



2023 Professional Liability Mini Seminar

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Who, What, When, Where & Why: How to Discover Evaluation-Critical Information and Fuel Your Defense

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Pre-Suit “Discovery” | Investigation vs. Informal/Formal Discovery

The Power of Social Media & The Internet

Social Media

1. Facebook
2. Twitter
3. Instagram (+ comments and tagged photos)
4. GoFundMe
5. TikTok
6. YouTube
7. Personal websites/blogs/vlogs

Send a preservation letter

Ongoing research/review can be key

Traditional name searches are rarely fruitful now

Review family and friend pages

Internet

1. Google is your friend
2. State Electronic Filing System
 - a. Civil History
 - b. Criminal History
 - c. Charges

Third-party sources of information

1. News articles (with comments section)
2. Local news sources Facebook and Twitter pages
3. Law enforcement pages
4. Claimant hobbies, activities, and clubs

Use of private investigator, surveillance, and social media research firms

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Join our seasoned panel of trial attorneys and claims professionals for some pro-tips and tricks on various discovery methods. We'll discuss common discovery methods, as well as some less frequently used discovery tools, including ways to strategically plan on if, why, and when to employ them.

Pick up the Phone! Coffee or lunch with opposing counsel

Canvassing family & friends

Site/scene inspection

Agreement to share evaluation-critical information (e.g., questionnaire in mass tort situation)

Interview of claimant; pre-suit deposition

Solicitation of settlement demand with support/documentation RE damages claims

Mediation as a discovery tool

1. Lay eyes on claimant/plaintiff
2. Agree to exchange of information or mediation protocols in advance
3. Agree to share mediation statement

Requests for Production

RFP for Documents or ESI

RFP to inspect, copy, test, or sample “tangible things” (e.g., instrument panel; red yeast rice)

Non-destructive testing | destructive testing | testing protocol

RFPs for emails and texts

The special problem of email and texts in professional liability claims

Too informal; can be manipulated (consider communication protocol in engagement letter- no text messages)

Were they on the phone? Where were they? Was the response timely and professional?

Non-Party Requests for Production & Third-Party Subpoenas

FOIA Requests

Criminal Records

DA records

Police records- videos, photos, videos of confessions, etc.

NPRs to other professional service providers

Accountant

Real estate agent

Should they be identified as at-fault non-parties?

Requests for admissions

When, why and how

Use to pinpoint damages range (e.g., in fee petition setting, RFAs might ask: “admit reasonable fees were between 10,000 and \$15,000.” And then go up in 5k increments until gaining admission on total amount of fees requested. Effective in setting a floor for the fees likely to be approved/awarded)

Contention-Style Interrogatories

Depositions

Pre-suit depositions

Depositions upon written questions

Deposition of plaintiff right out of the gate (& before any written discovery)

Who goes first?

30b6 deposition of non-party

Informal interviews vs, depositions

Videotaping depositions

Defense “sound bites” at deposition

Use for mock or focus group exercise