

GARDEN STATE CLE LESSON PLAN

A 2.0 CLE CREDIT COURSE

FREE DOWNLOAD LESSON PLAN AND EVALUTION

BRIDGING THE GAP: CIVIL TRIAL PREPARATION

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AND FEATURING

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Program Description

Preparing a civil case for trial in Superior Court can be a long and complex project with serious consequences when mistakes are made and filing deadlines are missed. This CLE program will provide you with step-by-step instructions on how to get your civil case ready for trial

I. INTRODUCTION

II. ADVICE FOR YOUNG ATTORNEYS

- a. If tossed a file, get a similar old file and review it. Read it and learn from it.
- b. Look at the Rule Book. Rule IV governs all aspects of litigation.

III. DISCOVERY

A. Interrogatories

- a. There are form interrogatories in the Appendix to the Rules. These form interrogatories (“Rogs”) are mandatory in certain types of cases.
- b. Counsel is permitted 10 supplemental rogs without leave of court, more with leave on motion.
- c. Form rogs are deemed served with the first pleading and are due to be answered 60 days from the date the Answer is filed as to the Defendant, and 30 days from the date the Answer is filed as to the Plaintiff.
- d. Sitting with the client to answer the rogs is the best practice to follow.
- e. Objections are sometimes lodged to the questions
- f. Sanctions are available to the parties for failure to answer subject to the requirements of”
 - i. Good faith letter stating answers are overdue and a motion will be filed in “X” days without further notice.
 - ii. Same as to deficiencies in the Interrogatories. Insert Question, Answer and explanation of why the answer is deficient.

- g. Sanctions included barring an Answer or dismissing a Complaint, subject to motion practice to reinstate the Complaint with a fee of \$100, and more in the event additional time is needed.
- h. A dismissal with prejudice is also possible but that process requires a letter to the client and a separate motion.

B. Requests for Production

- a. Draft and send, allow time for answer of 30 days
- b. Answer the other party's discovery requests in a timely fashion
- c. Review the Jury Charge: it has the elements of the offense that will clue you into the documents needed

C. Requests for Admissions

- a. Save time in proofs
- b. Simplify the Admission
- c. Move for attorney's fee if fact sought to be admitted is later proven at trial , and the failure to answer was unreasonably withheld

D. Depositions

- a. Usually in person
- b. On notice prescribed by the Rule
- c. Prepare your client
- d. Demeanor counts
- e. Video depositions and special considerations
- f. Depositions of Experts
- g. Positional Bias

IV. MOTION PRACTICE

- a. Summary Judgment
 - i. Difficult to obtain
 - ii. Address issues of admissibility of pieces of evidence that are considered by the Court. It is an often overlooked requirement.

V. RESOLUTION

- a. Offers of settlement, demands for same
- b. Valuation is key to settlement
- c. Document offers from the adversary and communication to the client
- d. Mediation
- e. Arbitration

VI. ARBITRATION

- a. Automatic in civil cases
- b. Discovery deadlines and extensions
- c. At end of discovery time, the Arbitration is scheduled by the Court
- d. Informal presentation of evidence
- e. Arbitration awards are non binding on the parties
- f. Private arbitration is available to the parties, you can make agreement to make private arbitration binding

VII. GOOD FAITH IN BARGAINING

- a. What gets the insurance company to pay the fair value for the case?
- b. NJ does NOT have a bad faith law. But Rova Farms v. Investors Insurance of America, 65 N.J. 474 (1974) gives the plaintiff some important rights if the Defendant agrees to assign his claim to Plaintiff for the amount of any verdict in excess of the policy limits.
- c. Offer of Judgment --- Rule 4:58. If Judgment is 120% of the offer is awarded by the jury, the Plaintiff benefits with an award of attorneys' fees from date of offer plus costs and higher interest rate of 8%.

VIII. TRIAL PREPARATION

- a. Preparation, Preparation, Preparation
- b. Know your discovery
- c. Trial notebooks keep things organized

IX. OPENING AND CLOSING STATEMENTS

- a. Introduce your client
- b. Tell their story
- c. Relate tell what the issues are
- d. Advice for young attorney on the trial process:
 - i. Know your evidence
 - ii. Don't show fear
 - iii. Ask Judge's if there are good trials or experienced practitioners to watch in court

