

PICKING A WINNER

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1. FIND THE RIGHT CLIENT THROUGH YOUR INTAKE PROCESS

Carefully screening your clients is the most important thing you can do to “pick a winner.” We all have a different screening process, but there are several aspects to the screening process that should be mandatory. The last thing you want to do is end up spending your time and money in a case that should have been turned down in the first place.

- Screening your clients is the most important thing you can do to “pick a winner”
- The strength of any case begins and ends with the plaintiff
- Always meet the client in person
- Find out everything you can about your client
- Find out everything you can about the defendant
- Ask your potential client the hard questions – the questions even the defense attorney might not dare to ask
- Talk with potential witnesses

A. Initial Client Interview

When a potential client calls your office have some procedure in place to gather and document initial information about the potential client and their claims. Attached are two initial client intake forms used to screen potential clients. (Exhibit 1, Intake Form and Exhibit 2, Intake Form). Your staff can gather some initial information and complete these forms when the potential client calls your office regarding representation. Have any potential client fill out a detailed intake questionnaire. Several sample intake questionnaires are attached. (Exhibit 3, Intake Questionnaire, Exhibit 4, Intake Questionnaire, and Exhibit 5, Intake Questionnaire). These are forms collected from several employment lawyers, but you should modify these forms to fit your practice and intake process. Review the intake questionnaire before meeting with the client so you have some understanding of the potential claims.

Have any potential client bring to the initial client interview any and all documentation they have in any way related to their employment or their claims, including any information on any cell phones or computers. Documents sometimes have a way of getting misplaced or lost. The earlier you take possession of evidence the more control you have and you are able to guarantee.

You are meeting with a potential client to not only review their potential claims, but also to evaluate them as a witness. You want to see how they respond to your questions, how forthcoming they are with their responses, and your gut reaction. There is no perfect plaintiff. While some have fewer warts than others, they all have some issues we have to address or overcome.

- Evaluate the potential client
- Evaluate the potential claims
- Evaluate the potential client as a witness
- See if the potential client has filed any other lawsuits/EEOC charges
- See if the potential client has been arrested/convicted of any crime
- See if the potential client has filed bankruptcy
- See if the defendant has filed bankruptcy
- Inform the potential client about you and your firm
- Begin to manage client expectations
- Begin to evaluate the defendant
- Evaluate any potential witnesses

Conduct a thorough background investigation on any potential client before offering to represent them. Find out if the potential client has ever been arrested and/or convicted of any crimes. (Exhibit 6, Consent to Criminal Background Check). There are several things you can do to evaluate a potential client, in addition to meeting them in person. Ask the potential client about any social media and have them show you their Facebook page, or any other social media, and any postings/photographs while you are meeting with them. Also, have them show you any other forms of social media such as Twitter, Instagram, Snapchat, etc. Depending on the case, see if your client posts on any blogs, dating websites, Tinder, etc. You need to know everything about any potential client to be able to fully evaluate the case and to prepare for any potential issues before they are known to defense counsel.

B. Managing Social Media

You also need to manage your client once you have reached an agreement regarding representation. How many times have we been in a deposition and a defense attorney presents your client's social media posting as an exhibit and it does not present your client in the best light? There are ways to limit this and hopefully prevent this from happening. Attached is a sample social media agreement and social network disclaimer. (Exhibit 7, Social Media Agreement and Exhibit 8, Attorney Client Social Networking Disclaimer.) The social media agreement requires your client to obtain written approval from you or your firm before posting anything on social media. Requiring your client to show you any social media posts prior to posting is an excellent way to remove social media as a weapon for the defendant. The social network disclaimer lets the client know what to expect and how they should act once you have filed a lawsuit. Maintaining and protecting the "winning" client is as important as picking the "winning" client.

C. Ask the Potential Client the Hard and Embarrassing Questions

Depending on the potential claims you need to ask the potential the hard and embarrassing questions. The questions you think a defense attorney will ask, and even those they may not think to ask. You never want to be blind-sided in a case with information about your client you should have known before agreeing to represent them. For example, in a sexual

harassment case, always ask the potential client if they ever engaged in any acts that could be construed as sexually offensive. Also ask the potential client if they socialized outside of work with any of the individuals they believe harassed or discriminated against them. Did they go have drinks with the person they claim sexually harassed them after they were harassed? Did they go to lunch with the harasser? Are they friends on social media with any of the people they claim harassed and/or discriminated against them? Have they ever sent any text messages, emails or pictures that could be construed as inappropriate? Have they done anything to violate any policies? Your client will be on a pedestal and you need to know what may be lurking in the shadows that a defense attorney may use to try to discredit your client. If there are any issues, this does not mean you don't take the case or you can't win. You just need to know so you can fully evaluate the claims and control the issues as best you can.

D. Evidence/Documents

Ask the potential client what documents/evidence they have in their possession to prove their claims. Rarely do we get the "smoking gun" or audio recording where the decision maker states your client is being fired because they are a woman etc. We usually prove these cases piece by piece. The potential client may not know what evidence they have in their possession to support their claims. Get everything they have, handbooks, any other policies, performance evaluations, everything! Attached is a sample document checklist for your potential client to complete. This will help them in understanding what documents you need. (Exhibit 9, Document Checklist). Ask the potential client to provide you with a list of important dates and the names of witnesses. You need to begin to develop a timeline of events and witnesses you may need to contact. Attached is a sample form to have the potential client fill out regarding dates and names. (Exhibit 10, Important Dates and Names).

E. Manage Your Client's Expectations

Just because you have agreed to represent someone you believe has good claims and will be a strong witness, does not mean they are a "winning" client. You have to begin to manage your client's expectation from the first time you meet them. We have all had the potential client that emphatically told you, "I won't settle for less than a million dollars." Have any potential client fill out a damage worksheet. (Exhibit 11, Damage Worksheet). This will help you begin to manage your client's expectations regarding their damages. I would suggest have the potential client fill out a damage worksheet during the initial meeting. Always explain what damages are available and limits on damages as soon as possible. Also have your client provide you with the names of any treating physicians related to their claims. (Exhibit 11, Treating Physicians).

You also need to determine if this potential client is so unreasonable it may impact your representation. Look for the red flags that might indicate client problems down the road, so you can hopefully avoid issues after you have invested a great deal of time and money in a case. What do you do with the potential client who asks the following questions:

- The company will settle to avoid publicity
- My last lawyer sold me out
- Other lawyers don't charge as much or their contingency percentage is less

- I forgot about my appointment
- I've interviewed 10 other lawyers

We have all had the potential client tell us the defendant will settle to avoid publicity or that they are going to the news media to expose the horrible wrongs to make the defendant pay them some money. Whether a potential client asks this question or not you need to explain to them that this is usually not the case.

We have also had the potential client tell us their former lawyer “sold them out.” Be careful representing the potential client and spend a great deal of time discussing any former issues and future expectations. You may not be able to do anything to please this potential client.

When a potential client questions your fee you need to find out why. Is it just that they have never been through this process and don't understand the fee arrangement? Or, is this potential client well educated in the process and just trying to get you to reduce your fee. Again, be careful representing the potential client that asks you to reduce your fee. Rarely should you ever agree to reduce your fee. What we do is hard and we invest our time and money in case without any guarantee we will ever be compensated.

What do you do when you have a potential client/client who misses appointments? Establish a rule with your potential clients and client's. If they miss more than one meeting, absent some extraordinary circumstance, you will either not take their case or no longer represent them. This is their case and if they are not willing to invest the time and energy in helping you pursue their claims you do not need them as a client.

F. The Truth, the Whole Truth and Nothing but the Truth

You need to make it clear to any potential client and client that they have to tell you the truth at all times. You cannot represent a plaintiff that will not tell you the truth. Make it clear that if you ever find out the potential client/client has lied to you about ANYTHING you will no longer represent them.

G. Engagement Letter

Once you have agreed to representation you need to send the client a detailed engagement letter that explains your agreement and expectations. Attached is a sample engagement letter. (Exhibit 13, Engagement Letter). You should send an engagement letter in every case. You may want to modify the engagement letter depending on your local rules and your firm's practices.

2. YOU HAVE FAVORABLE SUPPORTIVE WITNESSES

It is surprising how often we focus our efforts on ferreting out all of the dangers to our case that are hiding under rocks and in the bushes, such as adverse witnesses or documentary evidence within the possession of the defendant, and neglect developing our own affirmative case with supportive witnesses. These witnesses come in all shapes and sizes, and shore up our case in many ways.

A. Damages Witnesses

1. *Friends and Family*

These witnesses are important. Most of our cases will involve some dispute regarding whether our client was somehow defective, suffering from either a competence or a behavior problem at work that underpins the employer's pretextual reason for terminating her. We have to defeat these arguments on the merits and evidence, of course, but it is helpful for the jury to see live witnesses speak sincerely and fondly of our client. A juror will often conclude that "she must be a pretty good person if this very nice witness has been best friends with her for 30 years."

Close, long-term friends or family members can also give excellent "before, during and after" testimony establishing how the termination of employment affected the plaintiff emotionally and psychologically. Such testimony can not only be persuasive to the jury in the first instance, but it can also be necessary to support on appeal a compensatory damages award for pain, suffering or emotional distress. *See, e.g., Wulf v. City of Wichita*, 883 F.2d 842, 875 (10th Cir. 1989)(plaintiff's testimony that termination was "very stressful" and that he was angry, depressed, scared and frustrated, coupled with plaintiff's wife's testimony that plaintiff was under "tremendous emotional strain" and that they experienced significant financial difficulties, provided substantial evidence to support a compensatory damage award). Such supportive testimony is all the more important when you do not have expert witness testimony on these issues, such as from a doctor or a therapist. Relying on only your client's testimony to support on appeal a non-economic compensatory damage verdict based on emotional distress is an unnecessary risk.

Certain third party, non-employee witnesses in this "friends and family" group can also support liability to a certain extent. If the witness testifies that your client was going through hell while working at the defendant company, that contemporaneous report of the working conditions is admissible to rebut any suggestion that your client fabricated or exaggerated the work environment for purposes of the lawsuit. There are several solid evidentiary bases to support admissibility of such testimony.

Resist the conclusion that these types of witnesses are unimportant because they are biased in favor of the plaintiff. You can make the bias work for you in an honest way. The jury will recognize the bias (indeed, you will elicit it during your direct examination), but that does not mean they will disbelieve the testimony; rather, there are reasons that these witnesses are saying good things about your client, and that these witnesses like your client so much: your client is a good, honest, nice person, as evidenced in part by the good, honest, nice people that like her so much (like this witness).

2. *Professionals*

We often overlook the opportunity to develop expert-type testimony during our case. When a client who has recently been terminated comes to us shortly after termination, we might neglect to inquire as to whether they have sought or received emotional counseling or therapy related to their termination. Our encouragement to them to do so might not only help the

development and presentation of the evidence of their case to a jury at trial, but also it could provide to our clients real life benefits that would flow from the professional counseling itself.

B. Witnesses Supporting Liability

1. Co-Employees Supporting Your Client

It is very difficult to win your case without the supportive testimony of co-employees. Due to the fear of retaliation, current employees are often reluctant to take the stand and testify "against" their current employer (by testifying favorably for your client). Accordingly, often such testimony is best elicited from former employees, who are more free to testify without risks of retaliation. Finding and developing such co-employee testimony is crucial in ensuring that your client's testimony will not fly solo on important issues of liability, as his testimony is inherently self-serving and needs credible corroboration.

2. Other Employees Who Observed or Experienced Similar Problems (Past and Present)

Our cases should not be prosecuted in a bubble. Particularly when the legal claims involve some type of status discrimination, it is important to demonstrate that others with the same status have suffered similar difficulties. There is a natural human tendency to believe that something that has happened before is more likely to be happening now than if there is no such demonstration of previous occurrence. An employer who previously discriminated against or otherwise mistreated other people is more likely to have been intentionally discriminating against your client. And, evidence demonstrating that the employer has discriminated against other people after your client's claims arose also tends to show that discriminatory intent may have been present, and also is useful in advocating for punitive damages (they've done nothing to solve their discrimination problem, and they continue to do it).

3. ASSEMBLE STRONG FACTS ON LIABILITY TO AVOID THE EXPECTED SUMMARY JUDGMENT MOTION

In most federal courts, a summary judgment motion filed by defendants after the close of discovery (or sometimes even sooner) is inevitable. There are several steps that ought to be taken to minimize the chances that such a motion will be granted.

A. Favorable Witnesses – Low Hanging Fruit

We often overlook readily available evidence that is growing in our own back yard. Most of our clients have friends and co-workers (frequently former employees no longer beholden to the employer) that are very willing to sign witness affidavits supporting various parts of our cases. Such witnesses can provide excellent ammunition supporting our client's job performance, workplace behavior, and the like. Likewise, friendly former employee witnesses can give perspective on important disputed factual issues related to liability, such as their observations of discriminatory treatment of other employees in our client's protected status, the

selective enforcement of the rules or policies in favor of employees who are not of the same status as our client, etc.

It is important to find and develop these favorable witnesses early in the process. Such witnesses frequently provide valuable leads toward finding other witnesses or evidence of which neither you nor your client were aware. Moreover, interviewing them early often makes them feel as if they are "part of the team" on your side of the case, and it is often a beautiful thing to see how their support can "evolve" into stronger and stronger testimony as the case proceeds toward trial.

When the inevitable summary judgment motion is filed, these witnesses provide a valuable stock of ammunition for affidavits to attach to the Response to the summary judgment motion. These affidavits can often help create stark disputes on material issues of fact. Once you have survived the summary judgment motion, of course, you have a ready stable of witnesses that can provide supportive trial testimony.

B. Research Previous Litigation

Too often, we develop our cases as if the wheel has never before been invented and we are starting from scratch. This is usually not so. Many times, the employer has been sued before in employment disputes, and these previous cases provide opportunities for us in developing our own cases.

There are many reasons that evaluation of prior lawsuits and claims against the company can come in handy, including the following:

- Provides evidence and investigative leads to establish pattern, practice and supportive evidence of discrimination;
- Provides valuable evidence regarding the employer's likely approach to litigation and settlement issues;
- Provides information regarding who your opposing counsel may likely be;
- Provides excellent fodder for cross-examination of defense witnesses regarding various issues likely relevant in your case;
- Provides identities of other lawyers who have sued the company, raising opportunities to access evidence developed in those cases and brainstorming possibilities.

C. Consider Whether Statistical Evidence Can Support Your Case

By and large, statistical support for a discrimination case is much less frequently used now than in years past. Nevertheless, many courts have indicated that statistical proof, even based upon small numbers and fairly rudimentary analysis, can at least raise a justiciable

question sufficient to survive summary judgment and get the case to a jury. For example, in *Greene v. Safeway*, 98 F.3d 554, 561 (10th Cir. 1996) the court observed as follows:

We have recognized the relevance and force of such evidence of a pattern of dismissals in [*Bingman v. Natkin & Co.*, 937 F.2d 553, 556-57 \(10th Cir.1991\)](#). There we upheld a judgment for the plaintiff on his ADEA claim, rejecting the employer's argument that the trial court erred in admitting evidence that two 60-year-old employees were laid off about a year after the 60-year-old plaintiff was dismissed. We stated that:

evidence concerning the make-up of the employment force and events which occurred after plaintiff's termination were entirely relevant to the question of whether or not age was one of the determinative reasons for plaintiff's termination; and, as the trial court found, *evidence not too remote in time that defendant terminated others in the 60-year-old age group would be entirely relevant to the question of defendant's policies and practices.*

Id. at 556-57 (emphasis added). Here the statistical data, while of course not conclusive, raised a justiciable issue of material fact which must proceed to trial. See [*Hebert v. Mohawk*, 872 F.2d at 1114-15 n. 13](#). In [*Morgan v. Arkansas Gazette*, 897 F.2d 945 \(8th Cir.1990\)](#), there was evidence of a pattern of employees over 40 leaving the circulation department and being replaced by younger employees. The Eighth Circuit referred to this showing as one thread of evidence that led to upholding an age discrimination award:

"[t]his fact is certainly not conclusive evidence of age discrimination in itself, but it is surely the kind of fact which could cause a reasonable trier of fact to raise an eyebrow, and proceed to assess the employer's explanation for this outcome."

Id. at 951 (quoting [*MacDissi v. Valmont Industries, Inc.*, 856 F.2d 1054, 1058 \(8th Cir.1988\)](#)).

Greene v. Safeway, 98 F.3d 554, 561 (10th Cir. 1996).

D. Background Investigation of Employer and its Witnesses

It is surprising how frequently a background investigation yields relevant information and powerful evidence in support of our claims. This issue is highly fact and circumstance-specific, of course, but such background investigations have yielded previous convictions (often on crimes of dishonesty, such as fraud, which is admissible at trial and at summary judgment stage helpful to creating factual disputes about credibility), SEC or other official investigations or sanctions, EEOC or other employment-related proceedings against the company or its officials, and the like.

4. IT'S NOT ME -- IT'S YOU: HOW PERCEPTIONS OF THE DEFENDANT MAY AFFECT YOUR CASE

Election year analysis presents us with some food for thought on the topic of case evaluation; we're looking at favorability and unfavorability ratings for every aspect of our case to determine whether we have a "winner." A negative perception of the defendant may be just as helpful as a positive perception of our client. As we move closer to trial, jurors' favorability ratings of the defendant will increase in importance. If we can gather enough evidence of defendants' weaknesses, we can [hopefully] position our clients for pre-trial settlement or a sizeable judgment.

You may learn about potential jurors' attitudes about the defendant employer through a jury survey, but there are several questions you can seek answers to earlier in your case evaluation process. Your client may have the answers to some of these questions, and you may learn a lot through early investigation and research. Uncover weaknesses in the players on the defense side, consider potential juror biases against the defense, and work these to your advantage if possible.

A. Who or what is the defendant?

The identity and characteristics of the defendant-employer can offer important perspective on the challenges you can expect in litigating your case. We can look to theories of juror bias to determine whether and to what extent a juror may assign liability to the employer. Moreover, you can learn from your client more about employee perceptions of the employer and delve into the issue further by speaking with other employees. Researching a number of issues discussed below will inform your decision as to how one leverage negative perceptions of the defendant.

Here are some questions to consider:

- *What type of entity is the defendant -- is it a government entity, large corporation, local small business, or non-profit, among others?*
- *Where is the employer based?*

A January 2016 Gallup Poll found that 63% of Americans are dissatisfied with the size and influence of major corporations.¹ Similar negative perceptions about the federal government prevails in most jurisdictions. Although the notion that jurors are biased against corporations has been widely contested -- especially to the extent that the argument was used to support tort reform that resulted in damages caps -- studies show that individuals are generally distrustful of corporations, view them as faceless, impersonal entities, and hold them to higher standards of conduct than individuals.² Jurors have been known to view foreign corporations even less favorably.³

¹ http://www.gallup.com/poll/188747/majority-americans-dissatisfied-corporate-influence.aspx?g_source=corporations&g_medium=search&g_campaign=tiles

² Robert J. MacCoun, *Differential Treatment of Corporate Defendants by Juries: An Examination of the Deep-Pocket Hypothesis*, 30 Law & Soc'y Rev. 121 (1996), Available at: <http://scholarship.law.berkeley.edu/facpubs/727>

³ Kimberly A. Moore, *Xenophobia in American Courts*, 97 Nw. U.L. Rev. 1497 (2003)

On the other hand, certain corporations are headquartered in or are the largest employers in the city or region from which your jurors will be drawn. A corporation can weave itself into the fabric of a community. Similarly, if the defendant is a local business of any size, or if its leaders are known by the community, you may encounter challenges due to sense of loyalty that may have developed. Small businesses and large corporations may be sponsors of local charities, schools and sports teams. When employers have had a decades-long presence in an area, upper-level managers sometimes have ties to the local government, including judges. Family-owned businesses are sometimes viewed as an extension of a prominent local family. In these types of situations, you may encounter “local bias” -- a jury pool that is protective of the economic interests of its community, and therefore favors the employer. In smaller communities, witnesses and jurors may have some connection to the defendant through any of these avenues, either directly or through friends or family. If you pursue a case in which the defendant employer may benefit from local bias, your claims should be compelling enough that jurors are willing to punish their own to right a wrong.

Non-profits and other entities that perform work generally viewed in a positive light may also benefit from juror bias. You may need to have an exceptionally compelling set of facts to convince jurors to award your client money that could be viewed as being taken away from a charitable cause. However, showing that a non-profit or other organization with a generally positive public image acted against contrary to its own principles (Ex: A charitable hospital denied an employee medical leave) is one way to overcome juror bias in favor of the employer.

- *Is the defendant already perceived as a bad actor?*

Early on, you may be able to learn about the defendant by performing background research and by seeking information from NELA members about the reputation of the employer and any similar claims that have been litigated or settled. [Shameless plug for the value of NELA membership.] In today’s economic climate, community perceptions of corporate employers are likely influenced by actions such as layoffs or shifting operations to other locations. If the employer has already faced negative publicity for actions such as violating safety regulations, contaminating the local environment, or mistreating employees, jurors may be predisposed to finding liability for other wrongs. Regardless of whether individuals who admit to bias are struck from the jury pool, you may hold an advantage over a sizeable entity if its relationship with the community has soured.

B. Who is the face of the defendant?

As you know, depositions tell us a lot beyond the facts of the case. If the documents don’t win the case for you, you should find at least one defense witness whose weaknesses -- either through the substance of testimony or through the way the individual presents -- you can capitalize on to your client’s advantage. Find out early from your client who the key defense witnesses may be and what you can expect of each. Plan your deposition questions to bring out the witness’s most unfavorable characteristics.

- *Is the witness boastful?*

- *Is the witness uncomfortable or insecure?*
- *If the witness is combative, can you provoke the witness in a subtle way to behave badly?*
- *Is the witness evasive, and if so, can you highlight this through a persistent line of questioning?*
- *Does the witness have a faulty or selective memory?*

To determine how a defense witness may be perceived by a juror and to capture the weaknesses in witness testimony, video recording depositions is very helpful. Judges and jurors agree that video clips of testimony can be powerful and persuasive evidence. Moreover, while you may recognize some weaknesses in the witness's performance during the deposition, reviewing the video afterward may give you fresh perspective on the positive and negative aspects of how a witness will present to a jury. The witness's mannerisms may convey deception. Interactions between the witness and defense counsel are also captured and can help build distrust in a juror's mind. You can use video to great effect to test your case on a jury panel or at mediation, where the corporate representative with settlement authority may even have the opportunity to view the shortcomings in his/her own testimony.

C. Who represents the defendant?

Reputations often precede attorneys. If you have already litigated against defense counsel, you are in a good position to assess whether to expect any particular challenges, or whether the relationship will be a productive one.

If you have not worked with defense counsel, once again, you may be able to get valuable information from your NELA colleagues on what to expect from the individual attorney and the defense firm. As you likely know, certain firms and attorneys may be exceptionally difficult opponents, not because of their skill as litigators, but because of their aggressive and obstructionist tactics. You must be aware of the resources you will need to successfully litigate against defense counsel. In the most extreme cases, you should be prepared to fight abusive litigation tactics such as frivolous motions for sanctions against you and your client. In others, you should know in advance how aggressive you will have to be to obtain the evidence you need to prove your client's case, and whether defense counsel's dilatory tactics will lead to a long, drawn-out litigation process.

If you are fortunate, defense counsel will not have experience in employment litigation. This may be the case for some matters in which the defendant is represented by counsel retained by the insurer.

If you are representing an employee in another state or region, consider whether Defendant's counsel is a local attorney who practices regularly in the court in which you filed. Consider also whether defense counsel has a positive relationship with the presiding judge, in which case, you may be at a disadvantage from the start. If so, it may be helpful to retain local counsel who not only has litigated against defense counsel, but who also practices regularly in the same court and has strong relationships with judges.

Finally, you should consider the role of defense counsel in presenting the case to a jury. If defense counsel would earn strong unfavorability ratings because of personality or other factors, you are better positioned to establish a positive relationship with the jury that will further your client's cause. Here are some more questions to consider:

- *Does defense counsel come across as being a bully?*
- *Does defense counsel present as a stereotypical "slick" big firm lawyer, and if so, how will that sit with local jurors?*
- *Is defense counsel from "the big city" rather than where the jurors are from?*
- *Is defense counsel unlikeable or unappealing in some other way?*

Again, making a video recording of a deposition will have the effect of either tempering defense counsel's conduct or capturing unflattering conduct to use to your client's advantage.

5. YOUR LIKELY JURY POOL IS FAVORABLE

Deciding whether to take your case to trial -- especially if you and your client want to turn down a significant offer -- depends on whether you think you have a good potential jury. Whether you conducted a focus group or not, you need to know who will comprise your venire, and then figure out the jurors among your prospective jurors that you will try to strike and remove from your final jury.

As referenced above, potential venires can vary dramatically in the same city or area. For example, in Cincinnati, there is a vast difference in the expected jury venire if the case is filed in state court rather than federal court. In state court in Cincinnati, the expected jury venire will be more blue collar, more diverse, and more liberal. In federal court, the opposite will be true.

Knowing your expected jury venire is critical to evaluating whether to take a case to trial if you otherwise have a chance to settle.

6. YOU DID A FOCUS GROUP OR MOCK JURY TRIAL TO TEST YOUR CASE

Once you have completed discovery and have filed your Memorandum in Opposition to the Defendant's long anticipated Motion for Summary Judgment, it is now time to turn your attention to trial preparation. You believe that you will prevail on the Motion for Summary Judgment and Defendant will never offer enough to fairly compensate your client.

If you have selected a case that you really want to take to trial (and hope that the Defendant will not offer a significant amount of money to entice your client to settle), a focus group or mock jury exercise allows you to test your optimism with individuals unfamiliar with you or the case and are who representative of your expected jury pool. A focus group or mock jury exercise also allows you to discover issues in your case that you have not seen, the classic "forest for the trees" concept, and allows you to:

- Identify the important issues and probable range of juror reaction to them
- Discover the reasons jurors are likely to lean either way on each issue
- Provide new ideas for how to present the case
- Identify which ideas are weak or harmful
- Create themes, arguments, and analogies
- Demonstrate which beliefs, attitudes, life experiences, and
- Show how well the exhibits work and how to improve them

Every trial should be focus group tested to some degree because the tool is available to you and only enhances the value that you are providing to your client. Much like a client who represents himself has a fool for a lawyer, a lawyer who believes that he or she alone can know all the nuances of a case and its settlement value is being foolish.

We have learned something from every focus group we have ever conducted and, in most instances, we learn multiple things about the case that had not been identified prior to a focus group. In addition, there are often many issues that you will think are close calls, only to be surprised by focus groups that think nothing of the issue. Sometimes you think that there would be a difficult issue to wrestle with, either in your client's favor or against your client, and a focus group will help remove the issue from consideration one way or the other.

While focus groups should not be used simply to determine whether your focus group decides in your favor or against you, focus groups will help you to better evaluate settlement. For example, if you have one particular fact in the case that you are troubled by and the focus group turns out not to be troubled by that fact, you may increase your settlement advice to your client, and vice versa.

For example, one firm had a multiple Plaintiff case recently in which the firm believed that the strongest client out of three would suffer if they could not convince the jury to find in the other two Plaintiffs' cases because all three cases were gender discrimination cases. They thought that a jury might conclude that, if there was not gender bias from a manager against two of the female clients, the jury would not find gender bias in the case of the third even though her facts were substantially stronger.

What the firm learned from that exercise was that the focus group quickly decided in favor of the one Plaintiff, and were negative toward the other two. That focus group allowed the firm to be so confident of the first Plaintiff's case that it turned down a significant Offer of Judgment for the first Plaintiff, and did not settle the other two because the Defendant was confident that it would win the other two cases.

At trial, the firm was able to focus most of the attention on the first Plaintiff's case during its presentation and that focus likely resulted in the final result, which was a gender verdict for each of the three clients. Tried separately, two of the Plaintiffs would have lost and the firm learned enough from the focus group to develop the trial presentation.

The biggest push back when suggesting focus groups to other lawyers is the cost of the focus group, and whether the client is going to absorb the cost or the lawyer is going to absorb the cost. An excellent resource for focus groups is a book by David Ball and the accompanying DVDs. If you use the David Ball technique and outsource as little as possible, you can keep focus group expenses at a reasonable level.

Using the David Ball recommended method, a third party is used to recruit 12-16 persons to “hear” the case and ultimately be divided into two separate focus groups, and another person acts as moderator. The total cost is usually between \$2,000 to \$3,000 because the recruiter will charge you several hundred dollars to find the jurors, the “jurors” will end up costing \$1,000 to \$1,500 total, miscellaneous expenses will be approximately \$500, e.g., parking, light snacks or meal, and \$200 or so for a moderator.

When you have picked your winner and want to try a case, the money you spend on a focus group will have a great return on investment if you are correct in your initial assumption that the case is a winner. In addition to confirming your belief that you have a potential winner, the lessons learned from a focus group will increase your chances of success at trial and increase your potential verdict amounts.

The following steps are essential for a successful focus group:

- Buy the David Ball book, read it, and watch the DVDs. “How to Do Your Own Focus Group”
- Identify your expected jury pool composition. For example, in Cincinnati, Ohio most employment cases are filed in federal court but several are filed in the local state court in Hamilton County. The potential jury verdicts in those two courthouses could not be more different. A Hamilton County jury will be significantly more diverse than a federal court jury, and a Hamilton County jury will be significantly more blue-collar in nature. We know these pools from 30 plus years of trying cases in these venues but, if you do not know the make-up of your potential jury venire, get help from a local trial lawyer who has tried several cases or go observe jury trials and check the venires that are presented to the lawyers for those cases. Once you have determined the expected jury pool makeup, you can inform the recruiter as to the demographic makeup that you are seeking in your focus group.
- Select a focus group recruiter and give them your preferred profile based upon what you know about your expected jury pool. We typically do this by asking them to recruit a specific number of focus group members, a specific number of “blue collar” members, and a specific number of racial minority jurors.
- Follow the procedure in the David Ball materials because they are based on decades of research and experience by a wide variety of specialists.
- After your focus group is completed and you have followed David Ball’s suggestions, talk to the focus group members after they have completed their paperwork to gain

additional insight that they may not have expressed either during deliberations or on paper. The focus group exercise is considerably shorter than an actual jury deliberation and you want to make sure that your takeaways from observing the focus group will not be changed by prolonged discussion of various issues. In other words, you want to see how committed your focus group members are to the opinions they expressed during the focus group.

- Analyze anything you heard or read from the focus group that you had not seen or understood previously. Make a list of those issues and make sure that you deal with them during the actual trial, whether they are for you or against you, and alter how you would have tried the case before you conducted the focus group.
- The final, and most crucial step: Identify the types of jurors you do not want on your jury. This is critical -- too many people mistakenly identify the people that they do want and forget that your only control during jury selection is to remove jurors, not add them.

CLIENT INTAKE SHEET

Today's Date: _____ Referred by: _____

Time: _____ a.m./p.m. Intake By: _____

Name: _____ (H) Phone: _____ Race: _____

Address: _____ (W) Phone: _____ Sex: _____

City: _____ State: _____ Zip: _____

Date of Birth: _____ Social Security No.: _____

Email Address: _____

Employer: _____

Employer Address: _____ Number of Employees: _____

Date of Employment: _____ Date of Termination/Resignation: _____

Your Position: _____ Hourly or Salaried: _____

Supervisor: _____

Union Member? (Yes/No) Bound by Collective Bargaining Agreement (Yes/No)

Signed Employment Agreement at work (Yes/No) If so, is there an arbitration clause? (Yes/No)

Nature of Discrimination: _____

Date of Discrimination: First Time: _____ Most Recent: _____

EEOC Charge Filed: (Yes/No) When: _____ If no, have 180 days expired? (Yes/No)

Right to Sue Letter Issued? (Yes/No) Date Issued/Received: _____

If yes, have 90 days expired? (Yes/No)

Received documents and attach to the intake? (Yes/No)

Describe Discrimination: _____

Did client complain of discrimination? (Yes/No)

If so, to whom?: _____

Was this person who harassed/discriminated a supervisor or manager? (Yes/No)

When did client complain? _____ How many times? _____

Witnesses to Discrimination: _____

Date given to AKH/GEP/KDH/LMR (please circle) _____

To be completed by Attorney:

Appt. With: _____ M T W T F S Date: _____ Time: _____

Comments: _____

Follow-up discussion:

Indicate if notes are in Time Matters and location: _____

POTENTIAL CLIENT INFORMATION

PHONE CONSULTATION REPORT

DATE CALLED: _____ RETURNED CALL: _____

APPOINTMENT: _____ DATE: _____ (IN HOUSE / P/C)

NAME: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP: _____

HOME PHONE: _____ WORK PHONE: _____

CELL PHONE: _____ EMAIL: _____

REFERRED BY: _____

EMPLOYER INFORMATION

EMPLOYER NAME: _____ NUMBER OF EMPLOYEES: _____

POSITION: _____ HIRE DATE: _____

DEMOTED - POSITION DEMOTED TO: _____ REASON GIVEN/DEMOTION: _____

TERMINATION DATE: _____ REASON GIVEN/TERMINATION: _____

EEOC INFORMATION:

EEOC CHARGE FILED: _____ DATE FILED: _____ STATUS: _____

EEOC INVESTIGATOR: _____ RTS RECEIVED: _____ DATE: _____

ADDITIONAL INFORMATION:

ARBITRATION AGREEMENT: _____ BANKRUPTCY: _____ TYPE: 13 _____ 7 _____ STATUS: _____

APPLIED FOR UNEMPLOYMENT: _____ STATUS: _____ DATE: _____

ADDITIONAL INFORMATION: _____

ATTORNEY ACTION

DATE CALLED: _____

RUN OFF: _____

NO CASE: _____

OPEN FILE: _____

To Do: _____

POTENTIAL CLIENT INTAKE FORM

Please Complete this and Fax/e-mail it to Our Office at Least 24 Hours Prior to Your Appointment or Bring it with You to Your Appointment.

A. Personal Information

Full Name: _____

All names you have
used in the past: _____

Address: _____

Home Phone: _____

Work Phone: _____

Cell Phone: _____

Other Phone: _____

E-mail: _____

Social
Security No.: _____

Date of Birth: _____

Driver's License
State and Number: _____

Are you married: ____Yes ____No

Name of Spouse: _____

Identify all social
media accounts

(Including user
name)

**LIST NAMES, ADDRESSES, AND PHONE NUMBERS OF AT LEAST TWO (2) RELATIVES
NOT LIVING WITH YOU (INCLUDE RELATIONSHIP TO YOU) FOR EMERGENCY
CONTACT:**

Have you been convicted of any crimes? ___Yes ___No

If so please provide details:_____

Have you ever filed for bankruptcy? ___Yes ___No

If so when:_____

Have you ever filed a Debtor's Court Petition? ___Yes ___No

If so when:_____

Have you been discharged from bankruptcy? ___Yes ___No

If so when:_____

Have you been discharged from Debtor's Court? ___Yes ___No

If so when:_____

How did you learn
of this firm?

[illegible]

Race	Sex	Religion	Age	Disability
Retaliation	Sexual Harassment	Racial Harassment		National Origin
Overtime	Family and Medical Leave Act	Military Service		Genetic
Other: _____				

OPPOSING PARTY/COMPANY INFORMATION/EMPLOYMENT INFORMATION

Name: _____

Address: _____

City: _____ County: _____

State: _____ Zip code: _____

Phone Number (With Area Code): _____

Name of Your Supervisor: _____

Number of Employees: _____ Do you still work for the company? ☐ Yes ☐ No

Did you sign an arbitration agreement with this employer? ☐ Yes ☐ No

Have you signed any releases with this employer? ☐ Yes ☐ No

Your date of hire? _____

Your date of termination if applicable: _____

Your job title: _____

Your job duties: _____

Wages earned: _____

Did you work overtime? _____ If yes, were you paid overtime? _____

How many hours did you work on a weekly basis? _____

What job benefits did you receive, and what is their economic value?

Did you have health insurance coverage prior to your resignation or termination?

☐ Yes ☐ No

If so, have you received notification of election of COBRA benefits?

☐ Yes ☐ No

Did you receive any discipline while working for this company?

C. Employment/Education History

Education (Please where you attended school, any degrees/certificates earned and applicable dates)

<i>School/Educational Institution</i>	<i>Years Attended</i>	<i>Course of Study/Degree/Certificate</i>

Military

Branch

Dates

Discharge

Special Skills

Current Employment (if different from the party you are seeking to sue)

Employer

Address

Position

Rate of Pay

Benefits

Supervisor

Dates of employment

Former Employers (prior to the employer who you are seeking to sue)

Name of Employer and Address	Dates of Employment	Position(s) Held	Reason for Leaving

Have you filed an EEOC Charge over the matter you are seeking representation? ☐ Yes ☐ No

If yes, give the date your Charge was filed and the Charge Number: _____

Have you ever filed an EEOC Charge? ☐ Yes ☐ No

If yes, when and against whom? _____

Have you applied for Unemployment Compensation? ☐ Yes ☐ No

If yes, were you able to recover such compensation? ☐ Yes ☐ No

Have you ever been fired from a job? ☐ Yes ☐ No

If so, name the employer(s), date of discharge, and reason(s) for discharge: _____

D. If you are claiming any physical or medical injuries, please fill this section out.

For each doctor you have seen in the last year, please list the doctor's name, address, why you were seeing the doctor, and dates of treatment

Name of Doctor and Address	Reason for treatment	Dates of Treatment

D. Your Expectations

What are your expectations in this lawsuit/what do you want to achieve in seeing a lawyer?

E. Summary of Your Case

Give a brief summary of the key facts of your case. **On a separate sheet of paper, please type or print clearly and legibly the facts that you feel show your employer violated the law.** Please be as detailed as possible and feel free to use as many sheets of paper as possible. Try to include as many dates and names as you can recall.

F. Please identify your witnesses:

Feel free to attach an additional sheet of paper if you have more witnesses than for which this chart has space.

Name of Witness	Address and Phone Number	What this witness knows

I have read the foregoing and represent that it is true and accurate. I acknowledge that by completing this form, I have not entered into an attorney-client relationship with Heather Leonard, P.C. The firm has the right to decide to take or decline my case after meeting with me to review this information. I acknowledge that if I intentionally misrepresented any of the foregoing information, and Heather Leonard, P.C. accepts my case, Heather Leonard, P.C. has the right to terminate its representation of me and recover the costs of representation.

Signature

Date

EMPLOYMENT QUESTIONNAIRE

PLEASE PRINT CLEARLY

Name: _____
Home Address: _____
City & State: _____
Home Phone: _____ Cell Phone _____
E-Mail Address: _____
Social Security Number: _____ Date of Birth: _____
Who referred you to this office? _____

Occupation or Business: _____
Presently Employed By: _____
Business Address: _____
City, State & Zip: _____ Business Phone: _____
Date Started at this Job: _____ Current Rate of Pay: _____
Normal Work Hours: _____ to _____

Present Marital Status: _____ Name of Spouse: _____
Spouse Employed By: _____
Spouse' Business Phone: _____ Number of Years Employed Here: _____

Person to contact if you cannot be reached:
Name: _____ Phone Number: _____
With whom to you live (names, relationships, and age of any children)?

Are you responsible for the care of any children or other family members? Yes__ If so,
whom and what age (s)? _____

Are you currently under the care of any doctor or counselor for emotional distress? Yes__
No__ If, yes, name address and phone number of doctor or counselor:

Are you currently taking any medication? Yes__ No__ If yes, when did you start taking
this medication? _____
What is the medication for? _____

What is the medication for? _____
In the last year you have you taken any medical leave? Yes__ No__ If Yes, when, for
how long and why? _____

Have you filed Bankruptcy? Yes__ No__ If yes, when, where and why? _____

Is the bankruptcy finished? _____
What is the name of the attorney you used? _____

EMPLOYMENT QUESTIONNAIRE

I WISH TO COMPLAIN ABOUT

1. Are you currently using or have you previously used another lawyer to represent you in any claim concerning this employer? Yes__ No__ if yes, please state the attorneys' name, address and phone number:

2. Name of Employer: _____
3. Address where you worked: _____
City, State, & Zip: _____
Business Phone: _____
4. Address of corporate headquarters: City _____ Zip _____
In which state is the Company Incorporated? _____
5. What kind of business is the employer in? _____
6. How many employees work at the company? _____
7. Is this employer publicly traded? Yes__ No__
8. Does the company provide short term or long term disability pay? Yes__ No__ If Yes please provide details _____
9. How long did you work for this employer? _____
10. What date did you begin there? _____
11. What was your first position? _____
12. Was there a written job application? Yes__ No__ If yes does it contain any exaggerations or inaccuracies by you as to your education, qualifications, work history, etc.: Yes__ No__ If so, what? _____
13. Does your resume contain any exaggerations or inaccuracies by you as to your education, qualifications, work history, etc.? Yes__ No__ If so, what? _____
14. On what date did you stop working at this company? _____
15. What was the last position you held with the company? _____
16. How many promotions did you receive there? _____

17. For each position you held there, please state the title of the position and the start and stop dates you held each position, and the immediate supervisor in each position:

Title	Dates	Supervisor

18. What was your starting salary or wage or annual earnings at this employer? (If you were paid on a commission basis, state your annual earnings): \$ _____ per hour/week/month/year
19. How many raises did you earn at this company? _____ Were any of these merit raises? Yes__ No__ If so, how many? _____
20. What was your last salary or wage or annual earnings at this employer? \$ _____ (If you were paid on a commission basis, state your annual earnings): \$ _____
21. Did you ever receive a monetary or cash bonus at this company? Yes__ No__ If so, when, how much and for what reason? _____
22. How were you paid? Hourly Rate \$ _____ Salary Rate \$ _____
23. If you were paid hourly, did you receive overtime pay for all hours over 40? Yes__ No__
24. If you were paid hourly, was there any time that you were at work but for which you were not paid? Yes__ No__ If yes, please explain? _____
25. If you were paid a salary did you supervise employees? Yes__ No__ How many? _____
26. If you were paid a salary, have you ever received pay for less than a full day's work? Yes__ No__ If so, what were the circumstances? _____
27. If you were paid a salary, were you ever suspended without pay? Yes__ No__ For how long were you suspended? _____
28. If you were paid a salary, when you exhausted your allotted sick leave and were absent, how did the company treat the absence? _____
29. If you were paid a salary, did your position require a degree or equivalent? Yes__ No__

30. If you were paid a salary, describe your chief job duties:

31. Does this employer have written personnel policies and procedures?

Yes ___ No ___

32. Does this employer have a written list of rules and regulations?

Yes ___ No ___

33. Does this employer have an employee handbook? Yes ___ No ___ If so, did you ever receive a copy? Yes ___ No ___ If so, please enclose a copy

34. Does the company give performance evaluations? Yes ___ No ___ If so are the evaluations oral? Yes ___ No ___ Written? Yes ___ No ___ Both? Yes ___ No ___ If written please enclose a copy

35. How have your performance evaluations been (for example, "Good", "Satisfactory", "Meets Requirements", etc.)? _____

36. Did you ever receive anything in writing, which said that you were doing or had done a good job? Yes ___ No ___ If so, what did you receive, when, who sent it and what did it say? Please enclose a copy. _____

37. Did anyone ever tell you orally that you had done or were doing a really good job? Yes ___ No ___ When? _____ If so, who told you, what was said? _____

38. Were you ever written up favorably in a company newsletter, association newsletter or public newspaper? Yes ___ No ___ If so when, what publication, and for what? _____

39. On this job were you ever suspended? Yes ___ No ___

Put on Probation? Yes ___ No ___

Given any warnings? Yes ___ No ___

If yes to any of the above, please explain by giving, dates, who gave you the warning, etc., and for what: _____

40. When did you first learn things were not going well on the job? _____

41. How did you first learn things were not going well on the job? _____

42. Before you were terminated, were you ever told specifically that your job was in danger? Yes ___ No ___ if so, when, by whom, exactly what was said, and was anyone else present? _____

43. Before you were terminated, did you ever make any complaint to higher management or make any attempt to straighten put the problem(s)?
Yes__No__ If so, to whom did you speak, what was the person's job title, when, what did you say, and what was the outcome?

44. Does the company have a grievance or complaint procedure? Yes__No__
45. Before you were terminated, did you ever make a complaint (orally or in writing), file a complaint or grievance or express your concerns?
Yes__No__ If so, when, to whom, for what reason, and what resulted, if anything:

46. Were you fired? (Note the word "fired" includes firing, layoff, and reduction in force, termination or any other similar word.) Yes__No__
47. Who notified you were being fired? _____ What was his or her job title: _____
48. On what date were you notified that you were to be fired?

49. When was your termination to be effective? _____
50. When did the termination actually become effective? _____
51. Did you receive a separation notice to take unemployment: Yes__No__ If so, what was the reason provided for your termination?

52. What is the name and job title of the person who signed the separation notice? _____
53. State the name and job titles of each person present at the same time you were told you were being fired:

Name	Job Title

54. Where and when were you told you were being fired?

55. Were there any other persons who saw or overheard you being fired?
Yes__No__ If so, who?

56. Did you receive Severance pay? Yes__No__ If so, how many weeks?

57. Is there a severance plan? Yes__No__

58. Did you sign any kind of paper to get the severance? Yes__No__

59. How many other employees perform(ed) the same or similar job function as you? __Who? _____

60. Did your employer take similar action against any of these employees? Yes__No__ if so, please identify the employees, by name , race, gender, age, and/or disability, if applicable:

Name	Race	Gender	Age	Disability

61. If you were not fired, did you feel pressured to resign or quit? Yes__No__
If so, when did you notify the company you were resigning?

62. When was your resignation to be effective?

63. When did your resignation actually become effective? _____

64. Did you give written notice of your resignation? Yes__No__ If so, please enclose a copy.

65. What was then name and job title of the person who forced you to resign?

66. What circumstances forced you to resign?

67. At the time of your termination, how was the company doing financially?

68. Is the company still in good financial condition?

69. At or around the time of your termination, were there any other employees terminated? Yes__No__ If so, how many others were let go? _____

70. Were any of these people in your unit? Yes__No__ How many and when?

71. In the last three years that you were with the company, approximately how many layoffs were there?

72. What was the reason given by your employer for your termination? _____

73. Name and Title of person(s) who gave you this reason? _____

74. What do you think was the real reason for your termination? _____

75. Please precisely as possible what facts lead you to believe the real reason is not the "stated" reason: _____

76. do you have reason to believe that your termination was due to discrimination based on your: Age__ Sex__ Race__ National Origin__ Religion__ Disability__ Taking time off under the Family and Medical Leave Act (FMLA)__ Medical condition related to Family and Medical Leave__ Other discrimination (specify) _____

77. Please specify what facts, in detail, lead you to suspect (or believe) that there was discrimination against you (give names, facts, and events): _____

78. Are you aware of any discriminatory comments made by supervisors? Yes__ No__ If so, what comment (if known): _____

79. Was your termination due to your reporting of misconduct or illegal conduct to either management or the public authorities? Yes__ No__ If so, what did you report, to whom and when: _____

80. Was your termination due to your refusal to perform an illegal or unethical or unfair act? Yes__ No__ If so, what were you ordered to do, when and by _____

whom:

81. To whom did you protest or refuse, and when?

82. Was your termination due to another reason? Yes__ No__ If so, what was the reason:

83. Did you have a written contract of employment with this company? Yes__ No__ If so, please attach copy.

84. When you were first hired, were you given any paper or letter confirming your hiring? Yes__ No__ If so, please attach copy.

85. Did you ever sign a non-compete agreement with this employer? Yes__ No__ If so when: _____? Please submit a copy.

86. Did you ever sign an arbitration agreement? Yes__ No__ If so, when: _____? Please submit a copy.

DISCRIMINATION

If you answered YES to any of the items in question {insert correct#} (discrimination), answer this section. Otherwise, go to Question {insert correct #}.

87. Did you file a complaint with any government agencies (federal or state or local)?

EEOC? ____ When: _____ Case Number: _____

GCEO? ____ When: _____ Case Number: _____

88. Do you have a copy of your complaint? Yes__ No__ If so, please attach copy.

89. Have you received a letter from one of these government agencies which says you have a "RIGHT TO SUE" your former employer? Yes__ No__ if so, please attach copy.

90. What is the date on the letter? _____

91. When did you receive the letter? _____

92. After you were terminated, did you ever make any complaint to higher management or try to straighten out the problems? Yes__ No__ If so, to whom did you speak, when, what did you say, and what was the outcome: _____

93. After you were terminated, did you make or file a complaint with human resources about the termination? Yes__ No__ if so, when, to whom and _____

what happened:

UNION ISSUES

94. On this job, were you a member of a union? Yes__ No__ If so, what is the name of the local: _____

95. After you were terminated, did you file a complaint or grievance?

Yes__ No__ If so, when, to whom, and what

happened: _____

96. Have you filed a union grievance about this matter? Yes__ No__ If so, when? _____

97. Is it scheduled for arbitration? Yes__ No__ If so, when? _____

98. What has happened?

DISCUSSIONS WITH OTHERS

99. Since your termination, have you talked with anyone who still works at the company about anything related to your employment termination?

Yes__ No__ If so, give complete details (who, when, who said what, etc.): _____

100. Since your termination, has there been any written communication between you and anyone who still works at the company? Yes__ No__ If so, give complete details (who, when, what, etc.) and attach copies of letters: _____

101. Since your termination, have you told anyone that you were thinking of suing the company OR a boss or co-worker? Yes__ No__ if so, give complete details (who, when, who said what, etc.): _____

102. Do you still have nay friends who work at the company? Yes__ No__ If so, give their names, titles, home addresses and telephone numbers: _____

Name	Title	Address	Phone Number

103. Did anyone replace you in your last position? Yes __ No __ if so, please state his or her name, gender, race, and approximate age, if applicable:

Name	Gender	Race	Age

104. What do you know about this person's qualifications?

105. If no one holds your former position, who now performs the job functions you performed?

If more than one person, list all by name, gender, race and age:

Name	Gender	Race	Age

106. What do you know about the person(s) who perform your job functions?

UNEMPLOYMENT

107. Have you applied for unemployment benefits? Yes __ No __ if so, when?

108. Have you received any benefits? Yes ___ No ___ If so, when _____

109. Did your employer oppose your application for benefits? Yes ___ No ___

110. Did anyone appeal the initial decision of the unemployment office?
Yes ___ No ___ If so, who? _____

111. Was a hearing held before a hearing officer? Yes ___ No ___ If so, when? _____

112. Who appeared as witnesses on behalf of the employer? _____

113. Has there been a decision? Yes ___ No ___

114. Do you have a copy of the decision? Yes ___ No ___ If yes, please attach a copy.

115. On what date was the decision mailed to you: _____

Other Person(s) You Believe are to Blame for the Problems you Experienced on the Job

116. Give the names, titles, and cities of residence of each person or persons you believe are responsible for your termination, discrimination or harassment in the workplace (co-workers, foreman, facilitators, supervisors, managers, HR, etc.):

Name	Title	City of Residence

117. What disagreements or disputes have you had with these persons? _____

118. What have they done to you that was improper? _____

119. Why do you think these people are responsible? _____

120. Have these people ever made hostile, vicious, nasty, ugly or snide remarks about or to you? Yes ___ No ___ If so, identify who said what and when: _____

121. State the name, address and telephone number of each person who witnessed anything having to do with your termination, work problem, etc. other than those above:

Name	Address	Phone Number

122. Have YOU ever gone to the police to stop this person's conduct or filed any case, or charge or any other type of claim against this person (other than what is stated above in this questionnaire)? Yes__ No__ If so, identify who said what and when:

123. Have YOU ever filed any case, or charge or any other type of claim against this employer (other than what is stated above in this questionnaire)? Yes__ No__ If so, identify who said what and when :

124. Have you ever filed any case, charge, or any other type of claim against any employer OTHER THAN this employer against whom you are complaining here? Yes__ No__ If so, please give complete details (dates, what the controversy was, type of claim, outcome, etc.):

125. Other than described above, have you ever had a serious dispute with an employer? Yes__ No__ if so, please state the name of the company and complete details, such as date, outcome, etc. :

126. Have you ever been involved in any legal dispute, insurance claim, accident claim, lawsuit or anything similar, other than a divorce, not described above? Yes__ No__ If so, please state type of dispute, the name of the company and complete details such as the date, outcome, etc.:

127. How long have you been (or were you) out of work? _____
128. What wages have you lost to date? \$ _____
129. Describe each and every financial or monetary loss (besides loss of salary, i.e., loss of insurance-health, disability, dental, pension, profit-sharing, bonus, etc.) which was caused by your termination, giving type of loss, amount, etc.?
- _____
- _____
- _____
130. What other types of harm or loss have your termination caused for you or your family (i.e., been hospitalized, forced to move, bankruptcy, still unemployed, etc.)
- _____
- _____
- _____
131. Have you sought any treatment or counseling as a result of your termination? Yes___ No___ If so, when, with whom, and the address and phone number of the person(s) seen or consulted:
- _____
- _____
- _____
132. Have you discussed your complaint against your employers with other family members or friends? Yes___ No___ of so, whom:
- _____
133. What was the person's opinion:
- _____
- _____
134. What did the person recommend that you do:
- _____
- _____
135. What did you hope to accomplish by bringing a lawsuit against your employer or co-worker/supervisor?
- _____
- _____
- _____
136. Have you sought re-employment with the same employer? Yes___ No___
137. Have you sought employment with another employer? Yes___ No___
138. Have you obtained another job? Yes___ No___ if so, when, with whom, and is the job comparable to your former position?
- _____
- _____
- _____
- _____

Please add any other information which you think is or might be important to any aspect of your case. Use additional pages if necessary.

OTHER INFORMATION

139. Have you ever been arrested? Yes ☐ No ☐

If yes, provide the following: date of arrest, county, state, charge and disposition of the charge (plead guilty, found not guilty, etc.)

140. Have you ever filed for bankruptcy? Yes ☐ No ☐

If yes, when? _____

EMPLOYMENT HISTORY

Please fill out this form listing each job held since leaving high school up to the Present. Use additional sheets if necessary. Begin with your present (or Most Recent) job and work backwards.

Dates From _____ to _____ Last Salary/ Wage \$ _____
Company Name and City: _____
Last Job held: _____ Last Supervisor: _____
Reason for leaving:
___ I quit for the reason of: _____
___ I was fired for (state reason given by company): _____
Other (explain): _____

Dates: From _____ to _____ Last Salary/Wage \$ _____
Company Name and City: _____
Last Job held: _____ Last Supervisor: _____
Reason for Leaving:
___ I quit for the reason of: _____
___ I was fired for (state reason given by company): _____
Other (explain): _____

Dates: From _____ to _____ Last Salary/ Wage \$ _____
Company Name and City: _____
Last Job Held: _____ Last Supervisor: _____
Reason for Leaving:
___ I quit for the reason of: _____
___ I was fired for (state reason given by the company): _____
Other (explain): _____

CLIENT INTAKE SHEET

Today's Date: _____ Referred By: _____

Time: _____ a.m./p.m. Intake By: _____

Name: _____ (H) Phone: _____ Race: _____

Address: _____ (W) Phone: _____ Sex: _____

City: _____ State: _____ Zip: _____

E-mail: _____ DOB: _____ SSN: _____ Age: _____

Contact Person if you are unavailable: _____

Spouse's Name: _____ Phone number: _____

Employer who discriminated against you: _____

Employer's Address: _____ Number of Employees: _____

Date of Employment: _____ Date of Termination/Resignation: _____

Your Position: _____ Hourly or Salaried: _____

Supervisor: _____ Race: _____

Union Member? Yes No Bound by Collective Bargaining Agreement? Yes No

Signed Employment Agreement at work? Yes No If so, is there an arbitration clause? Yes No

Nature of Discrimination: _____

Date of Discrimination: First Time: _____ Most Recent: _____

EEOC Charge Filed: If Yes, when: _____ If No, have 180 days expired Yes No

Right to Sue Letter Issued? Yes No If yes, date Issued/Received: _____

If Yes, have 90 days expired? Yes No

Describe Discrimination: _____

Did you complain of discrimination? Yes: _____ No: _____

If so, to whom?: _____

Was this person who harassed/discriminated a supervisor or manager? Yes No

When did you complain? _____ How many times? _____

Witnesses to Discrimination: _____

Character Problems, i.e., Affairs, Criminal Activity, Bad References, Discipline @ work, etc.: _____

Purpose of seeking lawyer: _____

Have you filed bankruptcy in the last three (3) years? Date: _____ Case No. _____

Are you contemplating bankruptcy? Yes No ***It is import that you inform us immediately if you file bankruptcy as this can affect you lawsuit!***

TO BE FILLED OUT BY ATTORNEY

Appt. With: _____ M T W T F S Date: _____ Time: _____

Comments: _____

Attorney Actions: _____

CONSENT TO PERFORM CRIMINAL HISTORY BACKGROUND CHECK

Date: _____ Driver's Lic # _____ State Issued _____

Last Name First Name Middle Initial

Maiden and/or Other Last Names Used

Current Address City and County State and Zip Code

Date of Birth Social Security Number Circle One:
Male / Female

This authorization and consent for release of personal information acknowledges that

_____ (Hereafter referred to as "Law Firm") and/or its agent, may now, or at any time I am a client or being considered for representation, conduct investigations whether the records are of a public, private or confidential nature. These investigations might include, but are not limited to, searches of educational institutions attended; financial or credit institutions, including records of loans; records of commercial or retail credit agencies; other financial statements; records of previous employment, including work history, efficiency ratings, complaints and grievances filed by or against me; records and recollections of attorney-at-law or of other counsel, whether representing me or any other person (in either a civil or criminal case in which I have been involved); records from the U.S. Veterans' Administration; criminal history information of file in local, state or federal agencies; and motor vehicle records. I also authorize the National Personnel Records Center, or other custodian of my military service record, to release to Secure search, the following information and/or copies of documents from my military service record: DD214, service record, and any disciplinary records.

I understand that these searches will be used by the Law Firm to determine whether the Law Firm will engage employment and/or representation. Therefore, I authorize and consent for full release of records (either orally or in writing) to the authorized representatives of the law firm. In addition, I release and discharge the law firm and its agent and associates to the full extent permitted by law from any claims, damages, losses, liabilities, costs expenses or any other charge or complaint filed with any agency arising from retrieving and reporting this information. I understand that according to the Federal Fair Credit Reporting Act, I am entitled to know whether employment was denied based upon the information obtained and to receive, upon written request, a disclosure of the background report. After reading this document, I fully understand its contents and authorize the background verification.

The following are my responses to questions about my criminal record history (if any) with descriptions to any question with a YES answer:

1. Have you ever been convicted or plead guilty before a court of any federal, state, or municipal criminal offense? (Excluding minor traffic violations)

YES NO

If YES, please provide an explanation below:

2. Have you ever received deferred adjudication or similar disposition for any federal, state or municipal criminal offense? YES NO
If YES, Please provide an explanation below:

3. Have you ever received probation or community supervision for any federal, state or municipal criminal offense? YES NO
If YES, Please provide an explanation below:

4. Have you ever been convicted of any criminal offense in a country outside the jurisdiction of the United States? YES NO
If YES, Please provide an explanation below:

5. As of the date of this authorization, do you have any pending criminal charges against you? YES NO
If YES, Please provide an explanation below:

THIS SECTION IS TO BE USED TO LIST ALL COUNTIES AND STATES OF RESIDENCE SINCE AGE 18 OR HIGH SCHOOL GRADUATION. YOU MUST BE SPECIFIC ABOUT DATES OF RESIDENCE.

CITY/TOWN	COUNTY	STATE	DATES FROM	TO

I HEREBY CERTIFY THAT ALL INFORMATION PROVIDED IN THIS AUTHORIZATION IS TRUE, CORRECT AND COMPLETE. I UNDERSTAND THAT IF ANY INFORMATION PROVES TO BE INCORRECT OR INCOMPLETE THAT GROUNDS FOR THE CANCELING OF ANY AND ALL OFFERS OF EMPLOYMENT OR VOLUNTEER POSITIONS WILL EXIST AND MAY BE USED AT THE DISCRETION OF THE EMPLOYER.

Signed this _____ day of _____, 20____

Applicant (Print Name) _____

Applicant Signature _____

Name: _____

in the matter involving _____
(Company)

SOCIAL MEDIA AGREEMENT

As a party bringing a lawsuit your background can and will be thoroughly researched by your employer or the law firm representing you. This means that Facebook, Instagram, Myspace, Twitter, blogs and other social networking and internet sites you subscribe to or have ever posted to will be searched and reviewed for negative and embarrassing information.

As a condition to our agreement to represent you, your signature on this agreement serves as your acknowledgment to NOT post or share any information or photographs on the internet about yourself, your family, your employer, other employees, managers or any other person or event without the express written approval of this law firm.

Additionally, any internet sites that you currently subscribe to, including, but not limited to, Facebook, Instagram, Myspace, Twitter and other social networking sites **MUST** be marked private and hidden from public access. You should not search out nor accept new “friends.” Often employers or law firms hire people or companies to be your “friend” to download content from your Facebook page. Sometimes

information is created about you to put you in a false light. You may be asked at any given time to provide access to any of these internet sites to members of this law firm and your signature of this disclaimer will serve as your written consent to do so upon request.

Dated: _____

Witness

Client Signature

(Print Name)

ATTORNEY CLIENT SOCIAL NETWORKING DISCLAIMER

Email information (all accounts): _____
Twitter information: _____
Facebook information: _____
MySpace information: _____
LinkedIn Information: _____
Blog information: _____
Website memberships: _____
Instagram: _____

DISCLAIMER:

The following statements are general in nature and do not apply in every case. Each case is different and must be assessed based on the facts of each case. However, the following statements are based upon personal experience, years of experience and thousands of cases I have handled.

FILING A LAWSUIT IS A HOSTILE ACT:

Filing a legal claim against a person or company is almost always seen by the person or the company as a hostile act by you. Filing a lawsuit against a person or company is almost always seen as an act of war by you in the eyes of the person or company that has been sued.

YOUR EMPLOYER AND IT'S LEGAL TEAM WILL TRY TO WIN AT ANY COST

The simple fact is that you can almost guarantee that your employer or any other person or company that you file a claim against or sue for any reason will hate you for such. This means many of your friends and co-workers will turn their back on you or shun you. Some of your co-workers will use legal claim and being out of work as an opportunity to "suck up" to the employer or advance his or her career with the employer by trashing you.

Your employer will use every means possible to beat you and pay out nothing on your case. Every employer suspects that every legal claim no matter how legitimate is bogus or exaggerated. To put this in clear terms your employer will suspect and does suspect that you made up everything your are alleging or that you are exaggerating the impact of their decisions. To compound the problem is the fact that there are some claims and lawsuits that are bogus. You have seen the television expose shows involving people claiming to be disabled from a work related injury and then videotaped roofing, boating, skiing, skateboarding, etc. You remember the television shows that exposed the injured worker going into the doctor's office on a cane and then back a few hours later skateboarding. This is the kind of thing that is imprinted in the mind of the employer against whom you have made a claim or filed a lawsuit.

SUSPICION LEADS TO INTENSIVE INVESTIGATION

You will be investigated by your employer and its legal team. Most people see an investigation of their claim as an invasion of privacy and offensive. Get over it. There is nothing you or your lawyer can do to prevent the employer from investigating you. You are advertising yourself to the world and publishing personal information to the world when you are on social media. You are giving up your

privacy.

There are many ways an employer will investigate you. One of the easiest ways an employer or legal team can investigate you is to simply look you up on social networking websites such as Facebook. With one quick Facebook search I can find a listing of your best friends, their occupations, your relatives, your hobbies, your likes and dislikes, etc. Social networking can be a very valuable tool for someone trying to harm your case and cost you money with false manipulations of the truth.

You have a credible and legitimate claim and the employer and its legal team will find that out through an investigation whether it is sneaky or not.

I do worry about things that you might say or do being misinterpreted. Sometimes the things we say or do in daily life can be easily misinterpreted. For example, I often say “I am going to kill him” meaning that I am kidding or maybe mad, but never meaning that I would kill the person. I will often go to lunch with a young woman that works in my office. This could appear to some people that I am having a non-business related lunch with a woman without the knowledge of my wife.

Every day things we say and do can and will be misinterpreted from time to time. Of course, an employer that thinks you are lying about your claim or the extent of your damage will try to use anything against you. The employer and their legal team will use every possible bit of information to decrease the value of your case so that they will have to pay you less. I once had a case where the injured worker posted a long message about the motorcycle cross country ride he had just gone on. I was his friend on Facebook so I saw the message and immediately called him to ask him about his cross country motorcycle ride and explain that what he had said would be used against him.

THE LAWYER FOR THE EMPLOYER

The lawyer hired by the employer will hire a high dollar, highly educated, fancy law firm lawyer to destroy your case. The lawyer is not your friend. While I might like the lawyer just as the Alabama football coach likes Florida State’s football coach Jimbo Fisher, it is my job to win your case and beat the lawyer. One of the first things the lawyer against you will do to try to destroy your case is to review the investigation file on you. The lawyer against you will issue special questions referred to as interrogatories to formally investigate your claim. Often the lawyer will issue interrogatories asking for your Facebook or social media passwords and passcodes. The lawyer against you will take your deposition at which time he/she will ask you questions in an effort to destroy your case. The lawyer against you might possibly ask you about specific social media, Facebook, etc. postings.

The lawyer against you will try to use things you say or do against you and manipulate those things in such a way to harm your case (decrease the monetary value of your case). Social media postings on Facebook, blogs and the like will be reviewed by the lawyer against you.

SELF INFLICTED WOUNDS ARE THE MOST COMMON PROBLEM AND DECREASE THE VALUE OF YOUR CASE

There is a reason that you have a lawyer and pay a lawyer. The reason that you have and pay a lawyer is so that you will LISTEN to the lawyer. Some other important reasons you have a lawyer is to explain the law, file proper legal documents, pursue your case in the court system and protect you from your own mistakes. A majority of the biggest weakness in cases is a result

of what I refer to as “self-inflicted wounds”. A majority of the things that decrease the value of a case and lose you money on a case are NOT things that the lawyer did or did not do but things you as a client did to harm your own case. It is my job to educate you and help you so you can avoid self-inflicted wounds. You can have the greatest legal team including Johnny Cochran, Clarence Darrow, Gerry Spence, Alan Dershowitz, Judge Judy, Judge, Judge Wapner, Judge Alex, etc. to try your case and you will still lose your case if you do something fatal to harm your case.

NO ONE WANTS TO PAY YOU MONEY UNLESS THEY HAVE TO:

_____ I have been advised that my employer and my employer’s legal team are not going to be my friends, help me or willingly and joyfully pay me money they want to keep for themselves. I have been advised that my employer and my employer’s legal team will do everything possible to use whatever I say or do against me.

MY EMPLOYER HATES ME

_____ I have been advised that my employer and my employer’s legal team most likely hate me and will do everything to work against me because I am trying to take their money.

I WILL BE INVESTIGATED

_____ I have been advised that my employer and my employer’s legal team are going to conduct a comprehensive investigation of me and my activities without telling me or advising me that I am being investigated.

I CAN BE AUDIO RECORDED ON THE TELEPHONE BY SOMEONE WITHOUT MY KNOWLEDGE

_____ I have been advised that the law in Alabama allows someone to record me on the telephone without me knowing I am being recorded.

I CAN BE VIDEO RECORDED AND PHOTOGRAPHED BY SOMEONE WITHOUT MY KNOWLEDGE

_____ I have been advised that the law in Alabama allows someone to video record and photograph me without me knowing I am being video recorded or photographed.

I MUST BE CAREFUL OF EVERYTHING I SAY AND DO

_____ I have been advised that I must be ever mindful of what I say and share about myself, my work situation, my medical care, my case, etc. to anyone on social media, Facebook, MySpace, by email, etc. I have been advised that I never know how people are connected and I might be talking about my case to someone that is best friends with those working against me.

I MUST LIMIT WHAT I SAY TO CO-WORKERS TO PLEASANT THINGS

_____ I have been advised that it is acceptable to talk with co-workers about the weather, children, and other pleasant things but I should avoid any talk about my case or work situation, my case, etc.

Initials: _____

I SHOULD LISTEN TO MY CO WORKERS WHEN THEY DISCUSS MY WORK OR MY

EMPLOYER

____ I have been advised to listen to co-workers and what they have to say about my case but not to comment about my case. I have been advised my co-workers can be a good source of information about the employer's comments, thoughts, strategies, anticipated actions, etc. so I should listen. I have been advised my co-workers can be a good source of counter surveillance and counter investigation of the employer so I should listen to them.

I MUST BE CAREFUL OF WHAT I SAY OR POST ON FACEBOOK

____ I have been advised that I must be ever mindful that everything I type into a Facebook, MySpace, Twitter, social networking sites, blogs, and websites, etc. can be misinterpreted and used against me. I will be ever mindful that every picture that I post on Facebook, MySpace, Twitter, social networking sites, blogs, and websites, etc. can be misinterpreted and used against me.

I MUST UNDERSTAND THAT MY ACCOUNTS AND EMAIL CAN BE "HACKED"

____ I have been advised that my Facebook, MySpace and other social media accounts and my email account can be "hacked" by others and sensitive private information can end up in the hands of my employer, employer's insurance company and employer's lawyer. I must be very careful what I write and post in any digital format.

I UNDERSTAND THAT I SHOULD NOT DELETE OR DEACTIVATE MY SOCIAL MEDIA ACCOUNTS

____ I have been advised by my attorney that I should not delete or deactivate my Facebook, MySpace and all social media accounts as it can be viewed as destroying evidence.

I UNDERSTAND THAT I SHOULD AT LEAST SET ALL OF MY AVAILABLE PRIVACY SETTINGS ON SOCIAL NETWORKING SITES TO PRIVATE

____ I have been advised that I must immediately set all of my privacy settings on Facebook, MySpace, Twitter, social networking sites, blogs, and websites, etc. to protect my privacy. I have been advised not to publicly post anything. I have been advised that I can do all the social networking that I want after my case has been resolved.

I MAY HAVE TO GIVE UP MY PASSWORDS TO FACEBOOK AND SOCIAL NETWORKING SITES

____ I have been advised that a Judge could rule in my case that I have to give my passwords and pass codes to the lawyer for the other side to investigate my Facebook, MySpace and social networking postings, history, comments, etc.

CLIENT

Document Check List - Employment Cases

Please bring any and all documents you have which might relate to your case. In addition to the documents which independently support your claims, the defendant will likely request the following documents from you. Please locate and provide to our office the following documents:

- ☐ Any employee handbook or policy manual provided by your employer
- ☐ Any documents reflecting your job description
- ☐ Any collective bargaining agreement
- ☐ Any employment contract
- ☐ Any promises in writing made to you by the defendant
- ☐ Any letters sent to you setting out terms of employment with the defendant
- ☐ Any writings regarding terms of employment or grounds for discharge
- ☐ Your job description
- ☐ Written job evaluations from the defendant
- ☐ Written Disciplinary Actions from the Defendant
- ☐ Any Resignation or Termination Letters re: the Defendant
- ☐ Any Waivers signed by you for the Defendant
- ☐ Any Releases Signed by You for the Defendant
- ☐ Your EEOC Charge and Right to Sue Letter (if we don't already have it)
- ☐ Any other documents relevant to your case

The defendant will likely request your tax records for the last five years. You may want to begin locating these forms.

IMPORTANT DATES & NAMES

Please complete the following information to help us establish important dates and information about your case. In most cases it is helpful to create a time line of important dates during your employment that will help establish a pattern of discrimination. Some of this information may not be applicable to your particular case, but will.

CLIENT NAME: _____ **CURRENT AGE:** _____ **D.O.B.:** _____

ETHNICITY: _____ **RELIGION:** _____ **RACE:** _____ **GENDER:** _____

DISABILITY/PHYSICAL IMPAIRMENT/HEALTH CONDITION: _____

FMLA ONSET DATE: _____

QUESTION	DATE	NOTES
Date interviewed for job that is the basis of your complaint		
Date of Hire		
Date you signed an Arbitration Agreement		
Date you signed any Release of Claims with your employer		
Length of probationary period before becoming a permanent employee		
Date when you became permanent employee with your employer		
Direct Supervisor's Names and Chair of Command		

Other workers hired at or near the same time as you: *Include their race, gender and age. This information is helpful to compare how you were*

treated by reviewing the treatment of other workers.

NAME	RACE	GENDER	AGE

QUESTION	DATE	NOTES
Dates of promotions and positions you were promoted to: <i>Include any promotional pay raises and the amount or percentage raise for each promotion</i>		

Dates of ALL jobs you applied for and were denied: *Include the name, race, gender and age of the person who received the job.*

NAME	RACE	GENDER	AGE

QUESTION	DATE	NOTES
Dates of ALL pay increases and how much		

QUESTION	DATE	NAMES/RACE, GENDER and AGE
Dates/names of others similarly situated that received higher increase		

QUESTION	DATE	NAMES
No pay increase: <i>Dates/names of others similarly situated that did receive pay increase</i>		

EMPLOYEE EVALUATIONS: Date and score/content of evaluation: *Include the name, race, gender and age of the person signing your evaluation or responsible for evaluating you.*

NAME	RACE	GENDER	AGE

DISCIPLINARY ACTIONS: Date and action taken and person responsible for signing discipline: *Include the name, race, gender and age of those listed.*

NAME	RACE	GENDER	AGE

Names of other decisionmakers/supervisors/managers: *Include the name, race, gender and age of those listed.*

NAME	RACE	GENDER	AGE

Significant dates/names of others hired that could take your job or was recently hired: *Include the name, race, gender and age of those listed.*

NAME	RACE	GENDER	AGE

Significant dates/names of others not disciplined that did similar actions: *Indicate race, gender and age of those listed and conduct that was similar or worse.*

NAME	CONDUCT	RACE	GENDER	AGE

QUESTION	DATE	NOTES
Dates of any grievances filed at work: <i>List reason for filing ALL grievances.</i>		
Probation date		
Suspension date		

Termination date(s): *Name, race, gender and age of decisionmaker(s) that terminated you.*

NAME	RACE	GENDER	AGE

Others not terminated but should have been: *Indicate race, gender and age of those listed.*

NAME	RACE	GENDER	AGE

QUESTION	DATE	NOTES
Dates that you heard any discriminatory language or saw discriminatory conduct/activities at work: <i>Indicate dates and details of exact words/conduct.</i>		
List all witnesses, including address, gender, race and age and information known		
Dates that you complained about discrimination or unfair treatment or pay at work		
Date you filed for unemployment		
Date unemployment was granted		
QUESTION	DATE	NOTES
Date unemployment benefits denied		
Date of appeal of unemployment benefits: <i>Include copies of all documents</i>		

Miscellaneous dates that could be important to your case		
Date you filed an EEOC charge of discrimination: <i>List ALL charges you have ever filed and the date.</i>		
Dates you were required to take Family and Medical Leave for a personal illness or surgery of to care for a family member		
Dates of any workplace injuries		
Dates of any surgeries or onset of serious medical conditions		
Dates of workplace drug testing: <i>Indicate if any drug testing was positive</i>		
Dates you joined any social media sites: <i>Include a print out of your social media sites for the last 6 months and include a printout of all photos and postings for the same 6 months. Also print the page that indicates your social media site is restricted to view by the general public.</i>		
Dates of any criminal actions you have ever committed or been accused of committing: <i>Provide a copy or the case action summary sheet for all criminal actions and the disposition.</i>		

QUESTION	DATE	NOTES
Dates of any civil action (including all divorce actions and child custody or support actions) you have brought or been brought against you: <i>Provide a copy of any complaint.</i>		
Dates of any bankruptcies and the types you have filed: <i>Note: Do not file for bankruptcy without contacting us 30 days before you file for bankruptcy. Failure to list your discrimination claim as part of your bankruptcy case will impact your discrimination case. Failure to timely notify us can result in our withdrawing from your case.</i>		
Dates applied for social security disability benefits		
Dates of any new jobs and subsequent terminations		
Dates of destroyed any documents that could have hurt or helped your case: <i>List ALL reasons why you destroyed any document and identify all documents destroyed.</i>		
Dates and names of all attorneys you have ever consulted in the last five years		

Other dates that you believe are important to your case or would help us prove discrimination: <i>Let us know the reason you believe these dates could be important.</i>		
---	--	--

These dates are true and accurate to the best of my recollection. I understand that my attorney and their staff will use these dates and supporting information to assist in proving my case of discrimination. I understand that these dates and supporting information could be used in documents submitted to the judge assigned to hear my case. If, at any time, I discover any date or information is not correct and should be revised or updated, I will immediately let you know.

Signature and Date

EMPLOYMENT DAMAGES WORKSHEET

Client Name: _____

Date: _____

1. Lost Wages

- a. What are your lost wages? _____
Complete the total last by subtracting total interim earning from your gross lost loss wages.

i. Gross Lost Wages

(1) Hourly Pay

- a. If you were an hourly employee, what was your hourly rate of pay? _____
- b. How many hours a week did you work? _____
- c. Were you paid time and a half for any overtime? Yes No
- d. How much did you make a week? _____
- e. How many weeks have you been out of work?

- f. How much have you lost to date? _____
This amount is your gross lost wage-.

(2) Salary

- a. If you were salaried, what was your annual salary?

- b. Based on that salary, how much did you earn a week?

- c How many weeks have you been out of work?

- d. How much have you lost to date? _____
This amount is your gross lost wages.

ii. Interim Earnings

- (1) Have you found another job? Yes No

If yes, for each employer since your termination from the defendant provide the following:

- a. Name of Employer: _____
- (i) Dates of Employment: _____
- (ii) Rate of pay: _____
- (iii) Earnings to date: _____
- b. Name of Employer: _____
- (i) Dates of Employment: _____
- (ii) Rate of pay: _____
- (iii) Earnings to date: _____
- c. Name of Employer: _____
- (i) Dates of Employment: _____
- (ii) Rate of pay: _____
- (iii) Earnings to date: _____
- d. Name of Employer: _____
- (i) Dates of Employment: _____
- (ii) Rate of pay: _____
- (iii) Earnings to date: _____

- (2) Total amount you have earned since your termination:

This is your total amount of interim earnings.

iii. Unemployment

- (1) Did you apply for unemployment? Yes No
- (2) Did you receive unemployment? Yes No
- (3) If yes, how much did you receive? Yes No

2. Other Out of Pocket Economic Losses

- a. Did you have any paid job benefits? Yes No

i. Health/Dental Insurance

- (1) How much did you pay a month? _____
- (2) How much did your employer pay? _____
- (3) Have you obtained new health insurance? Yes No

- a. Did you pay for COBRA? Yes No

- (i) If yes, how much did you pay and for how long?

- (ii) If no, why not?

- b. Have you obtained new insurance? Yes No

- (i) If yes, how much did you pay and for how long?

- (ii) If no, why not?

ii. Life Insurance Yes No

(1) Value: _____

iii. Profit Sharing Yes No

(1) Value: _____

iv. 401(k) Yes No

(1) Value: _____

(2) Employer Match: _____

v. Paid Vacation Yes No

(1) Value: _____

vi. Paid sick leave Yes No

(1) Value: _____

vii. Other: _____

3. Emotional Damages

a. What is the economic amount you are seeking for emotional damages:

b. Describe your emotional damages:

c. What evidence do you have to prove the economic value of these damages:

3. Do you want to go back to work for your former employer? Yes No

DISCOVERY

1. Questions:

- a. Do you know of any documents which are in the possession of the defendants which you think may be helpful to this case? If so, please identity them by name and/or description below:

- b. Are there any former and/or current employees that you believe may be beneficial witnesses in your case? If so, please list their names, contact information (address and phone number), if known, and a short description of why you think that person may be a beneficial witness below:

DIGNITARY HARM CHECKLIST

Doctors Seen?

List doctor, date & reason: _____
_____.

Counselors Seen?

List counselor, date & reason: _____
_____.

Symptoms

Be Careful Regarding Italicized Matters

	<u>Y/N</u>	<u>Amount/frequency of occurrence</u>	<u>Started</u>	<u>Stopped</u>
Weight loss/gain				
Upset stomach				
Nausea				
Trouble sleeping				
Nightmares				
Rashes				
Low energy				
Family trouble				
Anger				
Crying				
Health Concerns				
Health Insurance				
Embarrassment				
Loss of Interest in:				
Spouse				

Friends				
Activities				
Sex				
Alcohol use				
Smoking				
Divorce/Separation				
Hair loss				
Ulcer				
High blood pressure				
Avoidance of:				
Persons				
Places				
Activities				
Loneliness:				
Persons				
Places				
Activities				
Worry about:				
Money/ bills				
Reputation				
Career				
Medication for (prescription or Over the Counter (OTC)				
Headache				
Upset stomach				

Sleeplessness				
Anxiety				
Depression				
Other				
Other Matters				

VIA U.S. MAIL AND ELECTRONIC MAIL

**Re: Representation for Employment Discrimination Claims against
_____ (Attorney/Client Communication Privileged)**

Dear _____:

I want to take this opportunity to personally thank you for selecting my firm to represent you in your _____ claims against _____. I will be handling the investigation and preparation of your case. Please be patient with me. The legal process moves rather slowly at times and other times very quickly. Your case is very important to my firm, and thorough investigation and preparation takes time. I will contact you as your case progresses and when I have important information for you. While I will be diligent and responsive to all inquiries from you, please be aware that repeated and unnecessary telephone calls, emails, and/or unscheduled visits will interrupt the progress of your case.

The fee arrangement for this service is documented in our fee agreement. As you know, if your case settles you will receive 55% of the settlement proceeds and I will receive [REDACTED] after all expenses are reimbursed. Please begin a folder at home where you will keep the key documents relating to your case. Please file this letter, your fee agreement, and attached documents in that folder.

In order to effectively represent you, I need your cooperation in the following ways:

1. Do not discuss the claim with anyone without my authorization. This means anytime other than your spouse. If anyone contacts you about the claim, please get that person's name and telephone number, and notify me immediately.
2. Social networking sites, such as Facebook, MySpace, Twitter, LinkedIn, etc. are regularly checked by law firms defending companies in lawsuits. If you have any social network pages, you can be sure opposing counsel will be reviewing your pages. Be sure that you do not post anything on these pages about your legal claims, the subject matter of our representation, or anything that could be used against you to impeach your character and/or credibility, also do not delete anything you may have already posted. If you have any social network sites, please let my Paralegal, Chorlette Davis, know. It also includes blogs, websites, forums,

and chat rooms. Anything that you put on the internet can be accessed by anyone and is virtually permanent. You can rest assured that the opposing counsel in your lawsuit will do an internet search and find anything on the internet relating to you. In addition, I recommend that you stop placing anything on the internet. Remember, anything you place on the internet will be found and used by opposing counsel. **DO NOT DELETE ANYTHING YOU HAVE PLACED ON THE INTERNET OR ANY SOCIAL MEDIA.**

3. If you file and are denied unemployment compensation, please contact us immediately to appeal for you. If you do not timely appeal a denial of unemployment compensation, your discrimination case can seriously be effected to your detriment.

4. Do not file for bankruptcy or social security/long term disability benefits without first talking to me. One or both of these filings can dramatically undermine, if not eliminate, your ability to pursue your claims. If you file for bankruptcy and/or disability benefits without first telling and discussing such with me, it will be grounds for me to withdraw as your attorney.

5. Notify my office immediately if you change your address and/or telephone number, or if you anticipate your phone being disconnected. It is always good to provide alternate phone numbers and relatives who can get in touch with you.

6. It is important that you have already provided to me all information, documents, and/or evidence, including the names of witnesses (and when possible their address and phone number). If you have not done so already, please provide me this information within the next week.

7. Whenever you learn of new developments in your case, please document the new development in a document and e-mail my office so that the information can be reviewed and placed in your file.

8. Be patient. In any legal case, there are long periods of waiting time. This is normal and should not concern you. My office will send you regular updates on the status of your case. You may be certain that as soon as there are new developments in your case, you will be immediately notified. Of course, if the waiting period seems to be unusually long, it is certainly reasonable to make a quick call to see what is happening. Likewise, when changes or developments happen on your end, especially to the documents on damages or witnesses, you should notify us promptly.

9. You have an ongoing duty to mitigate your damages (i.e. if you have lost your job/are unemployed, you are obligated to seek out/not decline employment; if you were denied a promotion, you should seek out other promotion opportunities). Please be sure to keep a record of what you are doing to mitigate your damages as well as copies of any relevant documents showing your efforts (emails, job applications, resumes, appointment calendars, turn down letters, etc.). Periodically or every 3 to 4 months, send this info to us via email or fax.

10. You have an ongoing duty to also preserve evidence. Please undertake a thorough review of your personal documents and locate anything that relates to your potential claims and the time period covered by your claims. Do not destroy or throw away any of these documents. You are required by law to preserve all evidence related to your claims, including e-mails, web pages, instant messages, and computer files. For the electronic evidence, please:

- a. Create a folder named "Litigation."
- b. In your e-mail account check your "Inbox", "Sent", "Drafts", and "Deleted" folders for any e-mails relating to your claims in any way. Please immediately save any such e-mails in the folder you have created. Do the same search through your computer for any other electronic files relating to your claims, and save in a folder entitled "Litigation."
- c. Whenever you receive an e-mail or locate an electronic document relating in any way to your claims, please immediately save any such e-mails in the folder you have created. Be sure to include replies, forwards, and any subsequent e-mail "threads."
- d. If you have paper documentation, please gather it into a file folder and send it to my office within the next two (2) weeks if you have not already done so. You should always scan copies in the event a document is lost or misplaced when mailing. Keep copies of all original documents you provide us.
- e. Keep up with your tax returns for the last 4 years. This information is always requested during discovery. Please start collecting this information and forward within 90 days to our office or sign the release of tax information and forward.
- f. You have an ongoing duty to preserve electronic evidence related to this litigation. Please check your e-mail box and your folders once a month for

any new electronic material related to your claims. Please save any e-mails you find in your folder. Print copies and provide them to us.

g. There can be serious legal consequences if we destroy, or even passively fail to preserve evidence in an actual or threatened lawsuit.

I understand that most people have never been involved in a lawsuit. Some of the words and phrases you hear are not familiar; therefore, I have defined them for you here, so you can have a better understanding of the legal process. If you hear other words or phrases that you do not understand, do not hesitate to ask us to explain the meaning of the words.

Affidavit - A written declaration made under oath before a notary public or other authorized officer. This is a written statement from a witness given under penalty of perjury.

Allege - to claim that something is true.

Answer - the paper filed in the court by the defendant's lawyer stating their defenses to your claims.

Attorney - another word for a lawyer.

Complaint- the paper filed in court by your lawyer stating how, when and by whom you were injured, and what relief or recovery you are seeking.

Damages- the loss, in money, that you are claiming you should be awarded for your injury. Only after we prove that the defendant is liable are we entitled to ask for money damages.

Defendant- the person or company against whom a lawsuit is filed.

Deposition - sworn testimony given during the course of a lawsuit. Anyone, a plaintiff, a defendant, or a witness, may be deposed. It allows one side to find out exactly what the other side intends to prove.

To File/Filing - the physical act of electronically filing or mailing the pleadings to the courthouse and depositing them with the Clerk of the Court.

Interrogatories - questions submitted by one side to the other, filed with the Court, which must be answered under oath. Interrogatories usually ask specific

questions on the facts of the case.

Judgment- the final ruling made by the Judge, which ends a part, or all, of a lawsuit.

Associate - a lawyer and an employee of a law firm who does not hold an ownership interest as a partner, but assists and supports senior attorneys in representation and handling of cases.

Paralegal- a person on an attorney's staff who has taken classes in the law and who will assist the attorney, under his or her supervision, in document preparation and information gathering.

Liability- legal responsibility. What must be proved against the Defendant before the Plaintiff is entitled to an award of money.

Motion - a paper filed with the Court, which asks the Court to make an order during the lawsuit. The motion may ask for a final judgment, a ruling on the admissibility in Court of certain evidence, or many more things.

Order - any ruling by the Judge on any issue brought up by the parties. An Order is signed and filed with the Clerk of the Court to be placed in the Court's file.

Plaintiff- the person who asks the Court him/her a remedy (e.g., money damages, an injunction, a declaration of rights or responsibilities, etc.).

Pleadings - all the papers filed with the Clerk of Court during the lawsuit.

Subpoena - a writ issued to non-parties to the litigation (i.e. people or businesses who are not the Plaintiff or Defendant) commanding him or her to appear as a witness or to produce documents in his or her possession.

Statute of Limitations- the law which puts an absolute time limit on filing a Complaint. There are different statutes and limitations for different areas of the law. For example, in an employment discrimination case, this date is usually 180 days from the date of the alleged wrongful act of the employer. There are some exceptions to this law. As such, always consult an attorney immediately if you think that you have a claim. You may have less time than you think to bring your case in Court for certain types of claims, so never delay. I will retain your file for a

period of ten (10) years after this matter is concluded.

I realize you have valid concerns about your claims, but please be patient and understand that the legal system often moves slowly. I will contact you promptly when there are new developments in your case. I again thank you for the opportunity to be of service to you in this matter. If you have any questions regarding this letter, the attached contract, or any other documents I am attaching, please feel free to call.

Very truly yours,