

Preparing for Trial – An Examiner’s Handbook

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Moderated by: Sam Mann
City of Clovis



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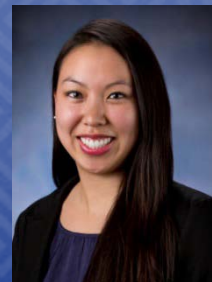


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S.I.P.P.

Set-Up.

The first question you should ask yourself is the simplest:

What legal defense will beat this case?

Can You Defend The Claim?

What is your legal defense:

1. Independent Contractor (Labor Code § 3600)
2. Intoxication (Labor Code § 3600)
3. Applicant's Serious and Willful Misconduct (Labor Code § 4551)
4. Disability aggravated by unreasonable conduct (Labor Code § 3600)
5. Employer prejudiced by failure to give notice of injury
(Labor Code §5400 and 5404)
6. Intentional self-infliction of injury or death (Labor Code § 3600)
7. Initial aggressor/altercation (Labor Code § 3600)
8. Conviction and commission of a felony (Labor Code § 3600)
9. AOE/COE (Labor Code § 3600)
10. Apportionment (Labor Code §4663/4)
11. Volunteer(s) (Labor Code § 3600)

The Principle of Parsimony:

K.I.S.S.

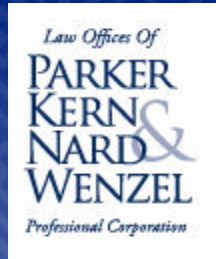


The Principle of Parsimony:

Keep It Simple Stupid.



A Real-Life Example:



Applicant, Officer Doe (hereinafter “APPLICANT”) was employed by the Defendant County of Bliss (hereinafter “DEFENDANT”) as a Sheriff’s Sergeant on December 20, 2001 when he was in a motor vehicle accident. On the same day of the incident, Applicant signed an acknowledgment that he had received a claim form.

Applicant was transported by hospital to SA Hospital and was checked, assessed and released that night. He recalled losing no time from work as a result of that incident. He did not recall filling out a claim form or other documents as it related to that accident. The next and first time he saw a doctor for the continuing pain was in March of 2007 when he met with Dr. Mary Doe and told her about his neck pain.

Applicant received a Claim Form (DWC-1) on December 20, 2001. It is undisputed that a claim form (DWC-1) was filed by Applicant on December 20, 2001. Applicant was sent a “Reynolds” letter on January 8, 2002. The only Applications for Adjudication of Claim (WCAB-1) were filed on or after April 20, 2007 alleging both a specific injury on December 20, 2001 and a cumulative trauma through March 20, 2007.

On March 29, 2007 Applicant sought treatment from Chiropractor Quack who manipulated Applicant’s neck. Applicant suffered a stroke immediately following the cervical manipulation provided by Chiropractor Quack.

What is your legal defense?

- The period within which proceedings may be commenced for the collection of benefits is one year from the date of injury or the last date on which any benefits were provided.

Labor Code section 5405(a)-(c)

- The timely filing of an application with the Appeals Board by a party renders this statute inoperative.

Labor Code section 5404

S.I.P.P. Continued



Investigate.

The second question you should ask yourself is:

What evidence do I need to prove my defense?

What Am I Looking For?



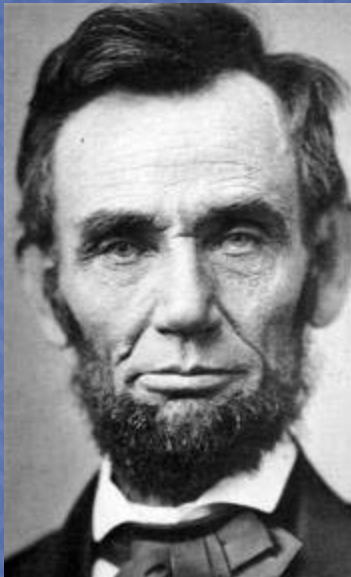
- **Evidence** is a piece of information that supports a conclusion.

Title 8 California Code of Regulations 10109(b)(1):

“...the information needed to provide timely benefits...”

What Am I Looking For?

WITNESSES



DOCUMENTS



In Real Life Example:

1. Documents to prove:
 - Applicant informed of his rights?
 - Statute preserved?
 - Statute extended – one year from last benefit?
2. Witness statement(s).
3. Medical records to prove:
 - Nature of care industrial?
 - Statute extended? (Yes medical benefits count)!

How Do I Get It?

Methods of Discovery California Code of Civil Procedure Section 2019.010

How Do I Get It?



- 2019.010. Any party may obtain discovery by one or more of the following methods:
- (a) Oral and written depositions.
 - (b) Interrogatories to a party.
 - (c) Inspections of documents, things, and places.
 - (d) Physical and mental examinations.
 - (e) Requests for admissions.
 - (f) Simultaneous exchanges of expert trial witness information.

Typically in California Workers' Compensation Cases:

Witness Statements

Witness Meetings

Depositions

Subpoenas

Medical Records

Personnel Records

Earnings Records

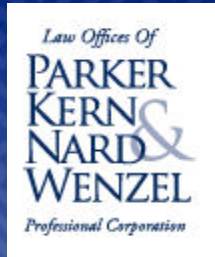
Investigation

Sub Rosa

Activity Checks

Interviews by Investigator

S.I.P.P. Continued



Prepare.

The third question you should ask yourself is:

Is this case prepared to proceed?

Review Your Case Including Strengths and Weaknesses!

Use “The Hundred Year Storm Standard.”

Strengths



The best architects, contractors and building inspectors create and approve their plans based on the worst storm in the last hundred years. The structures built to survive such a storm will survive any long-term challenge to their foundations.

Weaknesses



My Approach:

Think Like My Opponent First

In My Cases, Like An Applicant's Attorney.



My Approach:

I Can Honestly Say I Have Learned More
From My Best Critics Than My Best
Friends.



Commit To Your Legal Theories And Defenses

What are your legal defenses based on your discovery results:

1. Independent Contractor (Labor Code § 3600)
2. Intoxication (Labor Code § 3600)
3. Applicant's Serious and Willful Misconduct (Labor Code § 4551)
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Document:

Documentation:

1. List defenses
2. List documents
3. List witnesses
4. Match witness(es)/document(s) to defense(s)

Preparation Chart:

DEFENSE

- Statute of Limitations
- LC § 5405(a)-(c)
- LC § 5404

WITNESSES/DOCUMENTS

- Officer Doe (Witness)
 - Knowledge
 - Date of Claim Form
 - Last Treatment
 - Last Benefit
 - Receipt of Notice
- Claim Form
 - Date of Filing
- Application
 - Date of Filing
- Etc...

Final Preparations:

What should I present and How?

A. Pre-Trial Conference Statement, Trial Briefs
Possibly the death of your case?

B. Medical Packets

C. EAMS

D. Witnesses

1. Subpoenas

2. Notices in Lieu of Subpoena

3. Meeting and preparation!

-Talk To Them

-Explain What To Expect

-Do NOT Lead Them

S.I.P.P. Continued

Proceed.

The last question you should ask:

“Do I feel lucky?”

<http://www.youtube.com/watch?v=maBJzJgYito>



“Well, do ya, punk?”**

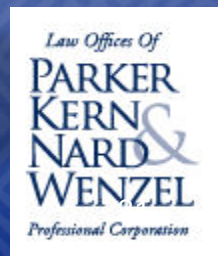
**Dirty Harry, (1971)

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