



# Making the case for case development plans

Much as novelists outline their books before writing the first chapter, an outline of your case will provide a valuable framework for your litigation

**BY KIMBERLY WONG**  
*The Veen Firm, PC*

As attorneys, we lead busy lives. Our work is demanding of both our time and energy. There never seem to be enough hours in the day to get everything done. We have no choice but to prioritize. Deadlines must come first, but what should come next?

It is easy to prioritize work that as a matter of course must get done during litigation, such as drafting pleadings, depositions, court appearances, preparing or responding to discovery, and writing or opposing motions. However, we should also be making time for creating case development plans as part of our regular practice, even though they are technically not required and involve significant time to prepare.

**The benefits of a case development plan**

A case development plan is a tool that assists the attorney in preparing a case to optimize the odds of a successful outcome. The plan functions as a road map for what you need to establish during litigation or trial to get the best recovery possible for your client. It is essentially an action plan that provides you with purpose and a defined goal. Use the

plan as a reference guide to help focus your work at each stage of litigation, whether it is drafting a complaint, crafting written discovery questions, or preparing for depositions. When you have a significant caseload, it can be challenging to keep track of the details of each case. The case development plan puts all of the key information in one readily accessible place.

For maximum utility, a case development plan should be started as early as possible after taking a case, preferably before filing the lawsuit. The plan is most effective if you memorialize the plan in writing. This helps ensure that you have addressed each component of the plan and makes your analysis more concrete when reviewing it later. Although you have recorded your case development plan, it should be considered a dynamic document that you continually update and develop as you learn new information.

**Components of the plan**

There are many different ways in which you can organize a case development plan, but they should all consist of the following eight core components: (1) causes of action; (2) investigation plan; (3) discovery plan; (4) damages; (5) defenses and attacks; (6) experts; (7) case themes; and (8) trial.

**• Causes of action**

You must first examine all potential causes of action that could apply to decide which to include in the complaint. It is advisable to keep an open mind during this brainstorming process. For example, an incident in which a box truck crashes into the back of a car may seem like a straightforward case in which you allege driver negligence and vicarious liability of the driver’s employer. However, there could also be other angles to consider depending on the facts, the severity of injuries, and potential resources of the driver. Was there a defect with the driver’s car that contributed to the collision? Was there a defect with your client’s car that exacerbated your client’s injuries, such as a defective seat back or a defective seat-belt?

The jury instructions are a good place to start because they provide all of the key elements you need to establish at trial. For each potential cause of action, ask yourself:

- What facts do you already know that support each element?
- What facts do you believe could be established to support each element?
- What evidence do you need to support each element?
- What evidence do you believe exists and will support each element?

Element	Facts	Documents/Discovery	Witnesses
1.			
2.			
3.			
4.			

Chart 1



Then, document each theory you contemplated and explain why you chose to include certain causes of action and exclude others.

Before discovery begins, make a chart for each cause of action which lists the elements of the claim. Every element needs one or more supporting facts. To succeed on the claim, each fact will eventually need to be linked to a witness, document, or other evidence. This cause of action chart (see page 18) will be useful when drafting discovery and preparing for depositions because it helps identify areas where evidence needs to be developed.

**• Investigation plan**

You now know what facts you need to establish. The next step is to prepare an investigation plan which outlines what you will do and where you will look to find potentially relevant information outside of formal discovery. Commonly, this will involve interviewing witnesses, obtaining records (e.g., police report, OSHA report, medical records), and doing online research. There is a lot of free information and resources available on the internet to research the defendants and any other people, places, or things involved in your case.

**• Discovery plan**

A discovery plan outlines the key issues for which evidence is needed to establish your case, the discovery tools you intend to use (e.g., interrogatories, requests for production, requests for admission, depositions), and the recipient of the discovery. First, examine the elements of the claims and what you need to prove. Your initial evaluation of the causes of action provides a good starting point, but you should also consider additional ideas for the topics and issues that your discovery should address. Second, identify which parties, including third parties, might have the information or documents you need. Third, assess what form of the evidence would be most useful if it existed, whether a document, photo, tangible thing, testimony, or something else to determine which discovery tools to use.

Economic Damages	Facts	Documents/Tangible Evidence	Witnesses
Past Medical			
Past Household Services			
Past Lost Earnings			
Future Medical			
Future Household Services			
Future Lost Earnings			
<b>Non-Economic Damages</b>			
Pain			
Mental suffering			
Loss of enjoyment of life			
Disfigurement			
Physical impairment			
Inconvenience			
Grief			
Anxiety			
Humiliation			
Emotional distress			

Chart 2

**• Damages**

In the damages portion of the plan, list all witnesses, as well as documents, videos, photos, music, and any other tangible evidence that would help explain the damages in the case. This could include photos of the injuries, photos of the plaintiff engaged in activities pre-injury, and photos of plaintiff in the hospital. Videos may include surveillance videos, sub rosa videos, home videos, and videos of plaintiff performing physical therapy exercises.

Eventually, the damages part should be expanded upon to ensure that all aspects of the damages claims have evidentiary support. One way to do this is to prepare a chart that lines up each item of economic damage and non-economic damage claimed with the facts and supporting evidence.

**• Defenses and attacks**

In this section, identify all defenses and other attacks on the case that are known or anticipated. This should be more than just a list of generic defenses, such as comparative negligence or failure to mitigate damages. Instead, provide as much detail as possible (e.g., “The plaintiff contributed to her injuries by failing to wear her seat belt.”). As the case progresses and you discover additional information during litigation, note all

testimony and evidence that the defendant could use to support these defenses.

**• Experts**

Identify all areas that will likely require expert testimony for both the liability and damages aspects. Then, identify the potential expert witnesses who will fill those roles. For personal injury cases, the type of liability experts you may need will vary depending on the nature of the claims. In some cases, such as those involving medical malpractice, product liability, or a dangerous condition of a public roadway, identifying and retaining the appropriate specialist to serve as an expert early is important because the very nature of the case depends on expert opinion for the claim to be viable. You may also need various experts to support the plaintiff’s damages claims, such as a life-care planner, a vocational rehabilitation counselor, a medical billing specialist, an economist, or medical specialists (e.g., orthopedic surgeon, neuropsychologist, psychiatrist).

**• Case themes**

Every case has a story you need to tell. To effectively convey that story, there must be a theme that provides a brief unifying idea of the key elements of the story. The theme provides a focus for how to view the evidence and determine the most important parts of the story.



Developing a good theme can take time so it is better to start brainstorming as soon as possible. By developing a theme at the beginning of the case, you can tailor your discovery requests and deposition questions to gather support for your theme. It also makes reviewing copious document production and deposition transcripts easier because it provides a lens through which to view this information. When you find bits of evidence that support the theme, be sure to document them.

• **Trial**

It is never too early to start thinking about trial. In fact, throughout the litigation you should be envisioning how the case would look at trial. After all, trial is where you will end up if the case does not settle or otherwise resolve. Moreover, to prepare a case for potential settlement, you typically must paint a picture for the defendant of how you expect your case would look at trial to persuade the defendant to pay a reasonable settlement.

There are a few things you can start early in the litigation that should save you time by the time you get to trial. First, write a draft mini-opening statement as soon as possible based on what you expect (and hope) the evidence will show after you have completed discovery. This will help guide your discovery efforts.

Second, make a running list of all of the critical points or facts that your client must be well-prepared to testify to during deposition and trial. Third, start a running list of possible motions in limine. As soon as you encounter any testimony or evidence that you believe would significantly harm or kill your case, add it to the list.

**Organization of the plan**

The particular form that the case development plan takes does not matter as much as the thought process that goes into it. Nevertheless, the plan is only as helpful as it is organized. How to organize the plan is really a matter of personal preference. For some, putting information into a table or flow chart is easier, whereas others may prefer bullet pointed lists, traditional outline, or a narrative with complete sentences.

You need to find a structure that works for you and then use that as a template to organize your case development plans for each of your cases. By having your plans consistently organized across cases, it will not only be easier to develop a habit for doing these plans, but it will also make it easier to find information when you need it.

Creating a case development plan may seem like a time-consuming exercise.

However, it is usually time well spent. As Benjamin Franklin once said, “For every minute spent in organizing, an hour is earned.”



Wong

*Kimberly Wong is a trial attorney at The Veen Firm, P.C., in San Francisco. She litigates complex catastrophic personal injury cases involving negligence, premises liability, wrongful death, products liability, industrial injuries, and exceptions to the workers compensation exclusive remedy doctrine. Ms. Wong is a frequent lecturer and author of published articles on various topics related to personal injury litigation, including third-party liability claims arising from workplace injuries. She has had several settlements featured in The Recorder's annual report of "California's Million-Dollar Settlements." Ms. Wong has also been selected by her peers to the Northern California Super Lawyers Rising Star list each year from 2012 to the present.*

*She is an active member of the Consumer Attorneys of California, the San Francisco Trial Lawyers Association, the Asian American Bar Association, and Queen's Bench where she serves on the Board of Directors and is co-chair of the Mentorship Committee.*