

Trial Practice

by Ralph F. Holmes, Esquire

Editor's Note: *Trial Practice* is a continuing feature of *Trial Bar News*. Written by Attorney Ralph F. Holmes, of the firm of McLane, Graf, Raulerson and Middleton, it focuses on subjects of interest to the trial bar in New Hampshire.



Ralph F. Holmes is a partner in the firm of McLane, Graf, Raulerson & Middleton in their Manchester office.

INTERROGATORY ANSWER PREPARATION: AN ADVOCATE'S OPPORTUNITY

No chore in discovery is more tiresome than answering interrogatories. To do the job correctly takes a great deal of time, yet the effort is often viewed as unproductive because it is a process instituted by, and to inform, the other side. That perception is wrong. Although answering interrogatories will probably never be fun, it offers outstanding opportunities for *persuasion, preparation* and *protection*. The three P's are the hallmarks of good answers.

Persuasion:

The answers will be read by opposing counsel and shared with his or her clients or adjuster and provide an opportunity to convince them of the strengths of the liability and damages facts. Aggressive, persuasive answers may cause the insurer to re-evaluate the case and up its reserve, as well as weaken the opposition's resolve. No other form of discovery offers as much opportunity while giving such control over the result.

The most common failing of answers is self-sacrificing brevity. All too often, answers are provided that are responsive, but not persuasive, because compelling detail is omitted. For example, a question in an auto accident case requesting a description of the claimed injuries might be answered simply by referring to attached medical records, a tack that completely wastes an important persuasion opportunity. A preferable alternative is something along the following lines:

My head had been violently driven into the windshield which was shattered in a starburst pattern. I suffered a concussion. My eye glasses were crushed between my head and the windshield. My head was cut and bleeding. I had several facial abrasions and a laceration

on my forehead over my left eye. Glass was embedded in my head and face. My face was bloody.

My chest had been driven into the steering wheel which was displaced upward. The 4th, 6th and 8th ribs on my left side were fractured and I suffered a lung contusion. There was a question of whether I suffered a splenic injury. The entire left side of my chest was severely painful, especially when I inhaled or moved.

My left hip was fractured at the acetabulum and the ischium. My right wrist was fractured. The ambulance attendants transported me to the hospital in a neck collar and on a body board.

Although this sort of writing takes a lot more work, it is unquestionably more persuasive and worth the effort.

Preparation:

Preparation of counsel and client to investigate, discover, and try the case is a valuable by-product of preparing persuasive answers. The drafting of the answers will require counsel to understand the details of the case. This will, in turn, alert counsel to the factual and legal issues requiring further analysis and investigation. Furthermore, it will educate the client as to the important issues and problems involved. The answers will likely be an important aid in preparing the client for his or her deposition which may occur months or even years later when memories have begun to fade. The extent to which the answers provide preparation in these ways will directly correspond to counsel's effort to make them complete and persuasive at the outset.

Protection:

Interrogatory answers are a two-edged sword. They should be used offensively to persuade the other side, but they can also be used against your client in cross-examination at trial. Five steps should be followed to protect your client from this danger. First,

answers should be full and complete and include all information falling within the scope of a fair reading of the interrogatory. If such information is not provided and is elicited on direct examination at trial, opposing counsel will then have the opportunity to impeach the client's credibility by suggesting that the client is fabricating his testimony or provided false and misleading interrogatory answers.

Second, in situations in which counsel is concerned that further case preparation may lead to the discovery of additional or different information relevant to the interrogatory answer, counsel should consider making a prefatory statement as part of that answer or at the outset of the answers to identify this concern. This is particularly appropriate in responding to interrogatories on theories of liability at the outset of a case if substantial further preparation on the involved issues is anticipated. Such a statement might be:

Prefatory Statement: These interrogatories are being answered at the very onset of this case before any other discovery has been done and while case investigation and preparation are ongoing. Future investigation and discovery may reveal further information covered by this interrogatory and such future discovery is incorporated here by reference.

The inclusion of a statement such as this can mitigate the damage to the client's credibility if cross-examined on the basis of the answer at trial.

Third, incorporate relevant records, writ declarations, interrogatory answers, and other documents by reference. In this way, the client's credibility can be protected against the risk that a significant item of informa-

