# Personal Injury Checklist

## Intake/Review
- **Statute of Lim.** 2 WD/3 MVA
- **Liability**
  - Contributory Negligence
  - Ticket
- **Damages**
  - Property Damage
  - Medical Injury
    - EMS
    - ER
    - Objective Signs
- **Previous Claims**
- **Pre-existing Injury**
- **Social Factors**
- **Insurance**
  - Liability
  - Medical Payments
  - Underinsured/Uninsured
  - Workers Compensation
- **Health Insurance/Liens**
  - Medicare
  - Medicaid
  - Private Health/ERISA
  - State Employee
  - Workers Compensation
  - M.D./Hospital Liens

## Pre-Demand Steps
- **Interview**
  - Contract Signed
  - HIPPA Releases
  - List Medical Providers
  - Police Report Info
  - Pre-X Medicals
  - Wage Statement
  - Photographs injury/veh
- **Insurance Notification**
  - Liability Carrier
  - Request Statements
  - UM/UIM
  - Med Pay
- **Pre-Suit Discovery**
  - Crash Report
  - Medical Records
  - Medical Bills
  - Photographs
  - Lien Requests
    - Medicare
    - Medicaid
    - Private Health
    - State Employee
    - Workers Comp.
- **Defendant's Criminal Record**
- **Plaintiff's Criminal Record**

## Demand
- **Letter to Include**
  - Description of Crash
  - Ticket
  - Property Damage
  - Witness Statement
  - No contrib.
  - Explanation of Liability
  - Statutes Violated
  - Common Law Duty
  - Aggravating Factors
    - DWI
    - Def. Crim. Rec.
    - Extreme Speed
    - Admissions
  - Med. Care Summary
  - Wage Loss Summary
  - Pain & Suffering
    - Events
    - Activities
  - Permanent Impairment
  - Demand $
  - Documents
    - Crash Report
    - Medicals
    - Bills
    - Wages
    - Photos
    - Statements
  - Send to UIM Carrier?

## Recorded Statements
- **Conference Call**
- **Prepare the Client**
- **Clarify not Object**
- **Don't Correct if it Helps**
- **Take your own Statements**
- **Reciprocity with defendant**
- **Statutory right to read stmt**

## Liens
- **Medicare**
  - 65 or Disabled
  - Notice: NO
  - Med Pay: Yes
- **Medicaid**
  - Poor, Disabled, Kids
  - Notice: NO
  - Med Pay: Yes
- **M.D./Hospital**
  - All Medical Serv.
  - Notice: YES
  - Records FREE
  - Med Pay: 
- **State Employee**
  - Paid after 7/04
  - Notice: NO
  - Med Pay: 
- **ERISA**
  - **NOT a Lien**
  - Notice: Yes
  - Med Pay: Yes
- **Reduce Lien:**
  - 50% AFTER Atty.
  - fees AND costs
  - May reduce also if
  - less than 50% gross
  - Pro-rates: NO
  - NCGS § 135-40.13A.
- **Work Comp**
  - WC benefits pd
  - Notice: No
  - Med Pay: Yes
- **Reduce Lien:**
  - Negotiation
  - usually 25%
  - 33%
  - Contract action
    - in Fed. Court
  - NCGS 97-10.2j

## Reduction
- **Medicare**
  - 65 or Disabled
  - Notice: NO
  - Med Pay: Yes
- **Reduce Lien:**
  - Atty Fee + Costs
  - Total Settlement = Reduction %
  - Lien x Red. % = Amt. of Reduction

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**NC Personal Injury Litigation Checklist**

### Pre-Filing Record Request
- Obtain Records for Discovery
  - Ticket
  - Property Damage
- Pre-existing Injury
  - W/C file from IC
  - Accident reports
  - Pre-x medical records
- Insurance
  - Liability Limits
  - Medical Payments
  - Underinsured Warning
  - SSD file request
- Health Insurance/Liens
  - Requests sent out
    - Medicare
    - Medicaid
    - Private Health/ERISA
    - State Employee
    - Workers Compensation
    - M.D./ Hospital Liens
- Asset Check on Defendant
- Secretary of State: Corporations
- Informed Consent of Client
  - Time for suit 1-2 yrs
  - Costs of suit
  - Results unsure
  - Time of client
  - Skeletons in Closet
- NC Reinsurance Facility Policy
- Causation from Doctor
  - Pre-existing conditions
  - Permanent injury
  - Client Compliant

### Draft & File Suit
- Complaint
- GAL or Estate Admin.?
- Consortium?
- COA’s: NIED, IIED, Punitives
- All defendants
  - I&S Liability
  - Agency
  - Vicarious Liability
  - Reg. Agent
- Description of MVA
  - Location/time/vehicles
  - Diagram
- Duty Violations
- Negligence
  - Duty
  - Breach
  - Neg. Per Se
  - Common Law
  - A Proximate Cause
- Damages
  - Property Damage
  - Physical injury
  - Past, present, future (ppf)
  - Pain & Suffering (ppf)
  - Medical costs (ppf)
  - Lost Wages (ppf)
  - Permanent injury/disabil.
  - Scarring
  - Loss of use
- Insurance Service
  - Liability (Facility Policy)
  - UM real service
  - UIM- real or certified
- RFO/INT/RPD (Discovery)
- Dist <10k Superior >10k

### Discovery
- Written Discovery:
  - Request for Admission
  - Interrogatories
  - Request for Production
- Plaintiff Depositions:
  - Defendant (video tape)
  - Treating Physicians
    - video tape if good
    - subpoena (costs)
    - live is better
  - Eye Witnesses
    - Bad one's first
    - good one's live
- Defense Experts
  - get background
  - previous depos
  - financial records
- Defense Depositions:
  - Plaintiff
    - Prepare!
    - Review Meds
    - Hired lawyer
    - Pre-x conditions
    - Diagrams
    - Guessing distance
  - P's Treating Doctors
    - Cross notice/sub.
    - Prep with pre-x
    - Explain WHY

### Service: Rule 4
- Summons “alive” 60 days
- A&P issued by 90 days
- Keep alive until Answer
- Certified/Restricted/Sheriff
- Publication only after:
  - Exhaust above and request from ins. co., check public records, judgments, filings, internet search, DMV, criminal record, deaths, defense attorney

### Meditation
- Required in All Counties in Superior Court
- All Parties must attend
- Mediator selected by agreement
- Notice to Lien Holders (Medicaid, WC)
- Determine Costs and Liens before mediation
- Explain mediation to client (expectations)
- Not admissible at trial
- Show you are prepared for trial
- Base Demand on Jury Verdict Possible
- Cite emotional/personal factors
- Potential for excess judgment
- Reasonable Expectations (use mediator)
- Don't take it personally
- Bring a calculator
- Don't spring new evidence
- Bring your trial exhibits

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EXHIBITS:
- www.NCTrialLawBlog.com
- Chris Nichols, Atty.
- nicholsatty@gmail.com
- www.NicholsTrialLaw.com
- 919.915.0212
**NC Personal Injury TRIAL CHECKLIST**

<table>
<thead>
<tr>
<th><strong>TRIAL ORDER</strong></th>
<th><strong>NC P</strong></th>
<th><strong>NC P</strong></th>
<th><strong>PERSONAL INJURY</strong></th>
<th><strong>TRIAL CHECKLIST</strong></th>
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<tbody>
<tr>
<td>○Calendar Call</td>
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<tr>
<td>○Pre-Trial Conference</td>
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<td>○Motions in Limine</td>
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<td>○Judge Instructs Jury Pool</td>
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<tr>
<td>○Introduction of Parties</td>
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<td>○Voir Dire Begins w/ P</td>
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<tr>
<td>○P seats 12, strikes then is accepted 12 jurors</td>
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<tr>
<td>○Def. strikes, seats 12</td>
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<tr>
<td>○P strikes from new, seats 12</td>
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<tr>
<td>○Process continues until jury selected (8 strikes each)</td>
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<td>○Jury Sworn by Judge</td>
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<tr>
<td>○P opening (usually 5 mins)</td>
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<tr>
<td>○Def. opening</td>
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<tr>
<td>○P Witness</td>
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<tr>
<td>○Def. Cross</td>
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<td>○All P exhibits in (check)</td>
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<td>○last chance to Voluntary Dismiss</td>
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<td>○P rests case</td>
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<td>○D Mot. for DV</td>
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<td>○D witness</td>
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<td>○P cross</td>
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<td>○D rests</td>
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<td>○P Mot. for DV</td>
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<tr>
<td>○Jury Instruction Conference</td>
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<tr>
<td>○Jury Instructions given to Jury</td>
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<tr>
<td>○Deliberation</td>
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<tr>
<td>○Verdict</td>
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<tr>
<td>○Motions</td>
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<tr>
<td>○Winner prepares Judgment</td>
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</tbody>
</table>

### DOCTOR DIRECT EXAMINATION

- Qualify as expert in specialty
- Judge Allows Expert
- "Can you agree that all of your opinion answers today will be at least to a reasonable degree of medical certainty?"
- Examined plaintiff, took history, ordered tests, reviewed medical records, diagnosis, treatment rendered, permanent impairment
- "Is [name] considered an injury?"
- "After treatment [detail] have you formed an opinion to at least a reasonable degree of medical certainty as to the cause of the injuries you diagnosed and treated?"
- What is that opinion? (car wreck caused it)
- Doctor, was the treatment you rendered reasonable and necessary medical treatment given your diagnosis of [the plaintiff]?
- Doctor, have you reviewed the records from the [ER, family doctor, physical therapist] and if so, was the treatment rendered reasonable and necessary given the Plaintiff's diagnosis?"
- (optional) Are these the records you maintained in your office for [plaintiff]?
- Introduce records into evidence (part or whole)
- Cover all the "bad stuff" before cross

### LAW ENFORCEMENT DIRECT

**Police Report Admissibility**

- Business Records Exception
- Personal Knowledge of report
- Made at/near time of collision
- Made in every crash case
- Filed in system/retrieved from

**Police Report Redaction (inadmissible parts)**

- Insurance Information
- Opinion of causation/fault
- Speed unless observed/stated by party
- Accident diagram if "reconstruction"
- Not based on personal knowledge
- Criminal charges (unless admitted)
- Estimated amount of vehicle damages $ 
- Hearsay witness statements

**Key Questions**

- Experience (# MVA's investigated)
- Use Report as exhibit (enlarged)(admitted)
- What did you see, hear, etc?
- Did defendant make statements?
- If P vehicle not damaged: "oficer have you seen bad wrecks where people walked away fine? How about wrecks like this where people were taken away on stretchers? No unusual, right? So the injury to the car may not relate to the injury to the person?

**CLOSING THEMES**

- Defendant admits fault but refuses to take responsibility. That is why we are here today.
- We live in a society where people refuse to take responsibility for their own actions.
- Saying you are sorry is the first step, correcting the problems you caused is the next step.
- Only give [the plaintiff] what is just and fair, put [her] back where she was before the defendant failed to follow the rules that all of us must follow.
- When we get our drivers license we make a contract and a promise to obey the rules of the road.
- When we break that promise, or violate that contract, we are legally responsible fix the problem.
- The defendant wants it all- to ignore the rules, deny responsibility, and then pick and choose what medical treatment the person he injured can have. It is your duty to level the playing field.
- The Defendant says that because we can not show you a picture of an injury, none of [plaintiff's] injuries must be real. Do we have to see something to believe it? What about love, or God? Or doing "the right thing." Everyday we take actions on what we know to be true, without seeing it.