

Chapter 7 - Managing Litigation Information Using Technology

Focusing on Cause of Actions, Legal Elements, Factual Propositions, Name and Other Codes.



The development of a cause of action, legal element, factual proposition and name coding system offers a significant advantage in using your electronic case notebook. This coding can form the foundation for your case and be the glue that binds all of your factual and legal information together. The organization of your case revolves around legal, factual, witness and other procedural issues. Creation of legal, factual, etc. codes to link key information is not difficult, and is a process we already engage in on a daily basis with our cases using manual methods. Once in a digital format, your work product and analysis can be preserved and the reliance upon the human memory can be decreased. As the facts and documents of a case grow, your ability to handle complex litigation with minimal resources will increase. To the right is a database record showing issue, authors, and other coding fields.

To begin creating an effective manual or digital trial notebook, one must determine what legal principles and factual propositions they will have to establish in court in order to convince the trier of fact that their client should prevail. Initially, a review of the applicable legal authorities is important in assessing a client's legal position. The law school teaching methodology of analyzing cases by identifying the legal elements and factual propositions of a case and then identifying the witness testimony and documents that are connected to those legal elements can



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w be transferred to a computer. After discerning the elements of the causes of action and defenses that apply, it is necessary to obtain the evidence to establish for the court that your position is the correct one. When the court prepares to write their decision, or a jury is instructed as to the law of the case, they will have to determine whether the legal elements of your cause of action have been proved with sufficient factual evidence. These are very time-consuming functions, but can be made much easier by using computer applications.

The examples that follow will assist in setting up the computer coding system for the legal elements and factual propositions of your case. Once this is completed and your factual information is coded under one or more elements, you will always have a summary of your case that will be invaluable for negotiations, your opening statement, closing argument, preparation of your witnesses for trial or deposition, etc. The coding process will develop links or chains

between your evidence so that important factual information can always be grouped or reported together for your use.

Above is a Summation document database abstract of a letter that has been coded with the issues OSHA and Health Dept.

The legal issues connected to a case are obviously very important. Whatever factual information is collected, it must be connected to the legal issues to which it relates, such as breach, nonpayment and damages.

For instance, if a contract document pertains to three different legal issues, then the factual information entered into the computer about that specific document can be connected to all three issues by the use of multi-entries in one record. The purpose and value of this type of field is that it will later permit you to search any of these issue codes, such as "nonpayment", and then generate a written report giving a description and summary of each document as it relates to the "nonpayment" issue code. You can do this for each issue code that you enter. This will give you control over what documents support the legal elements or factual propositions that you have to prove.

Creating Legal Issue Codes. Aside from a brief description of the legal elements, your emphasis should be placed on concise formulation of the factual propositions of your elements so that the factual information you develop can be properly coded and indexed.

<p>Generic Form - Legal and Factual Proposition</p>
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Letter Codes

Word Codes

A = Cause of Action

_____ = Cause of Action

B = Legal Element

_____ = Legal Element

B1 = Factual Proposition

_____ = Factual Proposition

B2 = Factual Proposition

_____ = Factual Proposition

C = Legal Element

_____ = Legal Element

C1 = Factual Proposition

_____ = Factual Proposition

C2 = Factual Proposition

_____ = Factual Proposition

C3 = Factual Proposition

_____ = Factual proposition

Negligence Cause of Action

Legal Element

Letter

Word

or Factual

Codes

Codes

Proposition

A

Cause-in-fact

Causation-in-Fact element

B

Duty

Duty of care element

C

Breach

Breach of duty element

C1

Improper Lookout

The bus driver did not maintain a proper lookout

C2

Failure to Yield

The bus driver failed to yield making a left hand turn

D Proximate Cause Proximate cause element

E

Damages

Damages element

E1

Property

Damages - property

E2

Lost

Earnings

Damages - lost earnings

To the right are two case examples where the legal elements and factual propositions have

been coded. DO NOT USE BOTH SYSTEMS AT THE SAME TIME. In these examples, the

legal elements and factual propositions have been coded using a letter code or a word code. If

your factual evidence is coded with these codes, then anytime an issue arises about the

“non-payment of the money”, the critical evidence will already have been coded and a report

can be run to retrieve locations and type of evidence that support or do not support your factual

propositions. This way, you will always be in control of the legal and factual analysis of your

case.

Contract Cause of Action

Legal Element

Letter

Word

or Factual

Codes

Codes

Proposition

A

Contract

Contract Cause of Action

B Duty Duty to perform contract requirements

C

Breach

Breach of contract terms

C1 Non-Payment X C1 Non-payment Company failed to pay for last six month's supply

C2

Acceptance

XYZ Corporation accepted the widgets

D

Damages Damages -

Contract price of goods

Name Code List. A name code list should be developed to connect case information to different

people. Name lists can be short, abbreviated name codes, or letter/number codes. Do not mix

the two coding systems. As you're reviewing your case materials for the first time, you will

generally be able to compile a substantial names list that you can use for linking case

information to people connected to the case. Some of these people will later be deposed and/or

called as witnesses at trial. It is very important that whatever factual information is collected is

connected with the person or persons to whom it relates for preparation of witness kits, etc.

For instance, if a contract document refers to three different persons, then the factual

information that you enter into the computer about that document can be indexed or connected

to all three persons by the use of multi-entries in the one record. Later, you can retrieve this

record for deposition or trial reports by searching for any one of the three persons or the

document itself.

You can either use their last name or assign specific codes to each of the persons connected

with a case. If you have two people with the same last name, then use the first letter of their first

name also.

Examples:

A. Name Codes

Short Code Full Name

Anderson, M Anderson, Mike

Anderson, J Anderson, Jane

Danmouth, Danmouth, Frank

Zuchowski, Zuchowski, Bill

B. Alphanumeric Codes

Short Code Full Name

W0001 Anderson, Mike

W0002 Anderson, Jane

W0030 Danmouth, Frank

W0140 Zuchowski, Bill

With some database software programs, data entry quality control is ensured by validation

features that preclude entry of a name into the computer, unless someone who has validation

control over the names has previously authorized it. This ensures that whoever is entering the

data in the computer does not enter an unauthorized or a misspelled name. Computers search

for the EXACT spelling of names or other case information, so it is important to correctly enter

name and other case information the same each time.

Other Codes. Besides issue and name codes, you may want to develop simplified coding

systems for other matters that arise in your case. Codes for a variety of categories can be

entered to retrieve records for specific purposes. For example, you may decide to use a code

such as PD to mean that further investigation or follow-up on a case is needed. The same

coding technique can be used for interrogatories (Interr), request to produce (RTP), etc.

Code Sorting. It is best to test your coding system on the software program so the sorting will

be acceptable for your later reports. Generally, in database programs, the computer will always

read and sort the first column first. It gives priority to numbers in ascending order, and then it

will give priority to letters in ascending order for your first column. For example, if you have the

number 1, number 2, and letters A and B in the first column of four document numbers, the

report will come back with the document numbered 1 first, 2 second, A third, and B fourth.

Below is an example how one software program will sort the following document numbers.

Always keep in mind that it first reads the first column of each number, and then will proceed to

the second column of each number for sorting and sub-sorting of the document number.

Sorting Order

.001

0001

001

002

1

101

A1

B11

C01

