CHAPTER 4
Investigation and Evidence

STUDY TIPS—KEY POINTS

• Interviewing clients and witnesses is an important preliminary step in the litigation process in which paralegals often play key roles.
• Legal and factual research skills are important for litigation paralegals.
• Case preparation requires knowledge of the rules of evidence.
• Expert witnesses play an important role in case preparation and at trial.

CHAPTER OUTLINE

I. The Client Interview
   A. Preparation for Initial Client Interview
      1. Conduct legal research to identify issues
      2. Make scheduling arrangements
      3. Develop a questionnaire and gather necessary forms and documents
   B. The Paralegal’s Role in the Interview
      1. Assist attorney
      2. Take notes
   C. Interview Summary
      1. Prepare narrative summary soon after interview

II. Locating Fact Witnesses or Elusive Defendants
   A. Steps for Locating the Agent of Corporations or Partnerships
      1. Contact the client
      2. Check records such as official records of secretary of state, accident reports, computerized services including Internet

III. Techniques for Interviewing Fact Witnesses
   A. Identify yourself
   B. Have questionnaire prepared
   C. Avoid leading questions
   D. Prepare written summary including observations of witness demeanor

IV. Evidence
   A. Types of Evidence
      1. Direct—evidence that if believed proves the point
      2. Circumstantial—evidence from which an inference is drawn
   B. Forms of Evidence
      1. Testimony
      2. Documentary
      3. Physical
      4. Presumptions and judicial notice
   C. Relevancy Requirement (Rules 401–402)
      1. All evidence must be relevant to issues in case
   D. Exclusion of Relevant Evidence (Rule 403–406)
      1. Not all relevant evidence is admissible
   E. Documentary Evidence
      1. Writing includes any type of medium upon which information is stored
      2. Must be authenticated and otherwise admissible
   F. Hearsay Rule
      1. Out of court statements not admissible if used to prove the truth of the matter asserted
   G. Exceptions to Hearsay
      1. Where truthfulness of statement is probable, hearsay is sometimes admissible
      2. Numerous exceptions include: statements used to prove state of mind rather than truthfulness, excited utterance, statements made for purpose of medical examination, business records, unavailability of declarant, statements against interest.
   H. Privileged communications are not admissible
   I. State Rules of Evidence—each state has its own rules
V. Methods for Locating and Preserving Evidence

A. Evidence Control and Retrieval
   1. Integrity of evidence must be maintained
   2. Shown by an evidence log detailing chain of custody

B. Preservation of Evidence
   1. Proper and secure storage is essential

VI. Expert Witnesses

A. Experts serve as consultants or expert witnesses
B. As a witness, can give opinion testimony.
C. Paralegals locate experts and confirm qualifications

WEB SITE LINKS

http://www.law.cornell.edu Legal Information Institute, Cornell Law School
http://www.uscourts.gov United States Federal Judiciary
http://www.nocall.org Northern California Association of Law Libraries
http://www.statelocal.gov Resources for State and Local Government Employees
http://www.four11.com Yahoo People Search
http://www.whowhere.lycos.com National Telephone Directory
http://www.anywho.com National Telephone Directory
http://www.switchboard.com National Telephone Directory
http://www.worldpages.com International Directory
http://www.knowx.com People Locator

LEARNING EXERCISES

1. Define or explain the following terms from Chapter 4:
   - agent
   - agent for service of process
   - authorization
   - character evidence
   - circumstantial evidence
   - demeanor
   - demonstrative evidence
   - direct evidence
   - evidence log
   - expert witness habit
   - hearsay
   - judicial notice
   - leading question
   - medical diary
   - presumption
   - release
   - relevant evidence
   - representation letter
   - retainer agreement
   - service of process

   If you cannot define any term, check its meaning in a legal dictionary such as that found on the following site:
   http://dictionary.lp.findlaw.com/

2. Today, a great deal of evidence is in electronic format. Obtaining and preserving this evidence is often difficult and many services provide assistance to lawyers in this area. Using a general search engine such as www.google.com search for “electronic evidence and litigation.” Find and summarize a site that is relevant to this topic.