

LOS ANGELES POLICE DEPARTMENT
Professional Resource Officer Assistance Civil Trial (PROACT)
Expanded Course Outline
1850-22680

Instructional Goal: To provide the students with the ability to understand, recognize and develop increased familiarity with the civil litigation process.

Performance Objective: Using learning activities (charts prepared by students, word pictures, direct questions, verbal exchange and assessments, group exercises and student feedback, etc.).

- To recognize and identify the functions, benefits, and plan strategies of the civil litigation process.
- To identify the nature and scope of the problems associated with civil litigation.
- To recognize and identify the value of documentation and preparedness.
- To increase the awareness of the settlement process.

Required Learning Activity: The instructor and students will interact on case studies involving law enforcement in civil litigation.

I. INTRODUCTION/OVERVIEW OF WORKSHOP TOPICS (60 Min)

II. EXPECTATIONS OF PROACT (30 Min)

- A. Learning Activity: The student will be broken into six groups and will participate in a discussion of what learning objective they hope to receive from the workshop today and to answer the following questions:
 - 1. What was your initial reaction to being named a party in a civil lawsuit?
 - 2. List any specific issues or questions that you would like to have addressed today?
 - 3. What do you hope to get out of the workshop today?
- B. After the discussion, an appointed group leader will write their findings down on a poster pad. The facilitator will debrief the group expectations and post it on the wall.

III. INTRODUCTION TO THE LITIGATION PROCESS (90 Min)

- A. The 15.07 Request for Representation
 - 1. Must be done if you are requesting City Attorney or City-paid representation.
 - a. See Manuel section 3/7/82.10 for content of 15.07
 - b. Exemplars are available through Risk Management and Legal Affairs Division.
 - 2. Must be done immediately upon receipt of summons and complaint.
 - a. Hand deliver to Risk Management and Legal Affairs Division
 - b. Copy of summons and complaint must be attached to the 15.07.
 - 3. The 15.07 must reflect the date the summons and complaint was served, which may be different than the date you received it.
 - a. List name of person who received or accepted summons and complaint
 - b. List date on which you first received summons and complaint
 - 4. Consequences of failing to turn 15.07 in on time:
 - a. Default judgement entered against officer.
 - b. Loss of ability to select forum
- B. The City Attorney
 - 1. Whose attorney is the City Attorney
 - a. Is he/she the City's Attorney or the Officer's Attorney?

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- b. Where does the City Attorney's loyalty lie?
 - 2. Can I pick my City Attorney?
 - a. By what process are Deputy City Attorney's assigned to cases?
 - b. What input, if any, does an officer have in the assignment of a City Attorney?
 - 3. Can I change my City Attorney?
 - a. What circumstances would justify a change of attorney?
 - b. What process or procedure is involved in getting a City Attorney changed?
 - C. Notify your City Attorney of conflicts or potential conflicts (Show slide 4)
 - 1. The City Attorney needs to be aware of conflicts or potential conflicts.
 - a. They are legal conflicts **not** personal conflicts.
 - b. Notify your City Attorney ASAP of any such conflicts.
 - 2. It will not affect your receiving City-paid representation.
 - a. Officers acting within the course and scope of their LAPD employment are guaranteed representation.
 - b. If a legal conflict exists, outside representation will be provided at City cost.
 - D. Tell us if you are involved in other cases, such as:
 - 1. Any criminal cases arising from the incident.
 - a. Both misdemeanor and felony
 - b. We need to be notified if you gave any testimony.
 - 2. Any other civil cases
 - a. We may reassign your new case to your current City Attorney.
 - E. The officer's cooperation is essential! (**Core Values**)
 - 1. Return phone calls and emails.
 - a. Many calls and emails are for your benefit.
 - b. If we cannot contact you, we cannot get your input.
 - 2. Respond to letters and memos.
 - a. Many letters and memos are for your benefit.
 - b. If we cannot contact you, we cannot get your input
 - F. Your role in the case: Civil versus Criminal (**Core Values**)
 - 1. In a criminal case you are a witness:
 - a. You are in the courtroom only during your testimony.
 - b. You have no attorney-client privilege with the prosecutor.
 - c. You are not a party to the case.
 - 2. In a civil case you are a *defendant*.
 - a. You can be in the courtroom at all times, from jury selection through closing arguments.
 - b. You have a right to be present at all proceedings in the case, including depositions.
 - c. Your conversations with the City Attorney and his/her agents are protected by the attorney-client privilege.
 - G. Role of the Risk Management and Legal Affairs investigator (Show slide 9)
 - 1. They assist the Deputy City Attorney in investigating the case and preparing for depositions and trial.
 - a. They gather necessary documents and evidence.
 - b. They conduct witness interviews.
 - 2. Conversations with the City Attorney's investigator are protected by attorney-client privilege.
 - a. The investigator is an agent of the City Attorney, so conversations with the involved investigator are protected like conversations with the City Attorney.

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- b. This confidentiality is unique to civil cases.
 - 3. They are a member of the team.
 - a. They work hand in hand with the City Attorney
 - b. They will do everything they can to make the experience less painful.
 - 4. They can serve as a liaison between you and the Deputy City Attorney.
 - a. Although it is important that you have a good working relationship with your City Attorney, you can always ask questions and bounce ideas off of your investigator.
 - b. Some officers are more comfortable talking to another sworn member of the Department, as opposed to a City Attorney.
- H. Interrogatories (**Core Values**)
 - 1. State: Form and special
 - a. Form interrogatories are pre-printed interrogatories which are pre-approved by the Judicial council
 - b. Special interrogatories are “custom made” interrogatories
 - 2. Federal: Special only
 - a. They are drafted by the City Attorney and sent to the plaintiff's council
 - b. Each party may propound 25 interrogatories, including sub-parts, on any other party.
 - 3. What are they? Written questions that an officer answers under penalty of perjury.
 - a. Must be answered within 30 days of service.
 - b. They can cover a wide range of topics.
 - 4. What are they used for? To pin down the officer and impeach later at trial or deposition.
 - a. They are essentially written testimony.
 - b. You must get them right.
 - 5. How are they answered? By the City Attorney with input from the officer.
 - a. City Attorney investigator will gather the necessary documents any items
 - b. City Attorney will raise appropriate objections and privileges
 - 6. Bottom line: They are very important and not to be taken lightly.
 - a. Whatever you say in your interrogatory responses, you are married to at trial.
 - b. They are not just a bunch of legal mumbo-jumbos.

NOTE: NEVER sign verification unless you are sure what you are signing and that you are comfortable with the responses given.

- I. Depositions (**Core Values**)
 - 1. What are they? Oral questioning under penalty of perjury by the opposing attorney.
 - a. It has the same force and effect as testimony at trial.
 - 2. Where are they conducted? Generally, at the opposing counsel's office.
 - a. Even though it is an informal setting, no do not let your guard down.
 - 3. Who can attend? Any party, the attorneys, and the investigator.
 - a. As a party to the lawsuit, you have a right to be present.
 - b. You should attend all depositions prior to yours.
 - 4. What is their purpose? To pin you down and gather evidence against you.
 - a. The deposition is not a trial run. It is as serious as the trial.
 - 5. Are they important? Critical!
 - a. Whatever you say at your deposition you are married to at trial.
 - b. You *must* get it right at your deposition
 - c. Prepare for your deposition as you would for the trial.

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- d. Participate in the walk-through with the City Attorney.
- e. Review all applicable documents and reports.
- 6. Your mindset at the deposition:
 - a. Think of it as an interview with IAD.
 - b. Be honest in your responses but answer *only* the question asked.
 - c. Do not volunteer anything.
- 7. What to wear: Unless the deposition is videotaped, wear whatever you want.
 - a. Check with your City Attorney to see if they want you to dress in a certain way
 - b. If dressing casually, avoid offensive clothing, i.e. T-shirts with inappropriate logos.
- J. Setting trial dates, deposition dates
 - 1. Trial dates are generally set by the court, sometimes with attorney input.
 - a. City Attorney should get input from officers regarding their availability
 - 2. Officers should advise the City Attorney of any scheduling problems or preferences.
 - a. Let your City Attorney know of availability problems ASAP, do not wait until the last minute.
 - 3. It is not uncommon for trials to be continued multiple times.
 - a. Think of it as multiple opportunities to review the materials
 - b. Always be ready; never assume the case will be continued.
- K. Your right to be present at all proceedings
 - 1. As a party to the lawsuit, you have a right to be present at all hearings and proceedings (except those held in chambers).
 - a. You even get to sit in and hear others testify
 - 2. Inform your Deputy City Attorney if you want to be advised of, or present at, any of the hearings or proceedings.
 - a. The City Attorney will make sure you get advance notice of all events.
 - 3. This includes the right to be present at all depositions and at all phases of the trial.
 - a. Generally, the City Attorney will want you to be present at all depositions
- L. Protecting personnel records
 - 1. State Court: Pitchess Motions, Evidence Code Section 1040 et. Seq.
 - a. State law provides significant protections for your personnel records.
 - 2. Federal Court: State protections are not binding on federal court; thus discovery of personnel records is generally broader and easier to accomplish.
 - a. Federal law leans towards disclosure as opposed to non-disclosure.
- M. Use and hiring of experts
 - 1. They are used to assist in the defense of your case
 - a. They testify on a variety of topics
 - b. They can have a large impact on the jury.
 - 2. Advise the Deputy City Attorney if you think a particular expert should be retained.
 - a. If you know of someone who you can think would be good in your case, let your City Attorney know.
- N. Walkthroughs (**Core Values**)
 - 1. They are done for a number of reasons:
 - a. To assist the City Attorney in gaining a full understanding and appreciation of what the officers experienced.
 - b. To refresh the officer's recollection of events.
 - c. To assist the experts retained on officer's behalf in gaining a full understanding and appreciation of what the officer experienced.
- O. Settlements: They can be initiated in one of three ways

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1. The court often mandates settlement conferences.
 - a. Federal rules require that a settlement conference be held.
 - b. Virtually every state court judge orders a settlement conference.
 2. Sometimes the City initiates them, but generally only in a case where we believe the liability is clear.
 - a. If we believe there is liability, it is our advantage to settle the case before the costs and attorney fees get out of hand.
 3. Plaintiffs generally initiate settlement discussions because they are the ones that want the money.
 - a. Plaintiff's lawyers make their money by bringing in a large number of cases and settling them at the earliest opportunity.
- P. The City is self-insured
1. They city does not have an insurance carrier to pay the cost of defending your actions or paying for settlements or verdicts.
 - a. All litigation costs come out of the City's general fund.
 2. The City pays all costs.
 - a. This includes City Attorney salary, officer salary, experts, and all other litigation related expenses.
 3. Since all costs, expenses and verdicts are paid for by taxpayers, their representatives (City Council members) have the final say as to whether or not the case is settled or tried.
 - a. This means that politics can play a significant role in what happens to your case.
 4. The City Council must balance potentially conflicting interests:
 - a. That which is in the best financial interest of the taxpayers; and,
 - b. That which is in the best interest of the morale of the City's employees (i.e., police officers).
 5. General bottom line: Will it cost us more later if we don't settle now?
 - a. This is similar to private auto insurance policies. Your insurance carrier has the final say as to whether or not to settle the case or go to trial.
 - b. Offers to settle for amounts less than \$50,000 may be accepted or rejected by the City Attorney without City Council approval,
 - c. Offers to settle for amounts between \$50,000 - \$100,000 must be presented to the City Council's Budget and Finance Committee.
 - d. Offers to settle for amounts in excess of \$100,000 must be presented to the Budget and Finance Committee and the full City Council.
 6. Presentations before the Budget and Finance Committee and/or full council
 - a. A member of the command staff represents the Police Department and relays the Department's position.
 - b. A City Attorney supervisor and (sometimes) the assigned Deputy City Attorney represent the City Attorney's Office.
 - c. The officer's input is conveyed by the assigned Deputy City Attorney to City Attorney supervision. It is generally not relayed to City Council by the City Attorney.
- Q. The good, the bad and the ugly of settlement
1. Advantages of settlement:
 - a. It eliminates the officer's exposure to punitive damages.
 - b. It eliminates additional discovery (i.e., officer's personnel records).
 - c. It avoids the stress of a trial and the time leading up to trial.
 - d. It provides closure and allows the officer and his/her family to put the matter

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- behind them.
- 2. Disadvantages of settlement:
 - a. The officer may see a settlement as an admission, by the City, that the officer did something wrong.
 - b. It does not provide vindication of the officer's name and reputation.
- R. Trials (**Core Values**)
 - 1. Your job: Be prepared!
 - a. Take the time to do your homework and study the materials given to you by your City Attorney.
 - 2. Memorize all materials given to you by the City Attorney, including:
 - a. All police reports
 - b. Scene photos
 - c. Communications tape
 - d. MDT messages
 - e. Preliminary Hearing transcripts
 - f. Criminal Trial transcripts
 - g. Interrogatory responses
 - h. Request for admissions responses
 - i. Deposition transcripts
 - j. OIS statements (possibly)
 - k. IAD statements
 - l. News articles and interviews
 - 3. What to wear: Generally, court attire (no uniform)
 - a. Dress conservatively
 - b. No "western wear"
- S. Expenditure of \$\$\$ for audio/visual and other trial aids
 - 1. The city attorney has the authority to spend money for blow-ups, slides, overheads, and (in some cases) video re-enactment. Work with you Deputy City Attorney on the selection and creation of these items.
- T. Guns in court (**Core Values**)
 - 1. State Court
 - a. Prohibited by Cal. Penal Code Section 171 (B)(2)(b).
 - b. Prohibited by Special Order No. 2 (January 26, 1996) (LAPD Manuel Section 3/782.50)
 - 2. Federal Court
 - a. Judges set their own individual policy regarding firearms
 - b. Check with your Deputy City Attorney or with U.S. Marshal's Service.
 - c. Generally, U.S. Marshal will not allow any exposed firearm in the courthouse.
- U. How long cases can take, trial continuances
 - 1. Cases can go on for a very long time.
 - a. State Court: Should be brought to trial within 5 years of filing date
 - b. Federal Court: Whenever the judge decides he/she wants to try the case.
 - 2. During the course of litigation, officers often change divisions and assignments. The City Attorney needs to know how to reach you and where to send things. Home address and phone numbers are optional.
 - a. Home addresses and phone numbers will be kept confidential.
- V. Stress
 - 1. A very real part of the process
 - a. Civil litigation is very stressful

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- b. Officers are not always cognizant of how stressful it is.
 - 2. You need to advise your Deputy City Attorney if you think it may interfere with your ability to concentrate during any phase of the case.
 - a. We must have your undivided attention at critical moments
 - b. If need be, we will attempt to move an event until such time as we can have your attention.
- W. Care and feeding of your City Attorney
 - 1. Believe it or not, they are people, too.
 - a. Contrary to common belief, they are warm-blooded vertebrates.
 - 2. If you like or appreciate what they are doing for you, let them know; it helps keep them motivated to do the very best they can for you.
 - a. A pat on the back goes a long way to keep your City Attorney focused on your case.
- X. Demand excellence
 - 1. Ask questions of your Deputy City Attorney: i.e., What is going on with your case?
 - a. One way to reduce stress is to keep up with the progress of your case.
 - 2. Stay in touch with your Deputy City Attorney!
 - a. It helps to build the relationship between you and your City Attorney.
- Y. Asset Protection and Estate Planning
 - A. Fraudulent Transfers
 - 1. Timely implement is necessary, when officers hesitate to act, they lose sight of their most valuable resource - time.
 - a. Officers have found that neglecting to act necessitates the option, Fraudulent Transfers. **(Core Value)**
 - b. A transfer found to be fraudulent is avoidable by the creditor.
 - B. Bankruptcy
 - 1. The most extreme measure. The purpose for the officer would be for equal distribution among creditors and a "fresh start" for debtor.
 - 2. The three types are Chapter 7-Liquidation, Chapter 11-Reorganization, and Chapter 13-Adjustment of debts.
 - C. Asset Protection Tools
 - 1. Officers need to have adequate automobile and homeowner's insurance, an umbrella policy.
 - 2. You must choose between California or Bankruptcy exceptions when it involves personal property.
 - 3. A Homestead Exception depends on debtor's status, when protecting your home from sale to satisfy enforcement lien.
 - D. Life Insurance and Annuities
 - 1. The two types are Unmatured, (while you are alive) and Matured, (after death).
 - E. Income
 - 1. A Wage Garnishment cannot affect debtor in bankruptcy proceedings or employer's deductions for insurance premiums and payments to health, welfare, or pension plans.
 - 2. A Lien cannot attach to paid earnings, social security or disability insurance benefits, unemployment compensation, health insurance benefits, workers compensation awards, and financial aid.
 - 3. A maximum of 25% of gross income unless debt is for child or spousal support, in which case 50% maximum applies.

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- F. Retirement Plans
 - 1. An officer's Police Pension is a "qualified plan" protected before and after received under California law.
 - 2. A 457 deferred compensation, IRAs and Roth IRAs are protected to extent reasonably necessary for retirement.
 - 3. The liability of community property interest in spouse's retirement plan to satisfy a judgement is protected to extent reasonably necessary for retirement.
- G. Jointly Owned Property
 - 1. Adding another owner is used mainly to decrease the amount of property owned by the debtor-owner.
 - 2. Upon the death of a joint tenant, jointly owned assets pass to the surviving joint tenants free of any claims of the decedent's creditors.
- H. Marital Property Considerations
 - 1. In Transmutation of community property to separate property to protect 50%, beware it has ramifications for subsequent divorce.
 - 2. Marital Agreements that are made in advance of problem, are better for long-term protection than undocumented outright gifts.
 - 3. A divorce is usually too extreme, and you lose all tax benefits associated with marriage
- I. Traditional Estate Planning Techniques
 - 1. Gifts of \$10,000 per year annual exclusion, that are outright to donee, to Trust for donee's benefit.
 - 2. Trusts are either Revocable with no creditor protection, or Irrevocable with disadvantages of loss of control of property, estate and gift tax issues, and income tax basis step-up for community property.
- J. Limited Liability Entities
 - 1. These are complicated and expensive to set up and maintain. They include Limited Liability Companies, Corporations, and Family Limited Partnerships.

IV. MANAGEMENT INSIGHT AND QUESTIONS

(240 Min)

- A. Discussion of litigation process by the Commanding Officer, Risk Management and Legal Affairs Group.

INTRODUCTION TO PSYCHOLOGICAL CONSIDERATIONS IN THE LITIGATION PROCESS

- A. Goals and objectives
 - 1. To understand the role of litigation in police work
 - 2. To identify the potential impact litigation could have on your emotional health, the job and the impact on your family
 - 3. What can you do about it
 - 4. It is Not All in Your Head
- B. The Role of Civil Litigation in Police Work
 - 1. Highly scrutinized police department
 - a) Reviewed by:
 - (1) The Department
 - (2) The City
 - (3) The Media

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- (4) The City
 - b) If you're not stressed, check your pulse
 - 2. Why be Concerned?
 - a) Effects of stress on health:
 - (1) Coronary heart disease
 - (2) Hypertension
 - (3) Cancer
 - (4) Alcoholism
 - (5) Depression and Suicide
 - (6) Anxiety
 - (7) And much, much more
 - 3. Major Stressors
 - a) Violence & Homicides
 - b) Officer-Involved Shootings
 - c) Disciplinary complaints
 - d) Critical Incidents
 - e) Organizational Stress and change
 - f) Criminal Indictments of officers
 - g) Civil Litigation
 - 4. Susceptibility to Illness
- C. Civil Liability Against Police Officers
 - 1. How Officers Change with Time
 - 2. The Phases of a Police Career
 - a) Phase One – Honeymoon
 - b) Phase Two – Settling Down
 - c) Phase Three – Dealing with Disillusionment
 - d) Phase Four – Coming to a Crossroad
- D. Lawsuits against Police Officers
 - 1. Citizens are filing legal actions more than ever
 - 2. National Center for State Courts
 - a) 1984 – 2000
 - (1) Lawsuits filing up forty percent
 - (2) California is number one
 - 3. Why is this happening?
 - a) Higher standards of accountability for public institutions
 - b) Increasing willingness on part of public to file lawsuits
 - c) Society expects Law enforcement to have higher accountability
 - 4. How You Think About It Matters
 - a) Appraisal
 - (1) Threat
 - (a) They are making me a villain
 - (2) Challenge
 - (a) This is part of police work
 - b) Response
 - (1) Anger
 - (a) Loss of focus
 - (b) Anger

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- (c) frustration
 - (2) At ease
 - (a) Focus
 - (b) Use as a learning experience
 - 5. Concerns About the Process
 - a) Healthy v. Unhealthy concerns
 - (1) Impact on behavior
 - (a) Does it make you stronger?
 - (b) Does it make you more vulnerable?
 - (2) Healthy concerns move you toward goals
 - 6. Elements of Productive Worry
 - 7. The Signs of Unproductive Worry
 - a) When you:
 - (1) Worry about unanswerable questions
 - (2) Worry about a chain reaction of events
 - (3) Reject a solution that's not perfect
 - (4) Think you should worry until you feel less anxious
 - (5) Think you should worry until you control everything
 - 8. The Signs of Productive Worry
 - a) There is a question that has an answer
 - b) You are focused on a single event
 - c) You are willing to accept imperfect solutions
 - d) You do not use your anxiety as a guide
 - e) You recognize what you can control and what you cannot control
- E. Why are Allegations of Wrongdoing So Uniquely Stressful to Police Officers
 - 1. Why Is It So Stressful for A Cop to Be Sued?
 - a) Tactics employed by both sides are designed to pressure defendants to settle cases
 - b) Settling a case of alleged wrongdoing is a body blow to a police officer
 - c) Officers are prepared to fight to enforce justice
 - d) But being named a defendant in litigation is completely alien to officers
 - e) Lawsuits require officers to fight for their own survival against, rather than, for the justice system
 - f) Most officers have chosen law enforcement because they're:
 - (1) Action-oriented
 - (2) Take-charge types
 - (3) Want to make a positive impact
 - g) A charge of negligence strikes at the core values of an officer
 - h) A legal claim forces you to defend yourself in a system in which:
 - (1) You have little control
 - (2) Process is slow
 - (3) The results have little to do with your performance
 - i) The litigation process almost always results physical and emotional reactions
- F. Common Reactions to Being Sued
 - 1. Emotional Reactions
 - a) Shock

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- b) Denial
 - c) Anger
 - d) Anxiety
 - e) Depression
 - f) Frustration
 - g) Shame
 - h) Fatigue
 - i) Difficulties concentrating
 - j) Sleep disturbance
 - k) Onset or recurrence of medical symptoms
2. What is Worse
- a) Officers would never recommend that a citizen not call for help when in need
 - b) But police officers will often deny themselves the opportunity for assistance
3. When to Get Help
- a) Awareness of not feeling “right”
 - b) Physical problems/complaints
 - c) Disruption of routine
 - d) Family conflict
 - e) Negative feedback from trusted others
 - f) Feelings of hopelessness
 - g) Just feel like “checking-in” with someone about your well-being
- G. Effective Strategies for Dealing with the Stress
1. Family Matters
2. Seek out other sources of support
3. Self-Help
- a) List your accomplishments and successes in life
 - b) Schedule time for more:
 - (1) Exercise
 - (2) Family activities
 - (3) Non-police related activities
4. Prepare for the long haul
- a) May take years for trial to conclude
 - b) Learn to be flexible
 - c) Trust that the situation will end
5. Remember!
- a) Civil litigation is now a completely predictable event in the career of a police officer
 - b) Learn from the experience
 - c) You become stronger and a role model for other officers
- H. Summary
1. Understand the stress associated with litigation
2. Take steps to counteract the negative feelings and reactions that occur
3. Regain the emotional equilibrium to function as:
- a) Good defendant
 - b) Good Police Officer
 - c) Healthy person
4. Resources
- a) BSS

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- b) EAS
- c) Department Chaplains
- d) Litigation Survivors
- e) Managed Health Network
- f) Private Insurance

C. Learning activity-The students will be exposed to a panel of four employees who have survived the civil litigation process. The “survivors” will share their unique experiences and interact with the students and their instructors.

I. **Learning activity.** The students will be exposed to a panel of three employees who have survived the civil litigation process. The “survivors” will share their unique experiences and interact with the students and their instructors.

A. Survivors will share with students their personal experiences of the litigation process and the associated psychological considerations that arise out of this process. The survivors will provide suggestions on how they personally dealt with the issues associated with the civil litigation process.

V. EXPECTATIONS OF PROACT

(120 Min)

- A. The facilitator will debrief with the class the List of Expectations (Module 2) and ensure that all the expectations were covered.
- B. Closing Remarks