

Paralegal Writing: An Argument for Court

By Scott Palmer

This is an example of my work as a paralegal. I drafted the argument for a lawsuit over a traffic accident. The lawyer for whom I worked used it verbatim. The text is extensively redacted to remove any information that would identify the specific case or people involved:

This case involves a two-vehicle collision occurring on October __, 200__, at approximately 12:30pm. The collision took place at the intersection of ___ Street and ___ Avenue in ____, Indiana, an intersection that is controlled by automatic traffic control signals.

On October __, the Plaintiff was operating her motor vehicle southbound on ___ Street and was approaching the intersection of ___ Street and ___ Avenue. At this point of ___ Street, the southbound side is wide enough for two cars side by side, though it is not clearly divided into two lanes.

As the Plaintiff approached the intersection with ___ Avenue, she observed that the vehicle driven by the Defendant was in the left side of the southbound lane, toward the center of the road, waiting for the automatic traffic signal to change from red to green. Because the Defendant had not activated his right turn signal, the Plaintiff pulled into the right side of the southbound lane next to him.

The two vehicles sat side by side for approximately 30 seconds waiting for the light to change. During that time, the Plaintiff observed that the passenger in the Defendant's vehicle looked at her and was aware of her vehicle.

When the light changed, the Plaintiff began to drive forward and the Defendant began a right turn toward her vehicle. The Plaintiff honked her horn and attempted to get out of the Defendant's way, but was unable to do so in time. The Defendant's vehicle struck the Plaintiff's vehicle.

Although the police officer on the scene assigned blame to the Plaintiff (citing "improper lane usage"), the officer's judgment was in error. By Indiana law and long-established rules of the road, the Defendant was at fault.

In driving her vehicle to the right of the Defendant's vehicle even though the lanes were not clearly marked, the Plaintiff acted in accordance with the rules of the road, specifically Indiana Code 9-21-8-6, which states that one vehicle may pass another vehicle on the right "upon a roadway with unobstructed pavement of sufficient width for two (2) or more lanes of vehicles moving lawfully in the direction being traveled by the overtaking vehicle."

Note that the statute does not say the lanes must be marked: only that the pavement must be "of sufficient width" for them.

The Defendant failed to follow the rules of the road, to wit:

1. He negligently failed to prepare properly for making a right turn, in that he:
 - Failed to activate his right turn signal, and
 - Failed to move his vehicle to the rightmost part of the road. Both Indiana law and common sense dictate that in making a right turn, the driver should "Make both the approach for a right turn and the right turn as close as practical to the right-hand curb or edge of the roadway" (Indiana Code 9-21-8-21). By turning right from the center of the road, the Defendant failed to follow this rule. If he had followed this rule, the Plaintiff would have been unable to drive her vehicle to the right of his.
2. He negligently failed to keep a proper lookout for other vehicles.
 - Because the two vehicles sat side by side for approximately 30 seconds, the Defendant had ample opportunity to note the presence of the Plaintiff's vehicle (as his passenger did notice it) if he had exercised proper care to do so.
 - Even if a driver has the right of way, he/she still has a duty to stay alert for the presence of other vehicles and to avoid collisions with them. Numerous Indiana court decisions have reached the same conclusion:

"A motorist is chargeable with negligence if he fails to discover a vehicle which ... he would have discovered in time to avoid the injury if reasonable care in keeping a lookout had been exercised." (Fort Wayne Transit Inc. v. Shomo, 1957, 143 N.E.2d 431, 127 Ind.App. 542). The same point is made by, among other decisions:

- Thornton v. Pender, 1978, 377 N.E.2d 613, 268 Ind. 540.
- Beem v. Steel, 1967, 224 N.E.2d 61, 140 Ind.App. 512.
- Keck v. Pozorski, 1963, 191 N.E.2d 325, 135 Ind.App. 192.
- Cochran v. Wimmer, 1948, 81 N.E.2d 790, 118 Ind.App. 684.
- Pfisterer v. Key, 1941, 33 N.E.2d 330, 218 Ind. 521.
- American Carloading Co. v. Gary Trust & Savings Bank, 1940, 25 N.E.2d 777, 216 Ind. 649.
- Lauer v. Roberts, 1934, 192 N.E. 101, 99 Ind.App. 216.
- Fishman v. Eads, 1929, 168 N.E. 495, 90 Ind.App. 137.
- The sole and proximate cause of the collision was the Defendant's failure to follow the rules of the road.

The Plaintiff respectfully requests an award equal to damages.