



A Day-in-the-Life video can be a powerful tool

A PROPERLY PREPARED DAY-IN-THE-LIFE VIDEO IS A COMPELLING EVIDENTIARY PRESENTATION OF A CLIENT'S DAILY DISABILITIES

As the name suggests, a Day-in-the-Life video captures a day in your injured client's life. It can grab your client's list of injuries right off the page and bring them to life in a short, compelling digital video. Most importantly, an excellently prepared video will precisely illustrate, in human terms, your client's daily sufferings caused by the defendant's conduct.

Producing a Day-in-the-Life video

There is much to know when it comes to properly producing a Day-in-the-Life video and using it for trial, arbitration, or mediation.

First, choose a video production company that knows how to shoot your client's life as it honestly happens or "live on tape." This means that your producer and videographer will capture each of your client's actions – just once. There's no going back for a second try, another take, or a better angle. The team must get it right the first time.

Some of today's legal production teams come from TV news. They are well trained and know how to properly capture your client's disabilities.

Correctly shooting a Day-in-the-Life video is especially important for admissibility at trial or arbitration should you later wish to show your video before the decision-makers. Before contracting for video services, be sure your producer is willing to authenticate the video in court and is prepared to make editorial changes at a minute's notice.

An experienced video team will treat your client with sensitivity. They will answer all of your client's questions before and during the shoot. They will also assure your client that their modesty will always be maintained. Importantly, let your production team know whether your client only speaks a foreign language so an interpreter will be available.

Second, discuss the merits of a Day-in-the-Life video with your client.

Explain that the video will show how the incident has affected their daily activities and life. This may include getting out of bed, walking, bathing, dressing, cooking, eating, and much more.

Third, give your video producer permission to contact your client or your client's caregiver. Be sure to tell your producer about specific difficulties that affect your client and those that may be of significance to your case.

If your client is in a healthcare facility, give your producer a contact person at the facility. The video team will need permission to shoot inside any care facility. Be sure to choose a video team that can assure the healthcare facility administrators that they understand the HIPAA law and the shooting will not be disruptive.

Contents of the video

Your final Day-in-the-Life video should have simple edits and be presented with no narration, special effects, or interviews. The audio should consist only of natural sounds made by your client or caused by the recorded activities.

A good length for the video is 10-12 minutes. But don't stay wedded to the time. If your video team captures important shots of your client, say, in physical therapy, trying to shop for groceries, or struggling to form words again, it may be worth making your video longer – as long as it's honest, engaging, and drives the point home.

Use at mediation but protect for trial

Before mediation, talk to your mediator about presenting your video during the session. Many mediation rooms are equipped with large screen monitors and computer hook-ups. Be sure that you, or a tech-savvy member of your team, know how to use the available equipment. Also, be sure all parties are aware the video has *not* been prepared

only for mediation to obviate an objection when proffering the video at trial. (See *Rojas v. Superior Court (Julie Coffin et al.)* (2004) 33 Cal.4th 407, 415-417 [holding documents *specially* prepared for and produced at mediation are confidential mediation communications and not discoverable or usable at any other forum].)

Since evidence presented solely for mediation is confidential, you will want to preserve your right to use your Day-in-the-Life video as evidence during other court proceedings, including trial or arbitration. Do this in writing. If you wish, your producer can put a title card at the top of the tape stating, "This video may also be presented at trial/arbitration and other aspects of the litigation."

Admissibility

The video is typically admissible at trial provided it demonstrates probative value and is not prejudicial or misleading. Under California Evidence Code section 352, "The court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, confusing the issues, or of misleading the jury."

A video that was shot and edited correctly should be admissible. It also will have the persuasive power to help you deliver the settlement or verdict your client truly deserves.

Christina Penza owns and operates Attorneys' Edge Productions in Los Angeles, where a team of veteran journalists produce Day-in-the-Life videos and long-form Settlement Documentaries. She is an Emmy Award winner and multiple Emmy nominee and spent nearly 30 years as an investigative TV reporter and producer. www.attorneys-edge.com. 