

Understanding Wrongful Death Claims in California

A Guide to Finding Justice and Peace After Loss



Published by Eason & Tambornini, A Law Corporation

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A Letter of Introduction from Eason & Tambornini, A Law Firm

If you are reading this, you are likely navigating one of the most painful and challenging times of your life. Nothing can prepare you for the sudden and unexpected loss of a loved one, and the grief that follows can be overwhelming. During such a difficult time, the thought of legal action can feel daunting and perhaps even insensitive. Please know that we are here to help you understand your options with the empathy and respect you deserve.

While we cannot erase your pain, the legal system in California provides a pathway to hold a negligent or responsible party accountable for their actions. This process, known as a wrongful death claim, is about more than just compensation; it is a way to find justice and secure a sense of closure for the future of those who are left behind.

This E-book has been created to be a compassionate guide through this complex process. We have distilled the legal language into clear, understandable information to help you learn about your rights, understand what a wrongful death claim entails, and know what to expect as you consider your next steps. Our goal is to empower you with knowledge so you do not have to walk this path alone.

With deepest sympathy,

Matt Eason, Esq.

Kyle Tambornini, Esq.

Managing Partners, Eason & Tambornini

How to Use this E-book

To get the most out of this E-book, finding a place where you can read without interruption will be helpful. It is designed to be short enough that it can be read all at once, but it certainly does not have to be.

Some chapters include “Helpful Checklists” designed to help you process the information being presented. These checklists are intended as an organizational tool for the road ahead if you decide to pursue a wrongful death claim.

At the end of the book, two worksheets (Worksheet A and Worksheet B) can be printed out and used to jot down notes while you are reading. We encourage you to bring the completed worksheets with you to a consultation if you decide to seek legal support with Eason & Tambornini or elsewhere in your quest for justice. A dedicated notepad works just as well.

The critical thing to remember in a time like this, when so much seems to be happening while you are trying to grieve and make sense of your loss, is that writing down your thoughts and questions can be immensely important to your well-being.

Chapter 1: Understanding What Wrongful Death Is

What is Wrongful Death, and What is a Wrongful Death Claim?

In California, **wrongful death** occurs when an individual dies because of the misconduct of another person or entity. This is defined in California Code of Civil Procedure, Section 377.60.

When a wrongful death occurs, the initial legal action taken to recover damages is called a **wrongful death claim**. Each state has its own rules governing wrongful death claims.

Remember, these initial steps will protect your rights and offer the best possible path to a fair resolution if you decide to pursue a wrongful death claim. If you do choose to hire an attorney, they will need as much of this type of information as possible to evaluate the strength of your case. If you have difficulties obtaining any of the information or documents listed, an attorney will be able to assist you.

Wrongful Death Lawsuit

If a wrongful death claim cannot be settled or resolved through negotiations (“out of court”), the party taking the action may file a **civil lawsuit** for damages. So, a "claim" is the initial right to seek compensation; a claim becomes a legal "case" when a lawsuit is filed.

In California, the California Code of Civil Procedure section 377.60 governs both wrongful death claims and lawsuits.

Three Categories of Acts that Can Lead to Wrongful Death Actions

Wrongful death actions are divided into three broad categories, depending on the circumstances under which the victim died.

The first category is **negligence**; it is also the most common basis for a wrongful death claim. Negligence occurs when a person's death is directly caused by another party's carelessness or failure to act in a reasonable manner.

The second category is **reckless conduct**, a deliberate and conscious disregard for a known risk that could cause harm. It carries a more significant degree of wrongdoing than simple negligence.

The third category of acts that can result in a wrongful death claim is **intentional torts**. (A “tort” is a legal term for “civil wrong” that causes harm to another.) When a wrongful death is caused by a willful act meant to cause harm, it is known as an intentional tort. Intentional torts are almost always deemed criminal offenses; a civil wrongful death case is a separate legal action.

- Example of Negligence in a Wrongful Death Case: A babysitter of a three-year-old is distracted by the family dog. The sitter fails to notice that the toddler has wandered outside, falling into the swimming pool and drowning. In this situation, the babysitter failed in their reasonable duty of care to supervise the toddler and protect it from harm.
- Example of Reckless Conduct in a Wrongful Death Case: A commercial truck driver who hasn't slept in over 24 hours falls asleep at the wheel and causes a fatal crash. It would likely be considered reckless conduct because of known commercial trucking safety regulations that specify how often a driver must take a break from driving.
- Example of Intentional Tort in a Wrongful Death Case: A person intentionally kills someone and is criminally charged with murder. Regardless of whether they are found guilty or not, the victim's family files a civil wrongful death lawsuit for financial damages. These are two separate legal actions.

Note: A person can be acquitted (found not guilty) in a criminal trial but lose a civil wrongful death lawsuit for the same act. One reason for this is that criminal and civil law have different standards of proof, among other differences.

Real-life Wrongful Death Civil Case: Goldman v. O.J. Simpson

A famous case in which this happened is the O.J. Simpson case. Simpson was found **not guilty** in his criminal trial of murdering his ex-wife, Nicole Brown Simpson, and Ronald Goldman, because the prosecution failed to prove his guilt "beyond a reasonable doubt." However, in the civil wrongful death lawsuit brought by the victims' families, the jury only had to find that it was "more likely than not" (a lower standard) that he was responsible for the victims' death. Because the plaintiffs met this burden, Simpson was found **liable** for wrongful death, and the jury awarded the plaintiffs \$33.5 million in damages.

The Role of Evidence and Documentation

As difficult as it may seem to do so, if you have experienced the loss of a loved one in a wrongful situation, proactive steps about gathering and preserving evidence are critical. Here's why: The information and documentation you collect in the initial days and weeks following the loss of a loved one can be vital to a successful claim. Evidence helps build a sturdy foundation for your case and ensures evidence is preserved before memories fade or details are lost.

Here are the essential documents and other information we encourage you to collect and safely store as soon as you can.

- **Death Certificate:** Obtain several certified copies of the official death certificate. These may be needed to settle your loved one's estate.
- **First Responder Reports:** Request and secure copies of any official reports of the incident itself, such as a police report, fire department report, or coroner's report.
- **Medical Records:** Gather all medical records pertaining to the deceased's final treatment, testing, and procedures, including hospital records, doctors' notes, and autopsy reports.
- **Witness Information:** Collect the names and contact information for any witnesses to the incident.
- **Financial Records:** Keep detailed records of economic losses, such as funeral and burial expenses, outstanding medical bills, and documentation of the deceased's income.
- **Photos and Videos:** If available, save any pictures or videos of the scene of the incident, the property involved, or the injuries sustained.



Chapter 1 Helpful Checklist: Do You Have Grounds for a Wrongful Death Claim?

If your answers to the following questions are yes, you may want to seriously consider consulting with a wrongful death attorney right away.

- Your loved one's death was caused by someone else.
- You are a surviving heir of the deceased (more in Chapter 2).
- You have suffered economic and/or non-economic losses (more in Chapter 2).

Chapter 2: Who Can File a Wrongful Death Claim?

California, like all states, has specific wrongful death laws concerning who is eligible to file a claim. In this section and throughout this E-book, we will consider the example of a wrongful death claim made in the traditional court system, as opposed to the workers' compensation system.

In California, the law is strict as far as who has the right to file a wrongful death claim.

Primary Heirs (“First in Line”)

Primary heirs (defined below) have the first right to file a wrongful death claim. If the deceased has primary heirs, they typically have the sole right to file.

Here is what the State of California considers primary heirs:

- The deceased person's **surviving spouse** or **domestic partner**.
- The deceased person's **surviving children**.
- If a child is deceased, the child's **descendants** (the deceased's grandchildren) are considered.

While primary heirs have the most compelling case for filing and winning a wrongful death claim, other persons may qualify under certain conditions.

2. Other Parties

In California, if no primary heirs exist, the right to file would pass to those who would be entitled to inherit the deceased person's property by something called “intestate succession.” This legal term refers to the process that determines to whom property and assets go when a person dies without a valid will. In simplistic language, it is the state's default inheritance plan when no will exists.

Therefore, if a person has no primary heirs and no will, the right to file would pass to:

- The deceased's **parents**. If they are also deceased,
- The deceased's **siblings** or the children of deceased siblings.

3. Financially Dependent Individuals

In addition to the persons listed and described above, California law allows individuals to file a wrongful death claim if they were financially dependent on the deceased. This group includes:

- A **putative spouse** (someone who had a good-faith, but mistaken, belief that they were in a valid marriage with the deceased).
- The **children of a putative spouse**.
- The deceased's **stepchildren**.
- The deceased's **parents** (if they were financially dependent on an adult child who had a spouse or children).
- A **minor** who resided in the deceased's household for at least 180 days and was at least 50% dependent on them for financial support.

The "One Action" Rule: In California, the one action rule for wrongful death cases requires all potential claimants to join in a single lawsuit. If one heir files a claim, they have a legal duty to include all other known heirs in the same lawsuit. This prevents the at-fault party in a wrongful death case from having to defend against multiple lawsuits for the same death.



Chapter 2 Helpful Checklist: Am I Eligible to File a Wrongful Death Claim?

If the following statements are true, you should probably consult with an attorney who can establish whether you have grounds to file a wrongful death claim.

- I have lost a loved one due to someone else's negligence or intentional act, not natural causes.
- I am an eligible heir (surviving spouse, domestic partner, child, or other family member who was financially dependent on the deceased, OR if no eligible heirs exist, I am a parent or sibling).
- I suffered either financial losses (income, support, etc.) or non-financial losses (Chapter 5).
- The statute of limitations (usually two years) has not passed (Chapter X).

Chapter 3: The Basic Steps in a Wrongful Death Claim

Wrongful death claims can vary greatly, depending on the types of cause of action, and no two take precisely the same path. In this chapter, we describe the four main steps a wrongful death claimant can expect to experience.

Step 1: Free Consultation

The first phase of a wrongful death claim begins with an initial meeting between the family of the deceased and a wrongful death attorney. This is often a free, no-risk consultation and case evaluation. If you and the attorney do not end up working together, for any reason, there is no charge for the meeting. If the attorney you consult offers to represent you and you decline, there is still no charge for the meeting. This is what a “no-risk” consultation truly is.

At an initial consultation, you will tell the attorney the facts as you know them, and you will likely be asked plenty of questions so the attorney can get a clear idea of what happened. You will probably be asked to bring the death certificate, police report, coroner’s report, and medical records to the consultation, but they are not required to have them.

The goal is to make a preliminary estimation of the claim’s strength. Remember, a wrongful death must be proven. As difficult as it may be to share these details, it is vital to the successful outcome of the case.

Once the consultation takes place, the attorney offers to represent you, and you accept, the claim can begin.

Step 2: Investigation and Case Evaluation

Based on the information collected, an attorney will identify who is at fault for the wrongful death. This may be both a person and an entity (such as a person driving a company car who causes an accident that results in someone’s death, and the company that employed the driver).

The investigatory phase will include gathering evidence such as photos, surveillance video footage, eyewitness statements, and other key documentation. The attorney will also request any official records that were not brought to the consultation, as well as a medical history of the deceased person. Finally, the attorney will turn to experts such as accident reconstruction specialists, medical examiners, and others to help determine liability, if needed.

Part of the investigation and case evaluation phase is determining damages, both economic and non-economic. Economic damages would be the medical, funeral, and other bills associated with the death. Future earnings, lost benefits, and lost retirement would also be included, if applicable. Anything that can be added up on paper.

Non-economic damages might include pain and suffering, loss of companionship, loss of spiritual or emotional support, and other non-tangible damages. This is a complex process because these damages are essentially subjective; they do not have a set value, and there is no formula. Not undervaluing these types of losses is critical, and having a skilled attorney with experience in wrongful death cases is vital to the outcome for family members.

Step 3: Settlement Demand

Once all facts, documents, expenses, and damages are calculated, the attorney will send a demand letter, either to the at-fault party's attorney or insurance company. The letter will include the facts, legal basis, and the specific amount of money being requested to settle the claim.

Step 4: Negotiations

Once the demand letter is received, the at-fault party's representative will reply with a counteroffer, and negotiations will ensue. As you can imagine, an attorney who is an experienced and skilled negotiator is critical. The goal of the talks is to finalize a fair settlement, which will avoid a court trial. If a settlement is reached, the parties sign a settlement agreement, and the case concludes.

Chapter 4: When a Wrongful Death Claim Becomes a Wrongful Death Lawsuit

In Chapter 3, the basic steps of a wrongful death claim were described, from initial consultation to completion of negotiations and settlement agreement. When a claim does not result in a satisfactory settlement, your attorney may advise that you take legal action in the form of a wrongful death lawsuit.

The claim officially becomes a **wrongful death lawsuit** when an attorney files a formal complaint with the court that has jurisdiction over the case. The complaint contains the legal basis for the case as well as a detailed list of damages being sought. Next, the at-fault party (“defendant”) is served, which means they receive the legal paperwork that notifies them they are being sued.

Below are the five basic phases of a wrongful death lawsuit.

1. Summons and Complaint

The official court document that notifies the defendant that they have been sued is called the **summons**. A summons contains the name of the court where the suit was filed, the names of the plaintiff (the party that filed the lawsuit), and the defendant’s name(s). It notes the deadline for the defendant to respond, which in California is usually 30 days.

A second document, the **complaint**, details the specific allegations against the defendant. This is the legal basis for the lawsuit, which is one of the three types of wrongful death actions described in Chapter 1: negligence, reckless conduct, or intentional tort. The Complaint also specifies the amount of damages the plaintiff is seeking.

Upon serving of the summons and complaint, a wrongful death suit enters what’s called the litigation phase.

2. Litigation

The first step in the litigation phase is the defendant’s response, which is filed with the court. This filing is called an **answer**, and it contains any defenses the defendant wishes to offer to each allegation. As an alternative, if the defendant’s attorney believes the complaint is legally flawed, they will file a **demurrer** and ask for the case to be dismissed by the court.

3. Discovery

In the formal information-collecting phase, called discovery, the plaintiff’s and defendant’s legal teams exchange evidence. Some legal tools used during discovery include:

- **Interrogatories:** Questions the opposing side must answer truthfully, under oath.

- **Deposition:** Sworn testimony, conducted in person or video-recorded, by witnesses and any involved parties. This process happens out of the courtroom setting. Typically, a court reporter transcribes the testimony, and lawyers are present for both sides.
- **Request for Documents:** This includes demands for relevant medical records, case files, emails, reports, etc.

4. Mediation and Settlement Negotiations

Throughout the phases of a wrongful death lawsuit, negotiations can continue, especially during and after the discovery phase. However, in one formal, final attempt at avoiding a courtroom trial, **mediation** may be attempted.

- In mediation, a neutral third party, called a **mediator**, works with both sides to help them settle. It is not the mediator's role to take a side or make a decision. Instead, their job is to facilitate a solution by helping the parties find common ground and understand the strengths and weaknesses of their case.
- The actual **settlement negotiations** are a back-and-forth process. The mediator will often meet with both parties together and separately in private sessions called "caucuses." During these meetings, each side presents its position and makes offers and counteroffers. The mediator acts as a go-between, carrying proposals and messages between the parties. They also help each side evaluate their case, including any risks and costs of going to trial.
- By and large, most wrongful death cases are resolved (settled) during this phase. If an agreement is reached, the terms are written into a formal, binding **settlement agreement**, which legally concludes the case without the need for a trial.

5. Trial and Verdict

If negotiations and mediation fail, the case goes to trial. As you've probably seen on TV, at trial, both the plaintiff's and defendant's legal team present their evidence. During this time, witnesses will testify, and the attorneys for each side will make arguments defending their clients' positions. If it is a **jury trial**, as most wrongful death cases are, the jury will deliberate and deliver a verdict, along with the amount of damages. If it is not a jury trial, it is called a **bench trial**. In a bench trial, the judge rules by delivering a decision. If the plaintiff wins, the judge will set the award.

Chapter 5: Understanding the Statute of Limitations

We've already mentioned the statute of limitations several times in this E-book. This chapter will provide an overview of the statute of limitations for wrongful death cases and attempt to explain their complexities. It will also cover why it's essential not to delay if you have lost a loved one due to someone else's actions.

California Civil Code

The [California Code of Civil Procedure 335.1](#) states that an eligible heir or person has two years to bring an action for wrongful death (or bodily injury).

The problem with that statute, and where it becomes problematic for many seeking justice for the wrongful death of a loved one, is that two years is the outside limit for most people to bring an action for wrongful death. Many other statutes shorten that time frame to less than two years. Unfortunately, this causes a great deal of concern about loved ones missing an opportunity to seek the compensation they deserve.

Exceptions to the "Two-Year" Statute of Limitations in California

If your wrongful death claim is for professional malpractice, such as against a doctor or hospital, many of those claims are reduced from two years to one year. Additionally, if your claim is against any number of government entities in California, the statute of limitations is only six months!

Another problem with a generic "two-year" statement about the statute of limitations for wrongful death is that in some situations, extensions can be granted by the court based on the defendant's actions or several other matters. Granted, these situations are rare, but they do exist.

Date of Misconduct vs. Date of Death

Another situation in which the simple statute could get complicated applies when the "two-year" period starts. Usually, the statute of limitations, or the time a party has to file a claim, begins on the date of the victim's death, not the date of misconduct or when the injury happened.

Hypothetical Example: Date of Misconduct vs. Date of Death

As an example of this, a person is injured in a car accident and placed in a medically induced coma while attempts are made to save their life through various means. After a few weeks or

months, the victim dies. The statute of limitations for filing a wrongful death claim would start on the date the victim was pronounced dead.

There are some exceptions, but they are fairly complicated and best explained if and when the conversation is necessary. An experienced attorney will determine if any exceptions may apply to your situation.

The many complex nuances surrounding the statute of limitations for wrongful death cases mean one thing: don't delay. If you have lost a loved one, seek an attorney who can make sure you do not lose your right to seek fair compensation for your loss.

Chapter 6: Calculating Losses, Damages, and Compensation

What is a human life worth? It's a question that has been asked throughout history. However, one answer everyone can probably agree on is this: life is priceless. However, the legal answer is much more complicated and frustrating.

Most attorneys will agree that cases involving wrongful death are the most stressful cases to handle, for several reasons. First, families are often still in a highly anxious state and trying to adjust to the loss and absence of a loved one. Suddenly, they are expected to assign and accept a [monetary value for their loss](#). Where do they even begin?

A compassionate, communicative wrongful death attorney can make all the difference in these situations. A skilled and thoughtful attorney will help to take pressure off a grieving family by providing a tremendous amount of guidance, support, and advocacy where needed.

The Difference Between Losses and Damages

In legal terms, **losses** are the actual harm you suffer, like medical bills, lost wages, or pain and suffering (non-economic losses; more on this below). Losses are the reason (cause) for a legal claim.

Damages are the monetary compensation a court awards to make up for those losses. They are the legal remedy for the harm you've suffered.

In short, your losses are what you've endured, and damages are the money you receive to compensate you for them. As you are probably realizing, a critical element in being fairly compensated for your losses and receiving the full amount of damages you deserve is your legal representation.

Two Types of Losses: Economic and Non-Economic.

Economic Losses

Economic losses are those that can be given a specific dollar value. They can include the financial support the deceased would have contributed to the family, as well as the value of lost gifts or benefits. Other economic damages include the reasonable value of household services they would have provided, as well as funeral and burial expenses.

Non-Economic Losses

Non-economic losses are a much more nuanced process because, in a wrongful death situation, they often relate to the loss of a relationship. In California, you can seek compensation for the loss of things that feel similar to pain and suffering, such as the loss of the deceased's love,

companionship, care, protection, and moral and spiritual guidance. Therefore, while you can't technically recover for pain and suffering, a skilled attorney can help you recover for many of the same emotional losses that do result in those states of being.

A Word About Calculating Damages

For non-economic damages, there's no fixed formula. This is where an experienced attorney's value is clear. A wrongful death case is deeply personal, and a legal claim can't replace a loved one.

The right attorney will respectfully present a victim's life and their relationships with family to help a jury understand the actual impact of the loss. When choosing a lawyer, find one who will personally invest in your case, get to know your family, and handle your matter with the dignity it deserves.



Chapter 6 Helpful Checklist: Documents for Calculating Damages

To accurately calculate the compensation you and your family may be entitled to, your attorney will need the critical documentation listed in Chapter 1; it will be needed to prove your financial and personal losses so that your attorney can build a full and fair demand for damages.

For Economic Losses:

- **Medical Bills:** All medical bills related to the incident itself and any medical treatment.
- **Funeral and Burial Expenses:** Receipts for all funeral, burial, or cremation costs.
- **Income Documentation:** Pay stubs, tax returns, or other financial records showing the deceased's past and projected future earnings.
- **Future Financial Contributions:** Documentation of financial support the deceased provided for the family, such as mortgage payments or college savings contributions.
- **Household Services:** Records of the cost of services the deceased provided that now must be paid for (e.g., childcare, home maintenance, etc.).

For Non-Economic Losses:

- **Personal Journal:** Your personal notes that describe your grief, emotional pain, and the day-to-day impact of the loss.

- **Visual Evidence:** Photos or digital images and video footage stored on family members' phones or elsewhere that illustrate the relationships and companionship the deceased had with family members.
- **Letters and Emails:** Any correspondence that shows the depth of surviving family members' personal relationships with the deceased.

If you feel overwhelmed, pause for a moment and remember that this E-book should not take the place of a supportive friend or family member who can help you work through the steps outlined in this book. A compassionate attorney will also guide you through this process. You are not expected to nor should you try to do this alone.

Chapter 7: Contingency Fee Model and “No Fee Unless You Win” Policy

Many people who need legal help hesitate to seek out an attorney for the simple fact they think they cannot afford one. But this is not always true. This chapter is designed to explain how legal fees with (many) wrongful death attorneys work and provide assurance that you can afford a skilled attorney.

Contingency Fee Structure

A **contingency fee structure** solves the problem of affordability and allows anyone who needs a lawyer to have access to one. With a contingency fee, a wrongful death attorney will typically front all the necessary costs and not charge any fees until the case is resolved. Upon reaching a settlement, the attorney is compensated on a percentage basis, which you will know upfront, even before filing your claim.

No Settlement, No Fee Policy

Not only will a reasonable and reputable attorney offer a contingency fee structure to fund the claim and defer payment of legal fees until a settlement is received, but many attorneys, including those at our firm, offer a “no fee unless you win” policy.

When an attorney offers this policy, they likely feel very confident that they can win a fair settlement. If they didn't, they wouldn't take the case. Attorneys, just like anyone else, don't want to work without compensation. So make sure you find a wrongful death attorney who offers a contingency fee structure as well as a “no win, no fee” policy.

Chapter 8: How to Choose the Right Wrongful Death Attorney for Your Case

Choosing an attorney to represent you (and possibly, your family) in a wrongful death claim is a profoundly personal decision. In choosing a legal advocate, you will be choosing a partner and a vital source of support during what will likely be one of the most challenging times of your life. The ideal attorney will exhibit both legal expertise and excellent communication skills, as well as compassion.

This is why a **free consultation** is so valuable. It is your opportunity to discuss the facts of your case but also to assess your personal connection with the attorney and their team. Pay attention to how they listen: Do you feel heard? Listen to how they explain complex legal terms: Do you understand? Are they able to clarify any points you aren't clear on with patience? Most importantly, trust your gut feeling.

Local Experience and Connection to the Community

Hiring a local attorney with experience similar to your case is more important than you may think. A local attorney knows the community, the court system, staff, and judges. Much red tape is lessened when a trusted, local attorney with a rock-solid reputation engages in negotiations with other attorneys or comes before a local judge or jury.

Understanding a No-Risk Consultation

Under no circumstances should you feel obligated to hire an attorney who doesn't seem like a good fit at your initial consultation, for any reason. This is why a "free, no-risk" case review is offered. If you decide not to hire or go forward with the attorney, there is no fee for the consultation.



Chapter 8 Helpful Checklist: Key Questions to Ask During a Free Consultation

- Do you offer a contingency-fee structure?
- What is your contingency-fee percentage?
- Do you have a "no win, no fee" policy?
- Do you have experience with similar wrongful death cases?
- What are your local reviews and reputation?
- How do I reach you if I have a question, and how often will I hear from you?

Use this list of recommended questions above and add any of your own that come to mind while reading this E-book to Worksheet A (at the end of this E-book).

Choosing the right attorney is not just about qualifications on paper; it is about finding a legal partner you feel comfortable with, and who truly understands how to walk with you on your journey of justice in the name of your loved one.

Worksheet A: Questions to Bring to Your Free Consultation

Print this sheet before you begin reading this E-book and keep it next to you. For each chapter, write down any questions as they arise. When you are finished reading, add any additional questions you have to the worksheet and bring it with you to your free consultation.

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Worksheet B: Next Steps Following Your Free Consultation

In the space below, write down your attorney's instructions for next steps, including the plan for communication.