



Civil v. Criminal Trial Work

By Mitchell H. Portnoi, Esq.

As an attorney for the last 31 years, I have done mostly trial work. That is, I have spent numerous days, weeks and years in the courtroom. The layperson has spent hours upon hours camped in front of television sets and has spent much of that time watching crime dramas. In relatively recent years, a new phenomenon has arisen which allows us to watch actual trials, starting with the OJ Simpson criminal trial, and now allows for civil trials such as Judge Judy and the like. This article explores the difference between the two and the layperson's impressions when faced with a civil trial as opposed to a criminal trial.

The fundamental difference between a civil trial and a criminal trial is the "Burden of Proof". In a criminal trial, the Prosecutor must prove the defendant guilty of the alleged offense "beyond a reasonable doubt". In a Civil Trial, a Plaintiff must prove the elements of the case by a "Preponderance of the Evidence" or, in layperson's terms, "more likely than not". That is, if it is 51% more likely that the doctor's malpractice (negligent failure to provide the appropriate standard of care) caused the injuries to the plaintiff, then Plaintiff wins.

The reason for the different standards is the severity of the consequences of a criminal versus a civil judgment. In a criminal matter, a person may be facing a severe penalty, which could include a significant fine or years in jail, or perhaps worse: a death sentence. In a civil matter, a defendant faces a monetary judgment against him or her. In certain matters, there could be judgment for possession of property, but that is rare.

As an attorney who generally practices in the Civil Courts of the Superior Court here in New Jersey, this distinction is extremely important. As a Civil Trial Attorney, I need my juries to know that my “Burden of Proof” is much lower than a Prosecutor in a Criminal Trial, but that I intend to prove my case just the same. In the standard negligence matter, I need to prove that:

- 1) the defendant was negligent,
- 2) the defendant’s negligence caused the accident, and
- 3) the negligence “Proximately Caused” my client’s injuries.

In certain cases, I also need to prove a “Permanent Injury”. A jury’s ability to grasp the difference in the standards of proof is vitally important to a Civil Trial Attorney’s ability to succeed at trial work in New Jersey and throughout this country.

Mitchell Portnoi concentrates his practice in all phases of litigation, with an emphasis on serious plaintiff’s personal injury matters, workers’ compensation and medical malpractice. For more information regarding civil trial work or the personal injury field, please contact him at mportnoi@postpolak.com or at 973-228-9900.