



## **Standards of Proof – What The Casey Anthony Verdict Reminds Us Civil Litigators**

*by Jessica S. Grigsby on 07/06/11*

In the aftermath of the Casey Anthony verdict, there was a certain amount of shock and disbelief that spread over the trial's followers. Once this initial visceral response had subsided, the verdict itself should not be that surprising. The standard of proof for a criminal trial is steep.

Beyond a reasonable doubt means that all the defense needs do, is plant the seed that some other scenario is plausible. In other words for the guilty verdict to come in, the evidence would have to establish a particular point to a moral certainty, and that it is beyond dispute that any reasonable alternative is possible. This case was fraught with evidentiary problems, the greatest of which appeared to be that the autopsy report that could not establish an actual cause of death. It came down to the fact that she "just looked guilty," but that's no evidence that can convict someone of first degree murder, or even manslaughter. Thus, the public at large was outraged while interested attorneys watching the case just shrugged their shoulders in acceptance of the result.

In civil matters like personal injury, the standard is much lower than beyond a reasonable doubt. The standard is called preponderance of the evidence; meaning that if I, as a Plaintiff's lawyer, make my case just a little more than my opponent, the jury must find for the Plaintiff, even if they have reasonable doubts. Preponderance of the evidence simply means something is more likely true than not.

Seems fairly simple, right? Well, I bet you never heard anyone on Law & Order or Court T.V. articulate that standard. In fact, the beyond the "reasonable doubt" is so ingrained in us as a

culture that most of us have no idea there are separate standards of proof for differing actions. Therein lies the difficulties in civil trials: getting jurors to understand their job and the standards they are to apply to their decision making. Our job as civil litigators from the get-go is to explain that this is NOT a criminal trial and that they CANNOT hold us to the criminal standard. I've heard it explained in percentages – “if I present just 50.1% more evidence in my favor than the defense – I win. That's the law.” I've heard it explained by a scale – “If the defense and I are essentially even and the scales are balanced, and I place just a feather on top of the scale, that is enough to tip the scale in my client's favor for a verdict.”

However it is accomplished, it is a NECESSITY that jurors understand (and are constantly reminded throughout the trial) of this standard. Otherwise, clients are left sitting next to me at counsel table with the same shock and disbelief as the faces of the those who first heard the Casey Anthony verdict.