

NEW MEXICO INJURY ATTORNEY BLOG

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Evidence of the Plaintiff's Criminal Past in Personal Injury Cases

Plaintiffs in personal injury cases, like anyone else, sometimes come with some baggage. On occasion, a plaintiff has been convicted of criminal offenses in the past. The question that most plaintiffs in this situation will want to know is whether these past legal transgressions can be held against them in their personal injury case.

Most plaintiffs in this position would rightly argue that a criminal conviction in the past has nothing to do with an auto accident today. They are partly right. The past criminal conviction is not particularly relevant to the determination of liability and/or damages in a personal injury action.

However, a past conviction though seemingly unrelated to the accident may come up with issues of credibility. For instance, if liability or damages are disputed, and a case goes to trial, a jury is basically asked to make determinations of credibility. In other words, who should the jury believe, the plaintiff or the defendant?

The rules of evidence regarding impeachment address these issues. Rule 609 of both the Federal and New Mexico Rules of Evidence address the admission of convictions for the impeachment of witnesses at trial. In other words, the rule addresses whether evidence of conviction is fair game for showing or more accurately suggesting a witness is lying. The rules apply to all witnesses including the plaintiff and the defendant.

Rule 609 provides that evidence of convictions can be admitted to attack the credibility of a witness was convicted of a felony or a crime of dishonesty if the court finds that its probative value is not outweighed by its prejudicial effect. Notably, evidence of a felony is more likely to be excluded than a misdemeanor crime of dishonesty.

To the chagrin of many witnesses, including plaintiffs in a personal injury case, crimes of dishonesty cover a lot of ground and include some seemingly innocuous offenses. Certainly, "crime of dishonesty" would encompass fraud, forgery, theft, burglary, perjury, false tax returns and so on. It also includes petty shoplifting among other petty offenses.

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Many plaintiffs do not particularly want to share these embarrassing details with their lawyers. Any plaintiff would be well advised to assume that the defense attorney is going to do a thorough background check and will discover any and all past criminal convictions. The only thing worse than having this evidence admitted against a plaintiff is having the defendant show to the jury through cross examination that the plaintiff has lied about the past convictions. Now the plaintiff is both a crook and a liar in the eyes of the jury.

The best approach is typically for the plaintiff's attorney to address these issues with the jury from the start. It allows the evidence to be presented in the best light to the plaintiff. Most importantly, it takes the wind out of what will surely be penetrating cross examination and a blustery closing argument impugning the honesty of the plaintiff.

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