

# Preliminary investigation

Law



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Preliminary Investigation What is included in preliminary investigative work for settling cases? Which aspect do you think is most important and why?

How does this preliminary work benefit plaintiffs and judicial economy?

Preliminary investigation can be defined as the proceeding or inquiry to establish if there is sufficient or enough ground to create a well-founded belief that a crime has been perpetrated, and therefore the respondent is possibly guilty and he or she should be held for trial (LII, 2011). Therefore, the purpose of the preliminary investigation is to establish whether a crime was committed or not, and as such to confirm or identify the identity of a suspect. The findings of the preliminary inquiry are used to determine whether the case will proceed to full investigation, formal accusation and trial. The basic steps include the filing of a Complaint-Affidavit, the Issuance of subpoena by the prosecutor who is investigating to the respondent, the filing of a counter-affidavit by the respondent, the filing of a Reply-Affidavit and Rejoinder-Affidavit and resolution.

In a primary investigation, a number of things are included. They include: ascertaining if the suspect is armed and still in the area, proceeding to the scene safely and promptly, rendering assistance to the injured, effecting the arrest of the criminal, locating and identifying witnesses, interviewing the complainant and witness, maintaining the crime scene and protecting evidence, interrogating the suspect, arranging the collection of evidence, reporting the incident accurately and fully, and yielding the responsibility to the follow-up investigator (Urlacher & Duffy, 2010). The most important aspect of these is the securing of the crime scene and protection of evidence. This is because the scene of crime usually provides some important leads as well as evidence that can be useful in settling the case. If

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the scene is not secured, the evidence might be tampered with, and this jeopardizes the settling of the case.

Preliminary investigation benefits the plaintiff in that it provides room for an investigation that might bring evidence that supports his or her case. It avoids a hasty trial that can be defeated on grounds of insufficient evidence. Therefore, by identifying a probable cause, the preliminary investigation helps to solidify the plaintiff's case. It is beneficial to the judicial economy because with the appropriate evidence, judges are able to make a quick determination so that the case does not drag on for long.

2. What is a Mary Carter agreement? How do these agreements impact litigation?

Mary Carter Agreements are used in the settlement of multi-party litigations. According to Sedrak (2012), a Mary Carter Agreement is a contract or agreement whereby one codefendant makes a secret agreement with the plaintiff that if such a defendant proceeds to defend him/herself in court, his or her own maximum liability will be proportionately diminished by increasing the liability of other codefendants. Therefore, the essence of this agreement is secrecy. As such, a codefendant may eliminate or diminish his or her own liability by painting a ghastly testimonial picture of the misconduct of the other defendant.

These agreements have an impact on litigation. This impact can be examined by looking at the 4 basic elements of the Mary Carter Agreement. One, it provides a guarantee of minimum recovery to the plaintiff from the settling defendant. Two, it enables the settling defendant to remain in the lawsuit. Three, it reduces the settling defendant's liability proportionally with any rise in the non-settling defendant's liability as the Court determines.

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Four, the terms are secret from non-settling parties. Since the plaintiff is guaranteed a minimum recovery and the settling defendant's financial exposure is capped, this affects the strategies and goals of its signatories at trial and pretrial litigation (Sedrak, 2010). For example, if the case is not settled in entirety, the plaintiff can proceed with the litigation with reduced risk since there is a guaranteed minimum recovery. Also, the settling defendant is in a position to proceed with the litigation without further risk since he or she does not have to pay the plaintiff more than the amount agreed upon. As such, the settling defendants and the plaintiff might cooperate in a joint effort to make sure that the non-settling defendants are found liable to the highest extent possible and for the highest possible damages.

#### References

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