

TRIAL PREPARATION

ORGANIZATION AND PREPARATION ARE KEY

60 Days Prior to Trial

I. OUTLINE ISSUES TO BE TRIED

- a. **POSITIONS** to be taken on each issue
- b. Outline the admissible **FACTS** supporting each issue
- c. Outline the **LAW** supporting and opposing your position on each issue

II. THE THEMES OF THE CASE

Treat it like a story so it unfolds for the judge in a meaningful way

III. TESTIMONY

- a. Using bullet points, outline a summary of each witness's testimony
- b. Using bullet points, outline cross of each witness to be cross-examined
- c. Note each exhibit that supports or undermines each witness's testimony

IV. COURT ORDERS

- a. Review each
- b. Summarize the salient points of each
- c. Determine the interplay of the orders in the trial (in your case in chief and on cross of adverse witnesses likely to be presented in your opposing counsel's case in chief)

V. EXPERT REPORTS

- a. Review each in detail
- b. Summarize the highlights of each and the factual foundation of each opinion

VI. CERTIFICATIONS

- a. Review each in detail
- b. Summarize the important statements in each
- c. Note each statement that can be attacked and note in your summary of the testimony of that witness

VII. DEPOSITION TRANSCRIPTS

- a. Review each in detail
- b. Summarize the important statements and note the page and lines
- c. Prepare to use for impeachment in cross-examination by noting the pages and lines and purpose in your testimony summary above
- d. Look for areas of impeachment or inroads opposing counsel might be able to make in your witnesses' testimony

VIII. THE LAW

- a.** Review all applicable statutes
- b.** Review all relevant case law
- c.** Review evidentiary issues likely to arise and prepare a bench memo on each to give to the judge if and when such issues arise

IX. TRIAL EXHIBITS

- a.** Assemble and make four copies of exhibits based on your prep work
- b.** Pre-mark exhibits in the most likely order in which they will be presented
- c.** Put exhibits in a binder (one for you, one for opposing counsel, one for the judge, and one for the witness)

30 Days Prior to Trial

X. TESTIMONIAL QUESTIONS

- a.** Write out/type the questions you'll ask each witness from your outline

XI. WITNESS PREP

- a.** Give client a copy of each certification he/she signed
- b.** Give client a copy of his/her deposition transcript
- c.** Give client a copy of the exhibit book 30 days prior to trial for familiarization and to review
- d.** Suggest that the client visit the courtroom (if he/she hasn't been there before), especially to witness an ongoing trial, if that's possible
- e.** Meet with each witness, both lay and expert witnesses (meeting with the client only after he/she's had time to review his/her copy of the exhibit book you've given him/her)
 - i.** You or someone else in the firm should present direct exam questions to the client
 - ii.** Have someone in the firm cross the client
 - iii.** Include objections and arguments in the prep
 - iv.** Consider having someone serve as the judge

XII. MOTIONS IN LIMINE

- a.** Consider preparing motions in limine on issues that can be addressed in that fashion, whether evidentiary or in limitation of testimony of potential witnesses
- b.** Consider the feasibility of a 104 hearing on evidence that might be excludible or to try to prevent an expert or lay person from testifying, e.g., based on weaknesses in a report that go to more than the weight of the evidence (e.g., the very foundation of the report and opinion) or an inability of a witness to have perceived the subject of his/her testimony

20 Days Prior to Trial

XIII. MEETING WITH OPPOSING COUNSEL

- a. Discuss documentary exhibits that can be stipulated into evidence (e.g., tax returns, W-2s, pay stubs, relevant bank account statements, deeds, mortgages and notes, etc.)
- b. Final discussion of settlement of the case or at least issues within the case

XIV. TRIAL NOTEBOOK

- a. Work with your paralegal or an associate (if you have one) to put the physical trial notebook together in a logical order with tabs and a table of contents

7 Days Prior to Trial

XV. TRIAL BAG

- a. Court Rule Book
- b. Book of Rules of Evidence
- c. Highlighters
- d. Colored pens
- e. Pre-ruled legal pads (if not using a computer)
- f. An extra legal pad for your client to take notes on (as you'll instruct your client not to tug on your sleeve as your asking questions of a witness but rather to write down his/her thoughts)
- g. Stapler
- h. Hole punch

XVI. THE NIGHT BEFORE TRIAL

- a. GET A GOOD NIGHT'S SLEEP THE NIGHT BEFORE TRIAL STARTS!
- b. Meditate before going to sleep and again in the morning (if you're so inclined)