



# *Trial Preparation Basics For Paralegals*

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# *Paralegals...*





# Case Status Sheet

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Case name and no.:

Court:

◇ Date filed:

Judge:

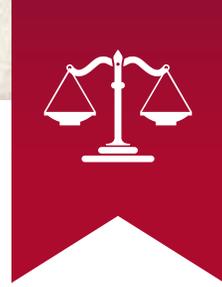
◇ Client: (plaintiff, defendant)

Defendant:

◇ Attorney:

◇ Paralegal:

Date client interviewed:



# Investigation

Signify investigations to be conducted and witnesses to interview

Done/date:

Done/date:

Done/date:

Any correspondence to the witnesses and/or from the witnesses:  
Any communication from client concerning the investigation of  
particular witnesses (group it with the witness interview)

Beware of Attorney-client and work-product privilege



# Pleadings and Motions on Pleadings

Description:      Date filed and Served:      Response date      Hearing

Complaint

Motion to dismiss

Answer and counterclaim

Reply

Amended pleadings (list)/dates filed/response date

Default:      Date:      Judgment for default:      Date

Jury trial demand:       yes  no



# Pre-Trial Disclosures

Federal Courts require these  
Provisional Discovery Plan (PDP etc.)  
Scheduling Conference and Order (State Courts)

## DISCOVERY

Interrogatories	Date Served	Due Date	Response date	Motion to Compel
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Caution:

Feds and some courts  
have time limitations  
on these

Request for Production of Documents and Things (Plaintiff's)

Describe	Served	Due	Answer/served	Objections/motions
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Conducted Copies delivered

Request for Production of Documents and Things (Defendant's)



# Depositions

Plaintiff's  
Defendant's Depositions

(by plaintiff)

Deponent/date	Notice/fee	Subpoena/fee	Location	Court reporter	Done
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Depositions (by defendant)

Request for Mandatory Physical Examination	yes	no
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Person examined:

Date:

Physician:

Request for Admissions (Plaintiff's)

Served  
compel  
(Defendant's)

Due

Answer/served

Objections/motion to



# Motions

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Describe	Notice	Response	Reply	Hearing	Result
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Motion for Summary Judgment			No		
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Motion for Instruction		Yes			
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CASE EVALUATED

Plaintiff's damages:

Total:

Other notes:



# Pretrial Conference

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## SETTLEMENT

Settlement agreement:

Date:

Terms:

Releases/settlement agreement

## Pre Trial Conference

Date:

Judge:

Preparation (describe):

Done

Notes on result:





# Final Pretrial Order

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Stipulation, consent decree, order for dismissal  
Settlement distribution statement

Witness                                      Address                                      Subpoenaed                                      Fees XXXXX

Jury Investigation

Preparation of Exhibits and Diagrams

Preparation of Trial Notebook (Proof chart, voir dire questions, witness sheets, legal research, motions, jury instructions, etc.)

Preparation of Witnesses, Including Experts

Final Arrangements (Lodging, meals, parking, petty cash, transportation of trial materials)





## **After The Mediation, Get Busy Immediately**

- ◆ Remember all those indices? Get them out and start organizing!
- ◆ Ever heard of a Pretrial Order? Well, now you have. Think of it as your bible. You're going to live and die by it. Get to know it!
- ◆ The Pretrial Order forces you to organize your exhibits, witnesses, stipulations and issues. Basically, it's your trial on paper.



## Hearing And Trial Preparation

- ◆ How does your team work?
- ◆ Do attorneys/associates attend trial?
- ◆ How is the hearing/trial structured? Is this a 2 hour hearing, or a 9 week trial? Know your venue and how the courtroom runs.



# Reviewing Your Pleadings And Discovery

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Sources of trial information:

Complaint

Answer

Affidavits

Initial Disclosures

Discovery - Interrogatories, Request for Production,  
Request for Admissions, Deposition transcripts and  
exhibits

Deposition transcript summaries



## Pretrial Order

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- ◆ The Pretrial Order has three main areas that should remember:
  - ◆ Stipulations (look at your Complaint and Answer - what is agreed to
  - ◆ and admitted?)
  - ◆ Exhibits (what are the documents of your case from both sides?)
  - ◆ Witnesses (who are the people of your case: parties and witnesses?)



## Preparing Evidence And Exhibits

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- ◆ Start with the index from the deposition exhibits as your first trial exhibits, and then add the remaining discovery documents in the Pretrial Order.
- ◆ Next, review the list of parties and those witnesses that were deposed, listing those as your witnesses in the Pretrial Order.
- ◆ Lastly, review the Complaint, Answer and any Counterclaims for the issues of the case and list those in the Pretrial Order.



# CREATE A WITNESS LIST FOR THE PRETRIAL ORDER

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This starts the minute you meet your client. From the beginning you will have a Plaintiff and Defendant.

Check out the Complaint and Answer - who is named in those documents?

Discovery responses and any Expert Designations

Create a table, and keep adding as you find them

You need to contact them to ask for their availability - when can they testify? How long are they available? How long does it take them to get there?

Does your team need prep time with them?

What are their documents? Not every witness for your case has the same documents from your case.



## WITNESSES AND EXPERTS

### Deposition Preparation v. Trial

Depositions - you're discovering what they have to say and confirming documents, timelines, etc. Your prep should include reviewing any discovery responses and documents they have provided

Trial - Testimony is likely already in through depositions

You want to prepare your party and witnesses with what to expect, how to dress, etc.

Prepare a handout for your witnesses - "Guidelines for Witnesses and Deponents"

Preparation of Experts - they should review Complaint and Answer, any discovery, photographs, video or physical evidence. You want to schedule time for them to meet with your legal team and the client, if possible. They have likely testified in court before, so you are getting to the "meat" of what they are going to testify to much quicker.





## **PRETRIAL INTERVIEWS**

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You need to see witnesses in person - the way they dress, present themselves and answer questions. Someone might look good on paper that would be terrible for your client.

Set up plenty of time for these interviews so your attorney and/or client has time to get a feel for the person.

You need to know how to get in touch with them - where to serve a subpoena, cell phone numbers and their availability.

Give them a copy of the Guideline for Witnesses and Deponents.



## CHECKLIST FOR TRIAL SUBPOENAS

- ◆ Discuss with your team who they want to call on the Pretrial Order witness list. You should prepare subpoenas for everyone listed there.
- ◆ Trial subpoenas should be prepared and served at least 4 weeks prior to your trial date, and the rules and PTO may contain a deadline for them as well.
- ◆ Prepare a cover letter (see forms) that will accompany the subpoena. You inform all of your witnesses (friendly and party) ahead of time that the subpoena is coming, and that's a formality of trial.
- ◆ For adverse witnesses, use the same letter but consider having your attorney change it to fit the circumstances.
- ◆ Once the subpoena has been served, prepare and file Affidavits of Service.
- ◆ Preserve a copy of the subpoena, Affidavit of Service and any communication you have had with the witness regarding their availability in a folder for that witness.



## **TROUBLESHOOTING WITNESS PROBLEMS**

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What are the reasons someone may not want to be involved in your litigation? Time, emotions, money, worry about how will affect them (work, relationships).

Make sure you have a good address for a subpoena and plenty of time to serve it - start early. You need several weeks in case it takes more than one time.

Consider using a process server.



## MOTIONS

- ◆ Motion to Dismiss - usually filed early in the case, prior to discovery starting for lack of subject matter jurisdiction, personal jurisdiction, improper venue, insufficient service of process, failure to state a claim upon which relief may be granted.
- ◆ Motion for Summary Judgment - usually filed once discovery is completed, either before or after ADR. Key facts aren't in dispute and require a judgment to be entered in favor of one party. This is often filed discovery testimony is taken, and can often bring an abrupt end to the litigation. Think of it as a “test” trial, but all on paper. It requires a motion, and usually a memorandum of law in support. It will also require exhibits, affidavits and other documentation that is part of your case as discovery documents.
- ◆ Motion for Default Judgment - One or more of Defendants do not answer the Complaint. You must first ask the clerk to hold the Defendant in default by a procedure called entry of default. You will file a Motion for Default Judgment which the judge will decide in terms of damages. This is a serious motion. It can be set aside if the Defendant in default has an adequate excuse as to why they didn't answer, but again at the discretion of the judge



## **MOTIONS (CONTINUED)**

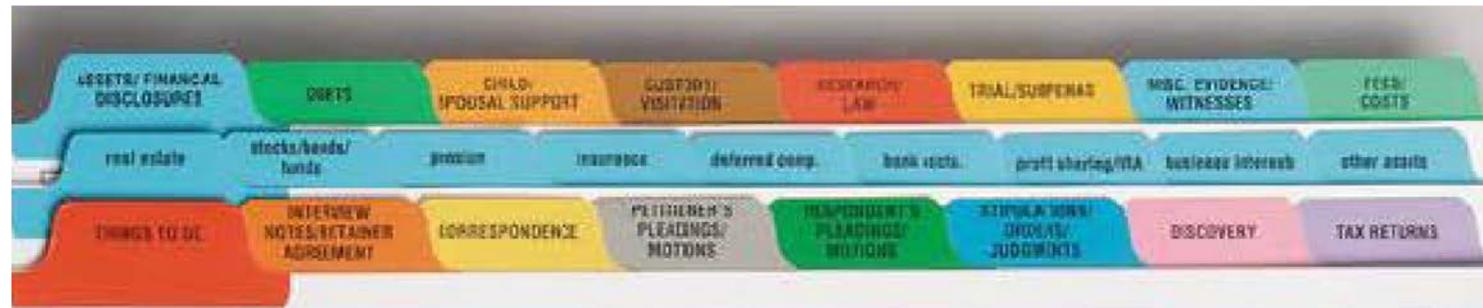
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- ◆ Motion(s) in Limine - motion filed by a party asking the court to order or ruling that limited or prevents certain evidence to be admitted. These are filed immediately prior to trial (and should be listed in the pending motion's section of the pretrial order). They may also be oral motions during trial, which may be ruled on prior to testimony or evidence being admitted.
- ◆ Motion for Directed Verdict - This motion is usually made orally in court before a case is submitted to a jury, Practically, it's made by Defendants once Plaintiff have rested and it argues that the evidence admitted is legally insufficient,



## ORGANIZING TRIAL NOTEBOOKS

- ◆ Pleadings and Discovery Notebooks
- ◆ Deposition Transcript and Deposition Exhibits Notebooks
- ◆ Trial Notebooks





## **PREPARING YOUR OFFICE: WHAT TO DO BEFORE YOU SET FOOT IN COURT**

- ◆ Choose On-Site Location
- ◆ Preparation and Set Up of On Site Work Room, a/k/a "War Room"
- ◆ Preparing for Court
  - ◆ Exhibits Box and Witness Box
  - ◆ Trial Supplies
- ◆ Advance Planning with the Clerk and Other Court Staff
- ◆ Daily Recap and Preparing for What's Ahead
- ◆ Last Minute Problems



## **PREPARATION OF AND SET-UP OF ON-SITE WORK-ROOM**

- ◆ Plan ahead - arrive in advance of your attorneys.
- ◆ Put all exhibit boxes together in order, and print several copies of the index of each box (these tend to walk away from the box).
- ◆ Separate witness boxes from exhibit boxes - if possible, put them in different colored boxes or print their labels on different colored paper for easy identification.
- ◆ Set up a portable printer, have enough paper handy.
- ◆ Bring extra batteries, computer cords, zip drives.
- ◆ Keep extra trash bags or shred boxes handy.



## CHOOSE ON-SITE LOCATION

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- ◆ If your trial is outside your county (or state) - think about what you need, and where your courthouse is located.
- ◆ Do you know attorneys at another firm in that area? Ask to use a spare office or small conference room.
- ◆ Consider a hotel conference room
- ◆ Questions to answer for your team:
  - ◆ Can your team stay set up for the amount of time you are staying there?
  - ◆ Is it possible to secure access to the room to only your team?
  - ◆ What resources do they have? Printer/Copier? Fax machine? Scanner? Internet access?
  - ◆ Where are the outlets in the room?
  - ◆ Do you have food and supplies nearby?



# **ORGANIZING TRIAL FILES FOR EASY, EFFICIENT ACCESS**





# EVIDENCE AND EXHIBITS

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Build a Witness Box:

- ◆ Witness List
- ◆ Subpoenas and Subpoena cover letters
- ◆ Affidavits
- ◆ Depositions (original sealed if possible) with copies & summaries/abstracts
- ◆ Special information - copy of exhibits to be used with that witness etc.
- ◆ May include atty. notes, taped statements, Interrogatory Responses (as specified by the attorney)
- ◆ Direct/Cross-Examination Outline



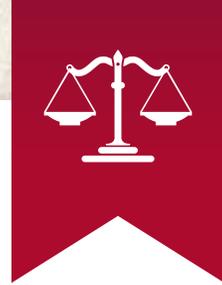
## **FOCUS GROUPS/MOCKTRIALS**

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The use of focus groups/mock trials is beneficial to the legal team, and helps to determine how a jury may view your case, and your client.

Focus groups help your team test out the legal theories and certain situations of your case, and their reactions (or lack of reactions).

They provide a meaningful method for your attorney(s) to try their case. And most importantly, they give you an audience that you can practice on.



*VOTR DIRE*



## PROSECUTION AND DEFENSE PARTICIPATE IN JURY SELECTION

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- ◆ Judge greets perspective juror members;
- ◆ The clerk calls the names of the jurors to be questioned first, prior to voir dire, Judge determines the jurors qualifications;
- ◆ A juror must be at least 18 years old, reside in the County and State of jurisdiction, must be qualified to vote, sound mind, able to read and write, and have no felony charges.



## **BENCH CONFERENCE WITH JURORS**

- ◆ Questions may be asked that the juror may want to discuss privately.
- ◆ The Judge may discuss such issues either at the bench or in chambers.
- ◆ Private discussions may include family criminal record, the jurors own criminal record, and whether or not the potential juror was the victim of any sex offenses, etc.



## THE JUDGE CAN RESTRICT TIME AND QUESTIONING

- ◆ The Judge can restrict the line of questions and the amount of time to ask questions;
- ◆ However, counsel can object if they feel they were not provided an ample amount of time to question jurors.





## JURY CHALLENGES

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If one party deems a juror unfit, that party may eliminate that juror from the pool by exercising one of three (3) types of challenges:

- a.) For cause;
- b.) Peremptory;
- c.) To the entire panel itself.



## CHALLENGES FOR CAUSE



The prosecution and defense may challenge, for cause, any potential juror who would not be fair. Reasons may include a juror's relation to counsel, witnesses or parties involved. **THERE IS NO LIMIT TO THE NUMBER OF CHALLENGES FOR CAUSE EACH SIDE HAS!**



## PEREMPTORY CHALLENGES

- ◆ Parties are also entitled to excuse “Peremptorily” a limited number of potential jurors.
- ◆ NMRA 1-038
- ◆ NMRA 5-606
- ◆ (Five Jurors for each side)
- ◆ Shall be done outside the presence of the jury,
- ◆ In Civil cases, both sides alternate
- ◆ One exception: Challenge based on racially discriminatory grounds is impermissible! See: Batson vs. Kentucky 476 US 79.

# PANEL CHALLENGE

See:

BATSON vs. KENTUCKY

An entire course in and of itself.



## **ALTERNATE JUROR SELECTION**

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At the Court's discretion, alternate jurors may be selected after selection of regular jurors;

The Judge may retain or discharge alternates once deliberations begin!

# JURY SELECTION TECHNIQUES/STRATEGY

THINK ABOUT YOUR VOIR DIRE EARLY AND OFTEN!

Three questions to consider after meeting with a potential client:

What are the jury issues in this case?

What questions do I have about this case?

What portions of this case are unclear?



## COMMUNICATION

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- ◆ An art of open ended questions
- ◆ Exact opposite of the control of cross
- ◆ Try to get the juror to talk
- ◆ It doesn't matter what they talk about



## LEARN, DO NOT TEACH

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- ◆ Voir Dire is to convince the jury that our position is the right one;
- ◆ Jurors enter the courtroom with a lifetime of experiences and a mindset;
- ◆ Don't waste time trying to change their minds;
- ◆ It is important to listen to the jurors and learn from them.



## **ENTER VOIR DIRE WITH YOUR TOPICS ORDERED**

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- ◆ Consider the order of your topics;
- ◆ Think primacy/recency theory;
- ◆ Jurors remember the first and last thing they are told;
- ◆ Put strongest issues first and last!



## STATING YOUR VOIR DIRE

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- ◆ Your introduction will immediately set the tone and mood of the trial;
- ◆ Get jurors to open up by setting the tone;
- ◆ Remember LEARN, DON'T TEACH!



## TYPICAL INTRODUCTION

◆ “Good morning ladies and gentlemen. My name is \_\_\_\_\_, and I am the attorney who represents the Plaintiff in this cause of action. This is the voir dire phase of the trial. The words, voir dire are French, and mean, to *speak the truth*. During this process, I will be asking you \_\_\_\_\_ questions so we can find twelve fair and impartial Jurors.”



## MUCH IMPROVED INTRODUCTION

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◆ “Good morning ladies and gentlemen. I am proud to stand here with my client, John Doe, and have twelve of you decide this very important case. In this part of the trial, we need to find out your feelings, impressions or opinions about the issues in this case. I want you to know that there are no right or wrong answers. We will be honest with you and we ask that you be as honest as you can with us.”



## HONEST AND OPEN INTRODUCTION

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The second introduction is similar, but it sets a much more honest and open tone. There is a lot more a lawyer can say at this point. With a thirty-minute voir dire it is necessary to set the tone, do a brief overview of the case and get right to the questions.



## CASE OVERVIEW

- ◆ You have the right to give a brief overview of the case, state the nature of the claim and what you believe the evidence will show;
- ◆ See: Powers vs. Ohio  
499 US 400





## LOOPING

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One of the most powerful and effective voir dire techniques!

Ask one juror a question, once they respond, ask a second juror for his/her reaction to what the first juror said. A third juror is asked to respond to what the first two said, respecting the jurors names and answers.



## **EFFECTIVELY DEALING WITH A “BAD” ANSWER**

- ◆ After receiving a “bad” answer, always thank and praise the juror for their answer;
- ◆ Voir dire is to learn about your opinions and feelings;
- ◆ Then ask “how many of you agree with juror number 4?,” “how many of you disagree?”



## MAINTAIN THE THREE E'S

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Three E's:

- ◆ Elicit Information;
- ◆ Establish Rapport;
- ◆ Educate by having jurors teach each other utilizing “looping.”



## **SUMMARY OF MAIN POINTS FOR VOIR DIRE**

- ◆ Think of voir dire early and often;
- ◆ Think of primacy and recency;
- ◆ Remember, “Learn, do not Teach”;
- ◆ Get the jury to open up, utilize looping;
- ◆ Put your strongest points first and last;
- ◆ Listen for bad answers and compliment your juror;
- ◆ Stick to your thirty minute outline.



## **JURY SELECTION FORMULA**

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- ◆ Preparation
- ◆ Communication
- ◆ Execution



## **PREPARATION**

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- ◆ Clerk's Office
- ◆ Public Defenders/Attorneys
- ◆ Judge Conference
- ◆ Free - Google, Yahoo People Search, Local News search
- ◆ Pay - Credit Report or On-Line Investigation
- ◆ Drive by home/car photos



## EXECUTION

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- ◆ In Court Access
- ◆ For Cause Challenges
- ◆ Peremptory Challenges



JUROR INFORMATION SHEET

8-8-05-8-19-05  
Panel I

NAME: Marcia M. Davis  
ADDRESS: 1816 Bisbee Ln Knoxville TN 37931  
PLACE OF BIRTH: Washington Co., TN  
MARRIED:  SINGLE:  WIDOWED:  DIVORCED:   
NO. OF CHILDREN: 1 OCCUPATION: Cytotechnologist  
YOUR PRESENT EMPLOYER: Baptist Hospital of E. TN  
BUSINESS ADDRESS: 137 Blount Ave Knoxville TN  
NAME OF SPOUSE: Jason R. Davis  
SPOUSE'S OCCUPATION: Photographer  
BUSINESS ADDRESS: 1816 Bisbee Ln Knoxville TN  
HAVE YOU EVER SERVED ON A CIVIL JURY? No CRIMINAL? No  
HAVE YOU EVER BEEN PARTY TO A LAWSUIT? No  
IF YES, WHAT TYPE? \_\_\_\_\_

IF YOU ARE ASKING TO BE EXCUSED FROM JURY SERVICE PLEASE  
STATE THE REASONS AS BRIEFLY AS POSSIBLE.

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**DAVIS, BEN 113**

Res: Knoxville, TN  
Born: Quincy, IL  
DOB: December 10, 1960 (44 yrs. Old)  
M/Ch: Single  
Emp: Mid-America Corp.  
Knoxville, TN  
Sp. Emp: N/A  
Law Enf Exp: No  
Party to Lawsuit: No  
Crim Case: No  
Charged Crim: No  
Ins. Adjust: No  
Govt Employ: No  
Case against govt: No  
Education: High school  
Juror Civ/Cr Case:

Religion:  
Psychologist/Mental:

Notes:

**HAYES, REGINA 124**

Res: Knoxville, TN  
Born: Kingsport, TN  
DOB: August 16, 1961 (43 yrs. Old)  
M/Ch: Married (3 children - 28,20,15 yrs old)  
Emp: Owns business: A Guy A Girls & Paintbrush, Knoxville, TN - painter  
Sp. Emp: Owner Body Shop  
Law Enf Exp: No  
Party to Lawsuit: Yes  
Crim Case: No  
Charged Crim: No  
Ins. Adjust: No  
Govt Employ: No  
Case against govt: No  
Education: Above high school  
Juror Civ/Cr Case:

Religion:  
Psychologist/Mental:

Notes:

**COOPER, BONNELL 109**

Res: Madisonville, TN  
Born: Walland, TN  
DOB: March 1, 1940 (65 yrs. Old)  
M/Ch: Divorced (2 children - 43 & 41 yrs old)  
Emp: Monroe Co. Dept of Finance  
Madisonville, TN - Bookkeeper/accounting  
Sp. Emp: N/A  
Law Enf Exp: Yes - son - Vonore Police Dept & Madisonville Fire Dept  
Party to Lawsuit: No  
Crim Case: No  
Charged Crim: No  
Ins. Adjust: No  
Govt Employ: No  
Case against govt: No  
Education: High school  
Juror Civ/Cr Case:

Religion:  
Psychologist/Mental:

Notes:

**JOHNSON, STEPHANIE 131**

Res: Knoxville, TN  
Born: Knoxville, TN  
DOB: March 15, 1979 (26 yrs old)  
M/Ch: Single  
Emp: NOVA, Knoxville, TN

Sp. Emp: N/A  
Law Enf Exp: No  
Party to Lawsuit: Yes  
Crim Case: Yes  
Charged Crim: Yes  
Ins. Adjust: No  
Govt Employ: No  
Case against govt: No  
Education: Above high school  
Juror Civ/Cr Case:

Religion:  
Psychologist/Mental:

Notes:

**HODGE, KEITH 125**

Res: Dandridge, TN  
Born: Sevierville, TN  
DOB: July 3, 1971 (33 yrs old)  
M/Ch: Married (1 child - 7 yrs old)  
Emp: Mahle, Inc. Morristown, TN - Engineer

Sp. Emp: Teacher  
Law Enf Exp: No  
Party to Lawsuit: No  
Crim Case: No  
Charged Crim: No  
Ins. Adjust: No  
Govt Employ: No  
Case against govt: No  
Education: Above high school  
Juror Civ/Cr Case:

Religion:  
Psychologist/Mental:

Notes:

**CARPENTER, ELIZABETH 107**

Res: Sweetwater, TN  
Born: Monroe County  
DOB: January 5, 1956  
M/Ch: Married - 2 children (27 & 30 yrs. Old)  
Emp: Director/Health Information Mgmt  
Dept/Sweetwater Hospital Associates,  
Sweetwater, TN  
Sp. Emp: Firefighter  
Law Enf Exp: Yes - Sweetwater Police Dept.,  
Sweetwater Fire Dept.  
Party to Lawsuit: No  
Crim Case: No  
Charged Crim: Yes  
Ins. Adjust: No  
Govt Employ: No  
Case against govt: No  
Education: 6 yrs college  
Juror Civ/Cr Case:

Religion:  
Psychologist/Mental:

Notes:



Alternate 1	Alternate 2	Juror 1	Juror 2	Juror 3	Juror 4	Juror 5	Juror 6
		<b>ALLEN, DAVID S.</b> 100 Res: Sevierville, TN Born: Knoxville, TN DOB: November 11, 1975 (29 years old) M/C: Single Emp: Auto Tech., Volunteer Chevrolet, Sevierville, TN Sp. Emp: N/A Law Enf Exp: No Party to Lawsuit: No Crim. Case: No Charged Crim: No Ins. Adjust: No Govt. Employ: No Case against govt: No Education: High school Juror Civ/Cr Case:  Religion: Psychologist/Mental:  Notes:	<b>BAILEY, PATRICIA M.</b> 102 Res: Maynardville, TN Born: Union County, TN DOB: November 8, 1951 (53 years old) M/C: Separated/Divorced (1 child 35 yrs old) Emp: Mutual Graphics, Printing Powell, TN Sp. Emp: N/A Law Enf Exp: No Party to Lawsuit: No Crim. Case: No Charged Crim: No Ins. Adjust: No Govt. Employ: No Case against govt: No Education: High School Juror Civ/Cr Case:  Religion: Psychologist/Mental:  Notes:	<b>BRUBAKER, ELEANOR</b> 105 Res: Loudon, TN Born: Los Angeles, CA DOB: April 14, 1956 M/C: Married (2 children; 41 and 39 yrs. old) Emp: Retired teacher/Housewife  Sp. Emp: Banker Law Enf Exp: No Party to Lawsuit: No Crim Case: No Charged Crim: No Ins. Adjust: No Govt Employ: No Case against govt: No Education: 4 yrs. College Juror Civ/Cr Case:  Religion: Psychologist/Mental:  Notes:	<b>CAZORT, FRED</b> 108 Res: Knoxville, TN Born: Lamar, Arkansas DOB: March 18, 1932 (73 yrs. Old) M/C: Married (2 children - 40 & 45 yrs. Old) Emp: Bank Examiner/Retired FDIC, Knoxville, TN Sp. Emp: Housewife Law Enf Exp: Yes Party to Lawsuit: No Crim Case: No Charged Crim: No Ins. Adjust: No Govt Employ: Yes Case against govt: No Education: 4 yrs college Juror Civ/Cr Case:  Religion: Psychologist/Mental:  Notes:	<b>DOMINGO, CLARA</b> 116 Res: Knoxville, TN Born: Habana, Cuba DOB: December 13, 1958 (46 yrs. Old) M/C: Married (1 child - 19 yrs old) Emp: Homemaker  Sp. Emp: Engineer Law Enf Exp: No Party to Lawsuit: Yes Crim Case: No Charged Crim: No Ins. Adjust: No Govt Employ: No Case against govt: No Education: Above high school Juror Civ/Cr Case:  Religion: Psychologist/Mental:  Notes:	<b>DYER, VICTORIA</b> 117 Res: Maryville, TN Born: Jersey City, NJ DOB: M/C: Married (4 children - 39, 36, 31, 22 yrs old) Emp: Homemaker retired Assat Mgr in Retail Sp. Emp: Wal-Mart sales Law Enf Exp: Yes - KPD - Son - Lawyer son-in-law Party to Lawsuit: No Crim Case: No Charged Crim: No Ins. Adjust: No Govt Employ: No Case against govt: No Education: high school Juror Civ/Cr Case:  Religion: Psychologist/Mental:  Notes:
Alternate 3	Alternate 4	Juror 7	Juror 8	Juror 9	Juror 10	Juror 11	Juror 12
Alternate 5							



**JURY LIST**  
**AUGUST 8, 2005 – AUGUST 19, 2005**

**PANEL I**

ELIZABETH BURFORD  
MARCIE DAVIS  
SUSAN FLANIGAN  
LISA INGLE  
HANNELORE KUKRUS  
WANDA LAWSON  
ERIN McCALLUM  
MIKE McMANUS  
DONALD PEDERSON  
CHIA SHIH  
SHEILA STEELE

**PANEL II**

HUGH BARKER  
DENIS BERNEY  
JESSE CILAPA  
ROBERT LAY  
KENNY MILLER  
MARY MONROE-ELLIS  
LYNN MOREHOUS  
DANIEL SEXTON  
TAJ SMOKER  
LYNDA STANCELL  
ROBERT WARREN

**PANEL III**

GWENDOLYN CAMERON  
ANNA CHRISTENBERRY  
JOAN GOE  
JULIA HARTMAN  
JENNIFER LIVELY  
BRENDA LOY  
CAROL MILLER  
KRISTY MUMFORD  
WILLIAM PATTISON  
PEGGY SHOFFNER  
KRISTI THURMAN-COOK  
RANDALL VAUGHAN  
JANET WALLACE

**PANEL IV**

LORINA AINSWORTH  
DENNIS CHILDERS  
ANN DONNELL  
NONA FOSTER  
JEANETTE FOWLER  
CAROLYN HALL  
CYNTHIA LEEK  
JARVIS LOCKHART  
ELIZABETH PEMBERTON  
LOIS PURGASON  
KRISTEN SANDERS  
KAREN SEATON  
TAMERA SEYMOUR

**PANEL V**

STEPHANIE BLAIR  
ROBERT BLEVINS  
DAVID CLIFT  
JOHN GELZER  
BRAD HYLTON  
JACKIE JONES  
STEPHEN MCGILL  
HALL MEDLIN  
MITZI MANTOOTH  
SIARRON PARSON  
CINDY RAUHUFF  
JUSTIN STAFFORD  
PATRICIA WILSON

**PANEL VI**

BILLIE BOUNDS  
JOHN BRANSCUM  
KENNETH BROCK  
JESSICA DEFENDERPER  
JACK HILL  
ROSS HOSKING  
CRAIG KING  
JOHN KNIGHT  
BENJAMIN LIGHT  
PATRICIA NORMAN  
SUSAN PICKEL  
MARK ROTTERO  
MELANIE STRICKLIN



## ADVANCE PLANNING WITH THE CLERK AND OTHER COURT STAFF

- ◆ Prior to trial, particularly if you have never visited the courthouse of the county where your trial will be held, call the trial court administrator or court's clerk and ask to see the courtroom.
- ◆ Take note of where the electrical outlets are. Is there a screen if you wish to use a projector? What (and where) are the seating arrangements?
- ◆ You may also ask the TCA or court clerk the trial judge's preferences for breaks and lunch and how long he/she allows.
- ◆ Find out where restrooms are, and if there are vending machines,
- ◆ Arrange with the sheriff's deputies to use a conference room during lunch and breaks.
- ◆ Where is there parking and is there a fee?
- ◆ Find out all this information before you leave for the first day of court, and you will help to create a smooth first day of trial.



## **DAILY RECAP- PREPARE FOR PROBLEMS!**

- ◆ Have your people ready - witnesses and parties
- ◆ Make sure everyone knows when the breaks are - where will you meet during those breaks?
- ◆ Pack snacks - you will be working through lunch
- ◆ Check in with your office and use this time to prepare for the afternoon. Make sure your witnesses are lined up for the next time period.
- ◆ Look ahead, and be prepared with the next witness on your list.
- ◆ Don't forget to check your index list before leaving the courtroom. You will need to know about the exhibits admitted when you are preparing for the next day, and it's the only way to make sure all your exhibits are admitted before you close the evidence.



## HANDLING LAST MINUTE PROBLEMS

- ◆ Remember, STAY CALM!
- ◆ You will have problems but less if you are planning ahead - test your software, computer connections before trial. GO EARLY.
- ◆ Have back-up. Things break and don't work. What will you do if something doesn't work? What is plan B?
- ◆ If you are planning to use the internet, make sure that you know what the credentials are. Plan to use a hotspot, or someone's iPhone connection if this doesn't work, but make sure you know how. Judges get cranky when technology doesn't work.



# MOTION IN LIMINE

For Order Prohibiting Reference During Trial to Insurance Payments Received by Plaintiff

(Caption)

MOTION IN LIMINE The Plaintiff respectfully moves this Court to order counsel for the Defendant to avoid any reference during the course of trial to any compensation received or likely to be received by the Plaintiff from the Plaintiff's insurance carrier for his/her hospital and medical expenses. Grounds for this motion are that reference to such insurance payments would be improper and prejudicial, and that such prejudice could not be corrected by any court ruling or admonition of the jury.

Date \_\_\_\_\_

Attorney for plaintiff

\_\_\_\_\_  
Address \_\_\_\_\_



# MOTION FOR MISTRIAL

---

(Caption)

MOTION FOR MISTRIAL \_\_\_\_\_ (Plaintiff/Defendant) respectfully moves this court for an order declaring a mistrial in this action and discharging the jury from further consideration of this case. As grounds for said motion, \_\_\_\_\_ (Plaintiff/Defendant) states that [state grounds]. Consequently, it is impossible for \_\_\_\_\_ to receive a fair trial by the jury. This motion is made on the basis of all records, files, and proceedings in this case.

Date \_\_\_\_\_

Attorney for

\_\_\_\_\_  
Address \_\_\_\_\_



# MOTION FOR DIRECTED VERDICT

---

At Close of All Evidence  
(Caption)

MOTION FOR DIRECTED VERDICT \_\_\_\_\_ (Plaintiff/Defendant) respectfully moves this court, at the close of all the evidence in this case, to instruct the jury to return a verdict in favor of \_\_\_\_\_. As grounds for said motion, it is asserted that [state grounds].

Date \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Attorney for

Address



# Jury Instructions

## Stock Instructions

## Contested Instructions

Instruction no. \_\_\_\_\_

Crossing between intersections, not in marked crosswalk, last clear chance

1. Although the Plaintiff had the duty to yield the right of way to vehicles on the highway, the Defendant had the duty to exercise ordinary care for pedestrians and others, including the duty of keeping a proper lookout. If you are satisfied from the evidence that immediately prior to the accident it was no longer possible for the Plaintiff, by exercise of ordinary care for his/her safety, to avoid the Defendant's vehicle, while the Defendant still had time, by the exercise of ordinary care, to discover the Plaintiff's danger and avoid the accident, you will find for the Plaintiff; otherwise you will find for the Defendant.

Footnote: Authorities that support the statement.

Accepted

Rejected

Comment/Note



2. Definition of ordinary care from other standard instructions.)

2. Damages can be standard/custom drafted

Authorities (List relevant statutes and cases.)

Accepted

Rejected

Comment/Note



# ALTERNATIVE JURY INSTRUCTION

It was the Defendant's duty while operating his/her vehicle to exercise ordinary care for others, including:

- a. keeping a lookout for others close enough to pose a danger
- b. keeping vehicle under reasonable control
- c. driving at a reasonable and prudent speed as dictated by speed limits and conditions of the road.

If you are satisfied from the evidence that the Defendant failed to comply with one or more of these duties, and that such failure was a substantial factor in causing the accident, you will find for the Plaintiff; otherwise you will find for the Defendant.

2. If you are satisfied from the evidence that the Defendant complied with all of these duties and that the Plaintiff moved into the path of the Defendant's vehicle so suddenly that the Defendant could not avoid the accident, you will find for the Defendant.

3. (Add definition of ordinary care from other standard instructions.)

4. (Add standard instruction on damages.)

Authorities



# EXHIBIT LOG

---

Exhibits (sometimes kept as separate book)  
Exhibit log

## EXAMPLE OF EXHIBIT LOG

---

Ex. no. (as premarked or accepted as assigned at trial)	Descript. or title	Whether introduced, or rejected / Notes
---	--------------------	---

---

Own ex. (in order of introduction) Title Introduced ( ) Accepted ( ) Rejected ( ) Notes:

P-1 (Plaintiff)

Opponent's ex. Title Introduced ( ) Accepted ( ) Rejected ( ) Notes:



- Each exhibit in expected order of introduction (may be separated by identifying tabs, including exhibit no. if premarked by clerk).
- Each exhibit section should include:
  - a. Exhibit summary sheet paper-clipped to exhibit (includes brief description of exhibit and significance, case file location or code no., witness needed for introduction, foundation, brief statement of authorities on admissibility)
  - b. Exhibit
    - (1) Marked copy for judge, opponent, one for each juror if desired, one for witness section, one for exhibit section
    - (2) If oversized, specially indexed to separate container or if cannot be hole punched, place in three-hole plastic envelopes
  - c. Place exhibits in box if there are too many for notebook.

List of all audiovisual props and accessories indexed to specially numbered containers if necessary.



## YOUR ROLE IN THE COURTROOM - SET UP AND BEYOND

---

- ◆ First, be calm. Everyone around you is likely on step away from walking off the cliff! You are there to keep order and make sure things are moving.
- ◆ Know where everything is. If it gets moved, put it back.
- ◆ If you are put in charge of the exhibits, own those exhibits. First. (put them where you can access them without making noise or distraction to the courtroom. PEOPLE ARE WATCHING YOU - INCLUDING THE JURY.
- ◆ Keep your own list of what exhibits are used - admitted, or not. At the first opportunity, talk to the courtroom clerk and ask if it's possible to get a copy of their exhibit list at the end of each day. Compare it to yours, and make sure they are both the same.
- ◆ Create a table for Voir Dire - We use a table with 6 columns and 2 rows. The boxes are the size of a sticky note. Print 10-15 copies, and have several sticky note pads ready. Your team might use iPad technology, too.
- ◆ Pay attention to the jury from the moment they come in the courtroom. You will notice things about them your attorneys are too busy to see.



# **Critical Steps for Paralegal Prep and Attendance in Trials**



**Now... Onward!**

# Building a Trial Notebook the Paralegal Way

Lalita Devarakonda, Esq.

T&E Litigation Group

Hurley Toevs Styles Hamblin & Panter PA

Lalita@hurleyfirm.com



# TYPE *1*:

TRIAL NOTEBOOK FROM INCEPTION OF  
THE CASE  
(CHRONOLOGICAL)

# Live pleadings (petitions and answers)

- ❖ Docket control sheet
- ❖ Disclosure responses
- ❖ Discovery responses
- ❖ Deposition summaries
- ❖ List of key documents

TYPE 2:

TRUE TRIAL NOTEBOOK

# Attorney Trial Outlines

- ❖ Voir Dire Questions
- ❖ Jury Seating Chart
- ❖ Opening Statement
- ❖ Closing Statement
- ❖ Jury Instructions

# Plaintiff's Pre-Trial Documents

- ❖ Plaintiff's Exhibit List
- ❖ Plaintiff's Witness List
- ❖ Plaintiff's Motion in Limine
- ❖ Plaintiff's Designation of Deposition Excerpts
- ❖ Plaintiff's Designation of Expert Witnesses

# Defendant's Pre-Trial Documents

- ❖ Defendant's Exhibit List
- ❖ Defendant's Witness List
- ❖ Defendant's Motion in Limine
- ❖ Defendant's Proposed Jury Instructions
- ❖ Defendant's Designation of Deposition Excerpts
- ❖ Defendant's Designation of Expert Witnesses

# Pleadings and Orders

- ❖ Live pleadings  
(petition and answer)
- ❖ Court's Pre Trial  
Order

# Discovery Responses of the Plaintiff and the Defendant

- ❖ Plaintiff's Discovery Responses
  - Interrogatory answers
  - Production responses
  - Admissions
- ❖ Defendant's Discovery Responses
  - (Same)

# Responses and Answers of the Plaintiff

- ❖ Plaintiff's Answers to Defendant's First Set of Interrogatories
- ❖ Plaintiff's Answers to Defendant's Second Set of Interrogatories
- ❖ Plaintiff's Responses to First Request for Admissions
- ❖ Plaintiff's Responses to Second Request for Admissions

# Evidence

- ❖ Exhibit list/Exhibits
- ❖ Witness list/Witnesses
  - Potential questions for each witness
  - Deposition transcripts/summaries/excerpts

Closing Argument

# TYPE 3:

LARGER CASES OR CASES WITH MULTIPLE PARTIES MIGHT NEED SEPARATE NOTEBOOKS FOR PLEADINGS, DISCOVERY, EXHIBITS, TRIAL OUTLINES/JURY

# Notebooks

- ❖ Extensive cases
  - Plaintiff's notebook
  - Defendant's notebook
  
- ❖ Separate "trial notebook"
  - Pre-trial Order
  - Witness lists
  - Exhibit lists
  - Jury section

# Live Pleadings

- ❖ Multiple parties might have a separate live pleadings notebook
  - Plaintiff's petition
  - Plaintiff's answer to counterclaim
  - Defendant 1's answer
  - Defendant 2's answer
  - Defendant 3's answer and counterclaim

# Discovery Responses Notebook

- Plaintiff's answers to interrogatories
- Plaintiff's responses to requests for production
- Plaintiff's responses to requests for admissions
- Separate section for each defendant's discovery responses

# Deposition notebook

- ❖ Each deposition taken (condensed version, copied front and back)
- ❖ Summary of the deposition with issues identified when possible
- ❖ Deposition excerpts

# Exhibit notebook

- Your own exhibit list with a copy of each exhibit behind separate tabs
- OR
- Exhibits in file folders in a box (marked with Exhibit number and copied for each party, the witness, the judge, and the court reporter)

# EXHIBIT LOG

Exhibits (sometimes kept as separate book)  
Exhibit log

## EXAMPLE OF EXHIBIT LOG

---

Ex. no. (as premarked or as assigned at trial)	Descript. or title	Whether introduced, accepted or rejected / Notes
--	--------------------	--

---

Own ex. (in order of introduction)	Title	Introduced ( )	Accepted ( )	Rejected ( )	Notes:
------------------------------------	-------	----------------	--------------	--------------	--------

P-1 (Plaintiff)

Opponent's ex.	Title	Introduced ( )	Accepted ( )	Rejected ( )	Notes:
----------------	-------	----------------	--------------	--------------	--------

Exhibit list  
should have  
columns for

- Exhibit number
- Description of the exhibit
- Bates number
- Offered into evidence
- Objection (if any)
- Admitted

# Task list/deadline chart

- ❖ Contact list
- ❖ Order of proof
- ❖ Research/case law

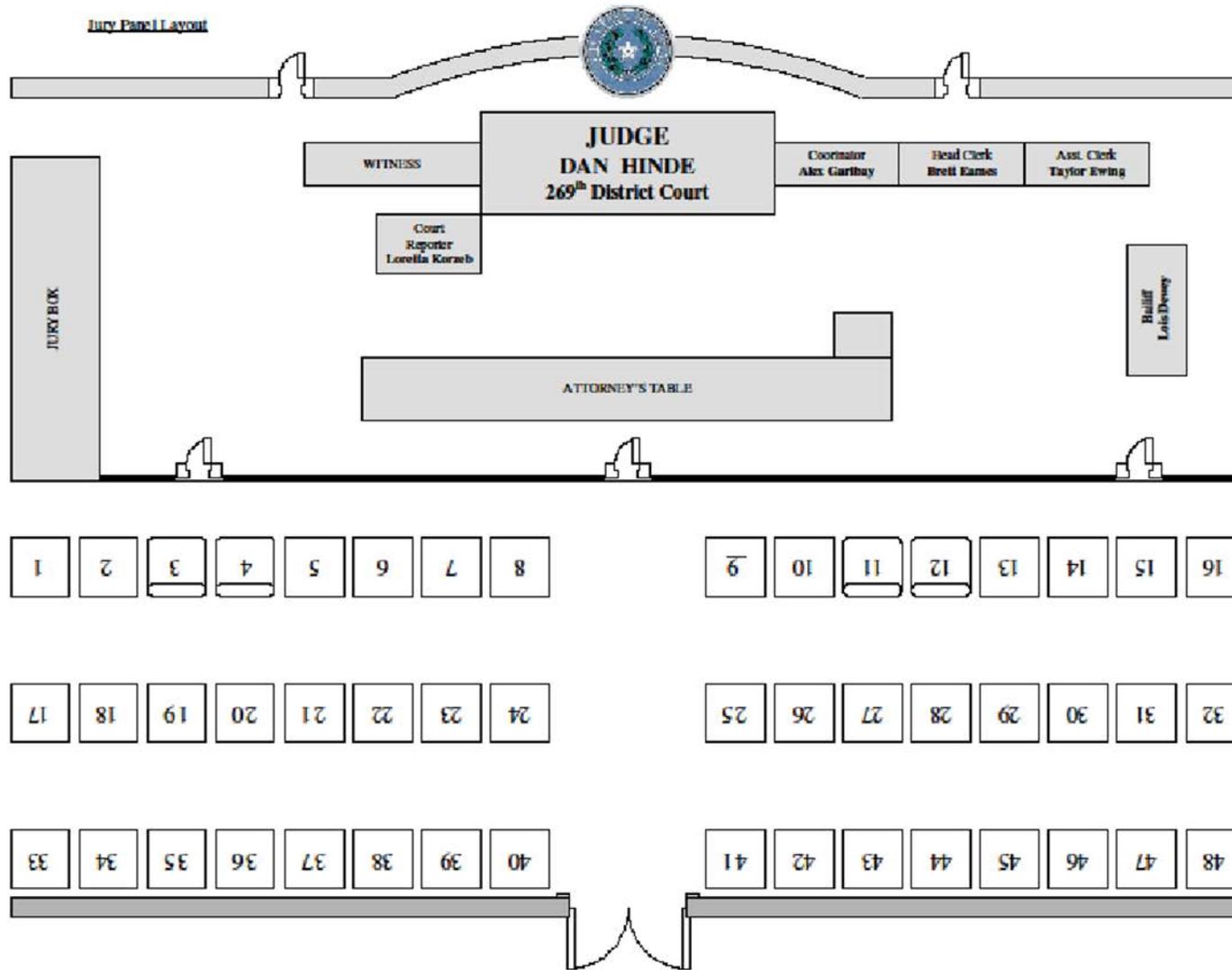
# Order of Proof Outline

- ❖ Witnesses
- ❖ Issue
- ❖ Exhibit

# Jury Section of Trial Notebook

- ❖ Jury Seating  
Chart

Jury Panel Layout



# 270th District Court

Cause Number \_\_\_\_\_

33	34	35	36	37	38	39	40
17	18	19	20	21	22	23	24
1	2	3	4	5	6	7	8

41	42	43	44	45	46	47	48
25	26	27	28	29	30	31	32
9	10	11	12	13	14	15	16

Court Bench

# Jury Section of Trial Notebook

- ❖ Jury Seating Chart
- ❖ Voir Dire Questions
- ❖ Jury Instructions
- ❖ Verdict Form

TYPE 4:

ELECTRONIC TRIAL NOTEBOOK

# Electronic Trial Notebook

- ❖ Trial software
- ❖ Use your existing computer system to gather your key documents in one place, in addition to how they were produced

# Create a plan

- ❖ Understand and know exactly what you want to accomplish
- ❖ Organize your thoughts on how to accomplish your goals
  - ❖ Prepare a task list: a timeline of when you will complete each task may be helpful
  - ❖ Focus on the essentials: Eliminate the most unimportant of your task, and concentrate on the main goals

# Communicate Clearly

- ❖ After forming a plan and giving everyone responsibilities, make sure to coordinate with them often to check in on the work they are doing.
- ❖ If any of your team members encounter a large problem, request that they notify you.
- ❖ Implement a timetable that the team will follow
- ❖ Periodically update the team about the progress that has been made. Try to eliminate confusion as best you can.
- ❖ Remember! Everyone brings something to the table, and their skills are all valuable

# Take Command of the Paperwork

- ❖ Help others by listen to their cases. Don't agree with the first thing you hear; analyze it from the point of view of the Judge/Juror.
- ❖ Review the other Lawyers case critically. Constructive Criticism is key
- ❖ If you have ideas for the other lawyer, be confident in your abilities, and say your thoughts

# Using Trial Pad

- ❖ Technology should be utilized well; upload your exhibits onto programs like Trial Pad
- ❖ Many times, there will be a person who is running the exhibits. They should Practice many times to get comfortable with the software.
- ❖ It is important for you to know your exhibits well, so Practice!

# Perfect your Visual Aids

- ❖ Decide if you will use Electronic Aids or demonstrative ones.
- ❖ Avoid Complication: Visual aids should strengthen your point, not create a new point altogether
- ❖ Practice Using the aid: Always practice beforehand, so you will get used to the aids. This will help resolve any issue you might spontaneously discover. Also, use your visual aids while preparing witnesses so that their testimony flows naturally
- ❖ Plan ahead: Think about the fine details, and any what-ifs you have. This will prevent anxiety on the day of the trial

# Don't Overlook the Details

- ❖ If possible, visit the courtroom before the trial and identify details that will provide advantage to your team. (Ex: line of sight for the jurors)
- ❖ Do everything possible to eliminate uncertainty, which is a key stress factor
- ❖ Create a trial bag with all of the office essentials, just in case.
- ❖ Communicate with the judge's staff, so you will know what they are like beforehand
- ❖ Try to understand the rules of that particular courtroom

# Courtroom Attire & Etiquette

- ❖ Make a good first impression: Dress Appropriately for Court, and know your judge
- ❖ Act professional, and be courteous to the judge and/or the juror
- ❖ Work well with your attorney and the team

# Be Calm, Collected, and Confident

- ❖ Be calm and collected. You know what to say, so speak
- ❖ Speak with confidence; do not cower or badger
- ❖ Ultimately you want to win the case: offer constructive suggestions to your team and client

# Grow from the Trial Experience

- ❖ Plan for the worst, and expect the best
- ❖ Grow from your experience
- ❖ Note steps that your attorney really appreciate.
- ❖ Accept constructive criticism and use it to your advantage
- ❖ Smile and Be proud of your accomplishments

# My Best Advice:

**START EARLY!!**

Ask questions, make lists and run through the "what ifs" before you get to the courtroom.

Make sure you can be human to your team: eat breakfast, bring snacks, pack Tylenol, Advil, etc. Think of everything you can do to make it easier.

**GET REST.** (if you have any time). This is a long marathon, not a sprint. You need to be able to keep going when you are tired, emotional and ready for it to end. Checklists, index, and well thought out exhibit and witness boxes will save your trial life!

Counselor,  
I need an  
answer.



stus.com



Hold on.  
I'm texting my  
paralegal.

# Questions?





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---

WITNESS PREPARATION

[www.pbwslaw.com](http://www.pbwslaw.com)

# WITNESS PREPARATION:



Starts when case is opened.

Begin creating witness folders as soon as individuals are identified.

- Plaintiff/Petitioner
- Defendant/Respondent
- Neutral
- Fact/Expert



# GATHER DOCUMENTS

---

- Electronic Information
  - Emails
  - Text messages
  - Social Media
- Hard Copy Information
  - Medical Records
  - Financial Records
- Previous Deposition Testimony
- Exhibits

# DEPOSITION PREPARATION

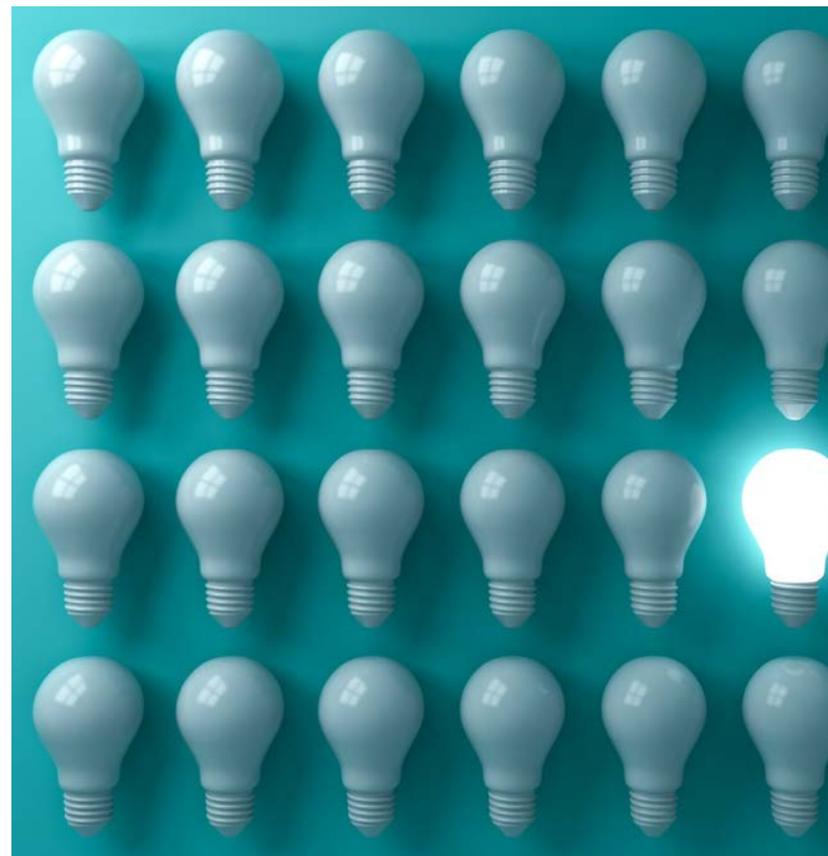


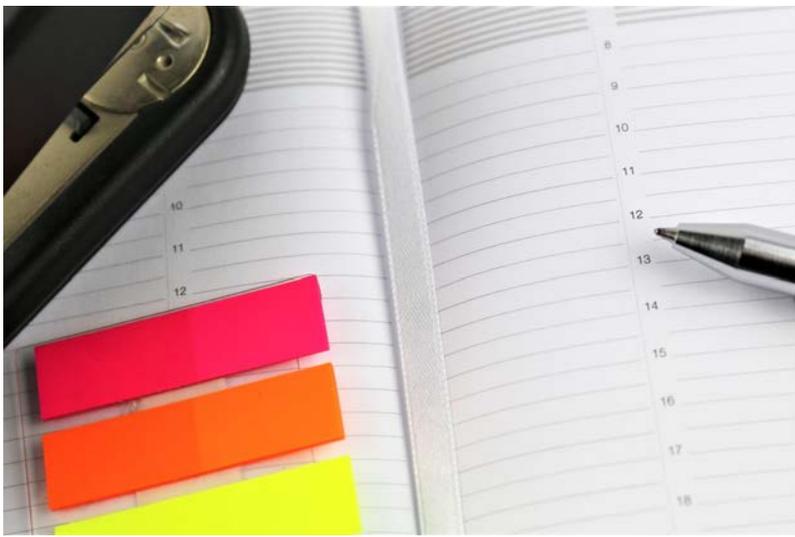
- **This is often the first step in witness preparation for trial.**
- **Is he or she your witness?**
  - **The other party's witness?**
  - **A neutral witness?**
- **Who is taking the deposition?**
- **Who is defending the deposition?**
- **How many parties are there to the litigation?**

# YOUR WITNESS: CLIENT (DEFENDING)

---

- Attorney will want to prepare your client prior to the deposition
  - Make sure deposition is calendared and court reporter is scheduled
  - Note the location of the deposition and how it's being held/transcribed
    - In-Person, by Telephone, by Video Conference
    - Is it being Video Recorded?
- Schedule time for preparation for attorney and client
- Prepare documents attorney will need for meeting with client





- Subpoena for Attendance
  - Duces Tecum?
- Court Reporter Scheduled?
- Location Scheduled?
- Documents/Exhibits Prepared?
- Assist Attorney with Documents?



# THE OTHER PARTY (TAKING)



# NEUTRAL WITNESS (TAKING OR DEFENDING??)

---

- Taking the Deposition?
  - Same Tasks as Before
- Defending the Deposition?
  - Yep. Same Tasks

# WITNESS LISTS

---

- Usually Follows Scheduling Order
  - May be initial list and final list required
- Fact or Expert Witnesses?
- What Does the Judge Require be Disclosed?
  - Usually at least name, address, phone and expected testimony
  - Email address?





# ALWAYS ON WITNESS LISTS:

- 
- All Witnesses Identified by Other Party(s)
  - All Witnesses Needed for Rebuttal
  - All Witnesses Identified Through Further Discovery  
(for prelim list)



# INTERVIEWS

---

- Not all Witnesses Need to be Deposed--
  - Some witnesses may need to be interviewed before being disclosed.
  - Do we want to use this person as a witness?
  - Do they have any relevant information?
  - Will they hurt/help our case?
  - How much prep will they need before deposition?
- Still Need to Prepare!

A close-up photograph of a hand moving a black chess piece on a chessboard. The hand is positioned at the top left, with the thumb and index finger gripping the top of a black pawn. The chessboard is visible in the lower half, showing the alternating black and white squares. Other chess pieces are visible in the background, slightly out of focus.

# EXPERTS

---

- Usually a separate deadline to identify.
  - Plaintiff/Petitioner First then Defendant/Respondent.
- How Many?
- What Subject Areas?
- Local or National?
- CV, Publications, Previous Testimony

# EXPERT REPORTS/ DEPOSITION



Opposing Party Gets the Expert's Report

Ideally Before the Deposition

Most Experts Testify Regularly

Some Practice Areas May Need Unique Witnesses

Travel Arrangements/Lodging/Transportation

# TRIAL WITNESSES

- 
- Subpoenas and Witness Fee
  - Travel Arrangements
  - Order of Presentation
  - Exhibits
  - Whose Witness is He/She?
  - Babysitting/Coordinating



# FOLLOW UP

## Deposition

- What Worked/Didn't?
- What Else Needed?
- Questions to Address?
- Follow Up on Documents?

## Trial

- Use Expert Again? Why/Why Not?
- What if Re-Trial? How Did Witnesses Do?
- Next Steps with Client?
- How Better Prepare Witnesses?



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