

# PREPARING FOR TRIAL

## TRIAL-READY LISTS

### I. To Be Completed 60 Days Before Trial

The following is a list of things that we should endeavor to have done 60 days before trial. While we cannot control what deadlines the court imposes and therefore some of these things will not be able to be done within the time frames suggested in this document, this list represents a “wish list” of where we should be insofar as trial preparation is concerned 60 days before the scheduled trial date. Your list in any particular case may also vary according to the type of case, case strategy, etc. Therefore, this list should not be viewed as a mandatory list of things to do or a time limit within which to do them but rather as a checklist to review in the course of preparing for trial,

1. Issues narrowed by dispositive motion.
2. Our experts identified and Rule 26 responses served.
3. Opponent’s experts identified, complete Rule 26 responses received and, if possible and necessary, experts have been deposed.
4. All of our discovery reviewed and supplemented as necessary.
5. Request for supplementation of opponent’s discovery sent out.
6. All opponent’s discovery reviewed and determination made about whether motions to compel should be filed.
7. We have outlined what we must prove and determined how we plan to prove it.

### NOTES:

8. All medical expenses are either proven, stipulated, or subject of admitted requests to admit.
9. Future medicals (if any) have been proven sufficiently (or proof is scheduled for trial).
10. All witnesses and subject matter of their testimony identified.
11. All potential exhibits identified and means of admission determined (expensive exhibits may not be prepared at this point but we should know what we will need).
12. Affidavits have been obtained to meet requirements of business records exception or we are prepared to subpoena records and/or custodian.
13. All depositions for proof have been taken or are scheduled.
14. Legal research list prepared.
15. Potential motions in limine identified (both from us and against us).
16. Identify objectionable portions of depositions for proof.
17. Decision made regarding focus group and, if needed, it has been conducted or is scheduled.
18. Decisions made as to case themes and style of presentation.
19. Trial notebook prepared.
20. Witness and/or issue notebooks prepared.
21. Calendar prepared for all deadlines (after consulting scheduling order, local rules, judges' rules).
22. Experts and witnesses have been informed of trial date and cleared of conflicts.

**NOTES:**

23. Court reporter booked.
24. Determination made as to necessary equipment for trial; e.g. VCR, TV, Projector, Laptop, Visual Presenter.
25. To do list for last 60 days started

## **II. To Do List for Last 60 Days**

The following is a list of things that should be considered for inclusion on a checklist for the last 60 days before trial, recognizing again that we cannot control what deadlines the court imposes and that each case is different.

1. Draft and file motions in limine and responses thereto (including objections to depositions).
2. Research and draft trial brief.
3. Draft Findings and conclusions.
4. Try to reach agreement of stipulations.
5. Research and draft bench briefs.
6. Complete any remaining depositions for proof.
7. Prepare remaining exhibits.
8. Conduct focus group, if not already.
9. Refine decisions regarding themes and style for case presentation.

**NOTES:**

10. Make decisions about order of proof.
11. Trial, witness and issue notebooks supplemented as necessary.
12. Continue to update calendar with deadlines.
13. Outline voir dire.
14. Outline opening, closing, and witness exams.
15. Make video clips for impeachment and other uses at trial.
16. Prepare jury instructions and verdict form.
17. Get other cases, office and life in order.

### **III. To Do List for Last 30 Days**

The following is a list of things that should be considered for inclusion on your checklist for the last 30 days before trial, recognizing again that we cannot control what deadlines the court imposes and that each case is different.

1. Disclose witnesses and exhibits to opponents.
2. Disclose intent to use any video depositions at trial.
3. Submit any objections to the opponent's use of video depositions at trial.
4. Obtain daytime telephone numbers from all witnesses so that you may contact them during trial.
5. Issue subpoenas for witnesses.

#### **NOTES:**

6. Schedule, meet with and prepare witnesses.
7. Confirm equipment for trial.
8. Confirm court reporter for trial.
9. Organize, copy, pre-mark (where permitted) exhibits.
10. Edit video depositions for use at trial.
11. Argue motions in limine (if not already completed).
12. File trial brief.
13. File jury instructions and verdict form.
14. Get jury pool list.
15. Make checklist of proof for use during trial.

**IV. Questions To Ask At Pre-trial Conference**

1. How does the court handle jury selection?
2. Does the court have any time limitations on opening statements, closing arguments, etc.?
3. What daily schedule does the court intend to follow? Does any commitment of the judge or other counsel impact the normal schedule?
4. What equipment is available in the courtroom ?

**NOTES:**

5. Does the court allow pre-marking of exhibits? If so, does the court have any preferences regarding pre-marking?

**V. Trial Notebook – Contents**

We recommend the use of a trial notebook (or, in some cases, multiple notebooks) for the efficient management of paper at trial. What ever system you use, consider how your system will give you ready access to the following items. Note: the temptation is to take your entire file; this is almost certainly a mistake. There are too many items in a file that have no use at trial and unless you are extraordinarily organized you will end up fumbling around in unnecessary paper if you bring your entire file. Be selective with what you bring to trial.

1. Witness list with contact phone numbers
2. To Do list
3. Key pleadings
4. Exhibits
5. Opening Notes
6. Closing Notes
7. Witness Exams (Consider separate notebooks for each witness in significant cases.)
  - a. To Do list
  - b. Outline of examination

**NOTES:**

- c. Deposition of witness and exhibits
  - d. Other documents and things related to witness
8. Witness and Exhibit Lists
  9. Bench briefs
  10. Voir Dire
  11. Jury Instructions
  12. Verdict Form
  13. Proof Checklist
  14. Court Error List. A separate, defined space to write down rulings by the court that you think may be error to help you prepare a motion for new trial (if necessary).

**NOTES:**