

# Pre-Trial Checklist



- Three months before trial:
  - Set trial date
  - Look for conflicts
  - Determine who will work on the trial
  - Complete discovery
  - Decide on expert witnesses
- Six weeks before trial
  - Establish work schedule
  - Determine whether you need to amend the pleadings to conform to what you're intending on proving at trial
  - Narrow the issues to the extent possible
  - Make sure all evidentiary motions have been resolved
- Three weeks before trial
  - Prepare witness list
  - Just investigation
  - Prepare exhibits and visual aids
  - Look into opposing counsel and judge

# Case Status Sheet

- This should include a list of all steps that need to be taken before trial, including:
  - Pleadings Done
    - Default judgment appropriate?
    - Jury trial demanded
  - Discovery completed and Results followed up on
  - All pre-trial motions filed and disposed of
  - Case evaluation, settlement options discussed and explored
  - Pre-trial conference and meetings and discussions held with opposing party
    - Note offers made by both parties and whether and when they were rejected

# Subpoena Witnesses

- Even friendly witnesses may be subpoenaed. Don't worry about offending someone. Call and explain that subpoenas are routine.
  - If the witness doesn't show and you need a continuance, the judge might be less sympathetic if you never sent a subpoena
- Other rules to be aware of:
  - Most often, the court has to actually sign and issue the subpoena
  - Subpoenas must be served personally or by process servers
  - A subpoena (*duces tecum*) can also require that documents be produced or brought to court
  - If a person doesn't not think that s/he may be subpoenaed in this manner, the remedy is a "motion to quash."

# Jury Investigation

- Rules allow a party to investigate the potential jurors, as long as you don't speak to them personally
  - You can get a list of potential jurors for your trial from the court clerk. This will be a list of all the people that have been called down to be on your panel.
    - This is likely to be close to 100 people or more!
- Other Sources for Juror Information
  - Voter registration list
  - You can speak to neighbors, co-workers, etc.
  - Jury files kept by your firm from previous cases
  - Jury surveys
  - Jury psychologists and analysis
  - Mock juries

# Preparing Demonstrative Evidence

- Evidentiary Concerns
  - Diagrams or models must be a fair representation of what they're trying to depict,
    - The opposing side is entitled to info about what is being depicted, such as copies of a summarized report, etc.
- Technology
  - Powerpoint presentations, holographic images, graphs, charts, etc. can be used as demonstrative evidence
  - Split screen between documents and other relevant documents can be used to allow juries to easily compare
  - Timelines can be very useful to a jury as well
  - Photos, videos, etc., can be introduced like any other document
  - Many courts will require you to show the opponent all such demonstrative evidence to give them a chance to challenge it for accuracy before the jury sees it

# Maintaining a Trial Notebook

- This is simply a loose-leaf that's organized to anything can be retrieved quickly
- Outlines
  - This is like a table of contents that indicates where everything is
- The notebook should also contain sections on:
  - Motions
  - Voir Dire Questions
  - Jury Instructions
  - Witness Questions
  - Juror Notebooks
  - Special Details or notes

# Preparing a Witness



- Preparing a client to testify
  - Try to simulate with the witness what the courtroom will be like
  - Preparation can range from a cursory review of what points will be made to a full Q and A practice session
  - A mock cross examination can also be very useful
- Preparing other witnesses to testify
  - Preparing them can be just as important as preparing your client
  - However, gauge how cooperative they are before pressuring them to work for hours with you on preparation
- Ethical Considerations
  - Remember that it is unethical and illegal to counsel a witness to lie or be misleading or to withhold information that should be disclosed
- Paralegals also may be asked to make technical arrangements for the witness' travel, etc.

# Trial and the Paralegal's Role 1

## ■ Stages in Trial Procedure

- Jury selection
- Opening statements
- Plaintiff's case
- Defense Case
- Instructions and verdict
- Post trial motions and appeal

## ■ Decorum at Trial

- Dress conservatively in a suit or formal dress
- Don't use devices like cell phone unless absolutely necessary

## ■ Jury Selection

- Voir dire
- Challenges for cause and peremptories



# Trial and the Paralegal's Role 2

- Shadow Jury
  - This sets up a group of ordinary people who will watch the case and acts as jury consultants from an ordinary person's point of view
- Witness Control
  - Keep track of the whereabouts of the witnesses, etc.
- Documents and Exhibits
  - Make sure you know where the exhibits and documents are, etc.
- Exhibit and Witness Logs
- Trial Notes
- Trial Day Review Meetings

# Trial and the Paralegal's Role 3

- When the Paralegal Must Testify
  - This can happen when necessary for chain of custody issues
  - The same preparation rules apply as with other witnesses
- Verdict
  - General and special verdicts
  - Verdicts with interrogatories
  - Punitive and compensatory damages
- Polling the Jury
- Findings of Fact and Conclusions of Law
  - This is written by a judge after a bench trial or after a jury verdict. It can be necessary in complex cases where the next step is not always clear
    - E.g., antitrust cases, etc.