

FINAL PRETRIAL PREPARATION CHECKLIST

This document assumes that a Mid-Case File Review in preparation for trial has been conducted and a to-do list prepared. It also assumes that discovery is complete, that motion practice (other than motions in *limine*) is complete, that you have a trial date, and that you are marching forward to trial. It also assumes that some plan for trial notebooks has been developed, and the raw data for trial notebooks has been gathered and put in the appropriate notebook(s).

When this review should be undertaken is again dependent on the nature and complexity of the case, the scheduling order in place, the deadlines imposed by local rules, the status of settlement negotiations, the likelihood of settlement, and other relevant factors. One factor that bears particular discussion here is the other time commitments, both of the lawyer who will be trying the case and of the staff, if any, which will be assisting in the preparation and trial. The more congested the lawyer's calendar and the more demands on staff, the earlier this process must start.

1. All deadlines from the scheduling order and local rules should be confirmed and written down at the top of the to-do list that will be created from this review. If there is no scheduling order in place, you should develop your own deadlines to help drive action on your part.

2. Your to-do list or internal scheduling plan need to address the following subjects:

a. Identify subjects for motions in *limine*, and draft and file the motions and responses thereto (including objections to depositions). Be sure to set aside time to prepare for motions filed by your opponent.

b. Determine whether a trial brief is necessary, and if so, when it should be completed

c. Finalize review of issues in dispute.

d. Determine how you will prove each element of each claim or defense. What lay witnesses, expert witnesses, and documents and things will you rely on to prove your case?

e. Draft proposed findings of fact and conclusions of law if a non-jury trial and you deem it appropriate to do so. Note: even if the court does not require this effort pretrial, doing so is an excellent way to focus in on what you have to prove and how you are going to prove it.

f. Try to reach agreement on stipulations if this task is not already completed.

g. Finish identification of legal and evidentiary issues, and draft pocket briefs as appropriate.

- h. Choose and prepare remaining exhibits.
- i. Refine decisions regarding themes and style for case presentation.
- j. Make decisions about order of proof.
- k. Outline *voir dire*.
- l. Outline and prepare for opening, witness examinations (both direct and cross), and closing.
- m. Make video clips for impeachment (if you intend to impeach with a video of a deposition) and other uses at trial.
- n. Prepare jury instructions, supporting law and verdict form.
- o. Get other cases, office and life in order.
- p. Subpoena witnesses no later than the time required by local rules or the case management order.
- q. Confirm availability of witnesses and schedule witness preparation sessions as appropriate. Confirm travel arrangements for witnesses as necessary.
- r. Supplement discovery if necessary.
- s. Book court reporter.
- t. Schedule pre-trial conference (if not already scheduled), and prepare checklist of topics to be covered.
- u. Obtain jury panel list.
- v. Prepare and exchange witness and exhibit lists required by local rules or scheduling order.
- w. Designate and cross-designate deposition testimony.
- x. Schedule and conduct witness prep.
- y. Visit / diagram / photograph courtroom if unfamiliar with it.
- z. Assign witnesses and other responsibilities (if working with co-counsel).

- aa. Prepare jury selection board or other method of collecting data during *voir dire*.
- bb. Prepare initial trial timeline.

Your to-do lists / internal scheduling plan will be revised frequently as the trial approaches.