



The Litigation Paralegal: Tips and Advice for Assisting in all Phases of Litigation

by Heather Finch

The Role of the Paralegal

While most attorneys are becoming more accustomed to including a paralegal in their litigation teams, they do not always know how to make maximum use of a paralegal's skills and talents. You can increase your involvement and responsibility in a case by developing a strong and open line of communication with the attorneys and then by doing good work.

Ask the attorneys on a regular basis what is going on in the case, the outcome of hearings, the judge's ruling on motions, anticipated scheduling for discovery and what motions have been filed and what will be filed in the future. Read and understand the major pleadings in the case and review major correspondence. Also, read the briefs when compiling their exhibits or attachments. Understanding the legal and factual issues in the case will help you play a more significant role as the case progresses, and will save a lot of time as you begin to prepare for trial. Show a sincere interest in the issues of the case in order to encourage the attorneys to include you as a litigation team member.

It is up to you to offer to undertake specific tasks which the attorneys may not be aware you can take on. Most attorneys have no idea how many things a well-trained, intelligent, and experienced paralegal can accomplish. Don't be afraid to take on new tasks - challenge yourself! Have a goal to increase the role you play on each successive case you work on with a particular attorney.

Start preparing for trial as soon as you become involved in the case.

Keep a chart of when depositions are taken, digested, and signature sheet returned. This will save you from having to reconstruct this before trial and will help you manage your workload throughout the litigation. Compile a "key documents" notebook as soon as you begin indexing documents and include documents attached as exhibits to briefs or key deposition exhibits. Keep a running index of deposition exhibits. This is useful when preparing for subsequent depositions and helps avoid duplication of exhibits. Start a first draft of your trial exhibit list and prepare a running index of exhibits attached to briefs. By adding these exhibits to

your key documents notebook, it increases your familiarity with the key documents of the case and makes it easy to find them, since they will undoubtedly be used again and again during litigation. The key documents notebook is a good place to look when preparing your first draft of the trial exhibit list. Update your witness files often as this will make preparing witnesses for their depositions much easier.

Exhibits – Before Trial Begins

When it comes to trial exhibits, work with the attorneys to get decisions from them early enough so that the process is not mayhem. Once identified, order the exhibits in the manner in which they should appear on the list, e.g., chronological or by witness. Explain to the attorneys the process of preparing exhibits so they understand how long it takes to copy, punch, and organize them into binders with tabs. Set up a timetable for the process with drop dead dates. Make sure you are familiar with the schedule of pre-trial events and advise the attorneys as to when things need to be completed in order to meet those deadlines. Prepare a draft exhibit list from the deposition exhibits, exhibits to briefs, and key documents file. Include copies of the documents when you present this to the attorneys to facilitate their review. Gather all documents into a conference room and urge (or really nag) the attorneys to go through them so they can identify potential trial exhibits. You can even offer to make a first cut if they wish.

Determine as early as possible how many copies you will be making, how the attorneys want their exhibits organized, and how the judge prefers them. Pre-order binders, tabs and file

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folders. Alert your copy company about the upcoming job so they can allocate the necessary resources. Talk with the judge's clerk about numbering type and pre-numbering. Whenever possible, pre-number exhibits before making copies. The more unnumbered copies floating around, the more confusing it gets later. Place numbered copies of the trial exhibits into the appropriate witness files. Whenever possible, make a clean set over which you have complete and total control! Lawyers tend to mark up their copies, then you're sunk when you need a clean copy.

As early as possible, work with the attorneys to identify your demonstrative and summary exhibits. Begin drafting them even if you don't yet have all the data. Plan for whatever audio/visual equipment you will need. Make arrangements to rent whatever equipment you will need well in advance. Get spare light bulbs and extension cords. Visit the courtroom to determine where the outlets are located and where you can put your overhead projector or LCD unit. Find out if the court has a white screen and where the best placement of the screen would be for both the judge and jury to view.

Coordinate with your experts to make sure their exhibits are in order, and find out which ones will be used as demonstrative exhibits and prepare them accordingly. Keep trial exhibit lists of all parties organized in several ways – chronologically, by exhibit number, or by witness – for ease of cross reference, particularly as the attorneys cross examine. Communicate with the attorneys how they will want exhibits organized for use at trial. For example, do they want one exhibit per file folder or in binders? Does the attorney want you to hand exhibits to the attorney as the attorney needs them or will the attorney take all of the exhibits to the podium at the beginning of the examination?

Witnesses

Early on, prepare and serve your trial subpoenas. Whenever possible, call witnesses to establish a cordial relationship, to obtain all their phone numbers, and to advise them of the rough plans for the date and time of their testimony. If they have never testified before, explain how it works and what to expect. *Take care to avoid coaching third party witnesses.* When asked, (and they will ask) just say that you don't know what questions they will be asked. If the witness has been deposed, you might suggest that it is possible that they could be asked some of the same questions they were asked in their deposition and make sure they have a copy of their deposition to review. They can discuss their anticipated testimony with the attorney and make arrangements for the attorney to meet with them to answer their questions.

If you will be assisting in court during trial, make arrangements for someone at your office to coordinate calling the witnesses

and arranging for them to appear and testify at the appropriate date and time. Designate one person to coordinate this, in order to avoid confusion or duplication of efforts. If possible, have someone there at court to greet them, update them on the schedule and let them know whether they can sit in the courtroom while waiting to testify. This will make the witness more comfortable, and is also a good way to monitor whether your witnesses talk to anyone from opposing counsel's office or to other witnesses. Tell the witnesses to bring a book or something to keep them occupied as more often than not they are kept waiting for their time to testify.

Take good care of your clients. Right before trial, the attorneys are usually too busy to "babysit" so this becomes your job. Be reassuring. Present the trial team as organized and under control (no small feat), and answer whatever questions they might have *that you are qualified and authorized to answer.* When in doubt, defer to the attorneys.

Trial Notebooks

Communicate with the attorneys regarding what they want in their notebooks. In cases where more than one attorney is working on the case, it usually means multiple versions of trial notebooks. Some items to include in your notebook might be: (1) exhibit lists, (2) pre-trial orders, (3) witness outlines, (4) voir dire materials, (5) jury information & chart, (6) motions in limine, and (7) relevant case law.

The Courtroom

Have everything you will need for the courtroom with you, such as: (1) pleading files, (2) original depositions for publishing, if necessary, (3) source documents for summary or demonstrative exhibits, (4) witness files, (5) most recent correspondence file (or all, if you have room), (6) office supplies, (7) designated "go to" person back at the office if anything is needed, and (8) Extra light bulbs, pens, batteries for laptop and cell phone, PowerPoint files, etc.)

Introduce yourself to the judge's bailiff and clerk(s), if you haven't already met them during the course of litigation. Find out from the bailiff how early the courtroom is opened each morning (so you can get set up as early as possible), whether it will be locked at lunch, and whether you can leave things in the courtroom overnight. You will need to check to see if the judge has any hearings the next day before trial begins. Sometimes you can leave everything on the tables and other times you have to set it all aside. Find out if the judge has a preference as to where the audio visual screen is set up.

Make certain that all audio visual equipment is set up ahead of

time each day, that the equipment is working properly, and that you have all supplies you may need. For example, if there was a hearing that morning on another matter, your audiovisual equipment may have been moved or unplugged. These are the types of details the paralegal should handle so that the attorneys don't need to worry about them. They are seemingly minor, but if not taken care of, your team may look sloppy, unorganized or unsure of themselves before the judge or jury. Arrange ahead of time to have videotapes/DVDs and/or audiotapes made of the proceedings that you can get copies of as the trial progresses.

Specific Tasks at Trial

Keep track of what is entered into evidence and update your lists nightly. Establish a procedure with the attorneys where they ask you daily before trial ends whether everything they have used that day has been entered into evidence. Pull and refile exhibits as necessary (always refile exhibits at the end of the day - ask the judge's clerk if the judge's exhibit binders need to be reorganized or repaired).

Take notes when possible, at least of witnesses in order, time on and off the stand, major subjects, etc. This will help when reviewing the dailies, if requested, or when looking for testimony while working on the appellate briefs. Listen closely to testimony for any contradictions with previous deposition testimony. Having a laptop with the file information will help you quickly find that testimony and point it out to the attorneys. Establish a system with the attorneys in which you can let them know of any issues such as the arrival of surprise witnesses or prohibited witnesses in the courtroom. Some attorneys don't mind having notes passed while some do and they will ask for a nod before they release a witness. Work it out beforehand so you don't disrupt the proceedings and the attorneys' examinations.

Get the list of the jury pool from the court as soon as you can. Circulate the list at the firm to determine if anyone knows a potential juror. Take copious notes during Voir Dire, with a

particular focus on items that may help you locate each juror after trial. Whenever possible, watch the jurors to gauge their attentiveness, e.g., who is sleeping, responses to particular testimony or witness, exhibits, or what testimony jurors are taking notes.

Check with the judge's clerk to see if the judge will release the telephone numbers of jurors. If not, try to catch jurors as they leave after a verdict has been rendered in order to ask permission to contact them later.

Refine the trial process each day. Ask the attorneys each night (in the unlikely event that they haven't already told you) what could be done to make things run more smoothly the next day. Refine your trial notebooks and exhibit organizations, pursuant to those discussions. Don't be afraid to offer suggestions since it is your job to organize and help make things run smoothly.

Post-Mortem

Draft an interview outline for jurors (be sure to include their view of witnesses, exhibits, experts, attorneys, arguments; i.e., who did you find most believable, least believable, etc.). Finalize the outline after input from the attorneys. Locate and call each juror for an interview and organize the results of your research. Meet with the attorneys to determine improvements for future trials. De-brief the support staff regarding how things went and how things could be improved for future trials. You will get helpful ideas from their perspective, especially if you weren't at the office during the day, and this will also give them the opportunity to gripe. Memorialize this meeting, so you can really use the suggestions next time you go to trial. Organize exhibits and notes while the trial is still fresh in your mind. This will help when you're trying to locate things for any appellate briefs. Don't forget to return original documents to the client, with the attorney's permission, while the trials is still fresh in the client's mind as well. Lastly, go home and reintroduce yourselves to your spouse, children, and significant others and take a few days off to recharge!

Seeking Nominations for the Distinguished Paralegal of the Year

The Paralegal Division of the Utah State Bar and Legal Assistants Association of Utah are seeking nominations for "Distinguished Paralegal of the Year."

For nomination forms and additional information please contact Suzanne Potts at spotts@clarksondraper.com.

The deadline for nominations is April 16, 2010.

The award will be presented at the Paralegal Day luncheon on May 20, 2010.