

## TRIAL: A Song and Dance



### Critical Steps for Paralegal Prep and Attendance at Trial

The final weeks before trial are chaotic. The lead attorney is overwhelmed with enormous responsibilities that can have a significant impact on the outcome of the trial, from the smallest details to deciding on the theory of the case. Juggling all these critical tasks while maintaining focus and perspective is a Herculean task even for the most experienced trial attorney.

Paralegals play an indispensable role in the trial preparation process. It's imperative that, in conjunction with the lead counsel, you design and adhere to a plan to make sure your energies — and those of the entire support team — are focused on the tasks that will contribute most to the success of the trial.

As the final phases of intense trial preparation approach, paralegals can wear many hats: coordinating schedules, monitoring deadlines, helping prepare witnesses and documents, organizing files and exhibits, preparing subpoenas and working with all members of the support team, including expert witnesses, outside vendors, and other legal assistants and attorneys involved in the trial.

Every trial attorney will use the talents of a paralegal in different ways. Hopefully your attorney will rely heavily on your paralegal skills and delegate a considerable amount of responsibility to you.

Also, there's last minute, and then there's really last minute. Often people think a case will settle and they put off trial preparation, only to find that the settlement didn't occur. Unfortunately, trial preparation is just one of those things that takes time, and there really is no fast-forward button. Put off trial prep and you and your attorney will likely be the one getting blamed for a bad trial result in the end.



"No, I said 'paralegals'."

## Step 1

### Create a Plan

Nothing is more vital to the success of the trial than a well-implemented detailed plan. At the outset of the trial, learn how you can be most helpful by communicating with the lawyer or lawyers trying the case. Clearly determine the team's objectives and the role you will play in achieving those goals.

Know exactly what you are expected to accomplish. All attorneys have their peculiar ways of preparing for trial. Trial Notebook or no Trial Notebook? Misunderstandings late in the game exacerbate everyone's frustration and stress levels, and in some cases, can have a significant adverse impact on the trial. Here are some of the essential elements you should consider when creating your plan:

- **Task List:** Prepare a task list with a timeline, including specific deadlines to accomplish each task, ideally in chart form. Allow space for regular status updates from team members. Place the task list in a central location accessible to everyone at all times. The task list should provide specifics such as a description of the task to be accomplished, who is responsible for accomplishing the task and supervising its completion and any other information the team collectively deems essential to the case.
- **Delegate Duties:** Delegate responsibilities to team members and make sure there is a clear understanding of who will be responsible for completing and supervising each task.

**Focus on Essentials:** Eliminate what you don't have the time or the resources to accomplish. Additional depositions or research might be useful, but if the cost of completing a task, either in money or time, isn't justified, bring it to the attention of the attorneys on the team and discuss eliminating it from the plan.

## **Step 2**

### Communicate Clearly

After the plan is in place and your responsibilities are identified, constantly coordinate with your team and those for whom you are responsible (other paralegals, attorneys, outside assistants, investigators, experts and vendors). Hold everyone accountable, and politely but firmly let them know you expect results, not excuses.

Insist the team members notify you immediately if they encounter a problem they can't resolve independently and quickly. Discuss the plan and timetable you have implemented with your team, and make sure they understand the importance of their contribution. In the heat of battle, team members can either lose focus, or become so focused they are unable to divert their attention to other matters as the need arises. Everyone is juggling multiple responsibilities, and everyone is pressed for time.

Update the attorneys regularly and notify them immediately if you encounter a serious problem with the case. Be clear in all your oral communications, both with your attorneys and your team.

Periodically update everyone with written correspondence, preferably through e-mails. Assume the responsibility for eliminating confusion. Know what your team needs to accomplish based on the plan you have designed, and constantly communicate the objectives with precision.

### Step 3

#### Take Command of the Paperwork



Trials are intensely stressful, regardless of how many cases one has tried. When the stakes are big, the stress skyrockets. Offer to help the lead attorney by listening and offering insight. Don't simply agree with the lawyer's theory of the case, trial strategy, proposed opening statement, line of questioning or closing argument. Analyze them from the perspective of the judge or juror. Are they clear? Are they descriptive? Do they flow logically and are they easy to understand? Do they tell a story that will resonate with the judge and jurors? Is the theme of the case precise and consistent with the evidence and documentation?

While it's ultimately the attorney's decision, the paralegal insight, if handled in an appropriate manner, can be valuable. Offer honest, constructive advice. Don't agree with a theory or proposed course of action you find confusing or incomplete. If you have other ideas, be confident enough in your abilities and judgment to offer them. Attorneys frequently become so immersed in their cases, they lose perspective, which might cause them to pursue a line of questioning, an argument or a case theory that will be lost on the layperson hearing the evidence for the first time.

Listen to the presentation and review the arguments critically. Express your ideas diplomatically (and with the especially volatile attorney, carefully) but always with a view of what best serves the client and the case. Prior to closing arguments, refresh your attorney on testimony that was critical to your case that should be presented in closing.

#### **Step 4**

##### Using Trial Pad

Your IT department should be utilized whenever possible for the trial exhibits. Many are able to upload your exhibits onto a program such as Trial Pad to be utilized during trial. Often the Attorney will have the Paralegal put up the exhibits on the screen at the appropriate time so that the Jury and the court room can see a large exhibit. MAKE SURE that if you are the person who will be running the exhibits you PRACTICE, PRACTICE, PRACTICE! Know your EXHIBITS and where each is located on the programs you are utilizing.

#### **Step 5**

##### Serve as the Sounding Board

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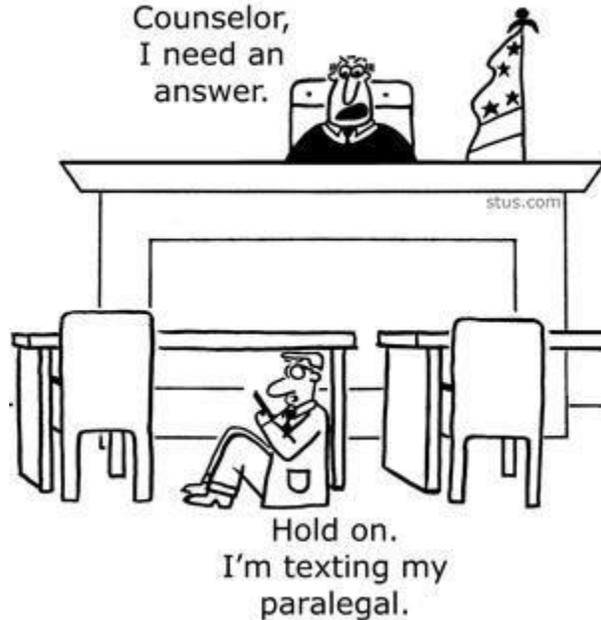
## Step 6

### Perfect Your Visual Aids

Visual images have an undeniable impact that no amount of verbal description can capture. If you are responsible for the visual aids used at trial, make sure they are designed with the listeners and the theory of the case in mind. Decide how they will be used for maximum impact. Here are a few rules:

- Determine if you will use demonstrative visual aids or electronic visual aids. Have a back-up plan if you go with electronic visual aids. Always test your electronic visual aids prior to trial. Test all equipment well ahead of time. If possible, have your firm's IT specialist visit the courtroom to help set up and/or run all equipment.
- **Avoid Complexity:** Visual aids should clarify and solidify your message. Too often, lawyers use visual aids packed with complex terminology, intricate diagrams or confusing charts. These only confuse and frustrate jurors and judges.
- **Limit Your Points:** The starting point in designing your visual aids should be determining the essence of your message. What points are critical for the judge or jurors to understand? Design your visual aids with that concept in mind. Then use numbering, bulleting, coloring or models that allow for easy understanding. Avoid too many lines, too much artistic flair and too many distracting colors.
- **Practice Using the Visual Aid:** Help the attorney prepare to use the visual aid at trial. The worst time for the lead counsel to resolve the nuances of how he or she will use and display the visual aid is during the course of the trial, under the watchful eyes of the judge and jurors, and while opposing counsel is poised and ready to pounce at the slightest transgression. Resolve all the issues of moving, positioning and displaying the visual aid before the trial. Moreover, use your visual aids while preparing your witnesses so their testimony flows logically and naturally with the introduction of the visual aid.

**Plan Ahead:** Know the answers to the following questions before the trial begins: How will you transport the visual aid to the courtroom? Will you be permitted to store it in the courtroom before and during the trial? Will there be an easel, stand or table on which you can display it? Will you need assistance moving or operating the visual aid? What electronic equipment will you need to assist your presentation? Does the court room support your electronic devices? Are there any particular rules to which the judge adheres that would limit how and when you will be permitted to use your visual aid? Do you anticipate any objections by opposing counsel or reluctance on the part of the judge to your using any visual aids? Plan and prepare in order to avoid needless scrambling and anxiety.



## Step 7

### Trial Exhibits

- Electronic
- Binders with hard copies
- Stipulate
- Juror and witness copies

Make sure you check with the court clerk and your attorney how many binders will be needed. The courts don't like to have a bunch of them lying around after the trial.

## Step 8

### Don't Overlook the Details

Visit the courtroom before trial if possible. Courtrooms are not clones. Identify details that will provide an advantage to your team, such as line of sight for the jurors, the witnesses and the judge; where you will position your visual aids and documents; and layout of the courtroom and the courthouse area (where to park, where to eat, the locations of the electrical switches, the restrooms, and so forth). Do everything possible to eliminate all uncertainty about details that might contribute to additional stress for your team.

Create a trial bag that contains office essentials including but not limited to; paperclips, sticky notes, scissors, stapler, note pads, pencils, pens, highlighters, calculator, whiteout, cell phone chargers, tissues, snacks, (including granola bars, candy bars, quick energy drinks, fruit

snacks, nuts, whatever your attorneys prefer). **You** are the office-on-the-go. When your attorney turns to you and asks for something, you need to have it at your finger-tips.

Establish a connection with the court clerks and Bailiffs; they can be your best allies. Find out their procedures and how they run their courtroom, i.e., how do they want the exhibits.

Know your Judge! Judges are creatures of habit and emotion, and they have a certain set of written and unwritten rules they follow in their courtrooms. Some have inflexible rules while other judges are very patient. Judges may be easily irritated by unnecessary movement in the courtroom. Avoid entering or exiting the courtroom during proceedings. When it is necessary, be as unobtrusive as possible. Know as much as possible about the judge before your trial.

Do your part to understand the rules and idiosyncrasies of each courtroom. If there are published local rules, study them. If you know others who have tried cases before your judge, seek their insight. Learn from the mistakes of others. Know the judge's preferences and predispositions.



## Step 9

### Courtroom Attire & Etiquette

It turns out that what our mothers told us about **making a good first impression** is true: empirical research demonstrates that people (including judges and jurors) form lasting opinions extraordinarily quickly about other people based on very little information, so **you never want your appearance to be the focus of the court's or jury's attention.**

While it is better to dress conservatively, simply, and inconspicuously, you do not need to reinvent yourself each time you enter a courtroom. But always dress and act professionally. Try

to make a good first impression. Know your Judge; some older Judges may look negatively at women in pants suits.

In her blog “The Paralegal Society,” Jamie Collins writes,

“When you wish to convey the image of a consummate professional, you must tip the scales to the conservative side on the fashion pendulum. While this is not always fun, it is necessary. The goal is to portray the look of a professional and dignified member of a professional team.” For male and female paralegals, that means suits of black, gray, navy, or dark brown. Accessories such as jewelry or neckties should be unobtrusive.

Also, the jury can be affected, negatively or positively, by the way in which an attorney and paralegal work together during a trial. Like it or not, a lot of decisions made by juries are based on their perceptions of the paralegal and the attorney.

**A paralegal shall maintain the highest canons of professional and ethical conduct.**

*A paralegal needs to make sure that they keep up on the every changing laws and to perform all of their duties in accordance with the rules of ethics. Paralegals shall not take part in conduct that would shed a negative light on the proceeding in the eyes of the court.*



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## **Step 10**

### Be Calm and Confident

Be the calm in the storm. Act confident in dealing with the trial attorney, your support team, the courtroom personnel and members of the opposing team. Speak with conviction and confidence. Don't cower or badger. Your team and your client will be best served if you offer insights and constructive suggestions. Ultimately, your objective is to win the case; every successful attorney recognizes this is a team effort, a concept requiring unusual confidence, maybe even courage, if your attorney is particularly tyrannical in the heat of battle. If handled diplomatically, you are the attorney's indispensable aid, and your contributions to the ultimate success of the trial are indeed invaluable.

Paralegals indisputably play a critical role in the courtroom drama. While much of your work is preformed out of the limelight, it's nonetheless essential to the ultimate success of the case. There is no substitute for detailed preparation, a precise plan and regular follow up. Trials are won, and lost, based on the thoroughness of the paralegals' preparation. Help your attorney prepare for the moment on the stage, and when that favorable verdict is announced, you will know you made a huge contribution.

## **Step 11**

### Grow from the Trial Experience

Plan for the worst and expect the best! Learn from your trial experience and establish steps to avoid pitfalls and problems for the next trial. Note steps that were helpful to both you and your attorney during the trial; what efforts did your attorney really appreciate. Accept constructive criticism and use it to your advantage the next go-round. Don't let mistakes hold you back or get you discouraged. Brainstorm with your team on how to create a better trial strategy. Lastly, smile and be proud of your accomplishments and learn from the experience.