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Preparing for Trial: Five Tips for New Litigators

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You've completed discovery and motions practice and are now preparing a case for trial, where being prepared is often the key to success. As a new litigator, what should you keep in mind when preparing a case for trial?

1. **Create a solid foundation through attention to detail.** Double and triple check local rules relating to pretrial filing deadlines, docket call, necessity (and format) of any courtesy copies to the court, and any other requirements of the specific judge. Call the trial coordinator to confirm your understanding of the requirements.

Some courts request flash drives with exhibits, others request binders. Some want you to exchange pretrial pleadings, but not file them. Knowledge of the court's local rules and procedures is even more imperative now that many proceedings are being conducted via Zoom and other video conference software.

2. **Develop your trial theme.** How will you present your case to the judge or jury? Consider weaving in elements of each claim or defense and specifically identify the witness or the specific document you will use to prove each element. Organize the order of witnesses, their testimony, and the introduction of exhibits to present the narrative in line with your trial theme. Meet with each witness to go over the narrative, ultimate objective, and how their testimony fits into the process. Determining how you will prove your claims or defenses through your trial theme also assists you in finalizing the witness and exhibit list, which is often a key portion of the materials that must be submitted to the court in advance of trial. When meeting with witnesses, identify any weaknesses or issues you anticipate and help them feel comfortable with addressing questions they may be asked.
3. **Develop a plan for overcoming evidentiary objections.** Think about the case from multiple angles. How might you overcome evidentiary objections? Write notes on the exhibit list so they are on hand when the issue arises during trial. Have a copy of the applicable rules of evidence on hand in case an issue arises that you had not previously noted.
4. **Identify opportunities for trial briefing.** Anticipate potential disputed questions of law and hone in on those that may benefit from briefing.

These should be apparent from the course of litigation (e.g., motions practice, points made in mediation, lines of questions in depositions, defenses pled, etc.). Often a trial brief is not only beneficial to the court, but also to you when developing the theme and structure of trial.

5. **Prepare the trial binder in a way that makes sense for you.** Everyone is different in how they organize materials for trial. Give thought to what will work best for you.

A typical binder could include the exhibit list (with objection response annotations), witness outlines, brief outlines with responses to anticipated substantive arguments from the other side, and pertinent

case law or statutes that you may need to reference. Also consider a separate folder or binder with your opening statement and a second, separate folder or binder with your closing statement that can be heavily annotated with notes pertaining to points made throughout trial by the other side.

By following the above steps for trial prep, you'll have set yourself up for success and be able to focus on the trial once you enter the courtroom.