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An Anatomy of Trial Binders

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If you hoped the days of a racing heart, sweaty palms, self-doubt or fluttering stomach were left behind at your senior prom, you may be in for a surprise. No matter how much education and work experience you have, sooner or later there comes a time when you will be assigned a task that you have never done. Even the most seasoned paralegal can experience a case of nerves when this happens.

Statistically speaking, most cases settle before trial and for this reason a lot of litigation paralegals have significant pre-trial experience, but not a lot of actual trial experience. The first time my attorney mentioned a trial binder, I was certain he could smell my fear.

I was immediately filled with self-doubt and irrational fears that I would soon be jobless due to utter incompetence. The dreaded trial binder was something I had never done, and it loomed over me. It felt like an impossible task that I was surely not qualified to take on. I would soon discover that there was in fact nothing scary or threatening about a trial binder and I was more than qualified to create one.

The Purpose of a Trial Binder

There is no court rule or requirement that says you need a trial binder. However, it is critical that your attorney be organized and well prepared in the court room. To break it down to the simplest purpose, your trial binder should be the bible of your case. It should contain all of the critical documents that your attorney may need to frequently refer to and it should be kept on hand at all times. Because the binder will change throughout the trial, with draft documents being replaced with revised or final documents, you should only have one master binder. This should also be kept on hand at all times, and should stay with you when you leave at the end of each day. It should be well organized so that documents can be found quickly and easily, reducing the need to search through boxes mid-proceedings.

Trial Binder vs. Trial Folders

The first thing is to determine whether you actually want to use a binder or a series of folders. There are pros and cons to each. It really comes down to the attorneys' preference.

Remember, you need to organize the material in a way that works for the attorney, not for you. Some attorneys prefer everything to be neat and tabbed and secure in a binder and some attorneys despise three-hole punched paper and prefer everything to be organized and easily extractable in manila folders inside of a Redwell. This should also be kept on hand at when you leave at the end of each day. It should be well organized so that documents can be found quickly and easily, reducing the need to search through boxes mid-proceedings.

While we focus here on binders, using folders works the same with very few minor tweaks. In today's electronic age, you can even have an electronic trial binder depending on the computer savvy of your attorney . No matter which method you use, the concept is all the same: to organize critical materials to be quickly and easily accessed during trial.

Contents

The contents of your trial binder will ultimately be determined by your attorney. There is no pre-determined list of items that will work in every situation or for every trial team. This article's general guide items to include may be adjusted for your specific case.

Case Materials

At a minimum, include operative pleadings including the pre-trial and/or case management order, complaint, answer, and any motions, responses and orders.
to exclude particular testimony or evidence, you definitely want that information on hand. Include pre-trial statements and witness and exhibit lists for each side, as well as all motions in limine, any anticipated trial motions and proposed orders.

Include discovery documents including initial disclosures, interrogatories/answers, requests for production/responses, deposition summaries and requests for admissions/responses.

If discovery answers include the questions in their response, you don't need to include the original set of requests such as initial disclosures, interrogatories/answers, requests for production/responses, deposition summaries and requests for admissions/responses. Use your judgment here to decide what to include. If discovery answers include the questions in their response, you don't need to include the original set of requests.

Keep in mind that a lot of the information may be irrelevant to the trial and does not need to be included. If the other party produced 500 pages of medical records but only 5 pages are relevant, then only those 5 pages may need to be included. The same goes for hearing or deposition transcripts. You may want certain portions of testimony on hand but may not need the entire transcript. Reducing the transcript to the cover/signature pages and the relevant testimony pages, makes things more manageable for the attorney at trial.

These items are for inclusion into the trial binder. Keep them short, sweet and to the point. The purpose of the trial binder is not to replace other materials you need on hand such as a full set of trial exhibits or extra copies of materials you may need to present to the Judge, and other important documents.

Voir Dire

If you are having a jury trial, you may want to have a section for jury information. This is a good place to keep your outline of voir dire examination, a jury chart and challenges record. Once trial begins, you can also include juror profiles and your notes. Once you choose your jury, you can remove the juror profiles of the individuals who were dismissed and include a jury seating chart.

Client and Witness Contact Information

As you approach your trial date, it is critical (and even more so during the trial), to be able to contact your client and witnesses easily. Your client might not be in the courtroom when you need them. Or, you may have a client representative present but still need to be able to contact the key client contact (decision maker) directly. Be in contact with witnesses to ensure they are ready to testify when their time comes. Delays or changes in the trial schedule may make things even more unpredictable.

Maintain a client and witness information sheet for each person including work, home and cellular phone numbers, e-mail addresses, assistant contact information, and any other pertinent information to ensure you can reach them immediately. If you are dealing with witnesses under subpoena, keep a copy of the subpoena and return of service in this section.

Witness Examination Outlines

In this section, keep copies of any outlines that will be used on direct or cross-examination of witnesses. You may also want to leave space in these documents for additions or changes which may become necessary along the way.

Opening Statement/Closing Argument

Have a draft copy of your attorney's opening statement along with some blank pages to make notes. It is common to get the transcript of the opening statement from both sides for use later in the trial, so leave some room for that as well. You should also have a draft copy of your attorney's closing argument. Make it double spaced or leave lots of room for notes, as it will probably be revised and updated as the trial progresses.

Jury Questions and Instructions

In this section, place requested jury questions and instructions, case law and standard jury charges. Keep your draft verdict form here. These documents will likely change as the trial progresses and can be updated as needed.

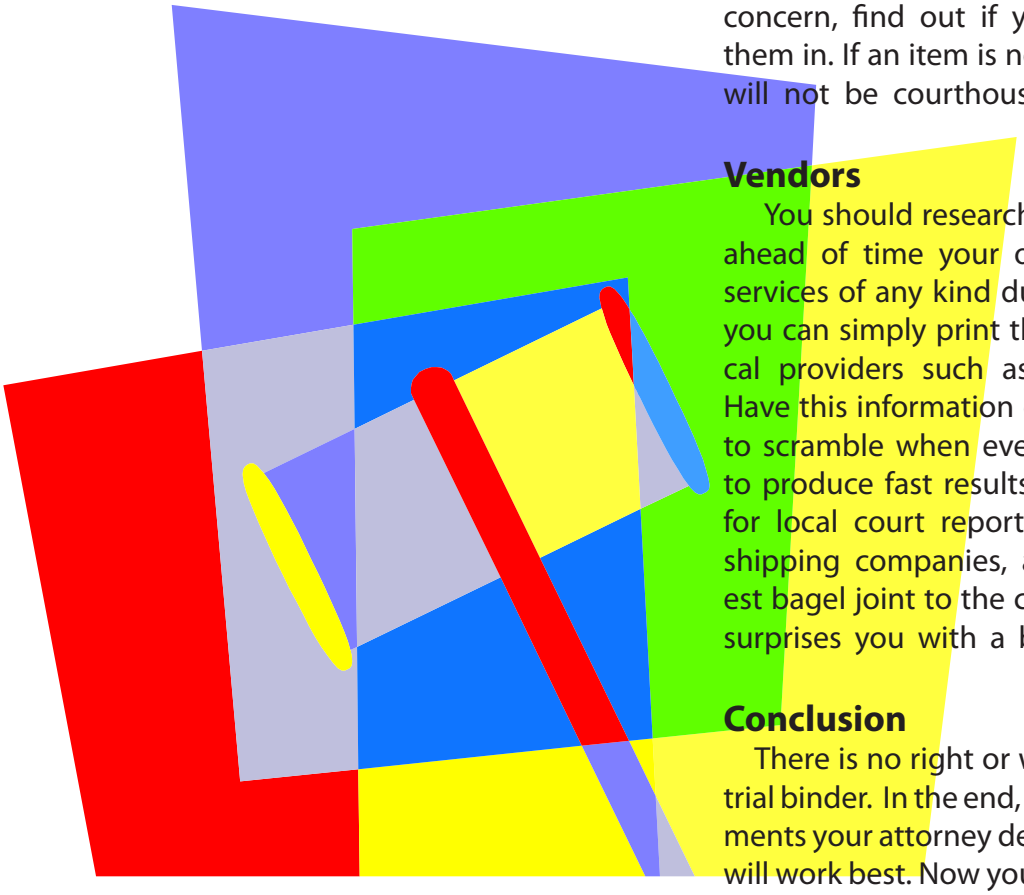
Law/Court/Local Rules

It is always good to have a copy of any case law, statutes or other authorities which you will be relying upon. Have copies of any court or local rules that pertain to your case including the Judges rules/preferences, if available.

Technology, Travel and Vendors

If your trial is out of town, there are a lot of other details to be considered. If you are

going to trial with your attorney, you may choose to have this information in a separate binder for your use. The "little details" in this section can really make you a star when the attorney is in a pinch. No matter how prepared you are, surprises can always happen. Before you leave for trial, there is a lot of information you can uncover that will make your life easier when they do.



Hotel

Have copies of your hotel (or other travel) reservations, directions to the hotel from your departure point, and directions to the courthouse from the hotel. If there is a GPS in the vehicle, pre-program it . Make sure that your team is booked into rooms close to each other as you don't want to check in to a sold-out hotel and find out that half of your team is actually booked at the sister property down the street. You should

Find out in advance key information such as dining options, if the hotel has wireless

Courthouse

Find out the layout of the courthouse. Know in advance exactly where to park and how to get to your courtroom. If your trial team will be taking a laptop, find out if you need permission in advance and if the courthouse has wireless internet. You should also find out what facilities are available inside the courthouse such as copiers or a fax machine. If you have exhibits that may be a concern, find out if you need approval to bring them in. If an item is not TSA approved, it probably will not be courthouse security approved either.

Vendors

You should research the trial location and know ahead of time your options if you need vendor services of any kind during the trial. A lot of times you can simply print the "contact us" pages of local providers such as Staples, Kinkos or FedEx. Have this information on hand so you do not have to scramble when everyone is depending on you to produce fast results. Have contact information for local court reporters, couriers, copy services, shipping companies, and the like. Find the closest bagel joint to the courthouse in case the judge surprises you with a breakfast order for the jury!

Conclusion

There is no right or wrong way to construct your trial binder. In the end, it comes down to what documents your attorney deems critical and what format will work best. Now you can feel confident that a trial binder is not an impossible task. Use these simple tips as good examples of what to include when you eventually prepare your own trial bible. Good luck!

Linda McGrath-Cruz received her Bachelor's Degree in Legal Studies from Barry University. She obtained her Advanced Paralegal Certification from the National Association of Legal Assistants, Inc. with a focus on Discovery and Trial Practice. She is a litigation paralegal at the Miami office of Arnstein & Lehr, LLP and is a Florida Bar Registered Paralegal. Linda is a member of the Dade County Bar Association and is the inaugural Vice-Chair of the DCBA's FRP Committee (2010-2011).