



KEY ELEMENTS OF A WINNING TRIAL NOTEBOOK



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Introduction

A trial notebook is an essential and invaluable tool to have when a case goes to trial. Having a properly organized collection of documents related to the legal case will assist the attorney you support. He or she will be able to maintain control over how evidence is presented, the rebuttal of opposing evidence and making a cohesive argument.

Additionally, a well-prepared trial notebook prepares the attorney to respond to unanticipated issues or arguments that may arise during the trial. In short, you want to have a winning trial notebook that will help you win the case.

If you are a novice to the legal profession, you might wonder what exactly a trial notebook is. First, understand that a trial notebook is not simply a folder that holds all of the evidence. Neither is it a collection of rules and procedures that govern courts. Basically, a trial notebook represents the “brain” of your attorney’s court appearance in a focused, dedicated and organized manner. This tool is used to present witnesses, exhibits and other vital information related one specific trial.

As a seasoned paralegal, you might not see the value in using a trial notebook for every case. Perhaps you have made it through smaller trials without a preplanned organization of material evidence. While that may be true, there are still many reasons that a trial notebook is beneficial to you, the attorney and the legal case.

Here are five good reasons to apply your legal knowledge to creating a winning trial notebook:

1. The process of organizing is educational because you can review the case while putting it together.
2. You might notice overlooked billable hours.
3. Disorganization and ineptitude is the quickest way to sway a jury against your case.
4. You might win favor and good will by streamlining your time in court with a good trial notebook.
5. If additional attorneys join the case, they can be quickly brought up to speed with a good trial notebook.

The next few sections cover some of the basics to creating a winning trial notebook. Included are useful tips and helpful insight into making your trial notebook polished and ready to win.

Key Elements of a Trial Notebook

This section covers key elements that you want to have in a hardcopy notebook. However, a softcopy should follow the same format, e.g. CDs/DVDs, computer and flash drives with an identical folder or TOC layout. As you go through each section, remember that logical organization is essential to how useful materials will be in court.

Some law offices choose to organize materials by form; others may use a function format. Whichever format your firm chooses, organized sections should follow the way they will be accessed and used during the presentation of the case.

The complexity of the case will determine if you have a single volume notebook or multiple volumes. Otherwise, the essential elements of all trial notebooks typically remain the same. The following is a brief discussion of what you will need to include.

Essential Pleadings

The complaint, answer, reply, responses to requests for admissions or productions go into this section. All essential pleadings should be tabbed, indexed and include a readable legend. If you have a multi-party case, use color coded tabs to distinguish each party. Your attorney may also consider highlighting sections of the pleadings that are main points.

Trial Memoranda

Trial memoranda should also be tabbed. Include easily readable labeled descriptions. This section discloses what all parties expect to show during the trial, along with what authorities the parties will argue.

Outlines for Opening Statement and Closing Argument

Upon accepting a case, the attorney usually begins a file for notes or memoranda. This information will contain phrases, arguments, summations of evidence or random thoughts about the case. Generally, this file can form the basis for an outline of the opening statement and closing argument. In some cases, you might also have a narrative for both. At a minimum, these outlines should contain a theme for the case that underscores what the evidence will prove or has proven.

In addition, you may find it helpful to include a listing of key evidentiary points that the attorney anticipates outlining to the jury during the opening statement. Each point can be checked off as evidence supporting the points is introduced. This same list can help with finalizing the closing argument as the trial progresses. Furthermore, the list can be a reference point to make sure evidence promised to the jury is presented.

Proposed Jury Instructions

During a simple case, jury instructions will consist of one section in your trial notebook. For a complex case, you might need to have a separate notebook for jury instructions. Instructions and objections from all parties should be included in this section, whether they are part of the primary trial notebook or in a separate one.

Jury instructions should be color coded or labeled based on the proposing party. Leave a space for the attorney to note whether an instruction was given, refused or given with amendments. Note any amendments that are ruled on or given when this occurs.

Include key arguments that are made for or against a jury instruction on a separate page. Place this page directly behind the proposed instruction to have as a quick reference when the instructions are argued. Additionally, any requested jury instruction that has only a reference to a uniform instruction number should contain a copy of the actual instruction.

Proposed Voir Dire Questions

Proposed voir dire questions should be in a tabbed section that will be asked by either the attorney or the judge. Typically, questions in this section depend on the court's practice during the preliminary examination of prospective jurors. It is also a good idea to include an outline of any arguments to barring the other side from rising during voir dire.

Witness Outlines for Direct and Cross Examination

You will want to have two tabbed outline sections: one for direct examination and one for cross examination of witnesses. Generally, you do not need to have every question verbatim. Both the direct and cross outline should have enough space to add notations or additional questions.

For purposes of quick reference, your trial notebook should cross reference both outlines to exhibits that the attorney plans to use with a particular witness. This reference may also include deposition testimony that your attorney might use for impeachment.

An outline for direct and anticipated cross examination of expert witnesses should also be included. Depending on the nature of the case, the expert's curriculum vitae can be in this tab. Exhibits used to support the expert witness's testimony can also be included in this section.

Exhibits or Exhibit List

This section is very important since you will list various pieces of evidence, exhibits and informational presentations that the attorney will use in court. You will want to document exhibits offered, objected to and received to keep track of each exhibits' status that is presented on both sides. Keep in mind that you may not place exhibits supporting your case in this section of the notebook. Rather, this section is simply to list descriptive information and record where the item is located in boxes, binders or folios that you bring to court.

Key exhibits that your attorney may anticipate being disputed should have cross references to legal arguments that are either for or against those exhibits. Although impeachment exhibits are usually not pre-marked, you should prepare an exhibit list that is for the attorney's use only.

Motion for Directed Verdict

At the very least, you want this section to contain an outline of grounds for a motion for directed verdict that might be anticipated. Include citations to supporting legal authorities for presenting the motion. Having this outline will help your attorney make a cogent oral argument. Even if evidence to support the directed verdict does not come in as expected, you will still have a good outline for the oral motion.

Other Anticipated Motions, Arguments and Supporting Legal Authorities

Other anticipated motions and supporting legal authorities should be part of every winning trial notebook. Whether the case is simple or complex, you will have case citations and arguments that prove why the jury should rule in your client's favor. It may be helpful to include copies of other cases and procedural and evidence rules to support the attorney's arguments.

Organization is crucial to this section because it shows anticipated legal issues and motions such as evidentiary disputes. Your attorney will want to have legal arguments that fully and persuasively argue a position as issues arise during trial. Additionally, this section can contain special or general findings that are separate from the judgment.

Miscellaneous Rules and Authority

Depending on the nature of your case, this miscellaneous section can include other materials that can impact the case. Generally, it is useful to have photocopies of all applicable rules pertaining to mistrials, directed verdicts or judgment notwithstanding verdicts for quick reference. You may also have verdict forms and written interrogatories proposed by all parties in this section. Content will vary among cases.

Winning Tips on the Physical Assembly of Your Notebook

The general organization of your trial notebook should follow the categories set forth above. The purpose is to make sure your attorney can access essential information with ease while in court. Delays and disorganization become easy distractions that most juries dislike and the opposing counsel will exploit.

Tabbed headings along with a table of contents or index should also be included. This presents an organized flow of exhibits, excerpts of depositions, legal arguments and any other material information that can be promptly located. When considering the physical assembly of your trial notebook, keep a key in the front, back and daily journal section so that each section can be found with ease. Whether using numbered or worded tabs, they should be labeled on both sides.

If you decide to color code the tabs, use one color for exhibits, another for items received from the opposing counsel and so on. Make sure every section has at least one cover, which is the tab divider page. In the legal profession, too many incidents of prying eyes occur that can lead to problems with your case or the court proceedings.

The same rule applies when you access a laptop. Consider using a screen cover that allows viewing from a small direct angle. At a minimum, use the sleep mode or screen saver to blank the screen at will.

Since the trial notebook will be flipped through constantly, you will want to use durable pages. The same durability applies to hole punches if you are using a three-ring binder. Use a slightly heavier paper than the standard office weight to print all documents for the notebook.

Consider using a 24-pound paper. Before punching holes for the binder, run a strip of cellophane tape down the inside margin. Do this on either the front or back side to reinforce the strength of the paper. This is much easier – and more efficient – than going back later to add the adhesive donuts that are used on punched holes.

Creating a winning trial notebook teaches you organization, which is crucial when presenting a case in court. Have just one primary physical notebook as much as possible for all cases. The point is not to simply put all your eggs in one basket since you will also have redundant softcopy backups. Rather, you want to have the easiest format to use and not worry about forgetting additional notebooks.

In addition to the trial notebook you create for your attorney, you may also need a schedule bench copy for the judge or court. Just as the flow of some courts and judges differ, each one may require different formats for their copy of the notebook. Find out first if they would prefer to have a redundant copy, but in a different format.

For instance, the court may require having all trial notebook copies in an electronic softcopy format. However, the judge may want a hardcopy. Another thing to consider for hard copies is whether the judge wants a three-ring binder, comb binding or spiral binding. Your attorney might prefer a nice leather-bound binder, but the judge might construe such formats as an attempt to influence their rulings.

So, what can you do to comply with court/judge preferences and not offend? Just make sure the bench book is professional and presentable with economical supplies.

In some trial notebooks, you may also have sub tabs along with the primary tabs. Resist the urge to use Post-It® colored tabs excessively. After a while, marking things for quick access with these tabs begins to make the notebook look unprofessional. As an alternative, use numbered tabs, blank tabs or the kind that you can peel and stick to mark sub-sections for quick reference in court.

With all of these considerations for the physical assembly of your trial notebook, the preferred format of the lead attorney takes precedence. Nevertheless, always keep a redundant backup copy in a softcopy or hardcopy format. Saving paper is good practice, but not better than winning the case. Keep the electronic copy requirements for the volumes of paper exhibits that are part of Discovery. Everything else should be easily accessible.

Key exhibits should also follow the redundant backup rule. An example of this is to prepare a witness statement in all available formats, whether electronic or hardcopy. If a video deposition was conducted, make sure that you have a hardcopy transcript that is verified. Save the video on a CD and flash drive. You will also want to have various video formats based on the capabilities of electronic equipment available in court. In addition to having a hardcopy transcript of the video, also have an audio file backup.

When it is necessary to have an original document during trial, keep a photocopy of the original in the trial notebook. The attorney will still have access to the document although the original is in the file box or already included in evidence and in the court's possession. In most situations, the location of physical paper indicates its value to the case. Any pieces of paper included in the file box should not be marred, altered or touched.

A Brief Word on the Physical Appearance of Your Winning Trial Notebook

Using section cover sheets in the trial notebook will make your life and your attorney's life much easier. Essentially, the notebook becomes a to-do list where you fill in the blanks based on the process of preparing for the trial. If you decide to use a color scheme for section tabs, pages, highlights, etc., make it uniform for every case and keep a legend in the office. Follow the same practice for typestyles and fonts. One font could mean one thing and another font has a totally different meaning.

While a uniform system is good to have, think about how complicated you want things to get. How many font colors, font styles or highlight colors are necessary? You could defeat the purpose of staying organized with cumbersome practices in figuring out what each color marker means. Stay organized but not to the point of losing track on what is really important.

If you end up with an odd number of tabs, keep a set of blank dividers to use each time you compile a trial notebook. You might have 13 categories, for example, but divider sets only come in 12-tab sets. Rather than repeating a color from an additional 12-tab set, the blank tabs can be used each time you make a notebook.

Typically, the final tab is marked “index” anyway and will not need a color code like the other tabs that have numbers or named labels. You might even find it useful to mark the index and reference section with ** to distinguish it from the other sections.

This white paper has taken you through the actual steps of setting up a trial notebook that is well-organized and useful for any case. Once you have compiled the essential documentation for a winning trial notebook, it should pass this litmus test: Qualities in the notebook should set up your attorney to be successful when the case goes to T.R.I.A.L. Ask yourself the following questions:

Thoroughness – Have you included everything your attorney will need? Did you check it again?

Reliability – Does the notebook format work based on the flow of the trial? Accuracy in documentation is important, but whether softcopy or hardcopy, the format should work for the type of case being presented.

Inquisitiveness – Do sections of the notebook and forms prompt the right information at the right time?

Appearance – Is your trial notebook one that commands respect or does it look like it was thrown together on the way to court?

Logic – is there a logical flow to how material is laid out so your attorney can navigate it easily?

Conclusion

Creating a winning trial notebook starts with organizing information from the beginning. Use whatever it takes to prevent trying to decipher unorganized notes. Keep old notebooks even after a case is closed. You can glean useful lessons from one trial to use in the next one. This practice is especially true if you work for one attorney in a narrow specialty.

Trial notebooks are an essential tool that you should use to help your attorney present a case professionally. Although this white paper presents specifics, trial notebooks are flexible and can be adapted based on the needs of a case. Whether the case is simple or complex, the consistent requirement to using trial notebooks effectively is advanced preparation and organization.

Forethought of what should be included helps you and the attorney take into account myriad angles and contingencies that may occur. Being able to quickly access pertinent documents and materials during trial could be the difference between winning and losing. While you may not be able to plan for every exception, your trial notebook will boost the attorney's confidence in presenting his or her position.

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