TRYING YOUR FIRST FIVE CASES: WHAT YOU NEED TO KNOW BEFORE YOU STEP INTO THE COURTROOM

By:

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Trial lawyers come and go in the courtrooms of this state. Some present as unflappable, calm and composed. Others with the same skill set are tense, stressed out and ill at ease before the jury. The question is why? And which will you be as a new trial attorney?

Although many variables present, part of the answer may lie in (1) the mindset needed to try cases, (2) the strength and uniformity of the trial preparation systems employed, and (3) how the trial attorney prepares her client for trial. We discuss them below, and why they are important for new trial attorneys.

I.

DEVELOPING THE PROPER TRIAL MINDSET

Successful trial attorneys understand the realities of the courtroom, and the inherent unpredictability of a trial. They have also mastered their emotions before they step into court. These foundation skills help them properly represent their client at trial.

a. Accurately perceiving the reality of the courtroom and how you fit into that reality

Each trial unfolds under a set of rules or principles that constitute the reality in which the trial attorney must operate. The sooner the trial attorney recognizes this reality, and tries cases consistent with it, the better. While opinions vary, here are some realities to understand:

1. Your creditability with the jury and the court is the most important asset you have.

2. It is not about you. The jury isn't really interested in you. They have a job to do, and they are listening to the judge to find out how to do that job. The Judge certainly is not focusing on you. You are a single player in a multi-actor process. It is about the jury determining an issue between the two parties.

3. Leave your ego at home. It will only hurt you at trial. This is not a trial of or about you. Just do your job, do it well and focus on that. Think of yourself as a plumber with a suit. Get out of the way. The trial is not a referendum on your worth, skill, or identity. It is not your case; it is your client's case.

4. Do not try to act as if you know more than you do. It is okay if this is your first trial. Juries like that. If it is not your first trial, be humble. Juries like that too.

5. Law School has changed you. You now comfortably talk about proximate cause and *res ipsa loquitor*. That is not normal. The jurors are humans. They have not been changed. They are normal. You need to relate to them like a human being.

6. We live in a media-saturated, instant response, visual culture. Present evidence as much as possible in a format in which jurors are accustomed to receiving it. The trial attorney that can present evidence in such format has a leg up on his opponent.

7. Don't waste jurors' time. They have real lives that they have interrupted at potentially great expense to sit on the case you are trying. Not having exhibits ready, fumbling around for papers, having gaps in proof will not sit well with the jury, (or the Court). Neither will asking the same question repeatedly, or putting on duplicative proof.

8. The hand-off between the various IAS, pre-trial, and trial assignment parts is unpredictable and variable in most counties in New York State. You work on a case for four years and know everything about it. The trial judge is assigned to the case immediately before jury selection (or after) and may not know a thing about it. The system is like an airport baggage conveyor belt. Individual items can be bruised or damaged. As we discuss below, be ready for a less than smooth transition.

b. Accepting, and Planning for, the Unexpected

Trials by their nature are unpredictable and fluid. For example:

The judge incorrectly excludes your key witness or a piece of evidence.

The weather is bad on jury selection day. The jurors are late. You don't start picking a jury until 1:00 pm. That is a problem since you scheduled your first witness for 3:00 pm. To make matters worse, your witness walks in and sits down with jury panel waiting to be called to the box, and starts talking to them. He explains the whole case. Then he waves to you. Opposing counsel is halfway to chambers.

The opposing attorney has a sudden "emergency" with his expert and needs to call him as the first witness in the case. The judge grants this request over your vehement objection.

The subpoenaed records that you need to use with your first witness never arrived, or were lost in the courthouse. Opposing counsel regrettably cannot stipulate to the records. The clerk's office is properly apologetic. The Judge doesn't want to keep the jury waiting.

The court is unable to hear your motions *in limine* to exclude really bad things about your client before jury selection. So, the jury hears about them in jury selection. Then the court grants your motion, and gives a two-sentence limiting instruction. The jury nods. Of course they can be fair. They will forget that your client is a convicted felon who robbed elderly nuns for his crack habit.

The Court announces that it has other matters to attend to for one of the five trial days on your case and therefore court will not be in session then. Your expert is flying in on that day after receiving non-refundable gold bullion. He advises that he can never re-appear

for any reason and will not be videotaped as it would be beneath his considerable skills and talent.

Opposing counsel advises you on the evening before the trial that he has been provided with a key piece of evidence that his client just discovered and that he is therefore going to use it at trial. He is also calling a second, previously undisclosed expert based on this evidence. He will try to get you that expert response by the start of jury selection, but he can't promise it.

Your client is on the stand. She only needs to say one thing that you really need. You have gone over this many times with her. There is no dispute. You get to that part. She says just the opposite – and smiles at you, evidently thinking she nailed it. The jury looks at you. You think about what you learned in law school about aggravated assault based on temporary insanity.

The expensive video presentation equipment that you brought to trial to show the jury demonstrative exhibits does not work. The Judge glares at you. He doesn't like all of this new technology cluttering up his courtroom. In front of the jury, he barks at you to take it down and do it the way all the other attorneys do. Opposing counsel graciously offers to help you. All of your demonstrative evidence is on disc.

During the closing, you use an easel supplied by the court staff. One of the legs has a worn-out clamp, causing the easel leg to retract, collapse the easel, and dump your exhibit to the floor. Now the jury is really paying attention.

What do you do?

You may not control events, but you can control your response to them, and you can recognize that all of the above items and many others like them, occur every day in courtrooms across the state. Your job is to have a Plan A, as well as, Plan B and Plan C. If unplanned event A happens, you will do B. If unplanned event C happens, you will do D. Things are going to happen that are unexpected, things will not work, surprises good and bad are coming. Recognize that this is part of the process and that you can only prepare so much.

You must accept what comes and still present your case. Your initial plan is likely not the plan that will get you through trial. This means having alternate routes to admit evidence, having two witnesses ready to testify about a crucial fact, in case one doesn't show up at trial, having witnesses scheduled in such a way that you can reshuffle the trial lineup as needed on the fly,[1] and being prepared to shift or alter theories based on new or unexpected proof.

[1] The trial schedule is just that – a schedule. Avoid placing too much reliance on it. Focus more on blocks of witnesses. For example, with expert witnesses, consider starting one expert as the first witness of the day to finish the expert that day. You can then fill in the remaining time with available fact witnesses who can be easily shifted to the next day depending on trial flow.

The work you do before trial will increase your ability to be flexible and resilient during trial. Consider shifting tasks that are often done during the plaintiff's proof to the immediate pre-trial phase. Among other things, move *in limine* to have evidence excluded but also admitted, pre-mark and exchange exhibits, seek trial stipulations, educate the court with trial briefs on key evidentiary issues subject to tactical considerations, check subpoenas, and test and retest your presentation equipment. These are things that you can control, or at least influence. The earlier that can get advance rulings and smoke out objections from your opponent, before jury selection, the more you will know what case you are going to try. The more evidence admitted, before jury selection, the more time you will have freed up during trial where you need it most.

To anticipate the Court and her courtroom style, review her court rules, call her clerk (if possible), talk to other attorneys who have tried cases before her, review her published trial decisions, and watch a trial where she presides.

On a more long-term basis, get on a jury, or watch a jury selection on a case where you have no interest or knowledge. This may provide a fresh perspective for your next case.

c. Managing your emotions

Controlling your emotions is a key component of trial work. Keep a calm demeanor in front of the jury. If you look like you took a hit, they will believe that you did. It is also difficult to think clearly when angry, stressed, or fatigued. Jurors will not react well to such emotions or states, and your opponent will likely take advantage of them.

Fear is a familiar emotion to trial attorneys. Its causes are many and varied. New trial attorneys may fear their first trial. They may fear looking bad in front of the client, *i.e.* not competent. This is difficult for attorneys. Incompetence is not high on the strength finder profile. New trial attorneys may also fear losing control at trial. Attorneys often try hard at trial to control events. This is futile. Trial attorneys cannot control everything that happens at trial. Fear also arises when attorneys measure their self-worth by whether they win or lose at trial. This is an unsustainable burden.

The antidote to fear is to know the difference between being beaten and losing a case. The best trial attorneys in the country lose cases. Some cases lack merit or have fatal structural issues. That has nothing to do with the attorney who has done her best and tried the best possible case. Further, there is no other way to become a trial attorney without trying, and sometimes losing cases. So the new trial attorney should pick up, persist, and move on to the next trial. She is in good company.

As discussed below, thoroughly preparing for trial also minimizes fear before trial.

Good trial attorneys are also self-aware of their emotional state and how it influences them at trial. If you as a new trial attorney have not worked on this, consider how others perceive you when you are angry, frustrated, stressed, anxious, or fatigued. How would you present to a stranger, *i.e.* member of the jury in such states? Ask your trusted advisors to be brutally honest with you about this. Then don't get mad at them when they are. Self-correct as needed to control your behavior

when you are in those states. Determine what you can do leading up to the trial to avoid these emotional states. This may entail delegating more tasks in trial preparation that you are comfortable with, and starting that delegation earlier. You may also need to stop overscheduling yourself and your team before trial.

Also, keep your personal and/or family house in order. You should not be handling major personal events during trial, entertaining, traveling on the weekends, or be watching the neighbor's dog. Trial is a single focus event. Keep it that way, and you are more likely to present as calm and competent rather than stressed, fatigued and anxious.

II

MASTERING THE RULE BOOK AND BUILDING TRIAL PREPARATION SYSTEMS

A new trial attorney must prepare his case for the jury, but also must learn and master two processes. These are (1) the rulebook, and (2) the trial preparation system.

1. **Master the Rule Book**

There is a rulebook of basic trial processes that attorneys must learn before their first trial. Some parts of the rulebook are in the CPLR, some are procedural courtroom rules, and some are common law rules of evidence. Veteran trial attorneys do not consciously think about these rules, as they have incorporated and mastered them as part of their trial skill set.

Some examples of the rule book: How to pre-mark exhibits, move exhibits into evidence, exercise challenges for cause in jury selection, make an offer of proof, protect the appellate record, object and raise legal arguments to evidence or attorney comment, how to move at the close of proof for a directed verdict, how to impeach a witness with a sworn statement or deposition transcript, how to lay a foundation for a witness or exhibit, how to read in a deposition, and how to prepare videotaped testimony for rulings and the jury.

The bad news is that if you do not get competent in these processes before trial, you are at a serious disadvantage. In a sense, you have prepared to get to the day certain, but not try the case. The good news is that you can learn the rulebook and how to comply with it well before any trial. Many texts and practice manuals demonstrate how to get proof in, or do any of the items listed above. There are also always veteran trial attorneys who will help a new attorney with these items, if asked. The rules of evidence exist in the CPLR or in the leading cases. Neither are hard to find. Watching skilled trial attorneys put in a case will also help.

Mastering the rulebook is an additional burden for new trial attorneys. Take the long-range approach and start mastering the rulebook well before a trial is on the horizon.

2. **Build and Use a Trial Preparation System**

Successful trial attorneys usually employ a well-designed and well-functioning trial preparation system. One of the hallmarks of such a system is that it operates independently of the trial attorney. Office staff manage it for the trial attorney, with ultimate responsibility for implementation remaining with the trial attorney. Here are the items that trial preparation system should deliver:

1. A written final theory of the case including the bad facts. The bad facts usually come out. Sorry. Get over it. You have to own them, and work them into your case as a strength not a weakness. No one said it was going to be easy. The theory of the case has to include and explain all facts and claims, the bad and the good.

2. A final witness list with a listing of the exhibits that each witness is expected to admit into evidence.

3. The trial exhibit list.

4. The trial preparation schedule (Ex A).

5. The trial schedule (Ex. B).

6. The verdict sheet and jury charges.

7. Marked Pleadings and Contentions for the Court

8. Motions *in limine.*

9. Your written plan for meeting your *prima facie* burden of proof linking your witnesses and exhibits with each element of the causes of action at issue.

10. A demonstrative evidence plan. What demonstrative evidence do you need, and how are you going to admit and present it at trial? How and when are you going to show it to the Court and opposing counsel before you attempt to admit it into evidence? Who is testing and transporting the presentation equipment so that it gets to the courtroom and it works when it gets there? Have you received the Court's approval to set up the equipment?

11. Videotaped deposition transcripts marked and submitted for ruling and videographers retained to cut and play video.

12. Stenographic depositions marked up for read-ins and copies submitted for ruling and extra copies made for court and witnesses at trial.

13. Disclosures updated, including expert and witness disclosures.

14. Confirmed witness and expert date and time appearances, with relevant documents provided to each. Travel, payment details, and lodging confirmed.

15. Trial briefs served.

16. Subpoenas served and service confirmed. Member of the trial team designated to review subpoena responses at Supreme Court clerk's office to ensure that they have all arrived in proper form and with proper certifications.

The above list does not include preparing jury selection outlines and themes, openings, outlines for direct examination, cross-examination of defense witnesses, preparing your clients, witnesses, and experts for testimony, and the closing, among other things.

As much as possible, the new trial attorney should develop a uniform system for delegating and completing the numbered tasks above. A good start is a chapter in a written or web-based office manual. This chapter should identify the specific procedures that need to be done, who is responsible for them, when and how they will be done, how they are going to be docketed and by who, and at what points meetings will occur to ensure that trial preparation is on schedule. Experienced legal secretaries and paralegals are better at many of the numbered tasks set forth above than attorneys. Let them do their job. In a sense, this is a project management function. The deliverables are the numbered items set forth above; the end result is a well-prepared trial.

Templates are a key part of any trial preparation system. Many of the written submissions leading up to trial easily recreate by template. These include trial brief and motion *in limine* shells, jury verdict sheets, deposition read in lists, letters to trial witnesses and experts confirming appearances, and travel arrangements, the trial schedule, subpoenas, the trial exhibit list, and the trial notebook index. These recurring documents can be stored and recalled with a click of the mouse if time is taken to develop them into templates and then into template groups. Again, office staff generally will be more adept at creating these templates than the new trial attorney.

Creating a trial preparation system and then delegating large parts of that system to office staff will free up the new trial attorney to concentrate on the essentials: Jury selection, openings and closings, preparing witnesses, putting in proof, and cross-examining witnesses. It will however take substantial up front time and sweat. Pushing this off will only hurt you as you seek to increase your trial skills.

Delegation, however, does not mean abdication. The new trial attorney must regularly monitor and correct her staff's work in the trial preparation system. New attorneys often stumble at trial because trial preparation tasks do not complete as scheduled and then back up against the day certain. Making sure that trial preparation tasks finish as scheduled will free up the new trial attorney's time in the critical last few weeks before trial.

In sum, it will greatly assist the new attorney at the start of her career to develop a high functioning trial preparation system. The alternative is to reinvent the wheel for every trial. This is an inefficient and stress-producing practice that can burn out the new trial attorney and degrade her performance.

III

PREPARING THE CLIENT FOR TRIAL

Understand the client's needs when preparing him for trial

New trial attorneys spend much time preparing a client for what they think the client needs to get ready for trial. But they often do not understand what the client needs to be ready for trial. We discuss here five steps of client centered trial preparation.

Trial attorneys are highly specialized professionals, in a highly specialized field. If you are one of them, you know the court system and the trial process in a way different from any layperson client. You speak and think in a different language, most of it in legal shorthand. This high level of training and experience can sabotage your attempts to understand and communicate with your client – and get her ready for trial.

Clients often don't know what you are talking about when you talk to them like the specialized legal professional that you are. So, they dutifully nod their head in agreement and smile, because they don't want to offend you. But they do not understand. And they will go home and tell their spouse that they listened to you for an hour, and that nothing made sense.[2] Now they are really scared to go to trial.

Your trial preparation session missed the mark because the person who needed the preparation – the client – learned nothing. Therefore, consider the following sequence to prepare the client for her trial. Then you can progress to the specific case facts, the standard rules, (don't volunteer information, etc.) the sequence and subjects of the client's direct examination, and expected cross examination.

Step 1 – identifying and addressing the client's fears

Like juries, clients may possess an internal story about the trial. And that story may scare them. The average person's two biggest fears are meeting strangers and talking in public. That describes

[2] As a threshold matter, effective trial preparation of witnesses assumes that you have an intact bond with the client on which to build before trial, and stand on at trial. Without such a bond, it will be difficult to present the case, and more difficult to win it. Ensure that a strong bond exists with the client well before trial, and keep that bond strong during trial.

a trial pretty well. The fear of the unknown is also very strong. So, identifying and later addressing the client's fears is a critical part of client centered trial preparation. We suggest the following:

- Suggestion # 1 -- Ask the client what comes to mind when she thinks of appearing at trial. What pictures are in the client's mind? What does she think the trial will be like? Don't use the word fears. Let the client direct the conversation. Do not rush in and reassure the client as soon as she indicates a concern. You want to identify the fears, and address them in a later session. Common fears include:

    - "I am going to forget dates and times"
    - "I don't remember things that well"
    - "I am going to make a fool of myself"
    - "I get nervous and I shut down when I am in front of people"
    - "I am scared of the other attorney and what she is going to do to me"
    - "The other attorney is going to trick me"
    - "I am not good at talking in front of people"
    - "I don't know how to answer questions the right way"
    - "I don't know what to wear"
    - "The jury won't like me, and the judge will be mean"
    - "I worry about who is going to watch my kids during the trial"
    - "I can't afford to take off two weeks of work"
    - "I am worried that they are going to bring up [fill in item from past]"
    - "I am on [fill in the blank] medication and that makes it hard to remember things, and/or concentrate "
    - "I am worried that they are going to ask me about [fill in the blank] and I don't want to talk about that, and that is very upsetting to me"
    - "They are going to blame me and attack me for what happened to [fill in the blank]"

- Suggestion # 2 – The worry sheet. Have the client write down her fears – all of them – and send it to you. Many clients find it easier to do that rather than discuss fears with you.

- Suggestion # 3 – Use your trial team. Maybe the paralegal, secretary, or young associate are more empathic, or more connected to the client initially. They can listen to the client's concerns, and discuss them with you.

- Suggestion # 4 – Once the client identifies her fears, address them in a separate session. For example, if the client is worried about remembering specific dates and

times, tell her that she doesn't have to remember this as you can establish that through other witnesses, and that she just has to remember topics A through C. Also, show her the documents with dates and times on them that are expected to be in evidence, and indicate that she can refer to the documents if necessary. Finally, explain that if she doesn't remember specific dates and times, she can say that.

Step 2 – Answering the "where do I sit?" questions – addressing the knowledge gap

Apart from their fears, many clients know little or nothing about a supreme court trial. Others presume knowledge because they appeared in traffic court for two hours. The client is your primary trial exhibit, 8 hours a day, for each day of trial. What she doesn't know can hurt both of you. Here are questions you may hear:

- "Do I have to be at court on the first day?"
- "Is it ok to [smoke, eat, chew gum, brush my hair, put on makeup, text, read, use laptop, cell phone, draw, and bring drinks] in the courtroom?"
- "Can I get up and walk around the courtroom if I get restless?"
- "My [friends, girlfriend, family, co-workers, probation officer] want to come with me to trial. Is that ok?"
- "I am meeting with [witness, co-plaintiff] next week to make sure we remember the same things before we go to trial. Do you want to come?"
- "Can I wear my [work clothes, jeans, sneakers, loafers, halter tops, sunglasses etc.] to court?"
- "Can I talk to the jurors?"
- "Will this take more time than my deposition?"
- "Will you be with me at trial?"
- "Do I get paid a daily amount for coming to trial?"
- "Do I have to come back after I testify?"
- "Can I come to court after [work, school, putting the kids on the bus, doctor's appointments, etc.]?"
- "When do I stand up?"
- "Do I look at the jurors? How often?"
- "How do I get to court and back, where do I eat lunch, and where do I park?"
- "What do I do if the judge talks to me?"

These are a few of the questions that you should answer at the earliest opportunity so that you can proceed to step 3.

Step 3 – Educating the client on the trial process and how the client fits into that process

- Overview in layman's terms the trial process for the client. Jury selection, objections, order of proof, openings, witness direct and cross examination, side bars, use of exhibits, charge conference, closings, pre and post-closing charge, the deliberation process, the verdict sheet, and the client's role during each part of the trial. Focus on how each part of the trial will impact the client and be perceived by the client.

- The five miles out talk – the client is on display for jurors within a five-mile radius from the courthouse. At the courthouse, the client is a walking, talking trial exhibit. This includes breaks, in the bathroom, at lunch, making phone calls, in the halls, in the elevators, and waiting in line at the metal detectors. Tell the client no talking please, except about the weather. If possible, assign a paralegal, intern, or secretary with appropriate skills to stay with the client.

- Explain that the client cannot talk to jurors even if the jurors say something to her, and must report such contact.

- How and when to stand, walk, sit, talk, place hands and arms, look at the jurors, react to testimony, opposing attorneys' arguments, openings and closing, and court rulings.

- The client dress and appearance conversation. Please do not take the client's word for it when she tells you that she will dress and present appropriately for trial. See it yourself before the trial.

- The general concepts of direct and cross-examination. How to be sworn in, styles of cross-examination, redirect, what to do when an objection is made, interacting with the court, the time to leave the witness chair, what to do if the court asks a question.

- Explain that you will ignore the client's look to you for help if she runs into trouble when cross-examined. You will be studying your legal pad and will not make eye contact.

- Suggestion – visit the courtroom with the client 5 to 10 days before trial.

Step 4 – Discussing the legal concepts that may impact the client

- The importance of the deposition and its use in the courtroom. "Were you asked these questions, and did you give these answers….."

- Some clients do not understand that hiding negative information from you is a bad thing. They feel that it has nothing to do with the case, so there is no reason to complicate things by bringing it up. They may believe that they are doing you a favor. Explain why this is not doing you a favor and why it harms the case.

- Clients often don't understand how much information is available to opposing counsel through social media and search engines.

- The client is expected to talk to her attorney. If asked whether she met with her attorney, the answer is "yes, of course."

- How documents are used at trial, and how to answer questions such as "is this a document from ABC Corp. sent to you on X date?"

- The importance of the client reviewing with you trial exhibits and other documents relevant to her trial testimony, including:

    - Deposition transcripts
    - Pleadings
    - Bill of particulars, Interrogatories
    - Written statements
    - Discovery materials
    - Documents written or received by the client
    - Documents on which the client may be cross-examined or questioned on

- Refreshing recollection versus agreeing that the document says what it says.

- The concept of foundation, and only testifying on personal knowledge, not assumptions, or what the client believes did or most likely happened.

Step 5 –Finding out what is important to the client

- Listen to the client's story of the case the first time out. What does he focus on, and what is most vivid in his mind? It may have nothing to do with the issues to be tried. It is also what is most likely to come out on the stand under pressure if

everything goes blank. Find out what you are working with up front. It is sometimes hard for a client to change the internal "tape" playing in his head.

- Possible questions include, "when you think back on what happened to [insert facts] in this case, what sticks out most in your mind?" or "what is most clear, or vivid?" or "what is the most important thing about this case to you," or "when you think about this case, what is the first thing that comes to mind?"

- Explain how the client and her expected testimony fits into the trial process that you described. If there is a part of the client's testimony that you will not cover on direct examination, explain why this is so, and how to handle that issue if it comes up cross-examination.

Keep the viewpoint from the client's eyes, and describe the trial based on what the client will experience and perceive. Prepare the client for her trial, not yours.

CONCLUSION

Trying cases is a learned skill that some trial attorneys take to naturally, while others develop through sustained effort. It does not matter. The trial bar needs hardworking, well-disciplined, and ethical attorneys to advance the legal system and protect the right of trial by jury. Good luck.

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EXHIBIT A

SUGGESTED TRIAL PLATFORM AND TRIAL PREPARATION SCHEDULE (PERSONAL INJURY)

TASK	ASSIGNED TEAM MEMBER	DATE TO BE COMPLETED BEFORE TRIAL	DATE COMPLETED	FOLLOW-UP REQUIRED
When trial date set, letters out to experts and witnesses advising of trial date and requesting that they confirm their availability		120 days		
Preparation of a settlement demand		120 days		
Meeting with clients and explaining the settlement demand and getting authority		120 days		
Preparation of letter to clients explaining chances of success and damages and risk benefit and confirming settlement authority (see above)		120 days		
Charting elements of causes of action and what evidence will support each element of the cause of action based on review of PJI		120 days		
Finalizing trial theory of the case, including review of the weakest points of the case and strategy for overcoming them and making them strengths of the case		120 days or before		

Meeting with clients and preparing them for trial		Ongoing- starting with small steps at 120 days		
Update medical, wage, economic damage records as needed		120 days 60 days 30 days		
Update lien or reimbursement information and get final lien amount, if necessary, and engage lien/reimbursement stakeholders		120 days and ongoing		
Send EBTs to witnesses and parties to review		120 days		
Get out of state records certified		120 days		
Secure certified copies of state regulations or death certificate, or official findings from state agency such as OPMC or DOH.		120 days		
Check that opposing parties EBTS have been signed or CPLR 3116(a) letters have been served		120 days		
Confirm experts' testimony date and time by letter and make the necessary travel and lodging arrangements		120 days before trial		

Contact clients for update since last contact, such as going back to work, moving, divorce, further medical treatment, operations, bankruptcy, death, scheduled loss of use in workers compensation, client getting SSD, or Medicaid or Medicare		120 days and ongoing up to, and through trial		
Supplement bill of particulars, if necessary, and discovery responses, as necessary		120 days 60 days 45 days		
Confirm that imaging is available in admissible form (*see* CPLR 4532-a) and copies are available for demonstrative art		120 days		
Interviewing and meeting with non-party witnesses		100 days		
Secure CPLR 4532-a affidavits if necessary		100 days		
Phone call to experts (1) updating them on the status of the case, (2) do they need further information or documents to finalize opinions for trial, (3) fee estimates and current billing, (4) change in the expert's status expected by trial date, (5) recap of expert's opinions to confirm no change, (6) discussion of expert's file		100 days		
Determining the identity if needed, and investigating the background, qualifications, history, status, prior testimony and other matters of the opposing party's expert		100 days and ongoing		

Independent review of your expert's qualifications, recent testimony, malpractice cases, writings		Ongoing		
Sending additional materials out to experts as needed based on phone call		90 days		
Determining what evidentiary issues are likely to present at trial		90 days		
Create a witness list		90 days		
Designating sections of depositions (videotaped and stenographic) for trial and submit for ruling		90 days		
Summarize depositions if not done already		90 days		
Review opponent's expert responses and determine whether motion to exclude or preclude is necessary		90 days		
Focus group		90 days		
Placing an alleged medical lien holder on notice and demanding that they present medical proof to support their lien at trial (if applicable)		90 days		
Determining the jury that you want and preparing a jury selection outline		60 days		
Creating a trial schedule (determining the order of proof)		60 days		

Preparing motions *in limine*		60 days		
Preparation of demonstrative art		60 days		
Demonstrative art sent to the experts for review and further work until they can lay the necessary foundation for it at trial		60 days		
Seek ruling on out of state medical records and physicians		60 days		
Review CPLR 3122-a documents received and determine witnesses and documents to subpoena		60 days		
Determine to ask for early conference with Part I judge and/or early assignment to trial court		60 days		
Submitting video discs for rulings as per court rule		60 days		
Service of demonstrative art on opposing counsel and court		45 days		
Charting route of admission and backup route of admission for evidence to be offered		45 days		
Determine whether judicial notice is necessary and if so follow requirements of CPLR 4511		45 days		

Prepare and serve subpoenas		45 days		
Consult with court clerk or personnel as to what type of video or presentation equipment is available for trial if room or judge is known		45 days		
Prepare and serve a trial exhibit list		30 days		
Redaction of exhibits		30 days		
Prepare and serve pre-marked, redacted trial exhibits on disc		30 days		
Opposing defense motions *in limine*		When served		
Identify objections to your client's deposition testimony and submit for a ruling		30 days		
Prepare and serve trial briefs		30 days		
Prepare and serve jury verdict sheet and proposed charges		30 days		
Preparing witness outlines for plaintiff's witnesses		30 days		
Preparing cross-examination outlines for defense witnesses		30 days		
Prepare and serve contentions to the court		30 days		

Prepare the opening		20 days		
Video discs cut and edited after court rules on objections		10 days or during trial		
Testing of presentation equipment		10 days before trial		
Preparation of file for court room		10 days		
Taking client to the courtroom to ease fear of unknown and anxiety		5-10 days		
Appear in court with opposing counsel to pre-mark exhibits with court reporter		1 day before		
Transport of file to the Court room		1 day before trial or day of trial		
Continued meetings with clients and ongoing communication with experts		Ongoing up to, and including trial		
Managing scheduling issues		Ongoing up to, and including and through trial		

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