



PROGRAM MATERIALS

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Trial Starts Now: Winning the Final Six Months

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Trial Starts Now

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Agenda

- + Trial Prep Soft Skills Overview
- + Organization and Strategy
- + Discovery
- + Pleading Amendments
- + Settlement Discussions
- + 90-Day Trial Preparation

Trial Practitioner's Guide to Key Soft Skills

- Persuasion and storytelling
- Client Relationship/Trust
- Diplomacy/Professionalism
- Credibility
- Judgment/Risk Assessment
- Plain, accessible communication





Getting Organized

Plan for what is difficult while it is easy, do what is great while it is small.

Sun Tzu

Pretrial Planning

- Draft a proof chart
 - Use relevant statutes/common law and jury instructions to set out elements
 - Add column for notes regarding strengths/weaknesses of each element
 - Include known facts/evidence and sources
 - Note admissibility issues
 - Note any preliminary legal disputes
- Prepare detailed task list
 - Description of task with any relevant notes/documents/research tagged
 - Assign to only one team member—one responsible party
 - Set deadline—make sure pretrial deadlines are on calendar
- Schedule recurring trial team/meeting/call
- Update discovery plan
- Draft proposed stipulations/trial agreements

Strategy

- Develop a case theme
 - Understand core facts/evidence
 - Identify legal and emotional aspects of case
 - Define key message
 - Consider defendant's position(s)
 - Develop a story
- Identify case strengths and weaknesses
- Identify pressure points for settlement discussions



The way to get
started is to quit
talking and
begin doing.

Walt Disney

Discovery in Final Six Months

- a. Determine if any protective orders are necessary
- b. Issue all necessary discovery and ensure compliance, filing motion to compel if necessary
- c. Ensure client's compliance with incoming discovery and supplement as necessary
- d. Review and provide privilege logs
- e. Determine if you have all necessary evidence
- f. Medical Exam
- g. Experts
 - i. Designations - Be thorough or your expert may get limited or excluded
 - ii. Bias evidence
- h. Depositions

Pleading Amendments/Continuances

- Don't panic!
- Amendment may be necessary to address new evidence, correct mistakes, clarify claims, add liability theories, and/or request additional compensation or remedies.
- Amendments after the initial response period require leave of court
- Leave is discretionary and liberally granted in most jurisdictions
- Factor in time for additional discovery (if needed) and potential motions
- Continuances are discretionary and should be requested as early as possible





Settlement Considerations

Evaluating Settlement

- + Be fully prepared for trial
- + Assess risk for both sides
- + Consider jury pool
- + Weigh financial costs
- + Brainstorm non-monetary options
- + Account for client impact
- + Consult with experts
- + Don't forget insurance policy limits

More from Sun Tzu...

- + The supreme art of war is to subdue the enemy without fighting.

Trial Preparation



- Notify witnesses, including experts, of trial date(s) in writing
 - Send letters early
 - Issue witness subpoenas
 - Consider whether interpreter is needed
- Prepare client and other witnesses
- Conduct a focus group
 - Used in complex liability cases, high-value or high-profile cases, cases involving complex medical evidence, severe emotional/psychological damages, sensitive/controversial topics, and/or significant credibility issues
 - Juror bias evaluation
 - Community perceptions
 - Public attitudes toward tort cases

Address Evidence Admissibility Issues

Business Record Affidavits

- + Sworn statement by records custodian
- + Avoids need for custodian to appear at trial to authenticate documents
- + Typically used for medical records, bills, and lost wage documents
- + Best practice: Request affidavit with your requests/subpoenas for medical records and bills

Affidavit Reminders:

- + Affidavit language must track language in relevant rule/statute
- + Ensure that you meet any legal requirements specific to your jurisdiction regarding how and when to submit business record affidavits.
- + Double-check the accuracy of the records and affidavit to avoid any challenges.
- + Usually, you must notify the opposing party that you plan to use a business record affidavit to authenticate evidence.

Trial Preparation Continued

- ❑ Develop/revise detailed trial outline—use proof chart
- ❑ Draft jury instructions—start with model instructions, then revise and customize as necessary and draft any unique instructions you believe are necessary based on the facts of the case and as supported by the law.
- ❑ Draft any motions in limine
- ❑ Designate deposition excerpts
 - ❑ Shorter is usually better
 - ❑ Negotiate with opposing counsel regarding time limits
- ❑ Prepare exhibit list
- ❑ Identify pretrial issues
- ❑ Prepare voir dire questions

Trial Preparation

Write Opening/Closing

- + Begin outlining early
- + Incorporate case theme
- + Include photos and powerpoint presentation

Prepare Witness Outlines

- + Determine witness order
- + Draft direct and cross examination questions
 - Keep directs short so decision maker doesn't lose key points
 - Keep expert cross short

Tech/Demonstrative

- + Visit courtroom and coordinate tech needs
- + Retain company to prepare visuals of injuries
- + Summary of medical bills
- + Practice any live demonstration ahead of time



Opportunities multiply as they are seized.

Summary

Sun Tzu



Thank You

- + Presenter Name
- + Email
- + Website

