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CASE PREPARATION: EFFECTIVE AND EFFICIENT TIPS

1 Introduction:

A case well-presented tells a story. Even a defense case tells a story. A judge should be able to understand one's story in a few sentences. It is the task of every arguing counsel to prove that story.

A good trial lawyer will keep the theme of the trial in mind through all the complex changes in circumstances throughout the trial and will seek to anticipate the defenses of the other side and the counter arguments they will advance to demonstrate why your story is wrong and theirs is right.

That means that the counsel must not just prepare to present the story, but must be ready to defend attacks upon the story and counter the various counter attacks that the other counsel will advance. This anticipation of defenses and counter claims is an inherent part of preparation of case and includes not only knowing the law and possible arguments that can be advanced, but making sure the case brief is also properly prepared.

2 Steps for an Effective and Efficient Case Preparation and its Presentation:

a Facts:

There is a common notion that facts are simple things and it is the law which is difficult. However, the same is not true since it is often more difficult to ascertain the facts than the law. It is even difficult to define a fact. Lawsuits have their origin in transactions or occurrences in the past. What actually happened may never be known, and it can only be reconstructed by assembling all the pertinent evidence of what happened, much of it resting in the fallible memories of witnesses, some of it circumstantial, very often all of it contradictory and inconclusive. The first and foremost in any case preparation is to ascertain the facts of the case, or more properly, the evidence by which one may be able to establish the facts.

b Law:

By and large the law is easier to ascertain than the facts, but the same thoroughness in preparation is essential. Begin by taking nothing for granted. Be prepared to cite authority for any legal proposition

involved in your case, no matter how elementary. Know Your Facts Before You Research the Law. The facts are the heart of the case. It is always advisable to know as much about the facts as possible before one goes to the books for supporting law.

c Analyse the strengths and weaknesses of the case:

If you are the Plaintiff, review what you must prove in order to be successful. Do you have the evidence to persuade the judge? What can you do to address the weaknesses? Write down each item you must prove and put how you will prove it next to each item. Would it make sense to try to reach a settlement before the trial?

If you are the Defendant, review what the Plaintiff must prove. Look at each of the elements that the Plaintiff must prove. Write down each item and list the evidence that you think the Plaintiff will gather. For each of these elements, write down the weaknesses that you can exploit to undermine the other side's case.

Be honest with yourself. If the Plaintiff cannot prove all of the elements of the case, the Plaintiff will lose. On the other hand, if there is a good chance the other side will win, look at what you can do to minimize the damage.

d Preparation of documents and evidence for a hearing:

Organized documents will help you to be calm in court.

- Prepare copies for yourself, the other side, and the judge. Keep the originals in a separate folder. If there are multiple parties on the other side, you should prepare copies for each party.
- Do not give any original documents to the judge or the other party unless the judge specifically asks you to do so.
- On your copy of each document, highlight the important points that you wish to make using each document. During the hearing, this will help you to find the information on each document when you need to point it out to the judge or the other side.
- If you have more than 3 or 4 documents, you may wish to put flags on the side of each document so you can find it more easily when they are in a binder or folder.



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- Staple the pages of a single document together. Clip related documents together. If this seems like too much work, just imagine if you dropped all of the documents on the floor. Will you quickly be able to reorganize it?

- You may even want to put your copies of the documents in a notebook. Put the documents in the same order that you expect to use them to support your side of the story.

• **Identify and prepare any witnesses:**

Once you have looked at the legal elements that you must prove, think about whether there are any witnesses. A good witness will:

- Be able to support a key point in your case;
- Have “first hand” knowledge of that key point;
- Not have a reason to lie about the situation;
- If you need an expert, have the correct expertise; and
- Be able and willing to testify on the day of the trial.

The witness should have seen, heard or otherwise experienced whatever you want the witness to prove. You do not want to use someone who knows about the problem or incident only because you told them about it. They will not help your case.

Ideally, you want to have a witness who has no incentive to lie for you. For example, your mother may be considered a less credible witness than a local mechanic when you want to show that your car was damaged.

f **If you are the Plaintiff:**

Write down your notes in advance on a paper pad and bring this with you to your hearing. It is better to have a few key points written down than it is to have a “script” with every word you want to say. Remember that the judge will not have a script nor will the other side. You know your story. You just need a few reminders to make sure that you make all of the necessary legal points. You will speak first. You will need to tell the judge your story. Remember, there are certain legal elements that you have to prove.

g **If you are the Defendant:**

You will speak second. The other side will have laid out a series of facts. You do not have to repeat these facts. Assume that the judge heard and understood the facts, even if you do not like the way the other side said it.

Focus your comments on your defense. Do not dispute every little issue, focus on the most important points. You should have prepared yourself by looking at what the other side had to prove. That will help you determine which points are worth disputing. Always, be polite to the other side.

3 Conclusion:

There is a storyline with each case. How that story is presented in the courtroom can often be very persuasive for the Judges and help the lawyers win favorable decisions. Regardless of how strong a case one may have, if they are unable to present it in a believable manner, the judges may not think much of it. On the contrary, when evidence is supported by a strong and believable storyline, the judges may accept it and rule the decision in its favor.