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How legal staff best supports attorneys at trial

TRIAL IS NOT
A SOLO ACT,
IT REQUIRES A
CHORUS OF SUPPORT

Finally, after months of preparation, panic attacks in the middle of the night, weekends and late nights in the office, and countless brainstorming sessions with your attorneys, the day of trial is at hand.

Just because trial has begun does not mean the legal assistant's job is done. You continue to be an essential part of your attorneys' trial team – which will depend on you now more than ever. You make sure things run smoothly; not only at the courthouse, but in the office as well. Knowing ahead of time the many hats you will wear and the many tasks expected of you during this time ensures that the entire team will be organized, confident, and ready for that winning verdict.

Pretrial meeting with your attorneys and staff

In the same way that the attorneys meet before the commencement of trial in order to hammer out trial details, it is important for you to have a pretrial

conference with your attorneys. During the pretrial conference, you should hammer out the details of your involvement in the trial, discuss and agree to a game plan, create a timeline, and discuss how you can provide the best support. What tasks will you be responsible for and when will they be due? In their absence, to whom will you report if a problem arises? Will you be expected to work late or on weekends? Will you be expected to go to court? And what is the scope of your authority in their absence?

Remember, your attorneys have a lot on their minds during trial and may not be as easy-going as they are when they aren't in trial. Know and discuss your attorneys' moods and come up with a plan that will help alleviate whatever anxiety, tension or irritability they may face.

You will also want to make sure you meet with other members of your team including junior associates, records clerks, deposition clerks, copy clerks and outside vendors such as jury consultants,

audio-visual technicians, and document production companies. It is crucial that you clearly communicate the demands on their time, assignments, and provide a clear timeline of when things are due. Make sure to discuss expectations and keep open lines of communication at all times.

Report everything back to your attorneys in a succinct fashion. This will help them know you are on top of things, allowing them to focus on the trial. Remember that going to trial is a team effort and every team needs a manager: That's you.

Know the documents

Though you are likely the one who finalized all of the trial documents, make sure you go through them again the week before – even the day before – trial. Make sure you are aware of each trial binder's contents and order of documents. You should have duplicate copies of each trial binder; in the event they call

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from court referencing something from their binder, you can immediately find the document.

Make sure you are aware of the most recent versions of all trial documents, especially the exhibit and witness list. Know which motions in limine are being opposed, stipulated, or withdrawn. Know which jury instructions are being jointly requested or objected to and by whom. You can create checklists or grids to keep you organized. Clearly mark and organize the exhibits. Make sure you have followed the court rules for marking and have organized them in a way that makes sense to you and your attorneys. This goes for all of the documents that they may need to look at, reference, or admit into evidence. Organization is key.

Be flexible and available

More likely than not, when your attorneys are in trial, you will be expected to work odd hours and weekends. They will be in court all day and may need to meet with you after hours or on the weekends in order to complete follow-up tasks on the case they're trying or to complete work on other cases. Cut your attorneys some slack. By the time they get back to the office after a day in court, they may not be their usual chipper selves; truth be told, after a long day in the office and having to stay late, you may not be your usual chipper self. All of you may have shorter fuses; all of you may be unusually tired; and all of you may need to take a step back and breathe.

Be extremely flexible at this point. You may need to make last-minute changes to trial documents or jury instructions. You may be called upon to draft a brief that will need to be filed the following morning or to prepare special jury instructions or verdict forms. Perhaps you will need to pull deposition testimony, organize it, or work with the graphics vendors preparing last minute graphics, PowerPoints, or posters.

Remember that things can change suddenly depending on the testimony of the day and sometimes what your

attorneys had planned for the day may have gone completely awry. Be prepared to request a court reporter's transcript of the day's proceedings on a rush basis, and be prepared to be a sounding board for your attorneys as they may need to change the direction of their examination.

Be candid, but respectful

Your attorneys may need you as a sounding board. It is important at this juncture that you do not agree with them simply to agree. Offer constructive and honest feedback. You have invested a lot of time and energy into the case and probably know it as well as they do. You can offer wonderful insight if you allow yourself to be completely honest and listen critically to their arguments. Do the theories and presentation make sense? Does the argument and presentation flow logically or are pieces missing? Does it leave you (and likely the jury) wondering about things that are irrelevant? Is the explanation confusing? Is the tone in which information is being presented one of condescension or is the attorney connecting with you?

If you are candid with them, it can have a huge impact on the case. Remember that sometimes they can be so immersed in the case that they lose perspective. Your opinions, if offered to them in a truthful, thoughtful, diplomatic and respectful manner, will be greatly appreciated.

Know the players

Courts encourage parties to work together and submit jointly prepared documents and exhibits. For this reason, it is crucial that you get to know opposing counsel and their assistants. Make sure you have all of their email addresses, business and cell phone numbers, and they have yours. Do not be shy or reluctant to take the laboring oar in the binder and document preparation. Do not be afraid to reach out to the opposing senior trial attorney if there is something you need from their office that is not being provided to you.

Remember your counterparts are as equally stressed as you about the case

and its work-up. By working together in an efficient and respectful manner, it will make things easier for everyone. You may even suggest an in-person meeting with your counterparts or sit in on the attorneys' pretrial meeting so you are all aware of what is going on. Building a positive rapport with opposing counsel and their assistants makes exchanging documents, exhibits and PowerPoints much easier and may help eliminate any last-minute surprises.

Learn about the court

As the trial date approaches, ask your attorneys if you may accompany them to the courthouse or if you can go on your own to introduce yourself to the department clerk, courtroom assistant, court reporter, and bailiff. Remember, these individuals are crucial to ensuring things get done in the courtroom and run smoothly. Make sure you obtain their contact information and provide them your contact information.

Ask questions. Ask these individuals if there is anything that you need to know about the department that may not have been included in the local rules (which you have already scoured) or in the department rules (which you have also already scoured). While you may not be able to meet the judge, you can get valuable information about them from their courtroom staff. What pet peeves or idiosyncrasies should you avoid (or comply with)? Find out what the courtroom daily trial schedule will be. Will the court be in session five days a week or four days a week? How many hours of testimony will be heard during the morning and afternoon sessions? Will there be a break at some point during the morning and afternoon sessions? Can you have a water bottle at counsel table or in the gallery? What is the procedure for requesting a transcript of the day's proceedings? Can you store things in the courtroom? Will there be an easel, stand, or podium for your attorney's use? Does your attorney need to carry blank checks to cover jury fees? When do jury fees need to be paid?

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If at all possible, go to the department and watch the judge conduct hearings in other cases. Ask your colleagues at other firms if their attorneys have previously been in front of this particular judge and what their thoughts are. Ask your colleagues to share their experiences and ask if there is anything that stands out to them of which you should be aware.

While some of these things may seem quite peripheral on the surface, they can make a huge difference in the way you and your attorneys approach the courtroom. Building good will and rapport goes a long way toward ensuring things run smoothly for all concerned and may provide you with a slight edge. Remember that while the judge may not be made aware of your efforts to “play nice,” they will absolutely hear about any nasty or inappropriate behavior. *Always* deal and interact with the courtroom staff in a positive and respectful manner.

Scheduling your team

Scheduling Experts

A tremendous source of frustration when beginning trial is that things are often extremely fluid. Having a trial date of August 9th, does not necessarily mean that the trial will start on August 9th. It certainly does not mean that your expert, who you know is going to be up first to testify, will be needed on August 10th. This is especially true in the Personal Injury Hub of the Los Angeles Superior Court.

Once assigned out, the attorneys will have to argue motions in limine, take care of other housekeeping issues, and select a jury well before any testimony is actually elicited. This could take a day, or it could take a week.

This uncertainty can be disconcerting for many experts, especially if they have never testified before. In order to ease their anxiety, it is imperative that you keep in close contact with your experts at all times. Make sure you have all of their contact information including cell phone numbers and email addresses and that they have yours. Call them every couple of days (or every day) and give them an update on what is happening at

trial and when they will be needed to testify. Make sure that you have obtained all of their vacation, family, and work commitment schedules and that you have shared it with everyone on your team. Create a chart or grid for yourself and your attorney showing each expert’s availability. Remind your experts that as your attorney adjusts to the dynamics of trial, last minute or unscheduled phone conferences with them may be needed to clarify points raised in testimony or to obtain additional insight or opinions that can be used the following day.

Once your attorney knows for certain the date(s) and time(s) of your expert’s testimony, contact your experts and find out if they need you to schedule their flights or make transportation or lodging arrangements. If your experts choose to do this on their own, request their travel information immediately so you are aware of their arrival times. Your attorneys will want to meet with the experts before they testify. Make sure this is taken into consideration when making travel arrangements, and that your experts will have ample time to meet with the attorneys the day before they testify. Build in time cushions for traffic and flight delays; being late to court is not an option. Even after your experts are done testifying, keep track of their availability, just in case your attorney needs a consult or has to re-call them.

Scheduling Your Clients

Make sure your clients are aware of everything that is happening in trial. If your clients are present for the duration of the trial, make sure they are aware of proper courtroom etiquette and attire. Schedule a meeting with your clients and your jury consultant (if you have one) to go over these issues. Remind your clients the jury is constantly forming opinions based on your clients’ dress and behavior in the courtroom. The opinions formed by the jurors, based solely on what they see, may influence how they receive, interpret, and weigh your clients’ testimony. Jurors are human, like the rest of us, and form opinions based on first impressions.

Jury Consultant

If your firm uses a jury consultant, you will likely be the main point of

contact for that person as well. Make sure you keep them well-apprieved of any last minute calendar changes and consider the same issues regarding travel, transportation and lodging you have with other experts and clients.

IT Person

Make sure you keep in close contact with your audio visual technicians or IT persons. Make sure you have met with them well in advance to discuss all of your attorneys’ trial needs. Will your attorneys require a laptop to run PowerPoint? Will someone be at the courthouse to help your attorneys set up a laptop or other devices (sometimes this job may fall on you, as well). Does the courtroom have the ability to interface with all of your attorneys’ devices? Will your attorneys be able to scan, email and print documents, if necessary?

Going to court

It is possible that in some instances your attorneys will need you to accompany them to court. This is, of course, a luxury for the attorneys and a wonderful learning opportunity for you, so if the chance arises, seize it.

One way in which you can assist while in court is by taking notes while they conduct their voir dire examination. In doing so, you allow the attorney the opportunity to focus solely on their questions and the jurors’ responses and reactions to those questions. Unless the juror’s response is patently obvious, your attorney may not recall a more nuanced response by a particular juror that may have particular significance. In instances such as these, your notes will provide your attorney with a wealth of information which, when coupled with those of your jury consultant, can assist your attorney in exercising challenges effectively.

Likewise, your attorney may not be able to keep track of all of the things being said while cross-examining a witness. It is extremely helpful for you to take notes so that they can freely focus on the flow of the examination. Additionally, you may see things that they do not because they are so engrossed in their examination of the witness.

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Perhaps you notice a juror sneering or nodding in agreement. Perhaps you see someone chuckle or roll their eyes. Worse yet, you may see someone has fallen asleep or is not listening to your attorney's presentation. Perhaps you notice a juror crying or shifting uncomfortably in their seat in response to something your attorney said or presented. These are all important non-verbal cues from the jurors that your attorneys will find helpful as they continue to craft their argument, presentation, and examination of witnesses.

If you are going to accompany your attorneys to court, make sure whoever you leave behind in the office is capable of handling your desk while you are out. While you may have a laptop with you so that you and your attorneys can make changes to documents or draft briefs during breaks, you may need someone back in the office to actually process the documents. Make sure whoever you leave in charge is up to date on everything that is pending. Your attendance at court should serve as a support to your attorneys and should help relieve their stress. Your absence from the office should *not* create stress for anyone left behind.

Back in the office

While the case being tried is the priority for you and your attorneys, you must also remember that you have other cases that continue moving forward. Other clients should not suffer because your attorney is in trial fighting for someone else. It will be difficult for your attorneys to keep up with all of the other cases given the demands on their time. Make sure you have

met with your attorneys prior to the commencement of trial to come up with a game plan for handling other cases to which they are assigned. Determine the sorts of things you can do, with their authority and without them having to be there, so their cases continue to move forward.

Your goal at this point should be to alleviate as many of their potential headaches as possible. Take as many things off your attorneys' plates as you can and as they are willing to delegate to you. Talk with your attorneys and decide whether you can grant and request discovery extensions, and request extensions on other discovery deadlines. Will your attorneys trust you with their calendars such that you can move depositions and appointments? Can you sort through the mail and categorize it into urgent and non-urgent stacks so that they know what to focus on during the precious few hours they have in the office in the evenings or on weekends? Can you let opposing counsel know that your attorney is engaged in trial and will likely be unable to respond to their requests for a few weeks? Can you enlist the help of other attorneys in your office to pick up the slack?

Trials away from home

Other things to consider, but which are not commonplace, include setting up a mobile command post somewhere near the courthouse. If your attorneys practice in Los Angeles and they have to try a case in San Jose, it is unlikely that they will be flying back and forth every day.

You will have to make arrangements for their lodging and mobile office. You

may need to find a local dry cleaner or eatery that delivers. In a nutshell, you will need to improvise and think outside the box because your attorneys will be far too busy focusing on the case. Being away from home and family adds another layer of stress. You should be prepared to help alleviate that stress in as many ways as you can.

Trial is the beginning, not the end

Your job as a legal assistant does not end when your attorneys start trial. It is the beginning of a whole new set of tasks and obstacles. Your attorneys will be counting on you to keep them organized and on track. Be calm and stay positive, especially in the face of adversity. Exude confidence and do not be afraid to take a leadership role when interacting with the entire trial team, including your attorney, support team, courtroom personnel and opposing counsel. Be constructive, be diplomatic, be respectful and prepare, prepare, prepare. Once you do all of these things, then and only then, can you sit back and await the phone call from your attorney announcing your side's winning verdict.

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