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# We're going back-to-back

## HOW TO SUCCESSFULLY TRY MULTIPLE CASES WITH NO DOWNTIME

This summer, I handled two trials back-to-back, and almost handled a third immediately after the second. When I say back-to-back, I mean truly back-to-back. I argued motions in limine for the second trial during jury deliberations for the first trial. I reported ready for a third trial during jury deliberations for the second trial, but there was not an available courtroom for us.

Thankfully, in Los Angeles County and many counties across the state, trial courts are open again. But the long backlog of trials that could not happen during COVID-19 court closures has left many of us with uncomfortably heavy trial calendars. If you think you are going back-to-back (to back-to-back), here are some things that will make your life easier.

First, a few caveats: Do not attempt this if you have never tried a case. Do not attempt this if you have never prepared for trial. As you will see, this is only doable if you have the right cases and enough experience preparing for trial that pre-trial documents and expert depositions are low stress for you. You cannot do this if a significant amount of your energy will be spent learning how to prepare for trial or learning how to try a case. That is not to say that this should not still be a learning experience, because of course every trial and every preparation for trial is a learning experience. But if you are not sure how to determine which jury instructions apply to your case or not sure how to fill out the exhibit list, you are not ready to try cases back-to-back.

The key to trying back-to-back cases is to do as much work upfront as you can. Even if you usually do not make checklists of tasks for yourself, you will want to do so here. Anticipate how tired you may be and make everything as easy on yourself for later as possible. If you find yourself saying, "I can do that later," check yourself and recognize you may not have time for that later or the energy to do it well. Do it now. You will be glad you did later.

### Get organized

Your case file needs to be organized in a way that allows you to quickly see what is going on without reading a 40-page medical chronology or multiple deposition summaries. These suggestions may seem simple, but they are game changers if you are not already doing them. Something as simple as putting the date of treatment in the file name makes reviewing the file so much quicker. If you are picking up someone else's case for trial, take the time to reorganize the file however works best for you.

The key for me to quickly understand someone's medical treatment history is to extract each individual treatment visit note and save it as a separate file. This is quick to do with Adobe Acrobat Pro. If I need to do it from an iPad, I prefer the PDFExpert app. Start the file name with the date of treatment formatted "YY-MM-DD," followed by the provider's name and what type of treatment. For example, if my client had a cervical spine MRI, the file name would be "YY-MM-DD Provider Name C Spine MRI." I keep them all in one folder online and have a nice, compact timeline for me to look at as a refresher. Gaps in treatment become visible fast. Taking the time to organize the file myself also crystalizes the relevant dates into my brain.

Do you have all the deposition transcripts? You need them. Subpoenaed medical records? You need those too. Now is not the time to cut corners. You likely do not have time to wait and see if you get these items in the defense experts' document productions before deposition. You will just add another item to your to-do list even closer into trial. Make your file as complete and ready to go as possible before expert discovery or trial document preparation even starts. Also, I would caution against waiting for the defense experts' depositions to get subpoenaed records and deposition transcripts as a general practice. If one of your experts' depositions goes first, you are sending them to deposition without these materials, which weakens their testimony even if you later send a letter to defense counsel and offer them a second deposition based on the review of new materials.

Do you know which witnesses you are calling at trial? Make a list of everyone you may call, including your damages witnesses like your client's friends and family. Put their phone numbers on the list. Include a column for whether they have been informed of the trial date, another column for whether they have confirmed they are available, and any potential scheduling issues they may have. I always over-include these folks on the witness list because they can often be hard to track down at the time of trial and I want to have multiple options. I also double check whether the defense asked for these names in discovery. If they did, I immediately supplement the discovery responses and offer to provide the additional witnesses for deposition.

### Timing is key

If you have a choice, handle your expert discovery for both cases at the same time, and also your trial documents for both cases at the same time. Once you are in trial, it is unadvisable if not impossible to take expert depositions or prepare trial documents for another matter. But handling expert discovery and trial documents for multiple cases simultaneously is surprisingly doable if you are organized.

For my three-trial stack over the summer, all three trials initially had the same trial date. These moved for various reasons, and I would not recommend picking the *same* trial date if you have a choice, especially if you have multiple trials occurring on the same day in different jurisdictions. Although courts understand that everyone's trial calendars are messy right now, your odds of an understanding trial court decrease if you

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associate into trials with the *same* exact trial date. It is alright to have them closer together and expect that you will roll from one trial to the next, schedule permitting. But as you agree to trial continuances, I would advise against stacking them on the same date as another trial.

### Pick the right cases

Doing back-to-back four-week-long trials with complicated issues is a different beast that requires a lot more assistance. I assume if you have these types of trials, you have a support team that helps you and a lot more resources. But if you do not have a support team, then clear your calendar and do not expect to roll from one longer trial to the next longer trial. My back-to-back trials all had 5–7-day estimates that we streamlined down to 2-4 days not including jury selection.

If possible, try to make any back-to-back trials similar types of cases so you keep your mind focused. In July, the cases I tried back-to-back were both dangerous condition of public property cases with ankle injuries.

### Tape depositions

The sneakiest bane of any trial attorney's existence is witness scheduling. Getting all your witnesses to court was already difficult, but the difficulty has increased due to heavy trial calendars and ever-changing dates. Arranging for a doctor to testify between 9:00 a.m. and 4:00 p.m., even virtually, is challenging. Make this easier on yourself by taping the depositions of non-retained treatment providers. Ideally, you should do your direct examination of the non-retained treaters at the deposition, then designate your direct examination to play at trial.

If you are unfamiliar with how to do this, here is how this tends to go. If you did your expert designation correctly, then you listed every treater who even took a breath near your client that you may want to call at trial. This list can be long, even on a simple case. The defense often reaches out and asks which non-retained treaters you intend to call at trial so they can notice depositions of those treaters. I have no issue providing this information with certain caveats. I respond to this request by saying something like, "While we reserve the right to call any of the designated non-retained treaters at the time of trial, as a courtesy, the treaters we anticipate calling at this time are [names]."

I find this helpful for several reasons. First, if the defense notices the deposition, they have to deal with getting the deposition scheduled, which can be difficult if the non-retained treaters are medical providers from an emergency room or hospital. Second, the defense then pays for the deposition, and we love savings. Once the defense notices the deposition, send a notice of joinder, which protects your right to play the deposition for any purpose at the time of trial. Confirm that the defense has ordered a videographer. If the defense has not ordered a videographer, you should order one.

If the defense does not notice the depositions of any of your non-retained treaters, you have the option to notice their depositions yourself. I recommend you do this and include the necessary language in your notice reserving your right to play the deposition for any purpose at trial. With any trial, but especially when you know you are heading into a back-to-back trial schedule, you need to take as much pressure off yourself as possible ahead of time. Taping your direct examination saves you the energy of scheduling the witness during trial and the energy of handling an extra examination. This also means one less witness you must prepare for trial testimony during trial.

You can also tape your direct examinations of your retained experts. You should do this in an abundance of caution even if you plan to call them at trial. Trial schedules are unpredictable lately and even the friendliest, easiest to get ahold of expert may end up with a conflict since you have no guarantee of when your trial will start or how long something like jury selection may take. Jury selection in my trial in Torrance over the summer took five days while witness testimony took only three, which caused last-minute scheduling stress for our expert witnesses.

If you think there is even the smallest chance that you may have to play deposition testimony in lieu of trial testimony for your retained expert or any of your non-retained treaters, be sure to timely handle the deposition designations, which require a lot of back and forth with opposing counsel. First, you send over your designated segments. Then, they send you back any objections to those segments and any counter-designations. Last, you add any objections you have to their counter-designations.

### First chair/second chair belongs in the past

I am of the mindset that doing trials alone, or even with a traditional first chair/second chair set up, belongs in the past. Working as co-leads makes trying a case a more humane experience. It is also easier to jump from trial to trial if you can narrow your focus to a particular part of the case.

The most common way to divvy up a trial is to have one person focus on liability while the other focuses on damages. There will be some witness overlap (for example, the plaintiff is often both a damages and liability witness), but for the most part it should be easy to figure out which witnesses everyone is handling. If you are in an admitted liability trial with different types of injuries, divide up the case by the injuries. You can have one person handle orthopedic injuries while one person handles the TBI.

This is not to say that everyone should not know the whole case – of course they should. In these types of splits, one person will handle opening statement while the other handles closing argument, so both people must know the ins and outs of the entire case. The point is to take some of the pressure off yourself and your teammate during trial. Trial is grueling enough. Trust someone else and

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take the pressure of handling every examination off yourself.

If you are still considering handling multiple trials back-to-back by yourself, another reminder: Every time you get out of trial, your other cases have been treated like you were on vacation. But you were not on vacation. Instead, you are returning completely gassed and probably in need of a vacation, even after a short trial. Without proper help, this is a recipe for burnout.

If you do team up, make sure you inform your trial partner of your schedule and that you will be going back-to-back. Try to handle any brainstorming about trial strategy for the second trial before you even start the first. Once I am in one trial, I become obsessed with that trial, and while I may carve out time to talk about the next trial, I know my brain is not functioning at full capacity and I am not giving my best thoughts and ideas to the second trial.

## Know what you can fix last minute and what you can't

If you are moving fast and do not have the opportunity to get your ducks in a row the way you would like, prioritize the things that are difficult to fix later. For example, make sure your witness list is correct and includes everyone you might call. Absent extremely understanding defense counsel, you will have a difficult time adding a witness late if you realize you omitted someone once you show up the first day. You may also run into difficulty trying to handle deposition designations the first day of trial given the amount of back-and-forth between the parties required. It can also be difficult to recover from failing to give your expert all the documents and films prior to their deposition.

Conversely, you will have almost no difficulty adding an exhibit you inadvertently omitted or bringing an oral motion in limine. Nor will you likely find difficulty adding a new jury instruction to the proposed list of jury instructions, or suggesting a change to the special verdict form. If you are short on time, these are the things you can often adjust later, so make sure they are in good enough shape to get assigned a trial court, but you will survive if they are not perfect.

## Make a plan for post trial

If you are not going to be there for the verdict, make sure you have a plan for who will be there and what they will do. You still need to be prepared to protect or attack the verdict by talking to jurors. You also need to make sure you do not inadvertently miss post-trial deadlines like filing the memorandum of costs or notice of motion for a new trial since you only have 15 days from service of the judgment to do so.

You can contract with other attorneys to help you on post-trial motions if you know you are going back-to-back and do not have a team member to help you. Figure out who that person will be before any of the trials start so that you know you have your support lined up. All you have to do is get the cost documentation over to them.

If you follow these steps, you will still be tired after back-to-back trials. But hopefully you will require less recovery time and can get back into the ring faster.

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