Chronological Trial Preparation Checklist

Done: date/who 4-8 weeks before trial

\_\_\_\_\_\_\_\_\_\_\_\_\_ Review pleadings, amend

\_\_\_\_\_\_\_\_\_\_\_\_\_ Review discovery and disclosure statements, amend/supplement

\_\_\_\_\_\_\_\_\_\_\_\_\_ File pretrial motions

\_\_\_\_\_\_\_\_\_\_\_\_\_ Serve trial subpoenas and notify witnesses

\_\_\_\_\_\_\_\_\_\_\_\_\_ Order transcripts

\_\_\_\_\_\_\_\_\_\_\_\_\_ Obtain rulings on pending motions

3-4 weeks before trial

\_\_\_\_\_\_\_\_\_\_\_\_\_ Organize trial notebook

\_\_\_\_\_\_\_\_\_\_\_\_\_ Prepare jury instructions

\_\_\_\_\_\_\_\_\_\_\_\_\_ Prepare witnesses folder

\_\_\_\_\_\_\_\_\_\_\_\_\_ Prepare exhibits folder

\_\_\_\_\_\_\_\_\_\_\_\_\_ Order large courtroom exhibits

\_\_\_\_\_\_\_\_\_\_\_\_\_ Check on service of trial subpoenas

2-3 weeks before trial

\_\_\_\_\_\_\_\_\_\_\_\_\_ Review theory of case, themes, labels

\_\_\_\_\_\_\_\_\_\_\_\_\_ Prepare jury profile and questions checklist or motion

\_\_\_\_\_\_\_\_\_\_\_\_\_ Prepare closing argument

\_\_\_\_\_\_\_\_\_\_\_\_\_ Prepare opening statement

\_\_\_\_\_\_\_\_\_\_\_\_\_ Prepare direct examinations

\_\_\_\_\_\_\_\_\_\_\_\_\_ Prepare cross-examinations

\_\_\_\_\_\_\_\_\_\_\_\_\_ Check on availability of your witnesses

\_\_\_\_\_\_\_\_\_\_\_\_\_ Schedule witnesses for trial preparation

Done: date/who 1-2 weeks before trial

\_\_\_\_\_\_\_\_\_\_\_\_\_ Discuss possible stipulations with opponent

\_\_\_\_\_\_\_\_\_\_\_\_\_ Prepare client for testifying and courtroom presence

\_\_\_\_\_\_\_\_\_\_\_\_\_ Prepare your witnesses for testifying

\_\_\_\_\_\_\_\_\_\_\_\_\_ Check availability of your witnesses on trial days

\_\_\_\_\_\_\_\_\_\_\_\_\_ File any motions in limine

\_\_\_\_\_\_\_\_\_\_\_\_\_ Check with court on trial date

week before trial

\_\_\_\_\_\_\_\_\_\_\_\_\_ Draft and execute written stipulations

\_\_\_\_\_\_\_\_\_\_\_\_\_ Keep in touch with your witnesses

\_\_\_\_\_\_\_\_\_\_\_\_\_ Advise witnesses when they will probably be needed

\_\_\_\_\_\_\_\_\_\_\_\_\_ Keep preparing client

\_\_\_\_\_\_\_\_\_\_\_\_\_ Keep preparing witnesses

\_\_\_\_\_\_\_\_\_\_\_\_\_ Refine order of your witnesses

\_\_\_\_\_\_\_\_\_\_\_\_\_ Refine exhibits list

\_\_\_\_\_\_\_\_\_\_\_\_\_ Refine planned cross-examinations

\_\_\_\_\_\_\_\_\_\_\_\_\_ Rehearse your opening statement

\_\_\_\_\_\_\_\_\_\_\_\_\_ Check with court on trial date, starting time, and schedule

\_\_\_\_\_\_\_\_\_\_\_\_\_ Obtain rulings on motions in limine

Mauet, Thomas A., Trial Techniques and Trials, New York, Wolters Kluwer, 2013.

**Index to Trial Notebook**

*1. Case Summary*

a. **Case summary form**

b. Fact and chronological summaries

c. Final pretrial memorandum and order

*2. Pleadings*

a. Amended complaint, answer, and reply, or indictment

b. Pretrial order, if it amends pleadings

c. Pleadings summary, if complex case

d. Copy of applicable statute, if statutory claim

*3. Discovery*

a. Initial disclosures

b. Interrogatories and answers

c. Requests to produce and answers

d. Deposition summaries

e. Requests to admit facts and responses

f. Physical and mental examinations and reports

g. Expert disclosures and reports

h. Discovery summary, if complex case

*4. Motions*

a. Motions, responses and orders

b. **Motions form**, for anticipated trial motions

c. **Stipulations form**, for anticipated stipulations

d. **Request for judicial notice form**, for anticipated requests

*5. Lists*

a. **Proof list,** for elements of claims and defenses

b. **Witness list**, for plaintiff and defendant

c. **Exhibit list**, for plaintiff and defendant

d. Index to jurors’ exhibits notebooks, if created

*6. Jury*

a. **Jury profile and questions checklist**

b. **Requested voir dire questions form**

c. **Jury box form**

d. **Juror form**

e. Copy of applicable statutes and court rules

*7. Openings*

a. **Opening statement outline**

b. Blank paper, for notes on opponent’s opening

*8. Direct*

a. **Direct examination outline,** for each witness, in chronological order

b. Blank paper after each outline, for notes on opponent’s cross-examination

*9. Cross*

a. **Cross-examination outline**, for each anticipated witness, in alphabetical order

*10. Closings*

a. Blank paper, for notes and ideas during trial

b. **Closing argument outline**

c. **Rebuttal argument outline**, if plaintiff

*11. Instructions*

a. **Requested jury instructions form**

b. Copy of your requested instructions and verdict forms

c. Copy of opponent’s requested instructions

*12. Law*

a. **Objections checklist**

b. **Exhibits foundations checklist**

c. **Experts checklist**

d. Federal / state rules of evidence

e. Trial brief

f. Opponent’s trial brief

g. Copy of key statutes and cases

h. Blank paper, for notes on trial errors for appeal

Mauet, Thomas A., Trial Techniques and Trials, New York, Wolters Kluwer, 2013.

**Objections Checklist**

Objections to witness questions and answers

(*Substantive objections*)

Irrelevant / immaterial - 401-402

Violates character trait rules - 404-405, 608(a)

Violates other acts rule - 404(b), 608(b)

Violates habit rule - 406

Violates policy exclusion rules - 407-411

Violates sexual assault rules - 412-415

Violates privileges rules - 501

Unfairly prejudicial / waste of time - 403

Hearsay - 801-807

(*Form and procedure objections*)

Witness incompetent - 601

No first-hand knowledge - 602

Improper lay witness opinion - 701

Misstates / mischaracterizes evidence

Assumes facts not in evidence

Leading - 611(c)

Calls for narrative answer

Asked and answered / repetitive / cumulative - 403

Speculative

Confusing / misleading / vague / ambiguous

Compound

Augumentative

Embarrassing / harassment - 611(c)

Unresponsive answer

No question pending

Improper refreshing recollection - 612

Improper impeachment / failure to prove up

Beyond the scope - 611(b)

Improper rehabilitation - 613, 801

Improper rebuttal

Unfair

Violates original documents rule - 1001-1004

Calls for testimony barred by pretrial order

Objections to expert witness questions and answers

Not proper subject for expert testimony - 702

Expert not qualified - 702

No foundation / testimony not relevant or reliable - 702

Underlying tests not properly done

Sources relied on improper - 703

Opinions and bases not properly disclosed - FRCP 26(a)(2)

Bases for opinions inadmissible - 703

Improper form for opinions - 702

Improper ultimate issues testimony - 704

Improper hypothetical

Improper use of treatise on direct or cross - 803(18)

Objections to exhibits

Improper foundation witness

Improper foundation procedure

No foundation

Irrelevant / immaterial - 401-402

Hearsay - 801-807

Record not trustworthy 803(6)

Record contains double hearsay / hearsay within hearsay - 805

Record contains inadmissible expert opinions and conclusions

Contains inadmissible matter (insurance, etc.)

Violates original documents rule - 1001-1004

Reading from / showing exhibit not in evidence

Improper marking of exhibit

Reading from exhibit unfairly / out of context - 106

Objections to opening statements

Mentions inadmissible evidence

Mentions unproveable evidence

Arguing

Stating personal opinions

Discussing the law

Mentioning the opponent’s case

Appeals to sympathy or prejudice

Objections to closing arguments

Mentions unadmitted evidence

Misstates / mischaracterizes evidence

Improper comment on missing evidence

States personal opinions

Appeals to sympathy or prejudice

Improper argument of / misstates the law

Improper damages argument

Argues consequences of verdict

Improper rebuttal argument

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