



The Litigation Paralegal's Role at Trial

by Greg Wayment

It is often said that the highest form of legal advocacy occurs during a trial. Most civil trials represent the culmination of years of effort interviewing clients, gathering information, reviewing documents, applying the facts to the law, motion practice, deposing witnesses, mediations, and settlement discussions. Usually if a conflict survives to the trial date, all parties and attorneys have invested a substantial amount of time, effort, and money and only a judgment, whether it be favorable or not, will provide a remedy.

The juror system is a thing of beauty. People are randomly selected from the community and bring with them to the courthouse a variety of backgrounds, interests, and talents. Oftentimes, they are not overly enthusiastic about the idea of devoting weeks or even months to being the trier of facts in a civil dispute. It is an incredible thing to witness how they are able to sort through mountains of evidence, often very technical in nature, listen and take insightful notes, understand the nuances of the dispute, and ultimately deliver a more accurate and fairer verdict that can be achieved from any other method.

A well-trained and engaged paralegal can be a crucial member of a trial team. Your paralegal can assist with substantive issues and tasks as well as perform the legion of ministerial tasks that accompany a trial. By having your paralegal attend to these things, it frees up your ability to focus on last-minute briefs, opening and closing statements, witness preparation and outlines, and ultimately, trial strategy.

Once you know a case is going to trial, the first step is to identify the trial team and create a plan. Ideally, those who will be part of the trial team come together to discuss what needs to be accomplished and who is going to be responsible for each task. It is important that your paralegal be involved with the process from the beginning, as it will help the flow of the preparation.

Communication is crucial as every trial is unique in its requirements, and every attorney will have different expectations.

Your trial paralegal can help by creating a master task list with specific deadlines for each task. It is important to delegate duties and match tasks with the appropriate skill sets and bandwidth. In a smaller firm, everyone might have specific tasks or areas for which they are responsible. One of the preparations for trial is subpoenaing witnesses that have been identified. Your paralegal can assist you by drafting and serving subpoenas and following up as trial gets closer.

Arguably the most important paralegal responsibility with a trial is before the trial begins and involves the exhibits. Trial exhibit lists are needed to keep track of which documents have been designated as potential trial exhibits and are usually exchanged with opposing counsel and sent to the judge on the day designated by the trial scheduling order, typically a few days or a week before trial. Your paralegal can do the substantive drafting of a trial exhibit list. When there are lots of exhibits, typing in descriptions, dates, and Bates numbers can be a burdensome task, but there is also a duty to create a consistent, professional, usable tool. A well put together trial exhibit list will make the process of arguing, agreeing, and admitting exhibits into evidence a cleaner process.

The documents or exhibits propel the narrative of the trial. More often than not, the deposition exhibits become the key documents in a case and parties may stipulate to marking those or designating those as the first set of trial exhibits. This can be helpful because in a larger matter where there are hundreds of deposition exhibits, this gives the paralegal an opportunity to begin well in advance. Your paralegal's role in preparing

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exhibits may include creating the exhibits, adding a trial exhibit number, collating them in an electronic format, loading them into a trial presentation software, and creating binders for you, the judge, witnesses, and opposing counsel. The exhibits are usually created in PDF format and your paralegal can be responsible for creating the discs for that exchange. More often than not, the exhibits are being exchanged via an FTP or internet-based file sharing program.

Another paralegal responsibility is marshaling the deposition testimony for use at trial. A time-honored tradition while examining a witness at trial is to have the witness ceremoniously unseal his or her own deposition transcript and read what he or she said in his or her deposition. Your paralegal can ensure the sealed original transcripts have all been received from the court reporter and should create an organized system where they can be accessed during trial. A paralegal can also ensure that electronic copies of the depositions can be accessed in the trial presentation software. If there have been videotaped depositions, those video files can be synched with the transcripts and your paralegal can help by creating clips of relevant portions as outlined in the deposition designations.

Another substantial task of trial preparation is opening and closing statements and witness outlines. When you begin practicing your outlines, your paralegal can offer to help by listening, taking notes, and offering insight. The other attorneys at your firm may be good at providing input and offering a legal perspective, but may have a hard time seeing it from a jurors' perspective. Are you reiterating important themes? Are you clear? Are you staying away from unnecessarily complex words or using confusing legal terminology? Your paralegal can help by providing insight and observations in a respectful way.

Paralegals can draft the jury instructions. Oftentimes, the judge may have a set of jury instructions he or she prefers so the instructions just need to be tailored to the specific case. Part of this task is assembling a courtesy and argument binder containing the jury instructions as well as the relevant case law, authorities, or other references. If the jury instructions reference treaties, digests, or other more obscure sources, these things can take some time to put together and your paralegal can ensure that this task has been completed well in advance of the deadline.

Even as courtrooms get more electronic, another long-standing tradition is to use oversize demonstratives. A simple and concise

demonstrative can have a major impact. Your paralegal can help ensure that the demonstratives are prepared in a way to highlight key points and avoid too much information or data. Demonstratives are most effective when they are colorful, bright, and persuasive. Your paralegal should be the contact with the vendor preparing them and ensure they are done on time. If done in advance, you can practice using them when running through your outlines and your paralegal can give you insight into how it looks and possible impressions that the jurors may have. Your paralegal will have a plan for how the demonstratives are going to be transported to and from the courthouse.

Another area where a paralegal can have a maximum impact during the trial process is understanding and preparing the technology. Most attorneys go to court now with a laptop and electronic copies of everything. Your paralegal can ensure the trial presentation software will run flawlessly and that the attorney tasked with running it at trial understands how the exhibits have been organized and how to run the software. A paralegal can make sure that the speakers, video files, and sound clips will work seamlessly, which includes finding out what the wireless password is that week at the courthouse and making sure the laptops are wirelessly connected for internet access. You or co-counsel may need quick access to something on the firm's network or your own email files.

A key role for the paralegal at trial is overseeing all logistics. Your paralegal can help understand the judge in advance by meeting and getting to know the court clerk and attending a hearing or part of another trial held in front of the judge. Some judges may be very formal, and some may prefer a more relaxed atmosphere. Some may prefer technology be used whenever possible; some might be irritated with attorneys relying too much on screens. Your paralegal can meet the court clerk and get to know him or her and through him or her get to know the judge. With this relationship with the court clerk, your paralegal would be the best person on the team to be the front-line communication for logistics with the court.

If at all possible, your paralegal should work with the court clerk to go to the courthouse the day before trial begins to set up any carts, binders, or demonstratives and to make sure the technology will work. A paralegal should know which side you prefer to sit on. Whether you will need an oversize pad of paper, easel and markers, and be prepared to have those things on hand. Your paralegal can also create and update a matrix with contact information for clients, witnesses, and expert witnesses. When you get busy

with trial preparation, your paralegal can be the first point of contact for scheduling and keeping witnesses informed.

On the first day of trial, hopefully any outstanding motions or issues have been decided and the court can get right into jury selection. Your paralegal can be helpful by attending, taking notes, and paying attention to the potential jurors by observing behavior. There is a lot of information coming very fast during this process, and most cases are not big enough to warrant hiring jury experts. There is a lot of pressure to get this right. Again, sometimes the non-lawyer perspective can be invaluable, and your paralegal can help by providing insight and observations in a respectful way.

Once the trial gets underway, your paralegal's role may vary. Some attorneys may want their paralegals to run the technology in the courtroom. If so, they can also assist in keeping track of the introduction and admission of exhibits. As mentioned previously, your paralegal is the point person for keeping the witnesses informed of when they are needed to be at the courthouse. Sometimes your paralegal may be a buffer between you and your clients or your clients and the opposing party. Your paralegal can be helpful by accompanying clients or witnesses in the hallway. Oftentimes he or she has been in a major dispute with the other party so a face-to-face meeting in a hallway or bathroom with no buffer can be awkward or volatile.

Some attorneys have their paralegals' duties be outside of the courtroom with such tasks as transporting clients from the airport or a hotel, delivering lunches and drinks to courthouse,

or at the end of each day of trial, typing up their notes. At times there may be issues with testimony that needs to be researched, additional exhibits to be added to the exhibit binders and exhibit lists, and copies made (both electronic and hard). Sometimes, you may want transcripts of the trial as it is occurring. Your paralegal can coordinate this process. If it is a long trial, you may task your paralegal with analyzing trial testimony for inconsistencies or false statements. All of these tasks can be managed by your paralegal.

Once a trial is completed your paralegal can be helpful by calling and interviewing jurors. The court will not usually provide any contact information for jurors, but both sides will have their names and there is no rule against contacting them after a trial has concluded. Sometimes the juror will not want to discuss the case and will not welcome the intrusion. More often than not though, they will have observed the paralegal coming and going during trial and will know who they are. And they may appreciate being asked their opinion and perception of the trial and the trial team. This insight can be valuable when preparing for the next trial. The sooner after the conclusion of trial the better, as memory will fade.

Ultimately the goal of your paralegal is to assist the trial team in every way possible. A valuable member of a winning trial team is an organized and efficient paralegal. Most trials are stressful and lots of extra time is spent at work. But it can also be a rewarding time, and with the help of your paralegal, hopefully you can obtain a positive outcome for your client.



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