

PREPARING FOR TRIAL

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TABLE OF CONTENTS

I. INTRODUCTION. . . . . 2

II. ANTICIPATE COURT AND STATUTORY DEADLINES. . . . . 2

III. COUNTDOWN TO TRIAL . . . . . 3

    A. At least 45-days before trial . . . . . 3

    B. At least 30-days before trial . . . . . 3

    C. At least 2-weeks before trial.. . . . 4

    D. The week before trial.. . . . 4

    E. The weekend before trial.. . . . 5

    F. The night before trial.. . . . 5

## I. INTRODUCTION

Even though only a small percentage of cases go to trial, every action you take in a case should be viewed with a trial in mind. The best way to prepare for a fair settlement is to prepare for trial. The fact that you are preparing for trial will result in the best settlement.

As you interview or depose potential witnesses, constantly ask yourself how will this witness's testimony and appearance affect the outcome of the case?

As you examine documents, ask yourself – is this a document that will have an effect on the outcome of the case? What will that effect be?

## II. ANTICIPATE COURT AND STATUTORY DEADLINES

A. Expert witnesses in professional negligence cases - §668.11(1) *Code of Iowa* requires plaintiff to designate experts within 180-days of the answer. Defendants have 90-days after plaintiff has identified experts.

B. In other types of cases, expert designation is governed by a scheduling order. Never wait until the last minute to identify your experts. Always have a final opinion before naming an expert.

C. Be sure you have completed all depositions that you want to take 30 to 45 days before the discovery deadline. You never know what new witnesses or evidence may be discovered or identified. Be sure you do not run out of time for unanticipated depositions or the need for requesting additional documents or propounding additional

interrogatories. Your opponent has 30-days to respond. See IRCP 1.509(1) and IRCP 1.513.

III. COUNTDOWN TO TRIAL

A. AT LEAST 45-DAYS BEFORE TRIAL

- (1) Confer with experts to decide if any additions need to be made to previously made answers to interrogatories.
- (2) Confirm in writing the availability of witnesses. If a person you plan to call to testify will not be available when needed, you can take his or her deposition for use at trial IRCP 1.704(3). Be sure to decide if the deposition should be videotaped.

B. AT LEAST 30-DAYS BEFORE TRIAL

- (1) Amend earlier expert witness interrogatory answers. IRCP 1.508(b)(2)(3).
- (2) Amend other interrogatory answers as necessary.
- (3) Arrange for preparation of charts, graphs, and blow-ups of exhibits. Be sure that they are complete prior to the final pretrial conference so that you can show them to other counsel and resolve any issues about admissibility.
- (4) Have Legal Assistant begin work on preparation of summaries of depositions of witnesses who will testify at trial

B. AT LEAST TWO WEEKS BEFORE TRIAL

- (1) Contact your trial witnesses to arrange time to meet for final witness preparation.
- (2) For each of your witnesses, prepare preliminary list of questions and anticipated cross-examination.
- (3) Finalize Exhibit List – Have four sets of exhibit notebooks prepared. One for witnesses on the stand, one for the court, one for opposing counsel and one for you.
- (4) Review demonstrative exhibits for needed changes.
- (5) Prepare required pretrial statement or report.
- (6) Prepare requested jury instructions.
- (7) Prepare trial brief

D. THE WEEK BEFORE TRIAL

- (1) Meet with and prepare witnesses for trial testimony. If you have not already done so, give each witness a copy of his or her deposition to review (not memorize) prior to testifying. Decide what exhibits will be used with which witness and provide them with copies.
- (2) Read each exhibit in your notebook and each exhibit your opponent will offer at trial. Hi-light portions that you want to be able to find quickly.
- (3) Prepare outline of your cross-examination of your opponent's witnesses.
- (4) Obtain copies of jury questionnaires, if available, and read them.

E. THE WEEKEND BEFORE TRIAL

(1) Prepare outline of opening statement and organize all exhibits and demonstrative aids in the order that you will be using them in your opening.

(2) Prepare list of jury voire dire questions.

(3) Review outlines of witness testimony to eliminate any unnecessary areas of questioning.

F. THE NIGHT BEFORE TRIAL

Shine your shoes and get to bed early. Get some sleep – if you can.