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Published: *The Recorder*

February 2013

An Associate's Guide to Surviving Trial Crunch Time

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You are in the woods. It's dark, and you are anxious, probably lost. Trying not to panic, you suddenly feel the soft forest floor give way to a hard surface. Asphalt! You look to the left, darkness. You look to the right and a large orb of light dangles over the horizon. Suddenly, the single light turns into two. You stand transfixed, and paralyzed. You are a deer and about to be run over by a car carrying a team of lawyers. You wake up in a cold sweat. You're not a deer. You are an associate on a trial team and it is 60 days before trial. This article is a broad overview of some of the key things to keep in mind during crunch time in California state courts so you are in the car, not the deer in front of it. This article is not meant to be exhaustive; it is a roadmap of the highlights.

60 Days to Go

Master the Calendar and Make Deadlines Your Friend

If you do not have a trial calendar and/or task list already prepared, the best thing you can do now is to prepare one so there are no surprises. You will consult this calendar/task list weekly if not daily as trial inches closer. In calculating deadlines, you will save yourself some heartburn if you calculate all deadlines based on the different methods of service. For example, for a motion to exclude you should list the filing date and all of the service deadlines. In California, a motion to exclude expert witness testimony must be heard on or before the 10th day before the initial trial date. However, it must be served at least 16 court days before that hearing. So, when calendaring the due date for that motion, you will have different deadlines

depending on your method of service. Your calendar should have all the mail, FedEx and personal service deadlines.

Although it is always ideal to have something ready by the mail service deadline, in reality, you will occasionally utilize the personal service deadline. Knowing exact deadlines is crucial to give filing staff a heads up so that they can make the appropriate arrangements. Like many attorneys, the filing staff dislikes (understatement) when last minute-rush projects land on their desk.

An important note about computer generated deadlines: it is not the best practice to rely solely on computer generated dates. Maybe it goes without saying, but sometimes it seems far easier to trust a computer generated calendar your assistant prepared than to "hand" calculate the deadlines. While technology has vastly improved, these programs are still far from perfect. It is always better to double check than to blow a deadline, so take the time to "hand" calculate and confirm key filing and service deadlines. Knowing your filing deadlines takes a lot of the pressure off.

Discovery Clean Up

Remember all those discovery responses you prepared? Review them to determine if there are any newly discovered facts that change or modify your prior responses and serve amendments as needed. Look for holes in discovery questions you served and prepare final written discovery. If there are no holes, it is always a good idea to serve a demand to have all prior discovery supplemented. We generally wait until the last day

possible to personally serve a supplemental demand just in case the other side forgets to make the demand; we don't like to remind them!

During the 60 days before trial, you should decide if you need experts and retain any you have not yet retained. Make a demand for the exchange of expert witness information on the other side after you have your expert(s), and at least 50 days before trial. Keep in mind that you will need to disclose your experts and summarize their testimony once you serve your demand.

After service and receiving the other side's experts, notice the expert's deposition. Make sure you include a document request seeking all reports and documents concerning an opinion or conclusion reached. (Remember that anything you provide to a testifying expert is discoverable, so be careful what you say and what you provide to your experts!) You only have 35 days to depose experts and must have expert witness discovery done 15 days before trial!

40 Days to Trial

Witnesses

Adverse witnesses generally will not voluntarily show up for trial. Make sure you subpoena all the witnesses you will need to prove your case. The timing of service depends on whether you want



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the witness to bring documents to trial or not, so make sure you look at what you need, and from whom, so you can timely serve the appropriate subpoenas. If you need the other party to testify, you should serve a Notice to Appear.

Complete Trial Preparation

This is where the fun begins. By this point you should have already organized your discovery, documents, case files and completed any research. If you have not, now is the time. You will draft your trial brief to tell your story to the Court and make strategic decisions about evidence to seek to exclude with motions *in limine*.

You are close to the home stretch and should be preparing witness outlines. Review deposition testimony of witnesses you will cross. Outline your examination and make sure you know the answer to any question you will ask. Review documents relating to your witnesses, especially those that opposing counsel might try to introduce. Think about whether any of the documents can be objected to and make notes on your exhibit list.

You will need to prepare any witness assigned to you. This means meeting with each witness (including your client) you plan to call to discuss their testimony. You should review deposition testimony and exhibits for each witness so you are ready to walk through mock exams, key exhibits, highlight areas where privilege might come up and practice difficult testimony sections. Take a moment to explain how things will work at trial and the general process, especially for witnesses who have not testified before.

It is also a good idea to remind the witness about general rules of being a good witness: (1) listen; (2) don't interrupt; (3) make sure you understand

the question; (4) breathe; (5) take a beat before answering; (6) don't get flustered if opposing counsel points out inconsistent statements; (7) don't look for help; and (8) stay cool. Also advise your client not to respond when others are on the stand. There is nothing the judge hates more than to catch an eye roll or some distraction.

You should also meet with your expert to discuss their opinions, the process used to reach their opinion, and walk them through hypotheticals and a mock cross.

During this time, if you have a jury you will prepare voir dire questions, jury instructions, and deposit jury fees. If you are lucky enough to be giving an opening or closing, you should prepare outlines for both.

30 Days to Trial

Communication is Our Best Friend

Young lawyers are always advised to "check-in" with their supervising lawyers on all of their cases. As it gets closer to trial, the need to communicate with your team is even more important. Check-in with your supervising lawyer(s) often. Staying in touch will save you a lot of time and energy. For example, if your supervising lawyer has any specific arguments and key facts he or she would like to incorporate and/or highlight in an examination, he or she is far more inclined to share those with you if you stop by to "check-in" on a regular basis and in some cases daily. A lot of young lawyers rely heavily on email and believe that if their supervisor needs their work on a particular project or has specific thoughts on a brief, that he or she will simply send an email. Some do, some don't.

While we personally love email, in some office settings, it cannot replace face-to-face interaction. For some senior

lawyers, email is considered more of a nuisance than an effective communication tool. Email can also be misdirected while a face to face talk cannot. For some lawyers, it is easier to verbally organize their thoughts than to divulge them by email. If you happen to practice where face-to-face interaction is important, keep that in mind as the clock winds down to trial.

Prepare a trial notebook and consult with the partner on what they like in their binder. Generally they contain exhibit lists (include one to give to the clerk), witness lists, examination outlines, deposition summaries, expert witness designations, trial subpoenas, trial briefs, pretrial motions, key research and memoranda. Be available, try to get into the office first, and stay calm! Your attitude will impact the entire team. ■