

# The Paralegal's Role In Trial Notebook Preparation And Trial



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# Trial Notebook Tabs



- I. Client Contact
- II. Plan
- III. Investigation & Discovery
- IV. Motions
- V. Statutory Summary Suspension
- VI. Trial De Novo
- VII. Criminal Trial
- VIII. Legal Research
- IX. Correspondence
- X. Appeal

# Motion Binder



- An exhibits list
- An outline of the points the attorney intends to make and exhibits to be introduced.
- The motion(s) to be argued
- Any memorandums of law to support a motion



- A copy of cases cited within the motion
- Exhibits to be introduced with the motion
  - a. All exhibits will have attached to them the predicate questions for its admission.



- Witness tab for each witness that will testify during the motion hearing.
  - a. An outline of points the attorney intends to make with this witness.
  - b. A list of exhibits to be introduced during the witnesses testimony.
  - c. A list of questions the attorney intends to ask the witness.



- The questions at this point are not what your firm's Trial Notebook should look like;
  - but why is a Trial Notebook used;
  - what should it contain; and
  - what role the paralegal plays in the preparation of this Trial Notebook.

# Why is a Trial Notebook Used?



- To insure that the attorney effectively and seamlessly presents his case.
- To insure that all points are presented and evidence is properly admitted.
- To insure the attorney looks organized and efficient in front of the Judge and Jury.

# Criminal Trial Notebook Folders



- **Charging Instrument**
- **Plea Negotiation**
- **Preliminary Hearing**
- **Jury**
- **Opening Statements/Closing Statements**
- **Exhibits**
- **Memorandums of Law**





- **Pleadings**
- **Motions**
- **Orders**
- **Stipulations**
- **Witnesses**
- **Transcripts**
- **Legal Research**
- **Paralegal Trial Folder**
- **Attorney's Trial Notebook**

# Charging Instrument



- Behind this tab will be the charging Instrument.
  - Examples would be:
    - ✦ The client's tickets
    - ✦ Information
    - ✦ Indictment

# Plea Negotiation



- Behind this tab will be any correspondence and communication between the Prosecuting Attorney regarding proposed dispositions of the case.

# Preliminary Hearing Notebook



- The preliminary hearing notebook will contain the following:
  - Statute for the crime charged
  - Statutes for all lesser and included crimes
  - The Charging Instrument(s)
  - Police Report
  - Witness Statements
  - Exhibits
  - Questions for all Witnesses

# Preliminary Hearing



- This hearing takes place before the Criminal Trial. A preliminary hearing is only held if the client is being charged with a felony.



There are two questions that are addressed during the preliminary hearing:

- Was the crime charged committed?
- Did the Defendant commit the crime?

This hearing does not determine guilt or innocence.

# Jury



- This folder holds the following sub-tabs:
  - Jurors
  - Voir Dire Questions
  - Jury instructions
    - ✦ Instructions requested
    - ✦ Instructions given

# Voir Dire



- Jury selection or Voir Dire is a critical part of the trial process.
- It is the process by which the defense attorney and prosecuting attorney (through questioning) discover any bias of the potential jurors.



# Voir Dire Questions



- The attorney will decide on a list of questions to be used during the Voir Dire process.
- A printed copy is placed in the client's physical file behind the Voir Dire tab in the Voir Dire Trial folder.

# A Potential Juror Can Be Challenged In Two Ways:



- Challenges for Cause:
- Peremptory challenge:

# The Time For Voir Dire Is Limited



- For this reason many attorneys use weighted questions to quickly gauge the juror's position on issues important to the case.
- The paralegal involved with jury selection will take notes during the Voir Dire questioning.

# Weighted Questions



- Examples of weighted questions:
  - Police officers should be believed over other witnesses?
  - Police officers, because of their training have keener senses than other people?
  - Police officers, because of their training have less bias than other people.



- The potential jurors would be asked to answer these weighted questions as follows:
  - Strongly agree = 6
  - Moderately agree=5
  - Slightly agree=4
  - Slightly disagree=3
  - Moderately disagree=2
  - Strongly disagree=1

# Example Of A Juror Card



Juror # 27

Sex M/F                      approximate age 30+

Weighted questions: 1\_\_\_\_ 2\_\_\_\_ 3\_\_\_\_ 4\_\_\_\_ 5\_\_\_\_ 6\_\_\_\_  
7\_\_\_\_ 8\_\_\_\_ 9\_\_\_\_ 10\_\_\_\_ 11\_\_\_\_ 12\_\_\_\_ 13\_\_\_\_ 14\_\_\_\_

Career field \_\_\_\_\_ Children \_\_\_\_\_ Ed. Level \_\_\_\_\_

Marital status S/M/D Race \_\_\_\_\_

Other notes: (note worthy comments made by the potential juror:

- A friend of his family killed in an accident that involved D Driver.
- I think the laws are not harsh enough.

# Information The Paralegal Will Note About The Jurors



- The potential juror's number
- The sex of the potential juror
- The age of the potential juror
- The employment of the potential juror
- Family information of the potential juror



- The education level of the potential juror
- Race of the potential juror
- Marital status of the potential juror, and
- The answers the potential juror gives to the weighted questions
- Also record statements made by a juror that indicates a potential bias.





- After the Voir Dire is complete, the paralegal will tally the numeric value of each potential juror's answers.
- This, coupled with the other information the paralegal has noted, will assist the attorney in his/her decision on which jurors should be retained or eliminated.

# Opening Statements



- Opening statements are the first opportunity the attorney has to present to the trier of facts, his theory of the case.
- The attorney may have the paralegal type up his/her opening statements, or an outline of the points the attorney intends to address.
- A copy is filed in the client's electronic file and a copy is printed out and placed behind the opening statements tab in the attorney's trial notebook.

# Exhibits



- This tab in the criminal trial folder contains: any and all exhibits that will be used at the criminal trial to support our case.



- All exhibits will have attached to them the predicate questions for admission.
- This is a list of what is required to lay the proper foundation for the exhibits admission into evidence.

# Pleadings



## Pleadings

Behind the Pleadings tab/folder you will find:

- Entry of Appearance (on right side of the folder)
- Procedural/Scheduling orders of the Court (on left side)
  - ✦ Example:
    - ✦ An order granting a continuance.
- Notice of Appeal

# Motions



- Behind the motions tab are all substantive Motions

➤ Examples:

A MOTIONS TO SUPPRESS PBT RESULTS,  
A MOTION TO SUPPRESS HGN, and  
A MOTION TO PRECLUDE TESTIMONY to name a  
few.



- This binder will not contain ordinary motions such as a motion to continue, these procedural motions will be found in the pleadings folder.

# Orders Folder



- **Orders**

Behind the Orders tab/folder you will find all substantive Orders of the Court:

- ✦ Example:
  - ✦ An order suppressing the EBT results.
  - ✦ An order suppressing the HGN field sobriety test and results.



# Stipulations



- This folder contains a list of any and all stipulations made by either party;
  - Example:
    - ✦ No calibrations logs for PBT or EBT.
    - ✦ Stipulating that the NHTSA manual is the standard for officer training in DUI detection and field sobriety testing.
    - ✦ Stipulating to the weather conditions.

# Witnesses



- **Experts Witness**

(white or black three ring binder labeled with Expert's name)

- Each expert witness will have their own binder.

- Example of binder name: (Expert Witness Lowe)

# Expert's Binder Contains



- Witness Summary
- Experts Case Evaluation
- Reports – any official report sent by the expert.
- Affidavit
- Exhibits – any exhibits prepared by the expert for use at trial.
- Experts CV – resume.
- Transcripts of previous testimony of the expert.

# Witnesses



- Each witness will have their own soft binder.
  - Example of binder name: (witness Smith)

# Witness Binder's



- Witness Summary Form.
- An outline of what the attorney needs to establish through this witnesses testimony.
- A list of questions the attorney intends to ask the witness.
- Audio Recordings of witness statement
- Affidavits
- Transcript of previous testimony of the witness (highlighted and tabbed).

# Transcripts



- A copy is placed in a three ring binder. It is highlighted and tabbed by the attorney or paralegal.
- Original transcript to the attorney's exhibits file.

# Legal Research



- This tab/folder of the trial notebook contains sub-tabs for all the information the attorney will need as reference materials.

# Law



- Cases—this sub-tab will contain supporting cases not used in the memorandums or motions that support any issue the attorney anticipates will be an issue at the trial.
- Statutes—are self explanatory, what statutes apply to the issues in this case or arguments the attorney intends to make at trial.
- Court Rules—which Court are we in and what are the rules specific to that Court.



# Studies



- A bound copy of any study the attorney intends to use at the trial. Also put an unbound copy in this file for the court.
- The bound copy used by the attorney is indexed, tabbed, and highlighted.

# Paralegal Trial Folder



- When the paralegal assist at a hearing or trial;
- He/she should always prepare a binder for his/her use.

# Items That Will Be In The Paralegals Binder



- Witness questions tabbed by witness name
- A Master Exhibit list
- An evidence list indicating the items the attorney intends to admit into evidence after the proper foundation is laid for its admission.
- A blank exhibit form on which the paralegal will list exhibits introduced by the Prosecuting Attorney.

# Visual Exhibits



- If the visual exhibit is a document;
  - The paralegal must set the document up for display prior to arriving in court.

# Content Of The Paralegals Electronic Trial Folder



- Segmented video
  - Car in motion
  - First contact
  - Exiting the vehicle
  - HGN instruction phase
  - HGN test
  - Walk and Turn instruction phase
  - Walk and Turn test
  - One Leg Stand Instruction phase
  - One Leg Stand Test
  - Any additional segments the expert witness may refer to.
  
- Visual exhibits

# Attorney Trial Notebook



- Master exhibits list for all exhibits and all witnesses.
- A list of the predicate questions for the State's exhibits.
- A list of questions that will be asked of the state's expert(s) and witnesses.
- Master evidence list.



- Witnesses (a tab for each witness, in the order they will be called to testify)
  - An outline of the points the attorney intends to make with the witness, and the exhibits that will be used during the witness's testimony. Set up in book form on the left side prior to the questions.
  - All questions to be asked the witnesses.
  - To include Predicate questions regarding the Exhibit(s) the witnesses will testify to.