

**ORGANIZING THE
TRIAL NOTEBOOK**

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ORGANIZING THE TRIAL NOTEBOOK**IX. WHAT IS A “TRIAL NOTEBOOK”, ANYWAY?**

There can never really be just one “ultimate” trial notebook. Trial Notebooks are individual as the people who practice law. It should be a reflection of the attorney’s organizational skills, thought processes, trial strategy, and overall theme of the entire case. Some lawyers prepare notebooks for temporary orders hearings, mediations, some prepare exhibit notebooks -- the kind of notebooks one can use is only limited by the creativity of the lawyer and the needs and size of the case.

X. WHY HAVE A TRIAL NOTEBOOK?**A. Flipping vs. Digging**

Anyone who has used a Trial Notebook can tell you that it’s much easier to flip through indexed sections in a notebook when trying to find a specific pleading or document in a notebook format than digging through red-ropes and file folders. In notebooks, documents are bound together and stay where they belong. If documents are just pulled out of file folders, they can end up anywhere - spread out all over the counsel table, on the floor, on the opposing side’s counsel table.

B. The Theme of the Case

Going through the process of developing a Trial Notebook really helps crystallize the theme of the case and the trial strategy. Forcing the case to fit into a structure imposes an organization to the case that keeps everything under control. Visualize

your desired “end” of the case, what you hope to achieve for your client. Then, with the end in mind, build the notebook with the tools you feel you will need to accomplish the task.

XI. WHEN TO PREPARE THE NOTEBOOK?

The best time to begin preparation is the very day the client signs the fee agreement and hands you the retainer. If you begin by using the notebook format for your general files, i.e., pleadings, correspondence, notes, etc., then you can easily transfer this organizational structure to a Trial Notebook. Or, if the case is relatively small, just modify your case file to take to the Courthouse. For example, some law firms use the Bindertek notebooks for the case files. These are specifically made for hands-on use, i.e., two hole punched on the left side, which makes it easier to access and read the top left part of a document. If you have a temporary orders hearing early in the case, and the only documents you need are the pleadings, financial information statement, maybe some bank account records, all of that can easily become part of your case file and can be flagged for reference when asking questions of the witness.

XII. WHO SHOULD PREPARE THE NOTEBOOK?

The notebook must be geared to the reflect the thought processes of the lawyer in the overall theme of the case. It is imperative that the lawyer transmit this “philosophical” information to the support staff who actually pull together, copy, index and prepare the notebook. Take the time to discuss the case plan with your support staff. If they

understand your “game plan”, it will be much easier for them to review documents and provide valuable input as to what should be included. In most law firms, the paralegals have a thorough knowledge of the case, the witnesses, the documents produced, and how they link together. If the legal assistant has a good understanding of what the lawyer expects to happen in the trial, and the order in which it is likely to happen, then he or she will be able to work independently to put the basics of the Trial Notebook together, and use their knowledge of the case to offer suggestions and make comments about the contents.

XIII. WHAT TO PUT IN THE NOTEBOOK?

Depending on the size of your case, what to include might be almost everything, if you have a relatively small, uncomplicated case. In the event your case is complex, with many issues and many exhibits, you might have to decide what NOT to put in the notebook. And you might have to have more than one notebook.

As you can see from the accompanying paper regarding Mediation Notebooks, if properly prepared, the Mediation Notebook is the perfect genesis of the Trial Notebook, assuming an unsuccessful mediation. There are the obvious basic items to be included: the live pleadings of each party, the inventories of the parties, discovery responses applicable to the issues being tried to the Court, any pretrial motions that need to be heard, etc.

Assembling the notebook should be a painstaking process - hopefully not started the night before the trial begins. Following is a general outline of the most commonly used sections in the Trial Notebook for a trial before the Court of a “typical” divorce, and

the step-by-step process used in the authors’ law firm to put it together:

A. Live Pleadings

Read the live pleadings of both parties. Make sure that you understand what issues are before the Court (and which AREN’T). Make a list of what relief each side is requesting, especially if this is a case that has been active for quite a while and you haven’t reviewed the Second Amended Original Petition for several months. Highlight and flag the relevant portions of the pleadings. Put your list of issues, yours and theirs, in this section. This list may be helpful if you are making an opening statement, to crystalize the issues for the Judge.

Any temporary orders under which the clients are currently operating should be included and any applicable issues highlighted for reference.

B. Pretrial Motions

If there are any issues which need to be ruled on prior to trial, for example, a Motion in Limine, or Motion to Exclude, Motion to Interview Child, etc. these should be included for ease of reference by the attorney in presenting the arguments to the Court.

C. Discovery Responses

Review the discovery responses (both sides) to determine where any disputes might arise during trial, or any responses which might be used to impeach the other side. Highlight and flag those responses which you anticipate you will need to refer to at trial. If applicable, copy and include portions of depositions which might contain impeachment

testimony.

It is very helpful to have an index of documents produced by both sides, whether or not you intend to use the documents as exhibits. It serves as a checklist for the attorney to make the appropriate objection if the other side tries to offer any evidence not previously produced.

D. Inventories

Again, highlight and flag any pertinent portions of the parties' inventories. If either party claims extensive separate property, you might have a subsection for this area. If your client is claiming separate property which is disputed by the other side, include in this section either working copies of the documents supporting your client's claim, or if they are too extensive, a list of which exhibits you intend to use to support your contention.

E. Witnesses

This section should begin with a list of the names, addresses and phone numbers of the witnesses you intend to call and the order in which you would like to call them. If any witnesses need to be taken out of order, they should appear first on the list to remind you to make this request of the Court or confirm any agreements with opposing counsel about the order of the witnesses. Following this list should be a page for each witness with either specific questions or topic areas (depending on the attorney's preference) for examination. Include a copy of any subpoena which has been served on this witness. Also include a list of any documents which you will be entering into evidence via that witness. If space permits, make a working copy of such documents to include in this

section. When preparing the synopsis of questions, leave enough room in the margins for note taking during the trial. This space can be used to check off each area of questioning, or to make notes about re-direct. Make sure the paralegal who is with you at trial has an exact duplicate of this list, so he or she can keep track of the witnesses, call them if necessary, and assist in note taking during direct cross-examination.

Include a list of the opposing parties witnesses, and your client's interpretation of what their testimony will be. Indicate topic areas which you anticipate will be needed for cross-examination. Leave space next to each for notes about additional cross-examination developed after listening to the opposing party's direct examination.

F. Exhibits

This section is the heart of the Trial Notebook. The exhibits in your notebook are working copies, and should be highlighted for ease of reference during trial. Most often, a separate exhibit notebook is warranted. If using a separate exhibit notebook, put an index of the exhibit notebook in your Trial Notebook for cross-reference purposes. The exhibit notebook should be indexed and the exhibits included in the order in which they are intended to be entered. They may also be pre-numbered to coincide with the numbers in the index. Your paralegal will have the copies for the court, witnesses and opposing counsel in correspondingly-numbered file folders, ready to pull and hand to you as you introduce them. The exhibit index should have a check-off column along the margin so each exhibit can be identified as admitted or not admitted. Most often, it is the paralegal who keeps track of the status of each exhibit, so he or she should also have a copy

of the exhibit index.

3. Subsection: Property

Depending on the issues involved in your case, you might want to divide the Exhibits section into two or more subsections. The Property section might have sub-subsections for Characterization, Valuation, Retirement Plans/QDROS, proposed property division/spreadsheets and the like.

4. Subsection: Children

This section might include subsections for child support, visitation proposals, relocation issues, Social Studies, psychological evaluations, and any other expert reports.

G. Attorney Fees

This section could be included in the Trial Notebook, or the exhibit notebook, whichever is preferred. This section should include a copy of your fee agreement and redacted billing statements for the client. It might also include the CV for the lead attorney, and any attorney's fees expert(s) who you intend to call. Also include any invoices for costs and expenses incurred by the client. Again, the documents in this section which you intend to introduce should be pre-marked and numbered to correspond to the Exhibits list.

XIV. OTHER POSSIBLE SECTIONS OR SUB-SECTIONS:

Of course, if you have a jury trial, the Trial Notebook expands accordingly, with sections for Jury Questionnaire/Profile; Voir dire; Opening Argument; Jury Charge/Instructions/Issues; Closing/Summation in addition to the other possible sections listed here.

Other subsections might include:

- Stipulations
- Timelines
- Abuse issues
- Research
- Premarital or Partition Agreements or
- Other causes of action/issues, i.e., alter ego, intentional infliction, diversion of community opportunity, disproportionate division, etc.

XV. WHAT TO DO WITH IT WHEN TRIAL IS OVER?

A. Review

As soon as practical after the trial, take the time to sit down with your staff and review the effectiveness of the Trial Notebook. Were there times when it was particularly useful? Were there any sections the attorney had wished were included? Did the organization of the notebook "fit" the events of the trial?

This kind of critique by the firm will help in developing the subsequent Trial Notebooks and help the staff be more involved in conceptualizing what is needed at trial.

B. Recycle

Thirty days after the trial is over, and all orders, decrees, QDROs, etc. have been entered, it's time to breakdown the Trial Notebook. Recycle the notebook itself, and the dividers. Replace the dividers with colored sheets of paper, and place the contents in a red-rope for archiving. If there is a research section you feel was particularly useful, you might consider making that part of the file into a reference file under the subject matter for future cases.

Use the witness lists to write appropriate thank you notes to the witnesses who participated on your client's behalf. If

your's was a jury trial, send thank you notes to the jurors for their time and participation.

XVI. CONCLUSION

Judges and juries appreciate the attorney who presented his client's case in a orderly, organized, understandable and succinct fashion. The Trial Notebook, if used and developed properly, is an invaluable tool in the preparation and presentation of your client's case. Even if you have a "bad facts" case, Trial Notebooks can help organize and clarify the case for the attorney, the jury and the judge and maximize the outcome for your client.