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Family Court Trial Prep Guide



The Divorce Solutionist

Welcome!

- **If you are a Member of the Program or a client working with me I hope that you find this guide very helpful as you prep your case for trial. Remember, this is not to be shared with anyone without my express consent.**
- **This helpful guide is intended to be used as you prepare for your Custody Trial in Family Court. It is not intended to replace attorney representation, provide legal advice, or guarantee any particular outcome in your case.**
- **However, it will significantly increase your chances of you getting your desired outcome in most cases. You will have the most common questions answered &/or addressed that many litigants have as they start to prepare for trial.**
- **You should use this guide in conjunction with any other helpful resources, but should also take advantage of any coaching that can only help make this experience less stressful.**

We do offer Unbundled Services, such as Trial Notebook preparation, that can definitely help you hone in on the skills you need to trial your case confidently.

Feel free to ask any questions you might have while you go through each Section of this guide as we intend to make things easy to understand.

We wish you luck!!!

Tracey Bee

These are the things you should focus on as you prepare your case for trial or hearing:

I. Start with creating a solid Trial Strategy

You need to have a theme(s) for your case, not just an idea of what you want. You should be working on a comprehensive plan that includes specific tactics that are intended to achieve the outcome you want. Each tactic should have a specific purpose, nothing should be random. If it's done correctly it will help you to prepare for the "unexpected" as much as possible.

- A. Get everything you have together, i.e. evidence, Discovery, caselaw, judge information, etc.
- B. Make a list of all the strengths of your case, the weaknesses of the other party's (OP) case, the weaknesses of your case, the strengths of the OP's case, the laws that apply (as well as their exceptions), the background information on the judge and his/her previous rulings in similar cases, caselaw that's relevant to unique issues and so on.
- C. Develop the theme(s) of your case based on all of this information, starting with the strongest to the weakest. Do the same from the OP's perspective.
- D. Plot out how you will present your theme(s). You should tell a story and have supporting evidence to emphasize key points.
- E. Be open to tweaking any of these things as "new" evidence or Discovery is uncovered.

NOTE: We offer Trial Preparation as an Unbundled Service where you give your case 1:1 direct attention and prepare every single detail for your upcoming trial/hearing. Visit [here](http://www.thedivorcesolutionist.com) for more information.

II. Analyzing & Organizing ALL evidence

No opportunity to gather evidence should be missed because you only have one shot. So this means that EVERYTHING that you have been collecting, gathering, piling up, etc. should be addressed now. In addition, what has been provided in Discovery should also be scrutinized. That being said, that doesn't mean that all evidence will be "admissible" but it might certainly have other uses even at trial. For example, even though some evidence might be considered "hearsay" it doesn't mean that it should be ignored. There are opportunities to use "hearsay" evidence in the event the other party "opens the door" by bringing up an issue related to the hearsay evidence.

By this time you should have ALL of your recordings, notes, emails/texts, witnesses, documents, screenshots, pictures, etc. on hand. You must take the time to go through each piece of evidence to classify, organize and prioritize it. We must look at all evidence with respect to the issues in your case, the laws, statutes, etc. that apply to them, and your specific court's procedural rules when it comes to evidence.



Things like text messages, social media posts, etc. are all sources of evidence. However, it is important to know what your court's procedural rules are with respect to getting these admitted. More importantly, knowing your specific judge can be even more valuable.

A. Organize your evidence based on: (best to use folders, labels, etc.)

1. Type
2. Issue(s)

3. Relevance
4. Admissibility (hearsay, legality, etc.)
5. Strength
6. Purpose
7. Alternative uses

B. Know the type of Evidence:

1. Documentary (reports/records, letters, emails, bills, etc.)
2. Physical (recordings, pics, etc.)
3. Testimonial (from depositions, hearings, etc.)
4. Real or demonstrative (DNA, fingerprints, etc.)

NOTE: We offer workshops geared specifically towards Organizing Evidence, Hearsay & Objections, and Witness Preparation. If you are interested, please feel free to check out the schedule [here](#).

III. Creating Your Witness List & Prepping Witnesses

Witness testimony usually makes up a large part of your case. Whether it is lay witnesses or expert witnesses, live testimony (in court) is critically important to how your case turns out. Choosing the “right” witness and preparing them for every aspect of trial can be very challenging. Timing, logistics, compatibility, etc. are a few things that should come into play when you focus on choosing your witnesses.

Your potential witnesses can (and usually do) include family members, employers, coworkers, daycare workers, counselors, physicians, educators, coaches, different types of record keepers, and others. Your witnesses should be chosen strategically.

A. You should consider the following when going through your list of potential witnesses:

1. Who are they in relation to your child(ren), the parties, etc.?
2. What will they testify to, i.e. moral character, having witnessed a specific incident, etc.?
3. How will they perform on the stand as a witness? Being questioned by the parties, the lawyers, the judge, etc.?
4. How will they handle being in the courtroom environment? Do they get anxious, nervous, forgetful, etc.?
5. Can they be prepped effectively?
6. Will they show up, are they reliable?
7. Is there anything they will add that is unexpected?
8. Do you have evidence they can get “admitted”?
9. Will their testimony change any significant relationships between any of the parties or child(ren)?
10. Are there any better alternatives?

Depending on your specific jurisdiction, you might have to provide a witness list weeks in advance. (The time period ranges from 2-8 weeks in advance usually).

If your court requires a witness list (or a pretrial statement), you will have to create a list of people who fit into the above categories.

B. Make sure that the list includes the following information:

1. The witness' address and contact information.
2. The witness' availability to appear at a hearing or trial.
3. The witness' willingness to appear at a hearing or trial.
4. Whether the witness' employers will permit them to testify.
5. How to process a subpoena for the witness.
6. What evidence you would need the witness to produce?
7. Most importantly, what the witness will be able to add to your case?

Talking with your potential witnesses well in advance of a trial may reveal weaknesses or strengths in your case – or even other witnesses or evidence you were unaware of before speaking with them.

IV. Preparing your Exhibit & Witness Lists, Pretrial Statement, Trial Notebook, etc.

A. Pretrial Statement

If your court has Pre-trial Conferences, the judge (or some other court personnel) will let you know at that time whether you have submitted a Pre-trial Statement and what should be included in it. (Most states have a form/template on their website.) To get ahead of the game, you should start to familiarize yourself with this statement (and the whole process actually) way before the Pre-trial Conference.

The pretrial statement gives a brief history of your case, identifies the issues that are outstanding, specifies what must be proven for each issue, and highlights what your objections are to specific issues, elements, etc. Careful attention should be given to preparing this particular document as it helps keep you on track and give the court a thorough synopsis of the case. Preparation of the pre-trial statement from the beginning will help you keep track of issues and the evidence and witnesses who need to present evidence for those issues. In addition, it will definitely help you make the most of the short time you will have to present your case.

The pretrial statement is usually dictated by local jurisdiction procedural rules. The deadline, layout, format, etc. should all follow the precise rules for your case jurisdiction.

The information required usually includes:

- Parties' information
- Exhibit List
- Witness List
- Any agreements among parties
- Discovery
- Contested Issues of Fact or Law of the Case

B. Exhibit List

A list of your exhibits (the evidence you plan to present in your case) should be created according to the court rules for your jurisdiction. The purpose of this list is to give the court the “heads up” as to what you will be asking to be offered into evidence. It also helps to make the most of the limited time you allotted to try your case.

Exhibits need to be labeled and marked according to court rules of procedure.

C. Witness List

You will need to provide the court with the names, contact info, etc for each lay witness and expert witness as well. In addition, the issue they will testify to must be included.

D. Trial Notebook

Whether your court requires it or not, you should have a trial notebook with all your exhibits in it when you go to trial. Exhibits would ideally flow in the same order as ~~the~~ testimony you want to present (but that is not always possible) and they should, hopefully, be organized by and grouped under themes/issues. Starting this notebook from the beginning – perhaps even including some of the other side’s pleadings, motions, oppositions and custody affidavits – will give you a good basic reference source to use as you prepare for trial and as you present your case.

Things to include in your Trial Notebook:

- a. Pleadings: Complaints, Petitions, Responses, Answers
- b. Pre-trial Motions: Motions, Order to Show Cause/Show Cause Motions
- c. Discovery:
Discovery Requests, Responses, Notice to Produce, Interrogatories, Notice to Admit

- d. Witnesses
- e. Exhibits
- f. Stipulations or Agreement
- g. Timelines (spreadsheets, charts, etc.)
- h. Abuse issues
- i. Caselaw Research
- j. Relevant Laws
- k. Procedural Rules
- l. Any Agreements

Your trial notebook is extremely important to being adequately prepared for trial.

NOTE: If you need help with this we provide this as a separate service.

V. Craft Opening & Closing Statements, Outline of Questions, Arguments/Objections, etc.

A. Opening Statement

Opening statements are entirely up to the court. Some don't allow them, while others might but with limits. Either way, it is the first part of the actual trial and both sides usually has the opportunity to present one if they are allowed at all. It introduces your judge to what your case is all about and what you plan on proving. It is a great time to build a rapport with the judge too.

B. Closing Statement

Closing statements are usually allowed whether an Opening was permitted or not. Closing are essentially a recap of what you presented, your claims, the problems with the other party's case and your reasons why all of this should result in the judge ruling in your favor.

C. Outline of Witness Questions

Coming up with questions for your witnesses should take precise and deliberate action. Each witness that you decided is essential to prove or defend a claim, issue in the case warrants a set of questions based on that. Questions for the other party should also be given considerable time and effort in coming up with. You need to know the rules of procedure before developing your questions, as asking leading questions on your Direct Examination is prohibited.

Questions for Direct Examination and those for Cross-Examination should be labeled accordingly. In addition, the questions that you ask your own witnesses (that are intended to support your claim/issue) should also be categorized differently than the questions you ask the other party's witnesses.

Expert questions should be created separately and apart from the ones you create for your lay witnesses.

D. Objections

Know how and why to object to questions. You need to know the rules of procedure to familiarize yourself with the basis for objections. Objections to "form" as opposed to "substance" varies depending on your court rules.

Questions to ask when coming up with questions:

- What will they testify to? (Look at your trial strategy.)
- How will they add value to this issue? (After analyzing your evidence.)

- Would the judge see them as credible? (Practising with them might help here.)
- Can they testify in a clear & convincing manner? (This will help you determine if you can ask short and simple.)

VI. Know the Law & Rules of Procedure

You should absolutely know the laws, the court procedures, etc. that apply to every aspect of your case. You might not fully understand everything you read but you should at least attempt to become familiar with their intentions, purpose and application.

Get a hold of the laws and rules and include them in your Trial Memo/Folder. You should read them, read them again, and read them again. Label them according to the specific part of your case they apply to and create an outline so you don't have to fumble to find them when you need to.

VII. Creating your Record for Appeal

If your trial does not end with the outcome you want you have the right to appeal. However, the rules or the grounds for appeal vary from jurisdiction to jurisdiction. Also, the procedure to file your appeal is determined by your local rules.

But what doesn't change much across jurisdictions is the requirement that you have to raise certain issues at the actual trial in order to use as the grounds for appeal. This is what's referred to as "preserving the record". When you have an issue or don't agree with a ruling, a decision, etc. that happened during the trial, you must state your objection "on the record". You must ensure that this disagreement or objection is said so the recording device or person recording the trial hears you. And you must specifically state why you disagree or object, which means knowing the rules of evidence and the court procedural rules too.

VIII. Be Ready for Anything

Family Court is a game of chance. You don't know what you're going to get so be prepared for the unexpected at all times. No matter how much you think you already know, you don't know what the judge will do.

NOTES:



Join the Program.

Don't do this all on your own.

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