

# CHAPTER 11

## TRIAL PREPARATION

### Chapter Outline

#### VOLUME 1, CHAPTER 11

- § 11.1 Litigation: Advocacy in Court
- § 11.2 The Three Stages of Litigation
- § 11.3 Preparing a Trial Notebook
- § 11.4 Preparing Exhibits
- § 11.5 Arbitration: Alternative to Trial
- § 11.6 Examples of Paralegals as Advocates
- § 11.7 Social Media
- § 11.8 Remote Working



### Chapter 11 Introduction

#### KEEPING UP APPEARANCES

Not all paralegals accompany their attorney to trial, but that does not mean you are not involved. You may help draft or modify witness examination questions. You may help to organize and label exhibits that will be introduced as evidence in the trial. You may help to prepare a trial notebook. Whether you are there in person or not, you will make a difference at the trial. Your involvement will also depend on your familiarity with the attorney. One paralegal found this out the hard way. It was the first time he had worked with Jim, one of the 7 litigation attorneys at the law firm. The exhibits, research notes, and witness folders were all collected in an aging cardboard box that was only held together by long strips of tape. A real shabby look.

So, the night before the trial, the paralegal bought a fancy new cardboard box called a “Banker’s Box” so the material could be collected in a much more professional manner.

The next morning the paralegal was in his office when he heard the attorney yelling his name and demanding, “Where the hell is my box?” The paralegal rushed into the office to explain that the old box was thrown into the trash, but that there was, in its place, a beautiful new box. Jim, the attorney, sighed deeply and explained, “I appreciate it, but look at me. I look like a slick attorney, even though I’m not. When a jury sees me, they think I’m a snake! That box helps make me appear more down-to-earth. More relateable. So thank you for your efforts, but get me back my box!” Fortunately the box was still next to the dumpster. Crisis averted. Lesson learned.

*IN THIS CHAPTER . . .*

**THE TRIAL NOTEBOOK**

**STAGES OF LITIGATION**

**THE PARALEGAL AS ADVOCATE**

**§ 11.1****Litigation: Advocacy in Court***Behind the Scenes***A PARALEGAL'S ROLE**

A client has a legal problem and decides to hire an attorney. The attorney is hired to act as his legal advocate. The process of advocating is not simply the trial itself. In fact, most advocacy is performed in the pretrial stage. It is during this pretrial stage that a paralegal is most involved.

Most lawsuits filed with the courts never get to trial. They are settled, dropped, or dismissed during the pretrial stage. If a paralegal performs the assigned pretrial tasks, he may be as responsible as the attorney for the outcome of the legal matter.

A full understanding of certain concepts and techniques will help you make a fruitful contribution to the pre-trial effort. These concepts include:

*stages of litigation*

The steps involved in the trial process and the paralegal's role in each.

*trial notebook*

A trial notebook helps organize the attorney at trial. The key to trial notebook preparation is making sure all documents, notes, and evidence are easy to access.

*evidence preparation*

Evidence at trial must be admitted by the court. The attorney must have the original evidence and copies for all parties.

*the arbitration process*

Arbitration is similar to the litigation process in most states, but is less formal and occurs prior to, or instead of, the trial.

*advocacy*

When a paralegal performs a task at the instruction of an attorney on behalf of a client, the paralegal becomes an advocate for the client's interests.

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## Advocacy: A Reality Show

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A strange thing happens when you start getting engaged as an advocate on behalf of your client. It happens when you realize that you are acting on behalf of your client's rights. It gets personal.

If someone can take away your client's rights, or limit access to information your client has a right to, it should offend you. Partly because if it happens to your client it can happen to any of us. But mostly because it is just plain wrong.

Another thing that you will probably not notice at first. You start with one case. Then another. And another. Several cases take unexpected turns or have surprising outcomes that no one expected. Like a mystery, or maybe more like a reality show (but much more real.)

What you likely will not realize until later is that you end up with stories. Some of them are great, interesting stories. And you have been a part of those stories. You have helped decide how they will end. And it is real life.

Can you share those stories? Wouldn't that violate a client's privilege? Yes, it would usually be a problem to discuss client matters with anyone outside the law firm. But just wait a bit. Your time will come.

### When it is okay to discuss a case

If you follow these rules, you can share your client's story with the world.

1. Wait until the case is no longer active.
2. Even if the client is not using your firm any longer, do not discuss the facts of the case if it is still active.
3. Never use real names.

### Are there any times it is okay to discuss an active case?

Yes. It is called *The Newspaper Rule*.

- *Anything that has been printed in a newspaper (or published in a reputable news website) may be discussed since that material has become public knowledge.*

However, it is dangerous even in these circumstances because it is hard not to stray into protected and confidential information. Just because some matters of a case have become public does not mean a paralegal or lawyer can share everything about that case.

It is best to not discuss any case that is active.