TRIAL PREPARATION:
File and Work Flow Organization

By: Lyle Griffin Warshauer

I. THE BIG PICTURE

Preparation for a trial starts on the day counsel is hired and a file is opened for the client. Herein begins the laborious task of putting together a case that with any luck will ultimately result in a finding favorable to your cause. When you open the file, ask yourself: what am I trying to accomplish and when should I reasonably be able to complete the task? As plaintiff's lawyers, we in our firm have one primary goal and that is to get the case over with as quickly as possible. Presumably, the same goal exists regardless of whom you represent. However, no case will be resolved fairly unless and until it is prepared properly. If we tackle the process of trial preparation with a constant recognition of the ultimate goal, each time we touch the file we can move the case along towards that end.

The most important part of trial preparation is hard work. There is no substitute for hard work. A famous lawyer once said that being a great trial lawyer is ten percent skill in the courtroom and ninety percent drudgery in the office preparing the case. Nothing could be more true. Drudge work out of the courtroom, in the form of diligent and careful trial preparation, can more than make up for a lack of trial experience and a lack of natural trial charisma. Preparation not only provides the knowledge necessary to deal with witnesses and the court; but, just as importantly, it allows the prepared lawyer the supreme confidence that almost always foreshadows success.

This paper will attempt to discuss the role of the file in trial preparation. What is the "file?" Where do you keep the materials you need? And, how do you chategorize them in a useful and organized fashion?

A. Basic Rules

1. Prepare the Case With the Expectation that it Will Be Tried

Statistics tell us that most cases settle. A settlement might be reached before suit is filed or it may not be resolved until reaching the courthouse steps. When a case will settle and on what terms is, in many respects, completely dictated by the level of preparedness for trial. A case that is genuinely prepared is often one that can be settled. On the other hand, where there has been a lack of preparation, settlement is rarely possible on anything close to fair terms. In short, if counsel wants to insure that a case will have to be tried to obtain a fair resolution, he or she can do so by failing to prepare for the trial that he or she will be forced to participate in!

2. Know the Law

No trial can be prepared unless it is prepared in the context of the law applicable to the case. It may be obvious, but it cannot be overemphasized. Read entire cases, not just headnotes and the sections that relate to the headnotes. A loss of credibility caused by an erroneous or opposite citation is hard to regain.

Part of knowing the law is sharing that knowledge with the court. This is both a practical and an ethical obligation. The rules require a lawyer to disclose legal authority "in the controlling jurisdiction" known to be "directly adverse" to the position of the client which is not disclosed by opposing counsel. It is many times better to lose a point at trial than on appeal. Further, candidly identifying controlling authority on one point often establishes sufficient credibility on the next point to carry the day in a gray area or on a judgment call.

The ABA Model Rules of Professional Conduct state a lawyer is competent if he has the "legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." Further, lawyers are required to perform the necessary research to reach an informed and intelligent judgment about the matter.

Throughout the course of litigation, a number of points will invariably be researched. While the research may be presented in brief form, it may simply be gathered for future use. Make sure that research materials are easy to find in the file. For complex cases, you may want to have a separate notebook containing pertinent cases, which are properly indexed and/or annotated.

3. Know the Facts

It is the facts that separate one lawsuit from another. The facts will make a claim viable or defensible. This is not a new concept. What *is* new is the manner in which the facts can be systematically organized in a file. We now have information recall systems that make it possible to have instant reference to depositions, statements, documents, and exhibits, among other things contained in a voluminous file. It is no longer necessary to tab an exhibit or a page of a deposition while preparing for a deposition. A simple swipe of a bar code will do the trick. With digitized documents, a deposition transcript or even a video can be recalled instantly and projected on screen.

4. Have a Litigation Plan

It is important to be in control of the case. You need to know what you need and how you are gong to get it. Sit down with your assistants several times during the course of a case and make sure that the case is moving in the direction necessary to obtain a verdict. This can only be accomplished if it is thought of as part of the trial preparation. It is imperative to think about the trial during the discovery phase. Decide what kinds of experts are needed, what exhibits will be needed, which witnesses should be deposed, and which witnesses should be interviewed.

5. Keep the File Organized

Use a good system to keep the paperwork organized. This is really the crux of this topic and will be discussed at length below. But as a basic principle it is amazing how much easier it is to work with a file when it is easily assembled and disassembled.

6. Set up a File Database

It is imperative that law firms have a system in place to check for potential conflicts of interest, maintain information regarding the client's contact information, and to ensure crucial deadlines, such as statutes of limitation and answer deadlines, are noted. We use a simple database by File Maker Pro, which allows us to set up custom templates. We can then search our files in a number of categories, including all cases managed by a given attorney or paralegal, all files opened in a given time period, all files with a certain value etc. Additionally, the basic template we use when opening all files includes an entry for the statute of limitation. Because this is so important, the program is set up so that the file entry cannot be closed without putting in a statute date.

We use the database to manage the progress of the file as well. There is a large section that allows extensive information about the day-to-day activities in the file. Each time we review the file, we update the database, so that anyone reviewing the information will know where we are in the litigation, what settlement demands and/or offers have been made, and other pertinent information about the status of the case.

7. Establish a Tickler System

Every letter or discovery request that goes out should come back to the sender from a tickler file within a certain time. It is not uncommon for discovery to be sent, and not answered, without any complaints by the sender until the week before trial. At that point, it is too late! Similarly, discovery is often answered in the most ridiculous fashion and the letter asking for a proper answer is sent out right away but never followed up on. The simple cure is a good tickler system that returns a "reading" copy of every letter to the writer in a pre-set number of days such as fifteen or twenty. The use of a numbered sorter into which every letter is placed is imperative. Keeping up with the work flow is essential to proper management of the file, i.e, preparation of the case.

8. Choose a Trial Theme

A trial theme is the single phrase which lends credibility, through human experience, to your version of the facts. An effective trial theme will leave a jury with no choice but to apply

the facts, presented within the framework of the legal theory of recovery, and award you a verdict.

The trial theme is *not* the legal theory of recovery. The legal theory of recovery is the *why* of your case and the theme is the *how* of your case. A trial theme is only one component of an effective case theory. Theory operates on three levels. An effective case theory will include legal theory and factual theory, as well as persuasive theory. Legal theory defines why it is that the law says your client should win. Factual theory explains what really happened in the case and why. Persuasive theory, or the "theme" of the trial, explains why, in equity, your client should win.

For example, in a typical intersection case, the legal theory, that is the reason *why* you are entitled to recover, is almost always that the defendant failed to yield the right of way. The themes that are applicable to such a case are as broad as the imagination of the trial lawyer, who will tell the story of the crash through the voices of his or her witnesses illustrated by exhibits. *Negligence* is not a theme - it is a legal theory. *Careless failure to prevent injury* is a theme. Note the emotional difference. Talking about negligence does not establish emotional or psychological responses in the jurors. Talking about a defendant's careless failure to prevent injury evokes a variety of emotions.

II. WHAT GOES IN THE PACKAGE

A. Prepare Your Jury Charges First

This might seem strange at first, but the concept of preparing the jury charges early in the case preparation serves the ultimate goal of readiness for trial at the outset, and it sets the stage for all other work to be done on the file.

Jury charges are an essential ingredient in the successful handling of a civil dispute. Jury charges must be considered as early as possible to serve as an outline for case preparation. Jury charges must be understandable in addition to being correct statements of law. Finally, suspected error by the trial court in giving, or refusing, jury charges must be properly preserved for review.

Jury charges are the legal framework within which the trial theme is placed. A conscientious attorney will be aware of the boundaries of this framework from the very beginning of the case. To be effective, jury charges must be understood by the jurors. At the trial stage, we all begin to think about how we can educate the jury; how we can sway the jury to find in our favor. There are many elements to this process of persuasion, but it all must be within the confines of the law governing the particular dispute. If at the very beginning of the case we think about how the jury will be instructed on the law in the end, we then have a better understanding of what information we need to gather to support a finding favorable to our cause. It will set the framework for gathering evidence, including physical evidence and witness corroboration; thus, ensuring that necessary support will be available at trial and eliminating the potential for "chasing rabbits" or otherwise wasting time on irrelevant issues.

When preparing the jury charges that will serve as the framework for your client's case, do not overlook charges to which the other side will be entitled, or which they may tender. In fact, preparing such opposing charges serves two purposes. First, it insures that the plaintiff's lawyer anticipates and prepares for the defense; and, conversely, that the defense lawyer truly understand the allegations to which he must respond. Second, it enables one to have charges that can be tendered as alternatives to the unfair, biased, prejudicial versions of the law the opponent is sure to tender. It is important to have such charges handy because if a party does not like the charge tendered by the opponent, he must present an alternative in writing. The Court of Appeals has held that "[i]f the plaintiff desired more specificity as to the legal theories involved, a written request to charge could have been submitted." *Ralston Purina Co. v. Hagood*, 124 Ga. App. 226, 230 (1971). If this approach is taken early on, the understanding of the applicable law can be useful throughout the case. Maybe it will bring to light an issue that is ripe for summary judgment. Maybe it will provide the authority for educating the court on the theories in the case at a scheduling or settlement conference, or even within the context of a discovery dispute.

B. Pleadings

The initial pleadings that are filed will establish the questions that need to be answered throughout the case.

1. The Complaint

There are two divergent theories regarding how a complaint should be prepared and how much information should be included. Georgia law requires only basic pleading, so you can really get by with very little. But, if you look at the complaint as the framework for the case, more is better. Go ahead and put the specifics regarding your basis for jurisdiction in the complaint, rather than simply stating jurisdiction is proper. If the defendant denies the latter allegation, you don't know what is deficient. But, if you affirmatively state the address etc., and that paragraph is denied, you know right from the start, without further inquiry, that some of your information is false. With that, you can fix it before it becomes a problem.

Certainly, a well-pleaded complaint is useful to the defendant, because it provides a fairly concise statement, including detailed facts, about the case, to which the defendant can either agree or disagree. Use the charges when drafting the complaint. While it is fairly infrequent that trial judges will read the complaint to the jury, there are still those who do and there are those who use the complaint to describe the plaintiff's contentions. A complaint that follows or quotes a favorable charge will often serve as a reminder to the jury and aid them in finding in your favor.

2. The Answer

Just as with preparing the complaint, there are two approaches to answering the complaint. One is probably more typical, which is to essentially deny everything. Unfortunately, this does nothing to provide any notice to the opposing side, or the court of the real issues in the case. Furthermore, it is a missed opportunity for the defendant. If defense counsel approaches preparing the answer with a genuine desire to determine what facts and issues should be admitted or denied, he or she will be ahead of the game from the get go. In this way, the answer, like the complaint can be the first step in setting the stage for how the case

should proceed. Discovery can then be fashioned on genuine issues, rather than requiring questions that could have been answered at a very early stage.

3. Discovery

You cannot prepare for trial unless discovery has been properly and timely completed. If you represent the plaintiff, have a set of basic interrogatories and requests for production served with the summons and complaint. (This rule of thumb does not apply in Federal Court where there is a 30 day waiting period before discovery can begin. *See* Local Rules of the Northern District of Georgia, 225-1(a)). If you represent the defendant, similarly file initial discovery at the time you answer. This gets the case started early and insures that this vital step is not forgotten. Keep the initial requests short as you do not want to use all of your allotted questions before finding out more about the claims and defenses.

Discovery must be answered fully and timely. This establishes credibility and moves the case along. Additionally, it prevents an unnecessary trip to the courthouse to explain why discovery was not answered. Make sure that the client understands the interrogatory answers. Keep in mind that all answers can be read at trial by the other side, not as impeachment necessarily, but as materials in the reader's case in chief.

When your initial discovery is answered, be sure to read it! This may seem obvious, but it is a rule that is not always followed. Read the responses carefully, and follow up with a letter requesting additional information if the responses are not complete. Document any communication with opposing counsel regarding discovery disputes so that you will have the proper basis for a motion to compel if necessary. As the case proceeds, it is likely that additional interrogatories and requests for production of documents will be necessary. Follow up with these requests, just as you do with the initial set.

Be cognizant of your duty to supplement discovery responses. Make it your practice to routinely review the discovery responses and make a note of information that may have been gathered in the interim. Not only will timely supplements be well received by the other side, but it ensures that you will not be in a position where you have to scramble at the end of the case to

add a claim, defense or important witness, and it almost guarantees that the case will move more quickly.

4. Get a Scheduling Order

If you have a case of any complexity, either with respect to issues or number of parties, the best advice I have to control the flow of the litigation is to get a scheduling order very early in the case. I file a motion for a scheduling conference and provide a proposed scheduling order for the consideration of the court and opposing counsel. Oftentimes, we can agree on deadlines for discovery and the filing of motions without the court's involvement; but it is often beneficial just to get all the players together and to introduce the court to the facts of the case. I always include in the proposed scheduling order a place for the court to give us a trial date. If the court is inclined to specially set the case, we then have a date to work toward and we're not faced with the eternal unknown. In addition to the various dates for discovery, I also request that the court establish a deadline for mediating the case.

In federal court, in particular, there are numerous time deadlines that must be met whether or not the parties agree. The local rules in many jurisdictions establish these deadlines ahead of time. Whether you are in federal or state court, however, make a time line and share it with opposing counsel so that everyone will be dancing to the same tune. This can be used even if a formal scheduling order is not entered.

5. Use Summary Judgment Motions

Defense lawyers often file summary judgment motions almost as a matter of course. However, most plaintiffs' lawyers look at motions for summary judgment as something to be responded to instead of as an affirmative tool to narrow issues and establish liability. Plaintiffs as well as defendants should use motions for summary judgment aggressively to get the opposing party on the run and to flesh out the best they have to offer in response. If liability issues can be established as a matter of law, there is no reason to waste valuable time and resources in attempting to prove or disprove them.

6. Prepare a Trial Brief

One of the best ways of establishing control in a case is to have a good trial brief. Parts of it should have been prepared during the months preceding the trial. Put it in a notebook and have it tabbed and indexed. Attach the important cases. Discuss the important issues, such as the fact that you will likely be entitled to a directed verdict. Anticipate tough evidentiary issues and explain why your side should prevail. Similar briefs can be used in other stages of litigation as well. If there is a matter of law that you know will require briefing, go ahead and have it prepared. It can be used at any stage where the issue comes up -- either to educate the opposing side or the court. Courts appreciate having the benefit of a well prepared brief. It is better than simply handing the court copies of cases, and substantially better than merely providing citations orally at a hearing.

7. Be Careful With the Pre-Trial Order

Make sure your pre-trial order is timely and complete. Be in control of the pre-trial pleadings. Read everything in the file before, not after, the pre-trial order is submitted. Use the preparation time as the time to complete the trial notebook. Make sure the pre-trial order has also been properly supplemented with witnesses and exhibits, if necessary, in accordance with your supplemental discovery responses.

C. Prepare a Trial Notebook

A trial notebook should be part of case management; not just something which is created the night before trial. Keep a list of topics for motions in limine, witnesses, and trial themes. As the case nears trial, more detailed information will be included; but throughout the litigation it is a good repository for information that you know will ultimately be required.

D. Make Medical and Trial Exhibits

Trial exhibits require a lot of lead time to prepare. There is no way that these essential aspects of trial preparation can first be considered on the night before the trial starts. Models, which can cost thousands of dollars, can take weeks to build and get just right. Medical illustrations can be obtained more quickly; however, by the time the doctor approves the drawing and it is printed, an eight week lead time is not unusual for surgical illustration.

Models and computer graphics must be made with the input of the expert and other witnesses, as they will be called upon to use the model to illustrate their testimony. It is important not to wait until the last minute to consider what demonstrative aids will be needed at trial. Make this part of the file from the beginning. Initially, it will provide a place to put ideas. Later, it might include quotes from vendors or drafts of the exhibits themselves. The ultimate exhibit is not likely going to be in the "file" per se. But there should be a copy or description of what exists in the file.

E. Retain Good Experts

Experts can be used for testimony and consultation. Only disclose experts who will testify. The use of expert witnesses is unquestionably an essential and ever increasing practice in

modern tort litigation. Certainly, in every case involving a bodily injury, expert testimony comes in through medical care providers. Additionally, attorneys in Georgia regularly use economists, accident reconstructionists, engineers, and other more specialized experts in state and federal court trials.

Too many great cases are weakened because the use of experts is an afterthought. Because the use of experts is often the only way certain aspects of the burden of proof can be met, experts should be selected as early as possible in the case preparation. Often, if not in most cases, an expert should be retained before the suit is filed. Certainly, this is true in professional negligence cases in which O.C.G.A. §9-11-9.1 requires that an affidavit identifying at least one negligent act be attached to the complaint.

At a minimum, experts should be immediately consulted and retained in all product liability suits, all malpractice suits, and all toxic injury suits. Even car wrecks can benefit from expert testimony if there is serious doubt about the cause of the crash. (In car wrecks involving serious injury and death, regardless of how clear cut liability appears to be, it is essential to get expert involvement as early as possible while the evidence is still available).

Make sure that all information regarding your experts, as well as those retained by the opposing side, is easily accessible. There should be a section within the file for each expert, which should contain all notes, all correspondence to and from the expert, a list of information exchanged, billing statements, the curriculum vitae of the expert, and all publications reviewed by the expert or/authored by him or her on the topic of the case. Often this information will be contained in various parts of a litigation file: correspondence, notes, bills etc. If necessary, make an additional copy of the materials so that everything relating to the expert is contained together.

III. PUTTING IT ALL TOGETHER

Now that we have outlined all of the material that should be gathered throughout the course of litigation in preparing, ultimately, for trial, what do you do with the information? How should it be maintained and organized? The days of keeping mass amounts of paper in manila folders and redwells are long gone. However, we are not quite to the point of eliminating the

paper file all together either. While more and more of the documents in a file can be maintained in the computer, and should be, there still in most cases must be a "hard" copy of the various documents as well. It is important for the documents to be maintained in a way that they can be efficiently accessed, reviewed and potentially copied.

A. USE BINDERS INSTEAD OF FILE FOLDERS

The old system of accumulating correspondence, pleadings, discovery and other documents in a folder with a clip at the top is not at all conducive to efficient use the information. A more efficient approach is with a typical three ring binder. Using a binder allows you to assemble a book of materials easily. Significantly, it allows access to a document in the center of a file without taking the whole thing apart. Unfortunately, three ring binders are not the easiest things to work with. They are difficult to open and close. The do not easily accept large stacks of three-hole punched paper. Their rings frequently misalign. They make flipping through the paper difficult. And they don't stand up particularly well on a shelf.

There is a solution: The better binder! A company called Bindertek makes a two-ring binder that solves the problems created by ordinary three-ring binders. Here's a list of why Bindertek is a better binder:

1. They use two rings instead of three, which "binds" less of the paper on each page, making it easier to flip through a large stack.

2. The rings are designed to resist misalignment and be easier to open and close.

3. The binders have a clamp, which presses the documents together. When not in use, the clamp binds the papers in the binder, which prevents stress on the pages so there is no tearing at the holes.

4. They are well constructed and specifically designed to stand up well on a shelf and will last a long time (the clamps can be easily replaced if and when they wear out; you do not need to replace the entire notebook).

5. The spine has a large area for labeling, making identification easier and reducing the need to resort to stickers and tape.

6. The have a circular opening in the spine for ease of access.

7. They come in 14 colors! Color-coding the case files is actually a great help when maintaining a large number of files, especially where each file has many volumes.

In addition to the notebooks, Bindertek has matching "buckets" that can be used to maintain deposition transcripts, exhibits and other materials that you do not want to hole punch. All of these can be stored on run of the mill shelving; however, Bindertek also makes shelves specially designed to hold the size and shape of the binders. The company also has a number of accessories specifically designed to accommodate the binds, including a variety of briefcases.

B. FILE CATEGORIES

Each file should contain, at a minimum, certain categories of information. In smaller cases, these categories can be separated by tab within a single notebook, or only a few notebooks. In larger cases, each category will have a separate notebook, or often a number of notebooks. For example, in a medical malpractice case, the medical records alone may be contained in numerous notebooks. Furthermore, the medical records from a single provider may be contained in multiple notebooks. Examples of the many copies that may be utilized in the case include: the hospital records provided by the client; the original records provided by the hospital; a "working copy" of the hospital record that has been separated into useful categories; a bate-stamped copy provided by the defendant hospital in discovery; and a copy marked as an exhibit to the defendant's deposition.

Examples of the various categories that might be included within a personal injury file include the following:

1. Correspondence
2. Notes/Memos
3. Medical Records
4. Administrative/Probate Documents
5. Photographs
6. Medical Records

7. Accident Reports
8. Personnel Records
9. Military Records
10. Tax Returns
11. Insurance Policies
12. Pleadings
13. Discovery
14. Experts
15. Research
16. Case Themes
18. Witnesses/Statements
19. Trial Notebook

Within each of the categories, whether in a single notebook or multiple notebooks, the information should be indexed and tabbed for ease of reference. Original documents can be maintained in the file without damage by hole punching them by placing them inside plastic holders.

As noted above, within each category it might make sense to sub-categorize the information where appropriate. For example, medical records are often organized so that all surgical reports are together; all nurses' notes are in one place etc. Often when the records are produced, they are completely unorganized and of no use. Always make a separate copy of the records and organize them as appropriate. Similarly, a trial notebook will be uniquely organized and categorized in a useful fashion. Many companies sell pre-printed tabs for a variety of categories and these are very useful.

C. DOWNLOAD ENTIRE FILE ONTO CD

Each and every document that is contained the file folders (if you're still using that approach) or binders can be simultaneously maintained on computer. Obviously, all documents created in your office will be on the computer, but so too can every document received from

elsewhere. All pleadings and discovery received from opposing parties should be scanned in. Similarly, all medical records should be scanned and numbered for easy access on line. All deposition transcripts should be downloaded from disk. Once every item of the file is in the computer, download the whole file onto a CD, so that it can be used whenever, and wherever you are.

Parts of the file can also be maintained on CD. For example, an expert can be provided a CD with all pleadings, discovery, deposition transcripts and other pertinent records. Conversely, the expert can provide a CD with all of the information he has generated, so that you and he are always sure all information available to either of you is available to the other.

C. CASE MANAGEMENT SOFTWARE

Most law firms currently have a pretty good database, using programs like Access, FoxPro, or Q&A. Some of the information may be stored in "flat- file" databases, in which information is arranged in a single table. This requires each file to be printed separately, and you can view only the data included in that particular database. You might have one database of client names, addresses, and telephone numbers; another database of information about defendants; another of expert witnesses you rely on and those opposing counsel uses; and another that generates reports representing your daily docket.

"Relational databases" are more useful case management programs because they utilize the whole litigation file. These databases can integrate information in one sub-file with information in another sub-file. They can use multiple tables to store information, and each table can have a different record format. Records share common "fields" that allow users to swap data between tables and generate all kinds of reports, such as a list of cases being handled by a particular firm in which a particular expert is employed.

One major concern of converting to a case management program is what will happen to all the information in your existing databases. Working with the vendor, you must consider how

to get all the information in your existing databases into the database used by the program your firm is thinking about buying.

Another consideration is whether you should maintain old databases even if the vendor that originally published the software no longer exists. Before making a change to a new software program, evaluate what you have and the time and money you have invested in it. You may find the merges, macros, and flat-file databases you have accumulated are, in effect, a case management program that works for you.

You should also consider what direction your firm is taking. Are you taking on more business and handling hundreds of cases per lawyer? Do you manage a firm caseload of a thousand or more cases? If so, you need one of the more sophisticated case management programs, and you should be looking for software that will keep track of all those statutes of limitations dates, discovery cut-off dates, due dates for responses to discovery requests, fast-track schedules, and so forth. Or you may be cutting your caseload and getting more choosy in selecting cases. If each lawyer in the firm is handling fewer than 20 cases, and there are only a hundred cases in the firm, then you may want to stick with what you've got for case management. In either event, it will probably be necessary to upgrade to more powerful computers.

1. Program options

Case management software idea could form the basis of an entire seminar. But, briefly here are some of the products that are out there. There are products that allow you to prepare for trial and make graphical presentations in court that will capture the attention of jurors. An example that everyone is familiar with is PowerPoint from Microsoft, which is a graphical presentation product popular with trial lawyers. The latest version provides a complete set of

tools for creating powerful presentations by organizing and formatting material, illustrating points with images or clip art, and even disseminating the presentation over the internet. Summation for litigation support and trial preparation is not an easy program to learn, but it is powerful, and it is definitely gaining support of trial lawyers. It can act as a litigation team's main information source for searching and organizing both documentary and testimonial evidence and shaping key information into a compelling presentation. CaseMap for trial planning is another option utilized by a number of lawyers in both plaintiff and defense firms. It is a litigation-specific program to help develop case strategy and is designed for use with all types of cases. CaseMap helps organize, evaluate, and explore the facts and issues in a case.

IV. READ THE FILE

The best piece of advice that I can offer for best utilizing a well-organized file is to read it. This seems like such a simple proposition; but it is not always followed. A thorough review of the pleadings, the complaint and the answer, is where your preparation must begin in every civil case. Whether you represent the plaintiff or the defendant, you must be completely familiar with all of the causes of actions set forth, and the factual allegations supporting them. As noted above, it is advisable to continuously be familiar with the file and to keep up with tasks that are appropriate and necessary throughout the course of litigation. However, it is essential for proper trial preparation to read every piece of paper in the file prior to trial. That means every letter, pleading and memoranda in the file. If you do this, you ensure that no stone is left unturned and you have a complete understanding of what the case is about. A fresh look at the file materials before trial may give you new insights into the case, may cause you to amend your pleadings or may cause you to conduct a further investigation into any number of issues in the case. The file should be completely reviewed prior to submitting a pretrial order; but, if not, most definitely as

part of the final preparation for trial. In situations where you have not handled the case from its inception, or several attorneys have worked on the matter, this review becomes all the more important.

V. USE OF FILE AT TRIAL

If the case file is not readily available at trial, you will look disorganized and unprepared to the judge and jury. Some people recommend that you remove from the file all nonessential material, correspondence, billing records, etc. in order to reduce the size of the file taken to court. While I certainly agree that you should have an abbreviated "file," in the form of a trial notebook, I think the better practice is to have the entire file available at trial as well. If you need something; it is there. If the file is properly organized, it will be no more cumbersome than to limit the contents.

It is a good idea to have a set of marked pleadings as well as the pretrial order available for immediate use. Exhibits you intend to offer into evidence should be pre-marked and readily available. It is frustrating to others involved when counsel asks for time to find their exhibits and put them in order in the middle of a trial. Further, if there are depositions, statements, reports or other documents that you intend to use to impeach the credibility of a witness, you must have them at the ready.

Similarly, all discovery demands, discovery orders, and responses thereto should be separated and readily available. This is essential in the event you make a motion to preclude certain evidence based upon the failure of the opposing party to produce information during discovery.

The bottom line is that you should know the file. You should have it available to you when you need it -- prior to and at trial. It should have all of the information you need to

effectively present you case. And, finally, it should be organized in such a fashion that it can be used efficiently at all stages of litigation.