

TRIAL IS DIFFERENT
Trial Practice Do's and Don'ts

Joseph J. Popolizio
Holly A. McGee
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Arizona Paralegal Association

8533 Central Ave., Suite 2700, Phoenix, Arizona 85024 | P: 482-243-1700 | www.jshfirm.com



Meet Our Presenters



Joseph J. Popolizio
Partner

- Educational Institutions Defense
- Employment Law
- General Civil Litigation Governmental Liability
- Insurance Coverage and Fraud

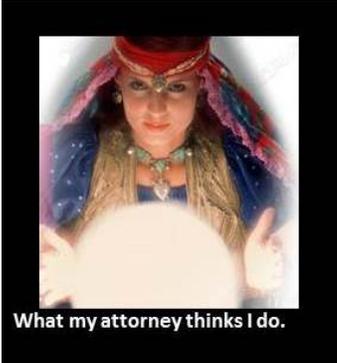


Holly A. McGee
Litigation Technology Coordinator
Paralegal

- Trial Technology
- e-Discovery Processing
- Large Document Case Management

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What my attorney thinks I do.

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PARALEGAL ROLE

- Assist Attorney
- Gather Information – just don't push paper - Think
- Obtain Records



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PARALEGAL ROLE

- Gatekeeper / Tour Guide
 - What is it?
 - Where is it?
- Safety Net for Attorney
- Encyclopedic Knowledge of the Case



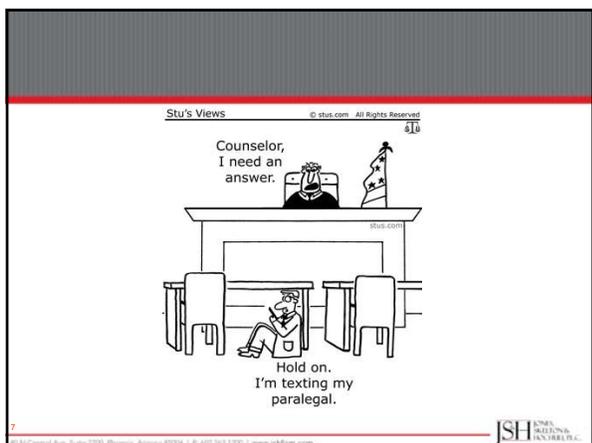
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LAYING THE FOUNDATION FOR TRIAL

- Retention – start writing the closing
- Your Initial Assessment is very important.
- Where do you want to go?
- What would be your best result?
- How do you attain that result?
- Can you attain that result?
- *Determine what you need to best prosecute your claim or present your defense.*

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How do Paralegals assist in laying the foundation for trial?

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THE THREE PILLARS

INTERVIEWS
DOCUMENT ANALYSIS
DISCOVERY

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INTERVIEWS

- Participate in client and witness interviews
- Develop your own interview skills, process, style
- Practice interview skills
- Learn from others
- Establish rapport with the interviewee
- Know what you need to learn from the witness before you begin your interview
- Assess how important the witness is and how they will perform on the witness stand



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DOCUMENT ANALYSIS

- Don't review – ANALYZE
- Know the key elements of the claims and defenses
- Be mindful of summary judgment potential to eliminate issues/claims for trial
- Identify documents that correspond with each claim or defense as you analyze the document the first time



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Stu's Views
§1a

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DISCOVERY

- Interrogatories, Requests for Production, Requests for Admission
- Disclosure Statements
- Depositions
 - Who should be deposed?
 - Why?
- Use effectively
- Make suggestions



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**NEW ARIZONA RULES
OF CIVIL PROCEDURE
EFFECTIVE JULY 1, 2018**

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Tier 1 – Simple Cases

- 1-2 day trials
- Minimal documentary evidence / few witnesses
- Up to \$50,000 in damages
- 5 total hours of fact witness depositions
- 5 Interrogatories
- 5 Requests for Production
- 10 Requests for Admission
- 120 day to complete discovery
- No experts

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Tier 2 – Intermediate Complexity

- Involves a little more documentary evidence / witnesses, maybe involves experts
- Likely involves multiple theories of liability
- Damages from \$50,001 to \$300,000
- 15 total hours of depositions
- 10 Interrogatories
- 10 Requests for Production
- 10 Requests for Admission
- 180 days to complete discovery

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Tier 3 – Complex Cases

- Voluminous documentary evidence / witnesses
- Claimed damages exceeding \$300,000
- 30 total hours of fact witness depositions
- 20 Interrogatories
- 10 Requests for Production
- 20 Requests for Admission
- 240 days to complete discovery

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TRIAL PREPARATION

- **Assist Attorneys with:**
 - Re-Interviewing and Preparing Witnesses
 - Knowing deposition testimony
 - Order of witnesses – how best to tell the story
 - Identifying necessary, important exhibits and testimony
 - Identifying strength and weaknesses in the exhibits and testimony to be offered by either side

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TRIAL PREPARATION

- **Assist Attorneys with:**
 - Mapping out examinations
 - Brainstorming ideas for opening statement and closing argument
 - Opening: what evidence will be presented and why
 - Opening is the roadmap for the jurors and the entire trial
 - what exhibits are you going to use? demonstrative exhibits?
 - PowerPoint?
 - Displaying exhibits and video electronically (how and who's in control)
 - Rehearsal

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TRIAL PREPARATION

- **Paralegal Role:**
 - Deal with Court Staff
 - Know special rules/orders of the Court
 - Prepare exhibits
 - Deliver exhibits to the Clerk
 - Issuing trial subpoenas
 - Scheduling witnesses
 - Coordinating experts' availability for trial – knowing this before sending attorney to pretrial conference to pick trial dates!

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**ONE DOES NOT
SIMPLY**



CREATE 150 TRIAL EXHIBITS OVERNIGHT.

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TRIAL PREPARATION

- **Litigation Support Paralegal Role:**
 - Prepare presentations for arguments and witness examinations
 - Use specialized trial presentation software for displaying exhibits effectively
 - Rehearse with attorney for presentations
 - Ensure attorney specifically references exhibit numbers for a clear record

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Local Trial Rules, Practices, and Procedures

DO...

- Know the rules of the Court and the Trial Judge
- Know the Local Rules of Procedure
- Know the standing Orders of a particular judge – the idiosyncrasies
- Check with other paralegals and lawyers who’ve tried cases before your Judge – wealth of knowledge

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Local Trial Rules, Practices, and Procedures

DON'T...

- Ignore anything in the last slide
- **WHY?**
- *Because it's a death wish*
- You will ensure the courtroom's staff's dislike for you and your attorney
- Prejudice to your client



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Courtroom Setup

DO...

- Take a field trip to the courtroom
- Schedule an appointment
- Test your equipment
- Consider available furniture and space
- Use the courtroom microphone – *especially the mute button*



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Courtroom Setup

DON'T...

- Assume that everything in the courtroom has stayed the same since you were last in there
- Expect the Court staff to trouble shoot issues for you
- Take anything for granted

TEST, TEST, TEST

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Courtroom Setup

AND TEST AGAIN!

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Jury Selection

DO...

- Stand up when jurors come in
- Look as respectful as you can
- Take notes
- Use some kind of chart to track the jurors

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Jury Selection

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Jury Selection

DO...

- Watch jurors' demeanor
- Provide input to the attorneys during the selection process

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Jury Selection

DON'T...

- Move around, fidget
- Attend to exhibits, notebooks, computer issues
- Talk or whisper (unless absolutely necessary)

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In the Courtroom

DO...

- Track Exhibits
- Listen – Think
- Coordinate Witnesses
- Consider whether a witness needs to be called
- Coordinate client presence/representative
- Explain procedures to client as appropriate

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In the Courtroom

DO...

- Know that appearances count and you are being judged by the jury constantly
- Be aware of yourself, your demeanor, and all others seated with and around you including the client
- Professional, pleasant, polite (even to your team), smile but not like a Cheshire cat
- Be conscious of the way you sit and your facial expressions

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In the Courtroom

DON'T...

- Ever let your attorney clutter up the table
- Allow a sea of books or papers to be in the way
- Swear
- Show disgust or anxiety or fear
- And unless you really hate your attorney, don't ever let them go into a courtroom unprepared and without a game plan
- Let this happen . . .

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QUESTIONS



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