

Trial Process Documents

It is most important to understand that any document used at trial must have been produced to the opposing party for purposes of discovery. There may be situations where further documents come into existence after the date of your discovery, or are found after discovery. These documents must be produced to the opposing party for purposes of discovery. It is most important to understand that all documents to be used at trial must have been produced and provided to the opposing party prior to the date of trial. You cannot simply show up one week before trial and start producing additional documents, or produce documents during the trial.

This is a very important issue to understand. Preparation for trial really starts when the documents are assembled and produced before discovery.

Discovery

The trial judge does not read the discovery transcripts. The discoveries are used only by the opposing counsel for purposes of cross-examination. If, for example, you testified at discovery the sky was blue on January 1st and at trial, said it was red, the inconsistency from the discovery can be put to you in cross-examination. Any such distinctions can be put to you for purposes of attacking your credibility and showing that your evidence is not reliable.

Witnesses

Both sides must produce names, addresses and phone numbers of relevant witnesses. Usually both sides agree to provide a summary of anticipated evidence from each witness before trial. There is no property right attached to a witness. Apart from company employees, the opposing counsel and myself can question any witness to be called by the opposition. There is no requirement for any witness, however, to be responsive to such questions made by opposing counsel prior to trial.

Opening

Both lawyers would give the judge a summary of what the case is all about. An overview of the issues, the facts and debate, names of relevant witnesses and the legal issues that the judge will be called upon to decide. Typically an opening lasts usually about 30 minutes to one hour.

The Plaintiff's Case

The Plaintiff goes first. Counsel for the plaintiff will call all witness to prove the case. Each witness will proceed with three types of questions:

1. Chief
1. Cross
2. Re-examination

Chief

The questions in Chief put to the witness are "lobs". The witness should have no problem answering these questions. The witness can refer to any document that is required to answer them and counsel can refer witness to any documents.

Questions asked in Chief cannot be leading. It is to say that the answer cannot be summarized in the question. For example, in Chief I cannot ask you "Is it not true that you did not read this document when you signed it" but rather I must ask "did you read the document before you signed it?". Every fact is relied upon as part of the plaintiff's case must be proven in Chief.

Cross Examination

Cross-examination is one of the few times in life you must respond to any question put to you by a person trying to attack your credibility, to show you are unreliable, a liar, fraud, incompetent, stupid, lazy and other generally nasty things.

You must prepare for Cross-examination by a through knowledge of your case. In particular, your documents and your discovery transcript. You are not limited to cross-examination upon the issues upon which you advised in Chief. Any issue relevant to the case may be the subject at cross-examination.

When you call a witness to assist you, you must consider not only what evidence the witness may likely give in examination-for-chief to support your case but also what points that the witness may be examined upon in cross-examination that may weaken your case.

Re-Examination

There is limited right of re-examination. The examining counsel, i.e. myself when you are called as a witness, may examine you on any subject matter raised on cross-examination which cannot have been anticipated in chief. Usually there are very few questions in re-examination.

This process applies to every witness called.

Failure to call Relevant Witnesses Under your Control

There is an adverse drawn where a witness who with relevant knowledge is not called by a party with “control” of a witness. This usually applies to a company who does not call as part of its case a relevant witnesses in its employ, although such person may clearly have knowledge relevant to the issues in dispute. An adverse inference will be drawn against the company - this means that a judge or court will conclude that had that person been called he or she likely would have given evidence which will be harmful to the case of the company.

Occasionally this could imply to an individual where close friend, for example, or relative is not called. Where such person may be asserted to “under the plaintiff’s control”. This is unusual.

Defendant’s Evidence

The defendant’s evidence presides in the same manner as the plaintiff’s case. Each witness is called in chief, cross-examined and is then subject to the examination.

Reply Evidence

The plaintiff has the right to recall reply evidence which is very rare. Just as evidence and re-examination is short so is the reply evidence. It is extremely unique when reply evidence is called. Usually the plaintiff does not wish to put the key witness in a trial to be subject to cross-examination twice.

Argument

After the case is closed both lawyers then present argument on the facts and law to the judge. The plaintiff proceeds first, then the defence and then the plaintiff’s reply argument is presented.. Argument can be quite lengthy. It can take sometimes as long as the trial. Often the judge will reserve his or her decision. If it is a straightforward case and the judge feels that it is possible to do so, immediate reasons for judgment may be given. Typically however, the decision is reserved. Reasons for a reserved decision are usually in by roughly 1 to 2 months after the trial has been concluded.

Settlement

A case can be settled at any time. Even though formal offers usually expire at the outset of trial, the parties can still settle a case even when the judge has left the room to think about his or her decision.