

# TRIAL NOTEBOOKS – YOUR CASE BLUE PRINT. WHY YOU SHOULD BUILD ONE AND KEEP IT UPDATED

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# TRIAL NOTEBOOK: YOUR ENDGAME



# TRIAL NOTEBOOK: WHY YOU SHOULD CREATE ONE

1. The Trial Notebook forces you to organize your case from inception through potential appeal by analyzing and evaluating claims, defenses and legal theories.
2. The Trial Notebook helps the practitioner create a plan for raising and reiterating key legal questions
3. The Trial Notebook is useful if you need to bring a paralegal, associate or other attorney up to speed.
4. The Trial Notebooks ensures that You have considered pre-trial aspects of your case.

# TRIAL NOTEBOOK: WHY YOU SHOULD CREATE ONE CONT.

In a recent CLE, practitioners were advised that as a result of COVID-19 and corresponding Court Orders suspending or postponing civil trials, practitioners should be conducting more thorough early-case assessment concerning claims and defenses and the likelihood of resolving some or all claims during motion practice versus issues that will necessitate a jury. \*\*The Trial Notebook helps the practitioner see the “Endgame” and advise clients accordingly.

# TRIAL NOTEBOOK: WHAT IT SHOULD CONTAIN

The Trial Notebook is either a hard copy or electronic notebook intentionally organized to help you organize, prepare and strategize each phase of trial.

A Trial Notebook should contain Tabbed Sections including:

- Working Notes and Theories
- Witness / Key Player Information [Concise summary of witness relationship and known facts to each claim / defense]
- Trial Theme
- Key Legal Questions
- Pleadings, Motions To Dismiss and other Pre-Trial Checklists
- Voir Dire & Jury Information
- Opening Statements
- Witnesses and Exhibit Lists
- Jury Instruction[s]
- Closing Statements
- Miscellaneous

# TRIAL NOTEBOOK: NOTES AND WORKING THEORIES

- The Notes and Working theories portion of the Trial Notebook is in essence one long evolving play by play as the case progresses.
- It is recommended that the Attorney start a Notes and Working Theories file (electronic or hard copy) and that the Attorney utilize the same template throughout the assignment.
- This document assists counsel with easy access to key contact information (e-mail, telephone numbers etc.) of witnesses but also allows the attorney to keep notes and brainstorm.
- The Notes and Working theories section can be referred to periodically to make sure that you have adequately requested relevant discovery, identified key witnesses and fully considered all legal theories and ideas and in preparation for trial, including pre-trial motions.

# TRIAL NOTEBOOK: WITNESS AND KEY PLAYER INFORMATION

The Witness and Key Player Information Tab tracks relevant and concise information about each witness and key player in your case.

Effective Information includes a concise statement of who the witness is, their relationship to the parties, other witnesses and facts of the case.

The Witness and Key Player Information also contains the attorneys impressions about the witness including how the witness may be perceived by a jury.

The Witness and Key Player Information Tab helps create the narrative / story and is also effective in creating the story and theme of your case or defense.

# TRIAL NOTEBOOK: TRIAL THEME

- The Trial Theme tells the judge / jury what the case is about in one or two concise sentences.
- The Trial Theme should be clear, clean and simple.
- The Trial Theme is an evolving / working document.
- The Trial Theme helps the Practitioner take the information in the Notes and Key Witness tabs to create a simple compelling story outlining your client's position.

# TRIAL NOTEBOOK: KEY LEGAL THEORIES

- This part of the trial notebook tracks the parties claims and defenses, as well as the elements necessary to prove each claim or defense.
- This section typically also includes a working document re standard of review re the ultimate key legal theory.
- This section should also track developments in the law and contain important research memorandums.

\*\*Example: Your case turns on the interpretation of a statute. You move for summary judgment and the Court grants your motion based on the Court's review of the statute. This is great news . . .except that the standard of review on appeal is "*de novo*."

# TRIAL NOTEBOOK: PLEADINGS AND CHECKLISTS

This tab contains practitioner checklists and pre-trial pleadings.

# TRIAL NOTEBOOK: WHY CHECKLISTS MATTER

Example: On October 30, 1935, a model Boeing 299 crashed after takeoff. The cause of the crash was determined to be simple error. Notably, the flight crew forgot to release the flight control gust locks. The result of the failure to release the flight control gust locks was the aircraft nose dived into the ground. The Checklist was introduced by Boeing, as a permanent and mandatory tool, to be used by all pilots in the Boeing fleet.

Since that time the airline industry has required and relied upon checklists to govern nearly every aspect of air aviation. It is now proven that the introduction of checklists save lives.

# TRIAL NOTEBOOK: PRE-TRIAL CHECKLISTS

Key Checklists Your Trial Notebook Should Contain

1. Initial Pleading Checklists [Complaints and Answers]
2. Issue Preservation Checklist
3. Motion to Dismiss Checklists
4. Dispositive Motion Checklists
5. Pre-Trial Checklists

\*Also important is the creation of a Initial Pleadings and Motions Flowchart. See the attached example.

\*\*Important to use templates to tailor checklists for Your individual case.

# TRIAL NOTEBOOK: VOIR DIRE & JURY INFORMATION

This section of the Trial Binder contains the jury information and helps the practitioner identify and select impartial juries.

This section includes juror questionnaires, background and potential questions.

Recommend that Your Initial Trial Binder Contain the following information:

<https://www.americanbar.org/news/abanews/publications/youraba/2019/march-2019/11-tips-for-effectively-conducting-voir-dire/>

# TRIAL NOTEBOOK: OPENING STATEMENTS

- This section of the Trial Notebook incorporates the Trial Theme, main characters and evidence to develop a compelling opening statement.
- See *e.g.* NITA: Craft Your Next Opening Statement With Confidence.

# TRIAL NOTEBOOK: WITNESS LISTS AND EXHIBIT LISTS

Although self-explanatory the witness list and exhibit list portion of the Trial Notebook helps the practitioner plan ahead and keep track of the order and presentation of witnesses and exhibits.

- Identify necessary witnesses and determine whether attendance needs to be compelled
- Identify deposition testimony (if any) that you will want to use in the prosecution or defense of your case; identify potential impeachment testimony.
- Identify the presentation of witnesses and exhibits to best fit your Trial Theme.
- Create Witness Examination Lists (as necessary)

# TRIAL BOOK: WITNESS LISTS / EXHIBIT LISTS

	Name	Date Served	Main Phone	Exhibits	Scheduled [Dated / Time]
1.					
2.					
3.					
4.					
5.					
6.					
7.					

# TRIAL NOTEBOOK: JURY INSTRUCTIONS

This section is self-explanatory.

# TRIAL NOTEBOOK: CLOSING ARGUMENTS

The Closing Argument section is the final working document section of the Trial Notebook and should re-work your Trial Theme and Opening to explain how the evidence introduced at trial supported your story.

Recommend that you include the following in your Trial Preparation Binder

<https://www.tba.org/index.cfm?pg=LawBlog&blAction=showEntry&blogEntry=33464>

QUESTIONS?

# THANK YOU!

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