

At Least Three Months Prior to Trial

- If a trial has not yet been set, check with the attorney and file any request or praecipe needed to have trial date set.
- Calendar the trial date, unless done previously, and check for any scheduling conflicts.
- Check case status sheet and calendar more frequent updates right up to trial.
- Check to see that all required disclosure to date has been completed, including exchange of expert witness names and written report (federal rules).
- Check time deadline chart and confirm that key dates are calendared and that litigation team members are reminded.
- Meet with team to assess need for special exhibits and technology at trial.

At Least Six Weeks Prior to Trial

- Meet with litigation team to review case status and establish countdown work schedule.
- Review the case status sheet and keep it updated in the file. Inform the attorney of any depositions, discovery, or other steps needing completion or updating.
- Review the facts of the case to determine if there is a need to amend the pleadings.
 - Keep the client fully informed. Meet as needed.
 - Prepare witnesses' statements or witness sheets.
 - Highlight important facts both for and adverse to client.
- Review pretrial order to determine if the issues have been narrowed.
 - List documents, exhibits, and witnesses needed on each point, including refutation of the opponent's key points and evidence.
- See that legal memoranda have been completed on all questions of law including any likely questions relating to the admissibility of evidence or any motions likely to be made at trial.

At Least Three Weeks Prior to Trial

- Prepare a list of all witnesses needed; confirm with the attorney and have subpoenas prepared and served.
- Conduct the jury investigation.
- Conduct an investigation of the judge, the opposing attorney, and the community if not previously done.
- Prepare any exhibits, diagrams, audiovisual aids.

(continued)

At Least One Week Prior to Trial

- Verify the court date.
- Complete the trial notebook.
- Verify service of all subpoenas.
- Prepare client and witnesses for testimony.
- Make final arrangements for the following:
 - Lodging of the client, witnesses, and staff as needed.
 - Payment of lost wages for witnesses if committed by the attorney.
 - Transportation of all files, documents, audiovisual equipment, computer terminal, and other items needed at trial.
 - Petty cash needed for parking, meals, phone calls, and so on.

One Day Before Trial

- Meet one last time with the trial team.
- Meet with the client.

Trial date:	Case name and no.:
Client: (plaintiff, defendant)	Defendant:
Attorney:	Court:
Paralegal:	Date filed:
Date client interviewed:	Judge:

PLEADINGS AND MOTIONS ON PLEADINGS

Description	Date filed and served	Response date	Check if met	Hearing date
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Complaint
 Motion to dismiss
 Answer and counterclaim
 Motions
 Reply
 Amended pleadings (list)/dates filed/response date

Default:	Date:	Judgment for default:	Date
Jury trial demanded	<input type="checkbox"/> yes <input type="checkbox"/> no		

INVESTIGATION

Signify investigations to be conducted and witnesses to interview

Done/date:
 Done/date:
 Done/date:

DISCOVERY

Interrogatories	Date served	Due date	Response date served	Motion to object or compel
Plaintiff's				
Defendant's				

Depositions (by plaintiff)	Deponent/date	Notice/fee	Subpoena/fee	Location	Court reporter	Done
						<input type="checkbox"/>
						<input type="checkbox"/>
						<input type="checkbox"/>
Depositions (by defendant)						<input type="checkbox"/>
						<input type="checkbox"/>
						<input type="checkbox"/>

Request for Production of Documents and Things (Plaintiff's)	Describe	Served	Due	Answer/served	Objections/motions	Conducted	Copies delivered
						<input type="checkbox"/>	<input type="checkbox"/>
(Defendant's)						<input type="checkbox"/>	<input type="checkbox"/>

(continued)

Request for Mandatory Physical Examination yes no

Person examined: _____ Date: _____ Physician: _____

Request for Admissions (Plaintiff's)

Served _____ Due _____ Answer/served _____ Objections/motion to compel _____

-
-
-
-
-
-

(Defendant's)

MOTIONS

Describe _____ Notice _____ Served _____ Response _____ Argued _____ Result _____

CASE EVALUATED

Plaintiff's damages: _____ Total: _____

Other notes: _____

PRETRIAL CONFERENCE

Date: _____ Judge: _____

Preparation (describe): _____ Done

Notes on result: _____

SETTLEMENT

Settlement précis or brochure _____

Date: _____ Terms: _____

Releases/settlement agreement _____

Stipulation, consent decree, order for dismissal _____

Settlement distribution statement _____

FINAL PRETRIAL

Witness _____ Address _____ Subpoenaed _____ Fees _____

Jury Investigation _____

Preparation of Exhibits and Diagrams _____

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EXHIBIT 11:2 ■ Case Status Sheet (continued)

Preparation of Trial Notebook (Proof chart, voir dire questions, witness sheets, legal research, motions, jury instructions, etc.)

Preparation of Witnesses, Including Experts

Final Arrangements (Lodging, meals, parking, petty cash, transportation of trial materials)

Trial Date: Verdict/Date: Judgment/Date:

Motions: Served Reply due Reply

APPEAL

Notice filed:

Order transcript and preparation of record

File brief: Plaintiff/date Defendant/date

Oral argument: Date:

Court Decision

Motion for reconsideration:

Bill of costs

EXHIBIT 11:3 ■ Juror Data Sheet

Case: File no: Court: Date:

Attorney: Paralegal:

Juror no. _____ Name: Aliases:

Overall Evaluation: Good _____ Bad _____ ? _____

Place and date of birth: Race: Ethnic group:

Address:

Previous addresses (list most recent first):

Grew up at:

Home phone: Work phone:

Employment (list most recent first):

Occupation: Employer: Address: Phone: Dates:

Present annual income:

Highest level of education completed: Date:

Health:

Marital status: single: married: divorced: widowed: remarried:

Immediate family

Parents: Age: Occupation/education:

Where lived most of life: Current address

Spouse: Age: Occupation/education:

Children: Age: Occupation/education:

Grandchildren: Age: Occupation/education:

(continued)

Juror's political affiliation: Rep () Dem () Ind ()
 Liberal () Middle of road () Conservative ()

Juror's professional and service associations:

Veteran:

Religious affiliation: Active: Inactive:

Hobbies and activities:

Friends and relatives:

Financial concerns in case:

Relationship to parties:

Prior jury service: Where: When:

 Type of case: Verdict: Foreperson:

Previous or current litigation: Plaintiff: Defendant:

 Where: When: Type: Outcome:

Close family or friend involved in litigation: Plaintiff: Defendant:

 Where: When: Type: Outcome

Prior experiences related to trial and issues: (for example, ever injured in an accident, ever at fault in accident, etc.)

Assessment of opinion on: Issues:

 Source of information: Survey: Fellow workers: Other:

Assessment of jury leadership potential and strength of personality:

 Source of information:

 Record of juror on current panel:

 Overall evaluation: Good: Bad: ?:

 Explanation:

 Additional comments:

Page or tab number	Divisions
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- Section One: Reference
1. Table of contents (complete last)
 2. Persons and parties at trial
 - a. Court, courtroom, judge, clerks, bailiff: name, phone, office e-mail
 - b. Own staff at trial: attorneys, paralegals, others: names, phone numbers, e-mail, motel, etc.
 - (1) Firm’s office numbers for assistance
 - (2) Client
 - (3) Witnesses Names, addresses, phone numbers, affiliations
 - (4) Expert witnesses
 - (5) Others
 - c. Opponent’s staff at trial and witnesses, experts, phone, affiliation, etc.
 3. Case summary: factual and legal issues
 4. Proof chart: elements and proof in case

EXAMPLE OF PROOF CHART

Plaintiff’s elements and facts to prove	Source of proof
Negligence:	
Excessive speed	Wit: Schnabel “between 45–50 mph” Statement Client: “over 45” deposition p. 26 (Tab___) Photo: skidmarks, test. of Officer Timms
Inattentiveness	Hart’s test.: “looking at speedometer” deposition p. 35 (Tab___)
Same for defendant’s proof	

- Section Two: Pleadings and Pretrial
1. Major pleadings as amended: complaint, answer, defenses (all tabbed and color coded to separate plaintiff’s from defendant’s with key sections highlighted)
 2. Alternative method: (Simply summarize pleadings stating allegations, admissions, and denials. Highlight remaining issues.)
 3. Any pretrial order could go here

- Section Three: Last-Minute Motions
1. Any remaining pretrial motions with supporting authorities
 2. Authority to oppose any expected last-minute motions by the opposition

- Section Four: Voir Dire (Jury Selection)
1. Jury challenge chart: (usually eighteen to twenty boxes on standard sheet of paper to enter no. and name of each juror, plus attorney’s and paralegal’s notes on suitability)

(continued)

2. Profiles of jurors most and least wanted (predetermined by jury investigation)
3. Outline of voir dire questions: (if the attorney is permitted to conduct voir dire—if not, proposed questions for the judge to ask jurors with copies for the judge and opponent. Questions are usually drafted by the attorney or an experienced paralegal with attorney review. There are numerous sources on conducting voir dire.)
4. List grounds and authority for challenges for cause (a challenge for cause is a request to remove a juror for lawful reasons such as inability to be impartial)
5. List of authorities on any anticipated jury issues (including legality of any voir dire questions)
6. Jury panel chart (usually twelve boxes to place names and comments about jurors finally selected to hear the case)
7. Blank loose-leaf sheets to write notes on voir dire or to record any objections

Section Five: Opening Statement

1. Complete text
2. Alternative: outline (both drafted by attorney. Use large orator's type.)

Section Six: Outline of Order of Proof and of Opponent's Proof

Section Seven: Witness Examination

1. Own witnesses: direct examination (tabbed subsections for each witness in the order they will be called by the attorney). Each witness subsection should include:
 - a. A synopsis of witness information, whether subpoenaed and interviewed
 - b. An outline or chronological list of the questions that will be asked on direct examination on each critical issue. Use wide margins so notes can be added
 - c. Notations of what exhibits will be introduced by the witness with inserted copies of the exhibits
 - d. Notations inserted on any references to diagrams or other audiovisual aids
 - e. Conflicting testimony of witness (references to prior statements, depositions, interrogatories, admissions)
 - f. Questions to rehabilitate witness, especially if harmful cross-examination by opponent is expected
 - g. Summaries of any statement, letters, memos, or depositions with key quotations highlighted. Cross-indexed to section containing copy of full statement, deposition transcript, memos, etc.
 - h. Copies of subpoena with proof of service
2. Opponent's witnesses: cross-examination (Some attorneys prefer an entirely separate, different colored notebook for dramatic effect.)
 - a. Similar structure to item 1 above with emphasis on conflicting and inconsistent statements, testimony, or other impeachment material
 - b. Inserted copies of necessary exhibits, criminal records, etc.

Section Eight: Exhibits (sometimes kept as separate book)

1. Exhibit log

EXAMPLE OF EXHIBIT LOG

Ex. no. (as premarked or as assigned at trial)	Descript. or title of exhibit	Whether introduced, accepted or rejected. Notes.		
<u>Own ex.</u> (in order of introduction)	Title	Introduced ()	Accepted ()	Rejected ()
		Notes:		
P-1 (Plaintiff)				
<u>Opponent's ex.</u>	Title	Introduced ()	Accepted ()	Rejected ()
		Notes:		

2. Each exhibit in expected order of introduction (may be separated by identifying tabs, including exhibit no. if premarked by clerk)
3. Each exhibit section should include:
 - a. Exhibit summary sheet paper-clipped to exhibit (includes brief description of exhibit and significance, case file location or code no., witness needed for introduction, foundation, brief statement of authorities on admissibility)
 - b. Exhibit
 - (1) Marked copy for judge, opponent, one for each juror if desired, one for witness section, one for exhibit section
 - (2) If oversized, specially indexed to separate container or if cannot be hole punched, place in three-hole plastic envelopes
 - c. Place exhibits in box if there are too many for notebook.
4. List of all audiovisual props and accessories indexed to specially numbered containers if necessary.

Section Nine: Trial Motions and Authorities

(Any motions such as for dismissal or for directed verdict. Reminders to make motions should be placed at chronologically appropriate places and cross-indexed to this section. Consult with the attorney for what and where.)

Section Ten: Jury Instructions (Charge to Jury)

1. Attorney's copy of all instructions proposed to be read to the jury. (Should contain complete language of instruction, one instruction per page, plus any legal authorities supporting its use. Each should contain a checkoff for given, modified, or refused. Have enough copies for all parties and the judge.)
2. Opponent's proposed instructions with checkoff
3. Final copy of instructions read by the judge
4. If no jury, copy of request for findings of fact and conclusions of law for the judge

Section Eleven: Proposed Verdict Form (General, Special, General with Interrogatories)

(Optional section depending on detail of verdict desired by attorney. Necessary copies for judge and opponent. Section for supporting authorities.)

(continued)

Section Twelve: Closing Statement

1. Text or outline of closing statement (orator's size print)
2. Props or list of props
3. Notepad for recording items to add as trial progresses

Section Thirteen: Law Section

1. Trial memo or brief covering the law on all significant questions of law concerning the issues, evidence, motions, and other anticipated objections or conflicts
2. Geared to the judge's bench book (legal authority book)
3. Should include points and responses to law likely to be argued by opponent
4. May include concisely typed copy of the Rules of Evidence and pertinent Rules of Procedure with authorities
5. Cross-indexed to relevant sections in notebook

Section Fourteen: To Do, Notes, and Reminders

1. List of items to do before trial in completing notebook, serving subpoenas, gathering exhibits, etc.
2. Reminders of motions to make, whether to poll jury, and others
3. Notepad for items that come up at trial that should be commented on, argued, noted for appeal, etc.

(Caption)

MOTION FOR MISTRIAL

_____ (Plaintiff/Defendant) respectfully moves this court for an order declaring a mistrial in this action and discharging the jury from further consideration of this case.

As grounds for said motion, _____ (Plaintiff/Defendant) states that [*state grounds*]. Consequently, it is impossible for _____ to receive a fair trial by the jury.

This motion is made on the basis of all records, files, and proceedings in this case.

Date _____

Attorney for _____

Address _____

EXHIBIT 11:6 ■ Motion for Directed Verdict

At Close of All Evidence
(Caption)

MOTION FOR DIRECTED VERDICT

_____ (Plaintiff/Defendant) respectfully moves this court, at the close of all the evidence in this case, to instruct the jury to return a verdict in favor of _____.

As grounds for said motion, it is asserted that [state grounds].

Date _____

Attorney for _____

Address _____

For Order Prohibiting Reference During Trial to Insurance Payments Received by Plaintiff
(Caption)

MOTION IN LIMINE

The Plaintiff respectfully moves this Court to order counsel for the Defendant to avoid any reference during the course of trial to any compensation received or likely to be received by the Plaintiff from the Plaintiff's insurance carrier for his/her hospital and medical expenses.

Grounds for this motion are that reference to such insurance payments would be improper and prejudicial, and that such prejudice could not be corrected by any court ruling or admonition of the jury.

Date _____

Attorney for plaintiff _____

Address _____

JURY INSTRUCTION*Instruction no.* _____

Crossing between intersections, not in marked crosswalk, last clear chance

1. Although the Plaintiff had the duty to yield the right of way to vehicles on the highway, the Defendant had the duty to exercise ordinary care for pedestrians and others, including the duty of keeping a proper lookout. If you are satisfied from the evidence that immediately prior to the accident it was no longer possible for the Plaintiff, by exercise of ordinary care for his/her safety, to avoid the Defendant's vehicle, while the Defendant still had time, by the exercise of ordinary care, to discover the Plaintiff's danger and avoid the accident, you will find for the Plaintiff; otherwise you will find for the Defendant.
2. Definition of ordinary care from other standard instructions.)
3. (Damages from other standard instructions.)

Authorities (List relevant statutes and cases.)

ALTERNATIVE JURY INSTRUCTION

1. It was the Defendant's duty while operating his/her vehicle to exercise ordinary care for others, including:
 - a. keeping a lookout for others close enough to pose a danger
 - b. keeping vehicle under reasonable control
 - c. driving at a reasonable and prudent speed as dictated by speed limits and conditions of the road

If you are satisfied from the evidence that the Defendant failed to comply with one or more of these duties, and that such failure was a substantial factor in causing the accident, you will find for the Plaintiff; otherwise you will find for the Defendant.

2. If you are satisfied from the evidence that the Defendant complied with all of these duties and that the Plaintiff moved into the path of the Defendant's vehicle so suddenly that the Defendant could not avoid the accident, you will find for the Defendant.
3. (Add definition of ordinary care from other standard instructions.)
4. (Add standard instruction on damages.)

Authorities

- Dress neatly in clothing that helps you feel secure.
- Arrive at court one half hour before the designated time.
- Do not discuss your testimony or the case with or in the presence of others.
- Look at the attorney asking the question, then look at the jury when answering.
- Speak up.
- Try to be as relaxed as possible. Remind yourself that you are not there to match wits or to outsmart someone, but you are there simply to tell the truth as best you can. Let the chips fall where they may.
- Do not try to memorize your testimony. If you have reviewed the facts in your own mind, and anticipated likely questions, your answers will be informed but spontaneous.
- Listen to the opening statements of the attorneys to better understand the opposing theories and where your testimony will fit. Be prepared, however, if you are not a party, that you may be sequestered (set off in a separate room) so your testimony will not be influenced by the testimony of others.
- Listen to each question very carefully. Do not try to answer if you do not understand the question or a term in the question. Ask for clarification.
- Do not guess at an answer. If you do not know, say so, and do not be led into guessing or agreeing with the cross-examiner when you really do not know.
- Do not look at the attorney for help, guidance, or approval. Once on the stand, all responses should be your own.
- Pause if a question seems inappropriate; give your attorney a chance to object.
- Do not continue to answer a question if your attorney objects.
- Do not get trapped by the opposing attorney into a yes or no answer even if the attorney says "Just yes or no." State what needs to be said. You have the right to answer a question fully.
- Avoid qualifying your answer with "maybe," "I think," "to tell you the truth," or "honestly."
- Your attorney will give you a chance to explain your side fully, but if the opponent gives you an opening, take it.
- Do not overexplain. State your point clearly and briefly and let it be.
- If you are a party, be prepared to be called by the opposition for cross-examination during their presentation of the case.
- If you are asked by the opposing attorney whether you remember saying something, agree only if you do remember it. If you do not, or are not sure, ask to see the statement. If refused, make it clear that you will have to guess.
- If asked, "Is that everything that occurred?" give yourself an out by saying, "That is all I recall at this time."
- Visit the scene prior to testimony, review photos, videotape, and diagrams; note any current changes or differences from the original scene.
- Review the statements or testimony of other likely witnesses.
- Have an understanding of the case, the theories of both sides, and the order of presentation.
- Bring all records and documents requested.
- Do not fabricate or mislead.
- If you have spoken with the attorney before testimony and the opponent asks, "Have you spoken with attorney so-and-so prior to testifying?" state "Yes." There is nothing improper about this as long as you have been instructed to tell the truth.
- If you have been reimbursed for lost wages or travel to testify or have been paid as an expert witness, acknowledge this when asked. Witnesses are frequently reimbursed and experts are paid for their time and experience. They are not paid to mislead or state something other than their well-founded, expert opinion.
- If an expert witness, do not readily accept other authorities as sole authority in the field.
- Avoid jargon and technical language.
- Do not get defensive if challenged by the opposition; relax and avoid a battle of egos or wits.
- If an expert, testimony should be extremely well prepared and planned.
- Be ready to show how measurements and calculations were made.

1. **Jury Selection (Voir Dire):** Initial selection and questioning of prospective jurors by the judge and possibly the attorneys to choose an impartial jury. Attorneys exercise challenges for cause and a predetermined number of peremptory strikes to eliminate unwanted jurors.
2. **Opening Statements:** Introductory remarks by the opposing attorneys on the case and what they will be proving. The defendant's attorney may reserve the opening statement for later.
3. **Plaintiff's Case in Chief:** The attorney presents the plaintiff's case through direct examination (questioning) of the plaintiff's witnesses. Physical evidence is also presented through the appropriate witnesses. Defendant's attorney may cross-examine each of the plaintiff's witnesses.
4. **Defendant's Motion for Dismissal or Directed Verdict:** The defendant may move for dismissal of the action or a directed verdict requesting the judge to dismiss the case on the grounds the plaintiff has failed to prove the allegations sufficiently. If the plaintiff, in the judge's opinion, has met the requisite burden of proof, it is a **prima facie case** (sufficient to prove a claim prior to any rebuttal), and the case will continue. If the evidence is inadequate, the judge will dismiss the case.
5. **Defendant's Case in Chief:** Presentation of evidence through the defendant's witnesses. The plaintiff may cross-examine.
6. **Plaintiff's Rebuttal:** Presentation of any witnesses or evidence by the plaintiff to rebut any new items raised in the defendant's case in chief.
7. **Defendant's Rejoinder:** Presentation of any witnesses or evidence by the defendant to rebut evidence offered in the plaintiff's rebuttal.
8. **Motion for Directed Verdict (called a motion for judgment as a matter of law in federal court):** Motion by either side stating that the other side has failed to prove or sufficiently rebut the evidence such that, as a matter of law, the verdict is clear. If granted, the judge enters the verdict and the case ends.
9. **Conference to Determine Jury Instructions:** Attorneys argue and judge decides what jury instructions should be given the jury. The conference takes place in chambers.
10. **Closing Arguments:** Attorneys review the evidence, summarize the case, and request the jurors to enter a verdict in favor of their client. In most civil cases the defendant closes first and then the plaintiff. Some jurisdictions have plaintiff, defendant, then plaintiff's rebuttal if needed.
11. **Instructions or Charge to Jury:** Judge reads instructions to jury on their duties and the law governing their decision.
12. **Jury Decides Case:** The jury adjourns to the jury room, deliberates, and reports its verdict to the judge.
13. **Motion for Judgment Notwithstanding the Verdict (JNOV) (a renewal of the motion for judgment as a matter of law):** Either party may move the judge to enter a judgment contrary to the jury's verdict on grounds the verdict is against the great weight of the evidence.
14. **Motion for New Trial:** Either party may move for a new trial based on serious errors occurring at trial. If granted, the case will have to be retried.
15. **Entry of Judgment:** The court enters judgment consistent with the jury verdict or JNOV. From this judgment, the unsatisfied party may appeal.

(Caption)

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above entitled action, having been tried before this court without a jury on [*date*], with _____ appearing as the attorney for _____, and _____ appearing as the attorney for _____, and having heard the evidence in this case and the arguments of counsel, this court, being fully advised herein, makes the following findings of fact and conclusions of law:

Findings of Fact

(In separately numbered paragraphs state each finding of fact.)

From the foregoing facts, the court concludes

Conclusions of Law

(In separately numbered paragraphs state each conclusion of law.)

By the Court

Judge

Dated _____