

How to use a litigation notebook

Attorney Russell Corker shares practical, time-saving tips on preparing a litigation notebook.



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Organizing information so that it can be retrieved when needed is an integral part of trying a lawsuit. Like most trial attorneys, I have experimented with a number of methods through the years and have gradually developed a system which is efficient and effective: a litigation notebook.

Efficiency of time is a virtue often abused by repeating the same acts needlessly. With the average life of a typical personal injury case ranging from one to five years, depending on the jurisdiction, much time is wasted when a file must be reviewed or prepared at different times, unless there is a method employed to prevent this. The litigation notebook is just such a device. Since all actions must be planned with the expectation of eventual trial, the notebook should be prepared from the inception of the case. It can be carried to the numerous pretrial conferences without having to take the entire file; all the necessary information should be in the litigation notebook to conduct most phases of handling a case.

The notebook itself can be any type desired, but I prefer an ordinary spiral notebook, since it is easy to carry and fits well into a file. The one disadvantage

of this type is that if you do not plan the notebook properly in the beginning, you may run out of pages in a particular section. Spiral notebooks come in varying sizes, so this rarely poses a problem. In complicated cases, such as medical malpractice cases, two notebooks are frequently used: one with all of the data applicable to the particular case, and a

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separate notebook for the particular field of medicine applicable to the case. Creating two notebooks allows the attorney to use and add to the medical notebook for other cases dealing with the same subject or system. More will be said later about organizing the medical notebook.

You should plan the organization of the litigation notebook from its inception; otherwise you may run out of space in a section and defeat the purpose of having all of your information in one place. Tabs are used to separate the various sections and assist in access to the desired information. The following is a suggested notebook format for the typical plaintiff's personal injury case.

The first page contains a chronology of all the dates involved with the case. Start with the date of birth of the oldest parent in the family, followed by the next parent, the date of marriage, and birthdates of children (ages of children is frequently important for figuring damages). If there are any prior injuries or hospitalizations which might be important, they should be listed. Next comes the date of the accident, followed by hospitalizations. A brief description of injuries and any treatment procedures is included, but there is a separate section for more detail on hospitalizations and medical treatment.

Doctor visits, physical therapy, etc., should be listed with only brief reference to significant events. The date of returning to work should also be noted.

The purpose of the first page—and all information should fit on only one page—is to assist in any conference discussions. It will also be useful when the case is prepped for trial. All the relevant information for subpoenas is there and the necessary medical witnesses are identified. Seeing events in chronological order also can put things into perspective and be beneficial in and of itself.

The next several pages are dedicated to information frequently needed for conferences. All of the parties to the lawsuit, who they are, and their attorneys are listed. In an automobile case, the details of the accident and any details of liability should be noted.

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The next page should be used to list the injuries, as they would be in a bill of particulars. Since judges have very little patience to listen to lengthy discussions, the most serious of the injuries should be listed, descending in order of severity. Hospitalizations and any operations should also be listed on this page. Time lost from work and lost income should also be recorded here. The age of the plaintiff at the time of the accident is also important. Any other information concerning the case which is usually brought up during a conference should be placed on this page.

The next sections of the litigation notebook should describe the hospitalizations. Be sure to leave enough space

for details from each of the hospital admissions. The best approach is a flow sheet organized by days and, where appropriate, by shift. This is particularly important for medical malpractice cases. Because hospital charts are organized in sections, such as the progress notes and orders, arranging the chart chronologically will assist the attorney in better understanding the course of events and in presenting the case to the jury at the time of trial. If carefully prepared from the start, a blowup of the flow sheet makes a very effective exhibit at trial. Again, the object is to record the information once and not have to duplicate your work again. It also is a great time saver for another attorney who may take over the case at a later time.

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The next section of the notebook is devoted to jury selection. At least four pages should be used. The first page contains all of the questions to be asked during voir dire. How many good concepts are lost because they are not recorded? Use the first page of this section to record thoughts which come to you prior to jury selection. The jury questions should be on a lefthand page, with the facing right page being left for the jurors' names and all of the information obtained during voir dire.

The next section is for the opening statement. Several pages should be used for ideas as they occur or are planned in the preparation of the final draft. In most cases, an outline is the most effective format for the final opening statement. This can usually be written on two facing pages so that the pages of the litigation notebook need not be turned during the delivery.

The next sections should be used for deposition questions and the responses given by witnesses at the depositions. While it is the practice in most offices to prepare deposition reports, it is very convenient to have these original notes in the event a question comes up during a conference concerning the testimony of a witness.

The next section of the litigation notebook contains outlines of deposition testimony which will be used to cross-examine witnesses at trial. The best method for preparing outlines of this testimony is to read through the transcript quickly before writing anything in the litigation notebook. The entries can then be made according to categories, with the transcript page and line written in the margin, or merely by outlining the deposition itself. The category method seems to be more effective because it is easier to retrieve information during trial. The outline should be on a righthand page, and the facing left page should be left for any trial testimony or questions which occur before or during trial. Use check marks to confirm that the witness has in fact testified to each point. This allows the attorney to devote more attention to listening to the trial testimony.

Several additional sections should be included in the back of the notebook. One should be reserved for any medical or technical research that is important for the case. If the case is particularly complicated and the information might be used again in another case, keep medical and technical research information in a separate notebook. For example, in a medical malpractice case involving breast cancer, a completely separate book should be maintained so that when the case is completed the notebook can be removed from the trial folder and eventually used in another similar case. A great deal of time is saved in not

having to duplicate efforts, and new information can be added with subsequent cases. In creating a medical notebook, the initial section should deal with anatomy, followed by physiology, pathology, and then any other information which might be relevant. Remember to leave enough space between sections so that additional information can be added later.

The notebook should also include a section for legal material. Any citations or legal propositions can be recorded there to be used at trial or during conferences. This is a very good place to keep your notes while doing legal research. Having readily available citations during the trial can be very useful.

The investigation section should be near the back of the notebook. Things to do and investigation needed should be part of the notebook from the very beginning of the case, to eliminate the need to review the complete file prior to trial in order to know what subpoenas need to be served or what witnesses are necessary. Space should also be reserved for important questions that need to be answered. How often has an important question been forgotten because it was not written down or put in a place where it could be retrieved?

The final page of the notebook should be reserved for all of the important phone numbers which may be needed for the case. The last page is most useful for this because it is the easiest to get to. The various file numbers should also be listed here, together with the name of the claims examiner. This is also a good place to note the index and calendar number for easy reference.

If the litigation notebook is started at the time the case file is originally opened and kept up-to-date as the case progresses, many valuable hours can be saved. A good litigation notebook is the single most important part of the file, and

at the same time is the easiest to work with. These suggestions concerning the proper format for a litigation notebook have evolved through the years that I have been trying cases, and should be considered merely as suggestions. The important thing is to establish a system which is useful to you.