Ten Steps in Trial Preparation

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TEN STEPS IN TRIAL PREPARATION

Outline the Theory of Your Case

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1. Theory of the Case

Outline of Case Theory

Argument

Parole Evidence
Bargaining History
Grievance History
Other Employer Contracts

Arbitrability
Substantive
Procedural

Contractual Provisions
2. PRIORITIZE YOUR ARGUMENTS

- Formulate all potential arguments in your favor
- Disregard all arguments that are unconvincing or trivial
  - One good argument is worth more than 3 poor ones
- Focus on a concise way to make your arguments
3. OUTLINE YOUR OPPONENT’S THEORY OF THE CASE

- Formulate all potential arguments your opponent might make
- Focus on your opponent’s strongest arguments
- Understand your defenses to such arguments
4. **Determine the Evidence You Need and the Method of Introduction**

- What witnesses will you need?
- What order will you present them?
- What stipulations of fact might you offer?
  - Prepare them in advance with copies for all sides
- Prepare any demonstrative evidence
- Arrange for any on-site visits that may be necessary
5. INTERVIEW AND PREPARE ALL YOUR WITNESSES

- Prepare weeks, not hours, in advance

- When you have the option of choosing from more than one witness, determine the best
6. PREPARE THE ISSUE YOU ARE TO SUBMIT

- Attempt to get agreement in advance—it will help you prepare!
- Type and copy (make enough for both sides and the arbitrator at least) the issue you plan to submit.
- If you can’t or won’t get agreement ahead of time, anticipate how your opponent will want to frame the issue.
- Mentally prepare alternative submissions based on legitimate objections.
7. PREPARE ANY STIPULATIONS YOU INTEND ON SUBMITTING

- Assess whether it is easier to present evidence rather than negotiate a stipulation.
- Determine whether you want to seek acceptance from your opponent in advance of the hearing (otherwise you won’t know what witnesses to bring).
- Type and copy all prepared stipulations.
- Resolve all prepared stipulations prior to the actual commencement of the hearing.
8. COPY ALL DOCUMENTS YOU PLAN TO INTRODUCE

- Make sure you have at least copies for the arbitrator, both sides and the witness.
  - If there is an arbitration panel make copies for all panel members.
- Arrange the documents in the planned order of introduction.
- Ensure you have all source documents if you are using excepts or summary documents/charts etc.
Consider giving an outline of the testimony to all witnesses so that they know where they fit into the hearing and their contribution to it. This will also give you a checklist of witnesses, order, testimony points, etc.

Contemplate who the other side may call, and what they will testify to.
10. **PREPARE A “TRIAL NOTEBOOK”**

- Use whatever organizational system works for you
- The system should organize all documents, exhibits, and resource materials
- Prepare a list of exhibits - Union, District, Arbitrator, Joint (and in PERB cases ALJ)

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