

Trial Brief Help...

Hi firm,

I'm working on my very first ever pre-trial brief which is due tomorrow (got the case very last minute) and I'm needing a bit of advice.

It's an auto accident case. I represent the plaintiff. Liability is not admitted by defendant.

I have looked for, but have not found any trial briefs for reference that answer: do you list the traffic laws you plan to use at trial in the trial brief?

Of the trial briefs I've found, they seem to be pre-trial briefs which discuss mostly trial procedure, or seem to be a brief during trial fixing something that has already occurred in trial.

Should I put the state traffic laws in, or keep them out?

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In my experience, a trial brief is pretty much whatever the lawyer wants to put in to it. But the purpose is to guide the judge. So citing the statutes you rely upon is a good idea.

Identify any evidentiary issues you anticipate.

Give a general description of what you expect the evidence to show.

List witnesses and what you expect them to say. (Strike a balance between being too general and being too specific.

Andy Simpson, U. S. Virgin Islands

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Andy's advice is good.

Basically use the trial brief to alert the judge to whatever issues you think he or she should know about before the trial. If the traffic laws are important (e.g., Defendant violated XX.XXX & XXY by driving the wrong way on the Interstate while texting an order to a liquor store), then list the ones you would like the judge to know about. If there are cases that are especially relevant to a particular issue, cite those and their holdings as well. Keep in the mind that the judge may not have a lot time to read the brief so don't be verbose or feel you have to describe everything about the case.

One way to approach is to imagine if you had run into the judge at a cocktail party, and were somehow allowed to tell him or her about the important aspects of the case given this ex parte opportunity, what would you explain if you had 15 minutes. The most important things are what goes into a trial brief (bet the fact that opposing counsel if a jerk is almost never one of the most important things).

Good luck.

Bert Krages, Oregon

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Yes cit the statutes the judge probably knows what they are but you'll raise his opinion of you if it looks like you do.

most of my witness lists tend to be short especially for custody cases that said you witness list is your roster not your starting lineup. That is when in doubt include them. That way you don't have to ask and it forces the OC to prepare for them.

John Davidson, Pennsylvania

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The first issue is whether you are required to submit the memorandum. If not relax, you have an excellent reason to not submit or to submit a barebones memorandum.

Having said that you probably need the memorandum for your own purposes so you want to put something on paper. You need to know the contours of the applicable law.

Richard P. Schmitt, Maryland

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Depends on case and issues but I generally try to set out what my theory of the case is; with citations as appropriate to relevant statutes, rules and case law as needed.

Some of this depends on exactly what you mean by "pretrial brief". I'm assuming you mean what we call a 'pretrial statement' where the judge asks for "brief" statement of facts and law and witness and exhibit list and any claims and defenses raised. IF this gets complicated I will do that, but I may also do an accompanying "Memorandum of law" discussing some of the more esoteric stuff. Depends on the case.

I would also, normally, briefly address any defenses raised; f'instance I'm working on one now, long story short is we're trying to 'void a deed' for failure of spouse to join homestead conveyance; opposing

party has raised defenses of both waiver and laches; however, I'm focusing on three things; one, case law says that such a deed is "void ab initio", i.e, not voidable but just no good from the get go; second there's case law that says A deed which is void due to violation of a constitutional provision cannot be given life by estoppel. and other that says T]he intent of a party is not controlling in a case such as the instant one when the formal requirements regarding a conveyance of a homestead were not satisfied. I'm trying to work those in.

Ronald Jones, Florida

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I am wondering what the practice is? I speak of setting out the text of applicable statutes in the trial brief instead of mere citations. So far in this thread I do not recall mention of content inclusion as opposed to just citing.

Seems to me a trial briefs with tabs for the text of statutes is desirable for a number of reasons. Not only is inclusion of text helpful but you may want to highlight portions.

You may also want to consider using colored paper for the trial brief, and maybe different colors for parts of the brief. Often in cases the bench becomes cluttered with mostly white paper. It helps the judge a lot if counsel refers to information on such-as-such colored paper. I add, same with witnesses. If asking a witness to direct her/his attention to something, it helps the witness, the judge, opposing counsel, and the court reporter to direct attention.

There can also be tabs for a glossary of terms used in the case, particularly where the terms may not be in common use, and for names of witnesses.

Court reporters appreciate being provided the information prior to testimony with a possible quick flip-through so he/she can quickly locate a word, term, names used in the hearing.

This comes to mind about glossaries. Some years ago a transcript prepared by the court reporter from a family law hearing contained the transcribed term 'power mower.' It was supposed to be paramour.

Rob V. Robertson, Texas

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Thank you all for your responses. It sure is comforting knowing there's a safety net out there (The Firm) when you get tossed a curve ball.

Your advice and tips were just what I needed. I only wish I'd had time to have it reviewed before I had to submit it.