



## Good Counsel

# 7 Steps for Trial Success

BY MIRANDA L. SOUCIE

**T**rials are stressful experiences that require planning, focus, and for us to be at our best to achieve justice for our clients. But the first step is figuring out which cases to try. Create a list of criteria for a case to go to trial, and reevaluate it regularly. Do you have strong liability evidence? Do you believe in the case? When those answers are yes, approach those cases as if they are going to trial, keeping these guidelines in mind.

**1. Pick your team.** Once you have decided which cases to try, choose your team. Trials can be done alone, but should they be? Whether you're trying a large catastrophic injury case or a small auto case, having more than one set of eyes and more than one person thinking through all aspects of the case will improve your chances of success.

This also means bringing people along for the ride—or in some cases forcing yourself onto the bus. Remember, your team is not limited to the people sitting at the counsel table. A good team has someone on standby who can draft initial jury instructions, directs, or crosses. They can prepare materials for depositions or do the initial witness prep. If you are always doing things yourself and not bringing others along, you may be hamstringing your whole team. Experience comes only with doing. This same premise goes for those of us seeking more experience. Take the lead, and ask how you can help.

**2. Make a plan, and set a date.** Figure out what needs to be done to set a trial date. Do you have a discovery plan? Have you mapped out what you need to really be successful at trial? What evidence do you have? What is missing? What experts do you need? Do you have all of your damages evidence?


Look at the big picture as well as the details. Preparation and planning aren't about making sure things go perfectly. Things will go wrong. Something will happen that you didn't predict. But you will be prepared for it. Also remember to be flexible. When you have all the pieces of the puzzle ready to go, sometimes you just have to find a new place for a puzzle piece to fit. When you've worked out all the details in your preliminary plan, take the lead on drafting the case management order, and be proactive about any other deadlines that need to be scheduled and tracked.

**3. Be present.** Pick up the phone. Put yourself out there. Sit across the table from your client, your colleagues, and your judge. There is no substitute for personal connection. Relationships matter. Rapport matters. Trust matters.

**4. Know your audience.** Every time you are dealing with an expert, remember your audience. It is not the expert. It is not opposing counsel. It is not your team or your co-counsel. It is the judge and the jury—people who have next to no knowledge about your case. You must understand the case like an expert, but always be mindful that you will present your case to jurors, not to a panel of experts. Simplify, rephrase, and reframe things. This also goes for drafting your complaints and disclosures and for presenting evidence at deposition or trial. Keep it simple. Keep it real. Authenticity and simplicity are what resonate with jurors.

**5. Have an outside ally.** Before you send a demand or respond to an offer, call a trusted ally and talk things through. This is someone outside of your firm and outside of your team. Your team is emotionally charged and has a vested interest, so you need a neutral perspective. The same goes for prepping for trial. Have a friend outside of your team on speed dial whom you trust and who gets what you are going through—someone who can provide objectivity and clarity and be a sounding board. Ask this person to observe your opening, look at demonstratives with you, and talk through damages. And remember, it's a two-way street. You also must take care of your allies and return the favor. Be present for others, because we are all in this together.

**6. Self-care.** This is a physically and mentally taxing profession. Make time for whatever it is that helps you remain centered and focused—working out, doing yoga, meditating. Schedule decompression time. Sleep and eat well. Don't let these things go by the wayside. Take time to unplug. Put your phone down. Walk away from your computer.

**7. Be yourself.** To succeed, you need to be you. Be credible and authentic. This comes down to how you talk, your approach to questioning, your appearance, and your presentation—the whole package. Jurors will connect with you more easily. Your witnesses will respond to you better. Opposing counsel will take you more seriously. You'll feel more confident and be more believable. You are your biggest asset. 

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