



Pre-Trial and Trial Preparation

ACTION	NA	DATE DUE	DATE DONE	Notes
1. Post-Questioning Steps				
<ul style="list-style-type: none"> Send copy of transcripts from questioning, any responses to written questions and replies to undertakings received from opposing party to client for review with reminder of implied undertaking not to disclose. 				
<ul style="list-style-type: none"> If client advises of incorrect answer in the transcript of their questioning, file affidavit (rule 5-31). 				
<ul style="list-style-type: none"> Prepare and review responses to undertakings to ensure they are responsive and complete. 				
<ul style="list-style-type: none"> Review refusals and assess whether necessary to pursue. 				
<ul style="list-style-type: none"> Consider whether order for inspection, detention or preservation of property or materials is appropriate (rule 6-44). 				
<ul style="list-style-type: none"> Consider whether there is a need to make an application for production of documents from others (rule 5-15). 				
<ul style="list-style-type: none"> Consider whether it is necessary to question a non-party (rule 5-20). 				
<ul style="list-style-type: none"> Consider pre-trial conference post-pleadings and prior to questioning (rule 4-11). 				
2. Re-assessment After Questioning				
<ul style="list-style-type: none"> Review pleadings to determine whether they are appropriate to deal with any new factual or legal issues identified during questioning. 				
<ul style="list-style-type: none"> Consider whether amendment to pleadings is necessary to permit investigation of new issues identified during questioning. 				
<ul style="list-style-type: none"> Re-assess with client the issues, objectives, problems, potential outcome and cost/benefit of litigation in light of what was learned 				

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during questioning, including any admissions made by your client or by the other side.				
<ul style="list-style-type: none"> Assist client with making decision of whether to proceed with litigation or to seek alternatives. 				
<ul style="list-style-type: none"> Consider alternative approaches such as: <ul style="list-style-type: none"> Negotiated settlement 				
<ul style="list-style-type: none"> Summary judgment 				
<ul style="list-style-type: none"> Application to determine point of law (rule 7-2) 				
<ul style="list-style-type: none"> Submission of stated case (where permitted under applicable legislation) 				
<ul style="list-style-type: none"> Consider whether to seek binding pre-trial conference (Rule 4-21.1) 				
<ul style="list-style-type: none"> Where appropriate, initiate settlement discussions or prepare and serve offer to settle (rule 4-26) or payment into court (rule 4-34) 				
3. Building the Trial Brief <ul style="list-style-type: none"> Reduce to writing a conceptual overview or trial plan that identifies: <ul style="list-style-type: none"> Theory of the case. 				
<ul style="list-style-type: none"> Legal issues to be addressed. 				
<ul style="list-style-type: none"> Essential facts to be proven. 				
<ul style="list-style-type: none"> Significant factual positions of opponent to be countered. 				
<ul style="list-style-type: none"> Evidence/witnesses to prove your affirmatives. 				
<ul style="list-style-type: none"> Potential rebuttal evidence or witnesses. 				
<ul style="list-style-type: none"> Damage issues and proof. 				
<ul style="list-style-type: none"> If not already done, prepare memorandum of law on each legal issue identified/evidentiary brief. 				
<ul style="list-style-type: none"> Review questioning of opposing party with combined objectives of: <ul style="list-style-type: none"> Indexing by topic. 				

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<ul style="list-style-type: none"> Identifying favourable admissions. 				
<ul style="list-style-type: none"> Identifying evidence to be rebutted at trial. 				
<ul style="list-style-type: none"> Summarizing the evidence. If litigation software is used, consider reproducing significant evidence on selected topics. 				
<ul style="list-style-type: none"> Review questioning of your client with combined objectives of: <ul style="list-style-type: none"> Summarizing the evidence your client can give. 				
<ul style="list-style-type: none"> Identifying admissions favourable to other side and impact. 				
<ul style="list-style-type: none"> Identifying areas where evidence from others will be necessary to buttress your client's evidence. 				
<ul style="list-style-type: none"> Prepare or update a master brief (utilizing points above) that states facts in detail utilizing: <ul style="list-style-type: none"> Chronological format unless there are overriding reasons to depart from it. 				
<ul style="list-style-type: none"> References to relevant documents at each stage. 				
<ul style="list-style-type: none"> When questioning reviews and master brief are completed, revisit and amend or expand trial plan. 				
<ul style="list-style-type: none"> Review all documents intended to be used at trial and ensure they have been disclosed. If not, file supplemental affidavit of documents. 				
<ul style="list-style-type: none"> Reconsider whether it is necessary or appropriate to: <ul style="list-style-type: none"> Make application for production of documents in possession of non-party (rule 5-15). 				
<ul style="list-style-type: none"> Seek leave to examine non-party (rule 5-20). 				
<ul style="list-style-type: none"> Consider whether it is necessary or appropriate to obtain order of court: <ul style="list-style-type: none"> For service of interprovincial subpoenas to obtain evidence outside of Saskatchewan (see The Interprovincial Subpoena Act, RSS 1978, c I-12.1). 				

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ACTION	NA	DATE DUE	DATE DONE	Notes
<ul style="list-style-type: none"> To question a witness (rule 6-29). 				
<ul style="list-style-type: none"> To cross-examine on an affidavit (rule 6-13). 				
4. Ordinary Witnesses <ul style="list-style-type: none"> Prepare witness list (rule 4-14). 				
<ul style="list-style-type: none"> Prepare or extract from master brief or questioning a summary of known facts or evidence relevant to each witness. 				
<ul style="list-style-type: none"> Prepare set of documents that may be relevant to each witness, including affidavits, reply to undertakings and transcripts. 				
<ul style="list-style-type: none"> Consider who will interview, or attempt to interview, prospective witnesses, bearing in mind that if you interview alone and witness changes the story at trial, you will have no way of cross-examining on this. Consider having investigator or paralegal conduct interview if appropriate. 				
<ul style="list-style-type: none"> Contact potential witnesses to arrange interviews. If refusal, consider sending written request noting refusal and, where appropriate, consider resorting to rule 5-20 (questioning of non-party with leave of court). 				
<ul style="list-style-type: none"> Prepare for interview: <ul style="list-style-type: none"> Review pleadings and issues. 				
<ul style="list-style-type: none"> Review summary of known facts and evidence and any relevant documents to each witness. 				
<ul style="list-style-type: none"> Prepare outline of topics to cover. 				
<ul style="list-style-type: none"> If not conducting the interview yourself, brief the interviewer. 				
<ul style="list-style-type: none"> Interview or examine witnesses. Interview/examiner should: <ul style="list-style-type: none"> Review known facts or evidence with witness. 				
<ul style="list-style-type: none"> Review relevant documents with witness. 				

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ACTION	NA	DATE DUE	DATE DONE	Notes
<ul style="list-style-type: none"> Get witness's version or interpretations with respect to known facts or evidence and the relevant documents. 				
<ul style="list-style-type: none"> Obtain witness's briefing on any new or related evidence. 				
<ul style="list-style-type: none"> Find out if witness has made any previous statements and attempt to obtain copy. Disclose previous statements to counsel opposite. 				
<ul style="list-style-type: none"> Try to identify other potential witnesses. 				
<ul style="list-style-type: none"> After each witness interview prepare: <ul style="list-style-type: none"> <i>Subpoena duces tecum</i> or <i>ad testificandum</i> along with conduct money. 				
<ul style="list-style-type: none"> Typed statement or witness brief. 				
<ul style="list-style-type: none"> Record assessment of person's strengths and weaknesses as a witness. 				
<ul style="list-style-type: none"> Consider sending brief or statement to witness to review, confirm, correct and sign. 				
<ul style="list-style-type: none"> Consider interviewing anticipated witnesses for opposing party. Note: you cannot speak to opposing party without counsel's permission. You should consider whether or not to contact opposing parties' experts without giving notice to opposing party's solicitor so that solicitor may advise his or her experts on matters that are covered by legal privilege that expert may not disclose. 				
<ul style="list-style-type: none"> Prepare witness contact sheet with names, addresses, telephone numbers, fax numbers and email addresses of all witnesses and potential witnesses for easy reference in your trial book. Research your witnesses on the Internet including social media. 				
5. Expert Witnesses <ul style="list-style-type: none"> Consider, if you have not already done so, the need for expert witness: 				

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ACTION	NA	DATE DUE	DATE DONE	Notes
<ul style="list-style-type: none"> Identify appropriate experts. 				
<ul style="list-style-type: none"> Discuss expert's fees with client, including who is responsible for expert's account. 				
<ul style="list-style-type: none"> Select and conduct initial interviews with experts in which you: <ul style="list-style-type: none"> Discuss expert's qualifications, publications and court experience. 				
<ul style="list-style-type: none"> Discuss case and issues. 				
<ul style="list-style-type: none"> Define issues on which opinion is required and availability for trial 				
<ul style="list-style-type: none"> State for the expert those facts that will be proven at trial (or assumptions to be made) and upon which his or her opinion will be sought. Take care in crafting facts or assumptions to ensure that you will be able to prove those facts or assumptions at trial. 				
<ul style="list-style-type: none"> Attempt to obtain preliminary expression of opinion before actually engaging expert to conduct investigation and prepare report. 				
<ul style="list-style-type: none"> Get estimate of fees and set clear parameters as to what can be charged. Make arrangements regarding payment, including who will be responsible for expert's account (you or your client). 				
<ul style="list-style-type: none"> When expert is selected: <ul style="list-style-type: none"> Prepare written engagement letter 				
<ul style="list-style-type: none"> Discuss the expert's role in the case. Ensure the expert understands he or she is not an advocate or finder of fact but is to provide independent and objective expert evidence in respect of particular fact situation. 				

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ACTION	NA	DATE DUE	DATE DONE	Notes
<ul style="list-style-type: none"> Make sure the expert knows he or she will be cross-examined and may be compelled to produce his or her entire file. Carefully consider what should be in the expert's file. Inform them of the possibility of being served with a subpoena and discuss privilege. Advise the expert that opposing counsel should not contact him or her without giving you notice so that you may advise the expert which matters are covered by privilege. 				
<ul style="list-style-type: none"> Ensure the expert has all relevant facts, documents and reports. 				
<ul style="list-style-type: none"> Obtain suggestions for reading that will improve your knowledge of the area. 				
<ul style="list-style-type: none"> Determine whether other experts will be needed. 				
<ul style="list-style-type: none"> Assess expert's strengths and weaknesses as witness. 				
<ul style="list-style-type: none"> If it is intended to use a report, discuss form and content of the report. 				
<ul style="list-style-type: none"> Obtain the report and review it with the expert in detail, considering how it will affect your case. Review the report as if you were preparing to cross-examine on it. 				
<ul style="list-style-type: none"> Remember draft reports in the expert's file may end up being produced. Therefore, ensure the expert has facts and assumptions straight to start with. Preferably have the expert discuss his or her potential report and opinions with you before reducing it to writing. 				
<ul style="list-style-type: none"> Obtain the expert's <i>curriculum vitae</i>. Research the expert on the Internet. 				
<ul style="list-style-type: none"> Add the expert's address, telephone numbers, fax numbers and email addresses to the witness contact sheet. 				
6. Documents <ul style="list-style-type: none"> Public documents: 				

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<ul style="list-style-type: none"> Consider what public documents will be necessary to be filed as proof or evidence. 				
<ul style="list-style-type: none"> Obtain certified or other verified forms of: <ul style="list-style-type: none"> Land Titles documents. 				
<ul style="list-style-type: none"> <ul style="list-style-type: none"> Personal Property Registry searches. 				
<ul style="list-style-type: none"> <ul style="list-style-type: none"> Court documents. 				
<ul style="list-style-type: none"> <ul style="list-style-type: none"> Other public documents. 				
<ul style="list-style-type: none"> Ensure that each can be used as proof without more pursuant to sections 40 to 48 of <i>The Evidence Act</i>, SS 2006, c E-11.2, or equivalent of <i>Canada Evidence Act</i>, RSC 1985, c C-5. 				
<ul style="list-style-type: none"> Place in specific file so they are available when needed. 				
<ul style="list-style-type: none"> Private documents: in respect of documents produced by party or third parties: <ul style="list-style-type: none"> Ensure exhibit numbers on documents are transposed into party's affidavit of documents and affidavit of document numbers are transposed into witness list so documents can be quickly identified in either direction. 				
<ul style="list-style-type: none"> Organize all documents produced and classify them into three categories consisting of: <ul style="list-style-type: none"> Documents likely to be exhibited at trial –extract original or exhibited copy into separate file/binder /computer file, sorted in chronological order or by topic. 				
<ul style="list-style-type: none"> <ul style="list-style-type: none"> Documents potentially of significance – index as to facts or issue. 				
<ul style="list-style-type: none"> <ul style="list-style-type: none"> Documents likely of no significance. 				
<ul style="list-style-type: none"> Proof of documents. <ul style="list-style-type: none"> In respect of public documents, determine whether they can be proven as public, official or court documents (<i>The Evidence Act</i>, SS 2006, c E-11.2) or whether a witness is required. 				

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<ul style="list-style-type: none"> In respect of private documents, determine whether document can be proven: <ul style="list-style-type: none"> By admissions from questioning. 				
<ul style="list-style-type: none"> By evidence of your client or non-party witness. 				
<ul style="list-style-type: none"> As business records (<i>The Evidence Act</i>, sections 49 to 53). 				
<ul style="list-style-type: none"> By notice to admit facts (rule 6-51). 				
<ul style="list-style-type: none"> Prepare list of those specific documents that are not susceptible to proof in a routine manner as stated above. Decide what steps will be taken for proof. 				
<ul style="list-style-type: none"> Consider cooperation with opposing party/opposing counsel in creation of joint document book. Set clear parameters in terms of whether documents included in joint book are admitted into evidence or must still be proven through one of the methods above. 				
7. Damages <ul style="list-style-type: none"> Consider approaches to proof of damage, including: <ul style="list-style-type: none"> Have your client or appropriate witness prepare up-to-date calculation of damages. When defending claim for damages, do your own assessment of damages based upon evidence at questioning/documents. 				
<ul style="list-style-type: none"> Restate client's calculations into heads of damage consistent with law regarding damages. 				
<ul style="list-style-type: none"> Identify witness/evidence by which each damage element will be proven. 				
<ul style="list-style-type: none"> Consider the basis upon which to attack each head or particular of damage you face. 				
<ul style="list-style-type: none"> Incorporate damage issues into your trial plan. 				
<ul style="list-style-type: none"> Consider agreement as to damages. 				

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8. Re-assessment				
<ul style="list-style-type: none"> Once again, re-assess prospects for the case with your client. 				
<ul style="list-style-type: none"> If you have not already done so, consider preparing and serving offer to settle (rule 4-26), or payment into court (rule 4-34). 				
<ul style="list-style-type: none"> In formal offer to settle, ensure it meets with mandatory requirements of rule 4-26(2). 				
9. Pre-trial				
<ul style="list-style-type: none"> When all of the above are complete, call for joint request for pre-trial conference in accordance with rule 4-11(i). 				
<ul style="list-style-type: none"> If you cannot obtain joint request for pre-trial conference, proceed to have date fixed pursuant to rule 4-11(2). 				
<ul style="list-style-type: none"> Serve and file pre-trial brief at least ten days before assigned date in the format contemplated by rule 4-13(2). 				
<ul style="list-style-type: none"> To this end, use materials assembled in your trial book to: <ul style="list-style-type: none"> Prepare summary of relevant facts. 				
<ul style="list-style-type: none"> Identify issues and applicable law. 				
<ul style="list-style-type: none"> Assemble documents for pre-trial judge. 				
<ul style="list-style-type: none"> Ensure client is advised in advance of: <ul style="list-style-type: none"> Pre-trial date. 				
<ul style="list-style-type: none"> Necessity for his or her attendance. 				
<ul style="list-style-type: none"> Pre-trial conference process, its objectives, opportunities it presents and settlement strategies that will be adopted. 				

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ACTION	NA	DATE DUE	DATE DONE	Notes
<ul style="list-style-type: none"> In respect of appraisal and medical reports: <ul style="list-style-type: none"> File and serve a copy of any appraisal report 30 days before the pre-trial conference that you intend to rely on at trial, together with qualifications of the expert at least 30 days before pre-trial (rule 5-46(2)). 				
<ul style="list-style-type: none"> File and serve a copy of any physician, chiropractor, dentist, psychologist, physical therapist or occupational therapist report that you intend to rely on at trial, together with qualifications of the expert at least 30 days before pre-trial (rule 5-47). 				
<ul style="list-style-type: none"> Pursuant to rules 5-46 and 5-47, such a report is admissible in evidence at trial without more unless the other party gives notice of need to cross-examine that expert not less than 30 days after the trial date is set for appraisers (rule 46(3)); 30 or 60 days before trial for medical report (rule 47(2)(a) and (b)). 				
<ul style="list-style-type: none"> In respect of a chiropractor, dentist, psychologist, physical therapist or occupational therapist report, consider whether it would be appropriate to ask at pre-trial for an order that the subject submit to an examination by an independent party. 				
<ul style="list-style-type: none"> In respect of other expert witnesses: <ul style="list-style-type: none"> Serve and file, not less than 60 days before pre-trial, the information required (rule 5-39; rule 5-40(2)(a)). 				
<ul style="list-style-type: none"> Ensure the expert has certified his or her duty in the report (rule 5-37(3)). 				
<ul style="list-style-type: none"> Rebuttal expert report must be served 30 days before pre-trial conference (rule 5-40(2)(b)). 				
<ul style="list-style-type: none"> In respect of joint experts, see requirements of rule 5-38 and consider rule 5-38(b) if additional an expert at trial is required 				
<ul style="list-style-type: none"> At and after pre-trial: 				

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<ul style="list-style-type: none"> Re-assess your prospects with your clients, in light of what you have learned. 				
<ul style="list-style-type: none"> Modify your offer to settle, if appropriate. 				
<ul style="list-style-type: none"> Follow up with the registrar to fix a trial date. 				
<ul style="list-style-type: none"> Consider whether to give a demand for jury trial. Under rule 9-1, this is to be made before the registrar has assigned a date. 				
<ul style="list-style-type: none"> As soon as the trial date is fixed, advise in writing of trial dates: <ul style="list-style-type: none"> Your client. 				
<ul style="list-style-type: none"> <ul style="list-style-type: none"> Potential witnesses. 				
<ul style="list-style-type: none"> <ul style="list-style-type: none"> Experts. 				
10. Final Preparation				
<ul style="list-style-type: none"> Update all aspects of trial book, including: <ul style="list-style-type: none"> Master brief. 				
<ul style="list-style-type: none"> Witnesses' briefs. 				
<ul style="list-style-type: none"> Documents to prove. 				
<ul style="list-style-type: none"> Briefs of law. 				
<ul style="list-style-type: none"> Prepare briefs on any anticipated evidentiary issues. 				
<ul style="list-style-type: none"> Attempt to reach agreement with opposing counsel regarding documents (e.g., for purposes of trial, it will be deemed that documents were sent and received by persons named therein, that those persons had authority to send and receive, business records were prepared in normal course of business, that copies may be used, etc.) 				
<ul style="list-style-type: none"> Attempt to agree on joint book of documents 				
<ul style="list-style-type: none"> Pursue agreed statements of fact 				
<ul style="list-style-type: none"> Notices: 				

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<ul style="list-style-type: none"> Notice to dispute documents (rule 5-16(4)) within one month of production. 				
<ul style="list-style-type: none"> Notice to admit facts (rule 6-51) in respect of any specific facts that you assess as being capable of proof but that the other party has failed to agree to. In this respect: <ul style="list-style-type: none"> You must serve notice at least ten days prior to trial. 				
<ul style="list-style-type: none"> <ul style="list-style-type: none"> If served with notice to admit facts, give admission of those facts that you expect to be proven within six days prior to date of trial or you may have to bear the cost of the proof in any event of the cause. 				
<ul style="list-style-type: none"> Notice to produce documents (rule 9-12 and form 9-12) in respect of any specific documents from the opposing side that you may require that are not subject to agreement. 				
<ul style="list-style-type: none"> Documents: <ul style="list-style-type: none"> Ensure any documents that come to your attention late in the process are produced to other side. Failure to give notice of undisclosed documents may result in the inability to use them at trial [rule 5-17(2)]. 				
<ul style="list-style-type: none"> Serve a subpoena <i>duces tecum</i> with conduct money in respect of documents needed to be obtained from third parties. 				
<ul style="list-style-type: none"> Serve subpoenas <i>ad testificandum</i> together with appropriate conduct money on all witnesses, whether friendly or not. If they are to testify in respect of documents in their possession, serve a subpoena <i>duces tecum</i>. 				
<ul style="list-style-type: none"> In the event that you intend to present evidence taken in another cause or matter, give two days' notice to other party of your intention to read such evidence (rule 9-22). 				
<ul style="list-style-type: none"> Make appropriate arrangements for: <ul style="list-style-type: none"> Presentation of telephone or audio-visual evidence (rule 9-20). 				
<ul style="list-style-type: none"> Court reporter at trial, if required. 				

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<ul style="list-style-type: none"> Interpreter, if required (this is the responsibility of the examining party (rule 6-29(7) and (8))). 				
<ul style="list-style-type: none"> View of any place, property or thing. Advise court and opposing counsel in advance and attempt to work out arrangements (rule 9-28). 				
<ul style="list-style-type: none"> Factual witnesses <ul style="list-style-type: none"> In respect of those persons who will be witnesses: <ul style="list-style-type: none"> Review with them your witness brief. 				
<ul style="list-style-type: none"> <ul style="list-style-type: none"> Advise them of areas you intend to examine on and go over some sample questions of examination and cross-examination. 				
<ul style="list-style-type: none"> <ul style="list-style-type: none"> Discuss courtroom procedure, how to dress, how to answer questions – consider providing them with brief written review for ease of reference. 				
<ul style="list-style-type: none"> <ul style="list-style-type: none"> Attempt to schedule specific time and make arrangements to contact them on short notice to facilitate their schedule. 				
<ul style="list-style-type: none"> Ensure your witness information (telephone numbers/email addresses and other means of contact) are current. If not, amend witness list [rule 4-14(3)]. 				
<ul style="list-style-type: none"> Expert witnesses: <ul style="list-style-type: none"> Review their report and ensure it is still current in light of all knowledge obtained. 				
<ul style="list-style-type: none"> Share any rebuttal report obtained and ask the expert to brief you on that, including assessment of points made. 				
<ul style="list-style-type: none"> Advise of manner on which you intend to present evidence and go over examination questions and sample cross-examination questions. 				

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ACTION	NA	DATE DUE	DATE DONE	Notes
<ul style="list-style-type: none"> If the expert is inexperienced as a witness, discuss courtroom procedure, how to dress, how to answer questions and consider providing an appropriate written guide. 				
<ul style="list-style-type: none"> Ensure timing, travel and other arrangements are made. 				
<ul style="list-style-type: none"> Ensure your contact addresses, telephone numbers and email addresses are current. 				
<ul style="list-style-type: none"> Finalize trial book, including: <ul style="list-style-type: none"> Reviewing and ensuring completeness of your trial brief. 				
<ul style="list-style-type: none"> Ensure proof of each document to be exhibited is available by agreement, admission or witness and appropriate copies are available for judge, witness and opposing counsel. 				
<ul style="list-style-type: none"> Prepare list of questions from questioning to be read into the record with copies for the judge and opposing counsel. Consider printing out those extracts using litigation support software to make judge's job easier. 				
<ul style="list-style-type: none"> Prepare list of witnesses in the order you intend to call them. 				
<ul style="list-style-type: none"> Prepare a layperson's glossary of any technical terms that will be used and have copies available. 				
<ul style="list-style-type: none"> Prepare outline of examinations-in-chief. 				
<ul style="list-style-type: none"> Prepare concepts and assemble necessary references for anticipated cross-examinations. 				
<ul style="list-style-type: none"> Ensure you have briefs of law on anticipated evidentiary issues. 				
<ul style="list-style-type: none"> Update any legal authorities and legislation referred to in your pre-trial brief and modify the legal argument from pre-trial brief into legal argument for trial. 				
<ul style="list-style-type: none"> Prepare opening address and closing statements. 				

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