

# Top 6 Mistakes to Avoid at Trial

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for the National Business Institute,  
Institute for Paralegal Education, 2019

# Effectively Prepare in Advance to Avoid Headaches



# Mistake No. 1: Not Having ALL Necessary Documents Ready

*Grey v. Gray, et al.*  
San Diego Superior Court, Case No. D-89967512

## PRETRIAL CHECKLIST

### 120 DAYS BEFORE TRIAL

- Joint Defense/Complex Case Considerations:
  - Joint Defense Agreement
  - Common Shared War Room
  - Share Databases
  - Trial Prep Division of Labor
- War room or remote office set-up
- Hire a Jury Consultant/Mock Trial or Focus Groups?
- Is an electronic trial presentation system necessary?
- Are videotaped depositions going to be used?
- Is a Demonstrative Evidence Consultant necessary?
- Prepare a Trial Deadline Calendar
- Serve remaining document Requests, Interrogatories, and Requests for Admission (to allow time for motions to compel)
- Serve Supplemental Document Requests and Interrogatories requiring opposing parties to update answers (state court). \*\* Note this is an ongoing obligation in federal court\*\*
- Summary Judgment Motion?
- Motion to Amend or Supplement Pleadings?

### 110 DAYS BEFORE TRIAL

- Serve Motion for Summary Judgment

### 90 DAYS BEFORE TRIAL

- Set up witness files
- Issue code documents/identify key documents

### 60 DAYS BEFORE TRIAL

- Meet with trial team - prepare trial checklist and allocate tasks with deadlines; discuss establishing work shifts
- Determine preferences for exhibit list organization (by witness, subject or date?) and procedures for identifying key exhibits; begin Exhibit List and compiling collection
- Determine preferences for trial witness file organization

[CASE NAME]  
[CASE NUMBER]  
[CLIENT/MATTER #]

## LIST OF TRIAL DEADLINES & ASSIGNMENTS

Trial Date: October 25, 2019  
(Updated: 7/28/2019 5:15 PM)

Deadline	Task	Authority	Person(s) with Responsibility

# Trial Documents & Case Templates

- Document production chart
- Expert communications & transmittal log
- Players list
- Subpoenas, Notices to Appear
- Motions & Discovery shells
- Subpoena tracking chart
- Witness notification & communication log
- Judicial Council forms
- Proofs of Service
- Case caption pages
- Binder indices, cover, & spine labels

# Pleadings & Forms

1 Mildred Tobins III (SBN 496101)  
 2 Mari Griegman (SBN 756463)  
 3 Samuel Kelly (SBN 175784)  
 4 **IN THE CLOUDS LLP**  
 5 123 ABC Blvd., Suite 450  
 6 Santa Monica, California 90401  
 7 (910) 509-4200 Telephone  
 8 (910) 506-5900 Facsimile  
 9 [tobins@inthecloud.com](mailto:tobins@inthecloud.com)  
 10 [mgriegman@inthecloud.com](mailto:mgriegman@inthecloud.com)  
 11 [skelly@inthecloud.com](mailto:skelly@inthecloud.com)  
 12 Attorneys for Plaintiffs

13 Jane K. Praster, Esq. (SBN 558996)  
 14 Reagan C. Linter, Esq. (SBN 447587)  
 15 Lennard L. Kinderson, Esq. (SBN 334962)  
 16 **PRASTER, THYER & LINTER, LLP**  
 17 123 DEF Drive, Suite 410  
 18 Camarillo, CA 93010  
 19 Tel: (980) 778-0920  
 20 Fax: (980) 778-0289  
 21 [reagan@prasterthyer.com](mailto:reagan@prasterthyer.com)  
 22 [lennard@prasterthyer.com](mailto:lennard@prasterthyer.com)  
 23 Attorneys for Defendants

24  
 25  
 26  
 27  
 28

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 COUNTY OF LOS ANGELES

SEVIN ZANG, a minor, by and through his  
 Guardian ad Litem, PENNY ZANG; PENNY  
 ZANG, an individual; and GEROLD ZANG,  
 an individual,

Plaintiffs,  
 v.  
 TAN HOSPITALITY, INC., a California  
 Corporation; TAN ARCHITECTUAL  
 PRODUCTS, INC., an Alabama Corporation,  
 and DOES 1-50,

Defendants.

-1-  
 JOINT EXHIBIT LIST

CASE NO. HC980195-63

**JOINT EXHIBIT LIST**

Complaint Filed: April 15, 2017  
 Trial Date: October 25, 2019  
 Trial Judge: Honorable Evan Matthews  
 Dept: C-72

SUBP-001

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address)  TELEPHONE NO.: _____ FAX NO.: _____ ATTORNEY FOR (Name): _____ NAME OF COURT: STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME: PLAINTIFF/ PETITIONER: DEFENDANT/ RESPONDENT:	FOR COURT USE ONLY        CASE NUMBER:
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**CIVIL SUBPOENA**  
For Personal Appearance at Trial or Hearing

THE PEOPLE OF THE STATE OF CALIFORNIA, TO (name, address, and telephone number of witness, if known):

1. YOU ARE ORDERED TO APPEAR AS A WITNESS in this action at the date, time, and place shown in the box below UNLESS you make an agreement with the person named in item 2:

a. Date:	Time:	<input type="checkbox"/> Dept.:	<input type="checkbox"/> Div.:	<input type="checkbox"/> Room:
b. Address:				

2. IF YOU HAVE ANY QUESTIONS ABOUT THE TIME OR DATE FOR YOU TO APPEAR, OR IF YOU WANT TO BE CERTAIN THAT YOUR PRESENCE IS REQUIRED, CONTACT THE FOLLOWING PERSON BEFORE THE DATE ON WHICH YOU ARE TO APPEAR:

a. Name of subpoenaing party or attorney:	b. Telephone number:
-------------------------------------------	----------------------

3. **Witness Fees:** You are entitled to witness fees and mileage actually traveled both ways, as provided by law, if you request them at the time of service. You may request them before your scheduled appearance from the person named in item 2.

**DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY THIS COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF FIVE HUNDRED DOLLARS AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.**

Date issued: \_\_\_\_\_

----- (TYPE OR PRINT NAME) -----      ►      ----- (SIGNATURE OF PERSON ISSUING SUBPOENA) -----  
 (TITLE) (TITLE)

**Requests for Accommodations**

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least 5 days before the date on which you are to appear. Contact the clerk's office or go to [www.courtinfo.ca.gov/forms](http://www.courtinfo.ca.gov/forms) for Request for Accommodations by Persons With Disabilities and Order (form MC-410). (Civil Code, § 54.8.)

(Proof of service on reverse) Page 1 of 2

**CIVIL SUBPOENA FOR PERSONAL APPEARANCE AT TRIAL OR HEARING**

Code of Civil Procedure, §§ 199, 199b, 199c  
www.courtinfo.ca.gov

Form Adopted for Mandatory Use  
Judicial Council of California  
SUBP-001 (Rev. January 1, 2007)

Mistake No. 2:  
Failure to Assemble  
a Comprehensive  
Trial Notebook



# Sample Index to Trial Notebook

*Grey v. Gray, et al.*

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## Trial Documents Index

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- A. Joint Statement of Case
- B. Joint Statement of Stipulated Facts
- C. Joint Statement of Controverted Issues
- D. Joint Witness List
- E. Joint Exhibit List
- F. Plaintiffs' Trial Brief
- G. Defendants' Trial Brief
- H. Joint Jury Instructions
- I. Defendants' Special Jury Instructions
- J. Plaintiffs' Special Jury Instructions
- K. Verdict forms
- L. Pretrial Order

# Other Helpful Trial Notebooks

- ❖ Motions *in Limine*, Opposition, Reply papers, ruling chart
- ❖ Joint Trial Exhibits
- ❖ Discovery binder
- ❖ Witness folders, including direct and cross examination outlines
- ❖ Depositions transcripts, designations, reports
- ❖ Evidentiary rulings and stipulations
- ❖ Opening statement/ Closing argument



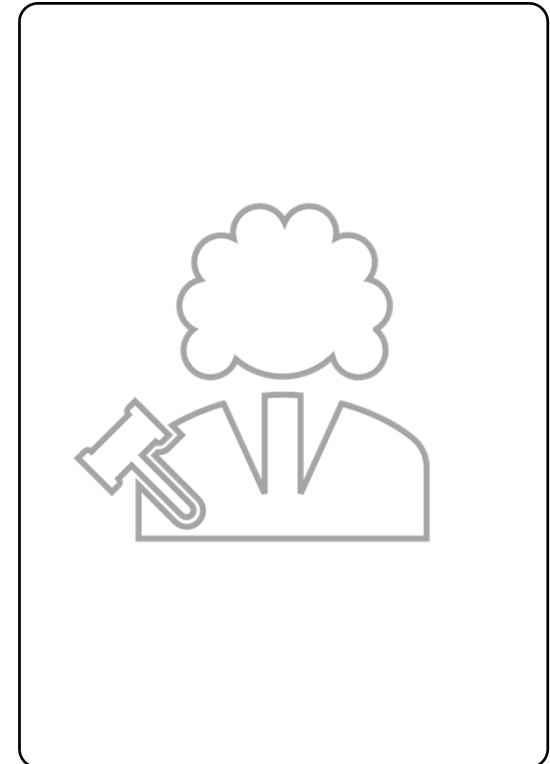
# Mistake No. 3: Not Understanding Court Rules



# Rules and Procedure

- Federal Rules of Civil Procedure
- Local Rules of Civil Procedure
- Chamber Rules & Standing Orders
- Judicial Orders
- Pretrial Orders
- Practice guides on navigating authorities and procedure
  - Matthew Bender
  - The Rutter Group

Mistake No. 4:  
Failure to Research the  
Judge of the Case



# Judicial Profiles

- Federal Bar Association
- State and local bar associations
- Lexis Advance
- Westlaw Edge
- Bloomberg Law
- Local law library
- Firm law library
- Procedural history and Court Orders

# Judicial Preferences

- Exhibit labels
  - Court specific form?
  - Color requirements?
  - Prefilled or blank?
  - Attached to first page?
    - Stapled
    - Sticker
- Entering exhibits into evidence
  - By stipulation?
  - Upon laid foundation and offering into evidence?
  - Beginning or end of trial?

United States District Court  
Northern District of California

TRIAL EXHIBIT 9

Case No. \_\_\_\_\_  
Date Entered \_\_\_\_\_  
By \_\_\_\_\_  
Deputy Clerk

<b>EXHIBIT NO.</b>	_____	
<input type="checkbox"/> ID only (Date)	_____	
<input type="checkbox"/> IN EVIDENCE (Date)	_____	
<input type="checkbox"/> Plaintiff/People	<input type="checkbox"/> Defendant	<input type="checkbox"/> Joint
<input type="checkbox"/> Petitioner	<input type="checkbox"/> Respondent	<input type="checkbox"/> Court
<input type="checkbox"/> (Other)	_____	
Signature of Atty/Party Introducing Sensitive Exhibit		
Case No. _____		
vs. _____		
David H. Yamasaki, Clerk of the Court		
By _____, Deputy		
<b>NOTE: THIS ITEM IS A PERMANENT COURT RECORD. DO NOT REMOVE FROM THE COURTROOM.</b>		
If found please contact: Superior Court of California, County of Orange (657) 622-7809		



Mistake No. 5:  
Lackluster Organization  
of Exhibits and Other  
Essential Trial Documents

# Case File Organization

- Establish a system:
  - Logical
  - Indexed
  - Bound
- Hard copy, electronic
  - Mirror folder and file structures
- Working notebooks
  - Save time come trial
- Ensure order from the start

# Common File Categories

- Court papers
  - Pleadings
  - Discovery
  - Motions and responses
  - Orders
  - Subpoenas
- Attorney records
  - Case history
  - Engagement, fees, costs
  - Correspondence
  - Legal research
  - Case memorandum
- Evidence
  - Bills, statements, receipts
  - Correspondence b/w parties
  - Photos, maps, diagrams, video
  - Business records



# Evidence to be Used at Trial

- Motions in Limine binders/chart
- Witness binders
  - Direct, Cross
  - Designation reports
- Opening statements, evidence
- Closing arguments, evidence

Day 1-9:30

Go over jury instructions, witness list, exhibit list, depo designations and verdict form. Parties will need to meet and confer on Ji, Depo designation and verdict form

Demonstratives for opening need to be disclosed in advance.

MIL

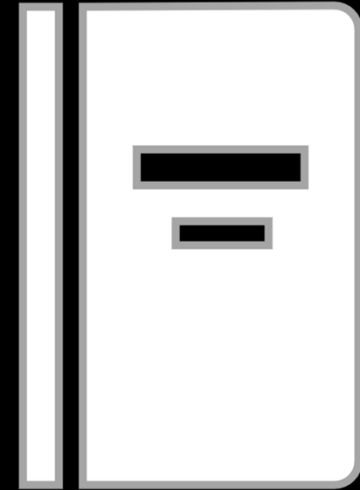
P 1-9

No	Name	Tentative Ruling	Arugment
1	Exclude Expert Opinion Not Related in the Deposition	Deny	Zande- never read the book - 284 page "Ready for Business", did not testify as to
2	Re: anti slip	Deny- no prejudice	
3	Exclude Peter Zande statement re: floor surface	Grant- with exception	
4	Exclude subrosa video	P Withdrawn- no subrosa video exist, issue moot	
5		Grant as to secondary gain, but D can	
6	Exclude Reference to drug seeking behavior	Grant as to "drug seeking behavior"	
7	Preclude Expert Offering Testimony outside of expertise	Bio mechanics are excluded	
8	Exclude	Grant	
9	Limit Docs not provided in Discovery		

D 1-4

1	Exclude remedial measures	Deny
2	Exclude reference to Dec 2016 Safety Meeting	Grant
3	Exclude other incidents on subject property	Grant
4	Exclude wealth and size	Grant (not relevant)
5	Custody of grandchild?	
6	Exclude evidence re: Carl Beels	5:30 Friday afternoon. Denied as to untimely. D will request 402 hearing.

MIL had lots of typos, keep in mind



Mistake No. 6: Failure to Take  
Comprehensive Notes During Trial

# Trial Responsibilities

## Voir dire/jury selection

- Name
- Residence area
- Marital status
- Other adults in household
- Occupation
- Occupation of other adults in household
- Children
- Prior lawsuit experience
- Prior jury service

1	2	3	4	5	6	Alternates
7	8	9	10	11	12	Alternates
Alternates	Alternates	Challenge for Cause	Challenge for Cause	Peremptory for P	Peremptory for D	

# Jury Selection

<p><b>1 Waldrop</b> Sun Valley Unemployed, formerly contracts admin/sales rep for Harrahs Corp</p> <p>Husband fabricator</p> <p>Adult child service tech</p> <p>1 civ verdict</p>	<p><b>2 Ceron</b> N Hollywood USPO super Wife super @ Target 2 sons 6 &amp; 1 y/o</p> <p>No jury</p> <p>Has child under 6 so sympathizes, but can set aside feelings</p>	<p><b>3 Davis</b> Burbank HR Mngr @ software co. Husband PM for comm construction</p> <p>No kids, jury</p> <p>Family owns Hilton in SD, helps w/ HR issues Exp w/ investigation of claims Husband witness to slipfall on a hotel prop</p>	<p><b>4 Mai</b> Enrollment coordinator at Central CA Health</p> <p>Lives w parents, mom tailor, dad machinery, bro cal trans</p> <p>No jury</p>	<p><b>5 Vasquez</b> Alhambra Material recovery facility (recyclables, janitorial) Lives w mom, bro Mom doesn't work, bro works at landfill</p> <p>No jury</p> <p>Not comfy w choice for another's life</p>	<p><b>6 Alba</b> El Cerrito City of LA housing dept clerk Lives w/ parents</p> <p>Anaphylaxis reaction w Dr., can put aside</p> <p>Slight prejudice; questions about proper adult supervision</p> <p>Handles landlord/tenant claims and redaction of public records</p> <p>No kids, jury</p>	Challenge for Cause
<p><b>7 Burton</b> S. LA CNA @ hi park convalescent viewpark Lives with mom, caretaker</p> <p>No kids, jury</p>	<p><b>8 Oh</b> RN @ USC Keck, cardio GF, RN</p> <p>No kids, jury</p> <p>Exp w stroke pts, no peds</p> <p>Grandfather hit &amp; killed by truck</p>	<p><b>9 Shiver</b> Miracle Mile HR Info Systems GF PR in Hollywood</p> <p>No kids</p> <p>1 crim verdict</p>	<p><b>10 Kim</b> Cerritos RN @ I.B Memorial Single, lives w parents Mom translator Dad warehouse manager</p> <p>No kids, jury</p>	<p><b>11 Miyao (Meow)</b> Hawthorne Retired software programmer Lives alone</p> <p>No kids</p> <p>4 crim verdict, 1 hung</p> <p>Neg exp @ hotel in Bombay</p> <p>Hired an atty for sm claims, judge threw out case b/c atty erred on forms</p> <p>Building house in SD county</p>	<p><b>12 Forman</b> Glendale Disney TV designer GF, software engineer</p> <p>No kids</p> <p>Alt for crim/Fed grand jury</p> <p>Date &amp; bro own small biz, recalls PI case</p> <p>Generally skeptical</p>	Challenge for Cause
<p><b>13 Pai</b> cyber security engineer, federally funded research for US Airforce single lives w pharmacist No jury, kids</p> <p>Bo runs a dermat clinic in Pasadena</p> <p>lock hobbyist</p>	<p><b>14 Angel-Garcia</b> Pico Union Unemployed/no job Single Lives w parents Dad cook Mom homemaker</p> <p>No kids, jury</p>	<p><b>15 Nestorova</b> Whittier CalTech as a biology researcher (genetic research on fruit flies), husband Jr Hi teacher 2 kids, daughter architect 30 y/o on east coast, son 10 y/o</p> <p>No jury</p>	<p><b>16 Gligger</b> N. Hollywood Works at Warner Bros studio, writer/actor Roomie freelance writer</p> <p>No kids, jury</p> <p>Grandfather injured at steel mill, lost arm, died 1989, family lawsuits followed re accident and med issues; stress point on family</p> <p>can't be fair/impartial</p>	<p><b>17 Thompson</b> Los Feliz In relationship Atty (patent lit, fed), no PI, can put atty hat aside;</p> <p>No kids, jury</p> <p>uncle killed 30+ years ago, altercation;</p>	<p><b>18 Weo</b> Country Club fashion designer and stylist; single, divorced</p> <p>No jury</p> <p>ex-wife atty for new line cinema; High volume orders from china for work, issues w products; Chinese export dissatisfaction in merchant world; has problem with Chinese product not people; bad experience as the franchisee (coffee shop in Simi Valley &amp; North Ridge); 15 years ago worked at hotel</p>	Peremptory for P

# Other Trial Responsibilities

- Trial notes
  - Complete daily
  - Circulate each evening
- Daily reports
  - Deposition designations to court reporter
  - Summary of trial day to team
- Prepare for following day
  - Print updated hard copy exhibit index
  - Print any updated pleadings
  - Review witness outlines, make sure evidence is in order

# Trial Evidence Tracking

- Exhibit index:
  - Identification/offered into evidence
  - Admitted
  - Confirm with court clerk daily
- Witness notifications
  - Notify next days witness line-up
  - Counsel communications of upcoming witness
- Evidentiary orders
  - Any redactions necessary?
  - Remove portions, sections, or pages?
- Time used by each side
  - Argument time, witness time
  - Report remaining allotment of time to counsel
  - Confirm with court clerk daily

Proper  
Preparation  
Prevents  
Costly  
Mistakes at  
Trial

