

# Lawyer Insights

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## Take Your Marks: An Associate's Guide To Your 1st Big Trial

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Your first big trial as an associate is in some ways like running your first big race. (If you're not a runner, don't stop reading; we're confident you will still understand our points.) We all know that most civil actions settle before ever getting to trial. This is especially true in complex cases involving substantial damages claims. As an associate in a large law firm, you may go years without ever seeing the inside of a courtroom in a major matter. Put simply, it's hard to get trial experience. So what do you do if you are the lead associate on a big case that is actually going to trial? Here are some tips we picked up as we raced — and let's face it, sometimes struggled — through our first trials.

### Train Hard and Keep Good Records

By the time your trial date approaches, most of your training is already complete. You have spent months, or even years, slogging through discovery, researching points of law, and preparing and opposing motions and briefs. At this point, you should know the facts of your case backward and forward. You might be having dreams about your case — much to the chagrin of anyone who lives in your household. But what do you do with all of that information in your head? What good does it do your partners and your client?

The information becomes valuable when it's well organized, so we recommend that you create a workable organization system. We can't tell you what your system should be; it will depend both on the nature of your case and on your unique set of preferences. It has to work for you as the primary user. Will you be able to find Plaintiff's Response to Defendant's Third Request for Documents filed two years ago while the judge is staring at your partner and your partner is staring at you? What about Plaintiff's Exhibit 1434 — when you have 30 printed exhibit binders at trial, and they are constantly being shuffled and reordered? Trust us, if you let someone else organize your files, you won't be able to find them quickly. You also won't be able to find what you need if your trial binders are nondescript or hard to read at a glance. You need a system, and you need to know your system well.

Our personal styles vary, and so will yours. What matters is thinking about a workable system and putting it into practice. Much like training programs, different organization systems come with different benefits, but all can agree that if you do not stick to the program, it will not work. Consider using colors to signify issues, and think about whether your labeling system will be legible and useful in a pinch. When your partner needs Plaintiff's Exhibit 1434, it's nice to grab your red binder with the big sticker that says "PLAINTIFF EXHIBITS 1400-1450" and know immediately that you are in the right spot. If instead that binder is the same color as all the rest, and it says, in small lettering, "Plaintiff Exhibits; Binder VII of

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XXV,” you need to take valuable time to think about what that means. Repeat that exercise 20 times each day of trial, and you can see how small inefficiencies can accrue to your detriment. Much like a top athlete develops “muscle memory,” your organizational system can take some of the thinking out of the process.

Finally, top runners have tracked their training progress in the weeks leading up to the race. Associates preparing for a complex trial should do the same thing. Counsel will often stipulate to items like the timing of exchange of exhibits, or how they intend to introduce confidential documents. These agreements can pile up on you. Keep a good record of all these agreements, and keep them all in one, easily accessible place. We suggest a “Key Docs” folder. You don’t want to guess or waste time poring over hundreds of old emails when your partners ask you seemingly “easy” questions about scheduling.

### **Warm Up**

At racing events, you will often see runners warming up by running sections of the course. These are usually the fittest-looking folks wearing all the best gear; they have top-of-the-line running shoes, compression sleeves, GPS watches, and lightweight hats and sunglasses. They just look like they’re going to finish in the top group — and they often do. You should channel these people at trial: look the part, bring the gear you need, and be ready for anything.

As associates, we often rely on partners to tell us what they need to argue a motion or to feel prepared for trial. While we do need to meet our partners’ needs, we also need to think independently and warm up on our own. You are the master of the facts, and it is you who knows the ins and outs of the case. So while your partners may have their own ideas for how each day of the trial will proceed, you need to make sure the other angles are covered. This could be as simple as bringing extra copies of documents or having the relevant court rulebook tabbed at the appropriate places. Put simply, you need to think about what you would want if you were at the podium, and prepare accordingly.

### **Find a Running Partner**

Sometimes you feel like you’re all alone on the race course. But keep your eyes open because you might find a buddy, and running together will make things better for both of you.

Similarly, at trial, you might sometimes feel isolated and overwhelmed. But if you are litigating against another big firm, odds are there’s someone on the other side feeling the same way. If you can establish a good working relationship with your counterpart on the other side, it can sometimes make your life easier — which will save you time and in turn save your client money. Being able to pick up the phone and have a productive conversation with an opposing associate can work wonders on many thorny procedural problems. But keep in mind that your “running buddy” is also trying to win the race, which means he or she wants to beat you. Still, that doesn’t mean you can’t work together to take on some of the hills of the race.

### **Jog/Sprint/Rest**

Trials can last for weeks, and much like in a race, if you can’t get to the finish, you can’t win. Knowing when to jog, when to sprint, and when to rest is as important to an associate entering his or her first trial as it is to a runner in a big race. The pace of your work at trial should be steady overall. Most of your work is preparation, and it demands long hours. You’re jogging. But nobody can jog for 16 hours a day, seven days a week, for a month before trial and then show up at trial ready to perform. Think ahead and know when to give your mind and body a rest. Sleep in on the weekends if you can. You’re most useful when you’re rested and thinking clearly.

Often at trial, you will have to sprint — there’s no way around it. Your partners need an answer, and they need it now. As associates, we are accustomed to explaining how we get to every conclusion we reach, often feeling quite proud that we spent such a large amount of time to accomplish such a difficult task. At

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trial, however, it is time for an associate to exercise judgment and just answer the question. This sounds simple, but there is a reason it is one of our tips. We don't mean to suggest that you should never explain your answer, but answer first, and explain if necessary. Do not make your partner listen to all the sources you checked, the other courts that have ruled differently, or the one in a million risk that you interpreted a holding incorrectly. And when your partner asks you for the conclusion to your research, don't answer by asking, "Did you get my email from last night?" That's not an answer. You know the facts; you know the law; have the confidence to apply it. Answer the question.

### **Heat or Ice? Or Ignore It?**

Runners sometimes suffer injuries. Different injuries require different treatments. Does it need heat or ice? Or can you ignore it and press on? Associates in the midst of trial should ask themselves the same questions. Every mistake or problem during trial feels like a big deal. You can minimize this by offering a recommended course of action with each problem you identify. Your colleagues at trial are all working on their own tasks; when you flag a problem without offering a solution, you've put more on someone else's plate.

Also bear in mind that there is a lot of pressure at trial and we spend hours cramped in tiny spaces with the same people, day after day. We can lose perspective, and weeks later when we think about our freak-out over not having the right size binder clips, we wish we would have applied a little less heat. The same goes for receiving criticism or comments from your supervising attorneys or clients. Should you push yourself even harder? Or should you take a step back and let things cool off? Whatever your decision, you must behave professionally and not react emotionally. Because long after the trial is over, the binder clip freak-out will live on.

### **Finish Strong and Apply What You Learned**

You see the finish line. You have trained hard and warmed up appropriately, defeated monster hills, and weathered storms. You are there, no longer a novice. Now what? Before the memory fades, write it all down. Make a list of what worked and what you could have done better. A runner who achieved a personal record time should be excited to do it all again at the next race; someone who didn't reach his or her goal should try to identify areas for improvement.

And lastly, whether you won, lost, or settled in the middle of trial, be proud that you finished. Enjoy it, but remember who got you there. Be sure to thank the staff who spent almost all of their time with you and even still speak to you despite your obsession with a particular type of binder clip, the mail person who woke you up when you accidentally fell asleep on your desk, your significant other who made you coffee at midnight, the sandwich delivery guy who saw you way too much in your Sunday office attire, and your friends for forgiving your months-long absence. Because as sweet as crossing the line and completing your first trial is, it is even better to think about how many people were willing to help you along the way.