

**Trial Preparation Tips:
Getting Ready to Tell Your Client's Story**

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Family Law Trial Fundamentals

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TRIAL PREPARATION TIPS:

GETTING READY TO TELL YOUR CLIENT'S STORY

You have finished making and arguing all your interim applications. You have obtained expert reports and have completed Questioning and provided Answers to Undertakings. You are now ready to proceed to trial but you have never done a trial and are panicking. This paper will provide some practical tips and simple check lists to help you overcome that panic.

Factors governing the choice to go to trial or arbitration are a discussion for another day; however, at this juncture it should be emphasized that you should treat preparation for Arbitration with the same degree of seriousness that you would treat trial preparation. While the Arbitration process may be less formal than the trial process, much of your preparation should be the same. In both cases your job is to present a clear, concise case to the adjudicator to assist him or her in understanding the facts and your client's point of view. You have a story to tell and you will tell it much better if you are well prepared.

To assist you, I have invented a matrimonial file called involving my client Diane Cricket who was married to her husband Jimminy Cricket in Anaheim, California and drafted various documents within that file. These documents are attached.

PRIOR TO ENTRY FOR TRIAL

Before you take steps to file documents to enter the matter for trial you should review your file to ascertain that those matters that are required to be complete are in fact completed or alternatively, to decide the date by which they can be completed. You will be required to certify that you will be ready for trial by a specified date and you should not take this requirement lightly.

Review your pleadings to double check that you have addressed all issues. For example, if you are claiming occupation rent you must remember to specifically request same.

Start to map out your story and ensure that you have requested and obtained all Expert Reports that may be required at trial.

Do a preliminary assessment outlining those matters which you feel can be agreed to by consent. This will help you estimate your trial time. If the opposing party is being difficult and will not do anything by agreement, you will require more trial time than if some matters can be proven by way of an Agreed Statement of Facts. Do not however underestimate the time that will be required for trial. The opposing counsel to date might have been quite reasonable but that counsel may not be the

counsel that takes the matter to trial. As in all matters in life – hope for the best, but prepare for the worst.

Warn your client that he or she will be incurring significant expense and clearly outline your retainer expectations. You will almost always under estimate. One Rule of Thumb is that each hour of trial will be matched by at least one hour of preparation. Advise your client at the earliest opportunity what retainer you will need, and when. Also warn your client that there are currently significant delays in obtaining trial dates – apparently longer trials are currently being scheduled in early 2019.

ENTRY FOR TRIAL

You will have to obtain a trial date. Scheduling of trial dates and obtaining trial dates from the Trial Coordinator's Office is dealt with in Division 2 of Part 8 of the Rules of Court.

Joint Request

Rule 8.4 provides for a joint request to the Court Clerk to schedule a date for trial and reads as follows:

- 8.4 (1)** The parties may, in Form 37, request the court clerk to schedule a date for trial.
- (2)** The request must contain at least the following information unless otherwise directed by the Court:
 - (a) the anticipated number of witnesses, including the number of expert witnesses;
 - (b) the anticipated length of trial;
 - (c) a copy of the pleadings and particulars, if any, for the judge's use at trial;
 - (d) if applicable, the order directing that the trial be by jury;
 - (e) the certifications required by subrule (3);
 - (f) any administrative requirements for the trial;
 - (g) any potential conflict of interest a judge may have and the reasons for it.
- (3)** In addition to the requirements of subrule (2), the parties requesting a trial date must
 - (a) provide
 - (i) a certificate that the parties have participated in at least one of the dispute resolution processes described in rule 4.16(1), or