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## Steps in Preparation of a Lawsuit

North Dakota State Bar Association

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force his rights thereunder without reference to any of the terms of the alleged prior agreement. Appeal from an order of the District Court of Logan County, Coyne, J. REVERSED. Opinion of the court by Burr, J.

## STEPS IN THE PREPARATION OF A LAWSUIT

(Continued From November Issue)

Errata:— In third line of first paragraph after word "maker" change word "the" to "for"

### PERSONAL EXAMINATION OF SITE, SCENE OR MATERIAL OBJECT INVOLVED

If the case involves facts concerning any structure or a building, or any material object or the scene of a crime about which testimony will be developed, to give the jury or the court a better understanding of the situation, an examination by the attorney trying the case of the scene, the structure, the site, or the object is a very helpful aid in the trial of the case, and aids the attorney in getting the facts clearly and logically before the jury. It enables the attorney to get a better grasp of the facts and he can ask his questions more intelligently and more directly to bring out those things which will help the jury to get a picture of the surroundings, or the situation. Without such examination by the attorney, he is apt to be attempting to clear his own ideas of the scene or the structure while he is examining the witness, and of course, he cannot ask questions that clearly bring out the facts without having a mental grasp of the scene, site, or object. Photographs procured shortly after the incident, or of the scene, are also of material aid to give the picture of the situation. A mental picture based upon a photograph or a snapshot is much more vivid than a mere word description, no matter how well rendered. Examination of the site of an automobile accident, particularly if this can be done while the cars are still in their original location right after the accident, a building involved in an arson case, or the scene of a crime, are without a doubt very helpful in getting a case properly prepared for trial. In fact, in many cases, such examination is absolutely essential to the careful and intelligent preparation of a case.

### SEARCH FOR AND EXAMINE DOCUMENTARY EVIDENCE

Many cases involve documentary evidence. This evidence should be first carefully checked as to its materiality. If there is any indication that documentary evidence exists which is not in the possession of client, such documentary evidence, if it does exist, should be located for use in the trial of the case. Failure to locate documentary evidence is often due to lack of diligence in searching. Sometimes clients have documentary evidence available that they have not examined themselves and do not even know exists. So it is sometimes necessary to prod clients to search their own records for documents that are or may become necessary in a trial. For instance, in court cases involving tax proceedings, it is important to find all documents that are involved in the proceedings. In tax matters, actions involving tax titles, quiet title actions, and foreclosure actions, it is very helpful to check all the records available at the courthouse in the county in which the land involved is located, or in which

the case originates. The records of the Auditor's office, the Register of Deeds, the County Treasurer, and County Judge often upon search yield evidence of great value to the solution of the case.

### BRIEF LAW ARISING FROM THE FACTS

All questions of law involved in a case, as we know, arise from the facts. When all of the facts have been fully ascertained, an analysis should be made of them for the purpose of determining the questions of law that arise out of them. Sometimes this cannot be done without some study of the law before making such analysis. Although sometimes the legal questions involved are readily ascertainable without study, it is helpful to brief the law in advance. Such a brief can be used in submitting the matter to the court at the trial, and is also of great value in the case of an appeal from the determination of the district court in case of an adverse decision, and if an appeal is decided upon. Once in a while a study of the law in advance may convince the attorney that his client does not have a good case, or perhaps no case at all. That may result, especially in a court case, where the facts are certain, but the law in doubt. While a lawsuit may thus not materialize, it is far better to find this out before suit is brought than afterwards and thereby lose the case and the confidence of a client, and burden the court with work that should not be necessary. Paranthetically, it may be told that many cases reach the courts for decision, which, if fully studied as to the law involved, would not come to the court at all.

Nearly every lawyer has found himself in court without an adequate brief on the law of his case, and later when he has come to the investigation of the law has found that the law did not support the contentions that he has made to the court. He may even admit that to himself. But because he has made his contentions to the court, and because he is reluctant to admit to his client that he was in error, he submits such argument as he can and then lets the court decide the case. If he properly investigated the law before he was in court, perhaps he would have advocated to his client a settlement of the case, and thus averted a lot of unnecessary work for the court.

If a case is involved and many legal questions arise in its proper preparation, and the library at the disposal of the lawyer in his own office is inadequate, a library should be sought that will enable the lawyer to give every legal question a thorough investigation, as far as it is possible to do so, if there is any law to be found on the questions involved. Usually there is some law to be found on every legal question, which, if not directly in point, at least assists in the analysis of the questions involved, or which is applicable by way of analogy and argument. Lack of diligent search for the law—failure to dig for it—often it the main reason for the failure to find it. Usually some assistance can be found if the legal questions have been ascertained and diligent, painstaking search is made under every conceivable title, and through the long, tedious, descriptive word indexes

now available. Digging for the law is like digging for gold. If the attempt to find the law is too easily abandoned, it will not be found, just as the miner may give up his quest for treasure when a little more effort, a little more courage, and a little more work would have brought the desired results. Work wins law-suits just as it has accomplished the myraid of other things in life.

#### IF SPECIALIZED KNOWLEDGE INVOLVED—STUDY IT

In any case involving special knowledge, such as the knowledge of medicine, engineering, chemistry, accounting, or any other kind of specialized knowledge, the lawyer should learn all he can about such specialized knowledge. Study the specialty sufficiently to get a thorough grasp of the vocabulary involved so that you can ask intelligent questions, and so that you will know exactly what you are seeking from the expert witness.

It may even be necessary to take a course in the specialized knowledge involved. This the lawyer can usually do by contacting a friend having knowledge of the specialty involved. Consult this expert and get him to give you material for study, to give you some instructions so that you will get a grasp of the necessary vocabulary and the fundamental questions that will arise in the testimony of the expert.

#### BRIEF FACTS

If the facts of the case are also involved and complicated, they should be briefed. It will be helpful to list the particular facts which it is expected that a certain witness or witnesses will prove, naming the witness. Listing the testimony expected from each witness under the name of the witness will help materially in a quick review of the facts, and also will help you to use it in the courtroom. The testimony, if listed under the name of each witness in as brief a form as possible, will give you a chance to glance over the outline before questioning that particular witness. A brief or summary of what each witness is expected to prove also helps the young practitioner to keep things in order, gives him some feeling of security that he will be able to remember all of the details, and will help him to establish these matters clearly in his own mind.

#### BRIEF OPPONENT'S SIDE OF CASE

In any case involving many legal points, any one of which may be the basis for the decision of the case, briefing not only the law favorable to your client, but also the law supporting your opponent's contention, will help you get a perspective of his case. It will also enable you to find law to refute and offset his contentions. It will enable you to know his arguments in advance, and be ready on a moment's notice to argue and refute them. The ability to meet your opponent's arguments, to have exact and specific knowledge of his contentions, and the cases that he produces to support them, adds to your prestige before the court, and if you show your ability in meeting your opponent's contentions in such a way as to show the court that you have

studied your opponent's side of the case, this will show the court that you have studied every angle of the case, and thus gain you the confidence of the court.

Preparation will soon attract the attention of the court. The judge will instinctively know that an attorney who argues with authority and confidence is well prepared. His argument will command more attention and respect than the argument of an attorney whose very demeanor shows that he is merely guessing at the law. Once an attorney established the reputation for fairness and reliability in preparation and presentation of his case, he has gained for himself and his client the assurance of careful and sympathetic consideration by the court, and thus gained an asset for future success and the success of his causes.

#### GET AUTHORITIES ON ADMISSIBILITY OF EVIDENCE

Develop, after you have ascertained all the facts and have investigated the law, a theory of your lawsuit. Then upon ascertaining the proof available, check the admissibility of your evidence under the rules of evidence that you deem applicable. If in doubt as to the admissibility of any evidence, documentary or otherwise, check the authorities which sustain your contention as to the admissibility of the evidence that you wish to prevent, and have the authorities available immediately should the court request them.

#### EMPHASIS ON WORK

Lastly, prepare, study, and work at every lawsuit. When you think that you have done everything that you can do to properly prepare your lawsuit, lay it aside for a while if circumstances permit, and then later go over your work and it may occur to you that something else can be done. Work is one of the absolute essentials preparatory to the successful trial of a case. While it may seem tedious and troublesome, remember that the oftener you turn the lawsuit over in your own mind, and the more you think about it, the broader will be your comprehension of it. Going over it in your own mind more than once will enable you to see angles of it of which you had not thought before, or perhaps overlooked.

Live strenuously with your lawsuit, both in its preparation and in its trial, and the more you do that, the greater will be your success and that of your client.

Remember as was said by Margaret Fuller, "Drudgery is as necessary to call out the treasures of the mind as harrowing and planting those of the earth."

George W. Ballinger once said, "How much easier our work would be if we put forth as much effort trying to improve the quality of it as most of us do trying to find excuses for not properly attending to it."