

Under pressure

Managing back-to-back-to-back trials as a small-firm practitioner


Cooper

By Miles B. Cooper

The stars aligned. Back-to-back-to-back trials for the plaintiff's lawyer. A good thing. Trial dates resolve cases. The pressure of a courtroom helps. "It changes everything. Pressure. Some people, you squeeze them, they focus. Others fold," said Al Pacino's John Milton in *The Devil's Advocate*. Devil or not, an apt observation. (If I'm spoiling the movie, too bad – any lawyer worth her salt should have seen it a long time ago. While I'm at it, Rosebud was a sled.) But back to our back-to-back-to-back trials. They pose certain problems, particularly for small firm lawyers. How does one stay on top of it all while in trial?

Prior to trial

If you're headed into a busy time, use it to your advantage. Most people are never as productive as the day or two before leaving for vacation. Trial is no different. Trial pressure separates what is important from what is not. Ride that wave, even if it means you are resolving issues in cases aside from the ones most imminent. There are people who need every room in the house cleaned and every email responded to before buckling down. I find it easier to focus on the trial case when I'm not worrying about the case where the statute of limitations is 60 days away. Whatever you need to do to focus, do it.

In trial

• *The trial schedule*

Once in trial, you'll need help getting ready for the next trial. There are a few ways to deal with this. First, consider the trial schedule. Trial's intensity is terrifying until you start looking at the schedule. Know that schedule well in advance. It makes witness scheduling and deck clearing far easier. Many courtrooms run 9 to 4:30, with a 12 to 1:30 break for lunch. Including two 15-minute breaks, that means a 5.5-hour trial day. Many courts are dark a few days a week (Fridays being typical.) Alameda and many federal courts have 8:30 to 1:00 schedules with two breaks (yielding a four-hour day – in many ways better than the long mid-day break).

An easy trial schedule can mean you have enough time to prep the next matter. A rigorous one, well, you might need help.

• *Force multipliers*

Help comes in many forms. Sometimes help is an associate or law partner. Other times, it is a contractor. Assigning the initial pretrial package draft – neutral statement, jury instructions, verdict form, trial brief, exhibits, and so on – to a skilled lawyer or paralegal helps you stay focused on the trial at hand.

Exhibits require planning. We like to have the medical records put into chronologic order and have each visit assigned a different exhibit number. Time consuming but the net result is clarity when referencing exhibits. This task can be assigned out. But making sure every exhibit you might want – demonstratives like maps to orient the jurors to incident location or anatomy – cannot. The exhibits are probably the most important pre-trial piece. They need your direct attention.

• *Office support*

It is much easier to focus on trial's intensity when there's someone at the home office making sure the other cases are getting the attention they deserve. A good legal assistant is a lifesaver. Ask that person to listen to all your voicemails and review all emails to alert you to "must act now" communications.

• *Daily triage time*

No matter how good the support or your force multipliers, there will be non-trial matters that require your attention. Set a certain amount of time – 45 minutes – to clear and triage email and voicemail daily. One otherwise might get sucked into other issues. Deal with the immediate. Triage that which can wait until the end of the week.

Rewards

We trial lawyers find ourselves in these back-to-back-to-back situations, moving at a million miles an hour. Then, in an instant, there are continuances, settlements, or no courtrooms available, and a big block of empty time opens up.

There's a compulsion to take that time and immediately start working on the files that you set aside for trial. Admirable. But the files will still be there, and you'll approach them with much more vigor (and creativity) if you are refreshed. Take a little time for yourself and the loved ones who you may have abandoned or been curt with in the past months.

Another reward is important too. The feeling at the end of a trial week when you walk out of court. No matter how jammed you are, take a little time – that evening, part of a Saturday – to do something aside from trial. Some of my best trial ideas came up while cycling, hiking, or swimming – not while plugging away.

Win, lose, or draw

Win, lose, or draw, stepping into the ring requires a certain fortitude. Doing it while the next trial is roaring up on you takes

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planning. With enough preparation, you can do a good job on each trial, keep the pressure on, and achieve justice for your clients.

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