

***Trial and Appellate Advocacy:
Using an Appellate Lawyer in the Trial the Court***

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BPW LAW
— ★ —
BOYD POWERS WILLIAMSON

Trial Prep Begins at Intake

- **Case Intake – Trial Lawyer**
- **“The First Ten Minutes”**
- **Damages vs Liability**
- **Various ways case can – and will – be delayed!!!**



Trial Prep Begins at Intake

- Case Intake – Appellate Lawyer
 - Proper parties
 - Venue
 - TCPA
 - Removal Jurisdiction
 - Federal court
 - Business court
 - 91a
 - Rough jury charge



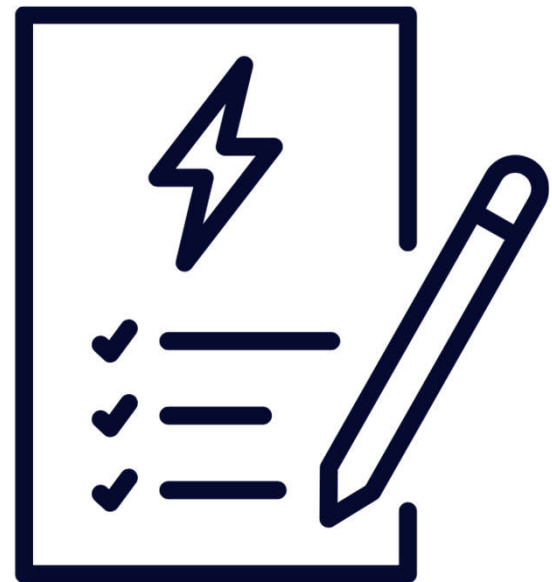
90-120 Days Before Trial

- **Trial Themes**
- **Key exhibit admissibility**
- **Witness Presentation**
 - **Good/Bad witnesses**
 - **Proving up evidence**
 - **Third-party witnesses**
 - **Video vs. Live**



90-120 Days Before Trial

- Trial Plans
- Witness outlines
- Stress testing
- Evidence sufficiency
- Addressing pretrial arguments



Motions in Limine

- **Trial Lawyer**
 - **Avoiding harmful evidence**
 - **Fishing for opposing theories**
 - **Educating the Court**
 - **Creating contrast in style**



Motions in Limine

- **Appellate Lawyer**
 - Prepare with trial counsel
 - Assume “law role” for trial court
 - Free up trial counsel



Proposed Jury Charge

- **Drafts early and often**
 - Never too early to start
 - Work together leading to trial
 - What can we win?
 - What do we have to have?
 - Negotiate specific wording



Proposed Jury Charge

- Burden of Proof Issues

PJC 104.2 **Question and Instruction—Breach of Fiduciary Duty
Defined by Common Law—Burden on Fiduciary**

QUESTION _____

Did *Don Davis* comply with *his* fiduciary duty to *Paul Payne*?

[*Because a relationship of trust and confidence existed between them.*] [*As Paul Payne's attorney.*] [*As Paul Payne's agent.*] *Don Davis* owed *Paul Payne* a fiduciary duty. To prove *he* complied with *his* duty, *Don Davis* must show—

PJC 104.3 **Question and Instruction—Breach of Fiduciary Duty
Defined by Common Law—Burden on Beneficiary**

QUESTION _____

Did *Don Davis* fail to comply with *his* fiduciary duty to *Paul Payne*?

[*Because a relationship of trust and confidence existed between them.*] [*As Paul Payne's attorney.*] [*As Paul Payne's agent.*] *Don Davis* owed *Paul Payne* a fiduciary duty. To prove *Don Davis* failed to comply with *his* fiduciary duty, *Paul Payne* must show—

Proposed Jury Charge

- Causation Standards

PJC 115.19 **Question and Instruction on Direct Damages Resulting from Fraud**

[Insert predicate, PJC 115.1.]

QUESTION _____

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate *Paul Payne* for his damages, if any, that resulted from such fraud?

Consider the following elements of damages, if any, and none other.

PJC 115.20 **Question and Instruction on Consequential Damages Caused by Fraud**

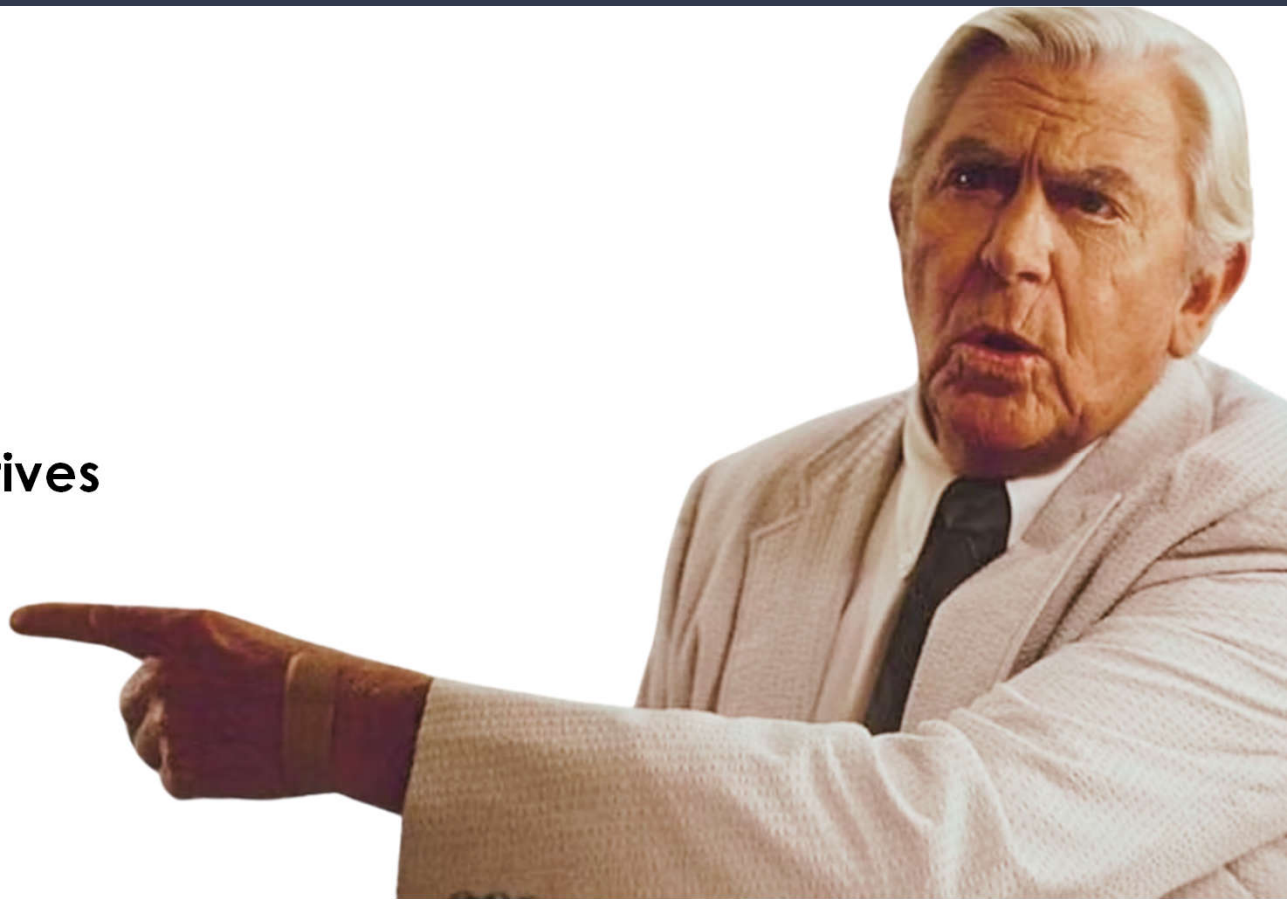
[Insert predicate, PJC 115.1.]

QUESTION _____

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate *Paul Payne* for his damages, if any, that were proximately caused by such fraud?

Trial Roles

- **Trial Lawyer**
 - **Presenting Evidence**
 - **Cross-Examination**
 - **Summaries/Demonstratives**
 - **Jury Argument**



Trial Roles

- **Appellate Lawyer**
 - Covering elements?
 - Evidence admitted?
 - Reviewing PowerPoints
 - Reminders
 - Objections
 - Additional questions



Trial Roles

- Keep the jury engaged
 - Opening props
 - Direct vs Cross
 - Objections
 - Experts
 - Always watching
- Arguments outside presence
- Error Preservation



Informal Charge Conference

- Be prepared early
- Work with the other side
- Formal charge conference can be too late to persuade
- Update trial counsel with changes
 - Negotiated changes
 - Rulings



Formal Charge Conference & Phase Two

- **Be prepared**
- **Preserving error**
- **Responding to objections**
- **Take your time**
- **Phase Two Charge?**



Post-Trial Advocacy

- **Attorney Fees**
- **Effect of Jury Answers/
Election of Remedies**
- **Interest**
- **Post-trial motions**



Conclusion

- **Prepare**
- **Work Together**
- **Have fun!**

