



THE FAMILY LAW GUIDE

Jason G. Smith has been practicing law since 2002. He has offices in both Newnan (metro Atlanta), Georgia, and in Winter Garden (metro Orlando), Florida. He and his wife of twenty-five years have four children and one grandchild. Before practicing law, Jason Smith was an ordained pastor, a business owner, and an insurance company executive. Jason Smith brings his practical and financial experience in business to his practice, and he understands the emotional/spiritual aspect of family law cases. His approach to law and his philosophy of practice focuses on the "real people" needs of his clients and on finding creative solutions for individuals facing family law issues. He is a seasoned and accomplished litigator that has made national news on more than one occasion. Jason Smith has successfully guided thousands of clients through the tumultuous waters of divorce, child custody, and child/spousal support cases. You can learn more about his firm at www.JasonGSmithLaw.com



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JASON G. SMITH

*Practical Help for Your Divorce,
Child Custody or Alimony Case*

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Child Custody or Alimony Case*



JASON G. SMITH

WHAT OTHERS ARE SAYING ABOUT THE LAW OFFICE OF JASON G. SMITH:

Rebecca S.

I'm still in the middle of my case, and Mr. Smith has always been attentive and has been continuously working hard on my behalf. I know I may drive him crazy with questions, but he cares about his clients and looks out for them. All he asks is just to follow and do what is being asked. Thank you, Mr. Smith for working and fighting for what is in the best interest of his clients and those involved in the case. I appreciate you and have and will continue to recommend you to others in need of a great attorney.

Kaila F.

Jason Smith is an outstanding attorney, and clearly one of the best litigators in the area. His knowledge of the law, and ability to truly care for his clients is undeniable. Jason always makes sure to respond in a timely manner and explain every aspect of the process beforehand. I couldn't be more thankful for his professionalism, drive and support. I highly recommend!!

Lisa B.

Excellent attorney! I hired him after watching him in court with other cases that were on the calendar the same day at my first court appearance. He is a sharp lawyer. I would hire him just so he wouldn't be on the other side of my case. Attorney Smith gave personal attention to my case, and he kept me informed and calm throughout my case. I highly recommend him...

Cherri B.

My husband and I recently hired Mr. Smith as our attorney and he has not only been very knowledgeable but also very compassionate with our case. We have five children, and this has been very emotional for our family. Mr. Smith assured us that justice does prevail, and he was more than capable of representing us and our rights in our situation...Mr. Smith doesn't back down when it comes to representing his clients! Not only did he guide us each step of the way as our family attorney, he also won our hearts...Take it from us, let Jason Smith represent you in your case, he's honest and trustworthy and he will get the job done!

Ashley B.

I wish I could review Jason with more than five stars! After having to drop our past attorney due to extreme incompetence and lack of communication, my husband and I were fortunate enough to stumble upon Jason Smith. He ALWAYS returned any phone calls and/or emails within a timely manner and provided knowledgeable information. Our case was a long process and at times extremely frustrating—being that it was a contested adoption—but Jason stuck with us, always reassuring we would be successful in the long run...and he was right! I honestly do not have enough wonderful things to say about Jason Smith. He is extremely professional but also laid back enough to make you feel comfortable and at ease. I would HIGHLY recommend Jason and his staff. Jason, my family and I cannot thank you enough for the incredible service you have provided. You have truly made such a positive impact on my family. Thank you!

Edward H.

Jason is by far the most professional and competent lawyer I have had the pleasure of dealing with... He was extremely knowledgeable on all laws pertaining to the matter. Through constant communication Jason could ease our worries and keep us informed on the latest updates. I cannot explain the amount of gratitude that my wife and I have towards Jason and his staff... They were all incredibly friendly and professional... Jason is incredibly knowledgeable about the entire family law process.

To Mo Shíorghrá

You are the reason that I do what I do.

— THE FAMILY — LAW GUIDE

Practical help for your divorce, child custody or alimony case.

JASON G. SMITH

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—INTRODUCTION—

When Family Law “Matters”

By Jason G. Smith, Esq.

Although it seems as though I have been a lawyer since birth, believe it or not I had a life before the law. As a business owner, an insurance agent, and as a pastor, I had an opportunity to sit on the other side of “the bar” (which is what lawyers refer to as that club for lawyers) and to see the law and lawyers from a non-lawyer’s perspective. I often disliked what I saw.

Before becoming a lawyer, I remember sitting in business court one day and watching other lawyers interact while the judge went through the calendar call. These lawyers were sharply dressed but smug in their demeanor, often laughing and joking

about some of the individuals in the courtroom. They did not sit with or interact with their clients. In fact, it even seemed as though they had to refer to their files to remember their own clients' names. My friend, who I was there to support, was terrified. After observing my friend's lawyer, I was terrified for him. Needless to say, it did not go well for my friend.

Lawyers refer to cases as "matters". And the problem is that after many years of school, internships and practice, many (and arguably most) lawyers become jaded and calloused, even to the point that they simply view each client, each case, each legal crisis as simply "a matter". A person's failed marriage is simply a file. A person's struggle to see their child is simply a case number. A person's financial crisis is simply a set of documents.

But for every file there is a person. For every case there are individuals effected by the outcome of that case. For every document, there are "real people" issues involved—never more so than in the area of family law. Whether it is a divorce, child custody, or spousal support / child support case, there are perhaps no more personal cases than these...and the persons involved take these cases personally.

Therefore, the family lawyer must understand that these are not simply "matters", but that these family law cases

MATTER to those persons involved. Family law matters when you are the person experiencing the heartbreak and uncertainty of divorce. Family law matters when you are the one facing the tragedy of being separated from your child. Family law matters when it is you dealing with the financial ruin that comes with a loss of a spouse's income.

When does family law matter? When it is your family law case. That is why I have written this book. I hope that in the coming pages I can take my years of experience as a lawyer with tens of thousands of hours of experience handling family law issues and offer you some direction and peace in the midst of your storm. I hope that I can take my unique perspective as a non-lawyer who turned lawyer, to break this monster down to a size that you can manage. I hope to arm you with the answers that you need to make good decisions as you face your family law situation—BECAUSE FAMILY LAW MATTERS WHEN IT IS YOUR FAMILY LAW MATTER.

— CHAPTER 1 —

I don't like lawyers. Do I really need a lawyer?

Do I need a lawyer?

If you don't like lawyers, you are definitely not alone.

Question: "What do you call three hundred lawyers chained at the bottom of the ocean?"

Answer: "A good start!"

Yes, there is a reason that the legal profession has become the brunt of bad jokes. But a good lawyer is a good start for your family law case.

One question that almost everyone in one way or another is, “Do I really need a lawyer for this case?” I always answer that question this way, “Do you get married and divorced every day?” If so, then you probably don’t need a lawyer. But if you are like most in the world, you don’t make a habit of getting married and divorced on a daily basis. You probably don’t run to court to argue over your children and your assets every chance you get. You probably did everything that you could do to avoid getting to this point—the point of facing a situation that would require the services of a qualified, seasoned attorney. So, yes, whether you are dealing with a legal dilemma, a legal situation, or a full-blown legal crisis, it is too important to simply “wing it”.

A prospective client recently came to me with a set of forms that he downloaded for \$100 from the internet. He came to me after the judge handed them back to him (in front of the other fifty or so people in the courtroom at the time) and told him that no judge would sign these fill-in-the-blank forms when a child’s life and wellbeing are at issue. This unfortunate client had wasted a tremendous amount of time, resources, and capital. He had spent \$100. He had spent hours and hours of time filling out these useless forms. He had expended tremendous political capital with his soon-to-be ex-wife negotiating a settlement (who

based on the judge's statement believed that she could now get a better deal and now wanted to back out of the agreement). He had missed significant time from work to go to court. By the time you add it all up, he spent MORE time and money trying to handle his family law case on his own than he would have by simply hiring me to guide him in negotiating a settlement, to draft the forty pages of documents required by the court, and to appear for him in court...and he wouldn't have been embarrassed on court day...and he wouldn't have lost his settlement with his soon-to-be-ex-wife!

Marriage and divorce, child custody, child support, spousal support, visitation, division of marital assets, and allocation of marital debt are the kind of issues that require good, legal counsel. If I have a toothache, I go to the dentist—and I go before it becomes a full-blown abscess. If I have appendicitis, I don't try to cut my appendix out with a sharp kitchen knife and a few shots of whiskey. I go to a professional surgeon who uses a fully equipped operating room. I go to a surgeon who uses the services of an anesthesiologist that specializes in the area of sedation. I go to a surgeon who has competent and trained support staff...and then I down the shots of whiskey in preparation for surgery.

In much the same way, the divorce that you are facing and the terms upon which you settle will affect the course of your entire life...and often the lives of your children as well. I often hear, "But we have everything settled...Why do I need a lawyer for this simple divorce?"

A young lady named Susan came into my office last year. She was a successful business woman who was well versed in contract negotiations. She had handled her divorce three years previously on her own, but now she wanted to sell the marital home that she was awarded in the divorce. The only problem was that the buyer's mortgage company would not permit closing to proceed because the divorce documents weren't clear enough for the mortgage company. The divorce documents did not contain necessary language that clearly and legally conveyed the house to Susan. Therefore, she could not satisfy the buyer's bank that she had full authority to sell the house. Do you think that her bitter ex-husband was willing to assist her in selling the house? No way...he was bitter that she was making a profit on the house only to move on to a higher-paying job in another state. It cost Susan twice as much time and money in court to rectify the issues caused by poorly written documents that she found on the internet.

Long story short, family law cases may often seem simple on the surface, but “the devil is in the details”. Family law cases involve some of the most important decisions that you will ever make in your life. It is worth a little bit of money to save a whole lot of headache in the future. Like my grandfather used to say when encouraging me to properly maintain my car, “Jake, you can pay me now or pay me later.” And, of course, when I failed to maintain the car, I discovered that the “pay me later” option was much costlier.

So how do I choose a good lawyer?

In his 2008 book entitled, Outliers, author/journalist Malcom Gladwell stated that “10,000 hours is the magic number of greatness.” He went on to say that, "an extraordinarily consistent answer in an incredible number of fields...[is that] you need to have practiced...for 10,000 hours before you get good." This is a good rule of thumb to keep in mind when choosing a lawyer.

Your lawyer should have at least 10,000 hours of practice under his belt. Now, in literal terms, this translates into about 250 work-weeks or almost five years. But the truth is that most lawyers don't work all day every day at their respective practices. Even more so, courtroom practice is an area that requires the development of specialized skills. If you don't use those skills consistently and frequently, you lose those skills.

In essence, I believe that *you should retain only those lawyers who have at least seven to ten years of experience in a particular area of law*. Even in my own practice, while I would like to think that with my “real-life”, pre-lawyer business experience that I was good right out of law school, I noticed light years difference between my practice before and after the ten-year

mark. At ten years of experience, not only had I learned to think outside the box to find solutions to seemingly impossible issues, but I had acquired the skills necessary to effectively execute those solutions.

It is one thing to know legal theory and principles. It is another thing to understand how to put that theory into practice to develop a plan. Further, your lawyer must not only know the law and know how to formulate a plan of attack, but your lawyer must understand how to execute the best plan to bring about the best possible resolution. So, in the practice of law there are three levels of mastery. There is “the theory” level, “the plan” level and the “execution” level. Mastering all three levels of practice is necessary for a successful outcome, and a lawyer typically lacks the experience to master all three levels before he or she has practiced at least ten years.

So, don’t pick a lawyer with the biggest staff, the fanciest office, or who is the first result on Google—all of which have little or nothing to do with actual skill. Choose the lawyer with seven to ten years of experience in family law that preferably has some level of real-life experience beyond simply going from high school, to college, to law school, and then directly to law practice.

Choose a lawyer who has a proven track record. Choose a lawyer that can help you find creative solutions to difficult problems.

So, how much does a good lawyer cost?

It depends on many factors, such as the venue (county) of the family law action, whether the opposing party hires a competent lawyer to contest the action, and the complexity of the issues involved. But you probably knew that already. I am sure you are saying, “Cut to the chase and let me know what I’m looking at here.”

I will tell you the tale of two cases. “It was the best of times, and the worst of times...” Joan had limited funds. When her wealthy CEO husband had cut her off from all the family bank accounts and credit cards in anticipation of their separation, she quickly borrowed money from family and friends to hire me. Joan’s husband thought that cutting off her funds would leave her unable to hire a good lawyer for the divorce. But Joan’s family and friends would not let that happen.

After talking with other “discount” attorneys and “family law mills”, Joan discovered that I was about 30% more than those

less experienced, less caring law firms. But instead of handling her case as an assembly line, and instead of treating Joan as a number, within weeks I had Joan's case in front of a judge for a temporary hearing. I obtained her temporary support that kept her in a standard of living to which she was accustomed. I obtained her temporary use and possession of the marital home (forcing her husband to vacate the home). I obtained her temporary attorney fees, so that she could repay the loans she had taken to retain me. Her husband (who hired a more expensive nationwide firm with a sharp, national marketing campaign) quickly settled the case after realizing that things would not go well for him in court. So, Joan paid less than her husband and received a better result. Joan did have the wisdom and foresight not to hire an inexperienced "discount firm" at \$1,000 less...and thank God she didn't. If she had, she would have likely received thousands less in her settlement. She would have likely lost much more money than she would have saved.

Then there is the story of Brett. In his divorce case, Brett went with an attorney with about five years of experience. He saved about \$1,000 in upfront attorney's fees. He thought that he got a decent deal in the divorce. Of course, it was his first divorce, and he did not know any better. He did not know that

his attorney miscalculated child support by not giving Brett all the deviations and adjustments that Brett could have received.

Brett came to me about five years later for a child support modification. He paid me about \$1,500 more than his previous attorney in upfront fees, but upon review of his case, I discovered that he had been paying about \$175 more per month in support than he should have been paying. Over a five-year period that amounted to more than \$10,000. With that money, Brett could have established a nice college fund for his child. With that money, he could have bought his child a car when she turned sixteen. Was Brett truly happy five years later that he saved a couple grand on his divorce? NO WAY! He was very regretful that just a little more money back then would have purchased a much better lawyer...and a much better result.

Nonetheless, I immediately went to work for Brett trying to undo the mess that was made by his prior lawyer. My firm obtained Brett not only the elimination of child support, but we proved that he was the better custodial parent for the child and obtained him custody of his daughter. He was ecstatic, and his daughter thrived in a much better environment. I only wish that I could have represented Brett in his divorce. If so, the result for Brett years earlier would have been much different.

The moral of the stories is this: a good attorney will cost you, but it does not have to break the bank. Go with an attorney who is an authority on family law. Go with an attorney who you feel you can trust. Go with an attorney that understands the real-people needs of each family law case and that has the interpersonal skills to negotiate a good deal or to persuade the judge to your side. It may cost a couple thousand dollars more in the short-term, but it will make a fortune of difference in the long-term.

And please, do not hire an attorney with the personality of a brick, or an attorney who is as abrasive as sandpaper. Family law requires interpersonal skills. Family law requires negotiating. Family law requires persuasion. Hire an attorney that can set people at ease, demonstrate his competence through action and find innovative solutions to difficult problems. That is the attorney who will obtain the best result...and that attorney will cost significant dollars, but it is worth it in the long run.

A family law case is not like buying a pair of socks. There are no “super shopper awards”. The results of a family law case will impact you and your children for years to come. Even children that you don’t yet have are affected by your reduction in wealth accumulation over time. Therefore, hiring a good,

CHAPTER 1

authoritative attorney is worth the few extra dollars to accomplish the best possible result.

—CHAPTER 2 —

Keep calm and chocolate on.

I like to have chocolate at the office for my clients. I have chosen to write about chocolate...not because I want to send you into diabetic shock, but because it is a good reminder to indulge in the good things and to take care of yourself when you are going through the difficult times of a family law case.

Chocolate increases the endorphins in your body, and it quite literally puts us in a state of euphoria that makes us more relaxed and better able to deal with stress. No wonder I love chocolate!

Exercise is also good to accomplish this affect...and exercise also helps burn off the chocolate. The point is this, take

care of yourself because you are the most important factor in winning your family law case.

Salena came to me a few years ago for a child custody modification case. She had gone with a different attorney in her divorce and had lost custody of her children. Her husband was from an extremely wealthy family, and he outspent Salena in the divorce case. For certain, Salena could have gotten a better result with a better attorney, but that was water under the bridge. At this point, Salena's kids needed her, and Salena's ex-husband cared little for the children. Instead he simply wanted to avoid paying Salena a large amount of child support. After Salena hired me, it was on! Her ex-husband went with the same tactic, hiring an expensive downtown law firm to litigate the heck out of the case. Shortly after the first volley of litigation, before we had really started in earnest, all those painful memories of loss and disappointment came flooding back in for Salena. She came into my office that week a wreck. Stress had caused her to develop a slight palsy of her face, and she was having frequent, debilitating migraines. I said, "Wait a minute...you can't go in front of the judge like this! You have got to take care of yourself first."

I showed her that unlike her divorce attorney, I had a plan and a strategy...a winning one. Armed with truth instead of

worry, she left my office determined to take better care of herself. She joined the gym. She started eating better. She followed her doctor's instructions. In essence, she let me worry about the case. Three months later we were in front of the judge, who gave her temporary custody of the children and ordered Salena's ex-husband to pay a huge amount child support. I am so glad that Salena got a grip on herself, as the judge also ordered psychological evaluations for both parties. Because Salena was doing great, she passed the evaluations with flying colors. Today, Salena has permanent custody of the children...and the ex is paying a boatload of child support.

One of the worst things that you can do in a divorce or other family law case is to let yourself go. This is the time to buckle down and excel mentally, physically and emotionally. If you need to talk to someone, don't hesitate to get into counseling. If you need some encouragement, surround yourself with positive people who encourage you (get rid of the negative, toxic relationships). If you need to lose some weight, see your doctor, get on a diet and join the gym. The better looking "you" will drive your ex crazy...and it will help your case too.

CHAPTER 2

So, before we get into the nuts and bolts of a family law case, have a piece of chocolate and let the flavor remind you to take care of yourself...keep calm and chocolate on.

—CHAPTER 3 —

Setting the stage...Preparing for your case

When you find yourself facing a contested family law action—whether it is a divorce, a separation action or modification action—there are things that you should do right now to set the stage for the upcoming case.

Regina came to me two years ago for representation in a divorce case. She had been married over twenty years. She and her husband had two adult children and two teenaged children. Both Regina and her husband were successful in their own rights, as Regina was a school administrator and her husband was retired military with a successful career in the civilian sector. They had purchased several rental properties during the marriage, and they had significant retirement and investment accounts.

When I asked Regina details about their financial holdings, she had shockingly limited knowledge concerning the balances of accounts, in whose name the accounts were held, the value of their property and the income of her husband. She simply stated, “I let my husband handle all that.” When she left her husband, she did so without gathering any of the information needed to pursue her case. We had to start from scratch, which prolonged the case and caused Regina a level of uncertainty. While that story had a happy ending (we obtained all the necessary information through discovery) Regina could have saved some time and money by simply taking a single day to scour the family file cabinet for information before leaving the house.

Here's what you should try to get.

To follow is a checklist of things to acquire for your family law attorney:

- ____ Last three years of tax returns
 - ____ Last three years of W-2s and 1099s
 - ____ At least one statement (but preferably the last 12 months) from every bank account you and/or your spouse have
 - ____ At least one statement (but preferably the last 12) from every credit card account that you and/or your spouse have
 - ____ At least one statement (but preferably the last 12) from every investment account and/or retirement account that you and/or your spouse have
 - ____ At least one statement (but preferably the last 12) from every loan, mortgage, car note, or other debt that you have
 - ____ A statement of account from the daycare
 - ____ A copy of any life insurance statements
 - ____ A copy of any health insurance cards
-

- ____ A copy of the kids' Social Security Cards
- ____ A copy of any lease to which you and /or your spouse is a party
- ____ A copy of your last three months of paycheck stubs from every source of income
- ____ A statement and declarations page of your auto insurance

If you are able to obtain these items, then you will be light years ahead of the game. However, it is worth noting that it is better for you to go ahead and retain counsel to pursue the action rather than delaying because you are having difficulty obtaining these items. Bad things can result from delay, but with your help, your attorney can obtain the information that you are unable to locate at the outset of your case. It simply helps move the case along if you have the ability to lay your hands on these items at the beginning of your case. And as I tell my clients, even a smartphone pic of these items will work. Therefore, if you must, take cell phone pics of the documents in the family files if removal and copying is too difficult or costly.

A word about social media.

Another thing that is of utmost importance...clean up your social media! Make sure that you change passwords, remove unsavory friends and followers, delete negative posts, remove inappropriate posts. Just remember that anything on social media may end up in evidence before the court. Make sure that whatever you have on social media would make even Mother Teresa proud. A good rule of thumb is that it is difficult to use positive, uplifting, encouraging posts against a person in court. But the posts with a negative tone always seem to find their way into evidence...and it is rarely favorable evidence for the party making the negative post. Therefore, the biggest advice that I can give here is, "CLEAN IT UP!"

The converse is also true. If you are a friend or follower of your opponent's social media (or if you know someone who is) then take screen shots and make copies of the opposing party's social media before they clean theirs up or before they block your access. Then you can use that evidence in court at a later date. The more evidence you have the merrier you will be.

You can learn a lot about a person through social media. I once found a father who had absconded with a child to Nebraska. He had been off the proverbial grid for three years. He later unexpectedly popped up on social media. Using a private investigator, we tracked him down and obtained custody of the child for my client. Thank God for his injudicious use of social media!

Nevertheless, I encourage you to exercise caution regarding your social media when you are facing a family law situation.

—CHAPTER 4 —

It's On...

After you have hired the right lawyer for your case, and after you mustered the documents that your attorney needs to effectively undertake representation, you should be able to sit back and wait for your lawyer to contact you regarding the goings on in your case. Understand that developments in any legal case do not happen daily or even weekly. It is not uncommon for there to be silence for a month or two at a time. As the saying goes, “The wheels of justice turn slowly, but they do turn.”

What to expect from the beginning

Any litigation is a lot like the old military adage, “you hurry up to wait.” Sometimes all you will hear is the sound of chirping crickets, and then suddenly there is a great commotion when your attorney will need you to answer questions (we’ll discuss discovery later), or get ready for a deposition, or to prepare for mediation, or to prepare for a hearing. Generally, when an attorney needs your assistance with your case, your attorney needs it rather quickly. The quicker you respond, the better it is for your case. Again, you will hurry up to wait.

How often should you contact your attorney? I recommend that you drop your attorney an email fourteen days after you retain your attorney to ask if he/she needs anything from you, and thereafter you should contact your attorney monthly. Email is often the best way to contact your attorney because an attorney can respond to a status request while multitasking. Often, I sit in court waiting for my case to be called, and I am able to return emails while waiting.

You may say, “but I believe in the old fashioned face-to-face or the personal contact of a telephone conversation.” I am happy to do those for clients who prefer that means of

communication, but in-person meetings and telephone calls are often like Thanksgiving dinner—it feels good at the moment, but later you’re miserable. When you get the attorney’s invoice for time spent on your case, it is easy to see why email (while not as personal) is much more cost-effective and efficient.

I’ll never forget Kathy. She liked the face-to-face and the telephone calls, but she made it clear at the beginning of the case that she had limited funds. I tried explaining to her that frequent telephone calls and meetings were costing her significant fees, but she didn’t listen. We had three in-person meetings and twelve phone calls (all initiated by her) before we even had the first hearing scheduled. Perhaps the conversations were cathartic for her, but they were also very costly. Essentially, she had blown through much of her retainer and racked up about six hours of billable time on unproductive conversations. That was nearly \$2,000 of time on unproductive activity.

You see, when there is an in-person meeting, a client has a natural inclination to fill that time with questions and discussion—even when much of the discussion does little to improve the chances of prevailing on the case. Also, when there are multiple meetings and telephone conversations, there is also

a tendency to be duplicative—covering the same ground over and over again.

Most of the time, the questions that a client has are all prospective in nature. What do I mean by that? The most common question I hear essentially involves, “What should I expect next?” Or, I will receive the “what if...” questions.

Understand this about your lawyer, your lawyer is not a prophet and generally does not have a crystal ball. Your attorney often cannot give you details about the future because your attorney cannot know what the future holds. Unless your attorney is clairvoyant, your attorney cannot know what the other side is thinking and what the other side is going to do next...until they do it.

That said, I can anticipate what the other side will likely do, argue and ask. Nonetheless, these are simply educated guesses until it actually happens. For certain, I can easily spend hours of the client’s time and money preparing for what may never actually occur. Nevertheless, I believe it best to save the client’s attorney fee dollars on what I know, not spend their fees preparing for what I can only guess. My recommendation is to save your attorney fee dollars for addressing issues as they occur

and trusting your attorney to effectively handle situations that arise...when they arise...not weeks and months beforehand.

Once again, it is similar to the surgeon analogy. Your surgeon can tell you what he/she plans to do, what the risks are and generally what you can expect. But your surgeon knows that every human body is unique and responds differently to various medical procedures. You don't spend hours and hours discussing with your surgeon what the remote possibilities of the procedure are. You don't spend time asking what size scalpel your surgeon will use. You don't spend time discussing what brand of gloves and scrubs your surgeon will wear during the surgery. You trust your surgeon to effectively complete the surgery in a way that ensures optimal results. Subsequent to the surgery, you follow your surgeon's post-operative instructions in order to achieve the best possible results.

I'm tickled when I listen to pharmaceutical commercials. They spend half of the thirty-second commercial listing the "rare but serious side-affects" while depicting happy people who obviously have not experienced these side-affects. You've heard it before, "Patients who take this medication may experience rare but serious side-affects including diarrhea, constipation, severe headaches, shortness of breath, and cardiac arrest...if you

experience any of these, contact your doctor immediately.” No thanks, I’ll just take an aspirin and call my doctor in the morning.

Obviously, these side-affects are rare. Obviously, if the medication is right for you, it may be worth the risk of the rare side-affects. And, of course, simply knowing about these side-affects will not prevent side-affects from occurring. Just remember the obvious when taking any medication...if you experience serious side-affects, call your doctor. Most people don’t need a thirty-second disclaimer to understand this commonsense response to a serious medical condition.

It is the same way with your attorney and your case. You can spend hours of time talking about what could (but may never) happen on the case. You can spend hours of time discussing in excruciating detail every rule and procedure involved in the process. You can spend hours of time simply hanging out with your attorney...and feel really good about that...until you get the bill. But my advice is to provide your attorney the information covered in Chapter 3 above. Ask questions about unique situations and circumstances in which you must make an immediate decision, i.e. whether you should pay the next car payment, whether you should leave the state with the kids, whether you should move to your sister’s house, etc. Leave the

“what could happen next” out of discussions as much as you can stand to. Contact your attorney only when it is an important, pressing matter. That is the best way to save time and money.

A word on how an attorney calculates your bill

You’ve heard the commercials, “you don’t pay unless I collect.” Well, in most states the law prohibits this sort of fee arrangement in divorce, child custody and child support cases. Therefore, your attorney will probably charge by the hour. There are other fee arrangements, such as flat fee, but I tell people that no attorney worth his salt will agree to charge a flat rate when he has no idea the time that may be involved in a particular case. So, if your attorney charges a flat rate, he probably is not familiar enough with the law to fully appreciate all the scenarios that may play out in a case. Therefore, if you find an attorney that will charge a flat rate...RUN...he probably doesn’t know what he is doing!

Local bar rules dictate how an attorney bills his/her time. So, when an attorney charges by the hour, that hour is broken into six-minute increments. The first six minutes is .1 (or one-

tenth) of an hour...the second six-minutes is .2 (or two-tenths)...and so on. Generally, any portion of a six-minute increment is billed as if you used the whole six minutes. For instance, if you spoke on the phone with your attorney for six minutes and one second, because you went over the first six-minute increment, it is generally billed at .2 (or two-tenths) of the attorney's hourly rate. Likewise, if you have a two-minute telephone conversation, although it is less than six minutes, it is billed at the full six-minute increment (or .1).

What many clients fail to realize is that most lawyers bill for every phone call made to the client, every phone message received from the client, every correspondence regarding the client's case received, every correspondence drafted in, every email received and every email response drafted—and each one of these tasks is billed as a separate task and is billed as a separate item and a separate six-minute increments. This is simply what the rules for attorney billing require in most states.

So, if you make a phone call in the morning and leave a message for your attorney, then follow up with an email, then call again later that same day, no matter how important (or unimportant) your question is, it likely costed you .3 (three-tenths) of an hour. If your attorney's billable rate is \$300 per

hour, then you likely spent about \$90 before ever talking with your attorney. Add a thirty-one-minute telephone conversation to that and you are probably at a grand total of \$240 on that burning question that you had.

Now, we can have a discussion over whether this is fair and right, but unfortunately it is generally permitted by the rules at present.

So, like it or not, it is the reality. That said, a few good attorneys, myself included, routinely extend good faith discounts to the client, reducing their bills significantly if paid on time. But there still is no such thing as “free time” or “pro bono” when it comes to good, family law attorneys.

Time is an attorney’s stock-in-trade. Just as product inventory is the lifeblood of Wal-Mart, time is the product/inventory that an attorney is selling. And that time should be priced based upon an attorney’s quality and experience.

After practicing nearly a decade, I finally purchased a big, beautiful boat. I loved that boat. I was proud of that boat. I took great care of that boat. But despite how much I maintained the boat, I learned that “boat” is simply an acronym of for Break Out Another Thousand. It seemed every time I turned around, I

was dropping a grand on the boat. I'm sure that for the average client, it seems that way with lawyers too. Just remember that everything to do with your case is billable, and good attorneys are not cheap.

So, the moral of the story is that before you contact your attorney, ask yourself if the question you want to ask or if discussion that you want to have is worth about \$100 or more. Ask yourself this important question because that is likely what it will cost you.

Please note that some questions are definitely worth it. Lisa was a client who hesitated to call me about canceling her “no-good” husband’s car insurance. The temporary order (that was poorly drafted by another lawyer) stated that her husband was responsible for his personal bills during separation and while the divorce was pending. Lisa reasonably felt that “personal bills” included her husband’s car insurance. Unfortunately, she did not know that the judge in that county had a specific standing order that unless an order of the court specifically addressed car insurance, neither party was to change anything regarding car insurance. That was definitely a phone call that was worth the billable time Lisa incurred. I am glad that Lisa did call me before violating the judge’s standing orders. Otherwise, she would have

incurred the wrath of the judge and the possibility of thousands of dollars in liability. Fortunately, I helped Lisa get back into court to get an order from the judge that did specifically address the car insurance...so that her “no-good” husband could pay for his own car!

Common sense dictates here. Again, while it may be comforting just to hear from your attorney and to talk to someone who will reassure you regarding your case, it is not always cost-effective or worth a few moments of comfort for hundreds of dollars in fees. So, use your time with your attorney wisely. Don’t waste time. Write out your questions before you call. Try to use email. Let your attorney worry about the minutia of details involved in the case; you simply follow your attorney’s instructions and ask only important questions when commonsense dictates.

—CHAPTER 5 —

So what is the procedure involved in your case?

So that you don't spend valuable time worrying about procedure that your attorney spent seven years in school to learn, I am going to give you a crash course on the general procedure of a family law case. This may vary slightly from state to state, county to county, and judge to judge. Regardless, all cases generally follow this process.

I. The Complaint or Petition

Pretty much every case—whether divorce, child custody or child support—must start by filing an action, or a lawsuit. In most states the filing of an action starts by filing a “Complaint for” or a “Petition for”

For purposes of this discussion, we will refer to the Complaint or Petition as the “complaint”. The complaint identifies the parties. The complaint briefly states the basic facts of the case. The complaint identifies what the complainant is asking the court to do.

Some attorneys like to file long, verbose complaints. It looks good to the client, and some attorneys feel that it is intimidating to the other side (attorneys also like to bill big dollars for these verbose complaints). Most states, however, are what is called “notice pleading” states. This means that the complaint must simply place the other side on notice to what the plaintiff is seeking and the basic facts that form the basis of the complaint.

But don’t make the mistake of over simplifying this process. There are some procedural pitfalls and traps that can

cause you to lose your case if the complaint is done and/or brought incorrectly. That is where your attorney will help you.

But because the states that I practice in are notice pleading states, I prefer a concise complaint. I find that long, verbose complaints give the other side too much information without demanding the other side to go through the proper procedure (discovery) to obtain that information. Why help your opponent do their job? Also, I find that very rarely do long, verbose complaints intimidate the other side.

You also need an attorney at this stage in filling out the ancillary documents that go along with the complaint. Sometimes a plaintiff can admit things in the ancillary documents that should not be admitted. Sometimes a court can refuse to take a filing if the ancillary documents are incomplete or incorrect. Therefore, even though these forms may seem simple and straightforward, I have often seen individuals who try to complete these documents without the aid of an attorney actually harm their own case.

Also, a case is not really underway until the other side is served. An attorney can assist you with arranging for proper service. If the opposing party is not properly served (and there are a myriad of complicated rules regarding “proper” service) then

the case may be dismissed...and it may be dismissed after you have expended tremendous time and resources on the case. Of course, that can be a very costly mistake. Again, each state has very specific rules regarding service of process and proper venue. That is why it is important to let your attorney assist you with where to file the action and with perfecting service on the opposing party.

II. Venue

Venue refers to where the case is filed. Generally, a case must be filed in the county in which the opposing party resides, subject to a plethora of caveats and complicated rules. Law students often spend several months exploring the various rules related to venue, therefore it is impossible to cover all the rules (and exceptions to the rules) here. Just understand that you cannot simply file a case where you live because you live there. That said, there are ways that a shrewd attorney can sometimes manipulate venue and get the case in a location that is favorable to you.

James was a client of mine who needed to file a modification of child custody case against his ex-wife to obtain custody of their children. Unfortunately, after the divorce, she moved to a county whose judges would be extremely favorable to the mother. I knew that it was best for James to keep the case in his county rather than litigating the action in his ex-wife's county (where venue was actually proper). I utilized a little-known loophole in the law and set a "procedural trap". We calculated that the ex-wife being overly confident in her position would likely try to answer the complaint without an attorney. With that in mind, I filed a very simple complaint that appeared weak and

un-intimidating. When the ex-wife answered pro se (without an attorney), she failed to raise venue as a defense or as an issue in her answer. When we later shifted gears and began aggressively litigating the case, the ex-wife hired an attorney, but it was too late. She was stuck litigating the case in James' county. Therefore, by having an attorney who understood the rules and how to use them to his advantage, James prevailed on the case.

III. The Answer or Response

After a person is served, they have a period of time to respond to the complaint. In some states, that is twenty days. In some states, it is thirty days. Some states offer something akin to a grace period. The rules differ widely in each state as to how long a person has to respond, but everyone must respond.

The response, often called an “answer”, is very important. There are important technical defenses that must be raised in the answer, or those defenses may be forever waived. Therefore, if a party fails to raise a technical defense in the answer, then that defense is waived and cannot be used in the future. That is why it is important to have an attorney respond to the complaint on your behalf.

Marcella was a client of mine whose eleven-year-old child went to visit the father (Marcella’s ex-husband) during the child’s summer break. When the child arrived at father’s house, he and his current wife began manipulating the child into “electing” (which is the child telling a court that he/she chooses to live with a particular parent) to reside with the father on a permanent basis.

Because the father filed his modification action near the end of his summer visitation period, I knew that this father was

likely to keep the child beyond the father's summer visitation period. Rather than answering immediately, I waited a couple of weeks to file Marcella's answer. When the father did as I expected, I raised a technical defense that prohibits a party from maintaining an action for custody when that party is holding the child beyond that party's visitation period. By raising this technical defense, the father was forced to return the child to Marcella to avoid the case being dismissed on technical, statutory grounds. When the child went back to Marcella, she was able to talk with the child and get past the father's manipulation. The child, of course, changed his election and opted to continue residing with Marcella.

We won that case by shrewdly and properly raising a technical defense in the answer. Had Marcella failed to raise that technicality, the child would have stayed with the father and remained under the father's manipulative influence...and Marcella would have likely lost the case.

If you are the one who has been sued, the answer is a very important step in the process. Make sure to tell your attorney exactly how (by whom) and when you were served. Your attorney will ensure that service was properly perfected, that the answer is timely filed and that the proper defenses are raised.

IV. Mandatory Disclosures/Discovery

After the answer is filed, the discovery period begins. This is the period of time in which you must submit to questions from the other side. This is also the time that you get to force the other party to submit to probing questions as well. This may come in the form of requests that a party produce specified documents. This may come in the form of questions that a party must answer in writing, called “interrogatories”. A party may have to submit to a deposition, which is questioning under oath, in person, and in front of a court reporter who types counsel’s questions and the party’s responses. These procedures may be utilized by your lawyer, and the opposing party may utilize these procedures as well. Often, if one party utilizes a certain procedure, generally the other party does the same.

When you are served a request for production of documents (also called “notice to produce”), interrogatories, or other written questions, the law requires a written response for each numbered request or paragraph. Whether you are responding to interrogatories or requests for production of documents, a written response to each numbered request or paragraph is required. It will save time and attorney fees for you

to respond in a Microsoft Word ® document that your attorney can use in preparing the formal responses.

Many of the requests made by opposing counsel are subject to a legal objection and may not require your response at that time. Nonetheless, you should respond fully to each request and let your attorney raise those objections that are appropriate, withholding the documents and/or responses as is appropriate. It is important that you respond within about seven days in order to give your attorney time to draft your formal responses.

You are generally NOT required to do the following:

- You are generally not required to request documents from third-parties that are not in your possession...for example, if you can easily obtain bank statements online, then do so. If you can easily get them from your bank, then do so. If you cannot readily get the documents without expending tremendous resources and jumping through significant hoops, then you do not have to spend money obtaining copies from your bank.

- You are not required to speculate, guess, or approximate when responding. If you don't have the information necessary to respond to a request, or you don't know for fairly certain the information requested, then generally you can simply respond by saying, "I lack sufficient information to form a complete and accurate response to this request."
- You are not required to disclose the contents of conversations that you have had with your attorney or other past attorneys.
- Obviously, if a request does not apply to you, you can respond by simply stating "N/A".

If you are responding to Requests for Production of Documents, your response to each numbered request may generally be something like one of the following:

- *“All documents in my possession that are responsive to this request are attached hereto.”* Then list those documents by category, i.e. “2010-2105 Bank of America statements (Acct. # 1234), Paycheck Stubs from January 1, 2018 to present, Closing documents on 1234 Hill Street...”
- Of course, if the request does not apply to you, such as you are asked to produce documents that do not and never existed, then you may simply respond by saying, *“Non-applicable,”*
- If you do not have the requested documents in your possession, and you cannot readily place your hands on these documents (see above), then you may respond by saying, *“Documents responsive to this request are not in my possession.”*

What you must generally understand is that failure to communicate your responses to your attorney within the time

allowed may result in a waiver of important legal objections and will necessitate your attorney giving valuable information to the opposing party that perhaps could have otherwise been withheld. Further, failure to respond to the requests within the requisite time period may result in severe court sanctions, including dismissal of your case or your defenses, exclusion of the evidence, paying the other side's attorney fees and/or eventual incarceration.

Discovery is the tedious and time-consuming part of the case. To streamline this process and to save on attorney fees, refer to section above relating to mandatory disclosures. Have those documents identified in that section ready to send to your attorney as soon as they are requested. You can also assist your attorney by emailing specific questions, the answers to which you believe would be helpful to your case. Your attorney may not be able to use all these questions, but I always welcome my client's input on questions to ask the other side.

V. Mediation

Increasingly, in most states, all domestic relations cases — by standing court order — must be mediated before a hearing can be scheduled. Thus, the parties are required to at least attempt mediation.

Mediation is an informal process wherein the parties meet with an impartial third-party (called “a neutral” or, “mediator”) and attempt to arrive at a resolution of the case. A few things that you should know about mediation are as follows:

- The case may be settled in part or in whole. It is permissible to reach a partial settlement of only some of the issues of the case, or you may reach a full settlement of all issues in the case. You can reach a temporary agreement that dictates how the parties will conduct themselves during the pendency of the case, or you may reach a permanent settlement that completely resolves the case.
- The parties may or may not reach an agreement. You are not required to reach an agreement, and you cannot force the other side to agree to anything either.

- The mediator cannot give legal advice. The mediator is neutral. While the mediator may be an attorney, the mediator cannot represent you as your lawyer or give you legal advice and direction.
 - The mediator cannot force a settlement. The parties are free to settle, or a party may opt not to settle.
 - Your attorney will advise you to be cautious regarding what you say. You don't want to spill the proverbial beans or give away the proverbial farm. Nevertheless, statements made in mediation are generally not later admissible in court. The law seeks to encourage free communication amongst the parties during mediation in order to facilitate a settlement.
 - The mediator cannot be subpoenaed to testify in court. Mediation is a confidential process, and communications with the mediator are generally not admissible in court.
 - The mediator will require payment from you at the mediation. Mediators, like all individuals, don't work for free. Be prepared to pay at the mediation session.
-

- The parties will generally share equally the cost of mediation. It is custom that the parties split the cost of mediation.

During the mediation process you will usually have plenty time to talk with your attorney. In the two to three hours that you are there, the mediator will meet privately with each party and his/her attorney. When the mediator is meeting with the opposing party, you will have time to talk privately with your attorney.

In terms of what to expect from mediation, you generally start in a small conference room with the mediator, your attorney, the opposing party and the opposing party's attorney. The plaintiff (the one who actually filed the case) begins by stating his/her position on the case. Then the other party states his/her position on the case. Your attorney will generally talk for you, so you will not have to say anything if you don't wish to. You don't have to make any settlement offers until you have had time to discuss things privately with your attorney and/or the mediator.

After the parties state their position on the case, the mediator will then "caucus", meeting with each party and his/her counsel privately, confidentially, separately and apart from the

other party. Nothing you say in mediation can be used against you in court, and you can instruct the mediator not to repeat to the other party anything that you don't want the other party to know.

In caucus, the parties usually make settlement offers for the mediator to take to the other party. The mediator will go back and forth, meeting with the parties separately until a settlement is reached or until the parties are at an impasse, at which time mediation is concluded. Mediation ends when the parties sign off on a settlement agreement that is put in writing in the mediation session, or the mediation will end upon the parties declaring an impasse (which means that the parties are unable to settle). The only thing that the judge in your case will ever hear or know about your mediation is whether or not a settlement agreement was reached. Judges can receive no further information regarding mediation or any information regarding what went on during mediation.

Because of my reputation in the community, about 80% of my cases settle in mediation. Usually, if the other side is represented by counsel, that attorney knows that I am fully aware of what the judge is likely to do in the case. Other lawyers know that if they offer my client something that is far outside the

parameters of what the judge in the case is likely to order at a trial, then I will advise my client to decline the offer and to proceed to trial. Other lawyers also know that I am fully prepared to go to trial if we don't reach a resolution and that I have a very good success rate. That is why if you hire a good, reputable attorney, it can save you time and money in the long run. It is plain and simple—an attorney's good reputation most often helps to settle cases.

That said, I always tell clients that a settlement usually involves less than your best day in court. If it is your desire to settle without going to trial, then you have to be prepared to compromise. Just as I would advise against my client simply accepting his/her worst case scenario, the other side will likely not accept their worst-case scenario either. Any settlement will likely involve both parties giving up something of value in order to gain something in return.

VI. Temporary Hearing

Sometimes a party may seek a temporary hearing to address issues regarding how the parties should conduct themselves while the case is pending and to address temporary issues before the judge has an opportunity to make a final ruling on the case. In the temporary hearing, the judge will usually address parenting time and parental responsibility that each party will have while the case is pending. The judge will also discuss issues of child support and spousal support usually for the purpose of maintaining the status quo as much as possible while the case is pending. Sometimes, the judge will address issues such as temporary possession of the marital residence, who will pay current bills and other miscellaneous issues that have arisen since separation.

You should discuss with your lawyer whether a temporary hearing is strategically advantageous in your case. Sometimes, when I am representing the wife, I will recommend a temporary hearing because the wife is often in need of temporary support. On the other hand, I usually avoid temporary hearings when I am representing the husband. I do this because if the husband is the primary breadwinner in the family, the court will generally require more of him in the temporary hearing than what a court

is likely to order in a final hearing. Therefore, depending on the individual circumstances, a temporary hearing may not always be the best strategic option.

A temporary hearing is often costly as well. Remember that for every hour of court, there is generally three hours of preparation time involved. I generally tell clients that a temporary hearing will require at least three to four hours of attorney time. So, budget accordingly.

Also, while everyone wants a court to rule quickly on a case, as the old adage goes, sometimes “caution is the better part of valor”. It is better to be prepared rather than going half-cocked into a hearing and being forced to show your cards before you are ready. Just listen to your attorney and don’t get stuck on the desire for a quick resolution. Often the right and best resolution for you is not necessarily the quickest one.

Also, be aware that in some jurisdictions a temporary hearing takes months to schedule. In other jurisdictions, mediation is required before a temporary hearing can be scheduled. Some judges will not do temporary hearings on modification cases and other judges treat temporary hearings as informal mediation-style hearings. Your attorney should know the jurisdiction and know the judge. That is the best way to

ensure that you choose the strategy that is right for you and your case.

VII. Trial

In a family law context, the goings on of trial will vary widely from jurisdiction to jurisdiction and from judge to judge. Therefore, it is impossible to address how your trial will go in a handbook on family law issues—that would require a library of books to cover. Also, trial is like the Broadway show that happens only after weeks of preparation and hours of rehearsal. That said, the conduct of trial is largely dependent upon what the other side says and does, so unlike a Broadway play, much of trial will be unscripted and impromptu.

Know this, the trial is not like what you see on television and in the movies. Most of the time, trial is relatively boring and mundane compared to what you are expecting. In fact, if it does get exciting, that usually means that something went wrong for you, or hopefully it was that something went wrong for the other side.

I recently tried a case for Richard, who was seeking custody of his elementary school-aged son. The mother claimed to be the primary care giver of the child since birth, but anticipating this to be her argument, I subpoenaed her work records to show that she was at work all day during the week. I also obtained copies of her Facebook posts to show that she was out partying most

weekends. Also, my client wisely started keeping a log of the days and times that he had the child. So, we had months of evidence showing that she had voluntarily let Richard have the child most weekends.

The truth was that she wanted “primary custody” primarily for Richard’s child support. In fact, while she claimed to have “after school care expenses” (which served to increase the amount of support that she was seeking), she never claimed the childcare tax credit on her taxes. Why? Because her mother, sister or other relatives would watch the child after school. Basically, this mother wanted the court to believe that Richard should not have shared custody because she was the one “who always cared for the child.” That was an exciting hearing when I caught her in lie after lie and showed that Richard did as much or more to care for the child than she did. But know this, something had definitely gone wrong for this mother and her attorney, who simply took his client at her word. About twenty minutes into my cross examination of this mother, her attorney was asking for a recess!

But trials are not always that exciting. The important thing is to get your evidence before the judge. Perhaps the best way to get this done is for you to provide your attorney with an

email in bullet point form that briefly states every fact that you believe helps your case. I often ask a client to do this at least four weeks prior to trial not only because it helps me know what is important to the client, but it also helps the client organize his/her thoughts and prepare for trial. Even when your attorney is good, your attorney has not lived your life and does not know the facts as well as you know those facts of your case. Your attorney's job is get the facts in front of the judge in a way that permits the judge to consider these facts. This is called the presentation of admissible evidence through proper trial procedure.

Keep in mind that you may have the best facts in the world, but the judge may never hear those facts or see that evidence (i.e. documents, photos, recordings, etc.) unless that evidence is presented in an admissible form and through an admissible process. I often tell clients that unfortunately the law is not about truth and justice, the law is about evidence and procedure. By providing a list of important facts to your attorney weeks in advance of trial, your attorney can ensure that he/she does what is necessary to ensure that this evidence gets admitted in trial for the judge's consideration. So, do not skip this very important step in helping your attorney help you at trial.

What not to do at trial...

Because state law, judges, facts and arguments vary so widely, perhaps it is best to tell you what not to do instead of giving detailed instructions of what to do. Therefore, to follow is a brief statement of what not to do.

Be stoic, not animated, when you are not on the stand.

Judges are not impressed when you shake your head or act like you want to jump out of your skin when a witness is testifying. Judges don't like to see you argue with opposing counsel through your gestures and body language. I remember that I had all but won David's case. I had demonstrated his wife to be mentally unstable and a chronic liar. My cross examination of her was flawless. Our witnesses had knocked it out of the park; I had prepared them well. David did a good job on the stand, as he followed my instructions to the tee. But I did not realize it was necessary to tell David not to act like an idiot during his wife's presentation of her case. Instead, David was visibly agitated and even animated when his wife and her witnesses told their stories. Ultimately, instead of giving David custody, the court split custody. The judge stated that because of David's conduct during the course of trial, he felt that David was as unstable as David claimed his wife to be. The judge said, "I don't believe that either

of you deserve custody...so all I can do is give custody to you both...I'm going to split custody."

Don't let the other attorney put words in your mouth.

Attorneys love to say, "Just answer the question 'yes' or 'no'." A question generally has no "yes/no" answer and most often requires an explanation. Don't be afraid to say, "I cannot adequately and truthfully answer that question without an explanation."

If an attorney says to you, "So what you are saying is..." Don't fall for that trap. Simply reply, "My prior testimony speaks for itself, and I stand by it." You may even want to add, "Respectfully, I believe that you are putting words in my mouth and misstating my prior testimony."

Don't speculate. If an attorney asks you, "About how many or about how much..." Feel free to respond with, "Respectfully, I don't feel comfortable speculating because I can't say exactly." If the attorney persists in pushing you to speculate, simply state, "Because I am under oath, I cannot speculate because I simply don't know [or, can't remember]."

Do not appear angry or bitter. In a family law context, judges are not impressed with how bad you believe the other side to be. Let your attorney level the personal attacks. As much as

possible, you should simply stick to the facts without personal attacks and commentary.

If you can simply master these simple rules, you are more than halfway to having a successful trial.

—CHAPTER 6 —

The purpose of it all

There are several aspects to a family law case and several elements to be considered. What I am talking about here are the goals of the litigation. What are you fighting for? What it is that you are asking the court to do? I will cover some key points using terminology that is used in the jurisdictions in which I currently practice (Georgia and Florida). This discussion will serve as a guide and a point of reference for you as you speak with your attorney and strategize concerning the goals for your case.

I. Divorce

Divorce is a concept that essentially means that the parties marriage contract is declared void or no longer in existence. In other words, post-divorce the parties will be considered separate legal entities, with no legal ties to each other.

There are generally several grounds for divorce. The primary ground is that the marriage is irretrievably broken, or that there are irreconcilable differences between the spouses. This is the ground usually characterized as a “no fault” divorce.

In most jurisdictions, you can get a divorce without the consent of the party. I recently had a case in which the opposing party (husband) absolutely refused to divorce his wife (my client). He filed motion after motion to “abate the divorce.” Essentially, he wanted to force the wife into marriage counseling. He filed motions to require multiple mediations.

To be certain, I am a believer in marriage counseling, reconciliation and mediation, but after suffering years of abuse and failed counseling attempts with her husband, my client was understandably and absolutely unwilling to consider further counseling and reconciliation. Ultimately, this abusive husband did not have a lawyer who was good enough to tell him he would not be successful in his attempts to stave off a divorce. In the

words of the renowned United States Supreme Court Justice Oliver Wendel Holmes, “The best advice that some lawyers can give a man is that he has no case...and that he’s a damn fool for pursuing one.” This was just such a case. Ultimately, the husband only opened himself to liability for wife’s attorney fees for defending those frivolous motions. The moral of the story is that if your spouse wants a divorce, ultimately, he/she will get one.

II. Child Custody

Most states have shied away from the concept of “custody” in favor to the concept of “parenting time”. In other words, courts in most states like to define parenthood not in terms of who possesses a child, but in terms of the amount of time that a party spends parenting a child.

Parenting time will be defined by a parenting plan that identifies when a parent will have the child. In some states and in some counties, a child will presumably be with one parent one week, and the other parent the next week (also called “week-on/week-off”). Other states lean more toward the “non-custodial parent” spending every other weekend with the child. Regardless of the state, almost all states generally favor a split holiday or alternating holiday arrangement.

For purposes of your case, you should focus on who is designated as the “final decision maker” or who is designated as the “residential parent” for purposes of education. I generally find that in today’s world, the parent who holds the majority of power as it relates to education of the child has greater control over the child as compared to the other parent. While parties are still required to confer with one another on all major decisions affecting the child, the parent designated as “primary custodian”

or “parenting time most of the time” or “the educational guardian” or “the residential parent”, is the parent who has the most say over the child. Therefore, ask your attorney about these designations in your state and pay careful attention to which designation gives you the most say in education. That will probably be your best option.

III. Child Support

Child support in most states has become very formula-driven...but the devil is in the details. While there are child support calculators online, a good lawyer can help you tweak the numbers and the data to get you the best possible result in terms of support.

For instance, the father's income may literally be \$2,000 per month, but if the father has a medical degree and a license to practice medicine, then he is grossly underemployed. A good lawyer can persuade the judge to "impute" additional income to the father for purposes of calculating child support.

In a recent case, I helped a mother obtain a significant increase over guideline child support by demonstrating that the father had an income earning capacity far over that which he currently reported. I showed evidence of his previous years of income, and I showed that he lost his high paying job due to his own misconduct. The judge ultimately added \$2,000 per month to the father's income and gave mother several hundred dollars more in support each month.

There are other factors that enter into the equation that can be used to reduce or increase the child support guideline amount. Child care expenses should be considered when

calculating child support. Extended parenting time exercised by the paying spouse can decrease child support. Health care insurance premiums paid by either parent should be considered in the child support calculations. There are even some little used factors such as the alimony, child tax credit, earned income credit, tax refunds and other government benefits that should be considered when determining a parent's income.

IV. Alimony.

Alimony is also called spousal support. Alimony is generally not controlled by formula but is left to the discretion of the trial judge, who considers the paying spouse's ability to pay and the receiving spouse's need for the support. Even if state law does eventually move to a formula for calculating alimony, I believe that the paying spouse's ability to pay and the need of the receiving spouse will continue to be key elements in determining alimony.

As a practical matter, what this means is that if you are the spouse who traditionally made the lion share of the money during the marriage, then you have an exposure for spousal support. Your goal then should be to show that your post-divorce financial obligations (i.e. marital debt, child support, tax obligations, etc.) eliminates your available resources to pay alimony. You may also argue that your spouse's post-divorce resources are sufficient to satisfy her monthly financial needs. For instance, if the receiving spouse has a large lump sum of money from the divorce settlement, then she may not need monthly support.

I recently had a case in which wife had a trust fund from her late uncle. Although husband was not entitled to any of the

trust fund as “marital property”, I did persuade the court that the trust fund made it unnecessary for husband to pay wife the alimony that she was seeking. I successfully argued that her entitlement to funds from the trust was more secure than husband’s employment and future job opportunities. I also showed that the trust fund paid her more than she needed each month to live.

While need and ability to pay may be considerations, marital misconduct can also be used to increase the paying spouse’s liability or eliminate the receiving spouse’s claim. Recently, I was able to overcome wife’s claim for alimony against her husband, who was a successful medical doctor. Even though her husband was very wealthy, I was able to show that the wife had engaged in an extramarital affair that resulted in the demise of the parties’ marriage. Therefore, her claim for alimony was successfully defeated. In essence, alimony is a complicated subject that requires careful legal analysis from a seasoned, quality lawyer. The arguments for and against spousal support are limitless and the availability, structure, amount and duration of spousal support is largely driven by legal custom, the judge and the conduct of the parties leading up to divorce.

V. Distribution of Marital Assets & Liabilities

There are generally two types of states—equitable distribution states and community property states. Community property states simply divide everything the parties have in half (which is probably an overly simplistic statement but will serve for purposes of discussion). In equitable distribution states, the court will seek to do “equity”, or fairness, in distributing marital property to the parties. While most states incorporate elements of both into their law, the jurisdictions in which I practice (Georgia and Florida) are generally characterized as equitable distribution states. The majority of states are equitable distribution states.

In equitable distribution states, the first step in the analysis is to determine what property is marital and what property is non-marital (also called pre-marital). Marital property is generally that which was acquired during the marriage...and generally through the joint efforts or resources of the parties. Now that question can be a lot more complex than it appears at first glance. Is the \$100,000 per year women’s cosmetic business (which was started by wife during the marriage) marital property? Well, if the inventory was acquired with marital funds, then it probably is. But if the inventory was acquired using wife’s inheritance from her late uncle’s estate, and if wife built that business in the

evenings after she got home from work, and if she did not rely on husband to watch the children while she was out working her business, then she may have a good argument that her business is not marital property subject to distribution. She will probably be awarded all of that business and the benefits that derive from it.

Another common scenario is represented by a case that I recently won. Wife had a home that she acquired prior to the marriage. Both husband and wife had their own high-paying jobs. The wife always paid the mortgage on the home out of her own bank account. Nonetheless, I artfully and successfully argued that husband paid the taxes on the home out of his account, that he paid the utilities on the home out of his account and that he improved the home with his “sweat equity” by adding carpet, cabinetry and deck repairs. The judge determined that he was entitled to a portion of the equity in the “pre-marital” home and awarded him 40% of that equity.

A couple of considerations to keep in mind—although you have your separate money/stuff/debt and the opposing party has separate money/stuff/debt, a court generally considers you both as a single legal entity while married. A court considers that husband may not have been able to build that business with his

own money and efforts if the wife was not at home caring for the children while husband went to work. Likewise, a court may be persuaded that wife's "non-marital" inheritance grew in value through husband's wise investment of that money or his efforts in improving the real property that wife inherited.

Equitable distribution of marital debt is a similar analysis. However, in equitable distribution states, a judge may order the party who makes the most money to take most of the debt. The court may also allocate debt to the party that keeps the property associated with that debt. In other words, the party that gets the family sedan will likely pay the debt associated with that sedan.

So, there are arguments within arguments as it relates to what property/debt is considered marital. The general overriding question is, "What was acquired during the marriage?" and, "How was that property acquired, maintained and used during the marriage?" Your attorney should help you navigate the nuances of the equitable distribution question.

VI. Attorney Fees

An award of attorney fees is generally in the discretion of the trial judge. Generally, a trial judge will consider the relative incomes of the parties. Often the trial judge will award attorney fees to the spouse that has a much lower income than the other spouse. As covered earlier, however, attorneys will usually collect any portion of their fees upfront. In most states, it is impermissible (and can subject an attorney to disciplinary action by the state bar) in most family law cases to agree to collect fees only if the judge orders fees from the opposing party. That would generally be a prohibited contingency fee on a family law case. Likewise, an attorney also cannot say, “I will take my fees when you are awarded money in your family law case.” That too would be a prohibited contingency fee agreement.

One exception to that rule is the collection of support arrearage. If you have been previously awarded child support or alimony (or really any money or property), and the other party has failed to pay that, then (and usually only then) can an attorney agree to take a cut of what that attorney recovers. That enforcement action to collect this arrearage is generally referred to as a contempt or enforcement action.

I once represented Mary, who had difficulty collecting alimony from her husband. She was destitute when she came to me for help. As it turns out, Mary's ex-husband owed more than \$50,000 in alimony arrears. When I took her case, I did an investigation and tracked him down. He was a chief financial officer for a successful manufacturing company with a six-digit income. Needless to say, Mary got paid...and I did too. In fact, the judge even added attorney fees incurred in the collection action to the amount of the arrearage. So, Mary was very happy.

Ask your attorney about an attorney fee claim. You may find that you have a good case to collect attorney fees.

VII. Legitimation/Paternity

Generally, when a child is born out of wedlock, that child is considered “illegitimate” by state law. In other words, the father has little or no rights until that father legitimates the child. Some fathers have come to me thinking that they have rights because they pay child support. However, the payment of child support does not necessarily convey legitimation rights to the father. In essence, a father may pay child support and still may have no right to visitation, decision-making or any other rights or benefits regarding the child until the father has been declared the legitimate father of the child in a legitimation action.

Some fathers believe that if they signed the birth certificate or if the child has the father’s last name then the child has been legitimated. That is not necessarily the case. While some states provide for an “administrative legitimation” by signing a birth certificate, this usually does little more than make it easier to prove legitimation in a later court action. Even states that recognize “administrative legitimation” (Georgia and Florida do not), as a practical matter, there is very little if any benefit at all to administrative legitimation without a formal court action.

In summary, if you are seeking rights to your child who was born out of wedlock, then you really need to consult a good

family law attorney. You may be entitled to have custody and parenting time of your child and to even have the child's last name changed. In fact, the longer you wait the more risk you run to permanently losing rights to your child...and a court permitting someone else to adopt your child. Therefore, do not delay if you are in this situation.

—CHAPTER 7 —

A Final Word on the Final Word

Sometimes at the close of trial, or sometimes a week or two later, the judge will pronounce his or her decision/ruling on your case. Some judges will draft the final order, while others will allow the attorneys to draft the final order. The final order will obviously be the most important document in your case. You should obtain a certified copy of the order and put it in a safe place, such as a safe or fire proof filing cabinet.

Read this document carefully. Discuss it with your lawyer. Abide by the terms of the order. There are serious consequences when you don't. Understand, however, that more often than not, the final order(s) is not set in stone for all eternity. If circumstances change significantly, then you can often seek a

modification or a change of the final order. This can be a difficult process, but often a good attorney can find a way.

Michelle represented herself in her divorce. She mistakenly thought that her husband's attorney was representing her as well. When Michelle read the final order drafted by her husband's attorney, she discovered that her ex-husband (and his attorney) had actually manipulated the final documents in the case in such a way as to give primary custody of Michelle's child to the husband. No doubt, they did this in an attempt to reduce and all but eliminate his child support obligation. I talked with her to find some creative ways that we could show a change in circumstances. We devised a list of possible changed circumstances, and I went to work. Turns out that the judge found it significant that Michelle's ex-husband had not attended a single doctor's appointment, school function or teacher's meeting in two years. Michelle won back primary custody of her child and she is now receiving guideline child support at the maximum amount. The moral of the story: have a good attorney that will review all documents in the case...and don't think that the final order is always set in stone forever.

— CONCLUSION —

So, you would rather be enjoying an exciting novel than having to read an informative book on family law. Perhaps you never imagined that you would later be in this situation when years ago your lover looked longingly into your eyes and leaned in for that first kiss, or when you said, “I do,” or when you gave birth to that child. You thought that everything would be storybook from there on out. But it wasn’t, and now you feel like you are in the never-ending train wreck.

But I am here to tell you that the light you see at the end of the tunnel is not an approaching train. It is a new beginning...a new normal...it is hope. That’s what I do in my practice. I find solutions to difficult situations. I find common ground where there is no consensus. I think outside the box to find a way for

you to not only make it through your legal crisis, but to come through it in an even better situation than you were in before your crisis.

Because I am a boating enthusiast, please indulge me in this nautical analogy. In the colonial days, in the days of wooden ships and tall sails, there was something of greater value than the king's gold...more desired than the pirate's booty...more sought after than hidden treasure. This sought-after commodity was, in essence, information—information in the form of navigational charts. Before GPS and satellite imagery, before navigation aids and nautical surveys, these navigation charts marked submerged hazards so that the king's ships could make it safely into the harbor. They alerted pirates to little known and narrow waterways in which a ship could be hidden from government patrol boats. These navigational charts disclosed the locations of little-known islands where treasure could be safely hidden. Without this information, without these navigation aids, the gold would be lost, the booty seized, the treasure taken. All the wealth in the world was useless if that wealth could not be navigated to safety.

I often hear friends, relatives and even other attorneys say, “How in the world do you practice family law?” They clearly

don't understand how rewarding it is to walk with good people through their darkest and most difficult times. They clearly can't see the joy in guiding people through these difficult waters to safety and security on the other side. All people need is someone in their corner helping them navigate the legal landmines and hidden hazards in the ocean of family law issues.

I hope that through this book, I have been able to offer you some guidance and some encouragement. I hope that I have made this tumultuous ocean a little more manageable. So, as you weigh anchor and cast off on this difficult journey, please feel free to contact my firm and let us share our years of experience and successful navigation with you. Let us guide you through the channel and into the safe harbors. But whether I have the privilege of sailing along side of you as your "Family Law Guide", or whether you have another helmsman help you along the way. I wish you the best on your journey to a new beginning. And always remember that every journey begins with the first mile.
SAIL ON!