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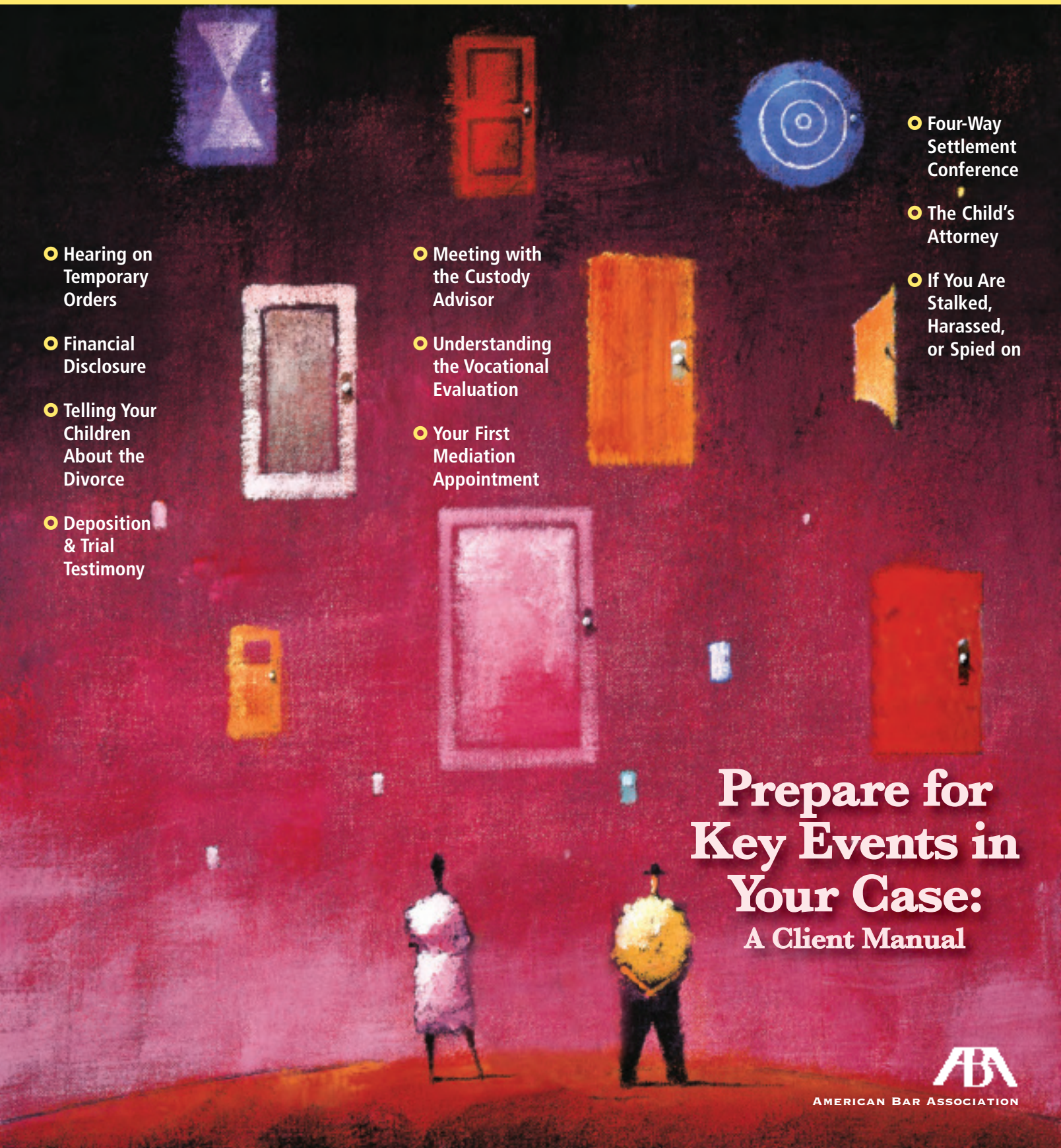

- Hearing on Temporary Orders
- Financial Disclosure
- Telling Your Children About the Divorce
- Deposition & Trial Testimony
- Meeting with the Custody Advisor
- Understanding the Vocational Evaluation
- Your First Mediation Appointment
- Four-Way Settlement Conference
- The Child's Attorney
- If You Are Stalked, Harassed, or Spied on

Prepare for Key Events in Your Case:

A Client Manual

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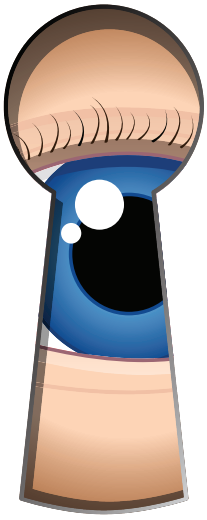
FEATURES

Prepare for Key Events in Your Case: A Client Manual



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Prepare for Key Events in Your Case

BY **KATHLEEN A. HOGAN**

For a lawyer, the steps and procedures in a divorce or custody case are very familiar territory, especially for the seasoned practitioner who has handled hundreds of these cases.

By contrast, from the clients' side of the desk, this is strange, uncharted territory that literally may affect the rest of their lives. Many clients have described the divorce process like this: Picture a person competently driving his or her own car around a familiar track. Place that same person on a bumper-car ride in the dark, with a track of unknown length full of uncharted twists, turns, hills, and valleys. Then fill that track with other drivers whose routes and intentions are unknown.

When a family law proceeding is initiated, competent and functioning adults who have been accustomed to making their own decisions and directing their own lives are placed in situations in which they no longer control the process, the timing, or the outcome. No written documents can totally eliminate the stress and worry that accompanies this life-changing transition from "married" to "divorced." Similarly, no written document can predict the exact course of each and every case. However, this client manual was created by the American Bar Association Section of Family Law to help illuminate the twists and turns and identify the other drivers on the track. This handbook is a special gift to you from your lawyer.

The process and your goals

A domestic relations case is seldom a one-step process. Instead, the client moves step by step through the process. Most of these steps are not like a surgical procedure in which the doctor performs the surgery and awakens the patient when it is over. In a domestic relations case, the client and lawyer work together to prepare for and get through the various steps in the process. The client needs to be fully awake and actively engaged. That active participation can best come about when the client understands not only his or her goals, but also the nature of the process.

The editors have tried to identify and describe the most common "key events" or steps in a domestic relations case. For each key event, an experienced author provides both a description of the event and its common purposes. In each article, the authors also provide information to help you prepare with your lawyer for each step of your case. Through some steps, your lawyer will accompany you, such as to a deposition or a court hearing. Through other steps, such as a meeting with an evaluator or a home visit by a custody investigator, your lawyer likely will not be present. However, the information provided here about what to expect and how to behave should make each step in the process less stressful.

Please keep in mind that this manual is not intended as a substitute for good legal representation. However,

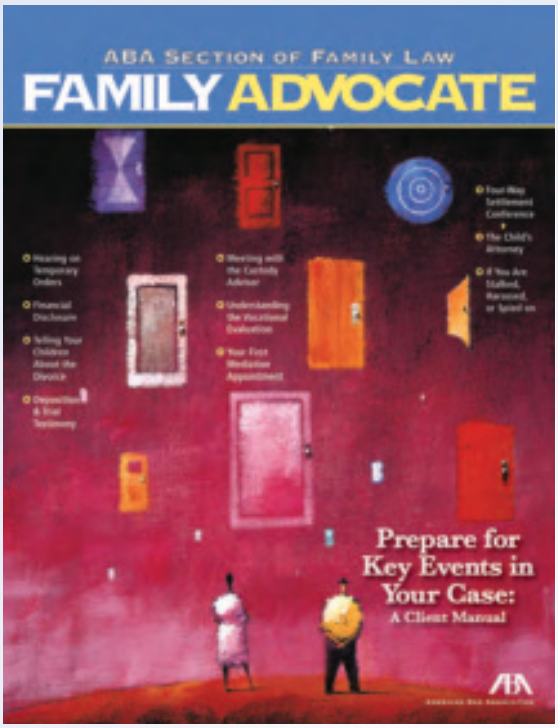
experienced lawyers know that clients are often overwhelmed with the amount of information relating to the processes and procedures of divorce. Often clients are trying to absorb that information as they process the emotional turmoil that accompanies a domestic relations proceeding. As a result, details are often missed or misunderstood.

Even the most intelligent clients need "refresher" explanations as the case proceeds. That is where this manual comes in handy. It provides those basic explanations and helps maximize the effectiveness of the lawyer-client relationship. It also helps focus and guide the specific questions you have for your lawyer so that you can spend more time discussing your case and less time on general descriptions of the process.

As you review the articles in this manual, keep in mind the following points.

- Procedures and terminologies vary somewhat from state to state. It is impossible in a publication of this size to identify and describe all those variations. Your lawyer can fill you in on state-specific variations in your case.
- Not every step described in this issue is appropriate or necessary for every case. On the one hand, the production and exchange of documents is virtually universal in domestic relations cases. On the other hand, a custody evaluation is obviously not necessary in a case that does not involve children. However, it might not be necessary or appropriate even in some cases that do involve children. Again, your lawyer can advise you as to which specific steps are right for your case.
- Events are described in roughly the order in which they occur in a typical case. However, keep in mind that state-specific and case-specific variations are possible. As well, preparations for various aspects of the case may occur simultaneously. You and your lawyer may find yourselves preparing for more than one event at a time.

Please read this manual carefully and refer to it often as your case progresses. It is sure to answer many of your questions and trigger important conversations with your lawyer. **FA**



Dear Divorce Client:

The American Bar Association Section of Family Law has created this handbook. It is a special gift to you from your lawyer. As you read the articles, consider the advice of our experts. Then talk with your lawyer, think through your options, and make the best decisions you can to launch you and your family toward a brighter tomorrow.

Our goal is to help you understand and prepare for "key events" in your case. We hope that by reading this handbook you will become more comfortable, confident, and capable as you work with your attorney through each step of your divorce case.

Best wishes,

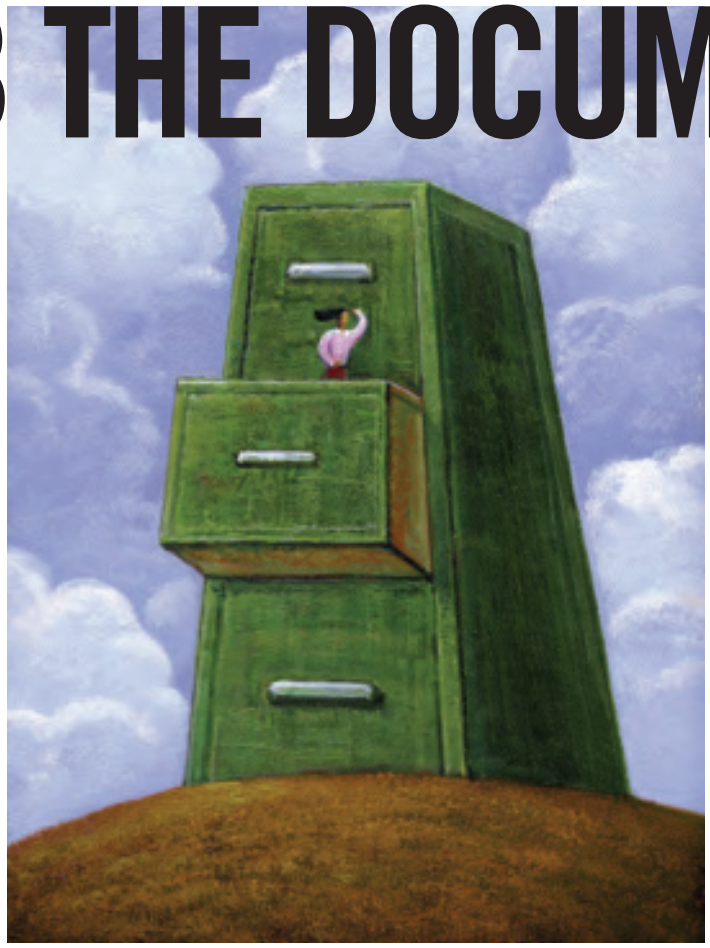
Kathleen A. Hogan, Editor in Chief

[Attach lawyer's business card here]

From bank statements to children's artwork, these important papers will tell the story of your marriage

GRAB THE DOCUMENTS

By MILES MASON, SR.



Documents are the lifeblood of divorces. Every day, spouses make choices. Those choices are documented in credit card statements, bank statements, tax returns, and many other records. Unless altered, documents don't lie.

Documents tell the tale of those choices and are objective witnesses. Your family law attorney will need these documents to adequately represent you in your divorce.

Before assets and debts can be divided, they first must be identified, classified, and valued. Classification means determining what is separate property and what is marital or community property. In determining spousal and child support, courts look at what the obligor spouse (the one who must pay) earns, and that analysis depends in large part on what the spouse's earnings history has been. Your spouse's income history may be reflected in the many pieces of paper gathering dust in closets and manila file folders throughout your home.

When lawyers say "documents," they mean the paper copies (or "hard copies"), the electronic versions, or both. Today, almost all scanned documents will be in Adobe Acrobat's "PDF" format. For example, bank statements can be mailed to you, or you may download them online, usually in a PDF format. But personal financial management programs, such as Quicken or Quickbooks, may generate reports of monthly income and expenses. These reports may be printed on paper or stored in PDF format. Your lawyer may prefer to have the electronic versions of these files, and he or she may even ask you to obtain a

copy of the entire personal-finance software program as well.

If you can easily obtain the hard copies and the electronic copies, get both. Save the electronic versions of the documents to a thumb drive, burn them to a CD, or e-mail them to your lawyer. Because making copies of voluminous documents can be costly, you may want to avoid copying. However, skip photocopying only if you are absolutely sure that the electronic versions are exactly the same as the paper copies. Talk with your lawyer about who should make the copies, handle the scanning, and/or organize the documents. To save money, some lawyers encourage clients to copy and organize documents themselves. Other attorneys will perform these tasks to handle them within their own document management system. Who copies, scans, and organizes documents often depends on the size of the estate and the complexity of the disputed issues.

For major documents, such as financial statements, tax returns, and brokerage account statements, you may want every single page you can put your hands on

Once assembled, take the documents to your lawyer. Some clients wait too long, accumulating as many documents as they can, before they bring in anything. The next thing they know, weeks have gone by. Don't be afraid to grab a bunch of documents, throw them into a box, and bring them to your lawyer's office. (Use the checklist on pages 9–10.) You can always make more than one trip. In some cases, lawyers may only want a copy (or scan) of the documents and ask you to replace them quickly so that your spouse does not miss them. Speed is important.

Some documents contain important information that may not be apparent when you first locate the document. Dates, times, places, amounts, payees, and other details may become terribly important later in the case. The values of assets at the time of marriage also may be important, especially if the marital or community property to be divided includes appreciation of separate property. Depending on your state's law, figuring out what amount is separate property may depend on the value of an asset as of the date of marriage, the date it was received in inheritance, or the date it was received as a gift. This means you may need documents going back in time as far as the date of the marriage.

For major documents, such as financial statements, tax returns, and brokerage account statements, you may want every single page you can put your hands on. For other documents, such as those concerning a major acquisition of a business interest seven years ago, you may want documents going back around eight years. For less valuable assets and debts, only three to five years' worth may be needed. It just depends. When in doubt, copy it. But before going to a great deal of expense or effort, talk with your lawyer. Getting the right answer to a quick question can save time and money.

Establishing Credibility

Memories fade with time. One particular number or date on one particular page among thousands can become very important if it validates your testimony or contradicts your spouse's testimony. In divorce, credibility is one of the most important aspects of any case. Once a judge determines a spouse's statements can't be trusted, recovering credibility can be very difficult.

You may need to print or download online banking and brokerage accounts from the Internet. If so, you may need a login and password. If you don't know them and your name is on the account, call the bank or brokerage firm and ask for help. If your spouse is a buddy of the banker or stockbroker, you may want to talk with your lawyer before calling to obtain that login information. Sometimes, a call for login help and passwords can tip off the other spouse that a divorce is imminent.

The Smoking Gun

Bring to your lawyer any information or documents that are potentially damaging to your case. Some clients pray the other spouse won't find a "smoking gun" document and go to great lengths to hide the document amidst a mass of other documentation or they simply won't produce it. This is a mistake. If you produce five years of credit card statements, hoping to bury one embarrassing statement in a stack of documents, the opposing attorney will almost always find it.

Likewise, if you omit a particularly damaging statement, the missing page may stick out like a sore thumb. If that page eventually gets discovered and turns out to list charges for an out-of-town trip with a previously undisclosed paramour, your own lawyer can be blindsided in negotiations or, worse, in court in front of the judge. Active concealment of documents—from your own attorney, as well as from the other side—can destroy your credibility. Many experienced family law attorneys will tell their clients to assume that the other spouse will find out everything and, thus, clients need to share with their lawyer everything damaging to the case. Only careful planning with your attorney can safeguard your credibility with the judge and minimize any potential embarrassment and/or financial costs of the divorce.

Following is a list of documents to obtain. Your spouse may receive similar instructions from his or her own lawyer. If a particular document is not listed below, but looks important, include it anyway. Always better to be safe than sorry.

Important Financial Records

1. **Financial statements.** Financial statements are submitted to banks and lending institutions to document the borrower's ability to pay back a loan. "Financial statements" is a general term describing statements of net worth, balance sheets, profit-and-loss statements, income statements, and statements of cash flow.

2. **Income tax returns.** Obtain as many personal, corporate, partnership, joint venture, or other income tax returns, state and federal, including W-2s, 1099s, K-1 forms, and supporting schedules, for as many years of the marriage as possible. If a business is involved, also try to obtain corporate tax returns and personal property tax returns filed at any time throughout the marriage. Supporting documents are important, too. These may be attachments, receipts, or schedules, such as depreciation schedules.

3. **Pay statements.** Pay stubs often show bonuses, commissions, overtime, retirement benefits, and contributions to 401(k) plans. A prior year's final pay stub can be a great source of income detail. Pay stubs showing earnings year-to-date will be needed periodically throughout the case.

4. **Bank account information.** Copy all monthly bank statements, check stubs or registers, deposit slips, and canceled checks for all personal and business accounts, certificates of deposit, and money market accounts from banks, savings and loans, and credit unions.

5. **Brokerage account statements.** Obtain all statements from brokerage and investment accounts held individually, jointly, or as a trustee or guardian. These accounts typically include stocks, bonds, CDs, and mutual funds. Also, let your lawyer know if you or your spouse possess physical stock certificates or bonds.

6. **Loan applications.** For all mortgages, second mortgages, home equity lines of credit (HELOCs), credit cards, lines of credit, car loans, and promissory notes, loan applications may include personal and business financial statements showing assets, debts, and income declarations. Because often business owners are personally liable for business debts, you will want to copy any other documents showing why the debt was incurred.

7. **Business ownership records.** For corporations, find all records indicating ownership interest, such as stock certificates, charters, and corporate minutes. For partnerships and limited partnerships, look for any documents titled or captioned as an "agreement." For limited liability companies, search for operating agreements. For "trusts" or "joint venture agreements," those words may be in the titles or headings of key documents. Know that, for any type of business or trust, the documents may be titled or headed using many different combinations of words. If you think your spouse owns part of a business, even a small part, tell your lawyer.

8. **Resumes.** Resumes for you and your spouse can be very important if one or both spouses are not earning as much money as in the past or are voluntarily underemployed or unemployed.

A prior year's final pay stub can be a great source of income detail

9. **Internet history, e-mails, and instant messaging records.** The Internet has made divorces more complicated. If you suspect your spouse has cheated, computer records on the family computer should be one of the first places investigated. Forget investigators taking photos at a hotel, the latest trends are copying hard drives and e-spying. From experience, your lawyer can tell you that e-mail and Internet passwords are never as secure as they seem. Never assume that pressing "delete" actually removes the electronic record. When in doubt, consult with an electronics evidence expert. To the extent you already have them, bring your lawyer any electronically stored documents or files, e-mails, or Internet page history printouts. But never hack into your spouse's computer. Also, never add spyware to any computer. Doing either may be a crime.

10. **Stock options.** Many spouses have stock options related to employment as an incentive or part of a compensation package. Some stock options can be extremely valuable. To determine the value of stock options, you may need certain records that are only available through your spouse's employer. However, some important documentation may be in your possession or your spouse's. To the extent possible, make copies of detailed plan descriptions or plan summaries; benefit statements; employment contracts; schedules of vested and unvested granted stock options listing numbers of options, exercise dates, exercise prices, expiration dates, and vesting dates; and all company-provided information, such as employment manuals, brochures, handbooks, and memoranda describing or detailing stock options and employees' rights to benefits, including reload and replacement provisions.

11. **Pension plans, profit-sharing plans, deferred compensation agreements, and retirement plans.** If any of these are provided through your employer, request them from the employer's human resources department now. The request may take time to process. To the extent available, obtain the following:
    - All benefits statements;
    - The most recent benefits statements, if issued quarterly or monthly;
    - Summary plan descriptions or "SPD";
    - The plan's qualified domestic relations order (QDRO) procedures;
    - Full text of the plan itself, if available; and,
    - Booklets, pamphlets, information sheets, or other written materials distributed by the plan or the plan sponsor to employees or participants concerning rights to plan benefits, types and forms of benefits, and options and elections under any plan.

12. **Credit card statements.** For all credit card accounts, provide your lawyer with copies of all statements and receipts. If there are many, just throw them into a bag. Your lawyer can go through them later, if necessary. If any of the credit cards are issued for your spouse's business use, tell your lawyer. You may be able to obtain records for those accounts directly from the employer. Also, look for copies of business-expense reimbursement forms. Sometimes charges associated with boyfriend or girlfriend expenses are placed on business credit cards in an effort to hide them, regardless of whether the amount is likely to be reimbursed by the employer.

13. **Other debts.** Bring documents reflecting all remaining debts and accounts owed by you or your spouse, secured and unsecured, including student and personal loans. Your lawyer will need proof showing the name of the debtor and/or creditors, the date each debt was incurred, the total amount of the debt, and the unpaid balance. Dividing debts can be as important as dividing assets.

14. **Insurance.** Your lawyer needs copies of all insurance policies, including, but not limited to, life, annuity, health, accident, homeowner's, renter's, casualty, motor vehicle of any kind, property, or premises liability insurance. Also, many policies have separate "declaration pages" listing the specific names of owners, beneficiaries, and key financial information. Finally, make sure to obtain recent statements showing balances and premiums due. These statements generally are issued monthly, quarterly, or annually. If appraisals have been obtained to insure valuables under a homeowner's insurance policy, copy those as well.

15. **Real estate.** Pull all real estate deeds, closing statements, tax bills, appraisals, mortgages, security agreements, leases, and other evidence of any type of interest or ownership in real estate, whether as owner, co-owner, fiduciary, trust beneficiary (vested or contingent), partner, limited partner, shareholder, joint venture participant, mortgagee, developer, manager, or otherwise.

16. **Personal property or "stuff."** Assemble all invoices, receipts, contracts, and appraisals on all personal property worth enough to worry with, including furniture, fixtures, furnishings, equipment, antiques, and any type of collections. This includes cars, RVs, motorcycles, boats, and jet skis. For all motor vehicles and watercraft, you need titles, invoices, purchase orders, contracts, loan applications, appraisals, lease agreements, registrations, and payment books. Later, your lawyer may want photos of valuable or other important assets, such as antiques, china, crystal, jewelry, or artwork.

17. **Employment records, contracts, and explanations of benefits.** Many employees have some form of employment agreement or contract, even if it is not formally labeled as such. It may just be a letter. Your lawyer will likely need documentation of compensation, including bonuses, commissions, raises, promotions, expense accounts, and other benefits or deductions of any kind. If you can get an employment handbook or manual, copy that too.

18. **Wills, living wills, powers of attorney, and trust agreements.** Whether they were executed by you or your spouse, pull together all records of wills, living wills, powers of attorney, and trust agreements or declarations, as well as copies of all statements, receipts, disbursements, investments, and related transactions. Powers of attorney are special documents that may allow a person to act legally on behalf of another. They can be very dangerous in a divorce. If you even suspect you have signed a power of attorney, tell your lawyer. You may need to revoke it immediately.

19. **Membership agreements or contracts.** For all country clubs, private clubs, associations, or fraternal organizations you and/or your spouse belonged to during the marriage, assemble all membership agreements and monthly dues statements.

20. **Lawsuits and judgments.** Give your lawyer copies of all pleadings in any legal actions to which you or your spouse has been a party, including bankruptcies and prior divorces as well as prenuptial or antenuptial agreements.

21. **Gifts and charitable contributions.** Include all records pertaining to gifts of any kind. For charitable giving, income tax returns likely have the necessary information. But if either spouse has made nondeductible gifts, pull that documentation, too. Include gift tax returns.

22. **Medical records.** If you or your spouse has a serious medical condition that limits or prevents employment, your lawyer may need records documenting the diagnosis; the names of treating physicians; evaluation reports; and prescriptions for medical, psychiatric, or psychological treatments.

23. **Cellular phone, home telephone, and long-distance charges.** For all telephone lines, detailed records of calls could be important, so grab them. If you have the ability to research outgoing and incoming phone numbers over the Internet, do it and print out those records for as far back in time as possible. Even if you think you will never need them, you might.

24. **Inventory of safe deposit boxes or in-home safes.** Not many people keep a written inventory of safe deposit boxes or in-home safes. But if you have one, copy it. If you can easily make an inventory, do it. Go to the bank, and see what's there.

25. **Tapes, letters, e-mails, and photos.** Never tape a telephone conversation unless you talk with your lawyer first. If you have done so already, tell your lawyer. Gather all recordings, written letters, notes, and e-mails between you and your spouse. If you think a particular photo may be important, bring it, too.

26. **Notes or agreements.** If you and your spouse ever discussed divorce and any notes were taken, they can be important. Were any promises made? Promises broken? Have you ever signed any legal documents you didn't understand? If you kept copies, take them to your lawyer.

27. **Calendars.** Personal or business calendars are among the documents you won't know you'll need until and unless the case becomes contested. So copy them, just in case. Include calendars stored in computerized organizers, smart phones, personal daily assistants, and daily planners. You may also want to investigate some of the entries. For example, you may want to research a reference to a credit card charge for Victoria's Secret from two years ago.

28. **Intellectual property.** If your spouse ever talked about receiving royalties from patents, trademarks, copyrights, trade secrets, or other intellectual property rights, tell your lawyer. Any records regarding intellectual property and its development, submission, purchase, sale, and royalties can be very important.

29. **Fault.** Give your lawyer any paper, letter, note, e-mail, or card describing or evidencing your spouse's fault in causing an end to the marriage. This is why you kept your spouse's "please, forgive me" e-mail. Or if you wrote one, your lawyer will want to read it, too.

Disputes Over Children

If you have children, obtain the following documents, notes, and other valuable records immediately. Even if there appears to be no dispute now, one may arise later. It is smart planning to have a copy of these documents in your lawyer's file.

1. **Report cards and notes.** Report cards and teacher's notes from parent-teacher conferences can be important. Your family lawyer may want to determine trends of improvement or decline in your children's grades.

2. **Cards, drawings, and sample photos.** Children sometimes show love, affection, and emotional ties in their art or schoolwork. If you've saved some, a quick look through them may be worth the effort. A handful of photos of the children enjoying daily living with you is always good to have, too. Plus, in the courtroom, photos can demonstrate a level of happiness, stability, and normality that oral testimony just can't match. If the kitchen, bathroom, living room, and children's bedrooms are clean, those photos can be used to defend against a claim by the other parent that the kids' living area is unsanitary or filthy.

3. **Primary caregiver.** Which parent has been the children's primary caregiver? Any document or item showing that you provided the children with food, clothing, medical care, education, and other necessaries more often than your spouse can be important if he or she is claiming to be the primary caregiver. This can include anything from notes setting regular dental appointments to evidence of scheduling and driving the children to a tutor. Think about all of the other boring, but necessary, day-to-day parenting you provide—but that is so often taken for granted.

4. **Continuity, stability, and community records.** Your lawyer needs any document or item showing the importance of continuity in your children's lives and

the length of time they have lived in a stable and satisfactory environment. Copy any documents or records of the children's home environment, school activities, and community involvement. Include pictures of trophies or awards resulting from academic achievement, sports, church activities, or scouting.

5. **Preference.** Copy any document showing the reasonable preference of the children to live with one parent or the other. Ask your lawyer about your state law. Depending on the age of the children and your particular judge, this may or may not matter.

6. **Abuse.** Assemble any evidence of physical or emotional abuse of yourself, the children, your spouse, or any other person relevant to your family or the divorce. This can include photos of bruises, medical records of doctors' visits, or police incident reports.

7. **Other adults.** Obtain any evidence of the character and behavior of any other person who resides in or frequents the home of a parent and such person's interactions with the children. Examples may include embarrassing Facebook photos, Match.com listings, and the other parent's new boyfriend's or girlfriend's arrest records, bankruptcies, and lawsuits. Researching backgrounds in the information age can be remarkably simple and stunningly fruitful.

8. **Family calendars.** When was that conference in Las Vegas? How many teacher's conferences or soccer games were missed? Family calendars could well be important sources for documenting events.

9. **Homemaker.** Documents showing that the stay-at-home parent's involvement has been important in the children's lives could be relevant. Should one parent stay at home with the children instead of working? Do any of the children have special needs? Is a religious education important? Have there been periods of home schooling?

In summation, it generally is a good idea to provide your attorney with as many records as quickly as possible early in the divorce process. When it comes to your attorney having the documents described above, there is no such thing as too much or too soon. **FA**

MILES MASON, SR., JD, CPA, practices family law in Memphis, Tennessee. He is the author of *The Forensic Accounting Deskbook: A Practical Guide to Financial Investigation and Analysis for Family Lawyers,* published by the American Bar Association. For more information about his firm, go to www.MemphisDivorce.com.

CHECKLIST of DOCUMENTS for Financial Disclosure

Financial statements
- ☐ statements of net worth
- ☐ balance sheets
- ☐ income statements
- ☐ profit-and-loss statements
- ☐ statements of cash flow

Income tax returns
- ☐ state and federal
- ☐ W-2s
- ☐ 1099s
- ☐ K-1s
- ☐ supporting schedules
- ☐ attachments, receipts, or schedules
- ☐ depreciation schedules

Pay statements

Bank account information
- ☐ bank statements
- ☐ check stubs or registers
- ☐ deposit slips
- ☐ canceled checks

Brokerage account statements
- ☐ physical stock certificates or bonds

Loan applications
- ☐ personal and business financial statements
- ☐ any other documents showing why the debt was incurred

Business ownership records
- ☐ stock certificates
- ☐ charters
- ☐ corporate minutes
- ☐ operating agreements
- ☐ trusts
- ☐ joint venture agreements

Resumes

Internet history, e-mails, and instant messaging records

Stock options
- ☐ detailed plan descriptions or plan summaries
- ☐ benefit statements
- ☐ employment contracts
- ☐ schedules of vested and unvested granted stock options
- ☐ numbers of options
- ☐ exercise dates
- ☐ exercise prices
- ☐ expiration dates
- ☐ vesting dates
- ☐ employment manuals
- ☐ brochures
- ☐ handbooks
- ☐ memoranda
- ☐ reload and replacement provisions

Pension plans, profit-sharing plans, deferred compensation agreements, and retirement plans

- ☐ all benefits statements
- ☐ most recent benefits statements
- ☐ summary plan description
- ☐ qualified domestic relations order (QDRO) procedures
- ☐ full text of the plan itself, if available
- ☐ Booklets, pamphlets, information sheets

Credit card statements

Other debts

- ☐ name of the debtor and/or creditors
- ☐ date each debt was incurred
- ☐ total amount of the debt
- ☐ unpaid balance

Insurance

- ☐ policies
- ☐ declaration pages
- ☐ recent statements showing balances and premiums due

Real estate

- ☐ deeds
- ☐ closing statements
- ☐ appraisals
- ☐ mortgages
- ☐ security agreements
- ☐ leases

Personal property or "stuff"

- ☐ invoices
- ☐ receipts
- ☐ contracts
- ☐ appraisals
- ☐ photos of valuable assets

Employment records, contracts, and explanations of benefits

- ☐ employment agreement
- ☐ documentation of compensation
- ☐ bonuses, commissions, raises, promotions
- ☐ expense accounts and other benefits or deductions
- ☐ employment handbook or manual

Wills, living wills, powers of attorney, and trust agreements

- ☐ signed documents
- ☐ statements, receipts, disbursements, and investments

Membership agreements or contracts

- ☐ country clubs, private clubs, associations, or fraternal organizations
- ☐ membership agreements
- ☐ monthly dues statements

Lawsuits and judgments

- ☐ copies of pleadings
- ☐ bankruptcies
- ☐ prior divorces
- ☐ prenuptial agreements

Gifts and charitable contributions

- ☐ nondeductible gifts
- ☐ gift tax returns

Medical records

- ☐ records documenting the diagnosis
- ☐ names of treating physicians
- ☐ evaluation reports
- ☐ prescriptions for medical, psychiatric, or psychological treatments

Cellular phone, home telephone, and long-distance charges

- ☐ detailed records of calls

Inventory of safe deposit boxes or in-home safes

Tapes, letters, e-mails, and photos

- ☐ text messages
- ☐ phone messages
- ☐ e-mails

Notes or agreements

Calendars

- ☐ personal and business
- ☐ computerized organizers
- ☐ smart phones
- ☐ personal daily assistants
- ☐ daily planners

Intellectual property

- ☐ royalties
- ☐ patents
- ☐ trademarks
- ☐ copyrights

Fault

Disputes over children

Report cards and notes

- ☐ notes from parent-teacher conferences
- ☐ improvement or decline in grades

Cards, drawings, and sample photos

- ☐ love, affection, and emotional ties shown in artwork or schoolwork
- ☐ handful of photos of the children enjoying daily living
- ☐ kitchen, bathroom, living room, and children's bedrooms

Primary caregiver

- ☐ food, clothing, medical care, education, and other necessaries
- ☐ notes setting regular dental appointments
- ☐ evidence of scheduling and driving the children to a tutor

Continuity, stability, and community records

- ☐ importance of continuity in your children's lives
- ☐ stable and satisfactory environment
- ☐ home environment
- ☐ school activities
- ☐ community involvement
- ☐ pictures of trophies or awards
- ☐ academic achievement, sports, church activities, or scouting

Preference

- ☐ preference of the children to live with one parent

Abuse

- ☐ evidence of physical or emotional abuse
- ☐ photos of bruises
- ☐ medical records for doctors' visits
- ☐ police incident reports

Other adults

- ☐ evidence of the character and behavior of any other person who resides in or frequents the home of a parent
- ☐ embarrassing Facebook photos
- ☐ Match.com and other Internet dating listings
- ☐ other parent's new boyfriend's or girlfriend's arrest records, bankruptcies, and lawsuits

Family calendars

Homemaker

- ☐ showing the stay-at-home parent's involvement
- ☐ children's special needs
- ☐ religious education
- ☐ home schooling

—M.M.

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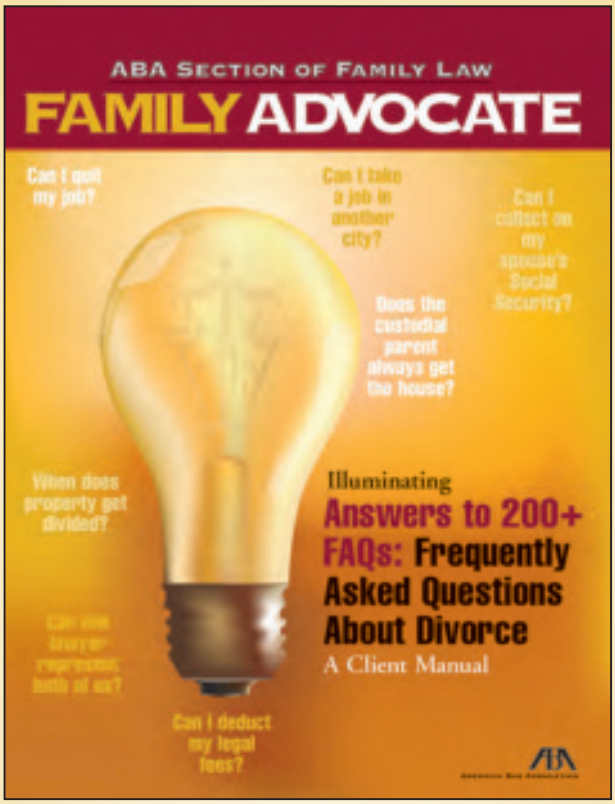

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Stay Calm & Carry On

PREPARING FOR A HEARING ON TEMPORARY ORDERS

"When you get to the end of your rope, tie a knot and hang on."

Franklin D. Roosevelt

By **JILL C. JACKOBOICE**

Most people never imagine that they could one day get a divorce. The decision to divorce usually comes after the long-term emotional strain of an unhealthy, unhappy marriage. At the outset of divorce proceedings, people are often angry, sad, or anxious about their financial future and the well-being of their children. They are hardly in the best intellectual or emotional state to start the marathon of divorce litigation—a race that will take them into the unknown.

If you find yourself in this situation and you have hired counsel, take comfort in the fact that your job is to provide your attorney with information about your life, most of which is readily available to you. Your attorney will know how to use this information, apply the law, and persuade your estranged spouse or the court to resolve the case based on your point of view.

At the commencement of a divorce action, either spouse can ask the court to enter various temporary orders to help the family manage its affairs throughout the divorce process. If there is disagreement regarding the terms of the temporary

orders, the court will set a hearing on the matter. Many people have no prior experience with litigation and are uncomfortable facing this new experience. Fortunately, preparing for a hearing on temporary orders is a matter of presenting and confirming what you *do* know—the trick is to do it in a way that streamlines the process for your attorney and helps the judge in your divorce case understand the information provided and agree with your proposals.

The most common purpose of a hearing on temporary orders is to ask the court to establish some ground rules regarding the actions of each spouse during the divorce case. In some jurisdictions, temporary orders are entered *ex parte (*on behalf of one party), simultaneously with the initial filing of the case. In those jurisdictions, the purpose of the hearing is to change the terms of an *ex parte* temporary order previously entered by the court.

Either scenario prompts the same analysis. How can the status quo be maintained during the divorce case? Should the status quo be maintained, or should the court change the status quo to protect the parties, the children, or the marital estate? Who will reside in the family home? When will the children spend time with each parent? Who will pay ongoing family expenses? Are there assets that need to be protected? Does each spouse have the funds to properly prepare his or her divorce case?

These questions need immediate answers so that each party can function day to day as the case progresses. Be ready to discuss these questions with your attorney when you meet to prepare for your hearing on temporary orders.

Your To-Do List

Most people appreciate a to-do list to keep them focused during this tumultuous process. Following are my suggestions.

☑ **Meet with your attorney in advance of your hearing and inquire about the topics to be covered.** Ask your attorney why a hearing has been scheduled and what topics will be discussed and decided. While this may be outlined in the pleadings filed with the court, it is helpful to review the agenda when preparing with counsel.

These topics may include whether any asset owned by either spouse should be frozen by the court; should the court enter an order prohibiting the change of any health or life insurance beneficiary or other term of policy; should the court limit spending or access to liquid assets owned by either spouse; which spouse should remain in the family home; whether family members should attend counseling; what schedule the children should follow to maintain contact with both parents; how much spousal and child support should be paid; which bills will be paid by each spouse; whether either spouse is in need of funds for legal fees or other expenses; whether a custody evaluation should be ordered; is domestic violence an issue; and, any other topic raised by either party.

Although the list of possible issues seems overwhelming, few cases have more than a handful of these. Educate yourself about the issues in your case and be prepared to talk about them with your attorney.

☑ **Outline the information that is important to your children.** This information will be important to the judge and will provide your attorney with the ability to talk about your child in a credible manner. Present your attorney with a recent photo of each child with his or her name, current age, and grade in school clearly marked on the back. Provide your attorney with a written proposed parenting schedule that clearly states when children will spend time with each parent. Obtain a copy of the school calendar for your attorney to share with the court.

Be ready to tell your attorney and the court about your child's activities. If your daughter attends

Get Organized

A three-ring binder is your new best friend. It is also a cost-effective and time-efficient tool for gathering the information your attorney needs to advocate on your behalf. One of the problems with hearings on temporary orders is that there is never enough time to cover all issues. Another problem is that because the hearing happens so early in the case, important information, which the court needs to make a good decision, is often missing. The more accurate and organized the information, the more your attorney will get accomplished.

All of this is really not that difficult to do, considering you likely have this information at your fingertips. Prepare three notebooks, label one for your children, another for family income and expenses, and a third for assets and debts. Most jurisdictions have specific forms for divorce litigants to use in outlining their assets, debts, income, and expenses. Ask your attorney if there are specific forms and, if so, use them to help your lawyer prepare for the hearing.

Complete the forms in detail, compile relevant documents regarding each of these topics, and organize them into an indexed three-ring binder, complete with a table of contents so that your attorney can find each relevant document quickly. Familiarize yourself with this information so that you can effectively educate your attorney about your specific situation and immediately (and accurately) answer any questions posed to you during the temporary hearing. Review the notebooks with your attorney in detail when you meet to prepare for the hearing. —J. J.

gymnastics every Thursday, the judge will likely want to accommodate her continuing to do so. Provide documentation to your attorney in advance of the hearing about the cost of your children's health insurance, work-related child-care expenses, private school tuition, or other ongoing expenses. These issues may affect child support.

You can obtain this information directly from your employer's human resources department, daycare, or school. If you think your child would benefit from counseling, be ready to explain why and have a list of recommended counselors near your child's home or school. Educate yourself as to the cost of the counseling you want the court to order. If your son has special needs, be prepared to educate your attorney and the court about his condition and how best to accommodate his needs within the terms of the parenting plan.

☑ **Have a proposal in mind for sharing income and expenses during the divorce case.** Your first step is to identify every source of income for the household, as well as every expense for both spouses and the children. Ask your lawyer whether a specific form is used in your jurisdiction and, if so, use it to document your gross and net take-home pay. Obtain the same information from your spouse, either through records you have at home (tax returns, bank statements, and pay stubs) or from records your lawyer obtains from your spouse. If you have not been employed outside the home, assess the amount of time it will take for you to return to the workforce, including whether additional training or education will be necessary. Prepare a budget for yourself and estimate a budget for your spouse.

Often, it is helpful to review previous bank and credit card statements to determine how much your family spends each month and where the money goes. Meet with your attorney in advance of the hearing and provide an overview of this information. Ask your attorney to calculate how much maintenance and child support will be ordered in the case. If the topic of your hearing on temporary orders is spousal or child support, you and your attorney need to know the nuts and bolts of your income and expenses as well as your spouse's income and expenses to support the argument your attorney will be making on your behalf.

☑ **Prepare a summary of your net worth.** Work with your attorney to determine whether you need to ask the court's assistance in preserving the net worth of the family, valuing various assets, or gaining access to or possession of specific assets. The first step in this regard is to identify every asset owned and debt incurred by either party. Most jurisdictions provide a specific form to assist divorce litigants in this process. Complete this form in as much detail as possible and provide it to your attorney prior to your hearing.

Prepare a one-page list of each asset and debt, including your estimate of values and amounts owed. Use this list as a reference when you meet with your attorney. Your list may be full of holes, especially if you are not the party who has access to account statements, appraisals, or balance sheets. Rest assured that any holes will be filled once your attorney obtains the necessary information from your spouse or third parties through the discovery process.

When you meet with your attorney, review this list and discuss your concerns, proposals, or questions regarding each asset and debt. Identify which assets are liquid and discuss with your attorney how those assets should be spent or preserved during the divorce case. Consider whether the family home should be awarded to one party or prepared for sale. Discuss which party should assume the debts. Anticipate that if a party receives an asset encumbered by debt, such as a vehicle, that person will be required to assume the accompanying debt, such as the monthly car payment and related costs. Help your attorney become familiar with your family net worth and ask for guidance in protecting and preserving assets and your credit rating.

☑ **Identify which issues are likely to be contested so that you can start working on them now.** If the fair market value of the family business will be an issue, provide your attorney with ample information (if available to you) to discuss the issue with the court at the beginning of the case. You want to know what the judge finds most

Dress for success

Your appearance and demeanor in court is almost as important as what you say. I always suggest that my clients dress as if they are going to church, but not a wedding or a funeral. In other words, be generic. This is not the time for a fashion statement, revealing clothing, or flashy jewelry.

For men this means slacks, a shirt with a collar, and a sport coat. Women should wear a blouse and slacks or a skirt. If your spouse will likely make an allegation about you during the hearing, try not to look the part. If your husband will contend you are a party girl, don't wear a short skirt or a low-cut blouse. If your wife will portray you as physically or verbally abusive, don't wear black from head to toe.

Your appearance will make an impression on the judge. Make it a good one. If you show up in jeans and a tube top, the bailiff may smile broadly, but the court is not likely to view you as credible. *(See also Do's and Don'ts on page 30.)*

—J.J.

helpful or convincing in this regard.

In some jurisdictions, the court is willing to provide helpful direction to the parties and their counsel on these types of topics. If you and your attorney have discussed hiring an expert witness, your attorney may request that funds be released from liquid assets to retain your expert. Be prepared to tell the court which expert you want to hire and the estimated cost of doing so.

If child custody will be an issue, your attorney may request a child custody evaluation or a home study. If mediation is required in your jurisdiction, the court may select a mediator at your hearing and order you and your spouse to attend. Pay close attention to what the judge says during your temporary hearing. If the court directs you or your attorney to do something, make sure you adhere to that order and that you do whatever is asked in a timely way.

☑ Ask your attorney whether the court will enter a scheduling order. If so, be prepared to participate in the scheduling aspect of your case by having your work, travel, and family schedule at your fingertips. Since both parties and counsel are present in court, your attorney may ask the judge to set deadlines for the exchange of information, designation of experts, closure of discovery, etc. Your case will move along more smoothly if specific deadlines are set, mandating that both parties do things by a certain date.

That being said, if dates and deadlines are being set, make sure you can meet them. Speak with your attorney if suggested dates and deadlines are unworkable. The court's ruling regarding any temporary orders will be in place until the case is disposed of. Absent another hearing, there may be uncertainty about when the case will be finalized. If the court is willing to do so and your attorney believes it is appropriate, obtain a status conference or trial date. This ensures that your case will keep moving, with a target date in sight to resolve the case on a permanent basis. Despite advances in technology, it is still easier to get something scheduled when everyone is in the same room.

☑ Prepare yourself for the unfamiliar environment of the courtroom. Find out where the courthouse is located and where to find your specific courtroom. Inquire about the best route to take, as well as your best parking option. The stress of unanticipated one-way streets, heavy traffic, and full parking garages is not something you want to deal with on the morning of your hearing. You need to know where you are going and how long it will take to get there.

☑ Be on time. Better yet, be early. The judge will not look fondly on you if you are late to court. Judges want to run their dockets in a timely way and may even conduct the hearing in your absence if you are tardy. The court will assume your case is not a priority for you, and your absence will make your attorney nervous and likely less affective. You know yourself: if you are the type of person who always runs ten minutes late, then plan to get to court thirty minutes early. Tardiness will harm your case.

☑ Don't expect the judge to be on time. Cases usually take longer than the time allocated. Don't be surprised or frustrated if your hearing does not start on time. Make sure to block sufficient time from work, arrange childcare, and plug the parking meter with coins to maintain your availability for the hearing.

☑ Expect a crowded courtroom. This is a court appearance, not a dental appointment. You are not the only case on the docket. There is likely to be a courtroom full of attorneys, litigants, and staff. Don't be discouraged. This is normal. When the court calls your case, no one else will be paying attention to you. They have their own issues to fret about.

☑ Show respect for the court. Stand when the judge enters the room. Turn off your cell phone. Be quiet when other cases are being discussed. If the judge says something you do not like or rules against you on an issue, keep your game face on. You don't want the judge to remember you in a negative light in the event you must appear before this judge in the future.

With organization and careful planning, your hearing on temporary orders should provide some short-term stability for you and your family in that assets will be preserved and protected, a parenting schedule will be set, spousal and child support will be ordered and paid, and other short-term emergencies will be satisfactorily addressed.

The suggestions above are designed to ensure that your experience with the family-law court will be as positive, informative, and as reassuring as possible. However, your role is essential. Do your best to gather, organize, and provide all relevant information to your attorney, so that he or she can proceed in a cost-effective and timely manner and achieve the best possible outcome to your hearing on temporary orders. **FA**

JILL C. JACKOBOICE practices exclusively in the area of family law in Missouri and Kansas. She is a partner in the law firm of Jackoboice & Fisher. In 2005, Ms. Jackoboice was the recipient of the Congenial Counselor Award from the Kansas City Metropolitan Bar Association and was included in *The Best Lawyers in America* in 2008, 2009, 2010, and 2011. She was designated as a *Missouri* and *Kansas Super Lawyer* in 2007, 2008, 2009, 2010, and 2011.

Litigation has two "sides," each trying to pull "the truth" their way

THE TEN RULES OF POWERFUL WITNESS PREPARATION

Your deposition and trial testimony

By **DANIEL I. SMALL**

NOT SO LONG AGO, persuading people that they needed extensive preparation before testifying in a legal proceeding was a battle. Many confident, articulate executives were convinced they could just "go in and tell my story," and they were insulted by the notion that they needed some lawyer to prepare them. Too many experienced lawyers didn't push back.

Then came an explosion of high-profile lawsuits and investigations, and with them a parade of highly successful executives who proved to be very bad witnesses. Gates, Stewart, Libby, Kozlowski, Lay—the list goes on. Now, people faced with the prospect of being a witness may wonder if there is some reason this happened and if it could happen to them. The answers are "yes" and "yes." It happened because people failed to understand that they were entering a different and dangerous world. In this world, it's not just about experience and intelligence. It's about preparation and understanding the audience, the rules, and the "core themes" of the case. Even executives who have spent years mastering the corporate world must, nonetheless, understand that this takes commitment, time, and effort.

This Is Not a Conversation

Several years ago, the television series, *West Wing,* had a series of episodes about a scandal in the White House. The president had multiple sclerosis, and he and his advisers did not disclose it. The news has now broken, and an investigation has been launched into whether top aides broke the law in covering this up. The president's press secretary, C.J., has been subpoenaed to testify and has been called to meet with the White House counsel to prepare.

C.J. is intelligent and articulate. She is clearly nervous and angry about the situation—and takes it out on counsel by being sarcastic, uncooperative, and not eager to take advice. Counsel is trying to make her understand the need to prepare. Then, in the middle of talking about what happened, counsel stops, and there is roughly the following exchange.

Counsel *Do you know what time it is?*
C.J. Sure, it's 4:30.
Counsel *You've got to get out of the habit of doing that!*
C.J. Doing what?
Counsel *Answering more than was asked!* (Pause) *Do you know what time it is?* (Long Pause)
C.J. Yes.
Counsel *Now we're making progress. We'll take a break and meet again later today.*

If as a witness you learn nothing

else, learn the answer to the question, "Do you know what time it is?" The right answer is the difference between a conversation and testimony. In a conversation, the answer "yes," the accurate answer, the precise answer, is a bad one. That's not what the questioner meant. That's not where the conversation is flowing. In the unnatural and precise testimony environment, it is the right answer. That is a core difference between a normal conversation and testimony.

Testimony is not a conversation. It does not "flow" or entertain. It has its own language and its own rhythm. "Question, Pause, Answer, Stop." Guessing, interrupting, and volunteering are common in conversation, but often inappropriate and dangerous in this narrow and artificial world where every word is taken down under oath and may be picked apart.

In this world, the questioner appears to be in control. It's an illusion, but even the most accomplished witness can fall victim to it. Don't do it. Remember, the witness has the right and the responsibility to take control. We all participate in meetings. We all know the best way to control a meeting is not by shouting the loudest, but by utilizing some clearly established techniques or rules. Testimony is just a different type of meeting.

The Ten Rules

True witness preparation is an extensive and intensive process. At its core are ten rules for taking control: for leveling the playing field and communicating effectively and safely in the language of question and answer. We may spend hours working through them and practicing them with a witness, but here they are, in rough summary.

1. **Take your time.** This is, amazingly, the most important rule and the one from which everything else follows. Slow it down, think it through, and control the pace. Lawyers want rapid-fire Q&A, but if the lawyer makes a mistake, no one cares. If the witness makes a mistake, it is "the gift that keeps on giving." From the very first question, slow it down. Do it mechanically, consistently, and for the right reason: This is important!

2. **Remember, you are making a record.** You are dictating the first and final draft of a very important document, with no rewind or erase buttons, so slow down and think about language. Certain words can take on special meanings—good or bad. Learn what they are in your case, remembering that words can have different meanings to different people. There will be only one transcript. Make sure you understand and control the meaning.

3. **Tell the truth.** We think of witnesses taking an oath to tell the truth, but they don't: You take an oath to tell, "the truth, the whole truth, and nothing but the truth." There are three parts to the oath for a reason. Oscar Wilde said, "The plain and simple truth is seldom plain, and never simple." Litigation has two "sides," each trying to pull "the truth" their way. Like a tug of war, if the witness doesn't understand which way the questioner is pulling, and pull back, the result is a distortion of "the truth." The "whole truth" includes both the good and the bad stuff. This is not the time to be coy: The record should reflect both the good things you've done *and* any problems. "Nothing but the truth" is a reminder that in this artificial environment—with every word under oath, recorded, and picked part—truth is a narrow concept: not what you guess or infer, but just what you, "saw, heard, or did." Hard to do.

4. **Be relentlessly polite.** This will feel personal. They're attacking you—or your employer or colleagues. But remember that a witness who is angry or defensive isn't thinking clearly and isn't controlling the language or the pace. Lawyers know that. A few garbage questions and off we go. It's a scam. Don't fall for it. Kill them with kindness. Be relentlessly polite, positive, and focused.

5. **Don't answer a question you don't understand.** Is it vague language, strange phrasing, or distorted assumptions? Is it just too long to be clear? It doesn't matter *why* the witness doesn't understand a question. Don't answer it. Just say, "Please rephrase the question." Then hold your ground: Trying to impose that discipline will generate several standard "wiggles and squirms" from the questioner. Know what they are and prepare for them.

6. **If you don't remember, say so.** Answer clearly. Just say, "I don't recall," and stop. Don't try too hard, and don't worry about what you don't recall. Understand how different this is. In a conversation, if one person doesn't remember, the other person will move on. Not so here. Don't change your answer just because the question is asked over and over.

7. **Do not guess.** Much of what makes people good conversationalists and intelligent, intuitive, people involves guessing. But guessing or assuming are inappropriate and dangerous for a witness. That includes hypothetical questions. Remember the great Jack Lemmon scene: "Never assume! If you 'assume,' you make an 'ass' out of 'u' and 'me!!'"

8 **Do not volunteer.** "Question, pause, answer, stop." We are not used to silence, and questioners know that. Practice the "stop." A witness must become comfortable with the silence of waiting for the next question. Don't do the questioner's job for him.

9 **Be careful with documents.** Documents are just written versions of what someone believed. Treat them mechanically. There is a simple, unvarying three-step protocol that witnesses should follow. If you are asked a question that relates in any way to a document: (1) Ask to see the document. Don't allow anyone to draw you into a debate with a document that is not in front of you. You can't win. (2) Read it. There are three issues with any document: credibility, language, and context. You cannot carefully consider each of them unless you read it. Read all of it, slowly and carefully. If the questioner has chosen to ask you about a document, he or she has chosen to give you all the time you need to read it. (3) Ask for the question again. It's basic fairness. The questioner has read the documents and picked out one little piece to ask about. Now that you've read it, the question will be clearer (and you may get a better question).

10 **Use your counsel.** Listen to everything that is said, understand what objections mean for you, ask questions when you can, and take breaks before you need them—not after.

Also, remember that counsel's role—and yours—doesn't end when the deposition stops. In most states, the witness has the right to read and sign the deposition, to make sure there are no mistakes by the court reporter, the questioner, *or* the witness. *Never* waive that important right.

Most of these rules are difficult to master. They are contrary to what we are used to, and often counterintuitive. But if they are practiced, they can impose a degree of discipline and control on the process that makes it significantly more fair and productive.

The Preparation Process

When I work with a witness to prepare for a deposition or an investigation, the witness often expresses surprise at the length of the process, saying something like, "I was deposed before, and my lawyer just told me to meet him an hour before the deposition and we'd prepare." That's not preparation. That's more like malpractice. True witness preparation is an extensive—and intensive—multi-step process. It demands a good deal of time, energy, and effort from both client and counsel. One of the keys to that process is a realistic "dry run," that is at least as challenging as the real thing, hopefully more so.

Some years ago, I helped teach my twin girls to ride a bicycle, with all the scrapes and bruises and tears that came with that process. It was traumatic. Try as I might, I could not teach them to ride a bicycle by just talking to them. Sooner or later, they had to get on the bike and try it themselves. All I could hope was to be there to help cushion the blow when they fell and console and teach them when it happened. The same is true for teaching someone to be a better witness.

No amount of discussion can fully explain the question-and-answer process. Like anything difficult and unnatural, doing it right takes practice. The best approach is to do a dry run so the witness can experience the process firsthand. It doesn't need to be formal or cover all possible topics, so long as it gives a clear sense of the process. However, the tougher and more realistic it is, the more helpful it will be to the client in the long run. I often have another lawyer in my office ask the questions, both to make it less awkward for everyone in role-playing and to show witnesses how I might act in representing them.

Do a dry run and you will be amazed at how productive it is. After you've gone through all the background information, reviewed the facts, and the "ten rules," see it in practice. Ideally, a dry run should be recorded in some fashion, if practical, and if covered by the privilege. This does not need to be that elaborate or expensive. It can be as simple as borrowing a tape recorder or video camera and finding someone who works at home to transcribe the tape.

Adapt the dry run to the proceeding. If you are preparing for a deposition, you may want to have a transcript of the dry run prepared, since the goal of a deposition is to produce a clear and accurate transcript. This will emphasize the strengths and weaknesses of the testimony, allow the witness to appreciate the final product, and address any weaknesses. Most witnesses have never seen their spoken words in print. It's a revelation.

Make an Impact

Some years ago, a colleague of mine asked for my help in a divorce case. His client, the wife, had testified in a deposition for one day, but had not finished and was now scheduled for a second day. However, my colleague was on trial in another case, had already postponed this second day several times, and was afraid that the court would not give him another extension (opposing counsel had already refused). Would I step in on short notice and represent her at the continued deposition?

When I read the transcript of the prior deposition, I was disheartened.

Here was an obviously intelligent, honest, caring person who had nevertheless been a disaster as a witness. The marriage and divorce were both ugly. The husband had been mentally abusive and dominating during the marriage. She had responded by always trying to "fix it," by being ever nicer and ever more helpful, until her husband finally left her. Both of their characteristics carried over into the divorce and depositions. The husband hired an old family friend as his lawyer, which devastated her, and then pushed the lawyer to play hardball at every turn.

Worse still, in her deposition testimony, she was still trying to "fix" this mess by being helpful and by trying to give them what she thought they wanted. In doing so, she had committed all the classic witness mistakes: she tried too hard, she didn't listen carefully, she talked too much, and she was totally undisciplined and imprecise in her answers. Mostly, she just talked too fast; between her nervousness and her giving nature, she couldn't wait to try to be helpful.

I was not easy on her when we met. I told her that she was not going to "fix" this litigation by being too nice in a deposition. She was only going to give her husband the ammunition to abuse her again. She was an intelligent, mature woman who had been taken advantage of in a bad marriage and was now going to be taken advantage of in a bad divorce if she did not take control of her future. The first step toward taking control of her future was to take control of this deposition. The first step toward doing that was to slow down.

We went at length through all the rules: Don't guess, don't volunteer, and so on. However, the one we kept coming back to was rule one: "Take your time." The need to regain control of the process was so dramatic that we clearly had to focus on building a strong foundation with this rule. It was so important that we did it mechanically: Count to five in your head after every question. Over and over, I insisted on that discipline in preparation. The mock deposition left her repeatedly in tears. Changing old habits is hard in the best of circumstances. Much more so here.

By the time of the mock deposition, I knew that she understood the rules intellectually. Still, I was not sure that she could pull it off emotionally. When we walked into opposing counsel's conference room, both the husband and his lawyer were there and clearly feeling good. Why shouldn't they? The first day had gone so well for them; the second day would surely be even more fun. If they could have sold popcorn for the event, they would have.

We were all in for a surprise. Most of us are stronger than we—or others—give us credit for. Often, we can rise to great challenges, if we put our heads and our hearts into it. My client had found that strength, and the result was extraordinary. From the very first question ("Please state your name."), she sat up firmly and politely in her chair, hands folded on her lap, looked the questioner straight in the eyes, counted slowly to five in her head, gave the simplest possible answer ("Anne"), and then stopped and waited for the next question.

By the time she had done this same thing for the first several questions in a row, everyone in the room (yes, I confess, including me) was stunned. When she kept at it consistently for the first hour, the husband's lawyer was clearly in trouble. What many witnesses—*and lawyers*—don't realize is that just as anyone can be a bad witness if they are not prepared, anyone can *question* a bad witness without much effort or preparation. Questioning a witness who is prepared and disciplined is far more difficult and, at the very least, requires of the questioner a much higher level of preparation and discipline. This lawyer (like many questioners) was neither capable nor prepared enough to deal with this new, highly disciplined witness.

Through four hours of testimony, she remained consistent: polite, firm, well paced, and precise. After two hours, the husband's lawyer was literally squirming with discomfort. By the end, it was clear to all (including the husband) that the deposition, as an effort to get her to say things they could later use against her, had been a complete failure. She had given them nothing to work with and fixed many of the problems of the first round. We walked out in quiet triumph, with my client still being her demure, refined self. Out in the parking lot, though, she shrieked with joy, flung her arms around me, and exclaimed, "That's the first time in twenty-five years that I've been in control of that son of a bitch!"

What had she done? She took her time, she followed the rules, and she took control. There was no magic to it, just hard work and concentration. Any witness can do it. But not without hard work and determination. **FA**

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What to Bring to Your First Mediation Appointment

The "right" documents, information, and attitude

By GREGORY D. KINCAID

A LITIGATED DIVORCE CASE IS RARELY A GRATIFYING EXPERIENCE FOR BOTH SIDES. HOLLYWOOD DRAMA ASIDE, MOST DIVORCE TRIALS DO NOT END WITH ONE SIDE CELEBRATING VICTORY.

At best, there is a sense of resolution. At worst, one and sometimes both spouses feel let down and disappointed by an outcome that is inconsistent with each party's view of what is "fair." Mediation, on the other hand, strives to find win-win solutions. It can be a faster, less intrusive, and less expensive alternative to trial.

My experience has taught me that healthy and wise families often gravitate toward mediation. They inherently have more trust in a cooperative (not competitive) structure for problem solving. The fact that you are reading this article and seriously considering mediation should give you some assurance that you are likely to achieve a satisfactory divorce outcome. I call this a sensible or "adult" divorce.

Candidly, however, one spouse rarely achieves "the best possible outcome" through mediation, because "the best possible outcome" for one spouse too often comes at a hefty price for the other spouse or the children. In mediation, the needs of the individual are often subordinated, or at least tempered, by the needs of others. At bottom, when we are doing this—fairly balancing the needs of others against our own legitimate self-interests—we are processing our divorce in a healthy, mature, or "adult" way.

Congratulations for seeing the wisdom of this approach and being willing to come to the table. Now, the next step, how best to prepare?

There are three distinct parts of the preparation process: (a) assembling documents; (b) familiarizing oneself with the mediation process and family law; and (c) adopting a helpful attitude. The first two are relatively easy. The third part, which is probably the most important, can also be the most difficult.

What documents should I bring?

In general, if you have children, most divorces are going to involve five fundamental issues: a parenting plan (where the children reside), child support (How will expenses for the children be allocated?), maintenance (called "alimony" in some states), division of assets, and division of liabilities.

The first step in your preparation should be to assemble all the reasonable documents that you, your mediator, and your spouse may need to address these five issues (three issues if there are no minor children). For instance, child support is typically driven by the income of both parents. For many families, both parents' incomes are obvious. However, for some families and, in some states, it's not always as simple as one might assume. For instance, should bonus income be included in the child-support calculation? How about car or cell-phone allowances?

These are issues that will be resolved in the mediation process, and the more of this information you can bring to the meeting, the quicker the mediator and your family can move along. Because mediators typically charge by the hour, it's not productive to have lengthy discussions about whether one party is making $80,000 or $85,000 a year. It's easier to simply say, here's my W-2, here's our tax return, or here's a letter from my employer that sets out my exact compensation and benefits.

In addition to your income information, it can be helpful to have a budget prepared for the anticipated expenses of both spouses in their new post-divorce homes. It may be too early in the process to complete a budget in great detail. But if you have Beverly Hills in mind, you may want to have a budget handy so the feasibility of that address can be examined.

Finally, you need to make a list of all assets and liabilities. It's most productive if you can have account statements to verify balances and account names. At some point, the attorney or the mediator must draft agreements allocating the assets between the parties and, if there are account statements, there will be no confusion over which accounts are being described or their exact values. Most mediators and attorneys have a list or a form you can use for this purpose. See also *Divorce Forms: Fact Gathering to Help Your Lawyer* on the back cover of this issue.

In addition to financial documents, if you and your spouse have already agreed upon a parenting arrangement, be prepared to discuss that arrangement. If you have not started the discussion, it might be best to allow the mediator to help you. Typically, this area is emotionally charged and difficult.

What should I know about mediation and family law?

Mediation is an entirely voluntary process. The focus tends to be on dialogue and not debate, consensus and not competition. Typically, the first session is exploratory.

Good mediation reminds me of arranging furniture in a new house. You set things down where you think they might work, but you won't know where things finally fit best until all the pieces are in place and you've lived with it for a while. Mediation is similar. Don't plan on making binding agreements at the first meeting. Instead, focus on possible solutions. Once you've explored those possible solutions and allowed them to settle in your mind for a week or two, then it's more appropriate to think about moving from negotiation to settlement, which typically happens in the second and subsequent meetings.

One of the responsibilities of the mediator is to help the family define their priorities. Accordingly, it may be productive for each spouse to think about and discuss what is really important before starting this process. Keep it general. "No matter what, let's agree to put the children's needs first."

One of the most attractive features of mediation is its ability to be creative. You only get to this realization, however, if you enter the process with an open mind and a willingness to explore all the alternatives.

Because mediators typically charge by the hour, it's not productive to have lengthy discussions about whether one party is making $80,000 or $85,000 a year. It's easier to simply say, here's my W-2

If, for instance, your husband indicates that he is absolutely unwilling to pay maintenance or alimony, be patient and hear the entire concern before reacting. He may be willing to relinquish extra assets in lieu of making monthly maintenance payments. In other words, a husband's interest may not be in denying his wife the stream of payments to which she may be entitled. It may very well be more about the painful process of having to write a check every month. In many instances, a lump-sum payment could actually be advantageous.

BEFORE YOU ARRIVE FOR YOUR first meeting, have a beginner's understanding of the legal issues that need to be resolved. Mediators are generally required to advise you to have your own lawyer. Your attorney should be able to give you a general assessment of the law and some reasonable expectations. Remember, too, that a mediator is a neutral party and cannot give legal advice.

If you arrive at mediation knowing nothing about family law, your mediator will not be irritated or frustrated. This happens. In ten or fifteen minutes, your lawyer can pass along the nuts and bolts you need. You will not, however, win the much-coveted "Client-of-the Year" award by arriving at the first session with a lot of misinformation. So, please try to avoid the free tutorial from Karl down at the gym. What Karl won't tell you is that he was divorced in 1964—in Sweden. Knowing next to nothing is far preferable to knowing Karl's law or, for that matter, mom's law, or Cousin Betty's law!

What's the best attitude to adopt about mediation?

The most important thing you need to bring to your first mediation session is the best possible attitude, or what I've described above as your adult self—capable of pursuing your own legitimate interests without ignoring the interests of other family members. Because of all the normal feelings of loss, anger, and disappointment that so often accompany divorce, it is not always possible to show up with the right attitude or to even know what the right attitude would look like if it were staring you in the face. Eventually, however, you should be able to accept the divorce without feeling like a victim or engaging in blaming or fault-finding. The healthiest outcomes seem to come when families share a common goal of helping each family member adjust to the new divorced-family structure.

Having the right attitude is not always easy. Some patterned ways of thinking get many family members into trouble. These are some of the attitudes to avoid if you can.

Please do not negotiate like Donald Trump trying to buy an office building at a steep discount. This is not business as usual. What sounds like a "good" deal to you may very likely sound like a "bad" deal to your children or your spouse. This is a personal relationship that requires interpersonal skills far more than business acumen. Leave the chisel at home.

An example might help. Assume it is clear that you owe $1,400 in child support. Telling your spouse that you might be willing to pay $1,000 for your children, but not a penny more, is likely to result in a post-mediation call to your doctor. There is only one right answer in this situation, so don't try to negotiate. "I will always support our children above and beyond what I am required to do. What can we talk about next?"

Feeling rushed, pushed, and controlled is not the hallmark of a cooperative process. Patience is helpful—in heaping doses.

Feeling rushed, pushed, and controlled is not the hallmark of a cooperative process. Patience is helpful—in heaping doses. Don't expect too much from the first mediation session. Please don't forget that you may have been processing this divorce in your head for months or even years. Everyone else is not necessarily on your timeline, so let the rest of us catch up. Just because you are very eager to get out of this marriage does not mean that it's smart to act like it! Let your spouse know that you'll take the time necessary to do it right, not just for you, but also for your whole family.

Be open to the possibility that what you think is terribly important may not be. For example, I've seen blood pressure shoot off the chart when one family member understates—or as the mediator in me wants to say, *conservatively depicts*—his or her income. I've had families become quite agitated over whether a spouse's income was $85,000 or $90,000 a year, only to find out that the difference between those two incomes amounts to only $2.50 a month on a child support worksheet. Try to keep an open mind and

simply allow the mediator to explore different options with you, based on various assumptions. Look for areas where you can let go and not dig in.

Mediation can be a very creative process. That's a good thing. So be creative. Try to focus on your interests, and don't get stuck in a particular position. There's a famous mediation story that drives home the distinction between positions and interests.

Position versus interest

Two children are fighting over an orange. Not surprisingly, their mother chops the orange in half and gives one-half to each child. Both were unhappy. As it turns out, one child wanted the peel to make a cake, and the other child wanted the fruit to make a salad. Their mother's resolution to the conflict, although expedient, allowed neither one to get what was really needed. A more thoughtful analysis of their true interests —as opposed to their stated need of one fresh orange—would have allowed the decision maker to reach a more helpful resolution. Likewise, for families, stating what you want is typically not as helpful as clearly defining your interests. Making demands about what we want tends to foster inflexibility in negotiations

Try also to avoid platitudes. It's not uncommon, for instance, for one parent to state that a consistent parenting schedule and not "bouncing kids back and forth" between houses is in the children's best interest. Although this certainly sounds laudable, the practical translation of it by the other parent is "So what you are really saying is that the kids should stay with you and never see me!"

The preparations suggested above should not take more than a few hours and are time well spent. If you can follow these simple steps, your chances of a reasonable outcome are high. Mediation is a powerful process that has worked successfully for many, many families. For more information about the mediation process, talk with your attorney or a local mediator, or ask your lawyer for a copy of *ADR Options: A Client Manual,* a publication from *Family Advocate* (see back cover of this issue). **FA**

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The Four-Way Settlement Conference

A settlement conference is a chance to try to resolve your case. Sometimes, a judge will sit in. At other times, the conference is between the parties and their lawyers, and possibly other key people. It is important to be ready for the conference.
Here are some tips to help you prepare.

Before the conference

1. Schedule an appointment with your attorney to plan the settlement conference.
2. Give yourself enough time to provide documents or other information that your lawyer may need at the conference.
3. Share all papers that you intend to bring to mediation with your lawyer before the conference.
4. Make sure you have all reports from experts or evaluators, and ask your attorney any questions you may have.
5. Your lawyer may want to prepare any spreadsheets or schedules, such as asset-debt spreadsheets or parenting-time schedules, so have this information available.
6. Make a list of issues upon which you feel there is agreement.
7. If there is something you have not told your lawyer, tell it now before the meeting.
8. Prepare a game plan or strategy with your attorney and make sure you understand it.
9. Discuss with your attorney whether the conference is confidential.
10. Assign who will talk about which topics during the conference. Stick to your assignments.

During the conference

1. Refer to the child as "our" child, not "my child."
2. Use your lawyer if you do not understand something. Ask questions.
3. Be polite. No name calling. Do not argue. Let the other side talk without interruption.
4. Keep an open mind as to settlement possibilities and principles. Participate in good faith.
5. Listen.

—CARL W. GILMORE

Telling Your Children About the Divorce

By SOL R. RAPPAPORT

Telling your children about your divorce is one of the most emotionally challenging and difficult things you will ever do. Most people who want a divorce spend months, if not years, thinking about it and how and when to tell their spouse. They don't spend nearly as much time thinking about how and when to tell their children.

Yet, the manner in which parents tell their children about the divorce will set the stage for how the children perceive and interpret everything that will happen over the coming months and years relative to the divorce. This day will forever alter your children's lives. So think carefully about how and what you will tell them and plan it out. You are setting the stage for how your children cope with your divorce.

When do I tell my kids?

Despite your immediate impulse, do not rush out and tell your children about the divorce as soon as you find out. You are not likely to be in the calm emotional state needed to sit down with your spouse and talk openly and supportively with your children about what the future may hold. The emotional upset that often accompanies divorce is normal, but not conducive to reassuring your children.

Second, you may not have all the information you need immediately upon learning about the divorce. Your children will want to ask lots of questions (even if they don't ask them), and you need to have some answers before talking with them.

Third, the timing of when you tell your children will, in part, depend on the ages and developmental stages of each child. A three-year-old won't understand what you mean when you say, "We are getting divorced in one year, and there will be lots of changes."

And fourth, your children really don't have a need to know until a change in their lives is imminent. This means

that if you decide to get divorced, but will live together for six months until someone can move out, there is no need to tell the children right away. Although you want to give them some notice, you may choose to wait until you are closer to making a change in their lives. Again, let the ages and developmental level of your children guide your decision.

Why can't I tell them right away?

Sitting down with your children to discuss the divorce in a calm and reassuring way may simply be too difficult. Furthermore, refraining from blaming the other parent or in some way letting the child know that you didn't want the divorce could be extremely difficult.

Parents often say, "I don't lie to my children; they need to know the truth." But children don't need to know the truth about everything. Just as parents want their children to enjoy the excitement and joy of Christmas and thus tell them that Santa comes down the chimney, so too should children learn about the divorce without hearing all the gory details about your spouse's affair and your hurt feelings. There is no benefit to exposing your children to intimate details about the breakdown of your marriage. And it certainly is not in your child's best interest to worry about these things.

Think about what your goal is in talking with your children. Is your goal to tell your child the whole truth or is it to help your child cope with the coming divorce and foster the best possible relationship with both parents? It's up to you. However, research clearly shows that children do best in the long run when they have ongoing loving relationships with both parents and there is minimal family conflict.

Before you sit down to talk with your children about the coming divorce, have as many answers for them as possible. Your children will want to know where they will live, with whom they will live, and will they still see the other parent. They may ask, "Why are you getting divorced?" and "Whose fault is it?" They will want to know where their pets will stay, where their bed will be, and will their grandparent still take care of them on Mondays. What about school and friends? They will want to know about both. While you may not know all of the answers to these questions, you should be prepared to answer some of them or explain when you will have answers to their questions. Think about all of these decisions ahead of time.

As word of your divorce spreads among family and friends, you want to make sure that your children hear it from you. When to talk with your children will depend on each child's age and developmental level and when changes in family living arrangements are expected to occur. Older children may need to know sooner than younger children.

In addition, older children understand time better than younger children. They understand what it means when you tell them that mom or dad will be moving out in one, two, or three months. Older children also need to plan for

Exactly what do I say?

Following are some things you may wish to say in discussing the divorce with your children.

"Your mom/dad and I are getting divorced." *or* "We are getting divorced."

"You know we have been arguing a lot for a long time. We tried our best to make it work, but decided we need to get divorced. While we know this may not be what you want, it is what we must do."

"This has nothing to do with you. I know you may think this is your fault, but it's not in any way."

"We both love you and will make sure that you get to spend a lot of time with both of us."

"You are going to be living with me during the week, and see your mother/father every other weekend, from Thursday to Monday, and see him/her at other times as well." *Don't use the word "visit"—you don't visit with a parent, you see them and live with them on some days/nights.*

"I know this is really hard for you."

"I'm really sorry this is happening."

"I'm going to be staying here at home, and your mom/dad will be moving to an apartment in a month." The other parent may add, "I'd like you to come with me to a store in a few days to help pick out furniture for your new room." *Although divorce is not fun for children, they can still be part of the process in a way that gives them a sense of control and allows them to have a little fun.*

"The divorce is not your fault. There is nothing you could have done to prevent it and nothing you can do to change it. It's not about you."

"This isn't about either of us doing something wrong, it's about us not being happy together for a long time and realizing that to be happy we need to be apart."

You may think this is your fault, but it's not in any way.

"We both love you very much. Anytime you have questions about what is happening, don't be afraid to ask. We may not know the answer, but we will always be here to talk with you about it."

"I know you wish we would stay married, but this is a decision your mom/dad and I have spent a lot of time making and we are not going to change it."

"Sometimes children think if they just act better and don't get in trouble, that moms and dads will stay married. That won't happen because our decision to get a divorce is not about you. Nothing you did had anything to do with our getting a divorce. We love you very much and tried very hard to stay together, but we are not going to stay married. We love you, and you will always be able to talk with either of us, no matter whose house you are at."

—S.R.R.

the future, so you don't want to tell a teenager the news a week before his or her life is about to change. Yet, with young children, such as a three-year-old, you may wait to discuss the divorce until a couple of weeks before the change.

In preparation for talking with your children, you may wish to consult with a therapist. A therapist can help you plan both what to say and when to say it, based on the children's needs and capacity to understand at different ages and developmental stages. In looking for a therapist, make sure to tell your lawyer and to select someone who has experience working with divorcing families so that he or she understands not just what you are going through, but what your children will be going through as well. You and your spouse should meet with the therapist together, if possible, to come up with a plan.

How do I tell them?

First and foremost, if you can, both parents should talk with their children together. As difficult as it may be, your job is to do what is best for your children. Even if you are angry with your spouse, you blame him or her for the divorce, or you just can't stand your spouse any more, you still must think about what is best for your children. In most cases, it is sitting down together and telling them.

When you discuss the divorce with your children, remember that your children's needs come first.

Your goal in telling them is to help your children understand that you are getting divorced, that you both love them and always will, that the divorce is not their fault, and that they can ask questions about what is happening. Letting them ask questions doesn't mean telling them the unbridled truth about everything (e.g., marital infidelity).

Parents are often afraid to let their children ask questions because they are not sure how to answer those questions. In one study, 23% of seven- to seventeen-year-olds said that no one had talked to them about their parents' divorce. Of those that were spoken to, only 17% percent were told by their parents together, and 45% of them reported learning very little, such as "Daddy is leaving." Only 5% felt that they were fully informed and could ask questions. You want your children to be in this 5%.

What if there is a custody evaluation?

Unfortunately, some parents are unable to resolve parenting-schedule disputes through meetings with their attorneys or mediation. Although attempting to resolve most issues without going through a custody evaluation is encouraged, at times it is not possible. A custody evaluation is conducted by a mental health professional who will meet with parents and children to help come up with the best possible plan for the family. So what do I tell my children if I have to participate in a custody evaluation? It's actually not complicated. The best thing to do is to explain to your children that you and their mother/father are having a hard time deciding which days/nights you should be with each of us. "We both love you and want to spend as much time with you as possible. As a result, we are going to be meeting with someone who will help us figure it out. He or she will want to meet with you as well. She/he is going to give us advice as to what might be best so that we can make sure we are doing the right thing."

Conclusion

When you are ready to discuss the divorce with your children, remember that the most important rule is that your children's needs come first. Think about what is best for your children in terms of when you tell them, what you tell them, and how you tell them. While the above suggestions are general guidelines, there are situations in which general guidelines may not be the most appropriate ways to handle the situation.

For example, if a spouse is going to be incarcerated or one or both parents has a serious substance abuse problem or a history of child abuse, it is strongly recommended that you consult with a therapist to discuss what to tell the children, when, and how. (You may need only a couple of sessions.) Although meeting with a therapist might delay your talk with the children, you and your spouse will be in a much better position to help your children cope with the divorce. **FA**

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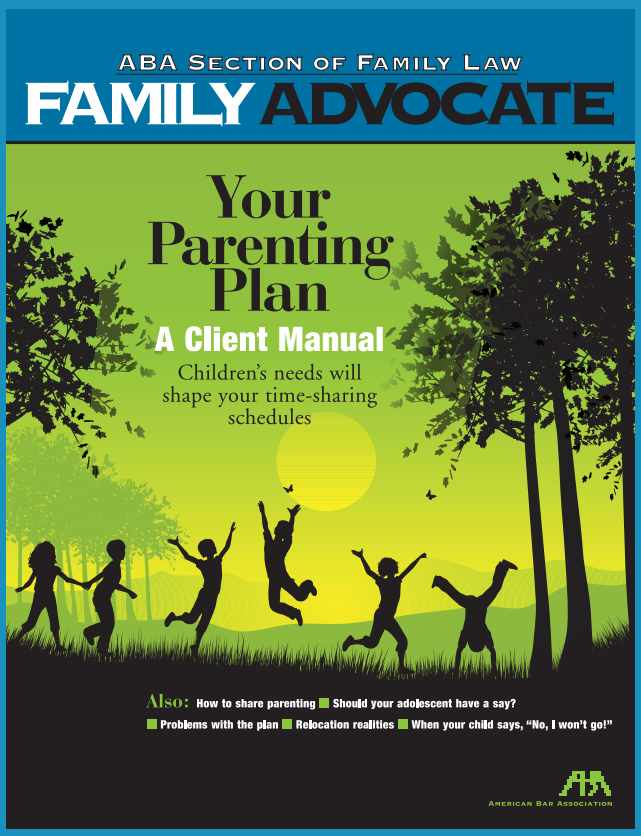

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THE Child's Attorney

By CARL W. GILMORE

★ ★ ★

NEARLY EVERY STATE PROVIDES FOR SOME TYPE OF LEGAL REPRESENTATION FOR CHILDREN. Some court systems provide for "attorneys for children," whereas others provide for "guardians *ad litem*." Still other states provide some form of hybrid representation. The roles of these representatives, as well as the rules under which they represent children, differ from state to state. Making matters even more confusing is the fact that courts and lawyers use these terms interchangeably or use one term to mean several things.

Regardless of terminology, however, these representatives share a few things in common. First and foremost, they do not represent the parents—you or your spouse. Second, any communications you share with any of these legal representatives may not be privileged, that is, the representative can use what you say against you. Third, the representative's communications with your child may or may not be privileged.

In some cases, the child's representative acts as a traditional lawyer who will investigate the case and may engage in formal discovery. He or she may call witnesses during a trial. Most important for you to know is that the child's representative is not necessarily on your side. In some jurisdictions, especially where this person is a "guardian *ad litem*," he or she acts more like a witness, providing a report to the court.

★ ★ ★

Classifying representatives

There are essentially three classes of children's representatives. The names are used interchangeably. Do not dwell on the title of the attorney. Focus instead on his or her function.

1. **Child's attorney**—The first class is commonly called an "attorney for the child" or "child's attorney." This type of attorney represents your child in the same way that your attorney represents you. He or she cannot divulge what the child says and is required to attempt to achieve the child's stated goals and objectives. For example, if your child says that he or she wants to live with your spouse, the child's attorney cannot tell you and will work to place the child with your spouse. This attorney will not simply take the child's directions at face value, but will discuss different positions with the child and counsel the child. However, an attorney acting in this role must generally advocate the positions the child ends up taking.

   During the case, you may or may not speak with the child's attorney. Due to the nature of the representation, the child's attorney cannot talk with you unless your attorney approves, and many divorce attorneys will not approve. Sometimes the child's attorney will speak with you only in a deposition, hearing, or settlement conference. These representatives will not testify in court, and you may not know their conclusions until the trial.
2. **Guardian *ad litem* or best-interests attorney**—The second type of representative is called a "guardian *ad litem*" (GAL), "child's attorney," or "best-interests attorney." The only difference between an attorney acting in this role and the one described in number one above is that the child's directions and wishes do not bind the best-interests attorney. The best-interests

attorney will generally communicate the child's wishes to the court, but may advocate a different position—one the attorney believes is in the child's best interests.

3. **Court advisor or GAL—**The third type of representative is called a "guardian *ad lite*m" or "court advisor." This person may or may not be an attorney. The function of a court advisor or GAL is often to make a recommendation to the court, but in some states, no recommendation is submitted.

In many cases, the court advisor or GAL will file a report or testify or do both, but not always. How this person interacts with the child, the court, and the parents is determined, in part, by whether he or she is a lawyer or a nonlawyer and by state rules that govern the role of the court advisor or GAL.

In many states, an attorney acting in this role is not allowed to testify or offer an opinion, but may provide legal services, such as questioning witnesses or making arguments based on evidence presented. On the other hand, a nonlawyer acting in this role often is allowed to testify and to make a recommendation, but may not provide legal services.

Think of this GAL as an arm of the court to assist the court in rendering a decision that will serve the child's best interests. This GAL generally serves as a neutral investigator. There is not likely to be confidentiality attached to any communications with the child or others. Appellate courts in some states have upheld a guardian *ad litem's* reliance on testimony or facts that otherwise may not be admissible in court.

In some cases, more than one attorney may be appointed. For example, an attorney for the child may be appointed to advocate the child's position, while a best-interests attorney also is appointed. Where there are multiple children, each child may have a representative appointed, or one attorney may work for all the children. These issues and others, such as who pays the costs, will be determined by the appointing order.

Each of these representatives may want to talk with you. Regardless of the type of questioner, you are entitled to have your attorney present.

Talking with the child's attorney

Discuss with your attorney whether you should talk with the child's legal representative. Knowing the type of representative will be very important in reaching a decision. If you are unclear as to which type represents your child, ask your lawyer. Make sure you know the function of the child's attorney. If he or she is a child's attorney (as described in number one above), an informal meeting will have little utility. There will be no record of an informal meeting, other than your own notes, and probably no report will be made to the court. However, your child's attorney can talk with you through a deposition and other discovery, which creates a record and thus can be used in court. If the child's attorney elicits any testimony favorable to you, your own lawyer can bring it to the court's attention through his or her questions.

For these reasons, your lawyer may suggest that you not meet with a child's attorney other than at a deposition. On the other hand, if the child's attorney perceives that the child's objectives and goals are not in the child's best interest, the attorney may counsel the child to pursue another outcome. In such a case, you do not want to give the attorney the impression that you are not cooperating or have something to hide.

Because the best-interests attorney (as described in number two above) makes an independent determination of the child's best interests, talking with a best-interests attorney may provide useful information and allow the attorney to form personal opinions about you. Again, discuss any communication with your lawyer first.

Talking with the GAL

In many jurisdictions, the court advisor or GAL (as described in number three above) will meet with parents and the child. Your refusal to meet with the GAL is often ill-advised. It will deprive the GAL of your side of the story, and, worse, the GAL and court may conclude that you are uncooperative. The court may even order you to cooperate. If the GAL files a report or testifies, your refusal to cooperate can be harmful to you. Even if the GAL cannot testify or offer an opinion, his or her summation of evidence may be harmful to you if the evidence suggests your lack of cooperation. If you do meet with the GAL, having your attorney present is usually the best course.

Keep the following in mind if you decide to meet with any type of child's representative.

1. Meet with your attorney beforehand. Your attorney will want to discuss any major issues with you and may be able to provide a practice session.
2. Make sure to tell your lawyer anything that may be harmful to your case.
3. Before providing any documents to the child's representative, ask your attorney to review them—even if you think you have already shared them with your lawyer.
4. At the meeting, do not offer information. Answer the questions asked and no more. The representative can ask a follow-up question; let him.
5. Use your lawyer. In this context, it is entirely permissible to ask your lawyer about an answer before you give it.
6. Limit your discussion to what you know. If you are not 100 percent sure, say you don't

know. For example, if you are taking medication, it is OK to talk about your medication. But what led to your taking medication is something your doctor knows, and you may not.

7. Representatives do not like it when parties' attorneys talk during a meeting. Too bad. If your lawyer starts to talk, you stop talking. If your lawyer says not to answer a question, do not answer.
8. Do not treat this as an opportunity to unload on your spouse, but rather as an opportunity to provide constructive feedback and solutions to your children's problems.

Take notes or ask to tape record the meeting. This is an opportunity to identify facts, assumptions, and conclusions the representative is operating under. These facts, assumptions, or conclusions may be wrong. Compare notes with your attorney afterwards to plan a strategy for countering any such misconceptions.

Home visits

Sometimes the representative, especially a GAL, will visit the parents' homes. Often these visits are unannounced, so you may not have time to clean your home, and your attorney is unlikely to be available. Failure to allow the home visit will result in charges that you are obstructing the process. A lawyer acting as a child's attorney or best-interests attorney should not make an unannounced visit that results in direct contact with you without the permission of your attorney. This could be an ethical violation for that lawyer.

It is a good idea to go through your house and make sure it is in good repair before the child's representative is appointed. Your house need not look like it should be featured in *Architectural Digest*, but it must be safe and sanitary. Look for and fix the following:

1. Smoke detectors should be in working order and have fresh batteries. Install carbon monoxide detectors if you do not have them.
2. For young children, move all medications to a locked cabinet or high on a shelf where children cannot reach them.
3. Tools and household chemicals should be locked up or placed out of reach.
4. Make sure that your outlets are not overloaded.
5. Change the filters on your heating and air conditioning units.
6. If there is a swimming pool or other open water, make sure the cover is operable and there are locks to prevent children from entering the area.
7. Fix any loose boards on stairs, nails sticking out, loose carpeting, holes in walls, etc.
8. Make sure you have hot and cold running water.
9. Make sure your heat is working, as well as your refrigerator.
10. Keep the home neat and clean.

When dealing with the unannounced visit, answer only questions dealing with the visit, your home, and home furnishings, such as "Where is the bathroom?" and "Which is junior's bedroom?" Respond to any questions about the legal case with "I am uncomfortable answering this question without my attorney present. I will be glad to ask him to provide an answer, if advisable." Do not promise or commit to providing anything. Do not allow a child's attorney to use this visit as an opportunity to investigate you.

Documents

Ask your attorney to review all items you intend to provide to the child's representative. Items may be used for any purpose, not just the one you

Do's & Don'ts for Appearing in Court

- ☑ **DO** look respectable and respectful.
- ☑ **DO** wear a sport coat and tie or business casual—accepted courtroom attire.
- ☑ **DO** wear a sport or knit shirt or blouse if you are not wearing a tie and jacket.
- ☑ **DO** wear pants, but no baggy or below-the-waist pants.
- ☒ **DO NOT** display underwear or undershirts.
- ☒ **DO NOT** wear jeans with holes.
- ☑ **DO** wear shoes, but not sneakers.
- ☒ **DO NOT** wear flip-flops or sandals.
- ☑ **DO** wear simple, discreet jewelry. A watch, ring, and simple earrings for women are acceptable.
- ☒ **DO NOT** wear earrings if you are male.
- ☒ **DO NOT** emphasize body piercings, other than in the ears.
- ☒ **DO NOT** chew gum.
- ☒ **DO NOT** wear hats or sunglasses indoors.
- ☑ **DO** cover all tattoos.

—C.G.

intend. If you provide a photograph to show a bruise on your child's arm and there is a pot pipe on the table, the representative might focus on the drugs, not the child. Do not shoot yourself in the foot by providing a document that turns the attention of the representative to something detrimental to you or creates a negative impression of you.

Items can be provided in three ways. First, documents, such as motions, responses, and affidavits, may be provided to the representative immediately. Your attorney should do this. Second, the representative may conduct discovery or an investigation. Work with your attorney to determine what should be provided according to the rules. Third, you may wish to provide items that are not requested in formal discovery. These documents may exist, or you may create them.

For example, you may put together a written list of concerns regarding visitation. Review and consider providing anything and everything. Think out of the box. Include photos, text messages, prescriptions, cards and letters, computer files, e-mails, Facebook pages, websites, or other physical evidence. In one case, a wife provided a bag of dog poop left on her doorstep by an angry husband to show the husband's frame of mind.

Consider providing the following additional items to your attorney.

1. A comprehensive family schedule showing your child's activities, appointments, and events, as well as yours and your spouse's.
2. A list of people important to your child—doctors, dentists, teachers, day-care providers, and others.
3. A list of possible witnesses and contact information, including telephone numbers and addresses. Review this list to make sure that all witnesses are willing to testify, are aware they may be contacted, and will speak positively about you.
4. A list of activities your child is involved in or has been involved in. You might also consider a list of activities you feel your child should be involved in and why.
5. Police reports.
6. Notes, e-mails, text messages, or other communications regarding the child.
7. Log books.
8. School records, especially any individualized education plans.
9. Medical records. If there are sign-in sheets, obtain them. Talk with your attorney about providing consents to doctors or dentists so that the child's representative can talk with them.

Let your attorney determine what is helpful to you and what is not. Err on the side of providing too much, rather than too little, information to your attorney.

After the report

If the child's representative submits a report to the court, your work has not ended. You can still provide additional information. If the report includes mistakes, provide information that corrects those mistakes. You may also want to update facts that have changed. The art of this process is in deciding what to call to the attention of the representative and what to keep in your back pocket for trial. This is your lawyer's job. Realistically, few representatives will later change their minds if you have been given the opportunity to provide information and have not done so. So always provide any new information to support your case.

Let your attorney determine what is helpful to you and what is not. Err on the side of providing too much, rather than too little, information to your attorney.

Keep in mind that the child's representative is just that: the *child's* representative—someone whose charge is to let the court see the case through the eyes of the child. That representative may, in the end, take a position similar to your position, contrary to your position, or somewhere in the middle. Although judges often place a great deal of weight on the opinion of the child's representative, the judge will consider all evidence from all parties. Do not make an enemy of the child's representative and do not attempt to manipulate the child's relationship with his or her representative. **FA**

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Meeting with the CUSTODY ADVISOR

By DONALD G. TYE *&* PATRICIA A. O'CONNELL

It is 11:45 p.m. on the night before your first in-home meeting with the evaluator, appointed by the court, to recommend the custodial arrangement that would best serve the interests of your three children.

Dishes are piled high in the sink, the pile of dirty laundry is fast approaching your waist, and various organisms are happily multiplying in the bathroom. Your fifteen-year-old daughter still isn't home, forty-five minutes past her curfew. You haven't been able to find the children's report cards. You haven't even had a second to warn your sister, who lives on the opposite coast, that the evaluator would be calling her to garner some feedback on your parenting skills. None of this really bothers you at the moment, however, because you are almost finished with a 42-page, footnoted, meticulously detailed manifesto that demonstrates precisely how and why your spouse makes Charlie Sheen look like Father of the Year. And that's what it will take for the court to decide that the children should live primarily with you, right? Wrong.

It's largely a matter of emphasis. All too often, a parent facing a custody evaluation focuses almost exclusively on the other parent's perceived shortcomings (both as a parent and as a romantic partner). In doing so, the parent unwittingly presents as little more than the "least distressing alternative," rather than as a parent who consistently has his or her children's best interests at heart. Parents who fare well in custody evaluations: (1) focus on the various needs of the children; (2) demonstrate that they are attuned to, and can readily meet, those needs; and (3) in most circumstances, show that they are willing and able to foster the children's relationship with the other parent.

It is crucial to put your best foot forward in a custody evaluation. The evaluator is unaligned with either parent; as such, the court will typically grant great deference to his or her impressions and recommendations. The evaluator is, in effect, the judge's own private investigator—retained to peer into the windows of your home. In effect, you're now the star of a reality show that you probably never wanted produced. With sufficient preparation and the correct emphasis, however, you can make sure that the custody evaluator likes what he sees.

What *does* the custody evaluator like to see?

The evaluator wants to happen upon a parent who has the understanding and ability to meet all of the children's needs—physical, mental, and emotional. She wants to see a parent who interacts lovingly with the children and can empathize with them. The evaluator wants to find someone who can provide a calm, stable home for the children—a parent who can both discipline the children and laugh with them. The evaluator wants to find a parent who can work with the other parent in an effective manner, who has moved beyond hostility, and who does not equate being a "bad partner" with a "bad parent."

To maximize your chance of conveying this impression, you will need to work closely with your attorney and prepare accordingly.

What can I expect from a custody evaluation?

To be adequately prepared for a custody evaluation, you need to know what to expect. A custody evaluation occurs when a family court judge appoints an individual to investigate and report back to the court on the custody and/or parenting plan for the parties' children when the parents cannot themselves agree on the appropriate arrangement. A custody evaluation is usually, but not always, performed at the request of one parent; sometimes the court will order a custody evaluation *sua sponte*, meaning of its own volition. The timing of a custody evaluation varies according to the complexities of the issues involved and the schedule of the appointed evaluator. In most instances, however, the process will take several months.

The background and qualifications required to serve as a custody evaluator (often called a guardian *ad litem* or GAL) vary by jurisdiction. Sometimes a lawyer is appointed by the court to perform the evaluation, usually when the case does not present special circumstances (allegations of substance abuse, domestic violence, sexual abuse, special needs, etc.). If cost is an issue for the parents, then sometimes the court will appoint a probation officer, family service officer, or other member of its staff to perform an investigation that is relatively limited in scope. Most often, licensed psychologists and other mental-health professionals are appointed as evaluators, due to the specialized knowledge they are able to provide. If possible, your attorney and the other parent's attorney should try to agree upon a mutually-acceptable individual to conduct the evaluation.

Regardless of background, the evaluator is charged with reporting to the court his or her impressions—good and bad—regarding the custodial arrangement and/or parenting plan (i.e., visitation schedule) that would be in the best interests of your children. As such, the evaluator will weigh in on the history of the parents' relationship, both before and after the birth of the children; each parent's ability to care for the children and meet the children's various needs; and any impediments that could hinder a party's ability to care for the children. A thorough evaluation will address the social, marital, and parenting history of each parent; the employment status and history of each parent; the age, developmental history, developmental stage, and academic functioning of each child; the physical and mental health of each parent and each child; the overall stability of the home environment provided by each parent; a description of the relationship between each parent and each of the children; a discussion of each parent's concerns about the other parent's parenting style or abilities; and a discussion of the parents' ability to co-parent effectively. In essence, the evaluator must summarize the history of your family—with all of its nuances—in a concise report for the court.

The evaluation process varies by jurisdiction, but usually includes the following:

- The evaluator will meet with and interview each party alone, usually two to three times during the course of the evaluation. Meetings usually take place in the evaluator's office or the parent's home.
- The evaluator will meet with and interview each child alone, usually two to three times during the course of the evaluation. The length and format of the meetings will vary based on the age of the child. A five-year-old child, for instance, may be casually "interviewed" while playing with toys at home. A teenager, on the other hand, may face more pointed questions while sitting across the table from the evaluator in an office setting.
- The evaluator will observe parent–child interactions, usually at the parent's home.
- The evaluator will interview various "collateral sources"—i.e., people who have observed a parent's parenting strengths and weaknesses. Each party usually provides a few collateral sources for the evaluator to question, such as extended family members, teachers, coaches, or clergy. These interviews may take place either in person or by phone.
- The evaluator will usually review any relevant pleadings that have been filed with the court.
- The evaluator will usually review documents and records provided by the parties or their counsel that may be relevant to the evaluation. These records may include a child's medical records; a child's report cards and attendance records; police reports; communications exchanged between the parties concerning the children, voicemail recordings, and photographs. In addition, the evaluator may request that

What can I expect from a custody evaluation? *continued*

each party sign consent forms that may be necessary to release medical, psychological, or school information.

• If the evaluator is a licensed psychologist, he or she may conduct personality testing (such as the Minnesota Multi-Phasic Personality Inventory or the Rorschach test). However, personality testing usually occurs only upon specific order of the court when a mental illness or personality disorder is suspected.

• After conducting all necessary interviews and reviewing the relevant pleadings and documents, the evaluator will prepare a final report that addresses his or her observations. (Sometimes, if the evaluation is particularly complicated and lengthy, the evaluator will provide an interim report and recommendations). Depending on the requirements set forth in the court's order, the final report may have recommendations on custody; the parenting plan; therapy for parents, children, and/or the whole family; the appointment of a parenting coordinator or mediator to help resolve parenting-related disputes. It may also contain specific provisions relating to the issues that may have "caused" the need for an evaluation, such as allegations of substance abuse or violence.

You may think that the custody evaluation starts when the judge appoints the evaluator and the aforementioned process begins. Focusing almost exclusively on how you handle yourself during the interview process would, however, be a mistake. How you handle yourself *prior* to the formal evaluation can be just as important as how you handle yourself during the evaluation itself.

Pull together the paperwork

Once the court orders a custody evaluation in your case, immediately begin to gather "reading material" for your lawyer to provide to the evaluator. If possible, give the evaluator a positive first impression of you and your parenting skills before you even meet. Provide information that portrays you in a positive light as soon as possible after his or her appointment.

As an initial step, your attorney should draft a letter providing the evaluator with an overview of the case and your position. He or she should detail your parenting and marital history, the history of the legal proceedings, any concerns you have about the opposing party's parenting skills, and the outcome that you believe would advance the best interests of your children. Your lawyer should furnish this introductory letter along with copies of all relevant pleadings filed with the court. Ask to review the letter for accuracy before it is sent to the evaluator.

Next, it is usually helpful to prepare a chronological history of your relationship with the other parent and your parenting of the children. While you do not want to chronicle the souring of your relationship ("He was always flirtatious with other women."), provide details that could have a bearing on a custody case. If you frequently felt neglected by the other parent because he was always working 13-hour shifts, for instance, that recollection could call into question his ability to be a primary caretaker for four children.

It is a good idea not only to prepare a history, but also to maintain a daily diary that documents any relevant conversations, incidents, and stories pertaining to the children. If the other parent is consistently late in returning the children, keep track of the date and time of each episode of tardiness. If a toddler usually returns home overtired and grumpy because the other parent ignores naptime routines, record your observations while fresh in your mind. Your ability to provide corroborating detail for your concerns may transform your statements from "accusations" to facts. Don't be afraid to mention positive occurrences as well—acknowledging the other parent's strengths will afford you credibility with the evaluator and the court.

Begin gathering any documents relevant to your case. Look for documents provided by the other parent that will undermine his or her position or advance your own. For example, a card that describes you as "the best mother ever" would undercut the opposing party's sudden claim that you are largely uninvolved with the children. Also gather any other materials that may lend credence to your concerns about the other parent's parenting of the children—for example, reports of social service agencies, police reports, photographs that are compromising, etc. Gather your children's school and medical records—most custody evaluators will want to review attendance records and report cards, at the very least. If you think that a document could possibly be relevant to the investigation, show it to your lawyer; you don't want to make the mistake of burying potentially helpful material or unknowingly providing damaging material.

Finally, compile a list of third-party "collateral" sources that can attest to your parenting history and abilities or to the other parent's deficiencies in that regard. Make sure your list provides the individual's name, address, phone numbers, and e-mail address. The key here is quality, not quantity. It is much better to have a few people who can provide positive, substantive information, than a veritable phone book of individuals who can offer little more than "he seems like a good dad." Relatives are often looked upon as biased sources of information, so use them only if they provide a unique perspective. And, by all means, make sure that you ask the person for permission to use his or her name and ascertain that he or she will, in fact, provide positive information when the call comes. There is nothing worse than being hung out to dry by someone you thought was on Team Mama.

Be on your best behavior

If you have even the slightest inkling that you might end up litigating for custody of your children, you may need to modify your behavior *immediately*—long before an evaluator is appointed. Consider whether any action you take, or any communication you make, could be characterized as contrary to the best interests of your children in any manner, shape, or form. In a general sense, you should ask yourself: *What would Jerry Springer do?* If the answer is, "Ask me to be on his show," then you need to cut out that behavior immediately.

In all seriousness, keep the following tips in mind in the months leading up to a custody evaluation:

- **Do not interfere with the other parent's access to the children or do anything to undermine the other parent's relationship with the children.** There is nothing—nothing—that family court judges hate more than a parent's efforts (whether active or passive) to distance or alienate children from the other parent. Never copy the children on angry or accusatory e-mails to the other parent. Never talk badly about the other parent to your children. Never involve the children in the details of your marital conflict. Never prevent the other parent from seeing the children, or even allow the children to think that it is "up to them" whether or not they will see the other parent. On the contrary, encourage the children's relationship with the other parent and be reasonably flexible regarding parenting time. This should go without saying but, unfortunately, it does not.
- **Anticipate the other parent's criticisms of you and try to ameliorate them.** If the other parent is likely to tell the evaluator that you party all the time, it may not be the best time to book your trip to Hedonism III. Tone it down.
- **Don't leave a paper trail that could be used against you.** If the other parent will claim that you spend too much time gambling, you do not want to have credit card statements showing multiple trips to Vegas. Don't allow a sullen teenager to miss school due to "cramps" and unwittingly create a trail of questionable absences from school.
- **Use social media sites sparingly.** More and more frequently, social media posts are being used as evidence in family law proceedings. Angry status updates on Facebook pertaining to your ex-partner—whether overt or not-so-subtly implied—will not help your effort to be perceived as a parent who has moved beyond anger and is capable of co-parenting effectively. Posting photos of drunken escapades will not help you to portray a calm and stable home—whether or not it was your fortieth birthday. There's no need to advertise your new "single" status on your Facbook profile; your real friends will know anyway, and chances are that the captain of your high school football team doesn't really care anyway. What's more, near-constant posts on Twitter and Facebook about your various personal interests and causes may undermine your argument that you spend all of your time "focused on the kids." Don't overshare. Please.
- **Make sure your parenting time is actually your parenting time.** If you are seeking custody of the children, but don't presently have custody, use babysitters as little as possible. Likewise, don't let the TV or Xbox babysit your children. You want to be able to show the court that you make the best use of all the time you have been allotted. Schedule your dates with your hot new neighbor when the twins are staying at their mom's/dad's house. Be sure that your parenting time includes overnight visits, particularly if you are a "breadwinner" dad who is now seeking 50/50 custody of the children.
- **Don't make a bad situation worse.** Divorce is a pretty good sign that you and your spouse just don't get along. While your spouse may never like you, try to get him or her to hate you as little as possible. Now is not the time to be on the other parent's bad side. Be the bigger person and act civilly and respectfully toward the other parent. Don't provide him or her with the "gift" of profanity-laced e-mails and voicemail messages that will be used in future court proceedings.
- **Do not discuss litigation with the children.** You should, however, explain the upcoming investigation at a level that is consistent with each child's age and ability to understand. Explain that they'll have a couple of meetings with the evaluator, who will want to ask them some questions. Remind them that they should be honest. Do not try to coach the children—i.e., "if you want to live with me, you need to say this…." Skilled evaluators are trained to detect this kind of coaching.
- **Be careful about introducing new romantic partners into the mix.** Divorce lawyers see it all the time. Parents seem to be getting along well and co-parenting with relative ease. Then one parent enters into a romantic relationship with another individual, and everything basically explodes. Your safest bet would be to delay introducing new partners until after the custody evaluation is complete.
- **Meet with your lawyer and role play.** It is always a good idea to meet with your lawyer prior to a custody evaluation so that he or she can "prep" you for your interactions with the evaluator. Those billable hours will be far more valuable to you than the hours your divorce lawyer devotes to reading your e-mailed missives against your ex-spouse.

COMMUNICATING WITH THE EVALUATOR: What not to do

The custody evaluator is going to be considering your reasons for wanting custody. Don't assume the evaluator is your friend or confidante. There is no "privilege," and anything and everything you say can end up in a report. As such, you should do your best not to raise any red flags, as follows:

Don't be the parent bent on "vindication," i.e., getting the court's approval of your own personal parenting style or philosophy. In most cases, the court will address the strengths and weaknesses of both parties, regardless of who gains physical custody.

Don't act in any manner that suggests that you are seeking custody as a means of revenge upon the other parent.

Beware of appearing like a "helicopter parent"—that is, a parent who hovers over his or her child, tries to control all of the child's actions, and generally fails to provide the child with space to individuate. For these parents, an award of custody may be more about fulfilling their psychological needs than providing for the children's best interests.

Save the financial discussions for the lawyers (unless you are alleging economic abuse by your spouse, resulting in a negative effect on the family). You don't want the evaluator to think you're seeking custody to gain financial leverage or avoid paying child support.

Don't confuse the dissolution of your marriage with parenting issues. "He left us."

Don't take extreme positions, such as "I did all the parenting" or "she would never help them with homework."

Don't exhibit resentment toward your spouse's new romantic partner. Generalized statements, such as "I don't want my children around her, she's a bad influence" suggest simple jealousy, rather than serious concern for the children's welfare.

Don't barrage the evaluator with phone calls or demand additional meetings. In addition, don't place the evaluator "on the spot" by asking what he or she is planning to recommend. If you have any concerns, let your lawyer be in touch with the evaluator.

—D.G.T. & P.A.O.

Don't assume the evaluator is your friend and confidante. Anything and everything you say can end up in a report.

Tips for in-home observations

Most custody evaluations include a visit to each parent's home. The evaluator will want to make certain that your residence is suitable for the children and will likely want to observe your interactions with the children in the home. If you're the star of this "reality show" for the evaluator, you need to make sure that the stage is set appropriately.

Do your best to make sure your home is neat, clean, and hospitable. Move that clutter into the closet. Open the windows, let the fresh air in, and try to get rid of any odors. Sometimes an evaluator will look into the refrigerator or pantry, so stock up on healthful foods.

It is also a wise idea to double-check that your home is absolutely age-appropriate for the children. If infants or toddlers are residing in the home, for example, spend time on the necessary baby proofing. Have toys and games readily accessible for school-aged children. If your children are teenagers, make sure any alcohol that you may own is not accessible.

When the evaluator arrives, warmly invite him into your home (even if you are annoyed that an investigation is necessary) and take his jacket. Offer a glass of water, coffee, or tea. After the initial pleasantries, invite the evaluator to look around the house. When you are ready to begin answering questions, invite the evaluator into a comfortable and quiet spot. You want the evaluator to have positive memories of your home.

If your children are home during the in-home visit, the evaluator will be observing your interactions. Make sure that the kids aren't staring blankly at the television or completely immersed in a video game. If possible, have them involved in an activity that will highlight the family dynamic (such as playing a board game or shooting some hoops).

Don't feel the need to start fawning over little Tom, Dick, or Harry. You want to seem warm and loving with the children, but not over the top. Trained mental-health professionals are generally able to figure out when affection is authentic and when it is not.

What if your child acts up during the evaluator's visit? Think of it as an opportunity to demonstrate to the evaluator your use of age-appropriate discipline. However, you should avoid raising your voice or engaging in any sort of corporal punishment.

Tips for your interviews with the evaluator

- **Make a good first impression.** Show up! Be on time, if not early, to meetings at the evaluator's office. Give yourself plenty of time to navigate traffic, park your car, and straighten yourself out in the restroom prior to the first meeting.
- **Be honest.** Don't lie, or even stretch the truth. Just as important, be reasonable and fair—that is, be willing to own up to your weaknesses and recognize the strengths of the other parent. Good custody evaluators can tell when a person is not being genuine. It is better to say, "Parenting can be really challenging sometimes, but it is so rewarding" than to say, "I love every single minute of being a Dad!"
- **Answer the question and be thoughtful.** Don't use the question as an opportunity to launch into something else you want to talk about (such as the weaknesses of the other parent or your take on extended breastfeeding); just answer the question asked, or risk being deemed evasive. You will have plenty of time to convey your side of the story to the evaluator (and, the carefully composed history that you prepared in advance also will help).
- **Take your time.** Don't be afraid to consider your answer. You want to appear thoughtful, but not reactive. It is OK to say, "I don't know."
- **Show the evaluator that you know your child.** Don't be the parent who can't name the child's best friend or favorite food. Show that you know your child's likes and dislikes, medical history, sleep patterns, names of teachers and coaches, names of friends and the parents of those friends, hobbies, and classes. Your knowledge of these basic facts is even more important if you have not been the primary custodial parent.
- **Articulate your concerns about the other party's parenting as objectively as possible.** Remember Dragnet? "Just the facts, ma'am." Use it as your mantra. Provide the evaluator with facts, and let her draw her own logical conclusion. Alerting the evaluator to the other parent's arrest record on multiple charges of drunk and disorderly conduct? That's fine. Proceeding to call him a "disgusting, loud-mouthed drunk"? Not so much.
- **Own up to your emotions—but don't let them own you.** It is normal to feel nervous. Acknowledge it. If you start to cry, that's OK. It is also common to feel sad about the end of your relationship, scared about losing custody, and angry at the other parent. You just need to show that, even in the midst of real emotional difficulty, you have the ability and self-control necessary to always put the children's needs ahead of your own.
- **When in doubt, talk about your kids—not your ex.** Remember that a custody evaluation is not some sort of contest to determine who is the "best" parent; it is merely an effort to find a child-centered and workable response to a difficult situation. All too often, custody evaluators are forced to sit and listen to each parent offer a tirade against the other parent. The interviews become a cathartic experience for the "unloading" parent, rather than an information-gathering opportunity for the evaluator. Your focus should *not* be on highlighting for the evaluator each and every perceived deficiency in the other parent. Rather, your focus should be on discussing the children's needs and your (unique? historic? tireless?) ability to meet those needs.
- **Show the evaluator that you are supportive of the children's close relationship with the other parent.** You are emotionally healthy. You haven't let your anger and resentment about the failure of your relationship cloud your ability to see that the children benefit from a strong relationship with the other parent. You do not equate the other parent's having left you with his or her having "left us" (i.e., the children, too). Show it.

Conclusion

It goes without saying that divorce is one of life's most stressful events. The prospect of a custody fight makes matters even more emotionally charged, particularly if a parent doesn't know what to expect from a custody evaluation. Many parents focus excessively on the perceived shortcomings of the other parent. In doing so, these parents fail to emphasize their own strengths and ability to meet the children's needs. If you follow the aforementioned tips and focus on the best interests of your children, however, you will be well-positioned to make your case in an effective and child-centered manner. **FA**

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Understanding the Vocational Evaluation

An interesting phenomenon occurs when people are getting divorced. Promises once made with the best of intentions take a backseat to new, less pleasant sentiments and emotions.

By MARTIN A. KRANITZ

AN IMPENDING DIVORCE OFTEN LEAVES PEOPLE FEELING HURT, ANGRY, AND SCARED. In addition to these quite normal emotions is a startling new financial reality: two people cannot live apart as cheaply as they lived together. Parents begin to worry about how they will provide for their children after the divorce. This too is normal, reality based, and very scary.

In many families, one parent, often the mother, stayed at home to raise children, and the other, often the father, worked outside the home to provide financial support. When a separation occurs, there is no longer enough money to sustain this arrangement, leaving both parties feeling disadvantaged. The homemaker, who may have been out of the job market for years, fears being uprooted from the children and forced to return to the workforce. The income provider regrets having spent so much time away from the children, a personal sacrifice that is now being used against him in custody proceedings.

As the divorce process unfolds, the homemaker may take a part-time job to jump-start an income stream; whereas, the breadwinner cuts back on work hours to spend more time with the children. Both spouses see the other's actions as too little, too late, creating even more problems and adversity in the divorce. Everyone feels used, upset, and unappreciated.

The vocational evaluation/ assessment

As the parties prepare for litigation, discussion turns to support (alimony and child support). Both sides charge that the other can earn more money and contribute more to the family's well being. When this happens, one or both lawyers (and sometimes the court) will request a vocational evaluation or assessment. The goal is to explore a person's employment and earning potential. That is, to assess the kinds of work a person can do (given age, education, work experience, and other factors that might enhance or limit ability to work), salary potential (income), and employment opportunities in the area.

How does an evaluation work?

In a *vocational evaluation,* a vocational expert (VE)/consultant/counselor, interviews the individual and may do some vocational testing. The VE asks about the person's age, education, work history, and health. He or she also explores what "work-like" activities (volunteer) and recreational activities the individual enjoys, along with what steps the individual has taken to find work and what resources are being using to locate job opportunities (in the case of the breadwinner, what steps have been taken to maximize income).

It is the VE's job to look at an individual's strengths and limitations and to form an opinion about employability and earning potential. Sometimes people suspect that the party who hires the expert is likely to get the assessment he or she wants. However, the vocational assessment should be the same whether the VE is employed by the person being evaluated or by the other side.

For example, I once sat in the back of the courtroom waiting to testify in a divorce case. Both sides had used different VEs to evaluate the same individual. The other VE was also in the courtroom, sitting not far from me. When it came time for a vocational expert to testify, the judge said to both lawyers, "Counsel, I have read both reports. There is no need for vocational testimony since these reports are mirror images. Your experts have reached the same opinion and made projections for income that are within $500 of each other annually. I do not need to hear their testimony. Counsel, you may excuse your experts." We (both VEs) stood, smiled at each other, and left the courtroom, knowing that we had done a good job, a neutral job, and an ethical job since the reports were essentially the same.

How to prepare for the evaluation

Before meeting with the evaluator, make a list of the jobs you have had since high school, actual tasks (job descriptions) and length of employment. Include how much you have earned in your most recent jobs (for the last 10 to 15 years). Also include what kinds of "work-like" activity (volunteer) you have undertaken. For example, if you ran a Little League program or helped with a fund-raiser for your church or synagogue that raised a lot of money. (Selling Girl Scout cookies with your daughter is important to you and your child, but not what we are looking for here.)

Next, make a list of health-related issues that might interfere with your ability to work. If possible, and only if your lawyer approves, bring copies of medical reports, documenting health issues and limitations. These limitations may be physical, mental, or emotional. Bring records of any hospitalizations, or at least when and where you were hospitalized.

Finally, detail what steps you have taken to look for work. It is not enough to say that you peruse the want ads once in a while. Keep copies of the ads to which you have responded. If you have applied online, print search-engine pages listing the jobs. The pages will have dates at the bottom to document your ongoing efforts to find work. Keep track of not only your applications, but also your interviews. Bring copies of letters you have sent to and received from employers. The goal here is to demonstrate that you have been looking for work, trying to get a better job, or can explain why you can't work.

The VE will not be interested in hearing that you do not want to work or don't think you should have to work because your spouse makes so much money. The VE is only concerned with whether you can work, what kind of work you can do, your chances of employment, and how much you can earn.

If you have a medical condition or several medical conditions, come to the interview in your normal or average condition. That is, get your regular amount of sleep and take your regular medication. Do what you usually do, so that the VE can see you in as "real" a way as possible and can provide the most useful, objective opinion and projection possible.

What will the vocational expert ask?

After asking your name, address, telephone number, birthday and age, the VE normally will ask about your education. How far did you go in school? What was your GPA? If you finished high school, was it college prep, vocationally oriented, or special education? Have you attended college or attained a degree? What work have you done since? Name of employer? How long did you work there? What did you do? Why did you leave? Did you like the work? How is your health? Do you have any health issues that would interfere with your ability to work full-time? What do you do for fun? What is your ideal job? What kind of work have you been looking for? How much looking have you done? Do you have a job application log or can you construct a list of all the jobs/businesses you have contacted for employment? How have you gone about looking for work? What resources have you used? What essential requirements must the job include?

Where claims are made of physical, medical, or emotional limitations, the VE may request copies of reports (if not already provided by counsel) to verify the existence, severity, and longevity of these limitations. On occasion the VE may recommend that a Functional Capacity Evaluation (FCE) or other professional evaluation be done to gather more information on the person's physical/neurological/mental and emotional strengths and weaknesses.

A lawyer once called me about a client who previously worked as a nurse. She had physical limitations that would preclude her from working in a hospital or nursing-home setting. She really wanted to work and did not want long-term support from her husband, but did not know what to do. After reviewing the medical documentation and interviewing the woman, I suggested that she consider taking some additional courses in the area of medical billing. This would allow her to

use her medical knowledge in an office environment that would not be so physically taxing. Alternatively, she might consider medical case review (compliance review) for an insurance company. My report included a section on additional education for medical billing, and the lawyer was able to negotiate support that allowed the client time to attend community college, obtain employment (with the help of the college), and begin an income stream that would lead to independence.

In another case, a cardiologist, with 10 years of experience, claimed to be making only $48,000 in income annually, which he could document. Research at a nearby medical library revealed that cardiologists generally were earning close to $300,000 a year. I later found out that the cardiologist in question had been working at a clinic owned by his girlfriend, hence the demonstrably low annual income.

Are there other reasons why full-time work may not be appropriate? Are there other responsibilities or activities that may or should take precedence over working full-time?

In one case, a lawyer for the husband asked me to do a vocational evaluation of the wife. The evaluation took place in the family home, where the wife was caring for their 12-year-old daughter who had brain cancer. The wife explained that the daughter required care 24/7 and had special food requirements. The wife acknowledged that, in fact, she could work outside the home and possibly earn a decent income. She pointed out, however, that home healthcare of the sort needed for her daughter with a skilled nurse to monitor vital signs and prepare the special diet would cost in the neighborhood of $65 an hour. While recognizing that she could work, it was apparent that she would not earn $65 an hour. More importantly, the soon-to-be teenager was in a very delicate situation emotionally, very uncomfortable around strangers, and very unhappy with the caretakers that had been provided in the past. I talked with the lawyer and pointed out that clearly the wife/mother could earn a reasonable income, but would not earn anything close to $120,000 a year. Additionally, I pointed out that the quality of life for the daughter would be greatly affected (negatively, in my opinion) if the mother were not available to provide the loving care this young girl so greatly needed. Both the lawyer and I understood that it was not my place to make value judgments about whether an individual should or should not work. I indicated that I would be ready to write a report or testify to the wife's employability and income potential. I also wanted him to see the larger picture. He appreciated my input and talked with the husband about settling the case in a way that worked for everyone.

After the interview, the VE will usually do a review of the documents provided by counsel or client, often including answers to interrogatories, deposition information, medical reports, resumes, job application log, and any other information that may have a bearing on the individual's vocational potential. After all the information has been reviewed, it is the VE's responsibility to form an opinion about whether the individual in question is able to work (or work at a higher level) and what kind of jobs, if any, may be suitable. If the VE feels that an individual can work, the VE will then begin to explore resources (often online) to determine what job openings exist and what income might reasonably be expected.

Alternatively, if the VE feels there are limitations so severe that they would prevent (or limit) employment, the VE may conclude that work is not possible or that full-time work is not possible or that work with certain restrictions or limitations can be considered.

I once was presented with a case in which the husband suffered a "closed head injury," resulting from an automobile accident. He looked quite healthy and capable and could carry on conversations, talking about the children or news headlines with reasonable clarity. However, if one listened carefully, there were a number of limitations. The client could talk about news headlines if he had just read the paper, but could not remember them an hour later. He could watch a TV program, but could not remember it an hour later. In reviewing his medical records, including a neuropsychological exam, and talking with the psychologist who administered the exam, it became apparent that this was an individual with severe memory loss. He could learn a new task, but would forget it as quickly as he had learned it. He would have to be retrained every single day in a work situation. The head injury had occurred almost three years earlier. The prevailing wisdom at that time was that no significant improvements were likely after two to three years of recovery. I interviewed family members who dealt with him on a regular basis, and they confirmed a number of limitations that were described in the psychological report. The man was quite intelligent (he had been an engineer) and had a great deal of difficulty accepting his limitations. He also had a great deal of difficulty remembering to look at the lists he made to remember things. In the end, I wrote a report saying that he was capable of work, but would be better suited to a day-activity program designed for people with similar brain-injury limitations.

The vocational assessment

A vocational assessment is similar to a vocational evaluation, except that the VE does not meet with the individual (usually counsel refuses to let the client meet with the VE). The VE gathers information from the documents listed above and any other sources (often the other spouse) before forming an opinion about the individual's ability to work. In cases where counsel denies access to the client, counsel who hired the VE may petition the court for access to that client. In these cases, the client who is denied access to the VE loses the opportunity to have an impact on the vocational report.

The VE will often write a report that reflects the findings of the vocational evaluation or vocational assessment. It is important to understand that the VE is impartial and objective. It is not the VE's job to form an opinion about whether an individual should or should not work, only whether the individual is able or not able to work and, if

The vast majority of these cases settle before going to court. This is a good thing. Unfortunately, sometimes they settle on the courthouse steps. This is not such a good thing.

so, what kinds of work are possible, potential earnings, and the availability of work.

Qualifications of a VE

Generally speaking, a VE has experience in the field of vocational assessment and placement. Many VEs have an advanced degree and work experience in counseling, rehabilitation, or psychology. These are not requirements, however. VEs may be licensed by the state or may have local or national certification, often provided by professional organizations that deal with rehabilitation/vocational counseling and/or vocational assessment. Advanced degrees, work experience, or certifications can help reassure the court that the individual does have specialized knowledge and experience in the field of assessment and/or placement. The VE does not need to have special knowledge about the divorce process or divorce law. The vocational assessment/evaluation is the same for people who are getting divorced as it is for someone out of work or with physical or emotional limitations completely unrelated to the divorce process.

What resources are used?

Vocationally oriented tests may include: tests of intellectual functioning, reading and math achievement, aptitude tests, and interest inventories. The scores on these measurements do not, in and of themselves, prove anything, but combined with information gathered during the interview (and a knowledge of past employment and education), they help the interviewer focus on the kinds of work an individual may perform in light of past experience or expressed interest. A number of "work samples" are sometimes used in an evaluation. These are hands-on activities that measure an individual's ability to function in a more "real world" setting/experience. At the most basic level, these may include sorting and filing kinds of activities. At a more advanced level, these include assembly or disassembly of mechanical parts used in various machines or demonstration of knowledge in the use of computer programs.

The VE may use a number of websites as resources for job-specific annual income information. These include the U.S. Bureau of Labor Statistics, the *Guide for Occupational Exploration*, the *Occupational Outlook Handbook*, labor statistics published by the various states and websites, such as salary.com.

Also of interest are websites such as monster.com, kforce.com, careerbuilders.com, and usajobs.gov. These are general information websites that post job openings by type and location. VEs also use employer websites, i.e., company websites that hire within selected industries. For example, medical jobs would be listed on hospital or laboratory websites. Education-related jobs might be listed on a board of education website (or private school website), and sales jobs would be listed by malls, big-box stores, or manufacturers.

Where appropriate, VEs also call employers and talk with human resource specialists to gather further insight into jobs, job accommodations, etc. On occasion, and where a medical release has been provided, the VE may talk directly with a medical provider to get insight into limitations that may affect an individual's ability to work.

Courtroom testimony

The vast majority of these cases settle before going to court. This is a good thing. Unfortunately, sometimes they settle on the courthouse steps. This is not such a good thing. These settlements often are stressful for the parties, as is the idea of someone else making such important decisions for them, such as the judge, or that they might actually "lose" when the judge hears the case.

When these cases go to trial with a VE as a witness, the expert is usually sequestered (kept out of the courtroom until the time for testimony), although on occasion I have been asked to sit in the courtroom and listen to testimony, because it is the first opportunity I have had to see and hear the person I have assessed. In these situations, the lawyer who has hired me will pose a series of background questions to the individual I have assessed, to give me firsthand experience with his or her answers. In most cases, however, I will have met with the individual before the hearing.

When it is my turn to testify, the lawyer who hired me will ask a set of background questions concerning my education, work experience, and other courts in which I have been qualified to testify. Then, the lawyer turns the floor over to the other lawyer who will cross-examine me on my background and qualifications. Some lawyers will stipulate to the VE testimony, and others will try to challenge the testimony (or challenge the report) to prevent the VE from testifying.

When I testify, I explain what I know about the individ-

Divorce is difficult emotionally and financially. Two people—two families—simply cannot live apart as cheaply as they lived together

ual I have evaluated or assessed, how I gathered the information, what documents I have reviewed, and what other resources I have used in forming an opinion. I then generally give my opinion and often the rationale for that opinion.

When my initial testimony is complete, opposing counsel then has the opportunity to question my opinion, the rationale, and the resources. Most do this gently and respectfully. A few are quite aggressive and unpleasant. It is my experience that the lawyers who are aggressive generally are not prepared or recognize that my opinion is reasonable (and conservative) and thus they want to distract from it through courtroom theatrics. After opposing counsel cross-examines me, I will sometimes be questioned briefly by the lawyer who hired me, to clarify any questions that may have arisen during cross-examination.

Conclusion

Vocational evaluations/assessments are tools used by counsel in divorce cases (and other income-related matters) to provide information about a person's ability to work, the kinds of work that they can do, the kind of income that can be derived from the work, and the availability of that kind of work. Vocational evaluations/assessments are used by lawyers to present, defend, and help settle the case. On occasion, vocational in-court testimony is necessary. In this instance, lawyers present the judge with objective information that may be used in reaching an opinion and making a decision concerning alimony or child support.

It is important to keep in mind that these are just tools. The VE does not form an opinion about alimony. The VE does not suggest how much or how little support an individual should pay or receive. The VE does not guarantee that an individual can earn a certain amount of money or be employed. The VE opines that if an individual wants to work and follows the necessary steps in obtaining work, he or she will find work even in this day and age of high unemployment.

When testifying in court, I am often asked by opposing counsel, "What if my client does not want to do the kind of work you are suggesting?" My response is always the same, "That's why they call it work." Not everybody gets to do the kind of work they like.

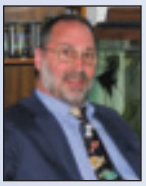
Divorce is difficult emotionally and financially. Two people—two families—simply cannot live apart as cheaply as they lived together. In many cases, this means that both spouses will have to work to make ends meet and take care of the family if they hope to approach their former standard-of-living.

Many clients come to me angry and quite resistant to a vocational evaluation. They are upset about having to be put through one more hoop and one more challenge. They find thinking about work difficult when they are dealing with emotional issues surrounding the breakup of the family and litigation.

I try to be reassuring that things will get better and easier after the divorce. I know this because former clients have come to me after the divorce (even the opposing spouse) and thanked me for my help. They have come to realize that my opinion made sense and, in fact, they later acted on the recommendations in my report.

The vocational expert can be an asset to both sides of the litigation and to the judge. The vocational report can help a client see when he or she is being unreasonable or unrealistic with regard to income and job availability, or the inappropriateness of work for a spouse who has physical, mental, or emotional limitations. This is true for both sides.

The vocational report (and sometimes vocational testimony) can help the judge make a more thoughtful, useful, and fair decision, tailored to the needs of the particular family. The vocational evaluation also can provide some very useful information to the person being evaluated as he or she moves ahead on a path toward independence and fulfillment. **FA**



MARTIN A. KRANITZ has a B.S. and M.A. degree in psychology and has worked as a vocational consultant in private practice for over 35 years. He has been a vocational expert for the Social Security Administration since he entered private practice and currently provides services to offices in Maryland, Virginia, and Illinois. Martin is also a trained/certified facilitative mediator who specializes in separation and divorce issues.

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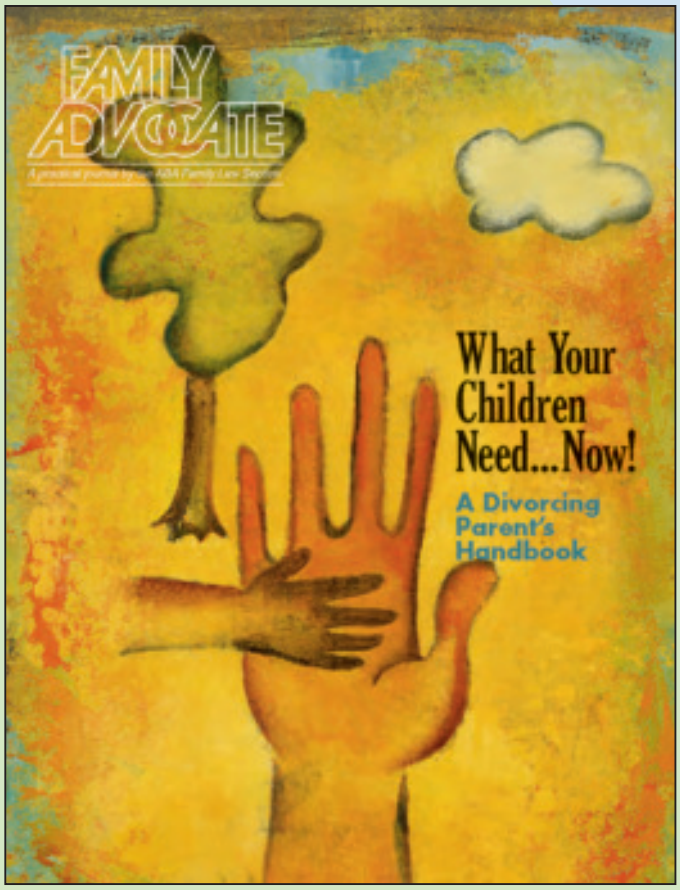

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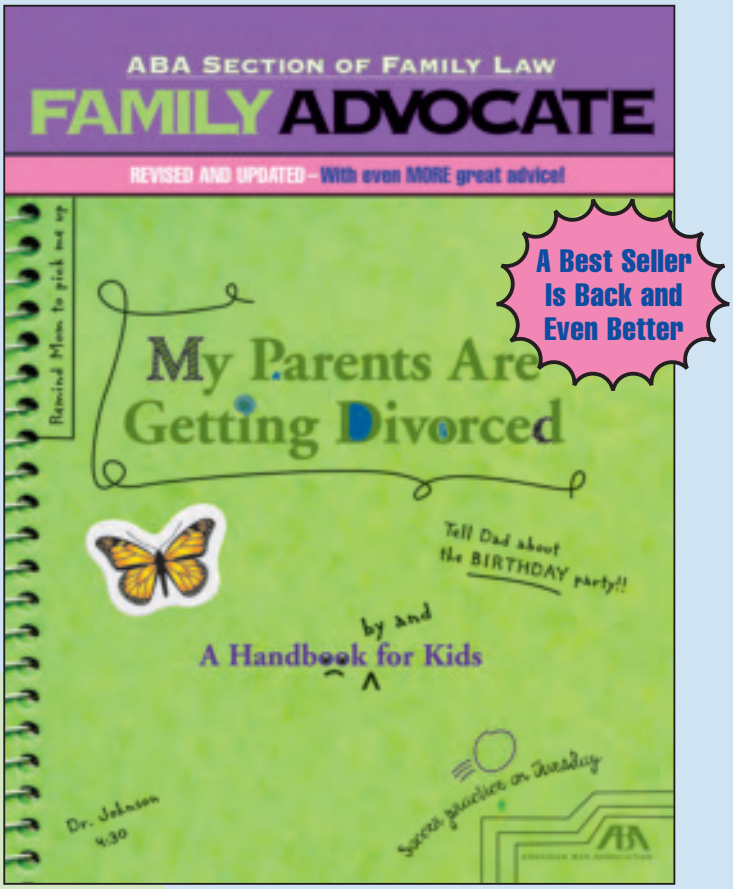
How much should we tell the kids? Will the children have a say about where they live? **What can I do when my child refuses to visit the other parent?** If my child lives with me, don't I automatically get the tax deduction? **My child is upset about the divorce, how can I reassure him?**



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What is divorce? Will my parents ever get back together? **Where will I live?** Will I still see both parents? **Is the divorce my fault?** If we move, how can I see my friends? **Why are my parents doing this to me?** Will I get to choose who I want to live with? **How will the divorce end?**

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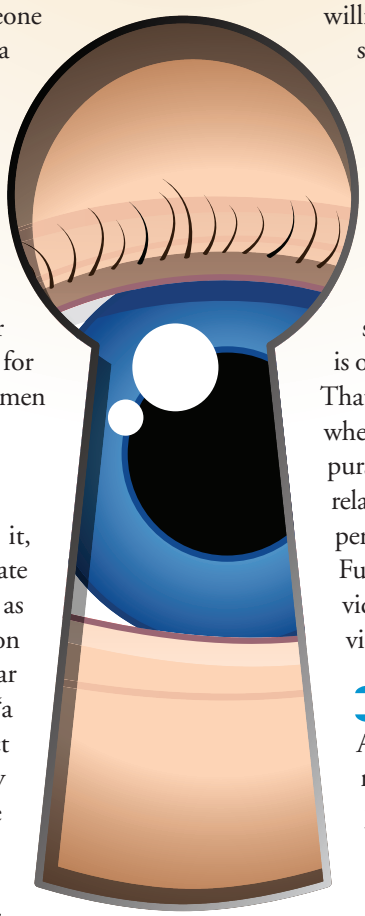
What to Do If You Are Being Stalked, Harassed, or Spied On

By JODY M. MEYER

When one hears the word "stalker," one immediately thinks of celebrities, such as Lindsay Lohan, Justin Timberlake, Halle Berry, or David Letterman. While these types of stalkers and situations are real, they do not reflect the typical experiences of average people.

A stalker can be, and very often is, someone you know. Your stalker might be a friend, a casual acquaintance, a current or former boyfriend or girlfriend, a former spouse, or a stranger. According to U.S. Department of Justice statistics, however, nearly three in four stalking victims know the offender. In many cases, the stalker and the victim are or were romantic partners or spouses. The risk of being stalked is highest for those who are divorced or separated, and women are at greater risk than men.



WHAT IS STALKING?

Although all 50 states have laws addressing it, the legal definition of stalking varies from state to state. Kansas, for example, defines stalking as "an intentional harassment of another person that places the other person in reasonable fear for that person's safety" and harassment as "a knowing and intentional course of conduct directed at a specific person that seriously alarms, annoys, torments or terrorizes the person, and that serves no legitimate purpose." California defines stalking as willfully, maliciously, and repeatedly following or willfully and maliciously harassing another person and making a credible threat with the intent to place that person in reasonable fear for his or her safety. New York classifies conduct into varying degrees of stalking, harassment, and unlawful surveillance.

These legal definitions may not, however, be helpful. Generally, stalking is a pattern of harassing or threatening conduct by one person toward another. In certain circumstances, it is obvious when you are being stalked or harassed. That is not always the case, however, especially when you are in the middle of an intense romantic pursuit or the demise of a meaningful personal relationship. In such a case, it can be easy to lose perspective on what is and is not appropriate. Further, various technological advancements provide stalkers new ways to contact and harass their victims.

WHAT CAN I DO? WHAT SHOULD I DO?

Although being stalked or harassed can be terrifying, you have the power and the means to protect yourself. One of the most important things to remember is that the stalker's behavior is not your fault and that you deserve to be protected from such behavior.

Stalking Behaviors

- Repeated and unwanted telephone calls, instant messages, text messages, or e-mails. This contact may have an innocent explanation, such as "I just want to talk about the children."
- Showing up uninvited at your home or workplace or perhaps at your children's school or sporting events.
- Opening your personal mail or e-mail messages.
- Following you or maintaining formal or informal surveillance of you.
- Threatening harm to you, your children, family, or pets.
- Posting threatening messages or personal photographs on Facebook, MySpace, Twitter, etc.
- Tracking or monitoring your computer, e-mail, and cell-phone use.
- Sending unwanted gifts, flowers, letters, cards, e-mails, etc.
- Damaging or vandalizing your home, car, or other property.
- Using GPS devices or hidden cameras to track your whereabouts.
- Discovering information about you through public records; online searches, such as Google; hiring private investigators; going through your trash; or questioning your friends, family, neighbors, or co-workers.

—J.M.

25 Practical Steps to Protect Yourself

If you are in imminent danger, go to a safe place and call 911.

1. If you have an attorney, let him or her know immediately what is going on. Behavior initially seen as annoying might be a sign of something more serious. Talk with your lawyer about the best course of action to take.

2. Carry your cell phone with you at all times. A phone that can record both audio and video is useful. Program emergency numbers into the phone and make them easily and quickly accessible. Change your home and cell-phone numbers. Some landline and cell-phone carriers will even do this for free if you explain the circumstances. Get caller ID and an unlisted telephone number.

3. Clearly state to the person (including your ex or soon-to-be ex) that you are not interested in and do not want his or her attention or contact. As with Lauren Holly and Jim Carrey in the movie *Dumb and Dumber*, if you respond to an unwanted overture with anything other than a categorical "no," your pursuer may optimistically conclude that "one out of a million" means "there's a chance." If you and your ex have children together, the situation becomes a little more difficult. It is almost impossible to end all contact with the parent of your children. Make it clear to your ex that your *only* contact with one another should be to communicate about the children. When you exchange the children, it might be helpful to use a public location, a supervised exchanged center, or a neutral third-party. Use e-mail or texting to communicate with your ex, rather than in person or by telephone, and keep a written record of the purpose and outcome of the conversations. Frequently, stalkers and harassers use the children as an excuse to have contact with their victims.

4. Tell the person, preferably in writing (letter, e-mail, text, IM, etc.) that he or she must cease the stalking or harassing behavior. Once you have done so, do not reply to any follow-up efforts to contact you. Do not engage in lengthy discussions. Despite his or her plea, the stalker is not entitled to an explanation.

5. Ignore this person's attempts to contact you or arrange some interaction. One way a stalker may try to control and harass you is by baiting you into a discussion or an argument. Even negative feedback can give the stalker what he or she wants and may continue or escalate the behavior. Do not try to reason with or appease a stalker.

6. Tell your friends, family, neighbors, landlord, and co-workers what has been happening, and show them a picture of the stalker. Stalkers typically thrive on privacy and secrecy. The more people know about your situation, the more eyes and ears are watching out for you. Tell your neighbors and co-workers to keep an eye out for the stalker in your neighborhood or workplace.

7. Instruct family and friends not to give your contact information to anyone, no matter how innocent the inquiry may appear.

8. Take all reasonable measures to avoid encountering this person and his or her family. A stalker's family or friends can unwittingly contribute to the problem by passing along information about you to your stalker. Do not travel alone. A stalker will be much more likely to leave you alone if you are in a group.

9. File a formal report of all incidents with your local police or sheriff's department.

10. If you continue to receive unwanted contact or attention, file a petition for a restraining order. In almost every state, such forms are available at your local courthouse. This can be done with or without an attorney. Some free legal aid agencies work specifically with victims of stalking and can provide advice and assistance. If you already have an attorney who is assisting you with your divorce or custody matter, consult with your lawyer prior to filing an action yourself.

If these measures do not keep the stalker at bay, file a petition for a restraining order against the person. This process is typically very simple and can be handled with or without an attorney.

11 Keep all text, IM, and e-mail messages, as well as any other relevant physical evidence, such as letters and gifts from the person and photos of property damage. Obtain and record the names and phone numbers of persons who witness any harassing behavior.

12 It may be possible to record and retain all phone calls from the person. Your ability to record conversations with another person varies by state. In some states, you can record conversations if one party consents. In other states, you can only record conversations if both parties consent and/or you advise the other person you are recording the phone call. Speak with your attorney about the law in your state before taking any such actions.

13 Keep the doors and windows to your house and your vehicles locked at all times.

14 Install security systems at home and on your vehicles. Use a timer to turn your lights on and off periodically. Ask your local police department to drive by your house occasionally.

15 Park your vehicle in well-lit, heavily trafficked areas.

16 Do not follow the same daily routine. Take your breaks at different times of day and vary your routes to and from work, as well as your destinations.

17 Contact support agencies, such as domestic violence and rape crisis hotlines, domestic violence shelters, counseling services, and support groups.

18 Keep a log or journal of events. If you need a restraining order, ask for one. Keep a journal of pertinent dates, a brief summary of events, and the names and phone numbers of any witnesses. Consider making copies and giving them to a friend or family member or placing them in a secure place, such as a safety deposit box.

19 At work, have someone screen your phone calls. Only open mail and e-mail from addresses you recognize.

20 Consider deleting any social networking sites to which you belong. This may seem extreme in the age of Facebook, Twitter, and MySpace; however, participation in these online venues provides a stalker easy access to your personal information. If you do choose to share personal information online, set up your profiles so that only those you approve can see your personal information and posts. Tell your friends not to post any of your personal information or tag you in photographs. Also consider blocking the stalker.

21 If you think your stalker is stealing your mail, get a post office box.

22 Sometimes a stalker will use the legal system to try to force contact with you by requesting court hearings, mediation, joint counseling or therapy, and unsupervised exchanges of children. Make sure your attorney is fully advised of the situation so that he or she can notify the court and take appropriate action.

23 If you think your e-mail account has been compromised, close it and open a new account with a free service, such as Gmail or Hotmail. Select usernames and addresses that are nondescript and gender-neutral and that do not contain any identifying information. Do not share your password with anyone. Do not give this new e-mail address to anyone that you do not trust implicitly and instruct anyone who has it not to provide your address to others. Also consider changing your passwords to all accounts. Your ex may remember a password to your account or easily ascertain your password if you use children's names, birth dates, or anniversaries.

24 Handle personal business only on computers you know to be secure and properly equipped with anti-spyware software. Understand that it is possible for a stalker to install software on your computer to record every keystroke, the websites you visit, your IM conversations, etc.

25 Use Google or a similar search engine to find information about yourself on the Internet. Consider using a service like www.reputation.com to monitor others conducting searches about you.

If these measures do not keep the stalker at bay, file a petition for a restraining order against the person. This process is typically very simple and can be handled with or without an attorney. While state procedures differ, generally the process starts with a petition or

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motion setting forth the reasons you need a restraining order. The office of the clerk of the court and local law enforcement agencies have forms for this purpose, and there generally is no filing fee.

Most jurisdictions have at least one judge on duty at all times to review promptly any such petitions and determine whether a restraining order should issue. If there are sufficient grounds, the court will issue a temporary restraining order and arrange for it to be served personally upon the stalker. These orders typically keep your address and contact information confidential. The temporary restraining order typically may be issued initially without notification to the stalker and can provide for such things as a "no contact" restraining order, custody and support of minor children, and possession of a residence. A hearing also is usually scheduled at this time. At such a hearing, each party has an opportunity to present evidence. The court then determines whether a permanent restraining order should issue. If there is already a pending divorce or other domestic or family law case, a motion may be filed in that case for similar relief.

It is important to discuss with your attorney the options at your disposal. It may be possible to have the stalker undergo a psychological evaluation, particularly when children are involved. It may be possible to have a guardian *ad litem* or mental-health professional appointed for your children if the impact of these activities is causing anxiety for them. Your attorney will know how to proceed in your area. Although you may not ultimately file an action for a restraining order, it is important for your attorney to retain documentation of these actions as the information may be relevant to your divorce case and to protecting you in the future. **FA**

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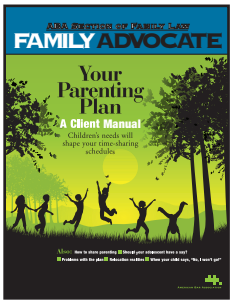

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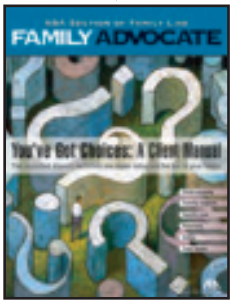

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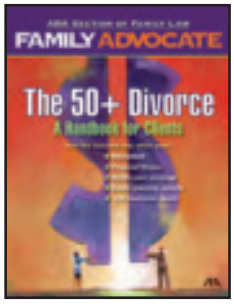

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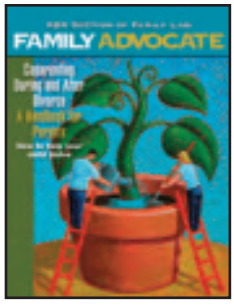

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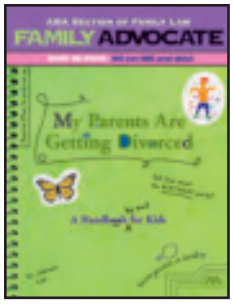

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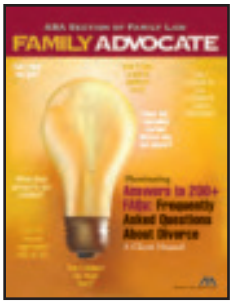

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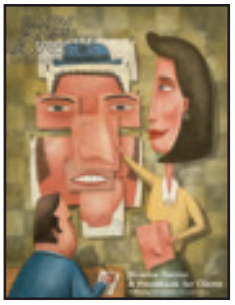
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