

PREPARATION FOR FINAL TRIAL

Presented by:

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State Bar of Texas
FAMILY LAW BOOT CAMP
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CHAPTER 6

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EDUCATION: University of Texas at Austin, Finance Major, Business Honors Program, B.B.A., 1967
University of Texas School of Law, Doctor of Jurisprudence, 1970

LICENSURE: Texas Supreme Court (1970) U.S. Supreme Court (1974)

CERTIFICATIONS: Board Certified in Family Law of Texas Board of Legal Specialization (1976)
AV rated attorney by Martindale-Hubbell Law Directory for 20 years
Credentialed Mediator by Texas Mediator Credentialing Association, 2004-2010
Harvard Negotiation Institute – Advanced Negotiation: Deal, Design and Implementation, 2010
Advanced Family Law Mediator Training by Coye Conner and Julia Kerestine, 2010
Advanced Family Law Mediator Training by Attorney-Mediators Institute, 1996
Basic Mediator Training by American Academy of Attorney-Mediators, Inc., 1994
Certified Matrimonial Arbitrator, American Academy of Matrimonial Lawyers
Collaborative Lawyer, 10 trainings 2001-2008

MILITARY: 1970-1974 United States Marine Corps, Captain, JAG - served as prosecutor, defense counsel and military judge

PROFESSIONAL ACTIVITIES:

Texas Super Lawyer for 2003, 2004, 2005, 2006, 2007, 2008, 2009 and 2010 (*Texas Monthly*)
State Bar of Texas Bar Director, District 14
Fellow, Texas Bar Foundation
Fellow, American Academy of Matrimonial Lawyers, 1992-present
President, Denton County Collaborative Professionals, 2006-2009
Board of Trustees, Collaborative Law Institute of Texas, 2003-2007
Member, Family Law Council, State Bar of Texas 1994-1999, 2000-2005
Member, Form Book Revision Committee, Texas Family Law Practice Manual 1991-present
Historian, Texas Academy of Family Law Specialists, 1990-2009
Past President of Texas Academy of Family Law Specialists, 1989-2000
Past President of Denton County Bar Association, 1983-1984
Past Director of Texas Academy of Family Law Specialists, 1984-1988
Past Director of North Texas Family Law Specialists Association, 1983-1986
Member, Family Law Section, State Bar of Texas and American Bar Association
Member, Denton County Family Law Association
Member, International Academy of Collaborative Professionals

CLE ACTIVITIES, ARTICLES, AND PRESENTATIONS:

Enforcing the Property Division	2010 Advanced Family Law Course
Final Trial	2010 Advanced Family Law Course
Characterization and Tracing	2010 Advanced Family Law Course
Defined Benefit & Contribution Plans	2010 Marriage Dissolution Course
Stages of the Process	2009 Nuts and Bolts of the Collaborative Law Process
Ethical Considerations in Collaborative Law -	2008 Advanced Family Law Course
Is There a Time to Withdraw? -	2008 Collaborative Law Spring Conference
Course Director -	2008 Collaborative Family Law Basic Training
Collaborative Law Workshop Chair -	2007 Advanced Family Law Course
Snafus and Sticky-Wickets in Collaborative Law:	
Problems and Ethics -	2006 Advanced Family Law Course
Planning Committee -	2006 Ultimate Trial Notebook

Collaborative Law: Don't Use the "F" Word	2005 Advanced Family Law Course
'Cause Nothing's Ever "Fair" -	2004 Advanced Family Law Course
Unusual Clauses - Drafting Modules -	2004 Advanced Family Law Course
Mini-Briefs -	2004 Advanced Family Law Course
Planning Committee -	2004 Advanced Family Law Course
Tax Issues and Valuation Issues -	2003 New Frontiers in Marital Property Law
Course Director and Planning Committee -	2003 Advanced Family Law Course
Interesting Family Law Cases -	2003 Marriage Dissolution Institute
Planning Committee -	2003 Marriage Dissolution Institute
Access to Children Under Three Years of Age -	2003 Texas Academy of Family Law Specialists
Planning Committee -	2003 New Frontiers Course
Principles of Characterizing and Tracing*-	2002 Advanced Family Law Course
*(Used as teaching material in law school classes at UT School of Law and Texas Wesleyan Law School)	
Interesting Family Law Cases: An Update -	2002 Marriage Dissolution Institute
Planning Committee -	2002 Marriage Dissolution Course
Discovering and Valuing Concealed Property and Income (with William F. Neal) -	2002 U.T. Family Law on the Front Lines Conference, Galveston
Multiple Purpose Drafting Modules -	2001 Advanced Family Law Drafting Course
Enforcement, Securing and Clarifying Property Division -	2001 Advanced Family Law Course
Planning Committee -	2001 The Art of Negotiation From Crisis to Collaboration, South Texas College of Law
Planning Committee -	2001 Advanced Family Law Drafting Course
Attorneys' Fees and Contracts -	2001 Family Law Seminar, Corpus Christi
Discovery Tracking Systems -	2000 Ultimate Trial Notebook
Law Office Management -	2000 Advanced Family Law Course
Planning Committee -	2000 New Strategies for Family Law Mediation and Advocacy: an Advanced Communication and Negotiation Skills Course, South Texas College of Law
Attorneys' Fees & Contracts**-	2000 Marriage Dissolution Course
** (Voted Best Family Law article of the year 2000)	
Characterization and Tracing -	1999 Family Law Practice Seminar, University of Houston Law Center
Division of a Privately Owned Business -	1999 Advanced Family Law Course
Characterization and Tracing -	1998 Advanced Family Law Course
Characterization of Property -	1998 Family Law Practice Seminar University of Houston
Dealing Effectively with the Mental Health Experts (for You, against You, and Court-Appointed) (with Robert S. Hoffman) -	1997 Advanced Family Law Course
Trying a Custody Case on a Shoestring -	1997 Marriage Dissolution Course
Course Director-	1995 Advanced Family Law Drafting Course
QDROS -	1995 Advanced Family Law Course
Attorney's Fees: Negotiating the Fee, Fee Arrangements and Collecting Your Fee -	1994 Family Law Practice Seminar, University of Houston Law Foundation
A Survey of Family Law Clients -	1994 Marriage Dissolution Course
Office Practice & Procedure In Handling the Typical Family Law Case -	1994 & 1995 Family Law for the General Practitioner and Legal Assistants, South Texas College of Law
Course Director-	1993 7th Annual Trial Institute, Texas Academy of Family Law Specialists
Attorney's Fees - Interim and Final -	1993 Advanced Family Law Course
Exercise and Nutrition, Balanced Moderation for Total Well-Being -	1993 Family Law Practice Seminar, University of Houston Law Foundation
Attorney's Fees in Family Law Cases -	1992 Marriage Dissolution Course
Interesting Cases -	1991, 1992, and 1994 General Practice Institute, University of Houston Law Center
Enforcing Family Law Decrees -	

Attorneys' Fees and Ethics -	1989 Marriage Dissolution Course
Mandamus and Prohibition -	1988 Texas Academy of Family Law Specialists 2nd Annual Trial Institute
Joint Managing Conservatorship -	1987 Family Law Seminar sponsored by Denton County Bar Association
Habeas Corpus and Writs of Mandamus - (with Curtis Loveless)	1985 Marriage Dissolution Course

CONTRIBUTING AUTHOR TO PUBLICATIONS:

Texas Family Practice Manual, Five Volume set, since 1991
Texas Annotated Family Code 2006, 2007, 2008, 2009 and 2010 Edition, LexisNexis Texas Desktop Code Series
Expert Witness Manual (Vol. 2), Family Law Section, State Bar of Texas

CIVIC ACTIVITIES:

Board of Directors KERA Public Television & Radio
Past President, Denton Public School Foundation
Past Denton I.S.D. School Board Trustee
Treasurer of 1985 Task Force Committee on school bond package
Former Adopt-a-School Participant
Past President, Board of Directors of Big Brothers and Sisters of Denton County
Former Big Brother with Big Brothers and Sisters of Denton County
Past President and member of Board of Directors of Summer Summits
Past member of Board of Directors of SPAN
Past Pro Bono Legal Adviser to SPAN
Current Pro Bono Legal Adviser to Friends of the Family
Past Pro Bono legal work for TWU legal clinic and West Texas Legal Services
Past member of the Board of Directors of Denton Rotary Club
Past member of the Board of Directors of Denton County United Way
Past Meals on Wheels Driver
Present Chamber of Commerce member
Past volunteer for Denton State School
Former Boy Scout Troop Committee member
Past Director for County Seat Saturday Fun Run for two years
Past member of County Seat Saturday Planning Committee for two years
Past member, Board of Directors of Denton Community Theatre, 1998-2004
Past fund raiser for YMCA, Boy Scouts, United Way, Big Brothers and Sisters, Summer Summits, Campus Theatre and Denton Arts Guild
Past President, Denton County Texas Exes Association
Volunteer speaker for grades 7-12 at Career Days, Denton I.S.D.
Past volunteer reader at Hodge Elementary School
Volunteer Speaker at TWU and UNT
Past adjunct professor at TWU – business law and women and the law
Past adjunct professor at UNT – business law

CHURCH ACTIVITIES:

First United Methodist Church, Denton

1. Worker and financial organizer for five Habitat for Humanity Houses built by FUMC – Denton
2. Stephen Minister
3. Stewardship Committee
4. Methodism 101 Committee
5. Past member of Mission Commission
6. Past member of Finance Committee
7. Past Chair of Board of Trustees
8. Past member of Habitat for Humanity Committee
9. Past Director of First United Methodist Church Foundation

10. Past member of Staff-Parish Relations Committee
11. Past member of Administrative Board
12. Past member of Nominating Committee
13. Past President, Sunday School class
14. Past youth sponsor
15. Summer Youth Mission Project in Mexico
16. Member, Building Committee for Fellowship Building 1978-1980

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EDUCATION

THE UNIVERSITY OF TEXAS SCHOOL OF LAW, Austin, Texas

Juris Doctor, with honors, May 2006

- Co-founded UT Street Law (an organization dedicated to providing practical, participatory education to public school students about the law, democracy, and human rights): Spring Event Committee Chair, 2005-2006; Co-Director and Scheduling Coordinator, 2004-2005
- The Supreme Court of Texas: Judicial Intern to Chief Justice Wallace B. Jefferson, Spring 2006
- The Review of Litigation: Associate Editor, 2005-2006; Staff Editor, 2004-2005
- Teaching Quizmaster (Writing/Research Teaching Assistant), 2005-2006 and 2004-2005
- Immigration Law Clinic, Spring 2005

UNIVERSITY COLLEGE LONDON, London, England

The University of Texas School of Law Study Abroad Program, Fall 2005

THE UNIVERSITY OF TEXAS, Austin, Texas

Bachelor of Arts, Spanish, December 2000; Plan I Liberal Arts Honors Program, Dean's List, University Honors, Minor in Business Administration

THE UNIVERSITY OF SEVILLE, Seville, Spain

The University of Texas Study Abroad Program, Spring 1999 (all classes taught entirely in Spanish)

LAW FIRM AFFILIATIONS

GREGORY FAMILY LAW, P.C., Denton, Texas

Family Law Attorney, April 2008 – present.

VINSON & ELKINS LLP, Dallas, Texas

Litigation Associate, September 2006 – April 2008.

PROFESSIONAL ACTIVITIES

- Denton County Bar Association and Greater Denton County Young Lawyers' Association, *2008-present*
- Denton County Bar Association Family Law Section, *Secretary/Treasurer 2009-2010*
- Denton County Collaborative Professionals, *Secretary 2008-2009; Vice President 2009-2010*
- Collaborative Law Institute of Texas, *Member 2008-present*
- International Academy of Collaborative Professionals, *Member 2008-present*
- State Bar of Texas Family Law Section, *Member 2008-present*
- Family Law Foundation, *Member 2009-present*

COMMUNITY INVOLVEMENT

- **DENTON BENEFIT LEAGUE**, Member, *2009-present*
- **FRED MOORE DAY NURSERY SCHOOL BOARD**, Member, *2009-present*
- **COMMUNITIES IN SCHOOLS OF NORTH TEXAS**, Gala Planning Committee Member, *2009-present*
- **UNITED WAY PROJECT BLUEPRINT**, Inaugural Class Member, *Fall 2009; Planning Committee Member, 2010*
- **LEGAL AID OF NORTH TEXAS**, Attorney Volunteer, *April 2008-present*
- **CHILDREN'S ADVOCACY CENTER OF DENTON COUNTY**, Attorney Advisor, *2009-present*
- **JUNIOR LEAGUE OF DALLAS**, Active Member, *2007-2009; Nonresident Active Member, 2009-2010*
- **HOUSING CRISIS CENTER**, Attorney Volunteer, *January 2007 – January 2009*
- **DRESS FOR SUCCESS**, Volunteer and Mentor Program Coordinator, *November 2006 – December 2007*

ARTICLES AND SPEECHES

- "Sometimes You're the Windshield, Sometimes You're the Bug: Responding to a Grievance"
Co-author with Charla Bradshaw Conner, Marriage Dissolution Institute, April 2009
- "The Basics of Discovery"
Speaker, Denton County Bar Paralegal Association, September 2009
- "Social Networking Evidence and Ethical Issues"
Author and Presenter, Marriage Dissolution Institute, May 2010

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PREPARATION FOR FINAL TRIAL

I. INTRODUCTION

Every lawyer practicing family law will have to try a case at some point. It may be on a singular issue or many, a divorce with six kids and tens of thousands in assets or no kids and only debt to divide. Regardless of the facts and issues, a final trial is your client's final option to end his or her case. We owe it to our clients to give their trials our best effort, and this article is designed to help you do so.

II. PREPARE, PREPARE, PREPARE

It should go without saying that preparation is crucial for trying a case, but the value of thorough preparation cannot be overstressed. Regardless of the facts and issues involved in your case, all successful trials have certain common denominators, the most basic of which is preparation. No trial can be properly executed without careful and methodical preparation.

a. Get an Early Start

No case can be developed at the last minute. If you don't start your trial preparations early, you'll find yourself scrambling and unprepared. A good trial lawyer operates under the assumption that every case will be tried and plans accordingly. The creed is simple – hope for the best and plan for the worst.

In a property case, early preparation means immediately identifying possible contested issues such as valuation and characterization and laying the groundwork to support your client's position.

In a custody case, it means knowing the history of the couple's relationship with their children better than anyone and finding the lay witnesses, experts, and other evidence to support your client's theory about what is best for his or her children.

b. Organize Yourself

Nothing will interfere with execution of your trial quicker than a lack of organization. If you are not organized, you will be nervous, and it will show. Your client will not be fooled, and neither will the Court. Bad facts are unavoidable, but poor preparation is not.

Start with the basic idea that the file you are building during the course of your case will be your foundation for trial. Find a system that works for you and stick to it, whether it's sub files, binders, or color-coding. Keep all of your notes from key conversations with your client, experts and other witnesses, and date them. Build your trial file from day one by segregating and organizing client notes and discovery responses received and produced. Keep pleadings and correspondence, including e-mails, in date order. Organize your file by issue and subdivide within each

issue (for example, property issues subdivided into car valuations, bank statements, and business documents).

c. Calendar Pre-Trial Deadlines

You have the potential to break your case by missing one of many pre-trial deadlines. Know your deadlines, create a calendaring system that works for you, and set reminders for yourself so that nothing sneaks up on you. Attached as Appendix A is an example of a calendar of pre-trial dates. There is software on the market, and probably even an iPhone application, that can be used to calendar dates onto an outlook calendar.

Whatever system you find works best for you and your office staff, the timeline to trial should begin 130 days from trial- 10 days before the designation of experts is due. You should have some sort of "tickler" system set up in your calendar and that of the legal assistant working on the case, so that you're sure to know when deadlines are approaching. Don't forget to incorporate deadlines imposed by the court's local rules in your countdown.

d. Know Your Burden of Proof and the Elements of Your Causes of Action

Early on, identify and write out the burden of proof for each contested issue. This way, you will keep the burden in mind to prove your position and can easily identify and point out to the Court when your opposing counsel has not met his/her burden of proof. For example, one component of the burden on the requestor in a modification case is to demonstrate a "material and substantial change in circumstance." Use those words in framing your questions. By understanding your burden of proof, you can further streamline your presentation of evidence by eliminating extraneous facts that add nothing to you meeting your burden. You may also use this exercise to define the theory and themes of your case. Use outlines to organize the specific evidence, whether testimony or documentary evidence, that meets your burden of proof and make that evidence central to your case.

In addition, if yours is a case involving additional causes of action pled by either party, use both O'Connor's Causes of Action and the pattern jury charge to do a similar exercise with the elements of each additional cause of action. Again, knowing the elements in a cause of action brought by your client will help you organize your trial evidence and keep you on track during the trial. As well, it will easily help you identify if your opposing counsel has not proved an element of a cause of action pled by his or her client.

e. Know the Local Rules

Read and comply with the local rules. Local rules often have different requirements than do the state rules, and you may find that though you've complied with a state rule requirement, you are not in compliance with local rules, which can have an adverse effect on your case. For example, Texas Rule of Civil Procedure 203.6(a), governing use of a videotaped deposition at trial, has the same requirements as does the rule governing use of a stenographic recording of a deposition at trial; however, Rule 2.15 of the Denton County Local Rules, for example, requires that counsel intending to offer videotaped depositions at trial, except those offered solely for impeachment, must serve opposing counsel with page and line designations for videotaped depositions no later than 30 days prior to trial. An attorney not familiar with this local rule intending to offer a videotaped deposition at trial would certainly be surprised to learn this rule at trial, and would likely be prohibited from offering such evidence.

f. Know Your Judge

Whether working out of county or in your home county, take time to learn whatever you can about the judge who will preside over your case. Learning about his or her preferences and biases will prove invaluable in advising your client with regard to possible settlement, in preparing your client for trial, and at the trial itself. Imagine you don't do this homework and so you don't know that the judge you will be in front of is very conservative when it comes to attire. Your client may then wear a sleeveless shirt to the hearing because you didn't advise her on proper attire to meet this judge's preferences, creating a lasting negative first impression on the judge that adversely affects the result of the case. Such a result may be minimized or eliminated by an attorney who knows the judge's preferences and biases.

g. Know Your Place on The Docket

This sounds so simple, but often, we as lawyers get caught up in our trial preparations and forget: know your place on the docket. Call, or have someone in your office call, the court coordinator the day or a few days before your hearing setting. Doing so may eliminate a weekend of unnecessary preparation and the associated expense if you find out that your case is fifth in line behind a couple of jury settings, at least one of which the coordinator thinks will go forward.

h. Reduce or Eliminate the Drama (for a Bench Trial)

While drama, mystery, and intrigue are the elements of a family law case that will keep a jury interested and engaged, our judges have heard and seen it all and are likely to be unsympathetic to the client

who tries to play on emotion, unless it is real and goes to the heart of your case. So don't over-dramatize your case in a bench trial. Emotions play a key role in certain cases, but expecting a family law judge to share your client's outrage at every minor marital indiscretion is naïve.

i. Thoroughly Review Your File

Before commencing any serious effort at trial preparation, review all of your personal notes taken during the course. Every good, organized attorney will have a filing system that includes a section for attorney notes. Often one of the longest times you will spend with a client is during your initial client interview, where you frequently will take a detailed marital history. It is often the history learned at the initial meeting that will form the basis of some of the most compelling testimony that will be presented at trial. As the case progresses, clients will frequently raise issues concerning problems with the other party that may form a pattern of behavior that is important to be presented to the court, which will be developed in your historical notes, taken throughout the course of your representation of the client. A review of your notes will also remind you of your client's stated goals and interests. This will help you to assess what a "win" at trial will look like from your client's perspective, and may help you focus your trial preparation. Your notes will also allow you to revisit your client's goals and to rein in unrealistic expectations before you step into the courtroom for trial.

III. DISCOVERY ISSUES FOR FINAL TRIALS**a. Know Your Discovery Deadlines**

As discussed earlier, knowing your deadlines is essential, especially when it comes to discovery issues. As we all know, the failure to produce or supplement discovery may prevent us from using certain evidence at trial, which could prove to be detrimental.

b. Supplement Your Discovery Responses**i. Rule 194 Requests**

Pay particular attention to your responses to Rule 194 Requests for Disclosures. The first response to a 194 Request may have been very general in nature. If you fail to supplement the response prior to trial, however, you may lose the ability to put on key evidence that has developed over the course of your case. For example, if you did not include Mrs. Smith, the child's teacher, in your initial Rule 194 response, and then fail to supplement and include her on your list of persons with relevant knowledge, an objection to you calling Mrs. Smith as a witness at trial will likely be sustained. Also, do not forget to provide redacted copies of your billing statements on a monthly basis.

ii. Expert Witnesses

Go back through your expert witness designations to be sure that you provided a resume or curriculum vitae for each expert, and carefully review their designated subject matter and mental impressions as set out in your discovery responses. Many times an expert's testimony will evolve during the pendency of a case, so while he or she may initially have been identified as testifying on one particular subject, the scope of his or her testimony may have been expanded to include other areas. You do not want to be caught in the unfortunate situation of having your expert's testimony excluded or limited because of your failure to supplement your discovery response.

iii. Interrogatories

Review your client's answers to interrogatories and identify answers that need to be amended or expanded. Sometimes a skeleton answer is provided to certain interrogatories early in the case so as not to inflame the other party or reveal too much of your strategy. As the thirty-day deadline approaches, sit down with your client and identify those responses which should be supplemented.

iv. Requests for Production

Don't forget to review your production responses and make sure that you have supplemented. In addition, make sure that you have provided all documentation necessary to support the values on your inventory and for use in your suit affecting the parent-child relationship case ("SAPCR"). Emphasize to your client the importance of meeting the thirty-day supplementation deadline and the necessity of providing the most recent statements for all financial accounts, credit card accounts, and other debts.

c. **Review Opposing Party's Responses**

As soon as the thirty-day deadline for supplementation has passed, you should do a detailed review of the opposing party's discovery responses. Seek out and make note of incomplete answers, claims made with no supporting legal theories, and experts whose opinions were never supplemented. Also make yourself extremely familiar with documents produced so that you will know, or be able to easily identify, whether a document the other side attempts to admit at trial was produced if responsive to one of your discovery requests. You can use all of this knowledge to limit or exclude the other side's testimony and evidence during trial.

IV. TRIAL AIDS

a. **Trial Notebook**

Your trial notebook is a must have. It is your roadmap, designed to guide you from the beginning of trial to the end of trial. A well-prepared, well-

organized trial notebook can be the single most valuable trial aid a lawyer can have. Preparing a trial notebook is a task to be taken seriously and is best begun long before trial. There have been presentations given and articles written solely focused on the importance of a lawyer's trial notebook, including examples of the types of things to include in the notebook. Briefly, the notebook should include:

- Current, live pleadings for each party;
- Underlying order in a modification case;
- Written Discovery Requests and Responses for each party;
- Witness notes, their contact information, and an outline for direct and cross examination of each witness with references to the exhibits that each witness will be asked to sponsor or testify to, as well as a copy of the witness subpoenas;
- Exhibits, with predicates noted for each exhibit to be offered into evidence and responses to anticipated objections;
- A working copy of your inventory and exhibits to support each asset and debt set out by number next to the corresponding asset/debt on the inventory;
- Expert reports;
- Deposition transcripts; and
- Proposals for final orders.

In a property case, you may consider organizing your trial notebook in the order of your inventory. When you have multiple documents to introduce for a single inventory item, organize these documents in a meaningful order (i.e. chronological).

For an orderly presentation in any case, prepare a list of all exhibits that you intend to introduce. Your exhibit list will also serve as a table of contents for the exhibits in your trial notebook. In a complex case, you may need separate notebooks for your exhibits.

Attached as Appendix B are two chapters from a new publication put out by the Family Law Section of the State Bar of Texas called "The Ultimate Checklists." This publication is a great resource not only for trial, but also for all other aspects of practice. The attached chapters address trial notebooks and trial to the court.

b. **Judge's Notebook**

You should also prepare an evidence notebook for the judge. The judge's notebook may include live pleadings, discovery responses, relevant deposition transcripts, and pre-trial motions. A notebook keeps the Court focused and organized. A notebook allows the Court to see what your client is testifying about and gives the Court the ability to highlight important

evidentiary points and make notes to use when making the final determination in a bench trial.

c. Trial Supplies

Take a container with your “trial necessities” – post-it notes, highlighters, white out, Kleenex, mints, a calculator, stapler, exhibit stickers, change for the copy machine, etc. In the spirit of being organized and prepared at trial, you want to have everything you could possibly need at your fingertips so that you avoid looking anything but cool and calm throughout the trial. Also, don’t forget to bring your annotated Family Code, a copy of the local rules and Texas Rules of Evidence, and the “Tool Kit” published by the Family Law Section of the State Bar of Texas.

d. Your Legal Assistant

If your case is particularly document-intensive, have your legal assistant assist you at trial, especially if there are a significant number of documents to be introduced into evidence. If it difficult enough to focus on testimony, the flow of evidence, and to take notes for cross examination or closing argument without complicating the process by having to worry about digging through file boxes for your next exhibit. Further, your legal assistant can keep you organized as you go through trial, replacing and re-organizing evidence or notes as you proceed, while providing a second pair of eyes and ears. In most cases, the client has probably had as much interaction with your legal assistant than with you, if not more. The legal assistant can also help you by managing the client during breaks, while you organize yourself to be ready when trial resumes. You may also consider having your legal assistant keep the list of exhibits offered into evidence by you and by the opposing side, with notations for exhibits that were admitted or not. Also, if yours is a particularly document-intensive case, you may have document logs for documents produced by you and to you in discovery. Your legal assistant should be in charge of keeping the logs up to date, and will provide invaluable support to you during trial in locating documents.

e. Preplanning for Practical Aspects of Trial

If your trial will be more than a few hours, you may talk to the security guards or bailiff at the courthouse, or have your legal assistant do so, regarding when your trial will take place, how many days you expect to be there, how many boxes you will have and what equipment you might need that the court provides. Find out if there are certain procedures that will ease your burden and help them do their job. Be sure to anticipate having to have all your boxes sent through the x-ray machine and plan for the time necessary to do that each morning.

Visit the courtroom in advance, if it’s not one you normally practice in, to examine the layout of the jury box, counsel tables, electrical plugs, lighting, best place to set up your equipment and large exhibits, etc. Find out if the Court has its own video equipment, easels, chalk board, dry erase boards, and the procedures for using them. Sometimes they have to be reserved in advance. Find out the location of the nearest copy machine, and whether it takes bills or change or whether you have to have a copy card.

Introduce yourself to the security guards, courtroom bailiff, court coordinator, and court reporter. Leave your business card with each of them. Find out if they have any special procedures during trial.

V. WITNESS PREPARATION

Good witness preparation can dilute bad facts and tip the scales when facts are close. You can’t spend too much time making sure your witnesses are confident and ready to testify. The following tips will prove very helpful in achieving that goal.

a. Preparing Your Client

Get control over your client weeks before trial. Educate your client to the realities of trial, including an overview of the trial process. Explain everything from the role of court personnel, the fact that trial proceedings are open to the public, appropriate dress, appropriate demeanor, as well as the basic order of the trial proceedings. You might even consider sending or taking the client to the courtroom, if there have been no temporary or other hearings in the case, to allow him to see where the trial will take place. An educated client who knows what to expect in the courtroom will be less stressed and will be better able to focus on his testimony and the analysis of the testimony of others.

b. Preparing Your Expert(s)

In preparing your expert to testify, it is imperative that you work with the expert one-on-one. Tell your expert that you want the truth. Read your expert’s report well in advance of trial. If there are aspects of the report that you do not understand, then make your expert explain them to you. This is especially important when dealing with issues involving tracing or business valuations, which may be more complicated than even the most sophisticated practitioners fully understand.

Begin working with your expert several weeks prior to trial. Work with your expert in person, particularly if you or your expert is relatively new to litigation or if you and your expert are unfamiliar with each other. Have your expert walk you through what he believes are the most salient points for his testimony and the strongest factors supporting the positions he has taken.

Just because you call an expert to the stand, doesn't mean you must spend hours on direct examination. Sometimes very succinct expert testimony is the most effective. Don't "over examine" your expert, as this will only allow your opposing counsel the time to think and prepare a cross examination that your expert may be ill-prepared to deal with.

Use your expert to develop a critique of the opposing expert's report. Also, your expert is the best person to assist you in developing his own direct examination, anticipating the cross-examination from opposing counsel, and preparing you to take the opposing expert's cross examination, so utilize your expert in these ways.

It is outside the scope of this paper to educate the practitioner on *Daubert* and handling/surviving a challenge to an expert's qualifications. There are many good articles written on this issue. If your opposing counsel will not stipulate to your expert's qualifications, then you must be prepared to respond to a *Daubert* challenge.

c. Preparing a Lay Witness

Preparing a lay witness to testify begins with the initial interview of the witness, which should occur early in the case. This first interview can be conducted by a legal assistant familiar with the case, and should be a general discussion stressing that you are not looking for testimony "for" your client or "against" the other party, but rather for an objective view of the facts so that you may better understand the circumstances of the parties and their children, if they are at issue in the case.

A trained legal assistant should be able to quickly ascertain those potential witnesses that have good information that they are willing to share and those potential witnesses that are reluctant to testify and have little to offer to assist the trier of fact. After these calls, you should be ready to discuss with the client and your legal assistant the witnesses' responses. A form is attached to this paper as Appendix C that you might consider using for these initial calls and to keep information related to witnesses organized.

Many times, your client will suggest witnesses that simply don't want to testify or who have very little to say that is helpful to your client's case. Worse yet, some witnesses suggested by your client may have a completely different view of your client and the case facts that your client does. Focus the client on the best witnesses to be used at trial and do not be afraid to be honest with your client about what witnesses have said in these initial interviews that has led you to your conclusion that a witness would be good or bad, helpful or unhelpful.

Be certain that witnesses are not repetitive. Each witness should add something valuable and new to

your case, not merely reiterate or bolster the testimony of another witness. Judges do not like repetition, and juries may find it patronizing.

Do not leave all of the work to your legal assistant. It is important to confirm for yourself that witnesses are competent to testify, that they actually have the information that your client claims they have, and that they are able to communicate the information effectively to the judge or jury. You must "work up" your own witnesses by discussing their testimony with them, walking them through your planned questions, and testing their ability to meet the pressure of trial.

Always instruct the witnesses as to proper attire, courtroom demeanor, courtroom rules like cell phones off and no gum, appropriate responses to cross examination, and how to handle objections. Instruct your witnesses about "the rule" and explain the consequences of violating "the rule."

Finally, call all witnesses in the days immediately leading up to trial. Ask if any new information has come up since your last conversation, and confirm that the witnesses will be in Court on time and in the right place. It is always wise to issue a "friendly" subpoena to every witness. You should tell your witnesses to expect to receive them and that issuing the subpoena is standard procedure.

VI. CREATE A SMOOTH FLOW

Whether yours is a bench or jury trial, you should strive for efficiency and a smooth flow of at least your side of the trial. Below are a few tips that will aid in achieving these goals.

a. Stipulations

Make early contact with opposing counsel to determine what evidence can be admitted by agreement. Stipulations cut trial time allowing you to focus on witness development and cross examination.

Stipulations can also extend to every issue upon which there is disagreement. For example, the parties can agree and stipulate to the value of certain property, the award of certain property or debts to one or the other of them, or any issues related to the children, thereby removing these issues from the trial and requiring the judge or jury to only determine those issues where exists disagreement of the parties. Stipulations save time and money.

Prepare written stipulations signed by the parties or read your stipulations into the record at the start of trial.

b. Common Courtesies

Always be flexible in extending common courtesies to opposing counsel. Allowing witnesses such as teachers, experts, or out-of-town witnesses to be taken "out of order" will likely not harm your case and may make a favorable impression on the Court.

Civility should never be viewed as a sign of weakness. You should let your client know prior to trial that you may do such things, so that your client does not view an agreement as anything other than what it is – professional courtesy.

c. Smooth Introduction of Evidence

Keep evidence simple, clean, and non-repetitive. Know your predicates so that foundations for admitting evidence are laid properly and efficiently without objection. Review your exhibit list and incorporate the predicate into your outline or put a copy of the predicate with the evidence to be introduced. This preparation will keep you from struggling over the admissibility of evidence, both basic and unusual.

Make sure that exhibits are pre-marked and ready to be properly authenticated. Another note related to the section above, “know your judge,” is to know how your judge likes evidence identified. Some judges may be fine with “Exhibit 1” or “Petitioner’s Exhibit 1,” but others require something different, such as “Husband’s Exhibit 1” or “Father’s Exhibit 1.” Knowing this ahead of time will allow you to properly pre-mark exhibits and avoid the hassle and potential disruption of learning a fact such as this during the trial. (In addition, look at the local rules of your court to see if there are any related to the marking and exchanging of exhibits to be offered at trial.)

You should pre-mark exhibits in the order that you anticipate using them, based on your trial story, but do not be rigid about this. Bear in mind that exhibits do not necessarily need to be introduced in their numbered order, although that is preferable. It is better to have a natural flow to your story than to rigidly adhere to admitting pre-marked exhibits in order.

Keep a list of your exhibits and that of the opposing side that are offered into evidence and those that are admitted. Attached as Appendix D is an example of such a list.

Simple is good. Especially in property cases, evidence tends to be complex enough without burdening the judge or jury with trial exhibits that look like hieroglyphics or a complex rabbit trail. Expensive, professional exhibits blown up on large board will impress your client and may make the client feel more confident, but they will likely not do more than the same evidence presented on an 8 ½ by 11 sheet of paper. The jury may be allowed to view such exhibits during deliberations; the judge will not likely carry the blown-up exhibits into chambers. The judge can, however, take notes on the same evidence on a sheet of paper, which he or she may then use when drafting the ruling. Always provide the Court with a duplicate set of exhibits, a work set, to be used for notes. These may be provided in a judge’s notebook, as discussed above. You make the court’s job easier

by providing this work copy, and you will help your client out as well if the judge is able to refer to your evidence when considering the case after-the-fact.

Consider thoughtfully which witness will sponsor each exhibit. Establish a file folder to each witness and include in that folder duplicate copies of the exhibits that the witness will be sponsoring. Review the exhibits with the sponsoring witness prior to trial.

d. Making Objections

Learn your objections and state them succinctly. Speaking objections drive most judges crazy. Basic objections are set out in the Family Law Tool Kit and include:

- Objections to the form of the questions (asked and answered, argumentative, compound, leading, etc.)
- Objections to the form of the answer (narrative, non-responsive, etc.)
- Objections to the witness (not designated, incompetent, etc.)
- Objections to testimonial evidence (irrelevant, hearsay, privilege, etc.)
- Objections to exhibits (hearsay, cumulative, parol evidence, best evidence, etc.) and
- Objections to the conduct of opposing counsel (harassment, side bar remarks, etc.)

Review these objections with your case in mind. Anticipate evidence the other side may attempt to introduce and your corresponding objections. Anticipate what objections may be made to your evidence and be prepared to respond.

e. Requested Relief Exhibit

One of the best ways to keep yourself focused in trial preparations and on track at the trial itself is to prepare an exhibit that summarizes your client’s requested relief. In a jury trial, this will help you walk through your client’s goals through testimony and documentary evidence; in a bench trial, you may present the summary to the judge, often in the form of an evidentiary exhibit. The summary should succinctly state what your client is requesting, as specifically as possible. The last question that you want a judge or jury to have at the end of a trial is – “Ok, so what does Mr. Jones want us to do?” An example of a requested relief exhibit is attached hereto as Appendix E.

VII. PROPERTY TRIALS

Successfully presenting a property-intensive trial depends on your ability to meticulously prepare your case and effectively present complex and detailed evidence. Your presentation must make sense to the judge or jury. Preparing a property case for trial is an

involved process involving many legal issues, which, depending on the facts of your case, may involve experts, valuations, tracing, and a potential myriad of complex legal theories. This paper does not attempt to detail the preparations for each potential issue, as there are very helpful and instructive articles written on most every potential issue imaginable. Instead, specifically with regard to property trials, this author suggests that the three most effective tools in a property trial are preparation of your client, your inventory, and your proposed property division, each of which is discussed below.

a. Preparing Your Client

Your client must understand his or her own estate. This can be particularly difficult with clients who have not worked outside the home or who left the financial responsibilities of the household up to his spouse. Discuss each inventory line item with your client and work with him on an understanding of the basic issues involved in the finances of the estate.

If you don't have an expert, your client may need to understand the concepts of present value, pre-tax versus after-tax values, discount rates, fair market value, and basis, if any of these concepts are relevant to the discussion of the estate. A client who is reduced to confusion and bewilderment on cross-examination is a client who will not likely be credible and will be difficult to rehabilitate.

Focus the client on debt. Usually clients are obsessed with the assets they want and totally ignore the benefit of "offloading" debt to their spouse. Debt is real. Eliminating debt may have far more of a day-to-day financial benefit for the client than additional assets, as eliminating debt will increase current cash flow.

Educate your client on the realities of trial. Emphasize to the client that court cannot and will not agonize over the division of the china collection, the damage to the rear fender of the vintage car, or the fate of the family dog. Get your client focused on the big financial picture.

Have a goal in mind before you begin trial that your client understands. Help your client identify what assets will work best for him. Assist your client in avoiding sentimental mistakes that he will live to regret, such as trying to keep a house that he cannot possibly afford.

If there are tax issues involved in a case that are relevant and important, explore those issues in depth. Tax issues can include such things as identifying a large gain that may be associated with award of an asset such as a brokerage account. If your client must cash in a 401(k) or IRA in order to pay immediate debts or to bridge the gap before he is able to return to gainful employment, the client must understand the tax consequences (and be aware of potential financial

penalties) and should reduce the value of the asset in his mind accordingly.

b. Inventory

Strive to complete your client's inventory as early as possible in the case. Lawyers often forget to ask for or enforce the court-ordered dates by which the parties must produce their *Inventory and Appraisal*. Know the deadline required by your local rules, if any, for exchanging inventories. Meet the deadline and insist that opposing counsel does so as well. The sooner you can identify the difference in the clients' views of the marital estate, the sooner you can prepare your trial strategy.

Exchanging inventories early will force you to identify issues while you still have time to supplement discovery. Your client's inventory will also solidify your knowledge of the estate and get you and your client focused. You are all but guaranteed a disaster if you begin preparing your client's inventory 30 days or less before trial.

At least two weeks in advance of trial, go through the inventory with your client line by line. Be sure that both you and your client understand how every value was determined. Do not assume that your client understands expert reports, blue book values, or that the values that they have given you are based on sound reasoning and correct math. If the value of an asset makes no sense to you, it will surely not make sense to the judge or jury. Pay particular attention to the items that were left to your client to value. Also, be sure that all account values are updated as of the week before trial. In this day of shifting markets, a month can make a tremendous difference in value.

Be sure to follow through and update any early-filed inventories so your client will not be precluded from offering evidence of character or value simply because the original inventory stated "unknown" or "to be determined." Early inventories should be labeled "preliminary" and reservation clauses should be included to allow for supplementation when discovery is complete.

c. Proposed Property Division

Along with your inventory, your proposed property division is one of the most important documents that you will provide to the Court in a divorce case. It must reflect the property division that you will be asking the Court to render and should be presented in spreadsheet form. The proposed property division should mirror your inventory, tracking item by item the asset, account numbers, and values, while specifying the aware of each asset in both dollars and percentages.

Do not hesitate to attach additional exhibits to your spreadsheet. The proposal may also include all special, specific terms that your client needs included

in the final order to make the division enforceable. Submit with your proposed property division the language you will be asking the court to insert in the order. Load it up with hearsay and reminders of fault and any other advantage you can take. These proposals rarely draw objections and are an excellent way to refresh the court's memory regarding trial testimony. This will be especially important if, in a bench trial, the judge makes his or her rendition days or weeks following the trial, or if the trial has been segmented or continued.

Finally, transfer your property division spreadsheet to a disk or thumb drive for presentation to the judge so that he or she may work from your proposal when formulating the property division.

VIII. SAPCR TRIALS

As with property trials, SAPCR trials may involve many issues, and each individual issue must be given much more study before trying a case in which any such factors are present. A trial involving contested SAPCR issues can involve contested child support, disagreements over parental rights and duties, including the right to determine the primary residence of the child, visitation disputes, a question regarding relocation, sole managing versus joint managing conservatorship, all of the above, or any combination thereof. There issues that arise between parents over their children are as varied and complex as human nature itself, which is to say that there is no telling what facts you should expect to contend with at trial. One thing for sure: SAPCR issues are emotionally charged for clients. Thus, preparation of your client, your witnesses, and your expert are key.

a. Client Preparation

Most often, the SAPCR cases that end up in final trial are those where the parents are arguing over "custody." In such a scenario, one or many other SAPCR issues, from rights and duties to visitation to relocation, may be thrown into the mix as well. This section will focus on "custody" cases, but there are cases where, for example, relocation is the only issue to be tried. There are a number of great articles written discussing the broad range of potential legal issues in a SAPCR and providing guidance for preparation of each.

As a general rule, as was mentioned above under "Get and Early Start," your main goal in any SAPCR case is to know the facts of your client's marriage and his children better than anyone else. It is through this knowledge that you can best present your client's case to the judge or jury.

To really learn your client's story, you need to know the family's history, the roles each family member plays, and any significant events in the family. You can start your education through "homework" that

you ask your client to complete. This may take the form of a timeline, a calendar with notations for significant dates and events, or a worksheet/questionnaire that you have prepared and ask the client to complete. An example of such a questionnaire is attached hereto as Appendix F.

Having your client complete a custody questionnaire will serve as a reminder to your client of those facts and events that he might not have thought to tell you in the initial interview or that he might not have viewed as important information for your preparation of the case.

As part of the worksheet, request that your client provide detailed information regarding which parent was responsible for certain and significant child-care tasks. Encourage your client to provide complete answers and to be as objective as possible, including information that may not be favorable to your client and might even favor his or her spouse. Encourage your client to provide as much information as possible to support why a ruling that, for example, he be named the "primary" conservator is in the child's best interest while the same ruling for his spouse is not in the child's best interest.

The information gathered in the questionnaire will be used to help you determine what evidence exists and should be used at trial and who your potential witnesses are, as well as to prepare your client for testifying at trial. Matching your client's facts with the "best interest" factors will provide the roadmap to establish that the best interest of the child is best served by the ruling that your client is requesting.

b. Witness Preparation

Lay witnesses will likely be used more often in a SAPCR case than in a property trial. Important in preparing for a SAPCR trial is to identify those lay witnesses who can provide support that the ruling that your client is requesting is indeed in the best interest of the child subject of the suit. Many potential witnesses will likely be discovered through your client's answers on the client questionnaire discussed above. Once identified, you should follow the steps outlined above in "preparing a lay witness for trial." Attached as Appendix G is a questionnaire you may consider having potential witnesses complete in order to assist you in your preparations.

c. Expert Witnesses in SAPCRs

The most common expert witness called in a SAPCR trial is a psychologist or psychiatrist. While normally only clients with some money or financial backing can afford a mental health professional on his "team," many clients can afford to share the cost of a court-appointed mental health expert.

If you are lucky enough to have the resources to hire a mental health expert for your side of the case, it

is important to select a psychologist or psychiatrist who will appeal to the Court and fit the circumstances of your case. Again, knowing your judge will be an important factor in making such a determination.

Regardless of whether the expert is selected by you or appointed by the Court, you will be required to elicit testimony from this expert at trial. When dealing with a court-appointed expert, avoid any contact with this expert that does not involve notice to the other side. Some judges require as such, but it is a suggested best practice regardless. You will receive a written report from this expert prior to trial and it must be reviewed with the most critical eye. If the report favors your client, develop evidence to support the expert's conclusions; if you are on the downside of the report, look for factual errors in the report and evidence of bias in the preparation of the report.

If the court appointed the mental health expert, don't expect to get points for attaching the expert's credentials or basic methodology. It may be more effective to hammer at what the expert did not do or what the expert did not know about the parties when the expert formulated his opinion. Don't forget, a court-appointed expert may spend as few as five hours with the parties and the children. There are many facts that you can use to your client's advantage that the expert may have overlooked or simply not have the knowledge of at the time he reached his conclusion.

The effective use of experts in a SAPCR is a subject upon which an entire article could be, and has been, written. Research this subject well. Read about the testing that experts employ, the art of deposing experts, and their requirements set out by the professional cannons for preparing evaluations in cases like yours.

IX. ATTORNEY'S FEES AT FINAL TRIAL

The Court always has the ability to award attorney's fees pursuant to Texas Family Code section 106.002 in SAPCR cases and pursuant to sections 7.001 and 7.002 in divorce cases. In preparing a request for attorney's fees at final trial, you must ensure that your pleadings and discovery responses support your request. List yourself and your supporting expert or experts on the issues of attorney's fees as experts in your discovery responses, and provide opposing counsel with all evidence requested as to the issue of attorney's fees, including contracts and redacted billing statements.

Provide testimony through your client concerning your representation, amount paid to you and owed to you, sources of funds used to pay you, including any debt instrument evidencing borrowed funds. Stress the opposing party's conduct and refusal to cooperate during the pendency of the case if that conduct contributed to increased fees and expenses. If possible, get a stipulation as to your qualifications from your

opposing counsel. If that fails, be prepared to testify to your qualifications and experience as is necessary to be qualified as an expert witness.

In your testimony, summarize the fees requested, testify to any special circumstances and problems encountered in the case, the time and labor involved, and the reasonableness and necessity of your fees. Also, be prepared to offer into evidence any settlement offer that, if accepted by the other party, would have mitigated the amount of attorney's fees incurred. Remember, settlement offers may be admissible if offered for a purpose other than those proscribed by Texas Rule of Evidence 408.

Since most of us enjoy our work more when we get paid for it, elevate the importance of preparing the issue of attorney's fees in those cases where recovery can realistically be anticipated.

To attack an opposing counsel's request for fees, cross examine the opposing party about the assets available for payment of fees, about his personal expenditures made during the case that could have been used for attorney's fees, and about any conduct that increased fees, such as failure to cooperate during the case. Opposing counsel's detailed billing should be reviewed to determine if the time and expenses incurred were "reasonable and necessary." You may ask the attorney about any specific charges when he testifies as an expert on fees. Compare the hourly rate charged to the rate that is considered standard in your area, as well as comparing his bills to yours to see if the billing is consistent as far as the similar tasks that you both conducted.

X. CONCLUSION

Most often, the best pre-trial preparation is advice given to the client to assist them in settlement of the case. There are many costs and risks involved in submitting a case for final determination to a judge or jury, and your client should be well aware of these costs and risks well in advance of stepping into the courtroom on trial day. If you do find yourself facing a final trial in court, you must start preparing your case, as well as your client, well in advance in order to be as organized and prepared as possible to present your client's best case. Start early, work hard, be creative, and prepare your client for the realities of the courtroom. Hopefully this paper, and the advice and exhibits included, will help you to achieve these goals.

[STYLE OF CASE]

Timeline to Trial

Final Trial Date _____

Days to trial	Task	Date	Date Completed
120	Designation of experts		
63	Last day to send (via fax or mail) discovery to other side		
60	Last day to hand-delivery discovery to other side		
30	(1) Last day to file sworn I&A with opposing side; prepare Certificate of Compliance (2) Amend I&A and confirm supporting info and prepare spreadsheet. (3) Last day to supplement discovery responses (4) Raise issue of any BRAs to be filed (5) Call Court to see if visiting judge for trial date (6) Set appt for attorney and client to prepare for trial 7 days before hearing. (7) Determine all your elements of proof and evidence needed to meet your burden (8) Determine which witnesses you will call and what evidence you will present through each witness (9) Prepare witness subpoenas (10) Write any briefs or arguments on legal issues to be presented to the Court		
14	Last day to file BRAs		
10	(1) Update I&A w/ client for current numbers (2) Ask attorney if we need to amend pleadings (3) Prepare exhibits		
7	(1) Last day to amend pleadings. (2) Attorney to prepare with client.		
3	(1) Prepare I&A spreadsheet with proposed division (2) Have all exhibits premarked and copies made (3 copies of each) (3) Have trial notebook for you and the Judge prepared (4) Call court to make sure there will be no visiting judge		
Day before	(1) Prepare Attorney Fees summary (2) Call court to check docket		

12. TRIAL NOTEBOOK**A. Temporary Orders Hearing**

- Live pleadings of the parties
- Subpoenas
- Witness List for Client
 - Fact Witnesses
 - Expert Witnesses
- Witness List for Opposing Party
 - Fact Witnesses
 - Expert Witnesses
- Exhibits
 - Property
 - Children
- Attorney Fees

B. Bench Trial (see Trial Notebook Dividers sold by Family Law Section)

- Pretrial Motions
- Stipulations
- Husband's/Father's Pleadings
- Wife's/Mother's Pleadings
- Husband's/Father's Discovery Responses
 - Request for Production of Documents
 - Rule 194 Request for Disclosure
 - Interrogatories
 - Admissions

- Wife's/Mother's Discovery Responses
 - Request for Production of Documents
 - Rule 194 Request for Disclosure
 - Interrogatories
 - Admissions
- Husband's/Father's Inventory and Appraisalment
- Wife's/Mother's Inventory and Appraisalment
- Husband's/Father's Witnesses
- Wife's/Mother's Witnesses
- Exhibits
 - Property
 - Children
 - Attorneys Fees
- Research

C. Jury Trial -all of Section B above, plus:

- Jury Profile
- Jury Seating Chart
- Voir Dire
- Opening Statement
- Closing Statement
- Jury Charge
- Jury Instructions
- Jury Questions

D. Pretrial checklist

- ___ Transcripts of previous hearings obtained, summarized if needed
- ___ List of fact witnesses disclosed **to** opposing counsel
- ___ List of fact witnesses disclosed **by** opposing counsel
- ___ Verify exhibits to be used at trial have been produced to opposing counsel
- ___ List of documents produced by opposing counsel
- ___ Witnesses interviewed, determined availability for trial
- ___ Order of witnesses determined
- ___ Subpoenas issued and served
- ___ Depositions summarized
- ___ Demonstrative exhibits prepared, format determined (easel, overhead projection, power point, dvd player) and availability of equipment in courtroom
- ___ List of Exhibits to be admitted
- ___ Exhibits copied and marked
- ___ List of witnesses to be called at trial, with contact numbers
- ___ Trial preparation of client

E. What to Bring to Trial

- ___ Bottled Water (if permitted by the Court) for the trial team and client
- ___ Post it notes (one color for notes passed to attorney from paralegal or 2nd chair, another color for notes from client)
- ___ Extra supplies: legal pads, paper clips, stapler, staple puller,

exhibit stickers, pens, highlighters

___ Kleenex

___ Breath mints/peppermints

___ Cough drops

___ Granola bars or crackers if work through lunch or dinner time

___ Change for the copy machine or vending machine

13. TRIAL TO THE COURT

The Committee wishes to thank Robert Gordon, J.D., Ph.D., for permission to use copyrighted portions of his book *On the Witness Stand* in the preparation of this section of the chapter.

A. PREPARATION

i. Witness Preparation

Knowing the Territory

___ Directions to courthouse

___ Directions for parking

___ Directions to specific courtroom

___ If metal detector is used, explain procedure

___ Do not bring cell phone or electronic devices OR be sure they are turned off. Court sanctions for use.

___ Show the witness where he/she will be sitting in the courtroom, where the judge will be sitting, where the court reporter sits, where the jury sits and where each attorney will be seated

Be Well Rested

___ Get a good night's sleep before you testify

___ Avoid the use of medication before you testify which would make you drowsy or tend to cloud your thoughts

Dress for the Occasion

___ Men— Coat, tie and dress slacks OR slacks and dress shirt

___ Women—Dress or skirt, plain blouse; Minimal jewelry, makeup, minimal heels or flats

___ Know courtroom rules on dress and prohibited dress

___ Avoid shorts, swim suits, flip-flops, sandals, tee shirts, tank tops, and low cut blouses or tops for women

At the Courthouse

___ Go to the courtroom and wait in the hall unless instructed otherwise

___ Is the “Rule” to be invoked? See TRCP 267; TRE 614

___ Do not speak with other witnesses

___ Do not speak to anyone about the case other than attorneys in the case

___ Do not read any reports about the case

___ Do not comment upon testimony in the case

___ Violations enforceable by contempt of court

Techniques in testifying

___ Always tell the truth!!!

___ The 5 Steps to Success

___ Listen to the question—can’t answer it if you haven’t heard it or don’t understand it

- _____ Pause—don't blurt out an answer, stop for a few seconds
- _____ Think—formulate the answer in your mind
- _____ Speak—answer the question which you were asked
- _____ Remain Silent—until the next question is asked
- _____ Questions Involving the Use of Documents
 - _____ If the question refers to a document, always ask to see the document before you answer
 - _____ Read the document before you answer
 - _____ Know the difference between what a document says and the interpretation given to a statement about the document, a sentence in the document or the document itself
- _____ Courtroom Manners
 - _____ Always answer verbally—avoid nodding or shaking your head or saying “uh huh” or “huh huh”
 - _____ Avoid putting your hands to your face
 - _____ Avoid covering your mouth with your hand
 - _____ Never interrupt the judge or a lawyer
 - _____ If an objection is made be quiet and do not speak again until the judge has instructed you
 - _____ Do not become angry
 - _____ Do not become arrogant
 - _____ Look the person in the eye who has asked you a question

- ___ Do not engage in a staring match with either party
- ___ Do not look to an attorney for help in answering the question posed to you

Direct Examination

- ___ Always tell the truth!!!
- ___ Understand your part in the story the lawyer is telling
- ___ The 5 Ws
 - ___ Who—refers to the person
 - ___ What—the event involved
 - ___ When—time of the event
 - ___ Where—place of the event
 - ___ Why—reason for the event
- ___ Begin with general responses to lawyer's questions
- ___ Become more specific only if asked to be
- ___ KISS—Keep it Simple Stupid
- ___ Be polite
- ___ Silence is golden
- ___ If you are wrong—admit it
- ___ It's okay to cry if the circumstances require it, i.e. a child custody case when a relative is testifying
- ___ Nobody's perfect
 - ___ If you don't know—say so—don't fake it
- ___ Have a good heart
 - ___ Reveal yourself to the trier of fact
 - ___ Show your true feelings

____ Tell them what you care about

Cross Examination

____ Always tell the truth!!!

____ Know the other lawyer and types of questions he prefers

____ Stand your ground

____ Don't argue with the lawyer

____ Be nice

____ Don't be arrogant

____ Don't be angry

____ Beware of trick questions

____ Stand up for your friends and associates

____ Don't gossip

____ Nobody's perfect

____ If you don't know—say so

____ If you made a mistake—admit it

____ No one can control you unless you let him

Types of questions

____ Those which call for an explanation

____ Those which call for a short answer

____ Those which can truthfully be answered “yes” or “no.”

____ Leading questions—those which suggest the answer as part of the question

____ Compound questions—those which contain two or more questions in the same question

- _____ The agreement question—one which begins with an inaccurate statement of fact—and seeks the agreement of the witness
- _____ Always/never question—which uses either word as part the body of the question
- _____ Question followed by instruction from lawyer to answer only “yes” or “no”
- _____ Questions which cannot be truthfully answered “yes” or “no”—“Have you beaten your wife lately?”

Witness Bill of Rights

- _____ Right to hear the question
- _____ Right to understand the question
- _____ Right to finish your answer
- _____ Right to see any document about which you are being questioned
- _____ Right not to be badgered
- _____ Right against self-incrimination
- _____ Right to have an opinion
- _____ Right to change your mind
- _____ Right not to be called names
- _____ Right not to be forced to answer an improper question
- _____ Right not to have to give a misleading answer
- _____ Right not to be forced to give a wrong answer

B. WITNESSES

i. 194 Requests for Disclosures

___ Name, address and contact information of Fact Witnesses

___ Name, address and contact information for Expert

Witnesses

___ Expert's Vitae obtained and sent to opposing counsel

___ Expert's Reports and Material reviewed and sent to
opposing counsel

provide ___ As an attorney, make sure you are listed as an expert,
your vitae and billing records

ii. Subpoena the Witnesses

___ Do you have the correct contact information? Make sure
to
obtain updated information.

___ Ask the Witnesses to bring any documents with them to
trial, if not already supplemented.

___ Ask the Expert Witnesses to update any reports

iii. Types of Expert Witnesses (Property Cases)

___ C.P.A. / Tracing Expert

___ Certified Divorce Planner /Specialist

___ Business Valuator

___ Real Estate Appraiser

___ Tax Attorney

Items

___ Appraiser for Vehicles, Antiques, Art, Wine, Unique

iv. Types of Expert Witnesses (Custody Cases)

___ Psychologists/Psychiatrist

___ Custody Evaluator

___ Physicians

___ Parent Coordinator/Facilitators (familiarize yourself with statutory changes)

___ CPS workers

___ Child's Therapist

___ Parties Therapist (Substance Abuse Issues?)

___ Case Workers/Social Studies

v. Timeline prior to Trial (If no Scheduling Order)

___ 120 days before trial - Petitioner must designate experts

___ 90 days before trial - Respondent must designate experts

___ 60 days before trial - Discovery must be sent to opposing party

___ 30 days before trial - Supplement Discovery

___ 14 days before trial - Business Records Affidavits to be filed

vi. Trial Preparation

___ Make sure all of your fact and expert witnesses are listed

___ See if opposing counsel has listed everyone

___ Compare your witnesses list with opposing counsel's list

- ___ Include the Witness List with phone numbers and Exhibit List in the Trial Notebook
- ___ Interview witnesses
- ___ Depose Witnesses
- ___ Prepare anticipated Q&A for witnesses
- ___ Prepare witnesses to testify

C. EXHIBITS

i. Common Exhibits

- ___ Timelines
- ___ Emails
- ___ Photographs
- ___ Inventory and Inventory Comparison
- ___ Business Record Affidavits for medical records, school records, financial documents
- ___ Financial Statements, Paystubs, and Tax Returns
- ___ Credit Card Statements
- ___ Appraisals
- ___ Corporate Documents
- ___ Marital Agreements
- ___ Billing Records and Contract
- ___ Calendars
- ___ Certified Records - Criminal, Court Documents
- ___ Summaries
- ___ Make sure all reports and billing records are updated

___ Supplement any Business Records Affidavits at least 14 days prior to trial

ii. Demonstrative Exhibits (Visual Aids -To be admissible, a demonstrative exhibit must “fairly and accurately” represent the real object at the relevant time)

___ Replicas and Models

___ Photographs, X-Rays, VideoTapes, Charts and Files (medical evidence)

___ Sounds Recordings

___ Diagrams

___ Maps

___ Drawings

___ History Logs

___ Graphs

___ Animation

___ Simulations

Ways to Display Demonstrative Exhibits

___ Powerpoint Presentation (Need Computer and Projector)

___ Elmo Presentation (Monitor)

___ Television (DVD, VCR Player)

___ Sound Device to play recordings

iii. During Discovery

___ Make sure all exhibits were produced in discovery

- ___ Make sure to remove or redact any privileged information
- ___ Pre-mark all exhibits and make copies
- ___ Confidentiality Order - Has all confidential information been marked?

iv. Trial Preparation

- ___ Exchange marked exhibits prior to trial - Notebook
- ___ Meet with opposing counsel prior to trial about exhibit objections
- ___ Stipulate as to which exhibits are admissible and agreed
- ___ Provide an index of the exhibits
- ___ Have copies of the exhibits for each attorney, the witness, any ad-litem, the Court and the Court Reporter
- ___ Include the Exhibit List in the Trial Notebook
- ___ Identify what witnesses will authenticate the exhibits
- ___ Prepare predicate for each exhibit
- ___ Prepare brief on any legal issues which are anticipated as an issue
- ___ Copy and highlight case law

D. BUSINESS RECORDS PREDICATE

Source: TEX. R. EVID. 803(6); *The Family Lawyer's Essential Toolkit*,
Family Law Section, SBOT 2009

_____ i. Questions

_____ State your full name

_____ Who is your employer?

_____ Are you the custodian of the records of _____
(name of company)?

_____ Did you receive a subpoena to appear and
bring/produce the records set forth in Exhibit "A"?

_____ Use your duces tecum as this exhibit

_____ Do you have those records with you today?

_____ Are the records you brought either the originals or true and
accurate copies of the originals?

_____ Have the records properly marked for identification

_____ Let me hand you what has been marked collectively
(records can be marked separately as Exhibit "A" and ask
you if you can identify those as the records of _____
(name of company)?

_____ Were the records prepared and are they maintained in the
regular course of business of _____ (name of
company)?

_____ Is it a regular practice of _____ (name of company) to
have these records prepared and reduced to writing?

____ Were these records either prepared by an employee or representative of ____ (name of company) who has personal knowledge of the information contained in them or, at least, prepared from information transmitted by an employee or representative who has personal knowledge of the events and conditions described in those records?

____ Were the entries contained in these records prepared at or near the time of the events and conditions described in the records, or, at least, reasonably soon thereafter?

____ Request the Court admit the exhibit

____ ii. Other Applicable Rules

____ The Court may still exclude the evidence if “the source of information or the method or circumstances of preparation indicate lack of trustworthiness TEX. R. EVID. 803(6)

____ Hearsay contained within hearsay is not admissible unless both levels meet exceptions to the hearsay rule. Thus a business record which meets the business record exception to the hearsay rule may not be admissible if the information contained in the record is inadmissible hearsay TEX. R. EVID. 805

E. OBJECTIONS

i. General Objections to Testimonial Evidence

____ bolstering

____ calls for speculation

- ___ conclusory
- ___ confuses the issues
- ___ cumulative
- ___ evidence speaks for itself
- ___ excluded by pretrial order
- ___ improper character evidence
- ___ improper cross examination
- ___ improper hypothetical
- ___ improper impeachment
- ___ improper opinion testimony
- ___ improper opinion that another witness is lying
- ___ improper predicate
- ___ improper testimony as to religious beliefs
- ___ inadmissible prior conviction
- ___ inadmissible settlement offer
- ___ incompetent opinion
- ___ inconsistent with pleadings
- ___ irrelevant
- ___ judicial estoppel
- ___ misleading
- ___ undue delay
- ___ unfairly prejudicial
- ___ violates best evidence rule
- ___ violates the dead man's rule
- ___ violates the parol evidence rule
- ___ violates a stipulation

___ witness not competent (insane, child, or lacs personal knowledge)

___ witness not designated as expert

___ witness not disclosed

ii. Privileges from Testifying

___ attorney/client

___ physician/patient

___ mental health information

___ communication to clergy

iii. Objections to the Form of the Question

___ ambiguous

___ argumentative

___ asked and answered

___ assumes facts not in evidence

___ compound

___ creating undue delay

___ harassing

___ improper hypothetical

___ improper cross examination

___ leading

___ misleading

___ misquoting the witness

___ misstating facts

___ narrative

- ___ overly broad
- ___ speculative
- ___ unfairly prejudicial
- ___ unintelligible
- ___ vague
- ___ witness not allowed to finish answer

iv. Objections to the Response

- ___ argumentative
- ___ narrative
- ___ lack of personal knowledge
- ___ nonresponsive
- ___ volunteered

v. Statements which are Not Hearsay

- ___ prior statement by a witness
- ___ admission by party opponent
- ___ deposition testimony

vi. Hearsay Exceptions (Availability of Declarant Immaterial)

- ___ present sense impression
- ___ excited utterance
- ___ then existing mental, emotional, or physical condition
- ___ statements for medical diagnosis or treatment
- ___ recorded recollection
- ___ business records

- ___ absence of entry of records
- ___ public records or reports
- ___ records of vital statistics
- ___ absence of public records or entry
- ___ records of religious organizations
- ___ marriage, baptismal & similar certificates
- ___ family records
- ___ records of documents affecting an interest in property
- ___ statement in documents affecting an interest in property
- ___ statements in ancient documents
- ___ market reports, commercial publications
- ___ learned treatises
- ___ reputation concerning personal or family history
- ___ reputation concerning boundaries or general history
- ___ reputation as to character
- ___ judgment of previous conviction
- ___ judgment as to personal, family, or general history or boundaries
- ___ statements against interest

vii. Hearsay Exceptions (Declarant Unavailable)

- ___ former testimony
- ___ dying declaration
- ___ statement or personal or family history

viii. Non-Testimonial Objections

- ___ ambiguity
- ___ authentication
- ___ barred by collateral estoppel
- ___ confuses the issues
- ___ creating undue delay
- ___ cumulative
- ___ evidence speaks for itself
- ___ evidence was acquired illegally
- ___ excluded by pretrial order
- ___ improper character evidence
- ___ improper predicate
- ___ inconsistent with pleadings
- ___ irrelevant
- ___ misleading
- ___ optional completeness
- ___ undue delay
- ___ unfairly prejudicial
- ___ violates best evidence rule
- ___ violates the dead man's rule
- ___ violates the parol evidence rule
- ___ violates a stipulation

F. ATTORNEY'S FEES

Sources: TFC §§ 7.001 (just & right division of the property includes attorney's fees); 9.014 (post decree enforcement); 106.002 (SAPCR); 157.167 (child support enforcement); PJC-Family 225.1; Tex. Disp. Rules Prof. Cond. 1.04

____ Preparation For Final Hearing By Petitioner/Movant

____ Pleadings

____ Petition or counter-petition requests attorney's fees and expenses through trial

____ Petition or counter-petition requests attorney's fees and expenses for proceedings in the court of appeals

____ Petition or counter-petition requests attorney's fees and expenses for petition for review to the Texas Supreme Court

____ Petition or counter-petition requests attorney's fees and expenses if brief on the merits is requested before review is granted (TRAP 55.1) or in the event review is granted by the Texas Supreme Court

____ Discovery

____ Answers to requests for disclosure include yourself and your supporting expert(s) on the issue of attorney's fees and supplemented within applicable deadlines

____ Answers to interrogatories provide opposing counsel with all evidence requested as to issue of attorney's fees and supplemented within applicable deadlines

____ Responses to requests for production provide opposing counsel with all documentary evidence requested as to issue of attorney's fees and supplemented within applicable deadlines

____ Checklist of Exhibits to Prepare for the Hearing

____ Your fee contract

- ___ Summary of fees and expenses you are requesting, broken down into categories of fees and expenses through trial, anticipated fees in court of appeals, anticipated fees for petition for review to Texas Supreme Court, anticipated fees in Texas Supreme Court if brief on the merits requested and/or petition granted
- ___ Copies of your billing records, redacted to protect attorney-client privileged information
- ___ Comparison of work done by you and/or your experts in comparison to work done by opposing counsel and his/her experts (to show work performed necessitated by the issues created by Respondent and/or proper preparation of the case by you and insufficient or negligent or unreasonable or unnecessary preparation of the case by Respondent)
- ___ Checklist of Witnesses for the Hearing
 - ___ Your client
 - ___ Yourself and other attorney's or legal assistants that worked on the case
 - ___ Your expert witnesses
 - ___ Attorney
 - ___ Accountant
 - ___ Appraiser
- ___ Direct Examination of Your Witnesses
 - ___ Your client
 - ___ Your fee contract
 - ___ Movant's testimony concerning your representation

- _____ Evidence as to attorney's fees and expenses paid by Movant to you and if from borrowed funds, include the debt instrument evidencing the debt
- _____ Whether Respondent's conduct or unwillingness to cooperate during the pendency of the case contributed to increased fees and expenses
- _____ Whether settlement offers were rejected by Respondent
- _____ Movant's request that Respondent be ordered to pay Movant's attorney's fees and expenses
- _____ Yourself and/or other attorneys or legal assistants that worked on the case
- _____ Your qualifications and experience and the qualifications and experience of any other attorneys that have or are expected to work on the case including each person's billing rate in comparison with the rate customarily charged in the locality for similar services
- _____ The qualifications and experience of any legal assistants that have or are expected to work on the case including each person's billing rate in comparison with the rate customarily charged in the locality for similar services
- _____ Summary of fees and expenses you are requesting along with your supporting testimony that the amounts shown are both reasonable and necessary

- _____ Supporting evidence under Tex. Disp. Rules Prof. Cond. 1.04 and PJC-Family 225.1
 - _____ the time and labor required, the novelty and difficulty of the questions involved, and the skill required to perform the legal services properly
 - _____ the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer
 - _____ the fee customarily charged in the locality for similar legal services
 - _____ the amount involved
 - _____ the time limitations imposed by the client or by the circumstances
 - _____ the nature and length of the professional relationship with the client; and
 - _____ the experience, reputation, and ability of the lawyer or lawyers performing the services
- _____ Testimony regarding the special circumstances and/or problems incurred in the case which warrant the requested fee
- _____ If you will not be calling accounting or appraisal experts to support your request for fees with which to pay these expenses, you should testify as to the reasonableness and necessity for these items based on your experience

- _____ Testimony in support of your request for attorney's fees on appeal, including estimate of hours required for research and briefing, preparation and presentation of oral argument, and expenses for travel to and from the court of appeals
- _____ Testimony in support of your request for attorney's fees on petition for review, including estimate of hours required for additional research and briefing
- _____ Testimony in support of your request for attorney's fees if briefing on the merits is requested or petition for review is granted, including estimate of hours required for preparation and presentation of oral argument and expenses for travel to and from the county in which you appear
- _____ Your expert witnesses
 - _____ Attorney
 - _____ The time and labor involved in a case such as this with these particular problems and/or issues
 - _____ The skill requisite to perform the legal services properly
 - _____ The fee customarily charged in the locality for similar legal services
 - _____ Your experience, reputation and ability and that of other lawyers in your firm

- _____ The training and experience of your legal assistants if known by your expert
- _____ The reasonableness and necessity for your requested fees, including fees on appeal
- _____ If you anticipate using an attorney as an expert witness for attorney's fees, be sure to provide your expert with sufficient information regarding the case prior to the hearing (including the pleadings, a synopsis of the issues, a synopsis of discovery conducted and pre-trial hearings, and a summary of the fees and expenses you are requesting) in order for that expert to provide informed, persuasive testimony
- _____ Accountant/Appraiser
 - _____ His/her qualifications
 - _____ The issues about which he/she was retained to work on and the complexity of those issues
 - _____ The necessity for the services rendered
 - _____ The cost of their services and the reasonableness in the locality
- _____ Preparation For Final Hearing By Respondent
 - _____ Pleadings
 - _____ Answer or counter-petition requests attorney's fees and expenses through trial
 - _____ Answer or counter-petition requests attorney's fees and expenses for proceedings in the court of appeals

- _____ Answer or counter-petition requests attorney's fees and expenses for petition for review to the Texas Supreme Court
- _____ Answer or counter-petition requests attorney's fees and expenses if brief on the merits is requested before review is granted (TRAP 55.1) or in the event review is granted by the Texas Supreme Court
- _____ Discovery
 - _____ Answers to requests for disclosure include yourself and your supporting expert(s) on the issue of attorney's fees and supplemented within applicable deadlines
 - _____ Answers to interrogatories provide opposing counsel with all evidence requested as to issue of attorney's fees and supplemented within applicable deadlines
 - _____ Responses to requests for production provide opposing counsel with all documentary evidence requested as to issue of attorney's fees and supplemented within applicable deadlines
- _____ Checklist of Items to Obtain Prior to Hearing
 - _____ Movant's fee contract with and retainer fee paid to opposing counsel
 - _____ Opposing counsel's billing records and records of payments made to opposing counsel
 - _____ Records of experts hired by, or on behalf of, Movant and fees paid to those experts
 - _____ Checklist of Exhibits to Prepare for the Hearing

- _____ Summary of your client's fees and expenses (if they show substantially lower charges than those presented by Movant's counsel) redacted to protect attorney-client privileged information
- _____ Comparison of work done by you and/or your experts in comparison to work done by opposing counsel and/or his/her experts (to show work performed necessitated by the issues created by Movant and/or proper preparation of the case by you and insufficient or negligent or unreasonable or unnecessary preparation of the case by Movant)
- _____ If using your own expert to rebut opposing counsel's request for attorney's fees and expenses, have your expert prepare a report of reasonable and necessary attorney's fees and expenses of opposing counsel based upon the work they claim to have performed.
- _____ Cross-Examination of Movant's Witnesses
 - _____ Movant
 - _____ Amounts paid by Movant to Movant's attorney
 - _____ Whether Movant's attorney is holding assets or funds in trust for Movant
 - _____ Assets and income available to Movant with which to pay attorney fees
 - _____ Movant's personal expenditures during pendency of case (if Movant was using discretionary funds for

purposes other than reasonable and necessary living expenses and attorney's fees)

_____ Whether Movant's conduct or unwillingness to cooperate during the pendency of the case contributed to increased fees and expenses

_____ Whether settlement offers were rejected by Movant

_____ Movant's Attorney

_____ Review time expended and services performed on the detailed billing records and compare to the work product to determine if the services and/or time expended were reasonable and/or necessary (Just because the time was spent does not mean that it was reasonable or necessary)

_____ Review Movant's bank records to determine that all monies paid to Movant's attorney's are credited on Movant's attorney's billing statements

_____ Carefully examine the expenses which have been charged to Movant for any excesses or irregularities

_____ Compare the hourly rates charged against the standard rates in your locality

_____ Determine whether non-attorney services are billed at attorney rates

_____ If substantial fees are requested for discovery, offer into evidence the letters you sent Movant's counsel concerning voluntary discovery

_____ Cross-examine Movant's counsel regarding the issues dealt with by Movant's counsel and legal services necessary to resolve those issues

_____ If substantial fees are requested for research, question Movant's counsel concerning his/her prior experience and knowledge of those issues toward the goal of negating the necessity for such research

_____ If Movant's counsel is requesting attorney's fees for appeal, question Movant's counsel as to number of appeals completed by counsel, results obtained, whether counsel has ever successfully prosecuted a petition for review in the Texas Supreme Court and challenge their estimated attorney time necessary for the appeal

_____ Movant's Experts

_____ Attorney

_____ The relationship between the expert and Movant's attorney or Movant

- _____ Whether the expert has testified for Movant's attorney in the past or Movant's attorney has testified for the expert in the past
- _____ The amount of time he/she spent reviewing the case, their familiarity with the issues of the case and their experience dealing with that type of case and those issues
- _____ The amount of time he/she spent reviewing Movant's attorney's billing records and requested fees and expenses
- _____ Whether the time charges have been compared to the work product, whether the time charges are reasonable and necessary; whether the time charges are in conformity with that attorney's practice in that community in similar cases
- _____ Customary billing rates and practices in your area
- _____ Accountant/Appraiser
 - _____ The expert's prior experience in performing similar services
 - _____ The necessity for the services rendered
 - _____ The amount charged by the expert for similar services performed in other cases
 - _____ The fees being charged by the expert for his/her testimony

_____ The relationship between the expert and Movant's attorney or Movant and whether the expert has testified for Movant's attorney or Movant in other matters

_____ Direct Examination of Respondent's Witnesses

_____ Yourself

_____ Reasonableness of fees requested by Movant as to legal and expert services necessary in this case and rates charges by Movant's attorney and/or legal assistants

_____ Necessity of fees requested by Movant as to the legal and expert services necessary in this case

_____ Your qualifications and experience and the qualifications and experience of any other attorneys that have or are expected to work on the case including each person's billing rate in comparison with the rate customarily charged in the locality for similar services (in contrast if significantly less than those requested by Movant)

_____ Rates charged in your community for similar services

_____ The qualifications and experience of any legal assistants that have or are expected to work on the case including each person's billing rate in comparison with the rate customarily charged in the locality for similar services

- _____ Summary of fees and expenses you are requesting along with your supporting testimony that the amounts shown are both reasonable and necessary
- _____ Supporting evidence under Tex. Disp. Rules Prof. Cond. 1.04 and PJC-Family 225.1
 - _____ the time and labor required, the novelty and difficulty of the questions involved, and the skill required to perform the legal services properly
 - _____ the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer
 - _____ the fee customarily charged in the locality for similar legal services
 - _____ the amount involved
 - _____ the time limitations imposed by the client or by the circumstances
 - _____ the nature and length of the professional relationship with the client; and
 - _____ the experience, reputation, and ability of the lawyer or lawyers performing the services
- _____ Testimony regarding the special circumstances and/or problems incurred in the case which warrant the requested fee
- _____ If you will not be calling accounting or appraisal experts to support your request for fees with which

to pay these expenses, you should testify as to the reasonableness and necessity for these items based on your experience

_____ Testimony in support of your request for attorney's fees on appeal, including estimate of hours required for research and briefing, preparation and presentation of oral argument, and expenses for travel to and from the court of appeals

_____ Testimony in support of your request for attorney's fees on petition for review, including estimate of hours required for additional research and briefing

_____ Testimony in support of your request for attorney's fees if briefing on the merits is requested or petition for review is granted, including estimate of hours required for preparation and presentation of oral argument and expenses for travel to and from the county in which you appear

_____ Experts

_____ Attorney, accountant and/or appraiser to rebut Movant's evidence as to the reasonableness and necessity of the requested fees and expenses

WITNESS LIST FOR FINAL HEARING

Name/Address/ Phone nos./Email	Date(s) Interviewed & Interviewer	Area/Issues of Testimony	Subpoena for Hearing Y/N	Coming Voluntarily Y/N	Date Served	Date Filed in Court's File

Petitioner's / Respondent's Exhibits
(Ours/Theirs)

No. _____

_____ **vs.** _____

Ex. #	Description	Offered	Admitted	Excluded

NO. XXXX

IN THE MATTER OF	§	IN THE DISTRICT COURT OF
THE MARRIAGE OF	§	
	§	
JANE DOE	§	
AND	§	DENTON COUNTY, TEXAS
JOHN DOE	§	
	§	
AND IN THE INTEREST OF	§	
BABY DOE	§	XXXth JUDICIAL DISTRICT

REQUESTED RELIEF EXHIBIT OF JANE DOE

1. Grant the divorce.
2. Confirm cruel treatment by JOHN DOE toward JANE DOE.
3. Appoint the parties joint managing conservators of BABY DOE, naming JANE DOE as the conservator with the exclusive right to designate the primary residence of the child within Denton County, Texas, and counties contiguous thereto.
4. Order that all other rights and duties be shared by mutual agreement of the parties.
5. Order JOHN DOE to pay child support of \$1,150.00 per month to JANE DOE.
6. Order JOHN DOE to carry health insurance for the child through his employer and to pay for same.
7. Order that JOHN DOE and JANE DOE shall equally pay any uninsured medical expenses for the child.
8. Divide the parties' marital estate in a just and right manner, as provided by law, awarding a disproportionate division of the estate in the favor of JANE DOE.
9. Confirm the following as JANE DOE's separate property:
 - a. 123 Main Street, Denton, Texas 76201
 - b. 1-carat yellow diamond engagement and wedding ring set
 - c. JVC digital video camera
10. Grant a judgment in favor of JANE DOE for attorney's fees, expenses, and costs through trial and appeal, to be paid directly to JANE DOE's attorney, who may enforce the judgment in his own name.

CLIENT CUSTODY QUESTIONNAIRE

ATTORNEY/CLIENT PRIVILEGE ASSERTED AS TO ALL INFORMATION CONTAINED HEREIN

Please fill out this questionnaire and return it as soon as possible. It is important that you answer each question fully, completely, and honestly.

It is imperative that you be candid!

You should answer all questions relevant to your case. If a question does not apply to your particular situation, please indicate by marking the question "N/A." If the answer to any question requires more space than has been provided on the form, please complete your answer on a separate sheet: refer to the question number to which your answer applies, and attach your answer to this questionnaire.

Your response to these questions will help to organize your case and will save you money on attorney's fees in trying to gather and assemble information after the case is in progress.

Since your answers are being made to an attorney, you are assured of confidentiality and are protected by the attorney/client privilege.

BACKGROUND INFORMATION:

About you:

Your name: _____

Address: _____

Telephone: _____

Birthplace: _____

Social Security # _____

Driver's license # _____

Employer: _____

Employer's Address: _____

Exact Position: _____

Job Title: _____

How long with current employer? _____

Prior employment: _____

Prior marriage: _____

About your spouse or your ex-spouse:

(Ex) Spouse's name: _____

Address: _____

Telephone: _____

Birthplace: _____

Social Security # _____

Driver's license # _____

Employer: _____

Employer's Address: _____

Exact Position: _____

Job Title: _____

How long with current employer? _____

Prior employment: _____

Prior marriage: _____

Children of prior marriage? _____
Names and birth dates of children of
prior marriage: _____

Children of prior marriage? _____
Names and birth dates of children of
prior marriage: _____

DATE AND PLACE OF MARRIAGE TO SPOUSE OR EX-SPOUSE WITH WHOM THIS DISPUTE HAS ARISEN:

Date of marriage: _____

Place of marriage: _____

INFORMATION ABOUT DIVORCE FROM EX-SPOUSE (IF THIS IS AN ACTION FOR MODIFICATION):

Date of divorce: _____

Place of divorce: _____

Court: _____

Name of Judge: _____

Name of your previous attorney: _____

Name of your ex-spouse's previous attorney: _____

Have there been any changes in custody, visitation, or support - formally or informally? _____

If yes, please describe: _____

Was the order that is now under dispute entered by agreement or after a contested trial? _____

BASIC INFORMATION ABOUT CHILDREN OF THIS MARRIAGE:

Children's names, birthplaces and birth dates:

NAME	SEX	BIRTHPLACE	BIRTH DATE
_____	M/F	_____	_____
_____	M/F	_____	_____
_____	M/F	_____	_____
_____	M/F	_____	_____

If you want sole custody (i.e., your children to live with you and for you to have all the primary parental rights exclusively) of your children, please tell me why you think you should have sole custody in fifty words or less:

With whom do the children currently live? _____

What period of time has this living arrangement been in effect:

Names and addresses of schools children attend, dates attended, name of teacher and name of principal there who is familiar with child:

Child's name: _____
School: _____
Address: _____
Dates attended: _____
Grade: _____
Teacher: _____
Principal: _____

Child's name: _____
School: _____
Address: _____
Dates attended: _____
Grade: _____
Teacher: _____
Principal: _____

Child's name: _____
School: _____
Address: _____
Dates attended: _____

Grade: _____
Teacher: _____
Principal: _____

At the child's school, who knows of the pending divorce/litigation: _____

CARE OF THE CHILDREN:

Who helps the children get dressed in the morning? _____

Who bathes the children and grooms them? _____

Are any of the children nursing? _____

Who takes care of the children during the day? _____

Who arranges for getting the children together with playmates?

Who puts the children to bed at night? _____

Who prepares the meals? _____

Who arranges for medical and dental care and takes the children to doctor's appointments? _____

Who takes the children to school? _____

Who picks the children up from school? _____

Who shops for the children's clothes? _____

Who transports the children to extracurricular activities? _____

Do you or your spouse participate in recreational or educational activities with the children? _____

Have you or your spouse coached or been a leader for any of the children's activities? _____

If so, which activities and when? _____

Describe the nature of the activities and how often you and your spouse or ex-spouse participate in them. _____

Do the children receive religious training? _____

If so, from whom? _____

Have you or your spouse ever taught Sunday school?

If yes, who, when and what class? _____

Who arranges the children's birthday parties? _____

Who helps the children with their homework? _____

Who helps the children with their school projects? _____

What kind of housekeeper is your spouse? _____

What kind of housekeeper are you? _____

Who attends parent-teacher conferences? _____

Are the children more likely to turn to you or to your spouse or ex-spouse when they have problems?

Client Custody Questionnaire

(06.01.09\Forms\Interofc\Questionnaire Client Custody)

Do you feel the children are closer to you or your spouse or ex-spouse? Why? _____

When a sitter is needed, who babysits? _____

When a sitter is needed, who arranges for the sitter? _____

How often is the sitter used and under what circumstances?

Are the children in daycare? _____

How many hours per week? _____

Under what circumstances is the day care used?

Who chose the day-care? _____

Who chose the sitter? _____

Give name, address, telephone number, and age of the sitter: _____

Give name, address and telephone number of the daycare: _____

Who arranges for the sitter? _____

Who cares for the children when they are ill? _____

Who disciplines the children? _____

By what method? _____

Has the division of responsibility for child care changed over the years? _____

If so, describe: _____

TIME AVAILABLE TO SPEND WITH THE CHILDREN AND PLANS FOR THEIR FUTURE CARE:

What are your working hours? _____

What time do you leave home? _____

When do you return? _____

Do you have flexible working hours? _____

Does your work require travel? _____

If so, what distance and amounts of time? _____

Is your work schedule likely to change in the future? _____

What are your plans for child care during work hours? _____

Describe your housing arrangements, including number of bedrooms: _____

What are your spouse's or ex-spouses working hours? _____

What time does your spouse or ex-spouse leave home? _____

When does your spouse or ex-spouse return? _____

Are your spouse's or ex-spouse's working hours flexible? _____

Does your spouse or ex-spouse's work require travel? _____

If so, what distances and amounts of time? _____

Is your spouse's or ex-spouse's work schedule likely to change in the future? _____

What are your spouse's or ex-spouse's plans for child care? _____

Describe your spouse or ex-spouse's household arrangements, including number of bedrooms: _____

How much of your spouse's leisure time does your spouse spend with the children? _____

How much of your leisure time do you spend with the children? _____

SPECIAL NEEDS OF THE CHILDREN:

Do the children have any special or unusual educational or health care needs? _____

If so, describe them: _____

Who has worked to meet those needs? _____

Are you or your spouse or ex-spouse better able to meet those needs in regard to time and in regard

to finances? _____

Has the children's academic performance changed in the last few years or months? _____

If so, what is the reason for the change and how were you made aware of it? _____

INTERFERENCE WITH OTHER PARENT'S RELATIONSHIP WITH CHILDREN:

Have you or your ex-spouse interfered with the child's relationship with the other parent or spoken badly about the other parent to the child? _____

If so, explain: _____

Have you or your ex-spouse blocked the other parent's visitation with the children? _____

If so, explain, giving dates and frequency with which visitation was blocked: _____

Have you or your ex-spouse discouraged the child from having a good relationship with a stepparent or a "significant person" in the other parent's life? _____

If so, explain: _____

What is the worst thing you have ever done as a parent? _____

What is the worst thing your spouse has ever done as a parent? _____

COOPERATION BETWEEN YOU AND YOUR SPOUSE OR EX-SPOUSE:

How well have you and your spouse or ex-spouse been able to cooperate on matters concerning the children and on matters concerning visitation or access to the children? _____

To what extent do you and your spouse or ex-spouse share values regarding how the children should be raised, what type of education they should have, and what type of religious training they should have (if any)? _____

FREQUENCY OF MOVES AND PLANS TO MOVE:

Have you or your ex-spouse moved in the last ten years? _____

If so, when, where (include moves in the same city), and why? _____

Do you or your spouse or ex-spouse plan to move in the near future?

If so, who, when and where? _____

Does the parent who is not moving oppose the move? _____

Why the opposition? _____

Is it likely your spouse could get transferred with his/her job? _____

Is it likely you could get transferred with your job? _____

"SKELETONS IN THE CLOSET" AND SENSITIVE TOPICS:

IT IS IMPERATIVE THAT YOU BE OPEN AND HONEST IN ANSWERING THE FOLLOWING QUESTIONS. ANY DISCUSSION RELATING TO ANY OF THESE TOPICS BETWEEN YOU AND YOUR ATTORNEY WILL BE PROTECTED BY THE ATTORNEY/CLIENT PRIVILEGE. IF YOU FAIL TO BE HONEST WITH ME IN ANSWERING THESE QUESTIONS, IT COULD BE ABSOLUTELY DISASTROUS TO YOUR CASE.

IF AN ANSWER TO ONE OF THE QUESTIONS BELOW IS "YES" PLEASE DESCRIBE THE SITUATION IN DETAIL BY ATTACHING A SEPARATE SHEET DESCRIBING SAME.

Have you or your spouse or ex-spouse: (if yes, please list who):

- _____ committed a felony?
- _____ been arrested?
- _____ been in jail or prison?
- _____ used illegal drugs?
- _____ abused prescription drugs?
- _____ been hospitalized for using illegal drugs?
- _____ abused alcohol?
- _____ been hospitalized for abusing prescription drugs or alcohol?
- _____ been arrested for or convicted for drinking while under the influence of alcohol (drunk driving)?
- _____ engaged in gambling activities (legal or illegal)?
- _____ engaged in other illegal activities?
- _____ attempted suicide?
- _____ been hospitalized for an emotional or psychiatric disorder?
- _____ suffered from or received treatment for an emotional or psychiatric condition?
- _____ abused your spouse in any way?
- _____ abused your child(ren) in any way?
- _____ had a sexual relationship during the marriage with someone other than your spouse?
- _____ had a sexual relationship (during or not during the marriage) with someone other than your spouse of which the children

were aware? If so, describe the children's reaction to the relationship and the children's feelings about the person(s) involved in the relationship.

had a homosexual or bisexual relationship?
engaged in unusual sexual practices?
had a pregnancy outside of marriage?
had a sexually transmitted disease?
drunk socially? If so, what do you drink and with what frequency?

If you or your spouse or ex-spouse have a relationship with a person whom the children see frequently and that person would answer "yes" to one or more of the preceding "skeleton in the closet" questions, describe the situation and how and from whom you gained your knowledge: ____

Do you or your spouse suffer from any physical disability that would interfere with being able to care for the children? _____

CHILDREN'S PREFERENCES:

Have the children told you with whom they want to live? _____

If so, what is the basis for the preference? _____

How strong is the preference? _____

How long has the preference been held? _____

Has the preference changed? _____

How would you feel about the children talking to the judge regarding their preference? _____

CHILDREN'S RELATIONSHIP WITH OTHER FAMILY MEMBERS:

Where does your family live (parents, siblings, aunts, uncles and cousins)? _____

Where does your spouse's family live (parents, siblings, aunts, uncles and cousins)? _____

How do you feel about your spouse's family? _____

How does your spouse feel about your family? _____

How do the children get along with each other? _____

How do the children get along with stepparents? _____

How do the children get along with stepbrothers and stepsisters? _____

Do the children have a particularly close relationship with either or both sets of grandparents? _____

Do the children have a strong relationship with anyone else that you believe is important? _____

GOALS:

What are your future goals with the children and the reason for your goals? _____

To what extent do you believe that you and your ex-spouse should have joint custody (sometimes referred to as "shared parental responsibility") under which you both would share equally in making major decisions affecting the child and/or being with the child for substantial periods of time? ____

What are your spouse's future goals with the children and the reasons for those goals? _____

Have you and your ex-spouse attempted to work out a settlement of the case between yourselves? What progress have you made? What are your positions? _____

PENDING PROCEEDINGS, OTHER ATTORNEYS, AND WHAT BROUGHT YOU TO THIS OFFICE:

Are there any court proceedings pending on this matter? _____

Who do you think would make good witnesses for you and what do you think the testimony would be and why? Possible witnesses include neighbors, the children's teachers, friends, doctors, baby sitters, day-care workers, clergy and family members. Important witnesses are those who have seen you and/or your spouse or ex-spouse around the children.

Name: _____

Home address: _____
Home telephone: _____ Business telephone: _____
Business address: _____

What could this person testify about: _____

Why: _____

Name: _____

Home address: _____

Home telephone: _____ Business telephone: _____

Business address: _____

What could this person testify about: _____

Why: _____

Name: _____

Address: _____

Home telephone: _____ Business telephone: _____

Business address: _____

What could this person testify about: _____

Why: _____

Who do you think will be a witness for your spouse or ex-spouse, and what do you think will be the testimony of those persons?

Name: _____

Home address: _____

Home telephone: _____ Business telephone: _____

What could this person testify about: _____

Why: _____

Name: _____

Home address: _____

Home telephone: _____ Business telephone: _____

What could this person testify about: _____

Why: _____

Name: _____

Home address: _____

Home telephone: _____ Business telephone: _____

What could this person testify about: _____

Why: _____

Name: _____

Home address: _____

Home telephone: _____ Business telephone: _____

What could this person testify about: _____

Why: _____

***Please continue to list on a separate piece of paper if there are more than you can list here.**

WITNESS QUESTIONNAIRE

* REMEMBER TO TELL THEM TO REVEAL INFORMATION EVEN IF IT IS HEARSAY!

1. Name: _____
Residence: _____
Telephone: _____
Occupation: _____
Business telephone: _____
Business address: _____

2. If married, spouse's name: _____
Spouse's occupation: _____
Spouse's business telephone: _____

3. How many years have you been married? _____

4. Are you a parent? _____ How many children? _____
Please list the names and ages of your children: _____

5. How do you know Mr. _____ ? _____

6. How do you know Ms. _____ ? _____

7. How long have you known Mr. _____ ? _____
How frequently do you see Mr. _____ ? _____
How many times during the last year have you seen Mr. _____ ? _____

8. How long have you known Ms. _____ ? _____
How frequently do you see Ms. _____ ? _____
How many times during the last year have you seen Ms. _____ ? _____

9. Would you allow Mr. _____ to babysit your child(ren)?
If yes, for what length of time? _____
If no, list all reasons why: _____

- 10. Would you allow Ms. _____ to babysit your child(ren)?
If yes, for what length of time? _____
If no, list all reasons why: _____

- 11. Has your child played with the _____'s child? _____ How often? _____
- 12. Does your child attend the same school as _____'s child? _____
- 13. Have you been in Mr. _____'s home? _____
How many times? _____
- 14. Have you had an opportunity to observe Mr. _____ around the child? _____
- 15. How would you describe Mr. _____'s actions and treatment of his child? _____

- 16. How would you describe the child's actions and treatment of Mr. _____?

- 17. How would you describe the relationship between Mr. _____ and his child?

- 18. Have you been in Ms. _____'s home? _____
How many times? _____
- 19. Have you had an opportunity to observe Ms. _____ around the child?
- 20. How would you describe Ms. _____'s actions and treatment of her child?

- 21. How would you describe the child's actions and treatment of Ms. _____?

22. How would you describe the relationship between Ms. _____ and her child?

23. Have you had an opportunity to observe the child's manners and demeanor? _____
Please describe: _____

24. Have you had an opportunity to observe any child of the parties at a time when his/her behavior was what you considered less than appropriate behavior for a child of his/her age? If so, please describe those instances: _____

25. Please describe the manner in which the inappropriate behavior described in Number 22 was dealt with and by which parent?

26. Are you aware of whether or not the behavior of the child(ren) described in Number 22 is caused by mental and/or emotional problems? _____

27. What do you know about Mr. _____'s work schedule?

28. What do you know about Ms. _____'s work schedule?

29. In your opinion, is the child neglected by Mr. _____ in any manner, either emotionally or physically? If so, please describe:

30. In your opinion, is the child neglected by Ms. _____ in any manner, either emotionally or physically? If so, please describe:

31. If I asked you about a child's primary care giver, what would that term mean to you? _____

32. Who do you think is the child's primary care giver? _____

33. What duties have you seen Mr. _____ perform regarding the child? _____

34. What duties have you seen Ms. _____ perform regarding the child? _____

35. Please tell me anything you feel is relevant regarding the child, the child's behavior, either parent's care of the child, etc. _____

36. Please tell me the strengths of Mr. _____ as a parent: _____

37. Please tell me the weaknesses of Mr. _____ as a parent: _____

38. Please tell me the strengths of Ms. _____ as a parent: _____

39. Please tell me the weaknesses of Ms. _____ as a parent: _____

40. Please tell me any facts which you believe are detrimental to the child living with Mr. _____

41. Please tell me any facts which you believe are detrimental to the child living with Ms. _____

42. Please tell me the reasons why you believe the child should live with Mr. _____.

43. Please tell me the reasons why you believe the child should live with Ms. _____.

44. Please tell me anything not already addressed above which you feel is relevant to this case: __

- 45. Are there any other people who would have knowledge about any of the issues in this case?
[Get names and phone numbers.] _____

- 46. What has Mr. _____ discussed with you about this case?

- 47. What has Ms. _____ discussed with you about this case?

- 48. Have you ever heard or do you have knowledge of either Mr. or Ms. _____
discussing this case with the child? _____

- 49. Would you be willing to testify in this case? _____

- 50. Would you need a subpoena or would you come voluntarily? _____

- 51. Please provide any information about yourself which you feel might be significant if you are
called as a witness in this case: _____

