

FAMILY LAWYER

2012 MAGAZINE

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settlement negotiations**

Top 10 financial errors

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making a difference**

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LETTER FROM THE PUBLISHER

ADVANCING FAMILY LAWYERS' PROFESSIONAL AND PERSONAL EXCELLENCE

I'm excited to welcome you to the premiere issue of *Family Lawyer Magazine*!

Family Lawyer Magazine is devoted to assisting family lawyers improve their practice and work/life balance. We help family lawyers succeed in and out of the courtroom, better serve your clients, grow your practice and take care of your health and well being. Our strategy is to provide expert-crafted content including: articles, case reviews, book excerpts and interviews, listing of resources and more.

In addition to our very dedicated staff, I'd like to acknowledge the over 200 professionals in family law and family law related fields who have contributed to the content of our magazine and website.

Family Lawyer Magazine is published by Divorce Marketing Group which also publishes DivorceMagazine.com and *Divorce Magazine*. It is largely because we have worked so closely with family lawyers over the past 16 years that we decided to launch FamilyLawyerMagazine.com and *Family Lawyer Magazine*. We wanted to ensure that family lawyers could have easy access to worthwhile information generated from a wide range of sources, including: CLE events, books, magazines, blogs, podcasts, websites and newsletters.

This issue of *Family Lawyer Magazine* features a small sampling of what is available on FamilyLawyerMagazine.com. To see what is available online, turn to pages 97-98. Keep in mind we are adding new articles and resources daily.

I encourage you to take full advantage of FamilyLawyerMagazine.com and *Family Lawyer Magazine*:

1. Share your views in the "Comment" section at the end of each article on FamilyLawyerMagazine.com.

2. Contribute articles or case reviews. Contact me if you would like to do so.
3. Participate in our "Difference Makers" Program and recommend family lawyers, and other professionals you think should be recognized for making a difference. Visit www.FamilyLawyerMagazine.com/articles/difference-maker.
4. Participate in our "Charity Funding Challenge" by nominating and voting for your favorite not-for-profit organization so they may win a prize donation of \$6,000. See page 9 for more information.
5. Take advantage of our FREE CLE. See pages 44 to 47 for these courses. If you're a CLE provider please contact me about contributing a free CLE course.
6. Listen to our Podcasts. Visit FamilyLawyerMagazine.com/article-category/interviews to listen to our interviews with top family lawyers, judges and other professionals.
7. Subscribe to our quarterly eNewsletter and have a chance to win a FREE iPad. Visit our website for details.
8. Advertise your practice or service. Please contact us to learn how we can help you promote your services directly to family lawyers and divorce professionals across North America.

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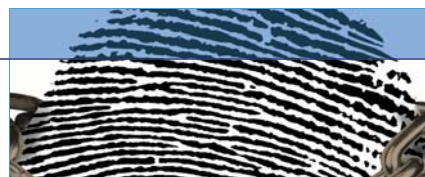
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An Interview with Judge Lowrance: Managing Clients' Emotions, Lawyers' Fees and Burnout



Family Lawyer Magazine:

We know that being a divorce lawyer is not an easy job. So let's start off with what it is in particular that you think makes it difficult for a divorce lawyer to do their job.

Judge Lowrance:

There are many things, but let's remember what they're taking on, what it means to be a warrior for the heartbroken and carry people's agonies in their hands. There are several levels of pain for divorcing people that family lawyers must deal with.

The first level of pain is the heartbreak, the fear of finances, the fear of the future and loss of identity.

The second level of pain is what it feels like for their client to be called a bad parent; what it feels like to be the

Illinois Circuit Court Judge and author Michele Lowrance discusses with Family Lawyer Magazine the hard skills family lawyers need but are not taught in law school. We're pleased to present an excerpt of that discussion.

one to deliver the news that the other person doesn't want you to get any of the money; what it feels like to stand in court next to someone who hasn't seen their spouse in a long time; or what it feels like to give a deposition and be shamed for the \$5 you stuffed in the drawer that you didn't reveal.

The third thing is that clients believe that they're supposed to be feeling better about all of these emotions. When they're not, they think that their family lawyer didn't do his or her job. Even when their case is over, when they're still not feeling good because they haven't healed the way they need to, they blame the family lawyers. "If the lawyer had gotten me a better settlement I would feel better." So, it's an enormous undertaking.

Family Lawyer Magazine:

It's virtually impossible for the family lawyer to make sure that their client feels good for sure. It's not their job to make them feel good.

Judge Lowrance:

Well the thing is, we're never taught those skills. When you're a warrior for the heartbroken, you usually end up giving ministry to your clients in ways you never expected and least of all, you've never been taught. So when they unload their whole heartbreak onto you,

some family lawyers have good innate skills, but when you talk about seminars that given to family lawyers, you're not going to find these kinds of skills there. And these are the skills that are really needed because communication and rapport with your client is life altering.

Family Lawyer Magazine:

Why do family lawyers burn out? Is it inevitable unless you actually do something to make sure that you don't. I know that you shared some ideas about the emotional intelligence that they need to develop.

Judge Lowrance:

Harvard and Yale studied Fortune 500 companies. What they found in their studies was the people that surpassed everybody else were the ones who had high emotional intelligence, that it was not the people who were the best in their field, the one that they called at MIT personal mastery... it wasn't the IQ, and it wasn't technical skills. That's one thing they found. The second thing they found was that without emotional intelligence, people with high IQ and good skills could become dumb. So here's the thing with emotional intelligence, these are skills we don't get in law school. I've been doing seminars across the country, not just for divorce lawyers but all kinds of lawyers on this, because I saw that there was a gap in that and nobody

was really talking about that. So I'd love to see a lot more work done on that.

Family Lawyer Magazine:

Are you talking about things like empathy, understanding, emotionally feeling connected?

Judge Lowrance:

No. I'm talking about hard skills. I'm talking about skills for handling anger, skills for listening — hard skills. Empathy is great but it's important to understand how to do it. All right, here's a skill, a tool. I've created this idea called a reality map. The lawyer says to his client: "I want you to write down the story of your divorce, what happened and what you think you would like to see happen, write it all down." Okay, the client does it. Then the lawyer sits down with the client and takes three colored magic markers: red, yellow and green and highlights what's written with one of these markers.

- The red one is: oh no, you want revenge, you want him to stop seeing his girlfriend, we can't really do that. So red is something I know you want but the courts don't really care... you're not going to feel satisfied with that, you're not going to get that.
- Yellow: if you want to spend the money to fight and try to get some of his non-marital assets? You can, you might have a shot at it, but it's an iffy thing.
- Green: we can do this. We can get you support. Green is what I want you to focus on.

Now all of a sudden you've got not only a picture of the case, and every time the woman comes back and says "I want revenge", "I don't want him to..." you will say: "remember, I told you that's red, we can't do that."

What this does is it organizes a chaotic thought process. The best part about it is that the lawyer doesn't have to listen to the same story all the time when the client perseveres about it. This manages fees. For example if somebody wants you to fight for the iffy, say to them that you may spend a lot of money on the

yellow. If you want that you just need to give me the go ahead, and we will do that. But you've got to know that that's the iffy. All of a sudden you're problem solving, you're picking and choosing, you have more control over what's going on. The whole business of going through a divorce is completely chaotic. People don't have a clue what's happening.

The next piece of the reality map is a risk assessment and you're going to want to put that down in writing for the client as well. High probability that you're going to get the house, or low probability you're going to get the house... and then you factor in legal fees, pre-trial recommendations, how much it's going to cost, really to get the yellow. So it all starts to make sense and then you've got a client who is on board with you and not sabotaging themselves.

Family Lawyer Magazine:

Do you think that lawyers can make the divorce experience ultimately better and more positive for their clients?

Judge Lowrance:

I do. I think the reality map, the risk assessment keeps them very much in the loop of what's going on. I also think the way lawyers listen makes a difference — listening has been considered the most powerful communication skill that there is. I can tell you some definite things about listening that people need to know. That is, the greater the emotional extreme the less people hear. It does not matter what the emotion is. You can't make them make sense when they're angry. I see lawyers all the time trying to get through to a client who's losing their mind, who's just so upset, it's just not the time, you can never do it in the crescendo. Through emotional intelligence you've got to know that. If you know that, and you're not fighting with them when they hit the crescendo, they're going to have a better experience because you've got to keep that trust level.

One of the other things I talk about is how to handle trust once it's broken.

This is one way to make sure it doesn't: You don't say anything to the client until they have said their fill. Then you ask, is there anything else you want to add. As lawyers we are all so used to jumping in, "I know what you're going to say but that's not what's going to happen" and "don't make me listen because..." That breaks the trust. ■

Judge Lowrance was a domestic relations lawyer for twenty years prior to becoming a domestic relations judge in the circuit court of Cook County, Illinois in 1995. She is also author of the book The Good Karma Divorce and has been a guest on Good Morning America, the CBS Morning Show, CNN, ABC and other shows. She also appeared, produced and hosted radio shows and is a regular guest lecturer.

More Advice for Family Lawyers

Read or listen to the complete interview with Judge Lowrance

Judge Michele Lowrance explains:

- Why developing "Emotional Intelligence" is vital to family lawyers
 - How a 'Reality Map' helps family lawyers keep their fees and clients' emotions and expectations in line
- www.familylawyermagazine.com/articles/an-interview-with-judge-lowrance.

Interview with Justice Brownstone

Read the excerpt on page 100 and listen to the full interview @ www.familylawyermagazine.com/articles/advice-for-family-lawyers-part-i.

Interview with Judge McCarthy

Judge McCarthy discusses how the lack of preparation for Court is costing the clients, the system and the lawyers. www.FamilyLawyerMagazine.com/articles/kathleen-mccarthy.

Advice for Young Family Lawyers

An interview with Bernie Rinella, a family lawyer of over 50 years. www.FamilyLawyerMagazine.com/articles/rinella-advice-for-young-family-lawyers.

Family Lawyer Magazine

Charity Funding Challenge



\$6,000 in Prize Donations

Many non-profit organizations offer services and resources to men, women and children who are in need as a result of family issues such as divorce, domestic violence, poverty etc. Many family lawyers are making a difference by donating money and volunteering their time and skills to these organizations. To support their generous efforts, Family Lawyer Magazine has created the Charity Funding Challenge to increase awareness of these worthwhile organizations and further empower them by donating \$1,000 cash and \$5,000 in marketing services to the organization that receives the most votes. For more information, please go to www.FamilyLawyerMagazine.com/articles/charity-funding-challenge.

1. **This challenge is now open for nomination and votes.** You can vote for your favorite charity on our website. If you don't see your favorite charity on the list, please email your nomination to us: charity@familylawyermagazine.com.
2. **Invite others to vote for your favorite charity.**
3. **Deadline for nominating a charity:** August 31, 2012.
4. **Deadline for voting for your favorite charity:** October 31, 2012.

Some Charities for You to Consider

The AAML Foundation Chicago, IL • www.aaml.org

The American Academy of Matrimonial Lawyers Foundation (AAML Foundation) advances one of the American Academy of Matrimonial Lawyers' most important goals: to protect children and families. The AAMLF raises money in a variety of ways, including its "hourly rate" program, in which a Fellow commits him/herself to contributing one hour of his/her hourly rate. Projects funded by the Foundation include:

- *Shelters and legal assistance for victims of domestic violence*
- *Recommendations regarding important issues in matrimonial law*
- *Education of judges, lawyers and related professionals about family law issues*
- *Promotion of free and low-cost family law representation and mental health services for indigent clients*
- *Programs to help children deal with the effects of divorce*

The Harriett Buhai Center for Family Law

Los Angeles, CA • www.hbcfl.org

The Harriett Buhai Center for Family Law protects victims of domestic violence and improves the well-being of children living in poverty. They provide free family law assistance and legal education to the poor, and strive to empower people in need and assure them meaningful access to the courts. Their programs include:

- *Self-Representation: The center aids impoverished individuals to represent themselves in court.*
- *Pro-bono: Free legal representation to clients who are unable to represent themselves in court.*
- *Domestic Violence: Legal assistance to victims of domestic violence.*
- *Community College: Legal assistance for low-income community college students who are experiencing domestic violence and other family problems with on campus sessions.*
- *Incarcerated Mothers: Legal education at women's jail in Los Angeles and direct legal assistance is provided to mothers released from jail.*

The Lilac Tree

Evanston, IL • www.thelilactree.org

The Lilac Tree is a resource for women across Illinois who are contemplating divorce, or are in the process or post-decree. Their mission is to provide education, support and resources to women, so that they can move confidently towards independence. The Lilac Tree helps clients stay focused, and really work together with their family lawyer to achieve the best possible outcome both legally and financially for their family. Their support programs include:

- *Individual Information Sessions: Help women assess their options and learn what to expect legally, financially and emotionally.*
- *Divorce Workshops and Seminars:*

Including a semi-annual "Divorce University™" which covers the role of family lawyers, mediators and financial planners, what women need to know about finances, helping children through divorce, co-parenting, infidelity, making career transitions, reducing stress and more.

- *Divorce Support Groups: Led by therapists, to help women deal with emotional issues.*

Jewish Family and Child Services

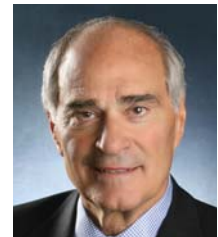
Toronto, ON • www.jfandcs.com

Jewish Family & Child (JFCS) supports the healthy development of individuals, families and communities through prevention, protection, counselling, education and advocacy services. They serve as a community asset for all family law firms and family lawyers who want to help their clients and their families to

CONTINUED ON PAGE 89

FAMILY LAWYER MAGAZINE HONORS DIFFERENCE MAKER — BERNIE RINELLA

Some family lawyers have found a way to balance their professional commitments with their philanthropic aspirations, making a profound contribution to their communities. In this issue, Family Lawyer Magazine wishes to honor Bernard B. Rinella as our Difference Maker by highlighting some of the charities he is working with.



Mr. Rinella, a partner at Rinella and Rinella, Ltd. in Chicago, has practiced family law for over 50 years. His inspiring volunteer efforts over the decades have touched countless number of lives.

- **The Allandale School for Boys and Girls in Chicago area:** "It's really been a great privilege for me to work with this organization. We take in kids from the age of 10 who have had very few opportunities in life. We go through high school with them and have sent many kids on to colleges."
- **The Bernie B. Rinella Jr. Learning Center in Miami University, Ohio:** "My son attended that university. He had some problems and needed some tutoring. When he passed away, my wife and I started this center to help kids with learning disabilities. In 2009, the center was selected the Outstanding Learning Center in America."
- **The American Academy of Matrimonial Lawyers Foundation:** This foundation started about 15 years ago. I was one of the original board members. We raise money for charities that deal with kids who have been involved in divorce. We just hit the million-dollar mark this year.
- **Scholarships for Needy Students:** We give scholarships to kids in the Upper Peninsula of Michigan, which is the poorest area other than West Virginia. My grandfather was from up there. We have one kid who started at University of Michigan and then got a Ph.D. in physics from MIT. We did the same thing with DePaul Law School.

To listen to our full conversation with Bernie Rinella and to learn more about his volunteer efforts, please visit: www.FamilyLawyerMagazine.com/articles/rinella-making-the-difference.

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4 REASONS TO MAKE THE PAC ADVANTAGE YOUR ADVANTAGE FOR PENSIONS & QDROS IN DIVORCE

Two "We Wrote the Book(s)"

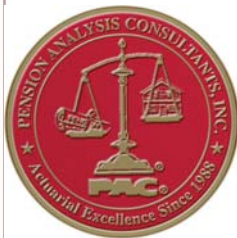
PAC actuaries are authors of over 50 law journal articles and are co-authors of three benchmark pension/QDRO textbooks: *Valuing Pensions in Divorce*, *Valuation Strategies in Divorce* and *Dividing Specific Assets in Divorce* (Wolters Kluwer). Attorneys have found our ability and willingness to share practical insights and discuss key issues has helped them secure better settlements.

Three We don't wing it; We win it

PAC is familiar with state-specific case law concerning pensions in divorce. If expert testimony is needed, we discuss the overall strategy of the case with you and prepare direct and cross examination questions. Our results stand up in court.

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An Interview with Stephen Kolodny, Family Lawyer to the Stars



Family Lawyer Magazine spoke with Stephen Kolodny, one of the most pre-eminent family lawyers in the U.S., about his family law practice and personal life. Kolodny has taken on many high profile family law cases including cases with celebrities. Here is an excerpt of that interview.

you give me an idea of how many hours of preparation you're talking about?

Stephen Kolodny:

The amount of time spent is dependent on multiple factors like the size of the estate and the complexity of the assets. When dealing with support issues, it's important to look at all the financial components. All the components of support and income determine whether or not someone is receiving adequate compensation for the services that they are performing. If you're dealing with a custody case you need to look into the background and the history of people. In today's world, you need to be looking on facebook and other social media to see if there are embarrassing things about your client that you need to know about. You will also need to know if there are things that will embarrass the other side or be important in terms of a psychological presentation to the trial.

Family Lawyer Magazine:

You've said the initial client interview is very important. What are the key objectives that must be achieved during this interview?

Stephen Kolodny:

I believe that the most important thing in the initial client interview is to establish the parameters of the relationship and to determine whether you, as the lawyer, are going to be comfortable

working with the client. This is one of the most intense interpersonal relationships that exist. If you're not able to feel like you are going to be getting accurate and complete information from them, or if you're not going to have access to them because they are too busy doing something else, you need to rethink whether or not this is a case that you want. For most professional athletes and busy executives, you need to establish a rapport with them in the very beginning of the case and understand that you are going to be working substantially with others, such as, handlers, managers, and business agents. Your client will also have to understand that they must be available to you when you need to speak with them.

Family Lawyer Magazine:

You've written that every case needs a theory. Can you expand on that?

Stephen Kolodny:

I think the phrase "theory" is something I learned much later in my practice. It was always something that I understood and that I always did but I never put the right words to it until I started teaching and listening to others teach trial theory. I believe that theory is critically important to the case because we are doing in effect, a performance to an audience of one. You must be able to put your material and evidence together in a way that will be persuasive to the

Family Lawyer Magazine:

You once stated that preparing properly for a trial is the best method for reaching a settlement negotiation in a satisfactory result. Why is this so?

Stephen Kolodny:

I believe that in order to properly settle a case you must first understand all of the details of the case. Before you enter into settlement negotiations you need to know what the parameters of your upsides and downsides are — full preparation before settlement is the only proper way to do settlements. We will almost never settle a case at the very beginning just to cut costs because without understanding the scope of the issues and the financial parameters, you cannot properly serve the client.

Family Lawyer Magazine:

I know that you handle many complex cases, both in terms of child custody and the financial aspects of divorce. Can

judicial officer that's hearing the case. That's what a trial is all about. So your theory needs to start out in a way that will appeal to the factual correctness of your position and the psychological impact that its presentation has on the judicial officer. The theory of the case will change as you develop more and more facts. You'll have one theory that seems to be the way you want to put together your evidence and its presentation at the time of the initial interview. You will probably find that as you gather more information and test things that your client tells you against the documents that exist, you may need to change that theory to adapt to the facts. And then as you get closer to trial you may come up with some other completely different ideas that will cause you to switch your theory of presentation. Theory really means the presentation of the ultimate script to the trial court.

Family Lawyer Magazine:

Do people with high income or high net worth treat their divorce more as a business transaction or are they just as emotionally involved as other people going through a divorce?

Stephen Kolodny:

For some reason, and I think it's because divorce deals with the most basic of human emotions, even the most sophisticated business people get emotionally involved in their divorces and become emotional about aspects that may be relatively insignificant in the overall scope of things. It is very rare, even for a wealthy businessman to look at divorce purely as a business transaction — certainly not at the beginning of the case, but as things progress, often their perspective changes.

Family Lawyer Magazine:

If your case is going to trial, a judge can make or break your case. What are some of the things that you have done to establish and maintain your credibility with judges?

Stephen Kolodny:

Be truthful. Don't deceive by omission. Don't deceive by suggesting things that

are completely illogical. Your credibility with the trial court counts for probably 10% of what happens in trial and probably 25% of what happens in motion practice. If the judge believes that you are credible and that you will not feed them a line that will not stand the test of an appellate court, they will look at what you suggest and argue with more favor because they know they can rely on you. There is much discretion that the judge has with family law cases, far more than in any other field of law.

Family Lawyer Magazine:

What qualities and characteristics do you believe have contributed to your success?

Stephen Kolodny:

I'm not willing to say that I can't do something because somebody shows me a case or two that seem undoable. When I am told that, I want to go over everything and find a way to do it. I think if you start out with this attitude, no matter what the task is, you can do it. A judge once said this about me: "Kolodny is like a Sherman tank. If he comes to a wall and it blocks him, he just backs up and starts again, and he just keeps going until the wall is down and he gets what he wants." Well I don't know if that's necessarily true, but it is indicative of the way I think about these things. If something looks like it is difficult, it just means you've got to work a little bit harder to achieve your goal.

Family Lawyer Magazine:

Committed professionals often struggle with establishing a work/life balance, what have you done to overcome this challenge?

Stephen Kolodny:

I think one of the things I've been singularly unsuccessful with is establishing a work/life balance. I grew up in a generation where work came first, which I think has changed dramatically for the good. Many younger lawyers are spending time with their children. In my era we just worked. We came home and our children were in bed and were probably still asleep when we got up

and left in the morning. I think it's much harder for lawyers today to have the kind of commitment that I had to work, which I think in some ways got me to where I am. The way I was raised in my professional life, you needed to get the work done and other things had to wait. So to a large extent I don't have a balance. I try to work on that, but it's very difficult. ■

Stephen Kolodny is a family law trial lawyer and founding Partner at the firm of Kolodny & Anteau in Beverly Hills, California. He is the Recipient of Boston University School of Law's Silver Shingle Award for Distinguished Service to the Profession. He is a Founding Diplomat and Executive Vice-President of the American College of Family Law Trial Lawyers; Former Program Co-Chair and 19 year faculty member of the ABA Family Trial Advocacy Institute at University of Houston, ABA Family Law Section Trial Advocacy Institute. Stephen co-authored Divorce Practice Handbook, Judge Mills Family Law Benchbook, and California Family Law Litigation Guide and is a lecturer at many state FLS conferences.

Listen to the Entire Interview @ www.FamilyLawyerMagazine.com

This is an excerpt of an interview with Steve Kolodny. To read or listen to the entire interview, please visit www.familylawyermagazine.com/articles/an-interview-with-stephen-kolodny-lawyer-to-the-stars.

More Interviews with Professionals

Read our interview with family lawyer Steve Mindel on page 85 and find out how he integrates work, play and charities in his life.

More interviews with family lawyers are available at www.familylawyermagazine.com/article-category/interviews.

The Art of Divorce Settlement Negotiations

By Gilbert B. Feibleman, and Paul Saucy, Family Lawyers

Any fool can take a divorce case to trial. Only a skilled lawyer can negotiate a settlement which maximizes the client's position without making the opponent feel taken advantage of. This article highlights those negotiating skills that are critical for resolving matrimonial disputes in non-courtroom forums.

The Importance of Understanding the Psychology of Divorce

The first step towards achieving a positive settlement is to recognize that a divorce negotiation is unlike any other legal negotiation. Car accident negotiations, for example, are one dimensional because the accident client wants only one thing: Money. By contrast, divorce cases often involve a multitude of interrelated issues, all of which are colored by the intensity of the emotions of the parties, their families and sometimes even the lawyers. Emotion-wrought disputes may arise over seemingly trivial matters, such as the division of furniture and wedding gifts, or even the custody of pets.

The lawyer who can understand each case's emotional aspects, its unique issues, the parties, and how they all interrelate can significantly improve settlement results. The successful divorce lawyer must know each of the following before starting to negotiate a case:

- The law and the facts of her case
- The client's goals
- The opposing lawyer, and
- The judge.

Know the Law, Your Client and Your Client's Case

A significant step towards a successful settlement is to develop a working knowledge of the law which applies to your situation. There is no quicker way to be taken advantage of or to create a malpractice opportunity than to violate this cardinal rule. Any good divorce lawyer must have a working knowledge of a multitude of areas of law such as tax, corporate, partnership, real estate, options, security devices, negotiable instruments, landlord/tenant, and wills and trusts. It is equally critical to have a working knowledge of non-legal areas of study such as finance, insurance, counseling, abuse, addiction and psychology. The lawyer also needs to know when to seek the aid of an expert in one of these fields.

The next step is for the divorce lawyer to familiarize herself with the client and the facts of the client's case. This is accomplished by truly listening to your client. The lawyer can only get those facts by listening. You should find another area of law to practice if you do not care about people or you lack the ability to listen to their problems. Your goal is to ascertain the



client's concerns, help the client set reasonable goals, and then work to resolve those concerns by accomplishing those goals. Have the client put aside that list of questions he brought with him and start the first interview by asking the client what went wrong in the marriage. Even the most stoic client needs the opportunity to get it off his chest, with no interruption, comment or criticism.

Study after study makes it clear that clients look for the lawyer who cares about their case rather than one who is the smartest, the cheapest, etc. So listen and learn. It will take several interviews and other information gathering techniques to fully grasp all the details and nuances of the case, and to develop your relationship with the client. Ask your client to write out his objectives in order of priority. This will give you a record of the client's own view of the importance of each issue, and will provide a checklist in developing a plan to achieve the important goals. This list can also be used by you and the client to determine what is and is not non-negotiable.

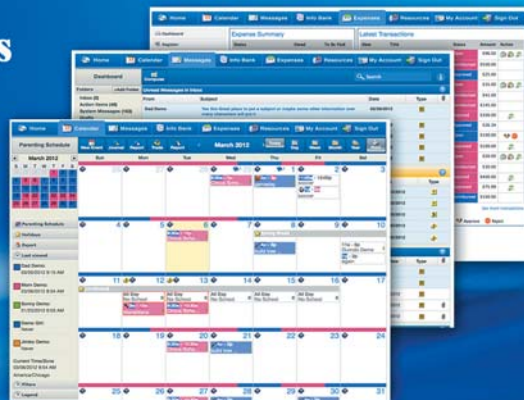
Focus on getting the client's information, including an understanding of what motivates the client's spouse. As you begin to understand what your client's spouse wants you can speculate as to what concessions she would make to attain her own goals. You will gain a greater understanding of the psychological and emotional pressures affecting all members of the family unit. In doing so, you will gain the insight that will become invaluable once everyone is sitting at the conference table.

Help the client develop realistic objectives by being direct, matter of fact, and honest. The more knowledgeable the client is made about the law and the process, the easier it will be to settle. The bottom line is always this: terminate the lawyer/client relationship if you cringe at the thought of picking up the client's file. You will not settle the case, or if you do, the client will not like the result regardless of how favorable it actually was. No lawyer needs the money that badly.

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Know the Other Lawyer

Who is the other lawyer? Does she know the law? Does she have solid negotiating skills, or does she take unreasonable positions only to back down on the night before the trial? Is she honest and forthcoming with information, or does she "hide the ball"? Is her style so offensive that the best course of action is to have the case set immediately for trial? The list is endless. One way to find the answers is to make a few calls and ask questions about your opponent if you have not handled cases with her before. It is critical to know your opposing lawyer's strengths and weaknesses, level of knowledge and working style.

What is your opponent's negotiating style? Is the lawyer a "competitive" or "cooperative" negotiator? "Competitive" negotiators occasionally obtain more extreme results than "cooperative" negotiators but the price for those results is that they settle far fewer cases. It is not worth subjecting your client to this kind of negotiation. "Competitive" negotiators frequently win a battle during a particular confrontation, but they seldom win the war. They forget that the parties are often going to have to deal with each other for a long time and the pleasure of the moment may cause damage that lasts a lifetime.

Know the Judge that Will Try Your Case

Settlement is largely determined by what the lawyers believe is attainable through trial. "Knowing" the judge does not mean that she will cut you any special favors. Rather, it is a recognition that every person, regardless of position, has personal biases and prejudices. A judge with a husband who stays home to care for their children will look at a case differently than a judge who has placed her children in daycare so that her husband can work. An alcoholic judge who has been sober for 5 years is going to be sympathetic to an addictive spouse who has recognized her problem and is seeking treatment. Call more knowledgeable local lawyers and ask for advice if you are not confident in your understanding of your judge.

Read the Full Article Online

This is an excerpt from an in-depth article by the same title which can be found at www.familylawyermagazine.com/articles/the-art-of-divorce-settlement-negotiations-part-1-of-3. The full article covers these topics:

- how to prepare for the negotiation process
- a family lawyer's role in the settlement process
- the mechanics of settlement negotiations
- strategies for positive settlement negotiation
- mistakes that family lawyers should watch out for.

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Divorce Settlement Negotiations

By Gregg Herman

10 Commandments of Domestic Negotiations helps create the type of atmosphere that makes a settlement more likely. www.familylawyermagazine.com/articles/divorce-settlement-negotiations.

Understanding and Working with Your Client: The Importance of the Other Side of the Story

By Kate Scharff, MSW and Lisa Herrick, PhD

Are your client's interests best served by your moving quickly to become the standard bearer of their cause as they define it? Maybe not. www.familylawyermagazine.com/articles/understanding-and-working-with-your-client-the-importance-of-the-other-side-of-the-story.

The Constructive Divorce

By Mark A. Chinn

Life is short and we lawyers can be the architects of the lifestyle we lead. Let's treat each other with courtesy and civility. Let's use collaborative techniques and mediation to help our clients achieve rapid and constructive results. www.familylawyermagazine.com/articles/the-constructive-divorce.

Gauge your settlement advice to the client on what you expect the judge to do if she ultimately will resolve the unresolved conflicts. Most judges are more than willing to meet with the lawyers for a quick advisory meeting. The judge can explain her read on what the outcome could be. Telling the client how the judge will likely rule on disputed issues often resolves stubborn impediments to settlement because it carries more weight than your own opinion and allows everyone to save face. ■



Gilbert B. Feibleman is a Fellow of the American Academy of Matrimonial Lawyers and Past-chair of the Oregon Chapter. He is also the past chair of the Oregon State Bar Family

and Juvenile Law Section and serves on the board of the Oregon Academy of Divorce Practitioners. He is a frequent speaker and author on matters of divorce and ethics. His website is www.feiblemancase.com.

Paul Saucy is a Fellow of the American Academy of Matrimonial Lawyers and the past chair of the Oregon State Bar Family and Juvenile Law Section. He is a frequent speaker and author on matters of divorce. His website is www.youratty.com.

Military Divorce:

Returning ServiceMembers and “the Home Front”

By Mark E. Sullivan, Family Lawyer

Empty outposts overseas mean full billets and bedrooms back at home. In view of the “new phase” of relations between the U.S. and Iraq, using Vice-President Joe Biden’s language, we can expect many returning servicemembers (SMs) in the next year. The redeployment of military personnel back to their stateside assignments and their homes will be the result of significant drawdowns in Iraq and Afghanistan. How will this impact the family lawyer?

Military personnel who are returning from the Middle East are not only from the active-duty forces (Army, Navy, Air Force and Marines); they are also from the Reserve Component, namely, the National Guard and the Reserves. Thus, the homecoming impact will be felt nationwide, not just in communities near military bases. While reuniting with one’s family will be a joyous experience for some SMs, it may create significant stresses for others. And these stresses may lead to legal consequences. Stresses may arise due to one party having

been solely in charge of the home for the entire deployment, without any help and with heavy responsibilities for running the home, managing the budget, taking care of children and — quite often — holding down a job as well. Having been away for a year in most cases, the returning SM has his or her own issues. These SMs need time to decompress and to adjust to new responsibilities, routines and duties — both at home and at work.

Sometimes there is an “interim relationship” which was formed while one spouse was gone. If so, this will have to be dissolved so that the marriage may continue. When this doesn’t happen, the marriage will be in trouble and a separation is definitely on the radar screen. The impacts on the parties include separation, interim support, domestic violence, temporary custody and many more issues.

The result for the family lawyer is a confusing welter of rules, laws, cases and

problems. When does state law govern? When should the injured party seek redress through the military? How does federal law affect the conflict? Where can one locate co-counsel who is familiar with these matters, a consultant who can give quick and accurate advice, or an expert witness who is available in person or by phone or Skype to assist the court? These are questions that family lawyers must be prepared to answer now — not later — if they are to effectively assist SM clients who are returning to “the Home Front.” ■



*Mark E. Sullivan, a retired Army Reserve JAG colonel, practices family law in Raleigh, NC and is the author of *The Military Divorce Handbook* (Am. Bar Assn., 2nd Ed. 2011),*

from which portions of this article are adapted. He is a fellow of the American Academy of Matrimonial Lawyers and has been a board-certified specialist in family law since 1989. He works with attorneys nationwide as a consultant on military divorce issues and to draft military pension division orders. He can be reached at 919-832-8507 and mark.sullivan@ncfamilylaw.com.

Related article

In Military Divorce, Fairness is Elusive, or is it?

By Rick Johnson

Issues related to the division of military retirement benefits in connection with divorce case. www.familylawyermagazine.com/articles/in-military-divorce-fairness-is-elusive-or-is-it.

Paving the Way for Professionalism in Family Law

Kenneth P. Altshuler shares his experience on being president of the American Academy of Matrimonial Lawyers (AAML) with *Family Lawyer Magazine*.

What are your goals as the President of the AAML?

To advance the positive image of lawyers and, in particular, family lawyers and to educate the public at large as to the need to always keep the health, safety, and welfare of minor children in the forefront of every family dispute.

Do you have a particular focus for your Presidency?

My initial goal was to bring the AAML into the twenty first century with regards to technology. The AAML now has a Facebook page, as well as a Twitter and LinkedIn account. My goal was to also increase communication among the fellows as well as ensuring that the public at large understands who we are and what we stand for. Communication is the centerpiece of my administration.

Does the AAML collaborate with any other professional organizations?

We have many collaborative programs with other organizations. Every other year we do a joint program with the American Institute of Certified Public Accounts (AICPA) on current divorce financial issues. On the alternating years we put on a joint program with the Association of Family and Conciliation Courts (AFCC) on non-financial divorce issues. We periodically present a program on negotiation in conjunction with Robert

“The AAML was founded in 1962. Today, it consists of more than 1,600 Fellows in 50 states.”

Mnookin’s Harvard Program on Negotiation. These events are available exclusively to AAML Fellows and the members of the associated organizations.

Do you describe yourself as “being in practice” or “being in business?”

It would be disingenuous to pretend that what we do is not a job that we perform to earn a living. However, family law is a particularly difficult legal discipline and a family lawyer has to have an affinity towards helping families to engage full time in this fairly stressful endeavor. So we practice by being helpful professional assisting families through a very difficult time in their lives, and we operate our business in a fiscally responsible manner in order to continue to do so.

If you could change anything about the practice of family law what would it be?

Certainly the evolution of alternate dispute resolution has been critical in insuring that the dissolution of a marriage can be accomplished in a more amicable and expeditious manner. Litigation is rarely the best way to resolve disputes between family members. However, if I could change anything

about the practice of family law it would be to make legal assistance available to the profound number of pro se litigants currently flooding the legal system.

How has your point of view changed over the past 15 years?

I certainly grew to realize that it is impossible for an attorney to change the traumatic emotional impact a divorce has on a client. We can be empathetic, but all we can do is provide the best legal advice available. If a party does not want a divorce, we cannot prevent the dissolution of their marriage. If a party wants the divorce, we can’t keep their family unchanged. In short, we cannot “fix” a broken family. All we can do is keep the damage to a minimum. ■

To learn more about the AAML, please visit: www.aaml.org.



Ken P. Altshuler is a partner in the law firm of Childs, Rundlett, Fifield, Shumway & Altshuler, LLC in Portland, where he has practiced family law since 1985. He has taught courses in Family Law for the University of Southern Maine & Andover College.



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Coaching for Success

If doubling the revenue of your law practice, taking 4-week vacations and going home on time interest you, you will want to read this interview we did with Mark Powers, a Master Certified Coach.

The field of coaching has grown through the years. The International Coach Federation (ICF) reported that its membership has grown from 11,000 in 2006 to 19,000 at the end of 2011. In their 2012 Global Coaching Study, the ICF estimated that the total revenue of the industry to be \$2 billion. The number of family law attorneys using coaches is also on the increase.

Family Lawyer Magazine decided to take a look at family lawyer coaching and its possible benefits. Where to start though? The best place was to ask top matrimonial lawyers who were using coaches, so we started with Cheryl Hepfer, past President of the AAML and incoming President of the IAML. Cheryl has been using a law practice coach for the past four years. "I've known about coaches for years and it wasn't until I was introduced to other top matrimonial attorneys (who work with coaches) that I saw coaching as a vehicle for taking a good practice and making it into a really great practice," Cheryl told *Family Lawyer Magazine*. "Matrimonial attorneys using coaches have dramatic improvements in revenue, client care, and personal freedom. Typically they use the coach to navigate growth, mergers, succession plans, or compensation plans."

Family Lawyer Magazine wanted a perspective on coaching and decided to interview Mark Powers, a Master Certified Coach and President of Atticus Inc. Mark has been working with family

lawyers for over 20 years, co-written two books on law firm productivity and marketing, and trains other coaches in law firm management.

Family Lawyer Magazine:

Mark, you've been coaching family law attorneys for over 20 years, is there anything that separates them from other law practices?

Mark Powers:

Absolutely, a family law practice is one of the most difficult to build successfully. The clients can be sometimes demanding, distraught, vengeful, but always emotional. Family lawyers have to be mediators, therapist, forensic accountants, as well as attorneys in dealing with all of their client's issues. Their days are filled with interruptions, stress and long hours. If they don't take control of the practice, it will control them.

Family Lawyer Magazine:

If there was a factor that impacts the success of a matrimonial practice more than others, what would that be?

Mark Powers:

Quite honestly, there are two critical factors. 80% of family lawyers' headaches come from a poor client selection decision and a poor hiring decision. Most family lawyers are very trusting in the hiring process, but when they make a mistake, they tend to keep a sub-performing staff member on far too long. These factors really hold them back.

Family Lawyer Magazine:

Given the availability of seminars why has coaching for law practices grown in the last couple of years?

Mark Powers:

The practice has becoming even more stressful with the number of attorneys

entering the marketplace, so good family law practitioners are looking for an edge to stay competitive. Conventional wisdom has been that you could go to a seminar, get a few practice management tips, and the practice would take care of itself. Clearly there are plenty of good seminars out there but the frustration has always been when you get back to the office and try to implement them. A good coach educates, guides, directs and provides accountability for implementation. Without that, best practice principles become good ideas that don't get traction.

Family Lawyer Magazine:

So how does one find a good practice management coach for their practice?

Mark Powers:

It gets more difficult everyday, because every life coach or attorney who can't make a living can put up a web site and call themselves a coach. I'd start the same way we look for a good family law attorney, with recommendations from your trusted peers and your associations. Most family law associations have practice management support and recommendations. Unfortunately, there are no professional standards for law firm coaching. As a matter of fact, we had to start our own certification at Atticus just to get some standards out there.

Family Lawyer Magazine:

When you say professional certifications, what are they and aren't you a Master Certified Coach?

Mark Powers:

Yes, my certification is through the International Coach Federation, which is a good start but it doesn't convey any expertise in the complex world of law firm practice management. I'm referring to certifications for law firm productivity, marketing, staffing, cash flow, succession planning and compensation. Outside of the Practice Advisors at Atticus, that doesn't exist right now. I would also look for a coach that has a proven, measurable track record of increasing your take home income,

decreasing the number of hours you work, improving the quality of the staff, and getting you plenty of free time away from the practice.

Family Lawyer Magazine:

Let's assume I've done my due diligence and checked out different coaches. How do I know they are a right fit for me?

Mark Powers:

Assuming you have identified the specific objectives that you want to accomplish, give the coaching relationship at least three months to ensure that you have good chemistry and that the coach understands how to interact with you. Keep an eye on the specific measurable results though; when you hire a coach, you don't need a therapist or a friend, in the end you want results. For significant results, you might be thinking about a minimum of six months to a year in working with the coach.

Family Lawyer Magazine:

What kind of results should be expected from a coaching program?

Mark Powers:

Depending on the practice, a 25% to 100% increase in revenues in the first 18 months; the shareholder getting to go home on time, not working weekends and taking two — four weeks off in a row; getting the firm to a 35% profit margin; increasing the average dollar value per file; and building a highly competent staff with low turnover. This will do for starters, but I'd also consider a goal of implementing a matrimonial assessment, a succession plan, or value pricing.

Family Lawyer Magazine:

100% increase in revenues and four weeks off work? Really? Those goals sound like a stretch if not opposing goals.

Mark Powers:

The goals are very compatible if you are building a business that does matrimonial law and not building just a job. And your readers are smart enough to know

they don't need a coach to maintain the status quo, you need a coach if you have big goals worthy of your time. ■



Mark Powers, President of Atticus, is the founder and developer of the first personalized training program dedicated to teaching attorneys the lasting skills and habits

necessary for practice development. Mark is a national speaker who has worked with members of the American Bar Association and bar associations in various states. He co-authored "The Making of a Rainmaker: An Ethical Approach to Marketing for Solo and Small Firm Practitioners," published by The Florida Bar.

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FIXED FEES BILLING

Family lawyer Lee Rosen has been using the fixed fees model for about 10 years. He explains the benefits of such billing model in an interview with us. Here is an excerpt from that interview.

The Benefits of the Fixed Fees Model

I think the model that so many practitioners use — the hourly billing model — really puts us at odds with our clients in a lot of instances. But when you switch to a fixed fee model, you very much get into alignment with your client. They want it over with, you'd like to have it over with, and everybody wins because you're all heading in the same direction trying to accomplish the same thing.

The hourly billing system truly rewards inefficiency, and penalizes the use of technology. You know: the faster you get, the more efficient you become, the fewer dollars you're able to collect for the case that you're working on. A fixed fee system rewards efficiency, and it rewards you for adopting technology. When you're using the old hourly billing system, you end up doing things from an administrative standpoint that costs your clients' money, but often doesn't really benefit them. For instance, when you move to fixed fees, you can eliminate a significant portion of your administrative overhead because you're no longer dealing with that function. Also, one of the biggest reasons to get away from hourly billing is that all of us hate keeping time records!

There are some other reasons that I think fixed fees will help a practice. Right off the top, you get paid for the work you do. So much of what people are experiencing when they're billing hourly, is that they're billing for time that they're not getting paid for. What I mean is, that they're sending out invoices, and then they end up with receivables — and those receivables don't get 100% paid. So people end up writing down some portion of it and entering into settlements with clients for some piece of the fee. All of that goes away when you move to the fixed fee model. You minimize all of those fee conversations, like having to call

clients and ask them to replenish trust accounts. When you eliminate those conversations, you also eliminate an opportunity for conflict — because those conversations are always sensitive, and they have a tendency to make clients upset.

Another reason to do this is that fixed fees are, in many markets, a competitive advantage. If everyone else in the market is billing hourly and you're doing the fixed fee, there will be many clients who appreciate that and see that you're offering a benefit they can't get elsewhere — and so it has a tendency to generate more business for you. Another thing that happens with fixed fees is that you get clients telling you everything that they need to tell you. That is, you no longer end up being kept in the dark about important details because a client didn't want to pay to fully inform you.

Finally, from a lawyer's perspective, fixed fees can allow you to drive away unprofitable business and focus on premium work, such as the cases that you really want to do — and you will be able to do fewer of them. You'll find that this really enhances the overall quality of your practice.

Why Clients Welcome Fixed Fees

Clients love knowing how much things cost. Can you imagine getting on a flight and not being told what it was going to cost? Imagine the airline telling you: "Well, we can't tell you how much the ticket is, because we don't know what the weather is going to be, we don't know if the pilots are going to demand a raise, and so when we get you there we'll let you know the cost."

The uncertainty of hourly billing drives clients bananas. With fixed fees, you can provide the client with certainty, which reduces their anxiety and enables them to make better decisions if they proceed through the

case — and that's really one of the key things we need for clients to be happy. You won't be facing a client who says: "Well, I don't know if I should file the lawsuit or pursuing this particular issue because I don't really know what it's going to cost." If you're using a fixed fee, they'll know precisely what it's going to cost, and they'll be able to evaluate whether pursuing that particular issue is something that's worth it to them, and can therefore make a smart cost-benefit decision.

Managing Your Practice

Now the fixed fees model is not billing Nirvana — you take on more risk when you use fixed fees. There will be cases that you'll lose money on because of charging too little. You're shifting the risk from the client to you, and that's a little scary. There will be times where things don't go the way that you'd like them to. There's also some complexity if your practice is such that you run credit lines or borrow against receivables. You won't be able to do that as easily. Banks see receivables as collateral, which they view as part of your overall financial health. If you don't have receivables because you've been paid in advance, you won't be in the same borrowing position. However you may not need to borrow because you've been paid in advance. ■



Lee Rosen is the founder of the Rosen Law Firm in North Carolina (www.Rosen.com). Lee is a member of the editorial board of the Family Advocate and a legal advisor to the National Council of Juvenile and Family Court Judges. He served as a Council member of the North Carolina Bar Association Family Law Section and Law Practice Management Section, as chairperson of several committees of the American Bar Association, and as editor of Family Forum, a publication of the North Carolina Bar Association.

Listen to the Full Interview on FamilyLawyerMagazine.com

This is an excerpt from an interview. To listen to or read the full interview please visit: www.familylawyermagazine.com/articles/flat-fees-for-services. In the full interview, Rosen also

- tells the story of how his transition to fixed fees nearly put him out of business
- provides practical insights on how to switch from an hourly billing system to a fixed fee billing system.

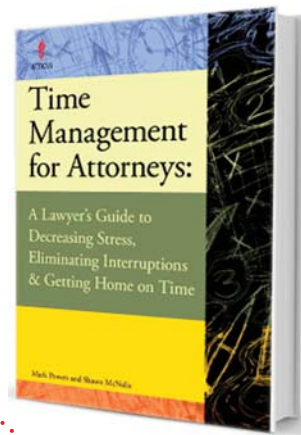
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Case Management Systems

By Mark A. Chinn, Family Lawyer



For years I lived in fear. Many nights I would wake up in the middle of the night, worried that something terrible was about to happen the next day, some important deadline that I had forgotten. On a few occasions, I actually threw my blue jeans on and drove to the office at 3:00 in the morning. Of course, when I got there, I quickly realized there was no emergency. To prevent malpractice and waking up in the middle of the night, effective, reliable case management systems must be employed.

The Calendar

Many firms use a large calendar on which they manually record key trial dates and deadlines. Such a calendar is obsolete in the age of case management software, and should not be relied upon as a method of case management. However, even if case management software is used, a large calendar can be useful as a visual aid to view key dates in the future.

Docket Sheet

A "docket sheet" is a list of each case with a summary of key information. A docket sheet lists the case, the lawyer responsible, and a brief summary of the status of the case and any key dates in the future. The docket sheet assists each lawyer and staff member in keeping track of the status of cases. The docket sheet also serves as a reference for discussion during docket meetings.

Docket Meetings

Most lawyers and firms are so busy tending to their business that they fail to stop and assess what they are working on and what needs to be done. Often, lawyers fall into the trap of working on what they want to work on, instead of what needs to be worked on, and cases get neglected. Regular docket meetings aid in making sure that cases do not fall through the cracks. The docket meeting is also a time when the entire staff can take a few minutes to think about the posture of a case and brainstorm about what steps should be taken.

Our firm has a one-hour docket meeting every Monday morning from 10:30 to 11:30. The entire staff participates, from receptionist, to bookkeeper, to lawyers. Usually, we stop and talk for at least a few seconds about each case. We try not to leave discussion of a case without creating a date for when something is going to happen or some action is going to be taken. Making sure that there is a date for action or for review, keeps the firm's performance proactive instead of reactive. These dates are recorded by staff in the case management system.

Docket meetings are a time to talk about many things other than the management of the case. The bookkeeper is present to talk about the status of the account: Is there a retainer in trust? Is the account past due? Is the client cooperating in payment? If not, the firm must take steps to protect its financial integrity. This type of discussion keeps the firm from working and working and building up a huge (and probably uncollectible) past due account, without noticing it.

Firm problems can be discussed in docket meetings. Perhaps there is a problem with equipment that should be discussed. Perhaps there is a quirk in the filing system.

Docket meetings can be used for morale purposes. Inspirational writings can be read and discussed. Awards can be given. Docket meetings can be fun, too. As a matter of fact, docket meetings which are not fun, may be counterproductive.

The time for the docket meeting must be protected on everyone's calendar. The purpose of the meeting can be defeated if everyone is not there. We seem to be able to prevent the scheduling of hearings, depositions, and appointments at that time.

In addition to regular docket meetings, conduct meetings with key people to discuss files at critical intervals. To resolve problems with files in the docket meeting would take too much of the entire staffs time and unnecessarily lengthen the docket meeting.

Case Management Software

If you are reading this and you do not have case management software, go get some case management software today. You should not operate another day without it. Among other things, case management software allows you to create reminders in the computerized calendar. Reminders can be created in many different ways. First, reminders can be manually created. You desire to check on a client in thirty days, so you go into the system and create a reminder in the client file for the desired date. Most systems allow you to create a reminder after taking notes on a phone call. You open a window for the phone call, type some notes and then click a button in the phone call window to create a reminder in the future.

Case management systems also allow you to program the calendar so it will systematically and automatically remind you of dates. For example, you can create a simple program to give you reminders in advance of the scheduling of a matter for trial, such as 60-day, 30-day and 15-day reminders. Case management software also allows you to perform the following functions:

- Maintain a list of contacts
- Target referral sources and create contact reminders
- Merge documents
- Create "preferences." ■



This article is excerpted from How to Build and Manage a Family Law Practice by Mark A. Chinn, published in 2006, by the American Bar Association Family Law and Law

Practice Management Sections. Mark received his law degree from the University of Mississippi in 1978. He is admitted to practice in all courts in Mississippi, the Fifth and Seventh Circuits and the United States Supreme Court. He is a frequent contributor in periodicals such as the American Journal of Family Law, The Family Advocate, Small Firm Profit Report and Fair. His website is www.chinnandassociates.com.

More Articles on Managing Cases and Clients

How to Properly Close a File

By Jonathan R. Levine, Family Lawyer

Obtaining the Final judgment and Decree is only the beginning of the end of a case. Simply mailing the client the Final Judgment and sending the file to storage is one of the biggest malpractice traps in family law today. Read the list of issues and items to consider when closing a file. www.familylawyermagazine.com/articles/how-to-properly-close-a-file.

Tips to Stay Organized

By Odette Pollar, Consultant

As a family lawyer, you know that things pile up. Papers multiply. Stuff just seems to arrive and remain indefinitely. Your working environment should support you, rather than weigh you down. Odette offers 20 tips to help you manage your workload and office. www.familylawyermagazine.com/articles/tips-to-stay-organized.

How to Deal with Impaired Clients, Professionals and Judges

By Mike McCurley, Family Lawyer

This paper serves as a guide for how lawyers deal with impaired individuals, whether they are clients, opposing counsel, or the judges. It describes frequently encountered disorders and treatment programs and facilities available. It also offers lawyers some practical advice for dealing with such individuals. www.familylawyermagazine.com/articles/how-to-deal-with-impaired-clients-professionals-and-judges-part1.



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Matrimonial Practice in the Digital Age

By Nicholas G. Himonidis, J.D., CFE, CCFS

This article deconstructs electronic evidence and examines its sources and procedure.



Computers have been around for decades. Technology has continued to expand exponentially. The “Digital Revolution” has reached a “fever pitch,” and the changes that affect almost every aspect of our lives have been dramatic. The way we think about the practice of law must change to keep pace. This is no longer a question of embracing new technology as a means to facilitate our practice, or increase efficiency in our offices. This is about the realization that *everything* our clients and adversaries are doing, the Subject Matter of what we are litigating, and the forms and location of the vast majority of evidence in the world is now created, stored, exchanged and replicated *digitally*.

Over 95% of All Information Created in the World is Now Created or Stored Digitally

Information is being created and stored on a scale never before seen. This change is qualitative and quantitative at the same time. Not only is the volume of information much greater than anything the world has ever experienced, but the very manner in which we think and act has changed in fundamental ways. E-mail and texting have replaced talking on the telephone as a primary means of communication. All recorded “information” is potentially “evidence.” “Digital Evidence” already dwarfs, by sheer volume, *all other forms*

of recorded information in the world as potential evidence. The impact of this change on the Justice Systems is pervasive and cannot be ignored.

Digital Evidence — Native Format

Native Format is the format in which a digital file (a group or “string” of digital data) was originally created and stored. The “Native Format” of a Microsoft Word document is a .doc file or .docx file. Every digital file has a “Native Format” and it is critical to have an item in its Native Format if we seek to obtain the relevant Metadata (see below) and to allow for proper forensic evaluation of the file if necessary.

In the case of emails and certain other items, the “Native Format” may be slightly more complicated, such as an individual email message that is contained within a Microsoft Outlook .pst or .ost file. In such case, the email is only truly in its “Native Format” if the entire host or container file is obtained.

Some Native Formats are proprietary or custom, and the source code of the application that created the file is not known. Therefore, when requesting files in Electronic Discovery it is important to consider requesting that they be produced in their Native Format, but not to “knee jerk” and make blanket demands that every item of Digital Evidence be produced in its “Native

Format.” Requesting that items be produced in “Electronic” or in “Digital” form is not the same as requesting them in their “native format.” The native format of a Microsoft Excel Spreadsheet is .xls (or .xlsx). That spreadsheet may be printed out, then scanned and turned into a .tiff or .pdf file and produced as such. To be sure, the item produced is in “Digital Form” but is certainly not in its Native Format. Upon receipt of the spreadsheet in its “new format,” there will be “Meta Data” (see discussion below) but the Meta Data will not be “relevant” as it will not relate to the original creation, modification, accessing and/or other information about the spreadsheet, it will only relate to the creation of the file in its current format.

Meta Data (and Beyond)

Meta Data is “Data about Data.” It is “additional information” created by the operating system or device that is creating/storing the data, to help keep track of and provide additional information about the data (usually a digital file) in question. The most basic form of “Meta Data” is referred to as “MAC Dates” or the date(s) and time(s) a computer file was created, last accessed and last modified. Nearly every operating system embeds its files with such “Meta Data.”

Meta Data can be very valuable in providing additional information about



a computer file. However, you must have the file in its native format in order to review and analyze the relevant Meta Data.

Although Meta Data contains difficult to alter information about the user or system that created the original information, it can be manipulated. For example, MAC Dates/Times are based on the Windows (or other operating system) internal clock. This clock can be manipulated by a savvy user. As easy as it may be to engage in such a manipulation, it is extremely difficult to do so without leaving significant evidence of the manipulation. However, the evidence of the manipulation will not exist within the file itself, or even within the "relevant meta data." It will only be found in other places on the hard drive/system files of the system that was used to create the "false" evidence. Therefore, you must have access to the system/hard drive in question to analyze "beyond the four corners" of the file itself, and beyond the "Meta Data." This is one of the best arguments for demanding production of entire computer(s) for inspection and "imaging."

With access to the system which created the evidence in question, we have access to Secondary/Indirect Evidence such as: Created by System (OS) or Application Files, Internet Temporary Files, Application Temporary Files, System Logs and Registry Files. This type of evidence can tell us about what the computer in question was used for, what programs were run, and when, and a variety of other potentially relevant information we might otherwise never know. The discussion of having access to the actual computer, system or device which created digital evidence actually begs the question: "when can I get the other party's computer in discovery?"

It is beyond question that discovery of electronically stored information in matrimonial cases is vital. "Fault" is now effectively gone from the matrimonial litigation equation, and even before that development, it was settled, at least in the First and Second Department, that discovery on issues of grounds was not permitted. However, discovery regarding the opposing party's finances is not only permitted, it is often the central issue in a matrimonial case. In addition, where custody is an issue, discovery of material relevant to the character and fitness of each party, and any conduct relevant to the issue of custody is properly discoverable and it goes without saying that a computer used by the opposing party may be an excellent source of such evidence.

All this notwithstanding, access to an opposing party's computer(s) in a matrimonial case, as opposed to merely obtaining discovery of specific documents/files, is not guaranteed, and the cases determining when such access is appropriate are far from uniform. ■

Nicholas G. Himonidis, is an attorney, licensed Private Investigator, Certified Fraud Examiner and Certified Computer Forensic Specialist. He is a Vice President at T&M Protection Resources, LLC in New York City, where he heads the firm's Private Investigation Division. www.tmprotection.com.

Read the Full Article

This article is an excerpt. To read the full article online, please go to www.familylawyer magazine.com/articles/matrimonial-practice-in-the-digital-age-part-1of-2. The full article contains much more detailed information and definitions, including:

- the difference between "digital" vs "electronic" vs "electronically stored information"
- electronic discovery and computer forensics
- what evidence is deemed forensically sound and more.

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Family Lawyer:

These days family lawyers should take advantage of technology and apps to help them improve their productivity, and better serve their clients. We spoke with John Harding, a family lawyer who publishes a blog on technology and family law practice. Here is an excerpt of that interview.

Family Lawyer Magazine:

John, can you start by talking about why you embrace technology?

John Harding:

I've always been an early adopter of technology, because I've always appreciated that it just makes it a whole lot easier to practice law. That same philosophy has blossomed with the evolution of the tablet technology. It has opened up a whole new channel of opportunities for me to take the technology that I use in my office with me wherever I go, including settlement meetings and trials at the courthouse.

Family Lawyer Magazine:

How do you use your tablet in your practice?

John Harding:

I use my tablet constantly as my calendar. I don't carry a day planner with me or any sort of paper calendar. It's all on my iPad — which is my tablet of choice. If I'm away from the office, I use my tablet to send and receive e-mails so I can keep in touch with clients. I also use an instant messaging app so that my staff and other attorneys in the office can get a hold of me at all times.

My iPad is my law library. We went paperless in our office about a decade ago, so everything is converted to PDF files. Via my iPad, I can take client files with me wherever I go. We also have some remote computing capabilities, so that through my iPad I can log into my computer at the office and access

the entire infrastructure. I can retrieve any client file at pleadings, research memos, correspondence, and archived e-mails. In addition, I have other tools that help me to perform better when I'm in court.

Family Lawyer Magazine:

Please take us through the apps you use for work?

John Harding:

The apps that I use constantly are the calendar and e-mail. I don't have anything special. I just use the native apps that are on my iPad. Another app that I use with great frequency is a note taking application. My particular app is called Note Taker HD. I take my iPad to depositions and to court. When I'm taking notes during a court proceeding or during a deposition, I'm using my finger as the pen, and I'm writing it directly on to the screen of my iPad with my note taking app.

For communicating with the office computers, GoToMyPC has a free app. I use LogMeIn Ignition as well.

I also use an app called PDF Expert Professional, it's a \$9.99 app, and it's fantastic. It gives me a full-screen image of the PDF documents. I can upload them to our Dropbox account and then pull them down to my iPad to see the document. For example, if I need to look at a bank statement or answers to interrogatories or a letter, they're right there. This app also gives me the ability to annotate and sign documents.



Dropbox is an app that I frequently use. It is an Internet file cabinet. You upload documents to your Dropbox account, and log on from a different computer and download them. Or you can synchronize various machines so that they all have the same version of a document in this central repository.

I also use what I call my law apps, which are the apps that I use at courthouse, at settlement conferences, at depositions if I need to pinpoint some law, and if a judge asks me a question. It's also useful when opposing counsel gets into a legal argument with me, because I can cite the authority that supports my position.

One of my law apps is Westlaw Next. It's a subscription app, and part of the library plan with Westlaw. It requires Internet access. It gives you the entire Westlaw library right then and there. In California, we have a series of reference books called the Rutter Group. It's really sort of the go-to "here's how you do the A, B's and C's of California- family law" book that every family lawyer in California has, and it's available as an online product.

There is An App For That



In California, we have more provisions in our family code than any other state. For less than \$30, I have every single California statute on my iPad through an app called California Codes, by Tekk Innovations.

In California, we calculate child support and spousal support with computer programs that are written for those purposes. A lot of other states are doing the same thing. We have three vendors who've been approved by California's judicial. One of those vendors, again, is West, and their app for support calculation is called DissoMaster.

There are also some great apps being developed for Microsoft Office devotees. Until now, there's been a bit of a lag and the software apps haven't enabled seamlessly integration with Word documents and Excel spreadsheets and other Office suite products. But new cloud-based products are coming online. CloudOn is one. Another is OnLive Desktop. These apps enable you to upload your Word documents or your Excel spreadsheets, and work with them in a completely native format, so

there aren't any formatting errors because of the lag time in developing compatible products.

Skype also has an iPad app. I have clients talking to their kids via virtual visitation using this app.

Family Lawyer Magazine:

What do you think this means to your clients in terms of having all of this information at your disposal?

John Harding:

It's a benefit to my clients in several respects. It really helps my clients to have that extra bit of confidence in me, because they see that I'm paying attention to the latest technologies and I'm really trying to be a cutting edge lawyer. And as I get older, it seems like my clientele gets younger. These young folks, who are totally conditioned by Facebook and the internet, almost don't give you any credibility unless you know about these technologies, and utilize them in your practice. If you can't, they treat you like a dinosaur and your credibility goes down.

Just the physical act of carrying an iPad adds to my credibility. But my clients see that if I'm asked any question from them, opposing counsel, or the judge, I can provide an answer instantaneously. And having an abundance of data empowers me to be a much better lawyer. Nothing is going to catch me by surprise.

Frankly, family law can be a very, very challenging profession. I'm always looking for ways to be a better lawyer without necessarily working harder at it. That's what technology does for me. It offers up tools by which I can be a better lawyer, but I can be better while also getting more efficient at the same time. ■



John E. Harding, JD, CFLS, AAML is the principal lawyer at Harding & Associates (www.HardingLaw.com). John is a family lawyer, collaborative practitioner and mediator. He regularly writes articles for legal publications and presents seminars on complex issues in family law for legal groups. He is also the publisher of the Family Law Lawyer Tech and Practice Blog @ <http://familylawyertech.blogspot.com>.

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To listen to the full interview with John Harding, visit www.FamilyLawyerMagazine.com/articles/john-harding-apps-for-family-lawyers.

For a list of apps for family lawyers, visit www.familylawyermagazine.com/resources/resources-for-lawyers-apps.

3 Ways Practice Management Software Helps Law Firms

By Rocket Matter

Duct tape! That's what's holding together law office technology at the typical small firm (metaphorically speaking, that is.) Learn how to run your firm more smoothly. www.FamilyLawyerMagazine.com/articles/rocket-matter-practice-management-software.



On Family Law and Technology

BY WILLIAM BREEDLOVE, LAWYER

While law governs technology in some ways — such as regulating patents and processes — technology governs law in many others, including the way it is delivered, the way in which legal service providers work, and the strange ways in which expectations under the same law change with the evolution of technology. It's not a matter of if technology will fundamentally change the economics of practicing family law, but a matter of when and how game changing it will be.

Many divorce decrees require that a parent inform the other parent of certain things whenever it is reasonably possible to do so. Today, that means a prompt phone call. As communications technology becomes more ubiquitous in our daily lives, how and when will the divorcees of tomorrow be required to communicate? How does the full-service family lawyer explain to his or her clients the burdens of communication that will exist post-decree?

Effective co-parenting is an important aspect of the post-divorce life that an honest attorney must prepare their client for in some regards. As many attorneys know, forcing parents who don't like each other to communicate about the important, subjective, and sensitive matter of their children isn't an easy task. When communication between

parents breaks down, the child is the one that ends up getting hurt. But who is to blame? Did the mother tell the father about school conferences three weeks in advance like she claims or was it only the day before? What about the mother who changes the custody arrangement every week making it difficult for the father to establish a routine to start his new life? Is she really asking for changes every week or was it once a month? Questions like that can come up in custody hearings post-decree and the answers provide evidence about whether one side or the other is violating their court-ordered arrangements and ultimately help a court determine what is in the best interest of the child.

Currently, sorting out breakdown of parental communication can require an attorney to sit down in front of literally hundreds if not thousands of communications back-and-forth between the parents to recreate the issues clearly for a court or mediator. While this is great for lawyers on a billable hour arrangement, those who can eliminate this unnecessary busy work can take on more clients, as well as spend time on more highly value added and priced services, ultimately bringing in more revenue for the firm, while saving the firm's clients from paying a highly skilled lawyer for menial tasks and increasing the likelihood of referrals from that client.

There are a lot of ways technology will change family law and as the founder and CEO of a company that helps parents accomplish effective co-parenting and other goals for attorneys through technology, I have some ideas of my own. But I'm interested in your ideas and I invite forward-looking attorneys to join the online discussion about these questions: How has technology changed your practice, how do you see it doing so in the future and what family law-specific technological services does your firm need that it isn't getting?

This is an excerpt from an article. To read the entire article and join the discussion, visit www.FamilyLawyerMagazine.com/articles/family-law-and-technology. ■



William Breedlove graduated from the University of Illinois College of Law where he taught undergraduate ethics and was the editor-in-chief of the University of Illinois Journal of Law, Technology & Policy. He is a general practitioner with Winstein, Kavensky & Cunningham in Rock Island, Illinois and is also the founder of Custody Communications Solutions, Inc. which produced and markets co-parenting solutions: www.coparent.me.

A Focus on International Family Law

International Academy of Matrimonial Lawyers president, Nancy Zalusky Berg speaks about membership, and the organization's goals and purpose.

Can you give us a little bit of background on the IAML?

The International Academy of Matrimonial Lawyers (IAML), was started in 1986 by members of the American Academy of Matrimonial Lawyers (AAML) to facilitate their handling of international family law matters with members of the London bar. The

their parent's country due to the failure to follow that nation's procedures, is evident to any sophisticated family law practitioners. Fellows of the IAML have easy access to lawyers and experts all over the world to assist their clients in getting assets valued and co-counsel to secure the return of abducted children through The Hague Convention.

tion which has opened up a world of issues for the Japanese legal and mental health communities. Divorce in Japan has not typically taken into consideration the kinds of child related issues which are so familiar to us; joint custody or parenting time by the non-custodial parent. It is not atypical in the event of the death of the custodial parent, typically the mother; the child then goes into the custody of the mother's family. Fathers have little or no influence in the children's lives after divorce. Hence the difficulty in securing the return of children from Japan even when there is an order granting custody to the left behind parent.

“As...multi-national corporations proliferate, the need to spot issues... due to the failure to follow a nation's procedures, is evident to any sophisticated family law practitioners.”

group has grown to over 600 members from over 44 nations. The USA Chapter is by far the largest with over 280 fellows from 34 states. The European Chapter has over 200 fellows from 25 countries. In addition there is a Canadian Chapter and over 80 fellows who practice outside the US, Canada and Europe ranging from Singapore and New Zealand to South Africa.

What is the primary purpose of the IAML and how does it benefit family lawyers?

As the world gets smaller and multi-national corporations proliferate, the need to spot issues in matrimonial cases involving assets in foreign countries, parties of multiple nationalities, children with several passports and children born from assisted reproductive technology, who may never acquire citizenship in

What I have found to be the most extraordinary benefit of the IAML has been the opportunity to experience a myriad of cultures, develop close and abiding friendships with lawyers all over the world and in a small way perhaps make a difference for children.

You recently addressed the Japanese Bar Federation, why did you do that?

I recently addressed the members of the Japanese Bar Federation in Osaka, Japan at the Symposium on the Hague Convention on Child Abduction. Japan has long been considered a haven for child abduction, notable for an industrialized nation, having failed to sign on to The Hague Convention on Child Abduction.

This past year the Japanese government indicated a shift in posi-

Legal Scholars from Japan are now visiting the U.S. as well as other Hague Convention signatory states to understand the wide variety of approaches to dealing with children and their ongoing relationships with parents after divorce. This is a truly profound task being taken on by Japan.

The IAML-USA Chapter as well as the IAML is committed to helping the Japanese Bar with this momentous task. Please visit: www.IAML.org for more information. ■



Nancy Zalusky Berg is a founder of Walling, Berg & Debele, P.A. She was admitted to the bar in 1980 and has limited her practice to family law since 1985. Berg is certified by the National Board of Trial Examiners as a Family Law Litigation Specialist.

10 Reasons to Adopt Cloud Computing for your Law Office

By Jack Newton, M.Sc.

Cloud computing offers a compelling alternative to traditional desktop-based software, and is seeing rapid adoption thanks to its ability to deliver easier-to-use, easier-to-deploy solutions at a lower total cost.

Cloud computing has rapidly evolved from a technology used by a small number of leading-edge law firms to a broadly adopted technology embraced by firms of all sizes. Cloud computing, or Software-as-a-Service (SaaS), refers to the notion of computing (software and data) being delivered as a service over the Internet. That is, rather than accessing software and data on desktop computers and servers located “on premise”, you access your software and data via a web browser. With the cloud computing model, your software and data are hosted and maintained by a third-party provider.

While this might sound abstract, you are likely already using cloud computing directly or indirectly: Gmail, Hotmail, Yahoo Mail, Facebook, Twitter, and Salesforce.com can all be considered cloud-based technologies. Here are some of the top reasons to adopt cloud computing for your law office:

Freedom

Cloud computing offers an unparalleled level of freedom to get your work done where and when you choose. Because your software and data are available on any device with an Internet connection, you can access your practice’s



Up-and-Running Fast

The complexity of traditional client/server software means long implementation times. Cloud-based software, however, can typically be implemented in just a few minutes. There’s no hardware to configure or software to install — just sign up, and you’re done. Your cloud provider takes care of the rest.

Tablet- and Smartphone-Friendly

With traditional desktop software, your data was often “trapped” on your desktop. Accessing your data from a mobile device, if not impossible, would often involve a cumbersome and error-prone “syncing” process. Cloud computing, on the other hand, offers “live” access to your cloud computing software and data via a mobile-optimized website or application. You can potentially access gigabytes of cloud-based data on-demand without any need for a cumbersome sync process, and you have the confidence you’re always looking at the most up-to-date version of your data.

As we enter a “post-PC” era dominated by devices like the iPad, iPhone, and Motorola Xoom, the importance of having access to your data where and when you choose will only continue to rise. Cloud computing and the new generation of mobile devices are a perfect fit for each other.

data from your law office, from home, from court, or even on vacation if the need arises.

Ease of Use

One of the biggest benefits of cloud-based solutions is the speed at which they can typically be learned. Since cloud-based applications run in a web browser, you’re already familiar with the user interface. You click a link to “drill down” into data; you click the “back” button to get back to the previous screen; you print off data on the screen by clicking the “print” button. Because you’re able to take advantage of your existing knowledge of how to use a web browser, most cloud-based applications only take a few minutes or hours to learn. This stands in stark contrast to traditional desktop-based solutions, which can have complex, non-standard user interfaces that take days, or even weeks, to learn.

Security

Cloud computing offers a level of security and data protection superior to on-premise solutions. Cloud computing vendors typically store data in highly secure, specialized data centers adhering to SAS 70 Type II auditing standards with 24/7 security monitoring and advanced, biometric-based access procedures. Cloud-based providers also perform routine and intensive server penetration testing which, when coupled with high levels of physical security, offered an unprecedented level of data protection.

Additionally, most cloud computing providers will offer geographically redundant storage of your data, meaning your data will remain intact and secure even if a data center suffers a catastrophic failure. However, the above security provisions are by no means standard across cloud computing providers; they are “best practices” that you should ensure your prospective cloud computing provider adheres to.

No Upfront Costs

Most cloud computing solutions offer a simple month-to-month subscription, meaning there are no upfront licensing costs. Likewise, because the cloud computing provider provisions hardware for you in “the cloud”, you don’t have the upfront hardware purchases typically associated with traditional desktop software.

Lower Total Cost of Ownership

Cloud computing not only costs less upfront, but less over the long term as well. To compare costs between cloud computing and traditional on-premise solutions we can use a “Total Cost of Ownership” (TCO) analysis, where all the direct and indirect costs of each solution are compared over a three-year period. Such analyses from the Gartner Group, Forrester Research and others typically show cloud computing solutions offer a 50% - 75% cost advantage over traditional desktop-based solutions.

No Lock-in

By the time you’ve finished implementing a traditional desktop solution, you’ve likely spent anywhere between \$5,000 and \$25,000. This “sunk cost” can make it difficult to switch to a different software system down the road. Furthermore, some traditional desktop-based systems make it difficult or impossible to export your data in an open proprietary format.

Because you haven’t made a large upfront investment in a cloud-based system, you’re free to switch to a system that’s a better fit for your needs. Most cloud-based systems make it easy to export your data in an open, non-proprietary format, thus making it relatively easy to switch from one system to another.

Collaboration

Putting your practice in the cloud means that it’s easy to selectively share data with your clients and other relevant parties. Many offerings, whether file storage services like Dropbox or Box.net, or practice management solutions such as Clio or Total Attorneys, offer the ability to securely share files with your clients. Cloud-based collaboration is more efficient, more secure, and can be a value-add service that helps you compete.

Ease of Migration

If you’re thinking about moving some or all of your IT to the cloud, you may be wondering if it’s possible to migrate all your existing contacts, documents, matters, and other data in an automated fashion. Luckily, it is.

For some cloud-based services, such as Dropbox, migrating is as simple as dragging-and-dropping your files from from your desktop to Dropbox’s cloud. In other cases, such as with practice management data, you may need to enlist the services of a consultant to help migrate data from your previous system. Data migrations take planning

and may involve some additional costs, but you’ll be able to avoid the costly and error-prone process of a manual data migration.

Conclusion

By embracing cloud computing you can make your law firm more cost-effective, more efficient, and capable of providing improved service and security to your clients thanks to cloud-based collaboration tools. ■



Jack Newton is co-founder and President of Clio, a leading provider of cloud-based practice management software. Jack holds a M.Sc. in Computer Science from the University of Alberta and holds three software-related patents in the United States and EU. Jack has written and spoken extensively on cloud computing in general, and specifically on the ethics, privacy, and security issues relating to the use of cloud computing in the legal market.

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By John Harding

Do we really need to carry a set of binders with us for a case management conference, or a settlement conference? My answer to you is no! There is an easier way. www.familylawyermagazine.com/articles/feature-article-dumping-the-banker-boxes.

Matrimonial Practice in the Digital Age

By Nicholas G. Himonidis

Read the short version on page 26 and the full version at www.familylawyermagazine.com/articles/matrimonial-practice-in-the-digital-age-part-1of-2.

A Powerful Tool in Child Support Enforcement

By Tim Voit, Financial Analyst

Retirement plans are considered marital assets, but even well seasoned attorneys are often unaware that retirement plans can be tapped into to pay child support.

Traditional methods of collecting overdue child support payments including the threat of incarceration for the dead beat parent are unlikely to produce the desired result. Not to mention that it is impractical since nothing will get paid if the parent of the kids is in jail. Garnishment? Possible, unless the Dad, or Mom, quits his/her job, moves around, barbers, or minimizes their income working partly for cash.

One of my clients, Jennifer, had not received child support in ten years on four children. Jennifer lived in one state while the father of her children lived in another. Over the years, Jennifer had accrued nearly \$160,000 in child support arrearages (4 children at about \$4,000/year over ten years). The father of Jennifer's children was working for a large company and accumulated a rather sizable 401(k) retirement account, enough to cover the arrearage.

Jennifer was told that the father being in another state created legal obstacles (untrue) that would take years to overcome, and others claiming that retirement plans were protected and could not be alienated or even paid out until some time in the future (mostly untrue). Although attorneys may have good intentions, and be well versed in the laws of their own state, they may not be as familiar with the administration of retirement plans nor have the experience of tapping into retirement plans using QDROs.

Typically (but not always) it is the wife or mother as the custodial parent who is burdened with the costs and energy of fighting for payment of child support, as court orders for support are often ignored by the non-custodial parent.

There is hope in an effective (but often overlooked) tool to receive child support and back child support, referred to as a Qualified Domestic Relations Order (QDRO), a set of instructions from the court to the retirement plan.

There are mainly two types of retirement plans: those with account balances like 401(k)s or savings plans (which are referred to as defined contribution plans), and those that are designed only to pay a monthly retirement benefit at a particular retirement age (referred to as defined benefit plans or pension plans). If the non-custodial parent only has an

interest in a monthly pension benefit, some calculations will have to be performed to determine the lump-sum value of the monthly pension benefit, with the value being compared to the arrearage. The pension plan can then be ordered to pay the custodial parent a percentage of the pension benefit, in consideration for not having been paid the child support when needed.

The process of obtaining current or back child support from a retirement plan is quite simple. Go to www.familylawyer.com/articles/a-powerful-tool-in-child-support-enforcement-to:

- get details about using a six step process to accomplish this goal
- see illustrations on how QDRO can work
- find out when and how distribution can be made, and
- how to handle tax liability. ■



Tim Voit is a Financial Analyst and founder of the forensic economics advisory firm Voit Econometrics Group, Inc. (www.vecon.com). Voit is an expert witness and advises law firms around the country on QDRO related issues and the valuation of retirement plans in divorce. He is the author of Retirement Plan Benefits & QDROs in Divorce and he teaches at the International College.

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Bright Line and Coverture in Divorce

Pension Valuations and Distribution

By Mark K. Altschuler, Actuary

In valuing marital property for purpose of equitable distribution in most jurisdictions, the definition of marital property is what is acquired during the marriage, from the date of the marriage to the time the marriage ended. In addition, passive increase in value from the time the marriage ended until the date of trial is usually included in terms of defining marital property. Examples of marital property that follow this definition are bank accounts, real estate, defined contribution plans such as 401(k)'s, IRA's, and other tangible assets, in that the rights to property classified this way ends when the marriage ends.

In some states, defined benefit pensions are allocated in the same way, using the benefit accrued as of the date the marriage ended (cut-off date). This is called the "bright line" approach.

However, the marital portion of defined benefit pension plans, in many jurisdictions, is determined by use of a time-based coverture fraction. Under this definition, the marital portion of the pension does not end at the cut-off date (the date the marriage ended), but continues until the date of trial, multiplied by the coverture fraction. Thus, rather than using the benefit accrued as of the cut-off date ("bright line" method), states using the coverture approach separate out the marital portion with the coverture fraction. The numerator of the coverture fraction is pension plan service during the marriage, and the denominator is total service until the allocation date, which is typically a date close to the trial date, for purpose of

present value calculation. In this case, the benefit accrued as of trial date is used, multiplied by the coverture fraction as of trial date.

In the case of deferred distribution ("QDRO") using coverture, the denominator is total service as of date of retirement, and the benefit is the future benefit at retirement, multiplied by the coverture fraction. Thus, as opposed to the "bright line" approach, the marital portion continues to grow, since the benefit typically increases faster than the coverture fraction decreases. This approach is often called the "marital foundation theory," because there would be no additional accrual after the cut-off date without the service during the marriage. To quote Brett Turner: "In other words, the post divorce increases are built upon a foundation of prior marital efforts."

Another rationale for the coverture approach is the fact that using a benefit frozen as of the cut-off date means that the value of the benefit is eroded by inflation, if there is a long time between divorce and retirement. Since the benefit increases with length of service and salary increase, an argument can be made that a component of the salary increase is merely due to inflation, and thus freezing the marital portion of the benefit as of the cut-off date is unfair to

the non-employee spouse. An extreme case of this argument was the Moore case in New Jersey. For terms of present value calculation, either the cut-off date benefit (bright line) or trial date benefit times coverture is used. In Moore, the benefit was adjusted to include pre-retirement cost of living increases until retirement. Moore was then overturned in New Jersey by the Hayden case, because of the double speculation of assuming future service until retirement, and assuming a portion of future salary increase due to inflation only.

Some of the states using a bright line approach are Virginia, Texas, North



Carolina, and Florida. Some of the states using coverture are Pennsylvania, New York, Ohio, and California. In fact, Pennsylvania recently switched from the bright line approach to the coverture approach.

Some states use the bright line method for present value calculations, and coverture for deferred distributions. The rationale for this is that there are typically only a few years from the cut-off date until trial date, and so it is proper to use the benefit accrued as of cut-off for present value calculations. However, in deferred distribution (QDRO), there is typically a long time period between the cut-off date and date of retirement, and due to inflation issue discussed previously, it is unfair to the non-employee spouse to have the benefit frozen as of the cut-off date. States following this approach are New Jersey and North Carolina. In New Jersey, the Hayden case indicates the use of the benefit accrued as of date of complaint (cut-off date in New Jersey) for purpose of present value calculation, while the Marx and Risoldi cases indicate the use of coverture along with the future benefit in deferred distribution. In North Carolina, both §50-20.1 of the

North Carolina Code and the Bishop case indicate use of the benefit accrued as of separation (cut-off in North Carolina) for purpose of present value calculation, while under the North Carolina Seifert case, coverture is used for deferred distributions, based upon the future benefit at retirement. Thus, both New Jersey and North Carolina are bright line states for present value calculations, but use coverture (along with the future benefit at retirement) for purpose of deferred distribution. Maryland is also a hybrid state, using the bright line method for present value calculation and coverture for deferred distribution. ■

Read the Full Article Online

This is an excerpt of an article that has more information and detailed examples. To read the full article and endnotes, visit www.familylawyermagazine.com/articles/bright-line-and-coverture-in-divorce-pension-valuations-and-distribution.



Mark K. Altschuler, Actuary, is President of Pension Analysis Consultants, Inc. (PAC®), of Elkins Park, PA. He has performed over 25,000 pension valuations and QDROs. His affiliations include the American Society of Pension Actuaries and Professionals (ASPPA) and the American Academy of Economic and Financial Experts. Altschuler writes a nationally distributed newsletter on pension issues in divorce (DIVTIPS®) and is a contributing author to the books, Valuing Specific Assets in Divorce and Valuation Strategies in Divorce. He can be contacted at: (800) 288-3675.

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Top 10 Critical Financial Errors in Divorce

Compiled by Justin A. Reckers, CFP®, CDFA™, AIF

Certified Divorce Financial Analyst™ professionals highlight some critical financial mistakes made by divorce-industry pros.

The Institute for Divorce Financial Analysts™ (IDFA) recently asked members across the country to share the worst financial mistakes they've seen in their practices. After receiving more than 80 replies, here are the top ten:

1 Terminating Spousal Support when a Child Reaches the Age of Majority

With the assistance of their attorneys, a divorcing couple crafted a Property Settlement Agreement that included both an agreed-upon division of property and a ten-year, defined-duration spousal support award for the wife. Spousal support was set to terminate in the same month the couple's youngest child graduated from high school and turned 18, the local age of majority. IRC section 71 (C) (2) sets forth two child-related contingency situations in which spousal support will be re-characterized as child support:

- a. If spousal support payments are reduced or terminated within 6 months before or after the date a child attains the age of majority, or
- b. When payments are reduced within a year before or after two individual children of the payor attain a certain age between 18 and 24, if payments are reduced upon each child turning the same age.

In this case, had support payments ceased as scheduled, the payments would have

been presumed to be associated with a child-related contingency and the IRS could have re-characterized spousal support payments as child support for the entire ten-year period. It would have cost the husband approximately \$1,000,000 in additional taxes and very likely resulted in a malpractice suit for the attorney.

~ *Gigi Robson CPA, CDFA™ practices in Richmond, VA.*

2 Using Inaccurate, Misleading, or Incomplete Financial Information

For the preliminary hearings, many state courts appoint special masters to set the groundwork for the eventual settlement. If they are using inaccurate, misleading, or incomplete information derived from hastily prepared financial affidavits, they will most likely set a base line for settlement that will need to be substantially changed later. It is more difficult to completely restructure the settlement after their findings than to work within the scope of their plan. Although the financial affidavits will likely undergo several permutations, it is best to deal with the more obvious inaccuracies sooner rather than later. Such inaccuracies can include expenses that both parties claim or that may be exaggerated, income not reported, or deductions taken that should not be allowed. Time spent early in the process will usually mean great time-savings later on.

~ *Alan Abrahamson, MBA, CFDA™ practices in CT, MA, NY, RI.*

3 Forgetting about the Spousal Survivor Benefit

I have seen cases where both husband and wife were retired and receiving pensions pre-divorce and wanted to keep it that way post-divorce. No big deal, right? No QDROs needed. That might be true, but what about the spousal survivor benefit? Can the election be undone? Certainly the husband and wife may want to stop paying the premium on that election. And if either took a joint and survivor option at retirement, can they now "pop-up" to a single life annuity option post-divorce? Both attorneys and clients sometimes overlook these considerations.

~ *Donna Smalldon, MBA, CFP®, CDFA™, Mediator practices in OR, WA, and CA.*

4 Failing to Follow Up

Typically, when a family law attorney receives a stamped Judgment of Dissolution, their job is done. Clients also think they're done—but there are many issues that could be avoided down the road if lawyers followed-up with clients to ensure they complete certain tasks to adequately wrap up their divorce. As a family law attorney, here are some of the most common issues I've seen:

- a. Not closing and taking spouse's name off bank accounts, credit cards, and investment accounts, or changing the beneficiary for insurance policies/retirement accounts.
- b. Not ensuring the QDRO is complet-

ed; the payee may die before it's completed.

- c. Not amending their estate plan post-divorce.
- d. Failure to address who is responsible for the Federal and State income taxes for the year the divorce is finalized, if filing jointly.
- e. Failure to develop a post-divorce financial plan.

~ Puja A. Sachdev, Esq., MSBA, CDFA™ practices family law in San Diego, CA.

5 Ignoring Tax Status during Property Division

Most lawyers ignore the tax status of an account when working toward an equitable division of property. Many think only about getting the columns to add up for the husband and wife: they don't go a step further to determine how those assets will be affected by taxes if the spouse needs to sell the assets to survive. You need to understand the client's future cash needs and determine which assets are best for him or her before finalizing property division.

~ Sam L. Thornal, CFP®, CDFA™, ChFC®, CRPC® practices in Addison, TX.

6 Overlooking Pension Plan Assets

I had a client whose husband had always handled the couple's finances. I asked her to send me everything she could find regarding their assets; buried deep in the 80 faxed pages was her husband's pension statement. His pension had two parts: a monthly income stream and a supplemental benefit that had a present value of \$30,000. The \$30,000 was included in the husband's disclosure document, but he made no mention of the monthly pension income. I valued that income at around \$390,000 and included it in the asset division report to my client and her attorney. However, when I reviewed the settlement agreement her attorney had drafted, the pension was omitted – a \$390,000 mistake.

~ Irene Smith CFP®, CPA, CDFA™ practices in Woodland Hills, CA.

7 Assigning Dependency Exemptions without Considering the Tax Implications

I have seen the dependency exemption for the children assigned to a wage earner whose AGI is so high that they cannot use the Child Tax Credit, American Opportunity Credit, the Adjustment for Student Loan Interest, or even the \$3,700 deduction amount due to AMT considerations. Meanwhile, the other spouse could have taken advantage of the deductions/credits – and even could have gotten some of the refundable parts without a tax liability. At \$80,000 AGI for singles and heads of households the American Opportunity Tax Credit begins to diminish and at \$90,000 it goes away completely. If an individual is consistently in AMT territory, the dependency exemption does not help them – these are disallowed under the AMTI calculation. The Child Tax Credit reduces at \$70,000 and is completely gone at \$95,000 for single and head of household. Bottom line: make sure exemptions are assigned to the ex-spouse who can benefit from them.

~ Beth Pickenpough, CFP®, ASA, CDFA™, MS practices in Columbus, OH.

8 Failing to Advise Clients to Refinance the Mortgage Before the Divorce is Final

Let's say that John and Jane have agreed that John will keep the family home post-divorce, giving Jane other assets to make up for her share of the current equity. You can do quitclaims to change the titling of the home, but unless John refinances the original joint mortgage, Jane is still financially responsible for the mortgage. If John stops making mortgage payments, it will affect Jane's credit report as though she had missed the payments herself. The only way to ensure this doesn't happen is for John to refinance that mortgage before the divorce is final.

~ Nancy Hofman Hetrick, AWMA®, CDFA™ practices in Phoenix, AZ.

9 The Perils of Jointly-Owned Business

I had a case in which a married couple, with no succession plan and no buy-sell agreement, jointly owned a business. Post-divorce, they agreed to continue to co-own the business. Unfortunately, after the divorce, the wife died and the husband became owner of everything. With the value of the business well in excess of \$30 million, estate taxes were triggered with no way to pay them. With an accurate value on the business, it might have been possible to find a buyer before a triggering event occurred, or to have set up insurance to fund a buy-sell agreement.

~ Michael Kothakota, AFC, CDFA™ practices in Apex, NC.

10 Failing to Get the Insurance Before Signing the Settlement

The insured should go through the underwriting process prior to signing the settlement agreement. If coverage will not be available due to health issues, or if the premiums are prohibitively expensive, other provisions should be included in the settlement to protect against pre-mature death, such as the creation of trusts or other estate-planning tools.

~ Noah B. Rosenfarb, CPA/ABV/PFS, CDFA™ practices in Short Hills, NJ.

Some of the submissions in this article have been edited for length; to read the full submission – and dozens of others – go to www.familylawyer magazine.com/top-ten-financial-mistakes-in-divorce. ■

This Top Ten list was selected by Justin A. Reckers, CFP®, CDFA™, AIF. The Chair of IDFA's Communication Committee, Justin practices in San Diego, CA. To learn more about how a CDFA™ can help you and your client address the financial issues of divorce, go to www.InstituteDFA.com/Lawyer.

Civil Unions Are Not Without Tax Issues

By Bruce L. Richman,
CPA/ABV, CVA

&

Richard A. Wilson,
Family Lawyer



On June 1, 2011, the “Illinois Religious Freedom Protection and Civil Union Act” came into effect. Under this law, two persons – both at least 18 years of age and without regard to gender – will be permitted to obtain a civil union with the same rights and benefits afforded to opposite-sex couples under the state’s marriage laws.

The Act does not amend the existing Illinois Marriage and Dissolution of Marriage Act (“IMDMA”). Basically, it provides for and guarantees all of the rights, benefits and burdens of marriage available under Illinois law by formally equating partners to a civil union with “spouses” under all of Illinois law.

There is a clear conflict between the state recognition and the existing federal law under the Federal “Defense of Marriage Act” or “DOMA,” which both defines “marriage” and “spouse” for purposes of federal law and declares that the states are free not to recognize a same-sex marriage from another jurisdiction. As a result, some major tax issues arise that pertain to tax filing status and the important financial benefit to divorcing parties (such as the tax consequences in the division of the marital estate upon divorce):

FILING STATUS

Illinois now formally will permit parties to civil union to file state tax returns as married filing jointly, despite federal non-recognition. The parties will have to prepare a pre forma federal return, which they do not file, to determine their federal taxable income in order to proceed to prepare their Illinois state income tax return.

PROPERTY SETTLEMENTS IN DIVORCE

Section 1041 of the IRC allows for no tax implications upon the transfer of property pursuant to a divorce. Again, since DOMA does not recognize the marriage this can become a problem in allocating property upon the divorce of partners in a civil union as IRC 1041 would not be available.

BUYING A HOUSE WITH A CIVIL UNION PARTNER

Suppose that Sue and Jill have a civil union and purchase a house together. Let’s further assume that Sue is a successful lawyer and Jill is not working. The down payment of the house was \$400,000 and they purchased the home in both of the names with joint ownership. It is very

conceivable that the IRS would construe this as a gift of \$200,000 from Sue to Jill creating potential gift tax issues. Obviously, if it was a marriage of Josh and Talia, no issue would be present as there is unlimited gifting between spouses.

SPOUSAL SUPPORT

Since the federal tax code provides that when payments meet certain rules, the payor of alimony would be includable in the income of the receiving former spouse and deductible by the paying former spouse. However, since DOMA does not recognize the marriage to begin with it is questionable whether payments would qualify as alimony under IRC section 71. The other problem is that the payments to the other party would probably be considered income as the payments clearly would not qualify as a gift as detached and disinterested generosity.

This is an excerpt from an article. The full article details more examples of the tax effects of the new law. Please visit: www.FamilyLawyerMagazine.com/articles/civil-unions-tax-issues. ■



*Bruce L. Richman CPA/ABV, is a Principal in Reznick Group’s Valuation and Transaction Advisory Group (VTAG). He is the author of the book *Guide to Tax and Financial Issues in Divorce*. Bruce. richman@reznickgroup.com.*



Richard A. Wilson, Attorney is a partner with Grund and Leavitt. He is also a member of and holds or has held leadership positions in the National LGBT Law Association. rwilson@grundlaw.com.

The Standard of Value is Critical in the Valuation of a Business in Divorce

There is no area of law where there is as much confusion and as little consistency about the standard of value for business valuation as in the family law area. This article deals with the different definitions of value and goodwill as a marital asset.

By Shannon P. Pratt, CFA, ARM, ABAR, FASA, MCBA, CM&AA
and Alina V. Niculita, CFA, ASA, MBA

Few family law judges are specialists in finance. Most may have a case involving a business valuation once or twice a year. The single most important thing for a lawyer to understand when dealing with a business valuation in a divorce is the standard of value in the particular jurisdiction.

The standard of value describes the value being sought in terms of who the buyer and seller are, and the circumstances under which the transaction would take place. For instance, in the case of fair market value, the buyer and seller are assumed to be hypothetical and the transaction is assumed to take place under normal conditions (as opposed to under duress). In other words, the standard of value addresses the question of “value to whom?” and “under what circumstances?”

The Definition of Value Varies

In almost no state is the definition of value included in the statute on marital dissolution. Instead, it commonly must be gleaned by reading the case law. Often, however, this can be misleading. Prior court decisions, even within a state, can appear to interpret the standard of value differently. For instance, one court may use the term “fair market value” to refer to a specific value, but that value may incorporate elements of other types of value, such as investment value.

Some states (e.g., Florida, Hawaii, Illinois, Missouri, Pennsylvania, South Carolina, Texas, and Wisconsin) adhere quite strictly to the standard of fair market value, and the price at which property would change hands between well-informed, willing buyers and sellers on an arms’ length basis.

Some states rely on investment value (value to the owner) based on special circumstances, which may make the value to the owner higher than the value to a hypothetical buyer. In this case, unless a sale is imminent, an assumption as to a hypothetical sale is irrelevant (unlike fair market value, where there always is the assumption of a sale). Other states have different standards of value in different jurisdictions (usually counties). Additionally, in most states, family law judges have very wide discretion regarding distribution of the marital assets.

Unlike Tax Court decisions or decisions in dissenting stockholder cases, which usually describe the analytical steps that the Court relied on in reaching its decision, written decisions regarding property values in marital dissolution cases are typically short. Moreover, it is not uncommon for the judge to use the familiar term “fair market value” when, on further reading of the case, it is revealed that the expert on whom the judge relied included one or more elements that do not fit into the widely accepted



definition of fair market value. Another commonly encountered misuse of financial terminology is “capitalization of earnings method,” which, in commonly accepted business valuation terminology, is called “excess earnings method.”

This is an article on definitions of value, not on methodology, but these examples indicate how difficult it is to read and interpret case law, which is the source of authority for standards of value.

Most Commonly Used Definitions

The most commonly used standards of value are: fair market value (previously defined), investment value (sometimes called intrinsic value or value to the owner, also previously defined), and fair value, which a few states have recently adopted (e.g., New Jersey, Indiana, and Washington). The term “fair value” is borrowed from the statutes of most states as the standard of value for dissenting and oppressed stockholder suits. Overly simplified, it means fair market value without discounts, such as discount for lack of marketability.

Goodwill as a Marital Asset

Closely aligned with the standard of value is the question of what is included in marital assets. This question most often arises with respect to goodwill. Goodwill is defined in the International Glossary of Business Valuation Terms as: “The intangible asset that arises as a result of name, reputation, customer loyalty, location, and similar factors not separately identified.” Goodwill is often separated into personal and enterprise goodwill.

Over time, personal goodwill has come to be understood as the goodwill that attaches to one or more individuals, while enterprise goodwill is the goodwill that attached to the business regardless of any one or few individuals.

In California, for example, personal goodwill is a marital asset. But in most

states that adhere closely to the standard of fair market value, personal goodwill is not a marital asset unless the spouse has an employment contract or a non-compete agreement. Therefore, in these states, the expert has to separate enterprise goodwill (the goodwill that attaches to the enterprise without the presence of the active spouse) from personal goodwill (the goodwill attributable to the presence of the active spouse).

The Best Use of a Valuation Expert

In a business valuation in connection with a divorce, it is essential that the lawyer and the valuation expert agree on the applicable standard of value at the onset of the engagement, and that it be a part of the engagement letter. The lawyer may also instruct the expert as to the treatment of the personal goodwill in the respective jurisdiction, asking for a value including, or excluding personal goodwill. While the lawyer is responsible for the specification of the standard of value, the expert should read the relevant case law in order to pick up on any nuances implied by the interpretation of the standard of value in the particular jurisdiction. ■



Shannon P. Pratt, is the founder and Alina V. Niculita, is the president of Shannon Pratt Valuations, Inc., a national business valuation firm located in Portland, OR.



Dr. Pratt has more than ten books in print on various business valuation topics including valuations for marital dissolution purposes and he has testified on hundreds of occasions in various types of litigated matters including divorce cases. Ms. Niculita manages valuation engagements at Shannon Pratt Valuations, and has contributed to several business valuation books. For more information, visit www.shannonpratt.com.

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California MCLE Provider number: 3421

Continuing Legal Education credit hours: LEGAL ETHICS: 1.00 hour

Cost: \$0

By Mari J. Frank, Esq., CIPP

Mari J. Frank, Esq. is a State Bar of California approved MCLE provider, and Ms. Frank certifies that this educational activity has been approved for 1 hour of Ethics of MCLE credit by the State Bar of California.

Massive security breaches of sensitive personal information are on the rise, and identity theft continues to claim million of victims. Simply, you become a victim of identity theft when an unauthorized person uses your personal identifiers, like your name and/or social security number to impersonate you to commit fraud. You, a client, or your office staff may become a victim or your law firm itself may be defrauded. Imposters steal identities for four main reasons — financial gain (the major reason); to avoid arrest or prosecution; revenge or jealousy; and terrorism. There is no limit to the creativity of these impostors because whatever you can do or obtain with your identity (personal or business), your impersonator can do the same as your “clone.” The goal of this article is to help you understand your vulnerabilities, your ethical duties to protect data from security breaches, and to offer tips on how to protect yourself and your clients.

Attorneys are appealing targets for identity thieves in that many have excellent credit, good reputations, money in financial institutions, and are quite visible to the public. When my own identity was stolen in 1996 by a woman I had never met who lived in a city four hours north of my office, I learned that my “evil twin” had stolen thousands of dollars of credit in my name, purchased a car, and worse yet she paraded herself as an attorney distributing business cards that she had taken from my receptionist’s desk.

You have seen horror stories about this crime on television, and you may be concerned about this happening to your firm. In 2011 Javelin Strategy & Research issued its research report and found 8.1 million adult stolen U.S. identities in one year. There was a shift in type of fraud from credit fraud to bank

fraud from the prior year. Debit card fraud accounted for 36 per cent of crimes up from 25 per cent.

Debit card use is dangerous since the money is depleted from your account immediately, unlike credit card fraud in which you may dispute charges before the bill is paid. Consumer protections are weaker for a debit card (Electronic Funds Transfer Act) compared to the zero liability of credit card consumer protections (The Fair Credit Billing Act). Check fraud is also rampant due to the availability of check-making software. Thieves create checks using the victim’s bank account and routing numbers to siphon money from personal and business accounts. Now, with tighter credit granting, fraudsters prefer to steal cash from bank accounts, investments, trust funds, college accounts, and retirement plans. They can obtain life insurance in your name (and make themselves the beneficiary), secure medical services using your health




insurance, receive governmental benefits like workers compensation and unemployment, get fraudulent tax refunds, and even obtain legal services using a victim's identity. Even more menacing, they can commit crimes or acts of terrorism in your name to avoid prosecution. They create online blogs,

social security numbers for child and spousal support; health, life, and disability insurance data to safeguard the parties; retirement account numbers and information; tax returns and financial statements to determine income and assets; sensitive health data to argue for custody and support issues; as

Family law offices are particularly vulnerable and under attack by fraudsters by virtue of the type of information you must use in your cases.

social networking accounts, and fraudulent personal and business websites using your good name. Savvy identity thieves are so imaginative that they can steal your professional identity, open a law office in your name, create new business accounts, and websites to steal from other individuals and business victims, thus making you appear to be a fraudster.



How does an imposter steal data from you or your office? Lost or stolen wallets, unencrypted electronic devices, and unsecured laptops provide a treasure trove of private data. Unscrupulous employees with access to sensitive data may be tempted to copy sensitive files. Criminal vendors may pose as "collectors" for fraud rings by gathering data to sell to other thieves. Night-time office cleaning services (fraud rings in disguise) have the right of entry into desks, unlocked cabinets filled with client files, computers without password protection, and unshredded trash. Hackers work from afar to gain access into unprotected computers. Staff inadvertently or carelessly display or lose sensitive data online or offline so unauthorized persons can use the information illegally. Whether data is lost through negligence or is stolen intentionally, security breaches of sensitive data in law offices can cause identity theft and expose attorneys to liability and ethical violations.

As a family law attorney, you are in a distinct position to protect the myriad of sensitive records that you maintain about your clients and employees. Family law offices are particularly vulnerable and under attack by fraudsters by virtue of the type of information you must use in your cases. You collect extensive personal and business financial data to determine division of marital property such as

well as other confidential documentation related to marital property and the family.

If your office experiences a security breach of sensitive information you have a legal duty to report the security breach to all whose data was compromised. Most states have security breach notification laws such as California law (Civil Code sections 1798.29, 1798.82, and 1798.84) which require all businesses and state governmental agencies that experience a security breach to notify all potential victims of the breach so that they may protect themselves with a fraud alert, a security freeze, or other means. The statute requires notification when there is acquisition by an unauthorized person of unencrypted electronic files of sensitive information. According to the California Office of Privacy Protection, this definition includes hard copy printed documents which were originally created electronically.

The American Bar Association recognizes that attorneys face risks of security breaches of client data which may cause an ethical violation. The ABA "Ethics 20/20 Working Group" recently published two papers on this topic, noting that lawyers may require guidance to "ensure that their use of technology complies with their ethical obligations to protect clients 'confidential information.'" (See ABA Commission on Ethics 20/20 Working Group available at www.abanet.org.) ■

View the Entire Article Online to get your Free CLE Credit:

This article is the beginning part of a full article that can earn you 1.0 hour of CLE credit. To receive your free credit, simply follow the link below to read the full article, and complete the instructions provided: www.familylawyer magazine.com/articles/free-cle-privacy-and-identity-theft.



Mari Frank, Esq., CIPP is a family law attorney/mediator and certified privacy expert. She is the radio host of Prescriptions for Healing Conflict heard on 88.9 FM in Irvine, California, and KUCI.org. She teaches negotiations and mediation at the University of California, Irvine. To learn more visit www.ConflictHealing.com and www.MariFrank.com.



1.00 HOUR FREE CLE CREDIT ACTIVITY

LAW, PSYCHIATRY AND CHILDREN: AN EXPERT'S VIEW

By Mark Banschick, MD, Child, Adolescent and Adult Psychiatrist

Provider: Mari J. Frank

California MCLE Provider number: 3421

Continuing Legal Education credit hours: GENERAL: 1.00 hour

Cost: \$0

This course is designed for lawyers who want to know more about the interface of child and adolescent psychiatry and the law. These questions were prepared by attorneys and answered by a child and adolescent psychiatrist. The objective is for the attorney to be more familiar with the assessment and treatment of young people.

1. In what contexts are the courts called upon to render/approve medical treatment choices for children including medication regimens?

a. In the case of psychotic children and teens whose parents refuse medicine, a court may be called upon. A court intervention may also be appropriate in the case of grossly dysfunctional children or teens whose parents are trying alternative treatments (including waiting) while the child continues to deteriorate badly. An example being an actively suicidal teen, a child with severe OCD who is homebound, or an ADHD fifth grader who is so disruptive to the class that he is not learning and the school has no sufficient setting for him. This can be a form of abuse which falls in the failure to provide adequate care category.

b. The question is always the risk/benefit ratio in all cases. Are the non pharmacological treatments — whatever they are (including

doing nothing) showing evidence of real improvement, or is the child or teen continuing to suffer emotionally or in terms of functioning? At some point the ongoing damage to the child by continuing to be dysfunctional outweighs the risks of using medications. In my opinion, these decisions should be made in the context of a careful assessment by a competent child and adolescent psychiatrist.

c. An attorney needs to work in tandem with a mental health professional in order to establish whether or not a treatment is urgently needed in order to prevent a dire psychiatric situation. The court can mandate treatment, but it needs a strong indication.

2. Under what circumstances does a school district get involved in medical treatment choices for children, such as recommending that a parent increase and/or use ADHD medication?

a. Schools have a limited role in recommending medication. They are experts in how to create an environment suitable for learning. Recommendations for medication or increased stimulants, for example, need to come from an outside expert who has access to all the facts about the family and has assessed a reasonable treatment course.

b. If a child is very disruptive in the

class, the school will have to call in the parent and discuss the problem. They can bring the child's case to the attention of the committee for special education and create an educational plan for the school setting. Many districts provide modest psychological testing services in order to better place these children with a workable plan. It is reasonable for the school to suggest a second outside opinion from a child psychiatrist if the behavior is consistently dysfunctional, because sometimes it is in the best interest of the child to have a more comprehensive evaluation. Medication decisions are made solely by a physician, in consultation with the parents. It is often useful to get information from the school as part of the fact gathering so important in a good treatment plan. ■

View the Entire Article Online to get your Free CLE Credit

This article is the beginning part of a full article that can earn you 1.00 hour of CLE credit. To receive your free credit, simply follow the link below to read the full article, and complete the instructions provided: www.FamilyLawyerMagazine.com/articles/free-cle-law-psychiatry-and-children.



1.00 HOUR FREE CLE CREDIT ACTIVITY

REDUCING ATTORNEY STRESS WITH DYNAMIC-ACTION

By Bob Barasa, Lawyer

Accredited CLE Provider (ACLEP)

Illinois Continuing Legal Education credit hours: Accreditation pending for this one-hour version; Pr/Ethics: 1.00 hour.*

Cost: \$0

*Check current accreditation status for all jurisdictions and details for obtaining Illinois MCLE "Certificate of Attendance" @ www.FamilyLawyerMagazine.com/articles/dynamic-action.

The extended version; "Reducing Attorney Stress with Dynamic-Action, The Audio Course," is fully accredited in Illinois and Florida, as follows:

- IL: 3.00/Hrs./MCLE-IL/Professionalism-Ethics
- FL: 2.00/Hrs. Maximum CLER, including 1.00 Ethics.

As part of Family Lawyer Magazine's commitment to providing family lawyers with ways to achieve a better work/life balance we sourced a one-hour FREE CLE program about reducing attorney stress and increasing civility in the practice of law. Visit www.FamilyLawyerMagazine.com/articles/dynamic-action to listen to this audio program and get details on how to purchase the "Extended Version" through a discount we have negotiated. ■



*Bob Barasa graduated from DePaul University, School of Law and has been a practicing attorney in Chicago for over 30 years. He is also the son, grandson, nephew, and cousin of attorneys. He is an advocate for the un-equalled dynamism of the legal profession which he used as the premise for creating the Reducing Attorney Stress with Dynamic-Action Seminars. Bob also authored the book *The Crossroads of the Over 50 Attorney*.*

About the Program

The Dynamic-Action program was developed by attorney Bob Barasa because he noticed an inconsistency in the legal profession. Having worked with many lawyers over his 33 year career, he knew lawyers to be a dynamic and powerful group of people undeterred by the ordinary challenges of a legal career. Nevertheless, over the last 10-15 years, he noticed that lawyers were complaining more and more about their practice than ever before. Bob believed that stress was at the root of the pervasive dissatisfaction he noticed growing in the legal profession, so he set out to do what he could to rectify the situation and created the Dynamic-Action programs.

High levels of attorney stress are responsible for a variety of health issues including depression, physical ailments and addictions. According to many lawyers, increased stress is also causing greater incidents of incivility and ethics violations within the legal profession.

Bob believes that lawyers need to develop new coping strategies in order to proactively manage stress by taking specific actions and by pursuing a vision instead of waiting for the negative effects of excess stress to impact them. Bob thinks it is always better for attorneys to self-medicate with action and vision, rather than turning to excessive work, alcohol, pharmaceuticals, illegal drugs, out of control gambling and other negative behaviors when stress is allowed to get out of control.

The "Reducing Attorney Stress with Dynamic-Action, The Audio Course" is a compilation of the best and most relevant moments of all the Dynamic-Action live seminars that were held with participating lawyers in 2009 and 2010. The free "One-Hour Version" is an uplifting and succinct compilation of the 3.00 hour extended version. Both versions cover:

- A discussion about stress and incivility
- Causes and consequences of stress
- Traditional stress management techniques
- Dynamic-Action as a stress management tool

The seminar offers an abundance of humor and camaraderie while examining the substantive CLE issues of stress, incivility, and their negative impact on the individual lawyer and the legal profession.

Perks and Highlights: The ABA Advantage

American Bar Association membership benefits explained by the organization's chair, Randall Kessler.

With nearly 400,000 members, the American Bar Association (ABA) is the largest voluntary professional association in the world. They provides law school accreditation, continuing legal education (CLE), information about the law, programs to assist lawyers and judges in their work, and initiatives to improve the legal system for the public at large.

According to their website, "The ABA was founded on August 21, 1878, in Saratoga Springs, New York, by 100 lawyers from 21 states. The legal profession as we know it today barely existed at that time. Lawyers were generally sole practitioners who trained under a system of apprenticeship. There was no national code of ethics; there was no national organization to serve as a forum for discussion of the increasingly intricate issues involved in legal practice."

The ABA's mission is "To serve equally their members, their profession and the public by defending liberty and delivering justice as the national representative of the legal profession."

What is the most beneficial aspect of membership in the ABA Section of Family Law?

One of the biggest highlights of my career has been the opportunity to network with and learn from my peers as a result of my membership in the ABA Section of Family Law (FLS). One of the main sources of

this networking is our FamLawESQ discussion list serve. Any of our lawyer members can sign up for it and instantly be connected to hundreds of family lawyers across the country (as well as some in Canada, too). I use it for referrals, to share resources, and ask questions about cases. I know other members have cited it as the top benefit of their membership, too.

It's also a great way to dis-

Institute for Trial Advocacy). All of our members receive discounted tuition for these programs.

Each year, we publish a Client Manual issue of Family Advocate that can be purchased in bulk and handed out to your clients. Topics run the gamut from divorce to co-parenting. They are great marketing tools

"Membership in the ABA has many benefits. We produce cutting-edge CLE programming in the form of live conferences..."

cover trends in family law and gain practice resources and tips. You can get similar information from our periodicals, Family Advocate and Family Law Quarterly, too. Every member of FLS automatically receives subscriptions to these, and the winter issue of Quarterly includes the "Family Law in the Fifty States" feature, complete with charts pertaining to grounds for divorce, child custody, visitation, and more. Family Advocate contains more practical information.

for your practice, too.

We also publish books that are written by nationally recognized experts in the field, many of whom are also members of FLS. Recent titles include: Pre-marital Agreements: Drafting and Negotiation and The Military Divorce Handbook, 2nd Edition.

ABA members get discounts on all of these. To learn more about the organization, please visit: www.ABA.org. ■

Why else should a family lawyer join the ABA?

Membership in the ABA has many benefits. We produce cutting-edge CLE programming in the form of live conferences, webinars, and national institutes (such as our Family Law Trial Advocacy Institute that is co-sponsored by the National

Randall Kessler is the founding partner of Kessler & Solomiany LLC. With over 20 years of experience in Family Law, Kessler has handled many high-profile and celebrity divorces. He also teaches at Emory Law School and John Marshall Law School.



Common Website Mistakes

WHAT YOU CAN DO TO MAKE IT BETTER

Over the past decade I have built and reviewed numerous websites for family lawyers and have seen many mistakes made over and over again. This short article features 8 out of 12 of those mistakes. To read all 12 mistakes, please visit: www.divorcemarketinggroup.com/article-common-mistakes.htm.

By Martha Chan, Marketing Consultant

1. The website does not deliver on the business objectives

Many websites are designed almost completely based on “look and feel.” Before a website is designed, the webmaster should have a business strategy discussion with you to determine your business objectives, how to distinguish your firm from other family law firms and then recommend the best way to accomplish those objectives. Far too often, designers do not have such business acumen.

2. Some content is for lawyers rather than for laypeople

You might have heard that “Content is king.” This saying should be, “relevant and interesting content is king.” We have seen websites with content (e.g. a newsletter) that is designed for lawyers. Almost none of your prospective clients or clients want or need it.

3. The website design is not visitor friendly

Your website is not user friendly if the visitor cannot tell where they should go to get what they want, or if those “impressive” big pictures take up most of the screen forcing them to scroll before they can get to the information they really want.

4. The website is not search engine friendly

There are a number of elements to consider regarding optimizing your website so it can be found by search engines (Google, Yahoo, etc.) — a whole book could be devoted to the subject. If your website is not search engine friendly, it will likely not show up on the first page of search results. You can learn more by reading this article on “SEO Basics” at www.divorcemarketinggroup.com/seo_teleseminar.html.

5. The text is not visitor friendly and doesn't sell your firm

Your prospective clients and clients are not lawyers, so keep the jargon away from your website. Talk to them in first person. Use “we” and “you and your spouse,” instead of “the parties” and “the file.”

6. The website is all about the lawyer and the firm

Your website should be serving the interests of your prospective clients. Their main interest is not to learn how great you are. They want to know how they can resolve their problems and whether you can help them.

7. The website looks dated and, or amateurish

If your website was built years ago, it is probably time to redesign it because technology and website-building software have all improved tremendously over the years. Today you can get a new website that is easy to update with built in SEO friendly functions.

8. You pay a sizable monthly fee for your website

Some of my clients were paying over a \$1,000 a month for their websites. We took over their websites and they stopped paying that monthly fee. It pays to review your agreement to find out exactly what you are paying for.

Martha Chan is the V.P. of Marketing for Divorce Marketing Group. She is in charge of their Client Services and Creative Services Departments. Over the past 30 years, she has serviced many Fortune 500 clients and countless family law firms. She has an M.B.A. with a major in Marketing.



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No other firm understands the divorce market better than us



100% Focused on Marketing Divorce Professionals to Produce Results

Divorce Marketing Group is the only marketing firm that is 100% dedicated to helping divorce professionals maintain, develop and grow their practices. Since 1996, we have been serving people who are going through divorce with information and resources through Divorce Magazine/DivorceMagazine.com so we completely understand their needs and how best to market professional services to them.

Our clients include family lawyers, mediators, business valuers, CPAs, CDFAs, financial planners, therapists, mortgage brokers as well as other divorce-related professionals and services. We can help you grow your practice by reaching divorcing people as well as other divorce professionals with a wide range of innovative and effective products and services.

Attract Quality Clients + Secure and Develop Your Referral Sources

We know you want to reach a specific type of client. We will present your firm in the best light possible and tell your story in a way so you will attract the type of clients you desire. Our products and services will help you nurture and develop your referral sources to ensure that you are kept “top of mind”.

We'll Create and Implement Your Marketing Plan

If you are like most of our clients, you are very busy doing what you are good at. But when it comes to marketing your services, you may not have the time or expertise to do the top-notch job of properly marketing your practice, that is where Divorce Marketing Group comes in!

We will develop and implement a professional marketing program based on your business objectives and budget. We work with solo practitioners, medium and large firms. Choose from our wide range of marketing products and services featured on the pages that follow.

Contact Us for Your Free Initial Marketing Consultation

We offer more divorce-related marketing products and services than any other firm

Divorce Magazine

The only magazine that targets divorcing people who need your expertise right now! Your firm's Profile or advertisement in Divorce Magazine powerfully informs prospective divorce clients about why they should use your services and reminds other professionals to recommend you. Divorce Magazine has regional editions in: California, Texas, Illinois, Florida, New York/New Jersey and Toronto.

DivorceMagazine.com

Reach divorcing people precisely when they need your services by featuring your practice or service on the Internet's best divorce-related website with a listing, and a full firm profile. As our client, you'll also have the opportunity to feature articles and Questions & Answers written by you on this website.

Divorce eNewsletter

This monthly eNewsletter for divorcing people can be personalized or custom designed for your firm. Add it to your website to enrich its content. Email it to clients and professionals who can refer business to you to keep your firm "top of mind". See a sample at www.divorcemarketinggroup.com/products.htm.

BlogsOnDivorce.com

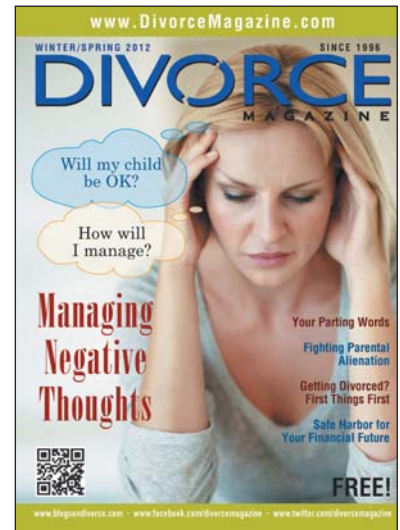
You get extra exposure as an "Expert Guest Blogger" on our blog which features professionals offering expert advice to divorcing people. You can also demonstrate your expertise to other divorce professionals.

Monthly Divorce Teleseminars

Ask us about being a guest speaker on our "lay" or "professional" TeleSeminar Series. You can demonstrate your expertise by providing useful information, tips and advice on a topic of your choice, including legal, financial, parenting or emotional issues. We promote these TeleSeminars/Podcasts on DivorceMagazine.com, FamilyLawyerMagazine.com, facebook, twitter, our blogs and on iTunes. Podcasts and transcripts of your TeleSeminars are available for you to add to your own website.

Social Media Marketing

The influence of social media is undeniable. While some divorce professionals hesitate to embrace social media as a marketing medium, those who use social media are reaching many prospective clients and establishing themselves as experts. We understand the legal and branding concerns you have regarding social media. We can show you how to present yourself and your firm professionally and effectively on LinkedIn, facebook, Google+, twitter and blogs so you will be remembered, recognized and retained.



We build better websites and know how to best promote you online

Website Design and Content

We build better websites for divorce professionals!

We understand your prospective clients' needs because we have been publishing Divorce Magazine for 16 years.. Our years of divorce market experience and intelligence enables us to provide you with propriety content for your website that you cannot get anywhere else, including articles on a range of divorce related topics, our monthly Divorce eNewsletter, and 9 unique Divorce Guides which are branded with information about your firm. We will custom-design a quality website that is search engine friendly and rich with content, making it an invaluable resource for your clients, prospective clients and referral sources.

Our writers can also write content for your website, be it your firm overview, lawyer's profile, articles about family law, mediation, collaborative divorce, and all other divorce-related subjects of your choosing.

Search Engine Optimization (SEO)

We offer a number of SEO services (on-site optimization, link building, social bookmarking, etc.) to improve your website's ranking on search engines such as Google, Yahoo, and Bing.

Law firm in California



Family Law firm in Canada



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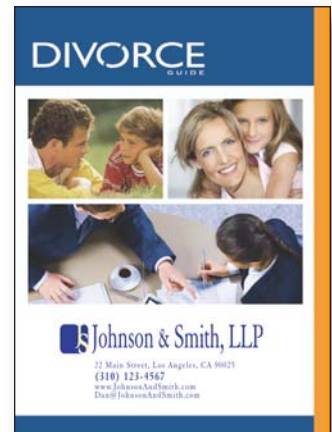
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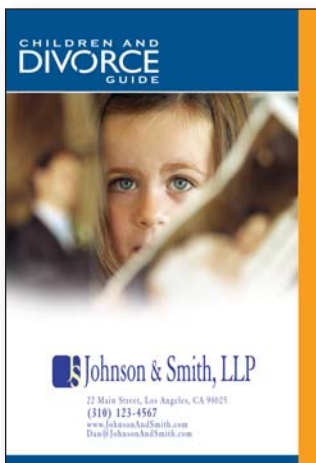
These helpful guides are custom published for your firm. They offer your clients professionally written articles that help them prepare and recover from their divorce and at the same time effectively market your firm. These Guides range in size from 26 to 40 pages and feature your firm's contact information on the front cover and a profile of your firm. All guides are available in a PDF format. Two of the Guides are available in a print format — the Divorce Guide and the Collaborative Divorce Guide.

Making these guides available to your clients, prospective clients and referral sources in your office and on your website will differentiate you from your competitors, keep your firm “top of mind”, keep your clients and prospective clients coming back to your website and increase the chances that your firm will be remembered, recognized and retained.

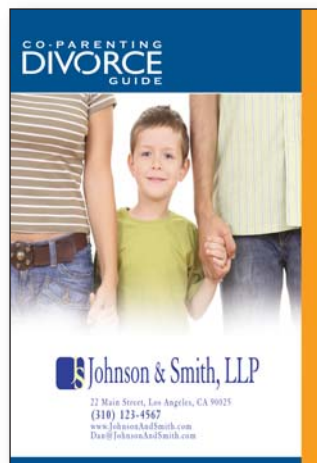
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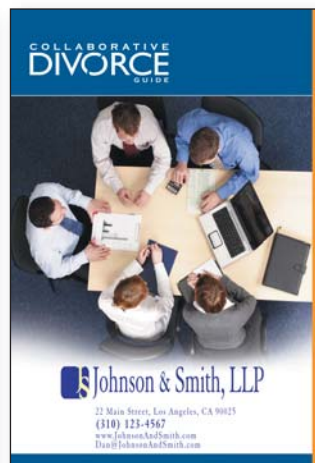
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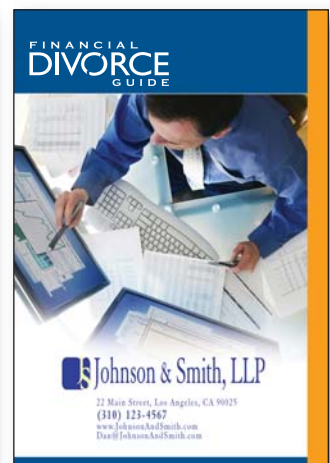
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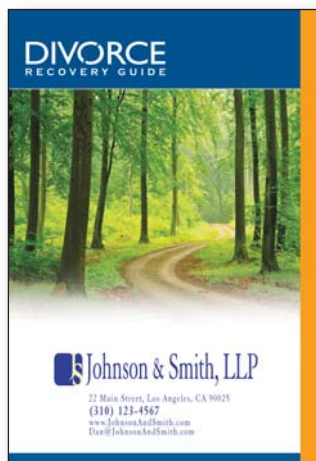
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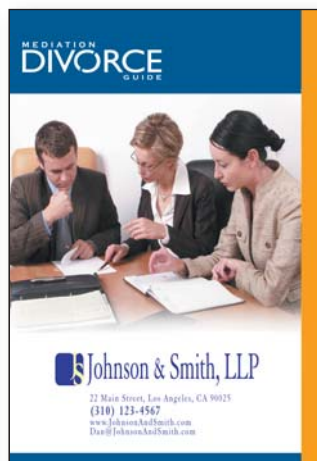
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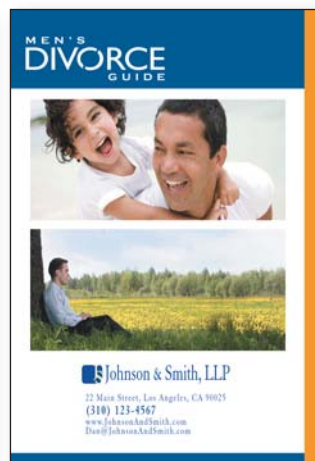
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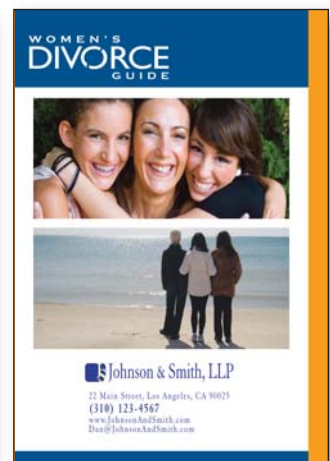
Mediation Divorce Guide



Men's Divorce Guide



Women's Divorce Guide



We'll handle all your marketing needs and keep your marketing program on track

Press Release Creation and Distribution

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Call in every month and get marketing tips on how to grow your practice from our 1/2 hour FREE TeleSeminars. See www.DivorceMarketingGroup.com for topic of the month and details.

Essential Marketing Guide for Family Lawyers

Published by Divorce Marketing Group, this is a simple, easy-to-understand marketing guide specifically written for family lawyers to help them market their practice. This 32-page Marketing Guide combines modern ways of generating business, especially online, with new ideas that improve on tried and true methods. Download this guide at www.divorcemarketinggroup.com/guide-for-family-lawyer.htm or **contact us for a free copy**.

Marketing Consultation

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Great resources for family lawyers and opportunities for other firms to reach them

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Family Lawyer Magazine is the largest circulation publication dedicated to advancing family lawyers' professional and personal excellence. Our editorial is educational, entertaining, thought provoking, inspiring and highly relevant to seasoned and new family lawyers who aspire to excel in their field. This magazine helps family lawyers:

- grow their practice
- enhance their success in and out of the courtroom
- better serve their clients and become more "client-centric"
- discover useful resources to solve challenges they face in their practice
- stay up-to-date on leading issues in the family law field
- increase their career satisfaction and work-life balance.

Family Lawyer Magazine features a wide range of subjects that are of interest to family lawyers, including: Significant Case Reviews, A View From The Bench, Financial Matters, Practice Management, Business Development, Technology, Client Relations, Marketing, Health & Wellness, Free CLE, and more.

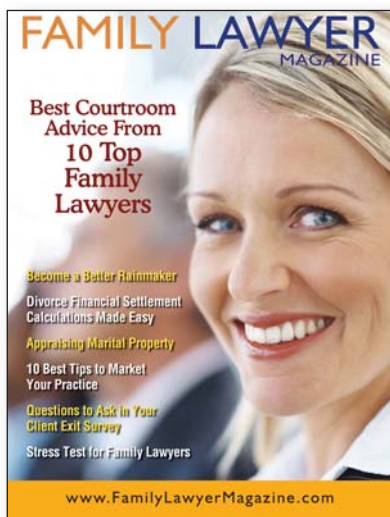
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An Interview with Judge Kathleen McCarthy

Dan Couvrette

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An Interview with Judge Harvey Brownstone: Advice for Family Lawyers



Know and Respect Your Client's Emotional Stage

It's rare that divorcing spouses are at the same emotional stage. It's far more common — in fact, it's the norm with very few exceptions — for one spouse to have emotionally disengaged from the marriage months, or even years before formal divorce proceedings begin.

Family lawyers do their client — and themselves, for that matter — an immense service by paying close attention to their client's emotional stage. Are they emotionally disengaged, and therefore capable of seeing their divorce as a business transaction? Or are they reeling from having the “divorce bomb” dropped on them from above, and can't separate the emotional issues from the practical ones?

If it's the latter — and it's not difficult for a perceptive, attentive family lawyer

Judge Harvey Brownstone has been sitting on the family law bench in Ontario for over a decade. We ask him for some advice for family lawyers on how they can be more successful and better serve their clients. Here is an excerpt of that conversation:

to quickly evaluate this — then my advice is clear: family lawyers should get their client into heavy duty counseling at the earliest possible opportunity.

I won't suggest that counseling during divorce can totally heal clients — for most spouses divorce is traumatic, and it can take years for the healing to completely finish (if ever). But with that being said, counseling helps clients get to a point where they can make objective, well-considered decisions regarding their divorce. And frankly, that's what clients want, that's what their children want, that's what judges want, that's what family lawyers should want, too.

Know Who You Can't Work With

Sometimes — not commonly, but I've seen it often enough — there are family lawyers who simply cannot work with certain other family lawyers. Family lawyers are human beings, and sometimes there's a personality conflict. It happens. That's reality.

But when family lawyers cannot communicate and cooperate on a professional level, it's their clients who lose — and that's not how it's supposed to work. Indeed, I've seen family lawyers lose sight of their client's dispute, and instead replace it with their personal dispute against opposing counsel.

Obviously, this affects client outcomes because opportunities to settle or, at least, clearly understand the other side's position are overtaken by venomous volleys between family lawyers who — it must be admitted — may not even be aware how deeply they've substituted their client's fight for their own.

The negative consequences of this go far beyond the specifics of a case. There are an increasing number of unrepresented litigants in family court. When they look out from the gallery and see what some family lawyers do to each other, they come away with yet another reason why they will do everything possible not to hire a family lawyer — which is the exact opposite of what they should be doing! But who can blame them? When they see a verbal brawl break out between family lawyers who are obsessed with destroying each other, what incentive do they have to spend hundreds of dollars an hour to hire one?

Family lawyers should have a list — call it a little “black book” — containing the names of colleagues who they simply cannot work with. And then when a family lawyer engages a client during initial consultation, the very first question he or she should ask is: who is representing your spouse? If the answer received matches a name in the black



book, that family lawyers should immediately say: I'm truly sorry, but I can't take your case, as I don't think I'll be able to give you the representation you need in this matter.

Take Advantage of the Remedies Available in the Family Law Rules

There exist an abundance of remedies built within family law rules that family lawyers can and should use to advance their client's interest, and to move the case forward. These include sanctions levied against the other party for not filing or failing to comply. There are also opportunities to proceed on an uncontested basis, strike pleadings, seek costs, ask for a summary judgment, and the list goes on.

From the bench, I'm stunned by how often family lawyers fail to avail themselves — and best serve their clients — by taking advantage of these remedies. Why not? Some don't know the remedies exist in the first place. And others can't be bothered to put in the effort to research and then invoke them.

My advice to family lawyers is to get up to speed ASAP on the remedies available within family law, and learn how to apply them to advance their case. And if this sounds like blatant common sense and not even the kind of thing that should be called advice, then you know exactly how I feel, sitting on the bench, wondering the exact same thing with alarm, disappointment and pity for clients and their children who deserve better.

Make Every Court Appearance Meaningful

By meaningful, I mean that something important should be happening at every court appearance. The matter should advance forward.

Family lawyers shouldn't view court as a forum where they can "talk to each other." That's not what court is for. And it's also not what clients are paying for — many of whom are taking time off of

work, and who are also paying for their family lawyer's time. Clients deserve to have their matter advanced in court — not to have their family lawyer, or the opposing family lawyer, treat it as an opportunity to serve documents at the last minute, or ask for yet another adjournment. All of this needs to happen before court. So the advice here, again, is for family lawyers to make each court appearance meaningful. If that means — and it usually does — that family lawyers communicate effectively and efficiently in between court dates, then that's what needs to happen. Frankly, it should be happening anyway. But too often, it's not.

Also, family lawyers should never lose sight of the fact that judges have the right to make an order if one or both family lawyers are failing to fully appreciate the role and function of the court. Judges view every court appearance as an opportunity to close the case, and they are looking to family lawyers to demonstrate that they're trying and have tried to make that happen.

Family lawyers should also remain mindful that their clients are taking time off work, dealing with the inevitable stress of sitting in court, and paying hundreds of dollars an hour. They need and are entitled to have their matter advanced with every court date.

Mentor New Family Lawyers

We have a serious, I'd even say severe succession planning problem in the family law bar. There are a large number of very senior family lawyers who are nearing retirement, and at the same time, we aren't seeing many young lawyers enter family law for a variety of reasons — not the least of which being that it doesn't pay as well as other areas of law, but also because one needs to have a certain personality type in order to withstand the emotional and psychological rigours of "dealing with good people at their worst."

However, unless and until we do something to make family law more lucrative or less traumatic — neither of which

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seem to be on the horizon — then it's up to family lawyers to help develop mentoring programs that really strive to help new family lawyers succeed.

For example, smaller family law firms may decide to share an articling student if the alternative is to hire no student at all. Firms may also want to connect with law schools to educate students on the myths of family law vs. the realities, so that those students can really take an honest, hard look at family law, and at themselves, to see if they're the right fit.

Join Your Local Bench and Bar Communities

Family lawyers should join their local bench and bar communities, associations and committees, so that they can take advantage of the ongoing dialogue between the court and the family law bar.

This interaction is an invaluable way to both get and give feedback, and to help judges like me understand how

we can do things better. It also gives family lawyers the opportunity to really get involved in the systemic issues that the field must tackle — issues like making family law affordable so that more people avoid the mistake of self-representation, how to reform and improve family law so that its intentions align more harmoniously with its application, and other critically important issues that affect real people; especially children.

Indeed, I can relay a story of my own to help family lawyers grasp the benefits — many of them perhaps unexpected — of plugging into their communities and associations. At our last judge's conference, we were told by a senior psychiatrist that the family justice system should actually be seen as part of the health care system, because our job is to use the law to, ultimately, heal people and families. This same paradigm can be certainly applied to family lawyers: their job is to make the family law process as pain free for their clients and their children. ■

Justice Brownstone has presided in criminal court, and since 2001 has presided exclusively in family court at the North Toronto Family Court in Ontario, Canada. In addition to his role in the court and his work as an author, Justice Brownstone frequently comments on family law and divorce issues in the Canadian national media. He can be seen on his public education talk show FAMILY MATTERS. Visit www.familymatterstv.com for more details.

More Advice for Family Lawyers

Interview with Justice Brownstone

Read the entire interview here: www.familylawyermagazine.com/articles/advice-for-family-lawyers-part-i.

Interview with Judge Lowrance

Read an excerpt on page 6 and listen to the entire podcast interview at www.familylawyermagazine.com/articles/an-interview-with-judge-lowrance.

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Life and Debt



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You have probably heard of the saying, the only things in life that are certain are death and taxes. Well, we can add a new one to the list — Debt. Whether you are young or retired, single or married, you are never exempt from the threat of debt. It could stem from a marriage breakdown, the death of a loved one, or loss of a job; debt can bubble up faster than one would expect, causing stress and possible financial chaos.

As a responsible family lawyer, whatever your client requires your expertise for; your goal is to ensure your clients are protected from any emotional and/or financial jeopardy that such life turns can cause. Your role may involve:

- Dividing marital assets, and debt
- Facilitating finances for a recently deceased
- Aiding a family who has taken charge of an elderly family member, or
- Facilitating a child custody/support case.

All of the above can have a crippling financial impact on a client and their family's life; such that it can easily grow to a devastating mountain of debt. Unsettled debt is best dealt with promptly and cleanly, to avoid legal settlement proceedings being dragged out. Here are some questions you can pose to your clients who have unsettled debt:

- Are they from credit cards, lines of credit or loans?
- Is each spouse or family member involved aware of all debts?
- Are the debts shared, or is one or more in one person's name only?
- How much is the outstanding balance of each debt?
- What is the interest rate attached to each debt?
- Is there a threat of bankruptcy?

We highly recommend that your client order a credit report from one of Canada's trusted Credit Bureaus, like Equifax or TransUnion. In the case of a couple requesting a divorce, a joint credit report should be ordered. Only then can an accurate account of all of debts be attained. It is your client's responsibility to go through all of their credit cards to see what cards are active, whose name they are in, and how much debt is owed on each. Once

this has been determined, you should strongly advise your clients to STOP making purchases on these cards. Continued purchases on these cards will only complicate matters in the settlement process. A good idea is to advise your clients to apply for an entirely new credit card in their own individual name from a different credit provider.

If there is a significant amount of debt involved in the divorce case, your clients should not borrow any more money, sell their home or assets, consolidate their debt or consider bankruptcy prior to having all options examined and spelled out by a consumer debt relief professional who can ensure that your clients are protected and that they pay back as little as possible to relieve their debt. Now comes the fun part. Who is responsible and who is going to pay the debt? This will entirely depend on the situation. Whether your client is going through a divorce or has recently experienced a death in the family, they will need to determine who will pay the unsettled debt.

A licensed, and reputable, consumer debt relief firm will assist your clients in resolving unsettled debt in a swift and manageable manner. They will act as your clients' representative in negotiating the terms of their debt repayment directly with your clients' creditors and the creditors' representatives. They will respond to telephone calls and letters from creditors to reduce the emotional stress on your clients. A reputable firm will offer your client a free financial assessment, in order to tailor a repayment plan that suits your client's financial needs. The goal of all debt relief firms should be to ensure your client has the money to:

- Secure a roof over their head
- Provide food for the family
- Ensure legal fees are paid
- Ensure unsettled debt is paid down!

With more than 20 years of experience, Ed Portelli is an expert in the debt relief and debt collection industry in Canada. He is the founder and President of OCCA Consumer Debt Relief, an independent and fully licensed firm in Brampton, Ontario. The firm's website is www.occa.ca.

Changing the World through Consensual Dispute Resolution — from the Legal System to the Middle East



Family Lawyer Magazine spoke to Dr. Barbara Landau not only because she is tops in her field, but because she has made significant contributions to the legal system and the mediation movement in Canada. Dr. Landau is committed to making a difference not just for people with family disputes but also on the planet through her peace work in the Middle East. Below is an edited excerpt from our interview.

From Psychology to Law to Mediation

I worked at the Clarke Institute as the Chief Psychologist at the Family Court Clinic, which was a great way of combining my interest in law and psychology. When I was there, I was dismayed with the way family law cases were handled in the court. I thought it was so short-sighted to pit parents against each other, writing horrible affidavits, lining up friends and family members for an ugly mudslinging battle. In my view, it destroyed all chances of mutual respect or parental cooperation. It was really destructive for kids. So, I created what I called “problem solving conferences,” I invited both parents to meet with me, which the lawyers thought was crazy. They were always looking to hire mental health professionals to testify on one side, but I brought both parents together and worked out a parenting plan that addressed everybody’s concerns.

Ten years after I graduated in psychology, I applied and went to law school. I wrote in my application that I was coming to law school to change the legal system. And to the credit of both the University of Toronto and Osgoode Hall Law School, they both accepted me. So I went to both of them.

I did practice as a conventional family law lawyer but always offered my services as a mediator as an alternative. When I was at the Family Court Clinic, I didn’t know that what I was doing was called “mediation.” I called it “problem-solving conferences.” The year before I went to law school I learned that there was something in California called “conciliation,” and then later “mediation.” After 15 years, I worked my way out of the practice of law and into a total mediation practice.

Champion of the Mediation Movement in Canada

The minute I got out of law school I joined Howard Irving, Molly Knowles, John Goodwin and a handful of others, to create

the Ontario Association for Family Mediation (OAFM). In 1982, I became one of the early presidents of OAFM. In 1983 I began teaching a Family Mediation course. Today, I’m still teaching Family Mediation and other conflict resolution methods.

At the time mediation was really a philosophic/social activist movement. It got stopped-up short by women’s advocates who were concerned that mediation was so future-focused it ignored a past history of abuse and power imbalance. They were very successful at convincing the government that family mediation should be disallowed. So for the next five years, I created committees and conferences with women’s advocates and mediators across North America. Together we framed a domestic violence policy that is still the policy across North America. It requires all family mediators — and family arbitrators — to attend a minimum of a two-day Domestic Violence Screening program. Today all clients must be screened individually for domestic violence and power imbalances

The Family Law Reforms in 2011

Over the last five years got together with lawyers, mediators, shelter workers, clients, government staff, and judges, to fashion changes in the family law process. We invited representatives from other provinces and reached out to Australia and California. After consulting with about 130 people, I wrote the report called “Home Court Advantage: Creating a Family Law Process That Works”. A number of the key recommendations were implemented in the summer of 2011 including:

A mandatory family information session for everybody to look at different dispute resolution options available and it gives an overview of family law. The second part is for parents of children under 21. The emphasis is on cooperation and behaving in a less adversarial way. Mediation services be available at every court, both on-site and off-site.

The Middle East Peace Movement

My daughter’s good friend was killed by a Palestinian bomb in Tel Aviv in 1990. That sent our whole family on a search for



how we could better understand why somebody would want to kill an innocent teenager. We went on an initial Compassionate Listening mission to the Middle East in 1999, spending time in Israel, the West Bank and Gaza, compassionately listening to Jews and Palestinians to deeply hear their stories. The premise was that a terrorist is someone who feels that his/her story hasn't been heard and that maybe by listening to people we can start to shift their views and make them more open to hearing the other. Later, I started a Jewish-Palestinian dialogue group here in Toronto and joined a group of mental health professionals called Shrink the Gap.

After September 11, I was really shaken. I believed that there would be an anti-Islam backlash. I activated an organization called the Canadian Association of Jews and Muslims with its founder. We are working on the Weekend of Twinning of Synagogues and Mosques, an initiative out of New York. Together we are running programs where synagogues and mosques or Jewish and Muslim cultural centers or university students come together for the purpose of building relationships and allies. This year more than 250 synagogues and mosques and organizations around the world will participate in the Twinning.

Peace is inevitable because we all want the same thing. We want a safe world for our children. We want economic opportunities. But I think peace can't happen when people are

looking at themselves as victims. I think that victims give up taking responsibility for their own actions, they wait for the other person to do something or to apologize first. I think victims need to take responsibility for changing the situation and stop dehumanizing each other. ■

Listen to the Entire Interview Online

This is a short excerpt of an interview. To listen to the entire interview, please visit www.familylawyermagazine.com/articles/an-interview-with-dr-barbara-landau-the-evolution-of-consensual-dispute-resolution-cdr-part-2-of-2.

Dr. Barbara Landau is president of Cooperative Solutions in Toronto. She is a psychologist, a lawyer, a mediator and a trainer, as well as an author. She has received many awards including: the lifetime title of Fellow of the Canadian Psychological Association for her outstanding contribution to the field of psychology; the Award for Excellence in Dispute Resolution by the Ontario Bar Association; the Distinguished Mediator Award from the Association for Conflict Resolution; the long-term achievement award FAMMA from Family Mediation Canada; and ADR Institute of Canada's Regional McGowan Award. Barbara is a former Vice President of the ADR Institute of Ontario and former board member and Director of the Psychology Foundation of Canada.



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What's Your *Escape*?

By Dan Couvrette, Marketer and Publisher

My heart was pumping wildly as I descended the mountain on my motorcycle, taking one jarring hairpin turn after another, towards the Sea of Cortez in Baja, Mexico.

Ironically, the Eagles' song "*Take it Easy*" was blasting away through my earphones and naturally, I was singing along at the top of my lungs. It was the Eagles, after all, and it is probably the only song I know all the words to.

Left and right, right and left, the motorcycle responded to my commands with a kind of supernatural intelligence. Or maybe it was just enchanted by my beautiful singing — not likely. Whatever the case, I was feeling more and more *in the moment* with each twist and turn on one of the world's most scenic and dangerous roads.

Even now, a month after that trip, I still get goose bumps reflecting on those afternoons spent cruising the Baja. It was truly an "escape" from my norm — my work, my family and the things I usually do. There were lots of "escape" moments. It wasn't that I decided not to think of my to-do list, my clients, or some other tasks, I simply *couldn't* think of anything else. The road, the motorcycle, and the moment

demanding 100% of my attention and concentration. Not 95% or even 99%. But everything. Anything less and I wouldn't be here. I'd be a statistic.

Of course, I also have other ways of escaping — ways that are far more agreeable to my family and my insurance company. For example, I escape through jogging, travel, yoga, art, snowboarding, tennis, windsurfing, movies and music. And I've now added long distance motorcycling to the "escape" list.

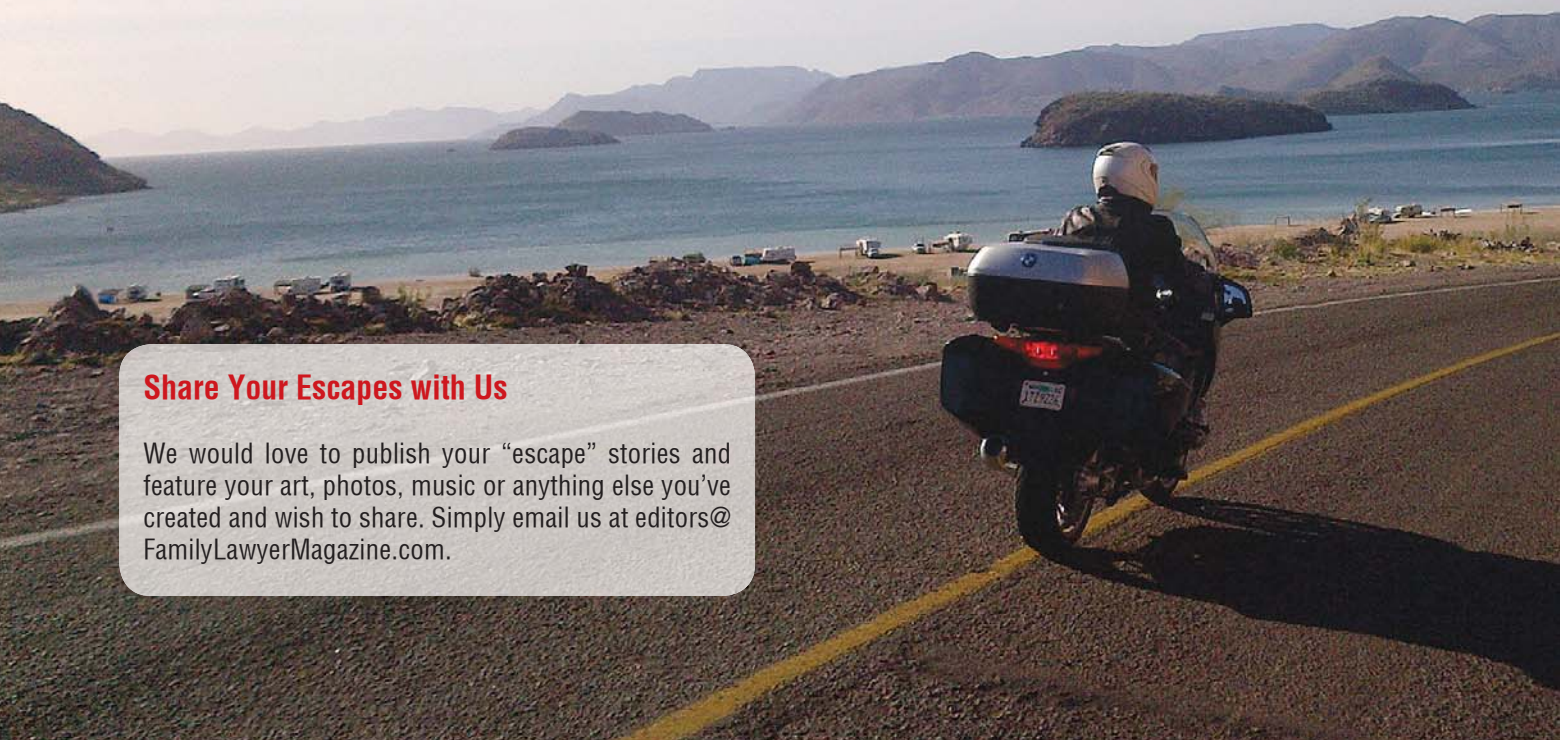
So that brings me to YOU.

How do you escape from life's demands and the rigors of being a family lawyer? What helps you achieve balance and gives you an essential, restorative timeout? Perhaps you play an instrument, or write, read, ride horses, cook, volunteer or meditate. We are interested in knowing about your "escapes". Please follow the instructions on this page and submit your escape stories to us.

P.S. If you're curious about how my motorcycle adventure unfolded, you can read my escape story "Long Way Down the Baja" at www.familylawyermagazine.com/articles/long-way-down-the-baja. ■

Share Your Escapes with Us

We would love to publish your "escape" stories and feature your art, photos, music or anything else you've created and wish to share. Simply email us at editors@FamilyLawyerMagazine.com.



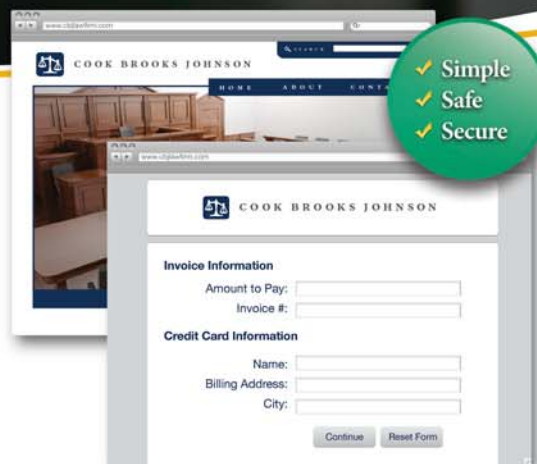
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