

FAMILY LAWYER

Winter/Spring 2016

MAGAZINE



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Gathering and Presenting Evidence

Wise Words from 3 Judges

10 Business Valuation Tips

Tax-Saving Strategies for Clients

7 Technology Tips and Tricks

Does Your Practice Run Like Clockwork?

Better Communication with Clients

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Top Advice for Family Lawyers

In 2014, we offered the first installment of a column entitled “What Family Lawyers Need To Know,” which warned of potential pitfalls and gave insights into best practices and cutting-edge technology to support a legal or financial practice. With this issue, we have expanded the popular column to fill the majority of the pages: you will find guidance from 56 experts on topics to help you manage and grow your practice (pages 28 and 30), improve communication with clients (page 40), prepare for court (pages 8, 13 and 42), understand divorce-related valuation issues (page 6) and tax traps (page 14), take advantage of technology (page 20), and learn about video marketing (page 24).

20 Years of Serving Divorce Professionals

Divorce Marketing Group – which publishes this magazine, *Divorce Magazine*, and seven divorce-related websites that reach 3,000,000 divorcing people (see pages 44 and 45 for more about this) – is celebrating our 20th Anniversary this year. The only marketing agency 100% dedicated to helping family lawyers and divorce professionals grow their practices, we have helped countless numbers of divorce professionals market their services both online and offline since 1996.

To help mark our 20th year, we are offering family lawyers in the U.S. a chance to win \$5,000 towards an all-inclusive vacation at a Sandals Resort of their choice (page 9)! For more details or to enter the contest, please go to www.DivorceMarketingGroup.com/contest.

We are also launching the world’s first Divorce School: an online place where divorce professionals and divorcees share their expertise and experience as Faculty Members, in videos and podcasts, to help people make better choices before, during, and after divorce. The Divorce School will be free, practical, and transformative. If you are interested in becoming a Faculty Member or a Sponsor, please contact me or visit www.TheDivorceSchool.com.

Thank You

We want to take a moment to thank our readers, visitors to our websites, and loyal clients – many of whom have been with us for years (or even decades in some cases). Divorce Marketing Group’s success speaks volumes about the need for the resources we provide as well as how well we service those needs. We look forward to serving the divorce community – professionals and families alike – for another 20 years!



**Divorce Marketing Group’s
staff look forward to serving
the divorce community for
another 20 years!**

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PROFESSIONALS AND SERVICES DIRECTORY

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10 VALUATION TIPS

FOR FAMILY LAWYERS

Advice from 6 valuers on dealing with divorce-related business valuation issues.



Normalizing the Historical Earnings Is a Necessary Step in the Valuation Process

During a business valuation, normalization adjustments to extraordinary or non-recurring items are made to remove one-time and/or non-recurring income and/or expense items from the historical earnings.

In our experience, certain attorneys do not fully understand why a valuation expert adjusts for these types of expenses. An extraordinary or non-recurring expense is an actual expense incurred by a company, but is not an expense that will be an ongoing expense. Given that the company actually incurred the expense, an attorney can have a difficult time with the “add back”.

It is important to understand that normalizing the historical earnings is a necessary step in the valuation process. When a company has a year with an

extraordinary or non-recurring expense incurred, the historical earnings may not represent normalized earnings potential. The valuation expert’s role is to adjust historical earnings to reasonably represent the economic reality of an ongoing business.

– Michael A. Saccomanno (CPA, ABV, CFF, CVA, CDFA™), Friedman LLP, www.friedmanllp.com

The Business Is Struggling at the Time of the Divorce: Is This Real or Just a Game?

Businesses can be cyclical, or they can follow a unique growth pattern based on their own specific circumstances. A historical qualitative and quantitative analysis of a business’s operating results can provide some explanation as to why the company may be experiencing a particular down cycle as of the valuation date. For small businesses

that are more reliant on the efforts of the owner, the impact of the divorce itself must be considered. Is the indicated downturn in the business due to a distracted owner? Or could the downturn actually be premeditated in an effort to devalue the business during the proceedings?

Specifically for businesses with cash accounting, a detailed analysis of the timing of invoicing and payments must be considered, as the owner may be intentionally delaying income that might make the business appear more valuable than they desire. Overall, the appraiser must be aware that the downturn may be related to the divorce itself, and take appropriate care both qualitatively and quantitatively in determining the value of the business.

– Arik K. Van Zandt (ASA, CDBV), Senior Director, Alvarez and Marsal, www.alvarezandmarsal.com

Celebrity Goodwill and the Right of Publicity

With recent cases in California and the change in the law in New York, many believe that the concept of celebrity goodwill is gone. (It still exists in New Jersey.) What is often overlooked in the celebrity goodwill discussion is the right of publicity (RoP). RoP is narrower than the concept of celebrity goodwill, and it is alive and well.

Recent controversy over the value of Michael Jackson's name and likeness in connection with his estate has highlighted the issue of the commercial exploitation of an individual's name and likeness. This is not a new concept: there is a legion of litigated cases involving the unauthorized use of a celebrity's name and likeness.

RoP is often defined as an individual's right to control and profit from the commercial use of his/her name, likeness, and persona. It is the alter ego of the Right of Privacy. RoP in the United States is governed by state law, so it is important to understand the protections afforded this right in any particular state.

Celebrities often license the use of their name, likeness, or persona in connection with a product endorsement. We are all familiar with George Foreman's grill and, if you are old enough to remember, Joe DiMaggio's endorsement of Mr. Coffee. One change that has occurred in recent years is the outright sale of a celebrity's name and likeness. This includes the aforementioned George Foreman – but more recently, Marilyn Monroe and Muhammad Ali.

As the proliferation of reality TV attests, America's love of celebrity continues unabated. So if the circumstances arise, do not overlook the right of publicity.

– Jay Fishman (FASA), *Managing Director, Financial Research Associates, www.finresearch.com*

5 Quick Tips from the Trenches

1. Start Early: A business valuation analyst needs to be brought in early in the case to help with

identification of information and documents during the discovery process. Sufficient and reliable data is needed for correct valuation results. Business appraisers have comprehensive lists of documents that are needed in a valuation, and they contain more than just financial statements and tax returns.

2. Credentialed Appraiser: Hire the best appraiser your client can afford, and make sure he or she is credentialed. The valuation credentials come from the following organizations: American Society of Appraisers (ASA), American Institute of Certified Public Accountants (AICPA), Institute of Business Appraisers (IBA), and National Association of Certified Valuation Analysts (NACVA). Credentialed experts have to follow professional business valuation standards.

3. Keep Your Expert in the Loop: After retaining a business appraiser, keep him or her informed in the developments in the case, including attempts to settle, depositions, relevant dates, and deadlines – and if such dates are pushed, because there may be conflicts in the appraiser's schedule.

4. Settlement Help: If the report of the opposing party's expert is available early in the process, a review and critique of that report by your expert may help in negotiations to settle the case. If the report is reasonable, then your client may benefit from settling the case early and save resources.

5. Prepare for Testimony: Work with your appraiser to make sure that you are on the same page regarding the important facts of the case. Not being informed about key aspects in the case may make the appraiser appear unprepared and lose credibility. Communicate with your expert and prepare accordingly.

– Shannon Pratt (CFA, FASA, ARM, ABAR, MCBC, CM&AA) and Alina Niculita (CFA, ASA, MBA), *Shannon Pratt Valuations, www.shannonpratt.com*

Valuation Disputes in a Divorce Setting Should Settle Out of Court

One never knows what will happen if a valuation dispute goes to court. In a matter a few years ago, I was the business valuation expert for an attorney on behalf of the husband. He and his wife owned a successful business, 50% each. For reasons I still don't understand, he had operational control and fired her. He wanted to purchase her stock, and she wanted to purchase his. I valued the business at approximately \$50 million, and the opposing expert valued it at \$80 million. We went to court and both experts testified. I like to think I was most reasonable and persuasive, but we will never know.

The judge ruled that the couple had proven beyond any doubt that they could not and would not work together. He refused to rule on a situation where the husband would purchase the wife's stock, and similarly he refused to allow the wife to purchase the husband's stock. It was apparent that no transaction could occur without significant seller financing. The judge refused to rule on an option that would prolong their long-embattled relationship financially. He ruled that the company would have to be sold, with the net proceeds to be split between the parties. Both sides spent tons of money on the valuation dispute and the result was what they should have agreed to when they decided to divorce.

– Z. Christopher Mercer (ASA, CFA, ABAR), *Founder and CEO, Mercer Capital, www.mercercapital.com*

Managing Client Expectations

In our practice, we have often found that when a divorcing spouse has strong opinions about the value of their business (or the value of their spouse's business), they have a difficult time accepting results that don't meet their preconceived notions. This can sometimes lead to prolonged conflict, requests for second (or third) valuations, and a change of lawyer.

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Wise Words from Three Judges

Meet and Confer with the Other Side Before Entering the Courtroom

The best advice I have for family law attorneys is to meet and confer with the other side long before you enter the courtroom. Nothing thrills me more than hearing two good attorneys tell me that they've met and conferred, they agree on the following issues (ideally, those issues are contained in a written stipulation they're handing me), and they have narrowed the remaining contested issues.

When I hear this, I know that they are working hard for their clients, they have done what they can to resolve things before coming to me, and that they are prepared. I know that my time – and their clients' money – is not being wasted.

– Hon. Judge Dianna Gould-Saltman, Superior Court of Los Angeles County

Provide Briefs to the Court on All Motions and Evidentiary Hearings or Trials

Whether it's a settlement conference, motion hearing, or full-blown trial, a great attorney will always be prepared. While this may seem like common sense, I am often flabbergasted by the lack of preparation that I see from attorneys, both new and seasoned. It

is very evident to a judge whether you know your case facts, case law, court rules, and rules of evidence. The best advice I can provide to accomplish this is to provide briefs to the court on all motions and evidentiary hearings or trials, even if the court does not require it. Your brief should be factually detailed, discuss current law, include applicable affidavits and exhibits, and be served upon the court in a prompt manner. Not only will a thorough brief show the court that you are a zealous advocate for your client, it will also help you be more prepared for your oral argument and/or witness examination, and may even encourage the opposing party to resolve the issues before having to appear in court.

– Hon. Kathleen M. McCarthy, Presiding Judge, Family Division, Third Circuit Court of Michigan

Problem-Solve Rather than Make War

One of the most difficult things for me as a practicing attorney years ago was to remain objective with my clients. I too easily bought in to my client's issues and story, and made the opposing party the enemy, which often translated into making my opposing counsel the enemy. It did not solve my client's problems to join in the war among all four of us.

When I was on the bench, I recognized the same problem in too many attorneys. It was so much easier for me to be a judge and remain neutral between the parties, because I was required to hold one party's "truth" in abeyance until I heard the other party's "truth." There was almost always some truth in each story and some misunderstanding of that truth in the other.

My advice is to problem-solve, rather than make war, by pretending to be a judge and listening to both "truths" before moving forward with solutions.

– Marjorie A. Slabach, Private Judge and retired San Francisco Superior Court Commissioner. www.mslabach.com ■

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Running Like Clockwork

Advice to ensure your family law practice runs efficiently.

Steady the Ship on Accounts Receivable Going into Year-End

Here are four tips to help you achieve your year-end collection goals:

1. **Meet with attorneys to determine what help they need getting their accounts collected.** Schedule a meeting in advance to go over their A/R and find out how you can give them hands-on help.
2. **Put together a list of clients that are expected to pay by year-end, and the exact date of when payments are anticipated.** Ensure each attorney receives a regular progress report and alert them if the commitment date has passed without receiving payment so they can make appropriate follow-up contact as year-end approaches.
3. **Provide the attorneys a checklist of items that will help ensure payments are made,** such as: verifying clients have copies of all outstanding invoices, determining if client offices will be closed the last week of December (to ensure payments have been processed before closing), providing the attorneys routing instructions if payment is to be sent by wire, or an overnight express mail account number for quick delivery, etc.
4. **Take the time to walk the halls and check in with the attorneys** on their progress during the last few weeks. Your visits will remind them of what they have to do.

— Jake Krocheski, President of Client Connection,
www.clientci.com

Ensure Your Practice Runs Smoothly by Collaborating and Acknowledging Expectations

To grow and develop your family law practice, you must hire staff to assist you and get the work done. Your hiring decisions are some of the most important decisions you will make, so take the time to get them right. Once you have made these decisions, the next step is learning how to manage your staff. They will not be able to meet your expectations unless you provide some guidance regarding those expectations.

Daily meetings are essential. During this time, you have the opportunity to check in and make sure that the work is being done properly. It is also a time for your staff to have the chance to ask questions about assignments and inform you about developments in the cases. A daily meeting where this exchange takes place allows everyone to move forward with peace of mind, and prevents numerous disruptions during the work day.

In addition to daily meetings, it is important to keep staff apprised of what is happening in every case so they can better grasp how their particular assignments fit into an overall strategy for each one. Most importantly, you and your staff are a team, and you need each other to succeed. As such, working collaboratively and making sure expectations and concerns are acknowledged and addressed will ensure that your practice runs smoothly.

— Jennifer A. Brandt, Family Lawyer, Cozen O'Connor,
www.cozen.com

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8 Tax Tips for Divorce Lawyers

Strategies attorneys can use to help their clients keep more of their hard-earned cash away from the taxman.

Beware of the “Child Contingency Rule” Regarding Alimony

Internal Revenue Service Publication 504 warns that if alimony payments are reduced or end around the same time as the child-related event, all alimony payments that were deductible to the payor and taxable income to the payee may be reclassified as child support instead of alimony. The payor will lose the deduction and pay retroactive taxes and the payee will receive a refund of taxes paid.

According to the IRS, support payments that would have qualified as alimony may be treated as child support “to the extent that the payment is reduced or eliminated either on the happening of a contingency relating to the child; or, at a time that can be clearly associated with the contingency.” A contingency relating to that child refers to any event that is certain – or even or likely – to occur, including: the child reaching a specified age or income level, graduating from high school, becoming employed, dying, leaving the household, leaving school, or marrying. The reclassification may occur if alimony payments are reduced:

1. Not more than six months before or after the date the child will reach 18, 21, or the local age of majority;
2. On two or more occasions (applies when there are two or more children) that occur not more than one year before or after a different one of your children reaches a “certain age” from 18 to 24 when the age is that of the oldest child when the first step-down reduction occurs. The age must be the same for each child and can be less than a whole number of years.

IRS penalties may be avoided if you establish that any reduction in alimony was determined independently of a child-related contingency, or that the duration or any step-down is a “rule of thumb” as a

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– Veralynn Morris (CDFA™), President of Divorce Financial Solutions, www.divorcefinancialsolutions.org

Consider the Circumstances of the Parties Before Committing to a Tax-Deductible/Taxable Alimony Order

Not every order for alimony must be tax-deductible to the payor and taxable to the payee. On occasion, a non-deductible/non-taxable order is a better fit than a deductible payment for a divorcing couple. If the parties are in the same tax bracket, it may not

“ Given the amount of money in play, you should hire an accountant to run post-tax cash-flow projections on behalf of your client.

be advantageous to draft the spousal support order as tax-deductible to the payor and taxable to the payee. In situations where the order will run afoul of the recapture rules, you may choose to make the alimony order non-deductible/non-taxable.

A non-deductible/non-taxable order could be the right choice if the payor or payee is a non-resident alien; that party may not be filing tax returns in the United States, and the tax consequences of alimony are advantageous to neither party.

In cases where the parties need a retroactive order for support, it is not possible to make the order qualify as alimony (Ali v. Commissioner [2004] T.C. Memo. 2004-284), so it would make sense to write the order as non-deductible/non-taxable.

Before drafting an order for alimony think about the circumstances of the parties before committing to a tax-deductible/taxable support order.

– Peter M. Walzer (JD), Walzer Melcher, LLP. www.walzermelcher.com

Review the K-1s for Potential Undisclosed Cash Flow

The IRS Form K-1 is the Partner or Shareholder Share of Income, Deductions, Credits, etc. from either a partnership, an LLC, or an S-Corporation. Each of these entities “flow-through” the various items listed above to the taxpayer’s individual Form 1040 via the conduit that is the K-1 prepared for each partner, member, or shareholder.

The predominant items that flow through include the profit/loss of the venture, and dividends, interest, and capital gains. However, there is a section on each K-1 which lists Distributions in Cash or Property. These are not taxable income if given out in the form of a

distribution. Instead, the cash distributed reduces the Partner or Shareholder Basis account. For support purposes, these are considered as cash flow even if they do not show up on the tax return. Refer to Line 19 on the Form 1065 for Partners and on Line 18 for all Forms 1120S.

Uncovering hundreds of thousands of dollars reported from distributions is not uncommon. Rather than take it in taxable salary, they reduce their basis accounts or report a new Loan to Shareholder.

– Peggy Tracy (CFP®, CDFA™, CFE), Priority Planning LLC. www.priorityplanning.biz

One of the Biggest Mistakes when Transferring a 401k to an IRA

A little-known tax law deals with Net Unrealized Appreciation (NUA) of employee securities (company stocks). When transferring a 401k to an IRA, you should always first check for NUA. If you have highly appreciated company stocks in your plan you may be able to get them out and pay long term capital gain rates instead of ordinary income tax rates. To do this there are three triggering

events: 1) Separation of service (unless self employed); 2) Disability (only if self-employed); and 3) Attainment of 59 ½ or death.

If the cost basis of your company stocks is lower than the current value, you should consider NUA. To get NUA, you must transfer the entire 401k within one calendar year to separate IRAs: one holding the NUA Stocks and another holding all other funds.

Now, when you sell the company stocks, you pay ordinary income taxes on the basis and long-term capital gains rates on the growth, often a savings of more than 20% in taxes. It is important to understand this must be done correctly or you lose the NUA. Be sure to consult a competent advisor in this area.

The cost basis of the NUA distribution can be used to satisfy your RMD for the year of distribution if you have one.

– James W. Johnson, All Mark Insurance Services, www.yoursafemoneypeople.com

How to Access IRA Money Without the Early Withdrawal Penalty

Ever had a client who had the majority of their assets in an IRA – which they needed to access immediately, but they were under age 59 ½? If your client has a 401k, you can transfer the assets that need to be liquidated and withdrawn into that 401k; the money then falls under ERISA rules rather than IRS rules, so your client can withdraw the funds and not have to pay the 10% penalty for being under age 59 ½. It’s as simple as filling out the paperwork and transferring the IRA into their current 401k. This strategy has saved my clients up to \$15,000 in tax penalties. Many divorcing clients need money to pay off debt, put a down-payment on a new home, or pay their attorney or other professional fees. The amount to transfer from the IRA should be determined through proper financial planning. Taking money from retirement accounts is a last resort – but all too often, it’s the only option.

– Jennifer Ray Bertheussen-Chapman (CFP®, CDFA™), Jenco Financial Services, www.jencofinancial.com

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Echols & Associates

Contested and Complex Family Law Firm



David and Eileen Echols

Echols & Associates is a matrimonial law firm established in 1979 by David and Eileen Echols. Through the years, the firm has received numerous accolades and has been recognized by their clients and their peers for their legal ability and adherence to the highest profes-

sional standards of conduct, ethics, reliability and diligence. The firm's outstanding work has been recognized by Martindale-Hubbell's Bar Register of Preeminent Lawyers, and as the "Best of the Best" in 2012, 2013, and 2014 by the readers of the Oklahoma Magazine. M. Eileen Echols, managing attorney and chief litigator, is a former family law judge, twice named "Outstanding Family Law Judge" for the State of Oklahoma by the Oklahoma Bar Association's Family Law Section. David W. Echols is a Fellow in the American Academy of Matrimonial Lawyers and has been an AV rated attorney by Martindale-Hubbell for more than twenty years. Both are Lifetime Charter Members of the Rue Ratings "Best Attorneys of America", and have been recognized by their peers as Oklahoma SuperLawyers. They both have been adjunct professors of family law and are frequent lecturers on topics of family law to Oklahoma lawyers.

The firm's other members pictured below are also excellent attorneys and have been recognized in their own right. Jonathan D. Echols graduated first in his law school class at OCU. He has been selected to the Oklahoma SuperLawyers Rising Stars list since 2011. Amy L. Howe has been selected to the Oklahoma SuperLawyers Rising Stars list since 2013. In 2014, she was named to The National Trial Lawyers "Top 40 Under 40", and the National Academy of Family Law Attorneys "Top 10 Under 40". Lindsey W. Andrews was recipient of the 2013 Journal Record Leadership in Law Award from the Oklahoma County Bar Association. Ashley D. Rahill is the newest attorney to join our firm. She was a recipient of the Oklahoma Bar Association's President's Award in 2012, and graduated from the OBA's Leadership Academy in 2014.



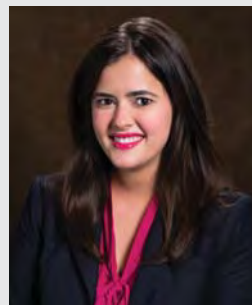
Jonathan D. Echols



Amy L. Howe



Lindsey W. Andrews



Ashley D. Rahill

Factor in the Property's Basis for Qualifying § 1041 Transfers

26 U.S. Code § 1041 ("Transfers of property between spouses or incident to divorce") prohibits a taxable event (a gain or a loss) when property is transferred from one spouse to another spouse if it's done pursuant to an award of property under the terms of a divorce decree. However, the recipient of the property will still be stuck with the tax basis of the underlying property when they go to sell the asset. Practitioners have to take into account tax basis when dividing or exchanging similar property pursuant to a divorce. While two pieces of property might be valued at the same exact value, if the tax bases are wildly different, then it's not an in-kind exchange of property. It's all too easy to use the same value in the spreadsheet and not take into consideration tax basis which conceivably would be a mistake.

— Michael P. Granata (JD). www.dallasdivorcelawyer.com

Hire a CPA to Create Post-Tax Cash Projections in Spousal Maintenance Cases

While it is easy to argue to the court that alimony payments are taxable to the recipient and deductible to the payor, the judge is not likely to run the numbers for your client. Nor will the court view you, or your FinPlan projections, as an authority on the issue.

The tax implications associated with alimony significantly impact the actual need for, or ability to pay, spousal maintenance. Given the amount of money in play, you should hire an accountant to run post-tax cash-flow projections on behalf of your client.

If you are filing a motion for spousal maintenance, attach the summary to an affidavit signed by the accountant. For purposes of trial, call the accountant to testify and offer the cash-flow projections into evidence.

Judges are not tax experts – nor do they have a lot of spare time. Spoon-feeding the information to them will enhance the credibility of your

argument, and is likely to result in the outcome your client seeks.

— Jason C. Brown, *Brown Law Offices, P.A.* www.brownlawoffices.com

Home-Related Payments, Alimony, and Taxes

How payments of certain home-related expenses are treated for tax purposes depends on how the property is owned (titled) and the type of payment. For example, if the Husband is ordered to pay the mortgage for the home in which the Wife is residing, what can he deduct? If the Husband owns the home, none of the payments are deductible as alimony – but the interest expense can be claimed as an itemized deduction. If the home is jointly owned, however, the Husband can deduct half of the total payment as alimony and claim half of the interest as an itemized deduction. The rule is similar for real estate taxes and home insurance, but is more specific depending upon the type of joint ownership. If held as tenants in common, half of the total payments can be deducted as alimony and half of the real estate taxes can be claimed as an itemized deduction. However, if held as tenants by entirety or joint tenants, none of the payments can be deducted as alimony, but all of the real estate taxes can be claimed as an itemized deduction.

— Jean J. Han (CPA/ABV/CFP, JD), Partner and Stacy A. Statkus (CVA, CDFA, MBA, JD), Senior Manager, Baker Tilly Virchow Krause, LLP. www.bakertilly.com

Consider "Head of Household" Tax Filing Status to Minimize Your Client's Tax Burden

If you approach tax planning during divorce based on the common options of Married Filing Separately (MFS) or Married Filing Jointly (MFJ), you may be limiting your client's options.

The Head of Household (HOH) filing status strategy is a simple way to reduce overall tax bills without having to finalize the divorce by year end. Filing HOH can put your client in a better tax bracket, can save him/her money, and

allows the spouses to file separate returns.

For example, a Husband and Wife each have \$100,000 in taxable income. They have two dependent children. Depending on their tax filing status, they could have one of the following outcomes regarding federal income taxes:

- Choosing Married Filing Joint or Married Filing Single results in a tax bill of \$43,051.
- Choosing Head of Household results in a tax bill of \$38,645.

By simply choosing HOH, the couple can save \$4,406 or 10% on federal taxes alone. They will also save money on state income taxes.

Involve a tax preparer to ensure the clients are eligible and meet the HOH filing requirements, which include:

1. The couple lived apart for more than half of the year.
2. The couple can't file a joint return.
3. The HOH's home was his/her child's for more than half the year – and the HOH paid more than half the costs of keeping up the home.
4. Each party must have a qualifying child dependent.

— Sandi Gumeson (CPA, CDFA), *Wellspring Divorce Advisors*. www.wellspringdivorce.com ■

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By David Sarif

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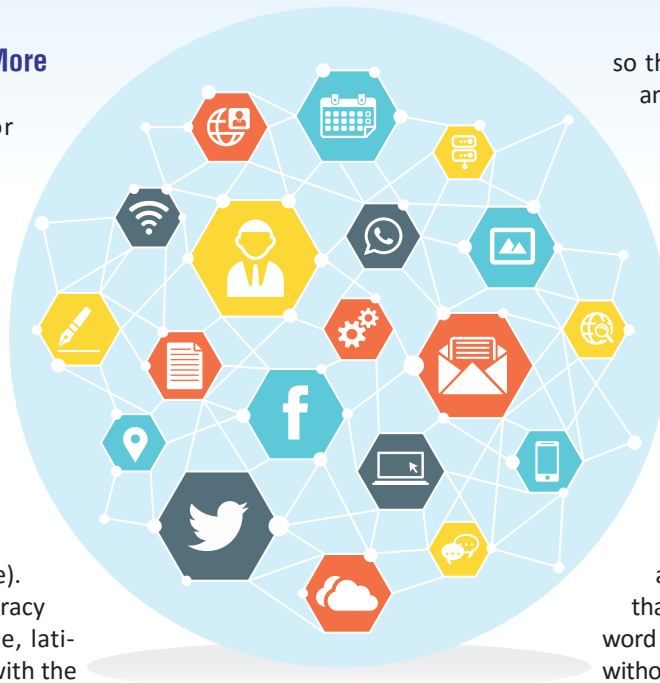
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7 Technology Tips and Tricks

A (Digital) Picture is Worth More than a Thousand Words

Nearly every smartphone or tablet user has taken a photo using their device and sent it to another person. However, what many people do not realize is that embedded in these photos are geotags within the Exchangeable Image File Data (also referred to as EXIF data), which contains substantial information you or your client may prefer not to share (or perhaps an opposing party didn't necessarily want to share). This data includes pinpoint accuracy of the exact location (longitude, latitude, and even altitude) along with the time the photo was taken. There are websites, free apps, and software such as www.geoimgr.com, GeoTagr, and Exif Wizard that will allow an individual to pull the treasure-trove of data located in a digital photo. Such data may be helpful evidence in a case, especially for cross examination or deposition. Of course, there are methods to easily disable the geotagging feature from an electronic device. With the iPhone for instance, under "Settings," go into "Privacy," select "Location Services," and choose the apps from which you would like to disable geotagging – or simply switch off location services altogether to completely disable geotagging. Keep in mind that many devices' default settings have the geotagging feature set to on.

– David Sarif is a Founding Partner at Naggia & Sarif. www.nsfamilylawfirm.com



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In court, I rely on technology to maintain my own composure, keep my client confident in my abilities as a trial lawyer, and earn the respect of the judicial officer.

Rather than waste financial resources on expensive trial software, I use Adobe Acrobat X Pro. All of my potential exhibits and client documents are already scanned electronically, so when it's time to create trial exhibit binders, I simply create a new electronic folder and begin to re-save my exhibits as the exhibit number to match my exhibit list. I use the Adobe program to electronically insert page numbers on the lengthy exhibits

so that I can easily direct the witness and the court to the particular page number I'm referencing during cross-examination. In addition to numbering the pages electronically, I also provide a footer on the left-hand side that reads something along the lines of "Petitioner's Exhibit 5." My staff can then easily assemble the Exhibit Binders with little to no error.

One of my favorite features of the Adobe program is the ability to apply Optical Character Recognition (OCR) to a PDF, converting it to a document that can be searched for a particular word or phrase. I would never go to trial without my laptop and electronic copy of all my exhibits and transcripts.

– Taylor B. Wallin (CFLS) is a Family Lawyer at Feinberg, Mindel, Brandt & Klein. www.fmbklaw.com

Use Online Tools to Simplify Case Management

Family law practitioners can simplify case management by requesting clients to communicate with their co-parent via an online tool that gives counsel an unfiltered window into their communication. When co-parents are prone to conflict, long email exchanges and vague text messages create ambiguity and miscommunication – not to mention making admissible records difficult to compile. As counsel, viewing an accurate record of client communication allows you to get effective work done more quickly. Online co-parenting tools offer the ability for

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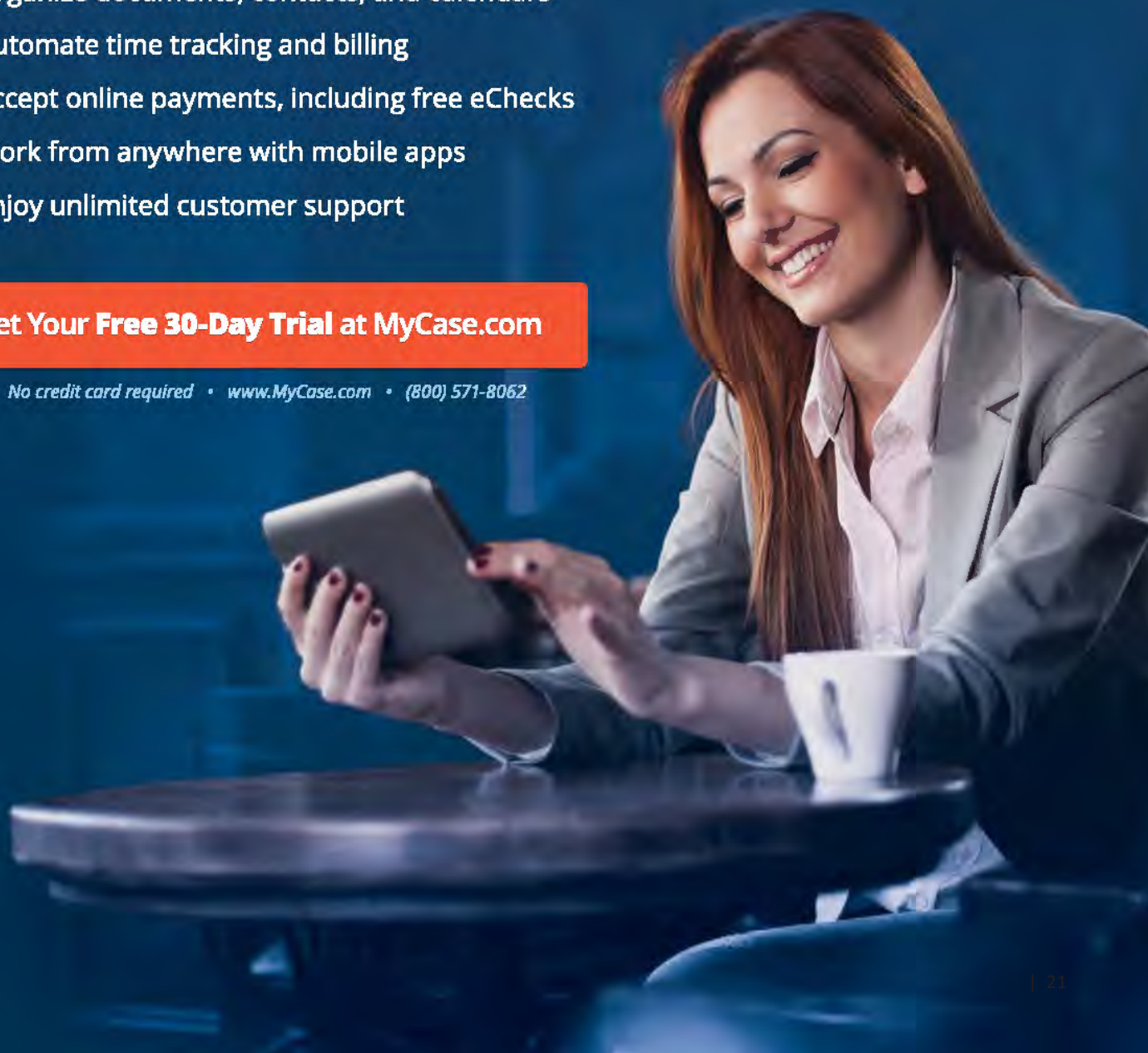
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7 Technology Tips / Cont. from page 20

counsel to view this information without waiting to receive material from clients that might be incomplete or hard to interpret. Some online co-parenting tools also provide reporting features that allow you to generate court-ready, admissible documentation with no hassle. Beyond facilitating your work on various cases, clients will also find it easier to manage communicating with their co-parent – a lasting result that will benefit your client well into the future.

– Sara Klemp is Business Analyst and Copy Editor at Our Family Wizard. www.OurFamilyWizard.com

No Contact Means No Contact – Including on Social Media

Be aware of what your client's doing on Facebook, especially if there is a no-contact order, restraining order, protection from abuse order, or similarly restrictive orders in place. To your client, a "like," "favorite," "friend request," "re-tweet," or even a "poke" may not seem like actual

contact or communication, but in the eyes of courts all over the country, they are. In Jenkins Township, Pennsylvania in August 2015, a man was arrested for "liking" 22 of his ex-girlfriend's photos on Facebook. The charge? Violating a no-contact order. In Beverly, Massachusetts, a woman used her Pinterest account to follow her daughter, who had taken out a restraining order. After the daughter received a notification from Pinterest, she reported the violation to police. In August 2010, Harry Bruder of Orlando, Florida sent his soon-to-be ex-wife two friend requests on Facebook, and was promptly arrested for violating a domestic-violence injunction.

Simply put, "no contact" means no contact of any kind – including in cyberspace on social networking sites. While a number of attorneys have voiced First Amendment concerns about restricting even such seemingly minimal interactions on social media, and others have claimed context is important in determining what qualifies as contact over the Internet, the fact remains that courts draw a hard line in the sand when it comes to their

orders prohibiting contact. What your client might consider innocuous could be viewed very differently by an ex-spouse – and more importantly, a judge.

– John G. Browning is a Trial Lawyer at Passman & Jones. www.passmanjones.com

Implementing Guiding Principles about ESI into Everyday Practices

ESI (Electronically Stored Information) is information created, manipulated, communicated, stored, and best utilized in digital form, and it requires the use of computer hardware and software. ESI is found on any device that has electrical, digital, magnetic, wireless, optical, or electromagnetic capabilities – including PDAs, cell phones, digital cameras, GPS devices, hard drives, thumb/flash drives, servers, tablets, and computers.

In 2006, formalized changes were made to the Federal Rules of Civil Procedure about the use of electronic discovery. Now, at least 49 states have e-discovery and ESI rules. These rules may differ from state to state or, where they

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might even be identical, the states might still interpret the lawyer's compliance differently "due to varying jurisdictions' different social mores, population bases, and historical approaches to their own ethics rules and opinions."

Family law attorneys should implement principles, not necessarily "best practices," to remain aware of their state's ethics opinions. Attorneys should also advise potential clients from the very first meeting about their duty to preserve ESI evidence so the potential client does not unintentionally destroy evidence – and perhaps create their own ethics dilemma by having failed to educate the client about this duty.

– Melissa Fuller Brown is a Fellow of the AAML and the IAML, and Founder of Melissa F. Brown, LLC. www.scdivorcelaw.com

Using Software to Turn Down the Temperature

Many times, a lot of the anger in a divorce stems from each party having an inaccurate understanding of the other

party's financial situation. Typically, each spouse thinks the other is making out like a bandit, financially. However, by using financial software that shows each party's budgets in detail, after tax, you can show the true position of the other spouse. This often has a dramatically calming effect, as each party sees the reality of the other's situation, which typically is more difficult than the spouses had expected.

– Daniel Caine is Co-Founder of Family Law Software. www.familylawsoftware.com

Legal Proofreading Software Can Save Time and Money

Every lawyer wants to believe that their documents are carefully thought-out and presented. But how can attorneys produce top-quality, near-perfect documents at a cost that makes clients happy? Most lawyers already use knowledge-management software and document-management solutions, but the industry demands perfection. That's why it's surprising that proofreading software is still relatively unheard of and not widely

used. Cosmetic and seemingly non-substantive errors in text give the impression that an attorney is sloppy, uncaring, and untrustworthy. There simply isn't time to check the hyphenation, italicization, and capitalization of every term in Black's Law Dictionary or other style guides. And it's not reasonable to expect clients to pay for lawyers to proofread several times to catch all consistency and contextual errors. Proofreading software solves all of that. Software won't replace a human editor, but it dramatically cuts the amount of time that attorneys have to spend on proofreading. Since that time often can't be billed, it improves realization rates. Moreover, as proofreading is often left to the last minute, such software not only improves the quality of documents but also means that attorneys aren't still in the office after midnight. It's a tiny investment in technology that pays off handsomely.

– Ivy B. Grey is Director of Legal Product Design and Business Development at Intelligent Editing. www.intelligentediting.com ■

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Video Marketing in 2016

Videos need to be a part of your marketing strategy now. Learn how to ensure you have the best quality videos for your law firm.

By Martha Chan and Dan Couvrette



According to research data released on October 7, 2015 by Statisticbrain.com, there were 1,300,000,000 people using YouTube, viewing 4,950,000,000 videos every day. A report from Cisco suggests that by 2019, videos will account for 85% of all U.S. consumer traffic on the Internet. There's no question about the potential of videos to bring people to your website and to engage their interest once they've found you; the only question is whether you'll take advantage of this growing trend or be at its mercy.

Prospective clients who visit your website have one thing in mind: should they hire you as their lawyer? Before making that decision, they want to learn more about you, your expertise, your firm, if you can solve their problems, and how much it will cost. Subconsciously or not, they also make that decision based on your personal style – especially when choosing between two similar law firms or lawyers. You're in a competitive market; in order to stand out and be remembered, you need to have videos on your website.

Converting Website Visitors to Clients

Aside from an in-person meeting, the most compelling way to demonstrate that your firm is the right fit for a potential client is through informative videos featuring you and/or other attorneys on your website. If a picture is worth a thousand words, then a video is worth a hundred-thousand words.

Well-produced videos can dramatically increase your chances of being contacted by website visitors. These videos should be engaging, informative, and create a great first impression of your firm. Videos also provide a lasting impression that can be far more effective than text or still photos. Divorcing people have a lot of questions, and they're often confused about what to do and what they need. Offering the information they're seeking in short, accessible videos will appeal to them – and possibly end their search for the right lawyer!

What you say, how you say it, and how you present yourself in the videos will help prospective clients decide whether or not you're the right fit for them. The right kind of video will help you attract the right kind of clients – and help to reduce time spent on unproductive phone calls and initial consultations.

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Ms. Williams lectures frequently for the Institute of Continuing Legal Education and her articles have

appeared in *New Jersey Lawyer*, *New Jersey Family Lawyer*, and other publications statewide. She recently presented at the Family Law CLE Seminar "Handling Sex Abuse Allegations in Family Law Cases."

Awards & Recognition for Allison C. Williams

A peer-rated Super Lawyer® and VIP member of the National Association of Professional Women, Ms. Williams was the first New Jersey attorney to become board-certified by the National Board of Trial Advocacy as a Family Law Trial Advocate. She was also appointed to serve a 3-year term on the New Jersey Board on Attorney Certification and ranked among the top ten New Jersey lawyers in Client Satisfaction by the American Institute of Family Law Attorneys for two consecutive years.

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Reaching Potential Clients Through Search Engines

Videos can be optimized for search engines (Google, Bing, etc.) so that they show up in search results. They also enable you to broaden your Internet exposure because you can feature your videos on YouTube, Facebook, and on other websites in addition to your own.

What's Involved in Producing High-Quality Videos?

1. Pre-Production Planning

The saying "Anything worth doing is worth doing right" was never more true than for video production. Poorly-produced videos are likely to create the exact opposite result to what you're hoping for, and most are a waste of time and money. We recommend you create an "overview" video that helps prospects understand why they should choose your firm, supported by a set of videos answering frequently-asked questions about divorce in your state (or even city).

Your firm overview video. This video delivers your firm's positioning statement: you should clearly state who you are, the type of clients you represent, and how you can help. Consider the following examples and you'll see how they attract different types of clients.

Example 1. "For the past 30 years, our firm has been helping business people and their spouses through complex divorces. We're known for handling high-stakes divorce, and for keeping our clients' divorce cases private."

Example 2. "For the past 30 years, I have been helping families achieve amicable divorces – while ensuring that my clients receive their fair share."

FAQ videos. Divorcing people are searching for information that will help them through the process from beginning to end, so the more information you provide, the better. The questions you answer should be determined by

the type of clients you want to attract. Are you looking for high-asset clients, business owners, celebrities, high-conflict cases, mediated or collaborative divorces? Answer questions based on the needs/wants of your target clients.

Write and rehearse what you're going to say. Many lawyers are more nervous in front of a camera than they are in court! Knowing exactly what to say allows you to focus on your tone and delivery; using a script reduces the number of takes, which saves time and money.

"... online video's fundamental to the way people now consume content and to ignore or shy away from this reality is marketing suicide..."
Adweek.com



Tone and manner. No matter what type of client you're trying to attract, you should present the most professional image possible. You need to look the part and be the part, ensuring that the message and the delivery are consistent. You do not want to come across like you charge \$600 per hour and that you only work with professional athletes if you actually charge \$300 per hour and work with middle-income families.

- 2. The Video Shoot Location.** Let the videographer help determine the best location in your office; he/she will factor in lighting and sound before deciding where to shoot. The space needs to be as quiet as possible: fluorescent lights and office equipment can create a surprisingly loud hum or buzz that is clearly audible on your videos.

3.

What you see is what you get. Once the camera is set up, take a look at what you can see through the viewfinder. Is your favorite painting or

sculpture showing up the way you want? Are your Best Lawyers or Super Lawyer plaques in the frame? Are there fingerprints on your desk?

What to wear. In terms of outfits, most solid colors are good. Make sure what you wear is not distracting: avoid loud colors or big patterns. You should also avoid shiny or jingly jewelry.

Teleprompter. If you have access to a teleprompter, use it and read from a script rather than "winging it."

What's Next?

Once you have your final videos, don't be shy about sharing them! In addition to featuring them on your website, you can upload them to YouTube, Facebook, and other divorce-related websites. You can also reference the videos in your eNewsletter, press releases, or through other promotion vehicles. All of this greatly increases the chances of getting found by your next ideal client. ■



Dan Couvrette and Martha Chan are marketing experts to family lawyers. They are co-owners of Divorce Marketing Group – a marketing agency dedicated to promoting family lawyers and divorce professionals. They help them attract quality clients, generate referrals, convert prospects into clients, and stand out from their peers.



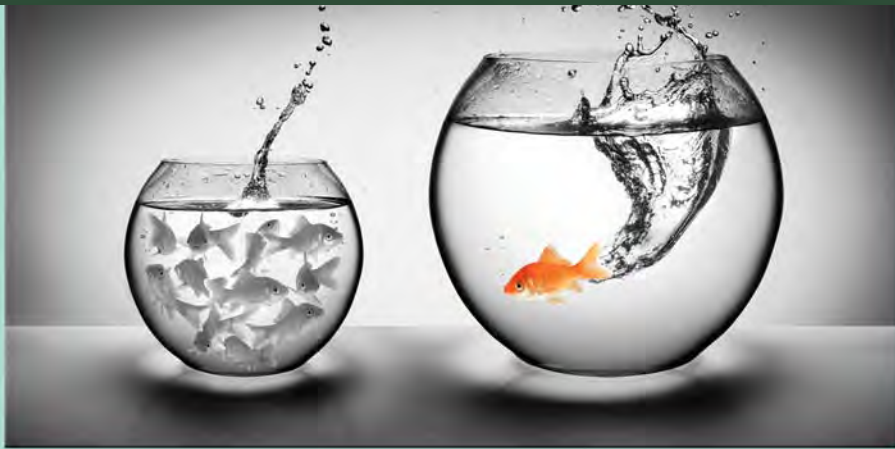


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Gathering & Presenting Evidence

Authenticating Facebook Posts, Photos, and Other Evidence

Despite the permeation of social media and electronic communications – and numerous published cases and articles regarding admissibility – some domestic relations judges, arbitrators, mediators, and attorneys still develop a “deer in the headlights” look when presented with electronic evidence. They allow words such as “spoliation” and “hacking” to diminish the reliability and importance of electronic evidence.

When facing a legal dilemma, start with the rule of law. Here, we begin with Federal Rule of Evidence 901. While state rules and statutes typically govern domestic relations cases, numerous states apply authentication rules that mirror the language of the federal rule. The portions of FRE 901 relevant to electronic information (“Authenticating or Identifying Evidence”) state:

A. In General. To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.

B. Examples...

- (1) Testimony of a Witness with Knowledge...
- (3) Comparison by an Expert Witness or the Trier of Fact...
- (4) Distinctive Characteristics and the Like...
- (9) Evidence About a Process or System...

Authentication is that simple – providing evidence that supports a finding that the item is what you purport it is. Attorneys who err in admitting electronic evidence tend to over-think authentication and assume that some sort of ironclad proof is required.

– *Melanie K. Reichert is a Family Lawyer at Broyles Kight & Ricafort. www.bkrfamilylaw.com*

Building a Psychological Case in the Courtroom

In a custody trial, a psychological case must be built to help inform the Court regarding the best interests of the child. In order to be prepared in the courtroom on key psychological issues, you need to start building the psychological framework in your case at client intake.

From identifying bias in reports to preparing your witness to building a psychological case in court, here are some great tips on gathering and presenting evidence to support your case.

Here are the steps to do this:

1. After meeting with your new client, identify the key psychological/family issues in the case. Examples might include substance abuse, a child with ADHD, and a restrictive gatekeeper.
2. Schedule a follow-up client meeting where child custody concerns will be queried. Ask informed and relevant questions that will help you gather necessary information to build out these psychological themes in your case.
3. Plan your out-of-court strategy. For example, if there is a substance-abuse allegation, request alcohol and drug testing at the outset. If your client is a restrictive gatekeeper, help your client receive appropriate treatment and consultation to remedy this issue.
4. If a mental-health professional will be involved in the case as an evaluator, treatment provider, or consultant, help prepare your client about the information and data that should be gathered, organized, and presented to the mental-health professional. The only way to do this is to understand what information helps to support the veracity of this claim.
5. Present all of the information above through evidence and testimony in court. When it comes to the psychological and child-custody issues, the best strategy in the courtroom is one that started in a proactive, thoughtful, strategic manner many months before trial. Being prepared on these issues before entering the courtroom

Cont. on page 50





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Organize Your Firm to Grow Your Profits

The true growth of any business is through an increase in profit.

By Richard Hugo-Hamman

It is a common misconception among owners of small law firms that growth is measured by the number of people in the business. Over the years, I have spoken with many partners in small law firms, and as soon as the word 'growth' is mentioned, they react, usually with alarm and a statement similar to: "No! I don't want any more partners!" However, the meaning of growth is misunderstood. The true growth of any business is through an increase in profit.

Cut Costs or Improve Efficiency

From a revenue perspective, simply increasing charge rates to improve the bottom line is not as easy as it sounds. Rates, whether fixed-fee or time-based, are controlled by powerful market forces. For most small practices, the need to offer affordable services constrains pricing. Most people find it difficult to pay legal fees, so you may have to cut costs or improve efficiency to increase your profits.

Staff costs are the biggest expense and the only variable where changes can have impact. Your options are to either reduce staff or get existing staff to do more. An effective way to achieve either of these objectives is to improve your business's efficiency by using the right technology. The rise of self check-ins/check-outs at airports and grocery stores provides clear signposts for the future.

Intense competition has made technology cheaper than ever; assuming you have the right staff, investing in the right technology is the best way to increase efficiency – and profits.

Some small law firms find it difficult to find suitable support staff – such as legal accountants, administrative assistants, and junior lawyers – particularly in non-metropolitan areas. Possible solutions to this problem include:

1. Giving your staff the tools they need to do more work faster.
2. Delegating routine work to existing staff so that you can do the high-value work.
3. Reducing legal accounting costs by re-engineering the way you do your matter accounting so you can use part-time bookkeepers.

9-Point Plan to Increase Profits

1. Organize your data into a single database.
2. Organize your template documents and matter documents.
3. Organize your communication documents.
4. Organize your Safe Custody contents.
5. Be disciplined about time recording.
6. Produce bills regularly for smaller amounts.
7. Collect what people owe you.
8. Involve yourself in the change project.
9. Act today!

If you follow this plan, you will see your profits grow without having to employ extra staff.



There are many reasons to do nothing: partnership difficulties, thoughts of retirement, being busy, general inertia, etc. Complaining is easier than doing. However, to grow the profitability of your firm while providing a better service to your clients, you must change something. Organizing your practice by introducing software will allow you to fine-tune the balance between the work you have and the people you have working for you. But which software solution is the right one for your practice?

One relatively quick and easy way to do this is to contact the software provider's support team directly. They should be able to help you make the right decisions for your firm, assist with the deployment and training, and provide the long-term support you need to enable you to concentrate on your clients – not on the technology. ■

This article has been adapted and condensed. To read the full whitepaper, go to: www.familylawyermagazine.com/articles/organize-your-firm-grow-profits.



Richard Hugo-Hamman is the Executive Chairman of LEAP Legal Software. He has thought about the challenges facing small law firms for more than 25 years and has visited

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The Arbitration Advantage

Three experienced matrimonial arbitrators offer insights into this form of ADR.



Dale Console is a Fellow of the American Academy of Matrimonial Lawyers (AAML). She is chair of the AAML's National Arbitration Committee and a faculty member of the AAML Arbitration Training Institute. She is president of the New Jersey Divorce Arbitrators Association, an organization of AAML trained arbitrators.

When would you advise a client to arbitrate a case rather than try it in court?

The more I do this, the more I think that arbitration is a much better alternative. You get to pick your arbitrator; you can't pick your judge. Arbitration is an expedited procedure; there are jurisdictions with a huge backlog and you can wait two or three years just to get a trial date.

Can you choose to arbitrate specific issues as opposed to arbitrating all pending issues?

If you have one issue that's driving the case, then you can arbitrate just that issue or you can arbitrate the entire case. Arbitration need not be rent-a-judge and replicate what goes on in a trial. It is less formal; if you have multiple issues, you can have the arbitrator hear all of the evidence on one issue and decide it. That decision may eliminate the need to deal with some other issue, which can save an enormous amount of time and money.

Is it better to opt for binding or non-binding arbitration for divorce cases?

If your purpose for going to arbitration is to get an expedited, cost-effective procedure, then you want binding arbitration. Most people think all arbitration is binding and non-appealable, but the reality is that you can pretty much set up whatever you want. For example, your contract can provide for a private arbitration appeal

panel. In most jurisdictions, decisions about financial issues are binding. Issues involving children are more problematic. In some jurisdictions, you cannot arbitrate those issues. Others say you can, but it's not entirely binding: there's going to be review by the court, usually based on the best interests of the child.



William M. Levine is an AAML Fellow and a former chair of both the AAML Arbitration Committee and the Massachusetts Chapter Arbitration Committee.

What's the relationship between mediation and arbitration?

They are both voluntary processes that empower clients to make as many decisions for themselves as they can. The mediator keeps people talking productively until they reach an agreement, whereas an arbitrator is a decision-maker. I no longer represent clients: I am a mediator and an arbitrator, and some cases end up using both sets of skills. In Med-Arb, I work with the parties as a mediator until they reach an impasse – and then I switch hats and serve as arbitrator.

Do former judges or family lawyers make the best arbitrators?

The parties can consider anything they want – including intelligence, temperament, integrity, and experience – before selecting an arbitrator. If a family lawyer and a former judge have comparable attributes, they can be equally effective. But many judges have not seen a lot of cases involving sophisticated business issues, for example, while an experienced divorce lawyer may have been involved in hundreds of them. Lawyers may be more sensitive to the needs of parties

and counsel in structuring process and procedure.



Lynn Burleson is an AAML Fellow, former chair of the AAML Arbitration Committee, and one of the drafters of the AAML Model and the North Carolina Family Law Arbitration Acts.

Is arbitration more suitable than litigation for complex cases?

I cannot imagine a complex divorce case where a family court judge would be more qualified to hear it than an AAML certified arbitrator. For example, seasoned family law attorneys are involved in sophisticated business valuation cases with much more frequency than that the typical family court judge. Judges are often assigned to other non-family law courts and have limited time to devote to a single case. An experienced family law specialist who is also a trained arbitrator enhances the chances of the parties receiving a fair and well-reasoned result, consistent with state law and the terms of the arbitration agreement.

Is privacy a powerful factor attracting high-stakes cases to arbitration?

In high-profile cases where one of the parties has some notoriety, clients often prefer to keep their business dealings and personal affairs out of the public eye. Confidentiality terms are often the first ones negotiated in arbitration agreements. Arbitration offers more options in insuring the privacy of personal and business details.

This article has been excerpted from longer interviews; to listen to the full podcasts, go to: www.familylawyer magazine.com/article-category/arbitration

Arbitration: Private and Timely Solutions for Family Law Disputes

*An alternative to
courtroom resolution.*

New Jersey Divorce Arbitrators Association is a nonprofit corporation that provides effective solutions to the challenge of resolving family law cases outside the courtroom through arbitration. Advantages of arbitration include:

- **Cost:** Arbitration can settle cases faster, and is often less expensive than trial.
- **Confidentiality:** Proceedings are confidential and take place in a private setting.
- **Control:** You control the location, timing, and rules of the arbitration proceedings.
- **Choice:** You select an arbitrator experienced with the issues in dispute, rather than having a judge assigned to your case.

Arbitration allows divorcing parties and attorneys to find solutions throughout the divorce process in a way that is cost-effective, confidential, and convenient.

Every NJDAA member is an experienced matrimonial lawyer who has been trained by the American Academy of Matrimonial Lawyers to specifically handle family law arbitrations.

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On May 19 and 20, top family law attorneys and financial experts will meet in New Orleans for two information-packed days of high-level seminars and networking opportunities. *Family Lawyer Magazine* asked four presenters for a sneak-peek at their topics, and about the value of attending this one-of-a-kind conference.

Nancy, what will delegates who attend your session on “The Valuation Nightmare of S Corporations” learn?

Nancy Fannon: How to value S corporations has been a very controversial issue in the tax courts, and it has now spilled over to the divorce courts as well. The varying S corporation methods used by two appraisers could result in values that are as much as 67% apart, for this issue alone. Experts have heretofore failed to bring any evidence to the courts to explain the issue, so my session will discuss the evidence that exists to support the valuation of an S corporation. In addition, delegates will learn how the courts have handled S corporation valuation, some of the errors

practitioners have made in their valuations, and what they should know so their clients can be properly advised.

Jay, can you tell us about your co-presentation with family law attorney Dan Jaffe: “Beware of Experts Bearing False Gifts”?

Jay Fishman: Over the last several years, I’ve noticed experts relying more on statistical and financial models as a way of convincing users that their opinions are more empirical and objective. However, all of these carry some degree of pitfalls. Our presentation will be broken down into three segments. The first deals with the use and misuse of certain statistical techniques when measuring active and passive increases in separate property in a marital estate. During the second, we’ll show some examples where experts change the capital structure of a firm: how firms finance their debt/equity mix as a way of manipulating the results. Lastly, we’re going to show instances where using five years of financial information could be misleading because the trend in the industry – or the economy – is longer or shorter than five years.

Jim, can you give us a sneak-peek at “The Good, the Bad, and the Ugly of the Market Approach”?

James Hitchner: The subtitle is: “Primary method, collaborating method, rejected method, or stand-alone method.” And because these are the only four choices you have in applying the transactions method of the market approach, my co-presenter Rob Levis and I are going to talk about the reliability, advantages, and disadvantages of this method. I think this topic will be of interest to the attorneys as well as the CPAs.

Chris, what will your session: “I Don’t Buy It: The Effect of Buy-Sell Agreements in Divorce” cover?

Christopher Mercer: The existence of a buy-sell agreement is a factor in every valuation. We have to look at the provisions in the agreement should divorce occur: for example, I read an agreement that stated if one of the four partners got a divorce, the others could fire him and buy his stock. That’s not the general intent of the divorce provision in a buy-sell agreement, but important to know.

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I'm going to discuss the meaning of a consent by an out-spouse, and whether a buy-sell agreement creates a definitive value for divorce purposes. I'm asking delegates to send me their most pressing questions, which I'll be answering during the session.

What is the "Battle Royale" panel discussion about?

NF: We will be discussing many controversial areas in the valuation of privately held businesses for divorce purposes, and what our take is on each one of those issues. Participants will learn what issues courts have a difficult time grappling with, and what consensus has developed about how to handle some of these issues.

JF: People will get to see the process that three experienced experts go through when they formulate their answers to tough questions. Each one of us has our own set of specialties, [and] I expect we'll have a great dialogue on many controversial issues. Nobody pulls any punches: someone will say, "I don't agree with that and here's why."

JH: All the panelists know each other, and we agree on many things, but we don't agree on everything, so the participants will see different points of view. This panel is going to deal with hot topics and some of the more controversial areas in valuation. We'll also talk about how attorneys and CPAs can better work together, including preparation for depositions and trial testimony including cross-examination.

CM: It will be fun and informative: we'll be talking about some of today's key valuation issues. I've asked Jim as the moderator to frame a few questions that will elicit direct experience from the panel: for example, one of the questions I've suggested is, "What's the worst thing that ever happened to you at trial (that you're willing to talk about)?"

Why should someone attend this conference?

NF: For divorce lawyers and divorce

valuation practitioners this really is the seminal conference they should attend. The information is particularly geared toward the financial issues that their clients will be facing in a divorce setting, and they get to hear both sides of the issue: the legal implications as well as the economic implications.

JF: The combination of having lawyers and financial experts as both speakers and observers makes this conference unique. You also get to rub shoulders with financial experts and lawyers who do this work every day. I think people will find the whole conference entertaining and rewarding.

JH: This is a rare opportunity on a national scale – with two prestigious organizations – to have attorneys and CPAs working in the marital dissolution

area mix it up. I learn an awful lot, and I think everyone learns from the sessions and by simply networking: attorneys and CPAs interacting during the sessions, breaks and lunch, and getting each other's viewpoints.

CM: The mix of people – divorce lawyers and financial experts from across the country – and the conversations with the people you meet are sometimes the best part of the conference. Another reason to go is the location: I haven't been to a conference in New Orleans in a long time, and I'm really excited about it! ■

This article has been excerpted from longer interviews; for full-length interviews and podcasts, visit www.familylawyer magazine.com/article-category/interviews.

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Nancy J. Fannon is the partner in charge of Litigation Services at Meyers, Harrison & Pia Valuation and Litigation Support. She has more than 25 years of professional valuation and damages experience, and is frequently retained to provide expert witness services. www.mhpcpa.com



Jay E. Fishman is a managing director of Financial Research Associates. Actively engaged in the appraisal profession since 1974, he specializes in the valuations of business enterprises and their intangible assets, and he has provided expert witness testimony in 12 states. www.finresearch.com

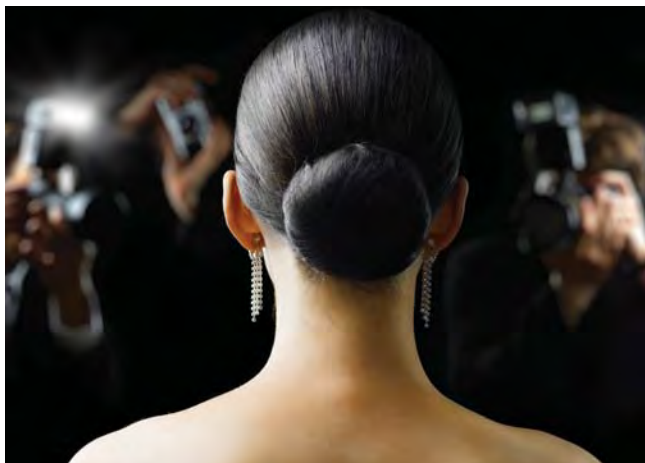


James R. Hitchner has 35 years of valuation experience. He is a managing director with Financial Valuation Advisors, president of the Financial Consulting Group and CEO of Valuation Products and Services. www.jimhitchner.com



Z. Christopher Mercer is the CEO of Mercer Capital. He has prepared, overseen, or contributed to hundreds of valuations for purposes related to divorce, tax, buy-sell agreements, and litigation. He is a prolific author and a frequent speaker. www.mercercapital.com

What would disability do to your affluent clients' support payments and assets?



Child/Spousal Support Insurance Against Disability

Disability is 2-3 times more likely than death during one's working years. Until now, there has been no insurance against disability of the paying spouse.

For Recipients: Ensure Support Payments Continue

If the payor's income has stopped due to disability, support payments to your client may be reduced or even terminated.

For Payors: Prevent the Need To Liquidate Assets

If your client has significant assets, a judge may order those assets to be sold rather than modifying the support payments.

Techniques to Improve Communication with Clients

Five legal professionals offer tips and tools to help improve attorney-client relationships through better communication.

Keeping the Client Informed Will Keep the Client Happy

Good practice management includes keeping the client informed about his case. Most client complaints arise out of the lawyer's failure to return calls or emails; the client feels ignored or thinks you are not working on his case. With a busy schedule, it is important to develop and maintain a system of returning calls and emails that permits an efficient workflow. Here are a few tips:

1. Turn off all email notifications that pop-up or ding. Every notification is a distraction that leads to a very inefficient workflow.
2. Schedule a couple of times a day to review and answer emails or calls. You don't have to take every call that comes in as it comes in; have the receptionist take messages for you when you are in the middle of a project that requires your full attention, or have your paralegal inquire about what the client needs so you can be prepared when you return the call.
3. Manage your client's expectations by informing them well in advance of when you'll be out of town or in trial. Don't forget to use your out-of-office message.



4. Keep personal and business email separate, and set up a strong filter for junk email. This will limit the number of emails you go through at the appointed time.

– Brandy Baxter-Thompson is a Probate, Trust & Fiduciary Litigation Lawyer at Calloway, Norris, Burdette & Weber. www.dallasprobatelawfirm.com

Incorporate New Tools and Techniques into Your Client Interactions

The failure to adequately communicate with clients is one of the top state bar complaints made by clients against lawyers. Take steps to address this issue by incorporating a few new tools and techniques into your client interactions. Here are three ideas to get you started:

1. Improve your listening skills. One way to do this is to always repeat, in your own words, the key points and emotions you think the client is trying to convey. By making a conscious effort to confirm your understanding, you can reduce miscommunications while improving client satisfaction.
2. Set clear expectations at the outset. Improve the quality of communications with clients by clearly discussing fee and cost estimates at the start of a case – including attorney hours required, court costs, and expert witness fees.
3. Consider using web-based portals for communication. As web-based portals become increasingly common in other industries, it's not surprising that many legal clients now expect instant access to case-related information. Practice-management software with built-in, secure web portals can improve client communication by providing your clients with 24/7, convenient, and secure access to their case information.

– Nicole Black is a Lawyer and Legal Technology Evangelist at My Case. www.mycase.com

Manage Your Practice with Your Clients' Needs in Mind

In any matter of law, the key to effective representation is communication – not only between attorney and client, but also within the firm. This is nowhere more critical than in family law. During your initial meeting, make a

point of clearly explaining the legal process to your clients, as well as their options regarding dispute-resolution processes.

If the only tool you have is a hammer, then every problem looks like a nail, so make sure you have a number of tools in your belt to offer a divorcing client. Find the right professionals with a broad base of experience, and try to offer more than one approach to dispute resolution – including traditional divorce and family law litigation, mediation, arbitration, and collaborative divorce.

Recently, our firm expanded our services to include collaborative divorce: a team approach in which each party is represented by a specially-trained attorney. When appropriate, we bring in collaboratively-trained financial advisors, child psychologists, family therapists, and other experts in their respective fields to assist with the process. Collaborative clients appreciate the facts that their private information is kept out of the public record, their children are better protected, and they maintain greater control over the end result.


Finally, make a point of listening to your clients with compassion, and always put their best interests first.

– *Judith Charny is a Partner at Charny, Charny & Karpousis. www.chnrylaw.com*

Use Online Outreach to Make In-Person Connections

Developing an online presence is a key step to take when trying to market your firm. Gone are the days of relying on word-of-mouth and in-person meetings to gain new clients. Although many attorneys are updating their websites and social media pages, they aren't building personal connections with potential clients. A good way to promote yourself while also connecting with individuals who may need your services is by organizing workshops on

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Use of the MMPI II in Custody Litigation

The MMPI II, when used in custody litigation, can and should be challenged as a tool in determining a custodial placement of the minor children. First, it was not developed for use in custody litigation: its original use was to prevent the mentally ill from entering the military in World War II.

Second, it is a personality assessment instrument that has nothing to do with which parent will better serve as the primary custodial parent. Since the scoring is done by a proprietary program – which shows up in phrases such as “people with this personality usually...” – the psychologist cannot even explain why certain answers suggest certain personality types. The test taker is compared against a “normative group” of about 2,500 people who previously took the test, and the test-taker’s answers are scored compared to the normative group’s answers. Few members of this normative group are going through a divorce and even fewer are custody litigants.

The third and most important point is the list of so-called “critical items” that the scoring program

Demonstrative summaries are great tools to communicate your story, or theory of the case, to the court. When done in real-time, during trial, you are not only creating a visual for the court, but many judges will take notes along with you.

highlights. These should be reviewed with the client as it might change the focus of the results. Check to see whether or not the psychologist sees the parent after they took the test to see whether or not those critical items were reviewed. If not, the scoring would be skewed.

– *Lynne Z. Gold-Bikin is an AAML and IAML Fellow, and a Partner at Weber Gallagher. www.wglaw.com*

Summaries Can Help You Tell a Story at Trial Quickly

Demonstrative summaries are great tools to communicate your story, or theory of the case, to the court. When done in real-time, during trial, you are not only creating a visual for the court, but many judges will take notes along with you.

Unlike Rule 1006, demonstrative summaries can highlight or cherry-pick data, incorporate summaries of witness testimony, and may be created during trial. One effective use of demonstrative summaries is to compare and contrast inconsistent evidence on an important issue. Not only are you teaching your theory of the case, but you are also implicitly highlighting the other party’s lack of credibility.

Here is an example of this technique. On one side of a white board, list one or more of the opposing party’s statements that are inconsistent with your theory of the case. Make sure to write the witness’ words down accurately, in real time, and verify with a leading question that your writing is

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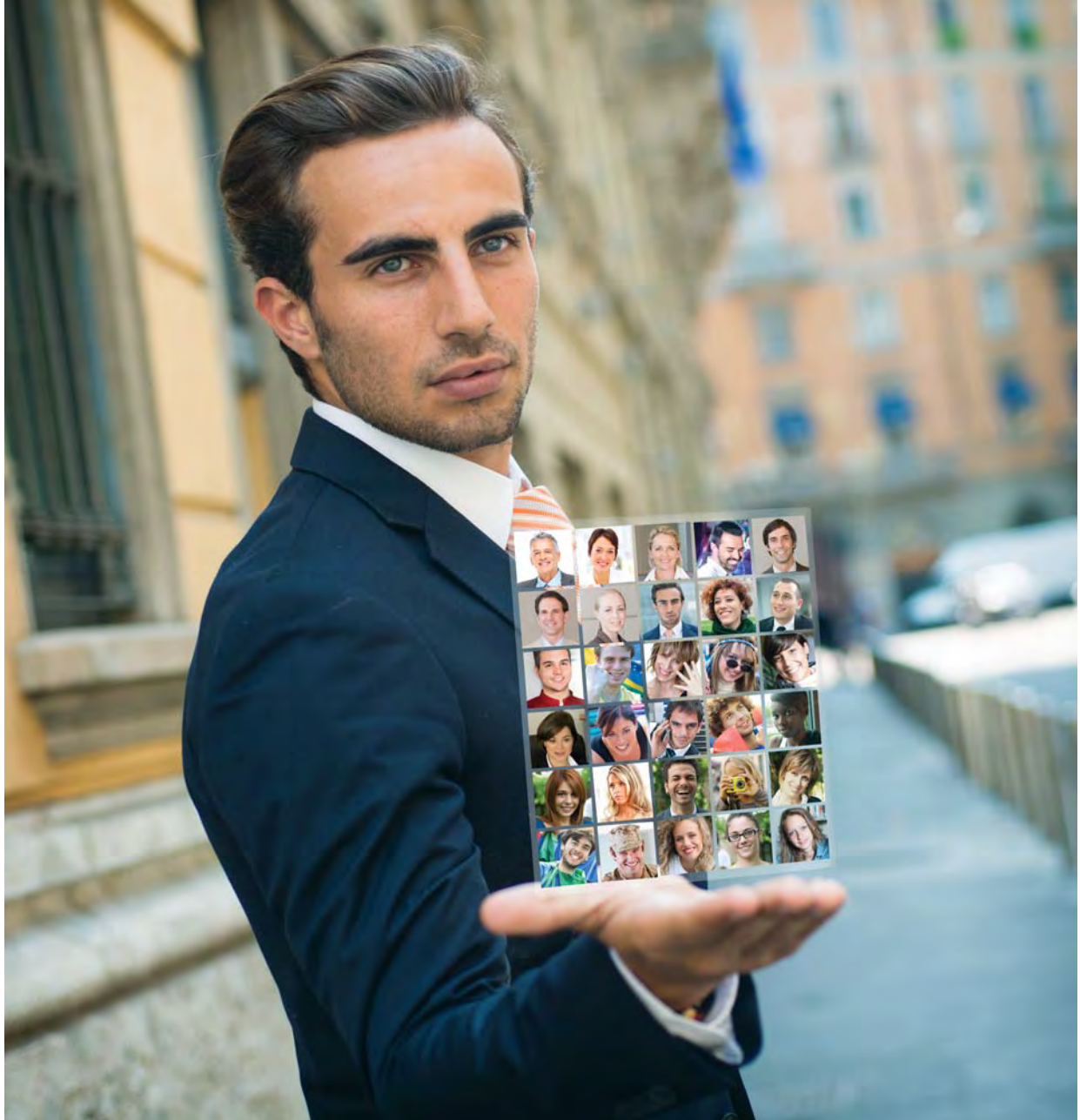
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Travel for the Health of It!

Travelling is one of the best ways to simultaneously unwind from the stress of daily life and reinvigorate the spirit with new experiences. Why not consider a tropical destination – like Jamaica or Bali – or Ann Arbor for a quick weekend getaway?

By Dr. Mel Borins, Family Physician and Author

Jamaica: No Problem!

The people of Jamaica are friendly and warm; they usually have a nice smile and a kind word to say. I have been to Jamaica four times and have not had one negative encounter with anyone the entire time I was there.

There are lots of options to choose from in terms of Jamaican vacations. You can go to an upscale five-star resort

Sitting in the sun on the beach, on my balcony, by the pool, and in the garden is what my Jamaican holidays are all about. Horseback riding, golf, and snorkeling or SCUBA diving are other activities that are often nearby. Even though everything is included, some guests enjoy touring off the resort and experiencing the country's vibration.

There is plenty to do in Jamaica. I

atop a cliff, Rick's Cafe in Negril offers an amazing view of the sunset.

Jamaica is all about "no problem," "irie," "level vibes," reggae music and dancing, and steel drum bands. The island is a great travel destination because the weather is hotter than Florida in the winter and the beaches are excellent. Furthermore, the food is generally better than many Caribbean

Photo © Dr. Mel Borins



Imagine yourself windsurfing or rafting down Dunn's River in beautiful Jamaica.

in Negril, or variously themed all-inclusive resorts in Ocho Rios, Montego Bay, and other smaller locations.

The best part of an all-inclusive resort is that you do not have to buy anything or withdraw any money at all. Most resorts discourage tipping and often there is not much to buy, especially if you never leave the premises.

I recommend a trip to Dunn's River Falls: climbing up or down the 600-foot river as it snakes its way into the sea is truly an unforgettable experience. If you are staying in Ocho Rios or Montego Bay, then I suggest visiting Negril's beautiful white "7-mile" beach, which is ranked as one of the top-ten beaches in the world. From its west-facing location

destinations, and there is a relaxed, sexy vibe that is both fun and unique.

Bali: Beaches, Mountains, and Culture

A small island of only 95 by 69 miles, Bali lies in the Indian Ocean just south of

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Bali offers spectacular beaches, coral reefs, volcanic mountains, temples, and vibrant culture.

the equator. It is located in the Republic of Indonesia, one of the world's largest archipelagos. The majority of the four million inhabitants are Hindu, and it is the only predominantly Hindu island in Indonesia. Green-terraced rice fields, volcanic mountains, coconut forests, endless beaches, and exotic flowers are only part of the island's spectacular natural beauty.

Some visitors stay at the resort enclave of Nusa Dua; others stay in the beach towns of Kuta and Legian. If you want to get away and do some snorkeling, then Pemuteran and Menjangan Island in the northwest are good places to visit. Stay at Amertha Bali Villas or Taman Sari Bali Resort and Spa, enjoy a sunrise excursion aboard a traditional fishing boat, and maybe even spot some dolphins. Later in the morning, rent a boat at the West Bali National Park and visit the famous snorkeling spots with wall-diving areas where the tropical fish are numerous and varied. Bring along a boxed lunch and relax on the island overlooking outstanding scenery.

If you want a sense of rural Bali, visit Mengwi. Stay at the village at Puri Taman Sari, where the hotel is nestled in shady coconut groves, surrounded by rice fields and rivers. Travel to the nearby Taman Ayun Temple, which

was founded in 1634. From Mengwi, I recommend an afternoon trip to Tanah Lot: an incredibly beautiful temple built on the water and an excellent place to watch the sunset. Watch a Kecak or monkey dance performance after sunset, and dine on scrumptious seafood at Melasti Restaurant before heading back to Mengwi.

Ann Arbor, Michigan: Artsy Town Vibe in a Big City

Ann Arbor offers outstanding food, beautiful art galleries, great entertainment, excellent shopping, and lots of outdoor activities. Overall, the city has a very friendly, welcoming atmosphere and is a great place to spend a holiday weekend, or week.

From spring to fall, there is a myriad of activities for the whole family to enjoy, including live theatre, live music, art shops, hiking, boating, and gourmet dining. At its core, Ann Arbor is a college town, and the University of Michigan looms large in its influence on every aspect of life. In fact, the university's stadium, which holds 110,000 fans, is the largest stadium in the United States. However, when the students are gone for summer break, the town carries on just fine without them.

Ann Arbor is a wonderful restaurant town and the locals take gourmet dining very seriously. There is a strong farm-to-table movement, and many restaurants strongly support the "locavore" movement, buying produce locally and providing a seasonal selection.

Within a 30-minute drive, there are lakes, bicycle trails, and hiking trails. A highlight of my visit was the kayak trip down the Huron River, which cuts right through the town. I paddled to my heart's content, observing birds and

native plants along the way.

This is a good place to see live theatre: the Performance Network Theater uses Michigan talent to produce classical, contemporary, and musical theater; and the Purple Rose Theater, founded by actor Jeff Daniels, puts on high-quality performances in Chelsea, a historic town just west of Ann Arbor. I was lucky enough to see *A Midsummer Night's Dream* in Nichols Arboretum, part of Shakespeare in the Arb, which puts on unique productions. There is no fixed stage and the audience follows the action through different locations in the park, with musicians guiding the way.

If you want a fun getaway in July, then plan to attend the world famous Ann Arbor Art Fair: an annual four-day extravaganza offering free concerts and art of every kind, attracting half a million people to the town. ■



*Dr. Mel Borins is a public speaker, travel writer, and family physician. He is the author of several books, including **Go Away Just for the Health***

of It! www.melborinscreative.com. Dr. Borins is leading a fun, first-class tour to Bali in May 2016; to learn more, go to www.doctorsontour.ca/cme-programs-bali-upcoming-1604.php.

Photo: ©Andrew Horne



The beautiful Huron River runs through the heart of Ann Arbor.

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Evidence / Cont. from page 28

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– Dr. Eric Frazer and Dr. Linda Smith are Forensic Psychologists and Co-Founders of Child Custody Analytics. www.childcustodyanalytics.com

Understanding the Risks of Bias in Expert Child Custody Reports

When a custody report goes against your client, he/she is likely to think the evaluator was biased. Knowing how to differentiate between objective and potentially biased reports is critical in knowing when to challenge and when to accept the conclusions of the child-custody evaluator.

Here are some examples of bias commonly seen in child custody reports:

- **Anchoring** – Heard critical allegations near the beginning of the evaluation and “anchored” to them.
- **Confirmatory** – Once anchoring to a critical issue, looks only for data to confirm the allegations.
- **Recency** – When the evaluator learns of something by reviewing collateral data or speaking to a collateral witness, does not check the veracity of what was learned.
- **Research** – Using research without identifying the limitations of that research, other research that might contradict the particular findings, or using research that is not relevant to the case.

In order to avoid bias, the expert must show evidence of multiple hypotheses; gathering additional information to disconfirm early conclusions; and asking relevant, in-depth questions with sufficient follow-up with both parents. A thorough risk-benefit analysis of potential custodial outcomes is critical.

If the process and report are truly objective, work to find a mutually agreeable settlement. If the process and report shows significant evidence of bias, consider using a consultant/expert witness to challenge the outcome in court.

– Philip M. Stahl (Ph.D., ABPP) is a Board-Certified Forensic Psychologist who serves as a consultant and expert

witness in child-custody matters.
www.parentingafterdivorce.com

Preparing an Independent Percipient Witness for Trial

You are representing Wife in a trial where Witness will give independent percipient testimony. When you meet with Witness privately to “prepare his testimony,” he is suspicious of your motives – he assumes that you will attempt to “improve” his testimony in Wife’s favor. Start by assuring Witness that you will not in any way attempt to influence his testimony, and that your only goal is his truthful and accurate testimony.

Cite the experiences of two hypothetical witnesses – Cora Confident and Timothy Timid – who gave inaccurate testimony because they had not been properly prepared for trial:

- When Cora Confident was asked at trial whether a certain event had occurred, she testified “Yes.” Her answer was inaccurate because she had not been properly prepared: Cora did not personally know whether the event had occurred, but she trusted the person who told her that it had. Cora’s accurate answer would have been “I don’t know.”
 - When Timothy Timid was asked at trial whether a certain event had occurred, he testified “I think so.” His answer was inaccurate because he had not been properly prepared: Timothy gave an equivocal answer because he found the trial experience intimidating. Timothy’s accurate answer would have been “Yes.”
- Ronald Granberg (CFLS) is a Fellow of the AAML and the IAML, and Founder of Granberg Law Office.
www.granberglaw.com ■

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The Perils of Pretexting

By Marshall Waller

Entrusting others to collect information for your case means you need to be aware of the possible violations of the law.

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Most people aren't terribly familiar with the principles of valuation, how valuations are carried out, and why experts are needed to perform them. A valuation is a dispassionate assessment of what a potential buyer would pay for a particular business based on long-standing accounting and financial principles.

In contrast, a divorce can be one of the most emotional and upsetting ordeals that a person will ever have to go through. That's why it's so important that family law professionals spend some time educating their clients about the valuation process: clients need to know that neither a private settlement nor one handed down by the courts will award equalization based on "gut feeling", but on expert opinion.

— *Matthew Krofchick (CPA, CMA, CBV, CMC, CFF), Krofchick Valuations, www.krofchickvaluations.com* ■

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3 Valuation Issues in High-Stakes Divorce

By Shannon P. Pratt and Alina V. Niculita

Deciding whether to normalize the stream of cash flows and what discount rate to use made a difference of roughly \$190 million in one case. www.familylawyermagazine.com/articles/3-valuation-issues-in-high-stakes-divorce

Business Valuation when the Client Is a Lawyer

Sylvia Golden, the Legal Editor at *Business Valuation Resources*, interviews prominent attorney Sanford K. Ain and business valuator Stuart Rosenberg about divorce and valuation related issues — especially when representing a lawyer who is going through divorce. www.familylawyermagazine.com/articles/interview-ain-rosenberg

the legal, financial, and/or emotional aspects of divorce.

Begin your online outreach by creating website listings and a Facebook page. Facebook offers the option to boost your page: for \$15, you can reach thousands of people in your firm's surrounding area. Websites like Craigslist and Meetup allow you create free ads and also give you the opportunity to reach individuals in your area.

Online tools make planning and promoting workshops easier today than it was 25 years ago. Use the Internet to not only spread information to a wide audience, but also to begin building in-person connections and showing potential clients that you are the right person to handle their divorce case.

— *By Ginita Wall and Candace Bahr, Second Saturday Founders. www.secondsaturday.com* ■

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By Mark Powers & Michael Hammond

Why making a case for a decision that is emotionally appealing rather than congested with data and reason can win people over faster and more easily.

www.familylawyermagazine.com/articles/what-drives-our-decisions-reason-or-emotion

Can Difficult Clients Learn Decision-Making Skills?

By Bill Eddy & Michelle Jensen
Encouraging clients who are going through divorce to develop self-management and decision-making skills can simplify their life as well as the law case.

www.familylawyermagazine.com/articles/can-difficult-clients-learn-decision-making-skills

accurate. On the other side, list the contradictory data from documentary sources or other witness testimony, also as it is elicited, to show the overwhelming contradiction. Use the chart during closing argument to put an exclamation point on the issue.

— *Patricia Kuendig is a Partner at Dodd & Kuendig. www.doddkuendig.com*

What to Do Before Questioning a Financial Expert

Most professionals — including myself — find it difficult to admit that we feel uncomfortable in a certain subject area. And it can be difficult to ask another professional for help. Yet many attorneys will admit that their eyes glaze over when they start to hear financial terms and have to deal with numbers.

My experiences in the courtroom suggest that it would behoove some attorneys to hire a consulting financial expert to clarify the financial issues in a case and to help develop questions for a financial expert witness.

The appropriate questions will vary depending on the case. The attorney will want to learn some of the financial language in order to avoid asking embarrassing questions or making embarrassing comments. For example, an attorney questioning a husband asked, "What is your income this year?" He responded, "My year-to-date earnings are...." To which the attorney replied, "I don't want to know year-to-date, I want to know this year." Of course, they are the same, and the attorney was slightly discomfited.

— *Harriett Fox (CPA) is a Mediator, Forensic Accountant, and Collaborative Divorce Practitioner. www.harriettfoxcpa.com*

Beware of Attorney Tricks and Witness Traps

The following ABCs of testifying can aid and help protect the expert from a wiley attorney.

- A. Avoid *absolutes*
- B. *Bulletproof* reports

- C. Have *class* and act as if in a class
 - D. Pay attention to *detail*
 - E. Know *elements*
 - F. Lay a *foundation*
 - G. Don't *guess*
 - H. Beware of *hypotheticals*
 - I. Don't *interrupt*
 - J. Don't use *jargon*
 - K. Be *knowledgeable*
 - L. Make no *legal conclusions*
 - M. *Missing issues* in report creates issues for you
 - N. Appear *neutral*
 - O. Don't answer a question if there is an *objection* pending
 - P. Be *paranoid*
 - Q. Be *quiet* after you answer the question
 - R. *Respond* only to questions asked
 - S. Keep it *simple*
 - T. *Think* before you speak
 - U. *Understand* the question
 - V. Keep an even tone of *voice*
 - W. Show *wisdom*
 - X. Use *x-ray vision* (see through the cross-examiner's motives)
 - Y. Be *yourself*
 - Z. Testify with ethical *zeal*
- Jeffrey W. Brend (JD, CPA) is an AAML and IAML Fellow, and a Partner at Levin & Brend. www.levinbrend.com ■

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How do you simplify your case's "story" into one unified theme – and set it apart from all the other cases on the judge's docket? The key is word selection.

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Gentlemen Advocates and High-Stakes Divorce

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Limit To Win It

As lawyers we can technically take on any legal matter that we feel (generally) competent about and proceed. But should we, when time, money, and sanity are an issue? When deciding what type of law to practice and what cases to take, especially when venturing into a new area of practice, think about your parameters. Limited-scope representation works well as a vehicle to test new waters as a professional, get to know your courts, build a client base, and keep your time/involvement a bit more confined and organized.

Narrowing client/case acceptance criteria also helps build confidence, with movement into more complicated cases later being more manageable should you want to do that. For limited scope, think about what you want to practice. What are the steps involved in the main type of proceeding? Are there specific parts or smaller types of cases that would work well in a limited-representation capacity? Could you conceivably charge a set amount for those specific parts and obtain the desired result for the client without having to get into something terribly complicated? Good examples of this are modifications of child support orders (when the criteria are met) or litigating final divorce hearings (and preparation of decrees).

– Carrie Anne Hagan, Associate Professor, Robert H. McKinney School of Law, Indiana University

A Colleague or Associate Has Made a Mistake – What Do You Do?

First, decide how much impact this specific mistake has upon you or your clients, then ask yourself how likely it would be for this kind of mistake to occur again. Consider these three questions:

1. **How knowledgeable is the person?** Is he or she aware that a mistake was made? What looks like a serious breach to you might not be perceived as a mistake by the other person.
2. **Why was the action taken?** Try to understand not only what occurred, but also the reasoning and decision-making involved. This is an opportunity to learn how the other person thinks and perceives responsibilities. The ramifications of the action may not be clear to him or her.
3. **How clear was your initial explanation?** Did the person fully understand what you expected? Mistakes occur in situations where “second-guessing” is the norm. To prevent this, explain exactly what you want and what level of authority the other person has. Outline where they can get required information, and what resources are available before problems arise.

Here are some guidelines for offering constructive criticism after a mistake has been made:

- **Do not judge or generalize.** Be specific about the situation and what needs to occur to remedy the problem. Criticism should not be designed to hurt the other person or increase your stature or power. Be straightforward,

direct, and objective. Be clear about why you are doing it and what outcome you desire.

- **Be prompt.** Memories fade over time, so have the discussion while everything is fresh – but not so soon that emotions are still running high.
- **Support your comments.** Rather than something vague like “you are never here on time,” provide facts and evidence.
- **Consider your location.** Feedback is best done in private, and with enough time to assure that a meaningful conversation can take place. Select a time when both of you are calm and focused.
- **Plan the discussion.** Rehearsing is helpful. Write down key points to help you clarify your thoughts. At the end of the discussion, the next steps to solve the problem should be clear.

– Odette Pollar, Workplace Consultant, Smart Ways to Work, www.smartwaystowork.com

Reclaim Your Hobbies, Interests, and Passions by Leveraging Them for Marketing

Your hobbies, passions, and interests keep life fresh and vibrant, but they are frequently set aside as you try to keep up with the demands of your law practice. Often, your “spare” time is taken up by marketing. If this describes your situation, why not combine the two and use your hobbies, interests, and passions to bring a renewed sense of fun to your marketing?

To begin, identify the hobbies, passions, and interests that you’ve set aside and miss the most. Consider reigniting your passion for sports, photography, animals, cooking, or travel – or consider joining a charitable organization that improves the community or helps the disadvantaged. Once this is done, think about how to not only engage in those activities, but also involve others. An energetic family lawyer from Canada, for example, leverages his love of cycling and cooking by organizing a cycling trip to Italy every year or so – complete with cooking lessons and meals at each stop. To reach those who can’t make the trip, he blogs about it.

What all of these efforts have in common is the idea that you can have fun doing what you love while building rapport with potential clients and referral sources. Taking your passion public can help raise your profile, create fun, and do good in the community. It’s a win-win scenario that’s hard to beat.

– Aaron Rothert, Practice Advisor, Atticus, www.atticsonline.com

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By Allison C. Shields

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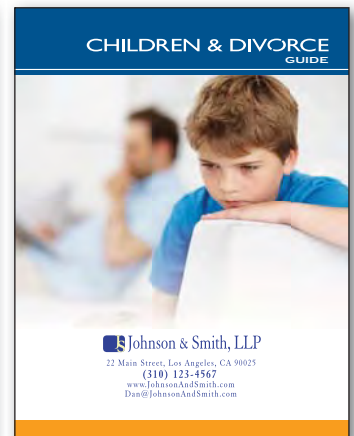
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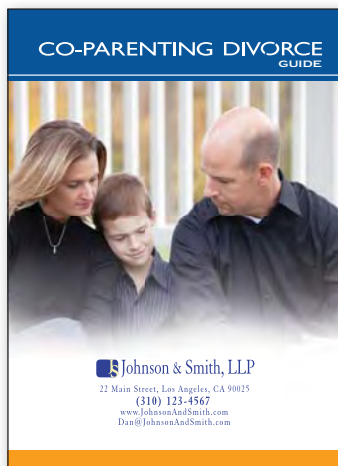
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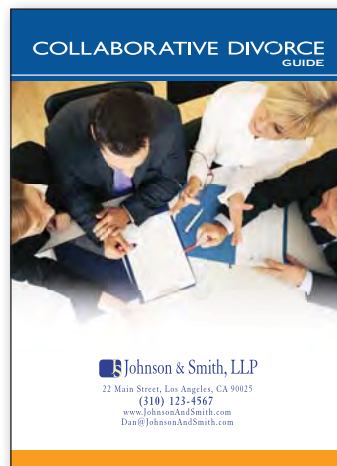
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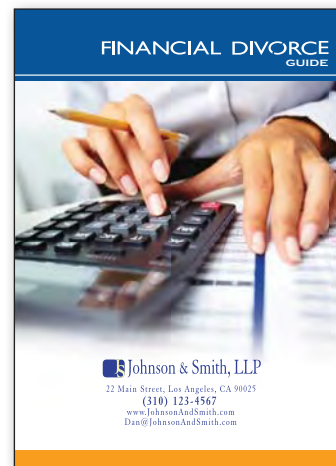
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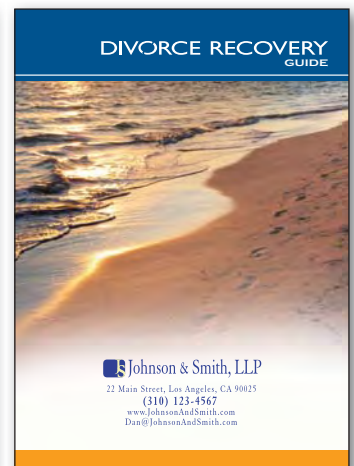
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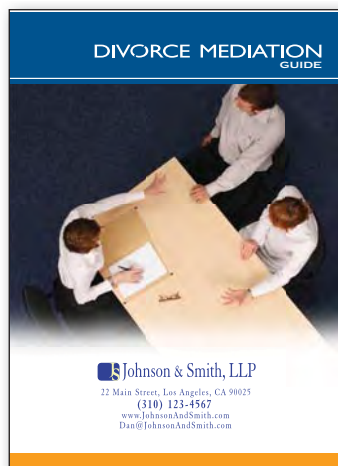
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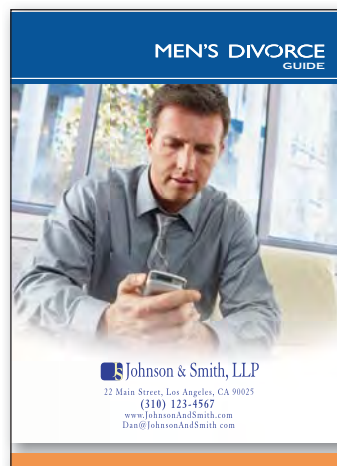
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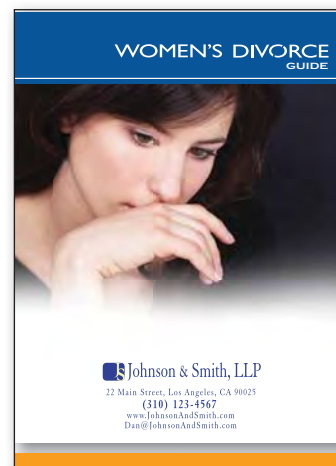
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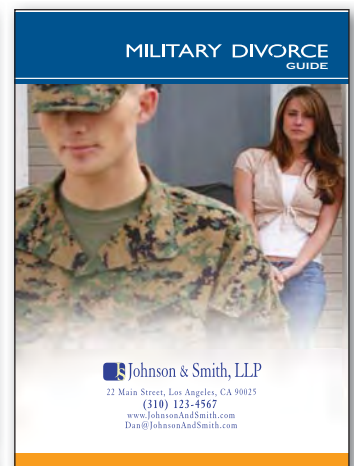
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