

▼ **Attorney-shopping Clients**

Should you take a client who is searching for their second, third or fourth attorney for their pending family law case? It's best to be very selective. Inquire in detail about problems the client had with the former attorney so you're confident you can offer something more or different; otherwise you too may disappoint the client. If you agree with the former attorney's approach, or can see that the client's dissatisfaction is due to misunderstanding why the former attorney did certain things, take the time to explain. I encourage such clients to try again with the former attorney, both to save the expense of starting over and out of respect for professional colleagues. I am no more magician than any other attorney.

If you do agree to be a subsequent attorney, explain what you will try to do in the representation and be sure to follow through with the plan. Encourage the client to deal with the former attorney directly on any fee disputes, complaints, etc., but make it very clear that you will not get sidetracked into those issues. Focus on the case for which you are retained.

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▲ **Military Personnel in Litigation**

The Soldiers and Sailors Civil Relief Act of 1940 provides that service members involved in civil litigation can request a delay in proceedings if they can show their military responsibilities preclude their proper representation in court. When requested, courts will generally grant a temporary delay (a stay) in civil actions where a member's military service has "materially affected" the member's ability to appear and "defend" or "prosecute" an action.

However, a request for a stay may in some circumstance constitute an "appearance," giving the court *in personam* jurisdiction and resulting in loss of default judgment protection.



When analyzing whether to request a stay, first determine if state law will consider a request to be an appearance. Examine the consequences if the member takes no action and a default judgment is entered. If a written request is appropriate, it should provide details understandable by a civilian explaining why the service member's ability to appear and defend in the action is materially affected by his or her military service *e.g.*, no leave available, overseas duty, etc.). The duration of the requested stay should be reasonable.

A letter signed by someone in the chain of command, and not a judge advocate (JAG) or the service member's civilian attorney, provides the greatest protection against a claim of appearance through counsel. If

opposing counsel is known, forward a copy of the requested stay to him or her.

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▼ **Retaliation**

Retaliation claims are among the most rapidly growing types of assertions under federal and state discrimination laws. The U.S. Supreme Court made it easier for claimants to pursue such claims in *Burlington Northern Ry. Co. v. White*, 126 S.Ct. 2405 (2006), holding that retaliation claims under Title VII of the Federal Civil Rights Act are generally factual in nature and, therefore, not readily susceptible to dismissal on summary judgment. But the Minnesota Court of Appeals recently ruled that a reprisal claim under the Minnesota Human Rights Act, Minn. Stat. §363A.15, cannot be

asserted when the person complaining of discrimination or harassment is not the employee but a third party, such as friend or relative. In *Gagliardi v. Ortho-Midwest, Inc.*, 733 N.W.2d 171 (Minn. App. 2007), the court upheld dismissal of a retaliation claim under the act after the employee quit, claiming constructive discharge because she was treated adversely following her boyfriend's complaints that she was sexually harassed. The court reasoned



that the reprisal statute applies only when the employee "personally engaged in protected conduct." Parties seeking to assert reprisal or retaliation-type claims should make the complaints themselves, rather than relying on third-parties to do so for them. Employers who oppose such claims may be able to show that the affected employees did not raise the claims themselves.

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▲ **Timekeeping and Billing**

To simplify timekeeping and billing and perhaps increase your billable hours, get a timer that sits on your computer desktop. Click it on whenever you start working on a client matter and click it off whenever you are interrupted. Try to keep the timer going during your entire work day. Just using a timer often adds 10 percent to billable hours. And by being diligent about turning the timer on as soon as you reach for a client file and leaving it on until you've put the client file away, you may be able to add a billable hour or more per day.

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