

Family Law Forum

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Solo and Small Firm Issue

Letter from the Editor <i>Linda Wold</i>	2
The Team Approach to Family Law <i>Jonathan Fogel</i>	3
Addiction and Dependency in Family Law: Why Does it Matter? <i>Joan Bibelhausen</i>	6
The Role of a Paralegal in a Small or Solo Family Law Firm <i>Jillian Kase</i>	14
Contingency Planning <i>Julie Bennett</i>	16
Providing Low Fee Family Law Services as a Solo Attorney: Reflections From the First Year <i>Mark Haase</i>	20
True Colors <i>Jen Schnabel and Jo Ann Ahles</i>	23
How to Get Paid for Your Work <i>Dennis Korman</i>	26
How to Keep Your Sanity While Practicing Family Law <i>Jack Setterlund</i>	32
Marketing Basics for the Small Firm and Solo Practitioner <i>Brian Huffman</i>	37
QDRO's From a Benefits Attorney's Perspective: Tips on Navigating the Process <i>Scott Becker</i>	40
Handling Real Estate in Family Law Cases; Supplemental Checklist <i>Robert Beutel</i>	44
Addendum: When Home is Where the Hurt Is: Minnesota's Address Confidentiality Program Keeps Battered Women Safer <i>Jenna Yauch</i>	51
Extras: Family Law Bush League <i>Jade Johnson</i>	64
Helpful Websites for Solo and Small Firms <i>Linda Wold</i>	65
Three Poems: Portia Explains the Mirage on the Road Ahead, Portia's Cowboy Divorce, Opening Arguments <i>Susan Stevens Chambers</i>	67

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Letter From the Editor

Linda Wold

This issue of the Family Law Forum is devoted to the solo/small firm family law practitioners. It includes many articles that should be pertinent to your practice. Hopefully they will help you solve some of your most “sticky” everyday problems and will enlighten you as to some other topics worthy of your review and implementation.

Substantive and practical articles on the team approach to family law; addiction and dependency; contingency planning; QDRO’s; handling real estate, providing low fee services, benefits of paralegals, keeping your sanity while practicing family law, getting paid for your work, marketing, dealing with strange cases.

An **Extras** Section includes a list of helpful websites, some poetry and a piece on the Family Law Bush League, which arose out of Divorce Camp 2005.

New to this issue is an **Addendum** article on Minnesota’s Address Confidentiality Program for battered women. This article came to us after the Domestic Violence issue had gone out for publication. But we felt it was so relevant and offers you and your clients a tool in their safety planning, so it is included in this issue.

One of the “perks” of membership in the Family Law Section is receiving the Family Law Forum. We hope you enjoy this issue and find it of practical value to your practice.

One of the benefits of being an MSBA member is the ability to become a member of the solo list serve. Both new and seasoned solos participate, ask, and answer questions about solo practice and issues that they are undertaking. Information is disseminated, points are pondered, interesting ideas are generated, friendships are formed, support is shared and even some humor can be found. To join the solo list serve you go to the online page at: http://www2.mnbar.org/msba/programs/e-mail_lists.htm and you will see a list of email lists you can subscribe to and the requirements for each. Follow the directions as to how to join.

Your comments, inquiries, offers to submit articles, and ideas are greatly appreciated and have played an important part of the success of the Family Law Forum. Keep them coming!! Contact me or any member of the committee for more information or to offer your good ideas and articles.

The topic for the next issue of the Family Law Forum is **PRO BONO**, due to be published May 15, 2008. If you are interested in submitting an article, let us know.

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The Team Approach to Family Law

Jonathan Fogel

Divorce impacts every aspect of one's life. While a divorce can be very intimidating and frustrating for the litigants, the approach which the attorney takes can make a significant difference in the outcome. The practice of family law includes, but is not limited to, division of property, both real and personal, determinations of custody and access time for children, and calculation of child support and spousal maintenance. Given the high-stakes involved it can become a very toxic environment for everyone involved, including the attorneys.

There are many different methods of practicing law; most of which they do not teach you in law school. I believe that the most important thing we as family law attorneys can do for our clients is to recognize when we need to call on someone else's expertise. That is the reason I strongly believe in a "team" approach to handling family law cases, especially divorces. From the very first meeting with my client, I will attempt to identify what other experts my client may need. If my client has very little financial understanding of their situation, I will put them in touch with a financial advisor. If a house needs to be sold, I will have my client meet with a realtor, a mortgage broker, and maybe even an appraiser. I call these other experts members of my "team."

I have listed the five professionals I believe to be essential "team" members in any divorce situation.

1. FINANCIAL ADVISOR.

A financial advisor can be critical in helping clients not only understand their present financial circumstances, but also how best to achieve their long-term financial goals. Remember, an equal division of assets does not always result in an "equitable" division of assets. A good financial advisor will meet with your clients, help them to develop a budget, organize their assets, help determine the impact of selling and/or buying a house, and much more. There is also a Certified Divorce Financial Analyst (CDFA). In order to be considered for this designation, a professional must have at least two years experience in the financial or legal industry. To obtain this designation, a professional must complete a series of four examinations based upon material learned from four self-study courses, including the treatment of property during divorce, alimony and child support, and tax implications of property division.

2. CERTIFIED PUBLIC ACCOUNTANT (CPA).

A CPA can help clients deal with all financial issues, including valuation of assets, marital and non-marital tracing, income determination, spousal maintenance and child support analyses. The CPA can also help with general property settlement structuring and cash-flow analysis. The CPA should also be capable and qualified to testify in Court if necessary.

3. MORTGAGE BANKER.

If a client is selling a house, buying a house, being awarded some interest in a house, or being ordered to pay their ex-spouse some equity from their house, it is a good idea to put them in touch with a mortgage banker. A mortgage banker can help clients decide which kind of mortgage is best for them. There are so many different types of loans with varying term lengths. The choice is extremely important and can take some time and effort to research and using a Mortgage Banker can be very beneficial. While often neglected by homebuyers, a little research before choosing a mortgage can save your clients thousands of dollars in the long run.

4. OUR FAMILY WIZARD®.

Parents often struggle with communication and organization before separating, so it is no surprise that sharing important family information becomes even more difficult after the emotions of divorce are added to the equation. The result is often poor, combative communication with children having to serve as “messengers” between squabbling parents. This is both a cause and symptom of bad communication which in turn leads to more stress for everyone.

OurFamilyWizard® is a tool which provides a bridge for the difficult moments that are sure to arise when children’s activities span two households. It allows parents to communicate in a manner that is thoughtful and reflective, rather than reactive.

The OurFamilyWizard® parenting website helps eliminate harmful game playing between parents by documenting every entry on the site. The time and author of an entry is shown on each page, and entries

cannot be post dated. Each page is printable to provide evidence of what information was actually provided to the other parent on a given date.

The website was designed to be easy to use for all members of the family. It has six sections – Shared Family Calendar, Message Board, Journal, Information Bank, Expense Log, and Resources – which can be used in any combination depending on the needs of each family. While some families utilize all of the site’s life management tools, others benefit from using just one or two.

The Shared Calendar provides basic calendaring functions, as well as many additional features such as color coding, notice of conflicting events scheduled for the same child, trading of days to accommodate special circumstances and many other items designed to assist parents in coordinating the busy schedules of separate households.

The Message Board allows families to communicate directly with one another. Because it is not the same as e-mail, users will never be distracted by non-family materials such as spam mail and advertisements. It also serves as a way to shield children from harmful materials that may be associated with email. The message board acts as the secure mailbox for the family.

The Information Bank is a place where family members can access the information maintained in several areas on the site. Information on everything from health histories to shoe sizes can be readily available to both households. The Information Bank also accommodates the online storage of important files. These files can be documents, pictures or anything else that may be needed by one or both parties.

The Journal functions as a virtual diary. Family members may maintain personal and/or shared Journals for their children. Parents can give each other detailed records of the children's daily affairs in a non-intrusive manner. It is especially important because children no longer need to carry messages or notebooks between parent's households.

The Expense Log allows parents to track the shared expenses of their children. Parents can set up expense types that will automatically calculate each parent's share of an expense. Receipts can be uploaded and parents can review expenses and approve them before payment.

The Resource Section has information and links to family law professionals who use the OurFamilyWizard® parenting website, helpful books and articles, support groups, family-friendly websites and online tools.

5. THERAPIST.

One of the biggest mistakes clients make when going through a divorce is forgetting to take care of themselves. Most people are so busy worrying about everybody and everything else that they overlook the importance of their own emotional health. I always tell my clients that if they are not emotionally healthy they will not be any help to me, their children, or themselves, during the divorce process. A therapist can play a pivotal role in this process. A therapist should also be considered on behalf of the children. Even when the children are not displaying any outward or obvious signs of distress, it is important to provide them with a "safe harbor" in which they can express their feelings in a safe and confidential therapeutic environment.

There are a number of professionals who can help make the divorce process much less intimidating. These professionals should be part of your "team" approach to handling a family law matter. I strongly believe that the job of a family law attorney is not only to provide clients with expert legal advice, but also to provide them with the tools necessary in order to move onto the next stage of their life.



*Jonathan J. Fogel has extensive experience handling divorces involving complex marital estates, spousal maintenance, custody, and post decree matters. After a decade of practice, he founded his own law firm, Fogel Law Offices, P.A., so that he could provide a "team" approach to family law for his clients by offering a network of professionals that can assist with issues ranging from finances to counseling. Jonathan is currently educating the public about family law issues as the host of FM-107's Family Affairs, which airs every Sunday from 10 - noon. In 2006, he published a book *Preparing for Divorce While Happily Married; Tips from a Divorce Lawyer* that offers insight into the process of divorce. Jonathan writes articles and provides lectures on a variety of topics including divorce, custody, child support, spousal maintenance, paternity and other issues related to family law.*

Addiction and Dependency in Family Law: Why Does it Matter?

Joan Bibelhausen

Why does addiction matter?

In family law, addiction and dependency, to alcohol, drugs or processes such as gambling, are present in a significant percentage of cases. From a purely legal standpoint, whether someone has a problem and is addressing it can affect the outcome of their case. As a lawyer, you may be in a position of influence when someone is in trouble, either because they are the person with the direct problem or because they are affected by it. In this article we will explore the issues of addiction and dependency and discuss ways in which lawyers may have an impact. For the purposes of this article, the most common addiction, alcoholism, will be used as the primary example.

The disease of addiction

The American Medical Association (AMA) defines “alcoholism” as a primary, chronic disease with genetic, psychosocial, and environmental factors influencing its development and manifestations. The disease is often progressive and fatal. It is characterized by continuous or periodic impaired control over drinking, preoccupation with the drug alcohol, use of alcohol despite adverse consequences, and distortions in thinking, most notably denial.¹

The American Society of Addiction Medicine (ASAM) defines “addiction” as a disease process characterized by the continued use of

a specific psychoactive substance despite physical, psychological or social harm.²

The American Psychiatric Association’s *Diagnostic and Statistical Manual (DSM IV)* defines “substance dependence” as a pattern of substance use leading to clinically important distress or impairment during a single 12-month period, shown by three (3) or more of the following:

- Tolerance, shown by either: (1) a markedly increased intake or the substance is needed to achieve the same effect; or (2) with continued use, the same amount of the substance has markedly less effect.
- Withdrawal, shown by either (1) the substance’s characteristic withdrawal syndrome; or (2) the substance (or one closely related) is used to avoid or relieve withdrawal symptoms.
- The amount or duration of use is often greater than intended.
- Repeated attempts without success to control, reduce or stop using the substance.
- An increasing or inordinate amount of time is spent using the substance, recovering from its effects, or trying to obtain it.
- The reduction or abandonment of important social, occupational, or recreational activities because of substance use.
- Continuing to use the substance despite the knowledge that it has probably caused physical or psychological problems.

DSM IV defines “substance abuse” as a substance use causing clinically important distress or impairment in a single 12-month period as shown by one or more of the following:

- Failure to carry out major obligations at work or at home due to the repeated use of a substance.
- The use of substances even when it is physically dangerous.
- Repeated legal problems from substance use.
- Continued use of the substance, despite knowing that it has caused or worsened social or interpersonal problems.
- The patient has not previously been diagnosed as dependent on this class of substance.³

Risk factors

Family History. Various studies have shown that children of alcoholics are four to eight times more likely than the population as a whole to develop problems with alcohol. These children often have a higher risk for other behavioral problems as well.⁴ Genetics may determine the body’s ability to metabolize alcohol and may also lead to a temperament that places an individual at higher risk. While genetics are important, environmental factors may have as significant an influence. This can include whether the home is abusive, whether there is neglect and what sorts of rules and rituals exist around alcohol and other substances. In cultures where use is limited by scope and occasion, there is less addiction and abuse.

Age at First Use. Individuals who reported that they first used alcohol before age 15 were more than 5 times as likely to report past year alcohol dependence or abuse than persons who first used alcohol at age 21 or older.⁵ Use, for the purposes of this survey,

means first intoxication in the case of alcohol. For other drugs, it is defined as first use of any kind. With an increased risk in an alcoholic and/or dysfunctional family, the ability of the younger brain to use without dependence is further compromised.

Gender. Women are statistically less likely to have alcohol or other substance dependency and abuse than men. Most often, women don’t seek help until the disease is more advanced than for men, partly because of stigma attached to public intoxication for women. There is also more shame reported among women who have abuse or addiction problems.

Stress, along with mental or physical illness weakens the body and brain’s ability to be resilient against addiction and abuse. This can occur from the attraction of a behavior that removed feelings because of the effect of the alcohol or drugs. Mind altering substances do just that, they alter brain chemistry. The result can be a change in the way the brain responds to the stimulus of the alcohol or drug. The brain believes that the presence of the substance is normal and craves it, sometimes to the point of feeling the need for survival.

A Family Disease.

Family members are not the cause of someone else’s drinking problem. They cannot cure it and they cannot control it. Yet there is often a feeling of responsibility and shame over not being able to “get someone to stop.” However, the family members’ reactions to the behavior might also contribute to family problems.

The chemically dependent family will operate by a set of rules. The alcohol is the most important thing in the family’s life, but the

family will not perceive this as the cause of their problems. There will be an effort to maintain the status quo, whatever it takes because somehow that proves there is not a problem. The entire family is involved in some way and as has their own rules and roles. The biggest rule is to keep the family secret and this is accomplished by keeping one's your true feelings to themselves.

The partner or spouse may react to incidents by taking on specific roles. Imagine a scenario where the user promised to pick up the kids or attend an event and either fails to appear or is intoxicated when they do. Here are some possible reactions that may carry over into your interactions with the client.

The Rescuer

The "rescuer" won't allow the incident become a problem and will do everything to protect the user from her own actions. This might include covering up mistakes, lying and otherwise protecting him from anything that might be a cause of distress (and thus produce more drinking). She will tell no one and minimize the problem if anyone else raises it. Her denial is as great as that of the user. As problems escalate, she may start carrying out his responsibilities. She may get a second job to pay bills over cover bail and excuses his failure to perform.

The Provoker

The "provoker" will respond with punishment. This can range from the silent treatment to rage. He might complain to others that she is a loser and lets everyone know how angry and disgusted he is with her. He wants it to look like it couldn't be his fault. And he won't let it go. The resentments build as the behavior escalates and there are frequent reminders of past transgressions, especially when there are others to listen.

The Martyr

The "martyr" feels shame for the user's behavior and tries to make him feel guilty. She tells him and others how embarrassed she is. Or she may isolate and avoid others because of her shame. She may become depressed and withdrawn. This shame may be particularly acute if the addiction is around sex, gambling or drugs.

The Enabler

Each of these examples is that of an enabler. The spouse may adopt a particular role or may switch back and forth between all of them. None of them helps with the illness and all of them can contribute to problems.

The disease of alcoholism affects the spouse's life, her thinking and her attitude and she may not even realize that it's the issue. Usually, the change occurs slowly.

Alcoholism is a progressive disease. Occasional or mildly unacceptable behavior will be excused – *he just had too much to drink, he didn't really mean it.* As the behavior becomes less and less tolerable, over months and years, it is still being accepted and can become the new "normal." The chaos that now exists would have been unacceptable at an earlier time, but because it was gradual, it is not recognized for what it is. The spouse or partner may become a drinking buddy with or without developing their own dependency. The same rescuer, provoker and martyr roles take on an interesting twist when both partners are regularly using and one has a dependency problem.

When the spouse is co-dependent, she often has much lower self esteem because she will be abused by the user to protect the use – sometimes physically, but not always. If she grew up in an alcoholic family, she may have been attracted to what she knew. Children,

including adult children of alcoholics, have their own roles.⁶ As a child, the role is a protector from the family secret and the family mayhem. As an adult, these roles can hold the person back in every aspect of his or her life.

The hero will try to repair the family by excelling in everything and making up for perceived shortcomings in themselves, the users and others who respond to the user. This child will often serve as a mediator between the parents, one or both of whom may be using.

The enabler wants to avoid pain at all costs. This child may even provide alcohol to the user to calm things down.

The scapegoat protects the family secret by acting out and becoming the focus. This may be at home, in school or in the community. This child is angry because of the emotional volatility of the family situation.

The lost child is the one you may not notice. This child avoids contact with family problems and may escape in fantasy or other ways to avoid reality.

The mascot will try to survive using humor. This child works to divert attention from the family and may be the class clown because that is where validation can occur.

Clearly, the disease of alcoholism has an impact on every member of the family. Sometimes children report more problems with the non-drinking parent than with the alcoholic.

The non-drinking or non-dependent parent will have trouble seeing themselves as part of the problems but they can be much more volatile. The alcoholic is predictable. The children will know when they have

opportunities to ask for things and when it's time to stay out of the way. There's a routine and they know it. But the other parent is a different story. One minute they see the provoker – threatening consequences like divorce (I'll divorce you) or death (I'm going to get a call that you went off the road) that can terrify the children. A moment later the rescuer is back, excusing unacceptable behavior, and cleaning up the mess.

Other addictions.

Alcohol is only one of many substances to which addiction occurs. Other drugs such as opiates and prescription drugs can cause as much havoc as alcohol. The cravings that occur in the brain of an addict will typically occur much more quickly and be much more virulent with drugs like methamphetamines.

Process addictions create similar reactions in brain chemistry. The triggers can cause as strong a reaction as the presence of a substance. Addictions involving money include gambling, shopping and shoplifting. Sex addiction can be very confusing and scary for a family member. Eating disorders are a type of addiction and obsession with computer or fantasy games has caused significant problems in more than one family.

What Is Your Role?

There will be times when an addiction is obvious and you know that you will not have a chance of obtaining the legal result your client wants unless they participate in some sort of abstinence or treatment. Most cases are not as clear cut. While it is not your job to be a counselor or an assessor, you are in a position of influence. Does your client interview include questions about the possible presence of addiction? Some would argue that because of the prevalence of these

issues in family cases, you have an obligation to make such an inquiry, but at the same time, denial may be very strong. If the answer is yes, or you think it should be, then what? Do you have a place they can call to go further? Do you know how to reach the chemical dependency services in counties where you practice? Are there psychologists to whom you feel confident referring clients? It is not your job to get them there or to keep them from drinking if they have acknowledged there is a problem. But you can say that you think they may get a better legal result if they follow the recommendations of these other professionals. Just as it is necessary to use your creativity in helping your client with their legal problems you can use that same creativity and persistence to suggest that now is the time to make other changes in their lives for the better.

Ethical Considerations

Rule 1.14 of the Minnesota Rules of Professional Conduct related to clients with diminished capacity.⁷ There may be occasions when the client is not able to make adequate decisions on their own behalf because of their impairment. While occasions with the level of severity may be rare, there may be an obligation to seek assistance. What may be more likely is that the fact that you could “consult. . . individuals or entities that have the ability to take action to protect the client” may be enough incentive for the client to seek help.

What if it's another lawyer?

According to studies by the American Bar Association and others, lawyers are twice as likely to be alcoholics as the rest of the population.⁸ It is likely that you will encounter another lawyer whose alcoholism or another issue impairs their ability to

practice. Those other issues include mental illness, physical illnesses such as Alzheimer's disease that may cause diminished capacity.

While there is an obligation to report serious misconduct,⁹ the conduct often does not rise to that level or it may just be a general observation of concern or a change in behavior or temperament that occurs over time. In your own organization, are there procedures to follow to protect clients if the lawyer is unable to perform adequately, and do you know them? Organizations can be held responsible if they knew of misconduct and did not act to prevent or respond to it.¹⁰ A confidential call to Lawyers Concerned for Lawyers will allow you to talk through a situation and options for providing help to a colleague in your organization.¹¹

But what if you don't work with them? Concerns often arise when an opposing counsel smells like alcohol in a meeting, deposition or in court, or more frequently, does not seem to be tracking or is conducting herself in a way that doesn't make sense. Sometimes the conduct is not that egregious and just as the codependent family member hopes it will go away, it seems best to do nothing.

Typically three things will happen if you have an impaired opponent. Their work will be delayed, inefficient and inadequate. Your client will pay more because you devote more time to following up, correcting mistakes and other case administration that shouldn't be necessary. Second, your client may ultimately get a result that would not have occurred if there had been equal representation. There is a strong temptation to let it alone because your client may get a better result by law, but ultimately, the family that came apart will continue to be dysfunctional because of the contribution of the dysfunctional lawyer.

And third, your stress level will increase. While there may be delays and other difficulties from opposing counsel that have nothing to do with impairment, it happens often enough that you may have some other options. Ultimately clients, the administration of justice and the public's trust of lawyers and the judicial system are all harmed when a lawyer is impaired.

We have built a system where the lawyers themselves ensure competence through the bar exam and a character and fitness examination. We continue to support that competence through continuing legal education requirements. We have a lawyer discipline system and a client security fund if things go wrong. Each of these protects the public and the reputation of the justice system. But we also can take care of ourselves and each other through a confidential lawyer assistance program. The conduct you observe may not rise to the level of reporting to discipline and there is often reluctance to do so in any case.

If you decide to pick up the phone and call LCL because you are concerned about another lawyer, what will happen? First and foremost, your call is confidential. You may call for advice on how to deal with a situation or you may call about someone you are concerned about. You might also wish to visit our web site (www.mnlcl.org), e-mail us directly at help@mnlcl.org, or visit our offices. When someone calls LCL for the first time, we will talk with you to determine how best to be of assistance. We will describe what we think options may be and you can choose to go no further or to even give us your name. Be assured that we will never rely on the report of one person, especially if you are opposing counsel, to reach out to someone. But that other lawyer may be in serious trouble, especially if they are isolated

and it takes the effort of someone whom is concerned to make a difference. One lawyer told us, "There had been delays and difficulties from the start and when I finally met with the lawyer in person it was obvious that they were not on top of things. Calling LCL to say that this person might need some help greatly reduced my stress level." The lawyer who reported the problem was not told and will not be told what might have been done to reach out to the lawyer they were concerned about.

The core services of LCL are crisis response, assessments, referrals, mental or chemical health interventions, short term counseling, on-going support through a mentorship program, and therapist facilitated mental health support groups. All of the services are confidential and free and access to a therapist is available by phone 24 hours a day.

As you read this, you may wonder if your use of alcohol or your craving for other substances or processes like gambling is affecting you as a lawyer. Your call is confidential as well, and we will refer you to the appropriate professional and peer support. We have received calls that go something like "I drank too much this weekend and felt lousy again this morning. I'd like to find out if I might have a problem." Or "I get to my office and I just can't get started. There are things I know I need to do and I just can't do it." We'll get you started on getting help and learning what your resources are. As lawyers we are problem solvers and it's hard to ask for help to solve our own. But when we are affected by a dependence on alcohol or other mental illnesses or addictions, we are even less able to take care of ourselves. Fortunately, with Lawyers Concerned for Lawyers, you are not alone and there is help.

Notes

¹ Robert M. Morse and Daniel K. Flavin, "The Definition of Alcoholism." *Journal of the American Medical Association*, August 26, 1992, Vol. 268, No. 8, pp. 1012 – 1014.

² *Principles of Addiction Medicine*, 2d ed., 1968.

³ American Psychiatric Association, *Diagnostic and Statistical Manual (DSM IV)*, text revision, 2000.

⁴ C Holden, "Probing the complex genetics of alcoholism," *Science* 11 January 1991 251: 163-164.

⁵ SAMHSA. "Alcohol Dependence or Abuse and Age at First Use", *National Survey on Drug Use and Health*, 2003.

⁶ Sharon Wegscheidrr-Cruse, *Another Chance, Hope and Health for the Alcoholic Family*, Science and Behavior Books, 1989.

⁷ RULE 1.14: MRPC.

⁸ John W. Clark, Jr., "We're From the Bar and We're here to Help You," *G.P. Solo Magazine* (A.B.A. Pub.; v.21, no. 7: October/November 2004).

⁹ Rule 8.3 MRPC.

¹⁰ Rule 5.1 MRPC.

¹¹ Lawyers Concerned for Lawyers may be contacted at 651-646-5590 or 866-525-6466. The email is help@mnlcl.org and the website is www.mnlcl.org.

Joan Bibelhausen is Executive Director of Lawyers Concerned for Lawyers. Joan received her J.D. from the University of Minnesota Law School in 1983 and has significant additional training in the areas of counseling, mental health and addiction, diversity, employment issues and management. She has spent more than two decades working with lawyers who are at a crossroads because of mental illness and addiction concerns as well as work/life balance, stress and related issues.



Joan is a member of the MN State Bar Association, Hennepin and Ramsey County and American Bar Associations, and MN Women Lawyers, among others. She currently serves on the ABA Commission on Lawyers Assistance Programs Advisory Commission, Conference Planning Committee, Judicial Resource Committee and Strategic Planning Task Force. She has chaired the MSBA Life and the Law Committee and the HCBA Solo and Small Firm Practice Section and has co-chaired the HCBA Diversity Committee. Joan also served on the MSBA Board of Governors and HCBA's Strategic Planning and Leadership Institute task forces. She has developed and presented numerous CLE and other programs and has written on mental health and addiction, career and life balance and satisfaction, stress, diversity, marketing and other issues of concern to the legal profession.

Addiction and Dependency in Family Law: Why Does it Matter?

RESOURCES

Lawyers Concerned for Lawyers

2550 University Avenue West, Suite 313N
St. Paul, MN 55114
Phone: 651-646-5590; Toll-free: 877-525-6466
Website: www.mnlcl.org; E-mail: help@mnlcl.org

Solo Small Resources

The ABA General Practice, Solo and Small Firm Section has produced 3 issues of their magazine, *GP Solo*, on issues of impairment. Because many family law practitioners are in solo or small practices, they are offered as a resource here.

<http://www.abanet.org/genpractice/magazine/2006/oct-nov/index.html>
<http://www.abanet.org/genpractice/magazine/2004/oct-nov/index.html>
<http://www.abanet.org/genpractice/magazine/2001/jul-aug/index.html>

State of Minnesota

- <http://licensinglookup.dhs.state.mn.us/>
Enter a facility name, if you know it, or simply look for all licensed providers in a subject area or a county.
- www.dhs.state.mn.us is the Department of Human Services general site.
Click on disability for numerous resources.
- *Sample Minnesota County Information* – These are provided to show what is available on some county websites. For any county in Minnesota, go to www.co.nameofcounty.mn.us.

Hennepin County

- Crisis Services for Adults website:
<http://www.co.hennepin.mn.us/portal/site/HCInternet/menuitem.3f94db53874f9b6f68ce1e10b1466498/?vgnextoid=515a12fc02d00110VgnVCM1000000f094689RCRD&vgnnextfmt=default>
Community Outreach for Psychiatric Emergencies (COPE): 612-596-1223
- Crisis Connection website: <http://www.crisis.org/>
National Suicide Prevention Lifeline 1-800-273-TALK; Twin Cities Crisis Line 612-379-6363; Toll Free MN 1-866-379-6363; Men's Line Twin Cities 612-379-6367; Toll Free MN 1-866-379-6367
- Chemical Health Frequently Called Numbers:
<http://www.co.hennepin.mn.us/portal/site/HCInternet/menuitem.3f94db53874f9b6f68ce1e10b1466498/?vgnextoid=7d89b6764b9fc010VgnVCM1000000f094689RCRD&vgnnextfmt=default>
- Chemical Health - suicide prevention: 612-347-2222

Crow Wing County

- Chemical Dependency website
http://www.co.crow-wing.mn.us/social_services/chemical_dependency_unit/index.html
Phone: (218) 824-1140 ask for CD intake
- Adult mental health website: http://www.co.crow-wing.mn.us/social_services/adult_mental_health/index.html

Ramsey County

- Adult Mental Health website: <http://www.co.ramsey.mn.us/hs/mhc/AdultMentalHealth.htm>
Crisis: 651-266-7900; Information and Referral: 651-266-7890; Case Management & Mental Health Center Intake: 651-266-7890

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- Chemical Dependency website: <http://www.co.ramsey.mn.us/hs/mhc/ChemicalDependency.htm>
Intake/Pre-Petition: 651-266-7890; Chemical Assessment Service: 651-266-4008; Detox Center: 651-266-4009
 - Adult Protective Services website: <http://www.co.ramsey.mn.us/hs/aped/AdultProtectiveServices.htm>

Dakota County

- Mental Health website: <http://www.co.dakota.mn.us/HealthFamily/CaringFor/FindMH/default.htm>
Social Services 952-891-7400
- 24 Hour Crisis Response Line 952-891-7171; Adult Mental Health Intake Reporting 651-554-6424
- Drug and Alcohol Addictions website:
<http://www.co.dakota.mn.us/HealthFamily/CaringFor/FindAlcoholDrugService/default.htm>
Public Health: 651-554-6100; Social Services: 952-891-7400

Washington County

- Managing Stress website:
http://www.co.washington.mn.us/info_for_residents/public_health/adult_health/managing_stress/
- Adult Mental Health website:
http://www.co.washington.mn.us/info_for_residents/public_health/adult_health/adult_mental_health/
Mental Health Crisis Line: 651-777-5222 or 1-800-273-TALK
- Crisis Numbers for Washington County:
http://www.co.washington.mn.us/client_files/documents/phe/FHL-MH-Resources.pdf
- Alcohol Abuse website:
http://www.co.washington.mn.us/info_for_residents/public_health/alcohol_and_other_drugs/
Human Services, Inc: 651-430-2720

St. Louis County

- Treatment Programs website: <http://www.co.st-louis.mn.us/slcportal/SiteMap/HomePage/Departments/PublicHealthandHumanServices/Services/ACTCRT/tabid/675/Default.aspx>
- Chemical Dependency and Mental Health website: <http://www.co.st-louis.mn.us/slcportal/SiteMap/HomePage/Departments/PublicHealthandHumanServices/Services/tabid/104/SiteMap/HomePage/Departments/PublicHealthandHumanServices/Services/ServicestoPeoplewithDisabilities/tabid/119/Default.aspx>
Phone: (218) 749-7179 or (218) 733-2709

Scott County

- Mental Health website: <http://www.co.scott.mn.us/wps/portal/ShowPage?CSF=1384>
Human Services: 952-445-7751
- Scott County Services Directory: http://www.co.scott.mn.us/wps/PA_1_0_S5/GetPDFServlet?dDocName=003254&RevisionSelectionMethod=Latest&inline=true
- Adult Mental Health website: <http://www.co.scott.mn.us/wps/portal/ShowPage?CSF=983>
Mental Health Crisis Program: 952-442-7601

Olmsted County

- Chemical Dependency website: http://www.co.olmsted.mn.us/health/adult_chemical_dependency.asp
Phone: 507-328-6400
- Adult Mental Health website: http://www.co.olmsted.mn.us/health/adult_mental_health.asp
Phone: 507-328-6400

*Thanks to Hayley Haider, Hamline law student, for assistance in researching these resource listings.

The Role of a Paralegal in a Small or Solo Family Law Firm

Jillian Kase

The job description for paralegals in large family law firms, as opposed to small or solo family law firms, varies greatly. Paralegals in any size firm have a high volume of client contact, legal research work, handling discovery, drafting pleadings and correspondence, assisting with trial preparation and file management, among other tasks. The difference is that many duties performed daily in a smaller firm are not necessarily typical in the role of a paralegal at a large firm. Everyone in a smaller firm must go the extra mile to keep the firm running smoothly. This requires a commitment not only to the position of a paralegal but to the firm itself. This is one of the qualities that should be strongly considered when an attorney is interviewing candidates for a paralegal position in a small or solo firm.

At any firm, large or small, it is imperative that the paralegal understand the importance of their work. The need and desire of a paralegal to be invested in the vision and mission of the firm and apply those principals to their work is crucial. It is important for an attorney in a small or solo firm to emphasize to their paralegal that they not are not only a reflection of the client, their case, and the firm they are working for, but also of the attorney and their reputation in the community. This becomes much more significant in a small firm with a paralegal who is working directly with each attorney in the firm.

My experience has shown that daily contact and communication with the attorney is beneficial to the paralegal in reinforcing their dedication to produce excellence in their work. It is important for the paralegal to realize their work can have a positive or a negative impact on the client, the attorney and the firm's image.

A paralegal in a small or solo law firm may be required to act not only in what is perceived as the traditional role of a paralegal but also may need to go above and beyond those expectations. They may be asked to play the role of the receptionist, secretary, assistant, bookkeeper, and other duties as necessary. It is critical that the attorney provide a clear understanding to the paralegal that they may have many different roles within their position. No matter what the task is, it needs to be done to keep the firm running efficiently, "that's not my job" does not work in a small or solo firm. Attorneys rely on their paralegals to be flexible with their assignments.

When interviewing prospective paralegals, along with making them aware of the possibility of varying assignments, it is important to discuss their capability to prioritize tasks. The paralegal must have the ability to determine what tasks need to be completed today and what tasks can be completed later. In family law many of the tasks in the following areas all present as top priority:

a) Handling casework: Are there deadlines approaching, does general case management need to be done to keep the case on schedule?

b) The client: Especially in family law, clients require a great deal of communication to be assured their case is a priority. Something as simple as a return call to let a client know their concerns have been heard and will be addressed as soon as possible is often beneficial.

c) The function of the office: Ordering supplies, handling bills and other mail, and determining what the office needs to continue to run efficiently.

d) Supporting the attorneys: Meeting and corresponding with the attorney, to help with daily work. Keeping on top of schedules for the attorney to be able to answer questions such as, is mediation coming up, is there an upcoming settlement that requires preparation from the paralegal?

What tasks are most important varies daily and the paralegal must be able to lay out which take priority for that day.

The ability to self manage is an integral attribute for a paralegal in a small firm. It is not cost effective for an attorney in a small or solo firm to monitor paralegals' work throughout the day. The attorney should be able to depend on the paralegal to prioritize the needs of the firm and manage their time efficiently with little supervision. This reinforces the need for the paralegal to be in line with the vision

and mission of the firm. Attorneys must be confident that they have hired someone that is committed to the firm, the client, and the attorney.

Additionally, effective and efficient communication between attorneys and paralegals is extremely important for a successful firm. Poor communication can be detrimental to a case and the practice. A delay in a case caused by a miscommunication, or lack of communication between the paralegal and attorney can result in wasted time, wasted money and a dissatisfied client. Much of this can be avoided by setting up clear guidelines for communication early in the employment relationship. Often smooth communication and understanding of the attorney's needs can become second nature to the paralegal over time. However, the opposite can be glaringly obvious when the attorney and paralegal are having communication issues that cannot be repaired.

Paralegal work in a small or solo firm environment may not be suited for everyone. Many excellent paralegals function more efficiently in larger firms. It takes a paralegal with commitment, understanding and special communication skills to fit well in a small or solo environment. Interviewing is the first step in creating a team that will not just work for you, but will work with you as well. It is important to be upfront and honest with the potential paralegal about their responsibilities and what the attorneys' expectations are. Finding the right paralegal who works well with an attorney in a small or solo law firm will lead to reaching the goals, vision, and mission you have for your law firm.



Jillian M. Kase is a paralegal at Lucas Family Law LLC. Jillian has seven years of paralegal experience working in large and small firms in the areas of family law, estate planning, worker's compensation, and insurance defense litigation. Jillian is a member of the Minnesota State Bar Association, Hennepin County Bar Association and is the Secretary and Director of Operations for the Minnesota Paralegal Association. Jillian is involved in the Wills for Heroes program, a member of Projustice.org's Pro Bono Committee, a Member of the Advisory Board for the Minnesota School of Business Paralegal Program and other volunteer programs through out the community.

Contingency Planning

Julie Bennett

Whether prompted by the aftermath of Hurricane Katrina or the aging of the baby boomers, renewed emphasis has been placed on making contingency plans. At its meeting in August 2007, the American Bar Association House of Delegates passed a recommendation urging the establishment of contingency plans.¹ In May 2007, a joint committee of the National Organization of Bar Counsel (NOBC) and the Association of Professional Responsibility Lawyers (APRL)² issued its final report on aging lawyers.³ A significant portion of the report deals with the importance of contingency planning. Both of these documents urge the courts and bar associations to take proactive steps to encourage and assist with contingency planning.

Why Adopt a Contingency Plan

While no one likes to think about becoming incapacitated or their unexpected deaths, it is important for attorneys, especially solo practitioners, to think about what would happen to their practice should they unexpectedly die or become incapacitated. While firms may be able to absorb the client matters of an attorney who suddenly dies or becomes incapacitated, that is

not an option for the solo practitioner. Consequently, it is more important for the solo practitioner to adopt a contingency plan. Failure to have a contingency plan could significantly impact client matters and cause additional stress to family members while they are dealing with a difficult event. A contingency plan acts as a set of instructions in the event of sudden death or incapacitation.

Steps to Making a Contingency Plan

Many of the steps in making a contingency plan are simply good business practice. These steps simply serve to allow the efficient and effective implementation of your contingency plan. One of the first steps that should be taken is the completion of a comprehensive list of current and active clients. In the event of an unexpected catastrophe, the interests of current and active clients are more likely to be impacted by the sudden incapacitation or death of their lawyer. The list should include current contact information for the client, which should be updated on a regular basis, court case number, and the name of the adverse party, if any. Another list that should be kept is that of past clients who's cases have been closed. The list

should include the last known contact information for the client, the court case number, and the date of when the file was closed.

Whether an attorney completes the objectives of the representation or withdraws prior to the completion of the client matter, it is important the attorney closes the file. When closing a file, an attorney should endeavor to send out a letter to the client indicating the file is closed in the attorney's office. In the event of unexpected death or incapacitation, the person/people assisting with the incapacitated attorney's practice will be able to determine the status of a matter with relative ease.

The Importance of Good File Maintenance

Good file maintenance is also important to contingency planning, as well as, general business. Ensuring that documents relating to a client make it into that client's file will make it easier to find information in the event of an unforeseen crisis. Another good practice is to return client originals to the client as soon as possible. Unless the original is needed for a particular purpose, it is best to return the original to the client so the client can access the original. If original documents are not returned during the course of the representation, they should definitely be returned to clients at the end of the representation. If for some reason original documents cannot be returned to the client, create a designated storage area for unclaimed originals and let your staff know of its existence. Also maintain a list of these documents including whom they belong to.

It is wise to periodically to sort through the closed files in storage to determine if the files can be destroyed. It can be a daunting task for someone to suddenly be faced with cleaning out a storage locker that contains several years' worth of old files. Additionally, files should be

maintained in a manner that makes them accessible. It may be necessary for those assisting with an attorney's practice to readily access a closed file in the event of incapacitation or sudden death.

The Importance of Maintaining an Up-to-Date Calendar

Ensuring a calendar is maintained and is up to date is another important step in succession planning. The calendar should have any due dates, meetings, hearings, etc on it. There should be enough information in the calendar entry that someone coming to assist with a practice can look at the calendar and prioritize the necessary contacts that are needed. Additionally, if the solo practitioner keeps an electronic calendar, the contingency plan should contain the necessary passwords to access the calendar. Periodically printing off a hard copy of the electronic calendar is also a good practice.

Written Retainer Agreement

Written retainer agreements are also a good practice and a helpful tool in contingency planning. Written retainer agreements help outline the scope of the representation and helps a person assisting with an incapacitated attorney's practice to identify what steps may be needed to protect the client's interest. Additionally, a solo practitioner may want to include the name of the successor attorney in the retainer agreement so clients know whom to contact in the event of sudden death or incapacitation of the practitioner.

Time & Billing Records

It is also important to keep regular time and billing records for each client. In the event of incapacitation, it will be important for those assisting with the practice to be able to properly

account for client monies and monies due the incapacitated attorney. Additionally, making certain bank account records are maintained in accordance with Minnesota Rule of Professional Conduct will also assist in a contingency plan.⁴ By properly maintaining the required trust account records, it will be easier for those assisting with an incapacitated attorney's practice to properly decipher the various funds held by the attorney.

Appointing a Successor Attorney

In addition to the good business practices described above, a solo practitioner may wish to think about appointing a successor attorney to assist during periods of incapacitation or after a sudden death. In choosing a successor, an attorney should think about how they envision the successor's role, i.e. will the successor take over the practice or will they simply assist in transferring client matters to other attorneys. The solo practitioner should think about who they believe will manage the client matters in an ethical and responsible manner. Consideration should be given to the size of the successor's staff and whether or not they have sufficient support to handle the additional duties.

The solo practitioner should have discussions with the successor about the successor's role and how cases will be handled. For example will the successor take over the incapacitated attorney's practice or just assist in winding down the practice. Once a successor attorney has been chosen whatever agreement the parties reach concerning what happens in the event of incapacitation or death should be reduced to writing. It is a good idea for the parties to the agreement to review the document on an annual basis.

Practical matters such as how the successor will access client files and the calendar in the event

of death or incapacitation should be a part of the plan. It is a good idea as part of any contingency plan to routinely inform the successor attorney who key staff members are and also to inform key staff members who the successor attorney is. It will be important that the staff and the successor attorney are able to contact each other in the event of incapacitation or death. Documents related to the contingency plan should be kept together in a place that is accessible to a successor attorney and staff members. As part of the contingency plan, family members and designated personal representatives should be informed of the identity of the successor attorney. Also, solo practitioners may want to incorporate arrangements with the successor attorney into any estate planning documents that are prepared. Additionally, information regarding a solo practitioner's landlord and insurance carriers should be contained in the contingency plan. It may be necessary for the successor attorney to contact these individuals in case of sudden death or incapacitation.

Discussion and plans should be made to address conflict of interest and confidentiality issues. The plan should outline what steps the successor attorney should take in the event there is a conflict of interest. Also, the successor attorney should not release a client's file or information to a new attorney without first obtaining the necessary release from the client. Also, if the successor attorney is primarily responsible for transferring files and making referrals, the solo practitioner may wish to maintain a list of various attorneys who may take the referrals in specific areas of practice.

Conclusion

Although it is unpleasant to think about not being able to practice law due to incapacitation or death, it is important to the protection of client interest to think ahead and

plan for the potentiality of incapacitation or death. By thinking ahead and establishing a contingency plan, the practitioner can assist their family members and staff with a very difficult situation. Also, if the incapacitation is temporary, a contingency plan may enable the solo practitioner to return to their practice without the additional stressors of attempting to catch up.

Notes

¹ American Bar Association, Adopted by the house of Delegates, August 13-14, 2007; <http://www.abanet.org/leadership/2007/annual/>.

² NOBC and APRL members are frequently on the opposite sides of each other in lawyer discipline matters.

³ A full copy of the final report can be found at www.nobc.org/nobc-aprl.pdf.

⁴ Appendix 1 to the MRPC sets out the requirements for records which must be maintained for both trust and business accounts. Regular attention to bank accounts is required by the ethical rules.

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Providing Low Fee Family Law Services as a Solo Attorney: Reflections from the First Year

Mark Haase

One reason I decided to practice family law on my own was out of a desire to serve those unable to afford larger firm fees. By keeping overhead low, I could charge lower fees and help the “working man/woman”. I suspect many other solo/small firm attorneys had similar motivations. Of course, I also hoped to provide myself and my family with a comfortable source of income while maintaining some work-life balance.

After my first full calendar-year of practice, I feel I have achieved my goals. In fact, as anyone who practices family law soon discovers, I found that there is no

shortage of lower-income people with family law issues. I found this especially true with my Spanish language skills and an office in south central Minneapolis. Now I have decided I need to be more deliberate and organized about providing reduced-fee services. Finding clients in need has not been a problem, developing a sustainable income and maintaining balance will be unless I get things more under control. I hope that by briefly sharing some of my experiences and thoughts about how to improve my sliding-fee practice, I can help others with similar goals, especially those who may be thinking of “going solo”.

FIRST YEAR FIGURES

So far I have approached my fee-setting by just trying to ballpark what people can afford, and, I must confess, a strong desire just to get people in the door the first year. My unorganized sliding-fee approach resulted in an average of \$112 per hour, this resulted from a small amount of pro bono work, a couple of cases at \$55 per hour, a few at \$75 and \$95 per hour, and a number at various amounts all the way up to my top fee of \$165 per hour. Without being too specific, I'll just say that with about \$16,000 in expenses, I ended up with a net salary slightly more than that of a legal aid attorney. Not bad for the first year I guess, and my schedule was very manageable, but not yet where I want to be financially.

STILL ALTRUISTIC?

Before continuing I guess I should ask myself if providing low fee services is still really what I want to do. I can answer this with a qualified but enthusiastic, "Yes." I love working with people who are struggling financially. My lowest fee clients seem to be my favorite. I don't know if it comes from my own lower middle class background, a need to feel good about myself by helping "the less fortunate", or simply a love of diversity and simple people. Regardless of the reasons, I am committed to continuing to provide affordable services, but I am not willing to work for less than people can afford and my services are worth, I am not willing to sacrifice my health and my family to meet the inexhaustible need out there, and I do want to make a comfortable living. I should add that I think this is a very personal choice. I believe all attorneys should make some kind of contribution to the community, but providing reduced fee services may not be the way to do it for everyone.

IS THERE REALLY A NEED?

There are a number of pro bono and low fee programs out there already helping people, and I highly recommend working with them, especially if you do not want to develop some kind of systematic low fee system on your own. My quick research tells me that the programs available serve people with incomes from 125% (Volunteer Lawyers Network, for example), to as high as 250 % (Hennepin County Low Fee Family Law Project¹) of the federal poverty guidelines. For a family of four that equals \$26,500 and \$53,000, respectively. They also have various asset guidelines. Besides these income and asset guidelines, some programs have a wait of several months, an indication of the need out there. Some programs also only serve certain segments of the population, and some only take certain kinds of cases. One of my favorite cases has been a young father who makes minimum wage on a part-time basis, but because he was the Defendant on an OFP, he had difficulty finding any organizations to represent him.

Then there is also the question of need for people who do not meet these income and asset guidelines. Can a family of four making \$53,500 afford two lawyers at the going rate of \$200 per hour? The answer to this question is debatable, and often a difficult one to answer for individual cases. Often people will want a private attorney and are willing to borrow or get support from family to do so. Even those who meet low income guidelines may have other resources available. I took a case at \$55 per hour only to find out the spouse made over \$75,000 per year and had hired an attorney at \$200 plus per hour.

HOW TO DO IT?

Given my desire to provide low fee services and the need for them, how I can do it in a way that both ensures the need is genuine and also allows me to have a comfortable income without working myself to death. The following is my new strategy:

1. Develop a better knowledge of what is already available.

I think one of the best services I can provide is helping people find available services. I can not serve every needy client who calls. If I know the availability and criteria of services out there, I can competently direct people to them and not feel like I am just brushing them off. As I think about slimming down my low fee services, I plan to become more familiar with the services out there.² I may also shift some more of my pro-bono/low fee work to working in partnership with these organizations.

2. Develop an application and criteria for different fees.³

It is important to have an application for low fee work so clients see you are not just bargaining with them, and to help you assess need.⁴ Each attorney must ultimately decide what to charge, but I think it is easier to tell clients about it if you already have criteria in mind. Both of these strategies will signal to clients that you are serious about providing services at a rate they can afford, but that you are fair and thoughtful about how you do it.

3. Decide how many cases to have at given rates and develop a waiting list.

This is what will help me keep my work-life balance, and hopefully add to the bottom line. I need to decide exactly how

many cases I can have at any given rate at one time, and stick to it. Then I can tell clients, “I would love to take your case, and I know you may not be able to afford my rate of ___ but I already have __ cases at my reduced rate of ____ and can not take any more. Would you like me to put you on the waiting list?” Then they self-select as far as true need. Maybe they qualify and can find help elsewhere, or maybe they find a way to pay my higher rate. In the meantime I retain my sanity but continue to help people in need and maybe even get some more clients who will appreciate my fees more.⁵

I hope these reflections and strategies will help others in developing a system for providing accessible legal services. If we all recognize that not everyone out there can afford full family law legal fees, and each take a small part in providing or even helping people find services they can afford, many more families will get the support they often desperately need in resolving their disputes.

Notes

¹ The HCBA Low Fee Family Law Project requires attorneys to qualify under the Lawyer Referral and Information Service, generally two years of family law experience.

² A good resource for information about services available is: www.lawhelpmn.org

³ Just as with full-fee clients, determining that the case is a good fit for you is also vitally important with low-fee cases.

⁴ Brekke, Clyborne & Ribich, L.L.C. of Shakopee has developed such a form.

⁵ The idea for this system came from “Pro Bono Profile: Meet Joann Barten: How Pro Bono and Low Bono Can Make Your Practice More profitable”, Leslie K. Dellon, November/December 2006 Immigration Law Today.



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True Colors

Jen Schnabel & Jo Ann Ahles

“I divorce you,” declared to a wife three times in Egypt, is all that is necessary for a husband to be granted a divorce.¹ Ever evolving with the times, these statements need not be conveyed in person but can be sent via text message. Clearly family law attorneys in Egypt have an easy job in advising for dissolutions. The extent of dissolutions being that you need to ensure your client makes the declaration three times.

Unfortunately, for Americans seeking quick legal fixes, our citizens are faced with a more complex legal procedure with built in protection for parties. Despite this, Americans do enjoy many freedoms. The freedom that we have as United States citizens allows us the freedom to create very complex family lives. As attorneys, we have all encountered clients that take that freedom and run with it. The family nucleus has evolved way past a mom, dad, two and a half kids and a white picket fence.

This evolution has allowed for a barrage of unusual cases in the family law arena. As a solo or in a small firm, you may start to think “How do I keep ending up with these cases?” Rest assured that you are not alone. In the past year, our small firm has had its share of outlandish and eccentric cases.

The most frustrating cases tend to be when a client has watched an episode of *Boston Legal* or *Law and Order* and expect the legal process to work as it did in these shows. The law shows clients are often times surprised that their case cannot be completed with an hour. These clients are nearly as frustrating as the client who “googles” their way through their own “legal research.” Often times, these clients are armed with case law that would be well suited for family court in New Jersey but have little standing in Minnesota.

Being in a small firm, we need to keep up with larger firms as far as obtaining clients. In order to do this, we make the most of modern methods. While these methods are fruitful, they often times do not allow us to pre-screen our clients as much as we would like. Specifically, our office utilizes an online client search program in which potential clients post just a brief snippet (admittedly biased) of their legal situation. Analyzing these snippets, we are able to deduce if a potential case is present. From there, the potential clients meet with us during a standard intake meeting. It has quickly become apparent that potential clients tend to put forth their best appearances for these meetings and as soon

as the retainer is signed, their true colors quickly show.

We have found that many of these clients are hesitant to disclose information to their attorneys. There are a multitude of reasons why clients are not forthcoming with the information that we find to be vital. These reasons range from their lack of recognition of the importance of the information to their embarrassment about the situation to simple dishonesty.

Recently, we responded to what appeared to be a very straightforward posting. The potential client stated that she was a stay-at-home mom with two children who simply did not want to be married anymore. She had moved out of the marital home and was anxious to move forward with a divorce. During the initial intake, she stated that she was barely making ends meet and was having problems finding a job due to her lack of work experience. We mistakenly felt sorry for this client and decided that we would greatly reduce our normal retainer to an amount that was feasible for her and arranged a payment plan for her. Our first misstep was wearing our hearts on our sleeves. From that day forward, this case entered a definite downward spiral.

This client was anything but forthcoming with information. When asked about marital property, the response was often that she didn't handle the finances, which given her background was completely believable. Yet at the same time, she insisted she get half the property. The whole progress was dragged out. After finally getting the information gathered to proceed with the Petition and Summons, her husband dodged service repeatedly. Finally one day, the client called stating

that her husband was now anxious to settle as he was being sued. He accepted service and we began to draft the Marital Termination Agreement. At this point, we thought this dissolution was going to be relatively easy to complete. This opinion changed drastically when we heard on the news that her husband was being indicted by the federal government for major business indiscretions. We were frantic and panicked for our client. Once again, wearing our hearts on our sleeves made the assumption that our client was clueless as to her husband's actions. When we called her to inform her of the events, her reaction was to ask if we would advise her to move all of her husband's assets into the bank account of a close friend. In our opinion, this is not necessarily be the reaction of a clueless person. The client failed to see how this action against her husband would have any impact on their pending divorce. She insisted that she get half of the assets of the business and completely disregarded the fact that the federal government had frozen the any and all assets. We can honestly say that we were not sad to bid farewell to this case.

Having firmly removed our hearts from our sleeves, we acknowledge that knowledge and information are key to any legal matter. Never can too many questions be asked of clients. From the zany client situations, I have realized that many clients feel that their particular situation is so normal that they do not have to share the details with you. Really, why would you want to know that the real reason your client is anxious to get her divorce is because she is pregnant with another man's baby. And truly, it is none of your business that she is pregnant in the first place. Not only do you need to obtain information from your client on any other legal actions,

you also want to get the motivation for people's goals. Clients often state a goal that on its face seems reasonable but the real motivating factor is less than innocent. Perhaps, a client mentions that they want X dollars from a savings account. As an attorney, you may initially think that the client feels they are entitled to the money due to their contributions to the account. It is unlikely that you would assume that they feel they deserve that money as a payback for the parties' wedding expenses from years earlier. In a sense, this particular client truly wanted to be paid for the years of marriage. Clients often want to take control of the financial aspects of their marriage as a way to "stick it to" their ex-spouse.

While information is a powerful tool, as attorneys we need to accept that we cannot fix all problems for our clients.

A potential client came to our office one day, desperately seeking assistance in a child custody case. She had filed the proper documents herself and upon review of said documents, we were more than impressed. Though she was confident in her ability to draft the documents, she was afraid going to court herself. In her documents she made some very serious allegations of drug abuse by the child's father thus she felt the father should not have joint physical or legal custody as was the current arrangement. The opposing party was able to obtain counsel shortly after our client filed. The answer served to shed a whole new light on our client. Contained in the answer were allegations about our client's home and whether the home was safe for the couple's 2 year old child. Included in these allegations were such gems as: the toilet was sourced with hot water, a majority of the furniture was constructed from old

cable spools, scrap metal was strewn about the place and there was a hole cut in the floor for easy access to electrical wiring. Needless to say, we were utterly shocked. We called our client assuming that these allegations were completely unfounded. She was able to rationalize, mainly to herself, every allegation. The toilet was just a temporary error in plumbing; the furniture had been customized with cutout hearts for a pseudo-country feel, she thought it was cute; the scrap metal had been collected to construct figurines of religious icons; the hole was not an issue because she made sure the child knew not to move the piece of plywood covering it up. We educated the client on making a safe environment for her child and referred her to agencies that could help with parenting issues.

You cannot allow yourself to get bogged down in the lives and crises of your clients. Despite the sometimes sad and tragic circumstances that people can become involved in and the compassion you have for them, not every case has merit. For your own piece of mind, an attorney must distinguish between issues in a family law matter and issues for support agencies.

In the midst of the insanity of your clients, you need to remember that no one will be able to advance in the legal process if you do not maintain your own sanity. Don't try to solve every problem of your client yourself. As members of small firms or as a solo practitioner, you need to be able to outsource the non-legal issues of your client to appropriate agencies and third parties.

In the event that your clients' situations take a toll or become burden on you,

remember that there are agencies and resources that can help you as well.²

Above all, remember to network. Having someone to talk to, who can relate, makes each and every outlandish client that much easier to deal with.

Perhaps family law attorneys should adopt the motto of many emergency room doctors, “Your worse day is our best.” We need to take our clients’ strife in stride and so we can produce the best legal outcome for our clients.

Notes

¹ Knickmeyer, Ellen. “Egyptian officials debate divorce by text message.” Washington Post 26 January 2008. Online. Internet. 26 January 2008. Available <http://www.startribune.com/world/14435271>.

² Lawyers Concerned for Lawyers. <http://www.mnlcl.org>. 1-800-367-3271.

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How to Get Paid for Your Work

Dennis Korman

Retainer

The first thing you have to accept is the concept that it is okay to get paid for your services. Volunteer work is fine, but you’re entitled to get paid for the rest of the legal work you do. The best way to get paid is to get a retainer. Make sure that the amount of retainer is sufficient to cover the scope of the work you anticipate doing for the client.

I think it’s part of my job to tell clients where they can obtain money to pay me a retainer. During my initial conference with a potential divorce client I tell them that they can obtain a retainer from any of the following sources:

1. Marital bank accounts
2. A client may sell or mortgage any of her/his own non marital property
3. A client may sell or mortgage any marital property
4. A client may borrow from friends, relatives, credit card advance, loan from bank, credit union, etc.

It is important to have a written retainer agreement. You should specify whether the retainer is refundable or not. You should also make clear that when the original retainer is exhausted the client needs to deposit an additional retainer. You should specify that you retain the right

to withdraw from further representation if the additional retainer is not deposited. Sample language from my form:

"Should the fee arrangement herein contained not be carried out by you, we have the right to refuse to proceed further in your behalf and to withdraw as counsel.

In the event that we withdraw as counsel, you agree that we have the right to charge you a reasonable charge for copying your files and documents in the event that you request delivery of such files and documents.

We also reserve the right to withdraw if you violate court orders, persistently fail to follow our advice, are persistently argumentative with us or otherwise conduct yourself inappropriately during this proceeding."

You must then actually withdraw if the client fails to deposit an additional retainer on request. If you don't, you will be left with an account receivable that you often won't be able to collect later. You are allowed to withdraw under those circumstances as long as you do not withdraw at a point where the client's case would be prejudiced; i.e., a week before the case is set for trial, or a couple of days prior to a contested motion hearing. If you withdraw when some formal court action is imminent, you need to get a continuance, either with consent of opposing counsel or on motion to the Court.

It is tough to convince yourself to withdraw. It is so much easier, especially with nice clients, to convince yourself that you will somehow get paid. You've got to somehow get yourself hardened to the point that when you realize that you are not likely to get paid, you need to withdraw. You can do so nicely, so that you don't make the client angry. But, you need to learn to take the step of withdrawing when the retainer is gone!

Where the divorce case warrants, you should try to assist the client in paying fees by seeking an award of temporary fees at the temporary hearing. If you are representing a client that has little or no income and the other party has sufficient income, the court can often be convinced to order that temporary attorney fees get paid.

Billing

I find that clients are much happier if they receive regular detailed billing statements. We religiously send a statement at the end of each month. It shows all work done for the month just ended and itemizes the charges for the work that was done. Our statements also show the amount of retainer used during the month and the amount of retainer available to be used in the future. To do this, get yourself some good time and billing software. Get software that has all the accounting systems that you need – general ledger, etc. Make sure your accountant approves the system before you buy it. There are a number of good ones out there – I use Tussman and like it. Also Tabs3, PCLaw and others are available. Mark your time down as you go – otherwise, you'll forget a lot of your time. And, just in case you missed what I just said, bill your clients at the end of each month without fail.

Accessing retirement funds to pay fees

One good source for payment of attorney fees is deferred compensation plans through employment of either party. The court can frequently be convinced to order that funds be rolled from these types of accounts to fund litigation (assuming that the other side won't voluntarily agree to the use of these types of accounts). The money needs to be rolled out using a QDRO and has to be rolled to the non-participant spouse. You should consider rolling the amount you need for attorney fees and enough to cover the expected tax due on the money that is rolled out. To ensure that the non-participant spouse actually pays you the money that gets rolled out, there should be a separate court order that details exactly what the non-participant spouse must do with the money when she/he receives it. On request, I can provide you with a sample order that I have used for this purpose in the past. Some sample language might read like this:

"The sum of \$_____ shall be rolled from the 401K account of (Petitioner or Respondent) and paid to (Respondent or Petitioner whichever is the non participant spouse). Immediately upon receipt of the funds (non participant spouse) shall deliver the funds to (Petitioner's or respondent's) attorney who shall deposit the funds in her/his trust account.

From the funds deposited, the attorney shall then divide the funds as follows: (Insert the details as to how the funds are to be divided and used for the parties' fees). The sum of \$_____ shall be retained in the trust account

and used to pay the taxes that will be due on the funds rolled from the 401K account of (petitioner or respondent). Any additional tax that might be due shall be divided equally between the parties. Any excess amounts remaining after payment of the tax due shall be divided equally between the parties."

It's important to accurately estimate the amount of tax that will be due as a result of the roll and the services of a competent accountant are recommended in making the estimate of potential tax due.

You also need to know that a QDRO can be issued by the court at any stage in the dissolution process and that the court can issue several QDRO's affecting the same qualified plan. There is nothing wrong with rolling money out of a qualified plan several times if the situation warrants.

I think it is important to work with opposing counsel to see that both attorneys get paid their reasonable fees. It is much easier to get paid when both attorneys work together on the issue. The only time I won't work with the other attorney to see that both get paid is when I am convinced that the other attorney is milking the case to build up unreasonable fees. But, as an example, if you want to get an additional retainer out of one of the spouse's deferred compensation accounts, it is much easier to accomplish if both attorneys are cooperating with each other to see that both lawyers get paid. Then you won't have to do a contested motion on the issue with the attendant additional costs and the risk that the court might say "no" to you.

Collecting accounts receivable

Let's assume, despite all the advice above, you've gotten yourself to the point where you have an account receivable. How do you collect it?

The best approach is to do a good enough job for the client so that the client feels good about you and works to pay you. I always tell clients that I'll work with them by accepting regular monthly payments in whatever reasonable amount the client's budget allows. If you propose something reasonable like this, most clients will work hard to pay off your account receivable.

Sometimes when I have a large account receivable that I have significant doubt about collecting, I'll offer the client a discount at the end if they pay regularly. For example, on a \$5,000 account, if the client pays regular monthly payments I'll forgive the last \$1,000. I look at it this way – I'd rather lose a doubtful \$1,000 than the entire doubtful \$5,000!

Another approach to collecting receivables is to send the delinquent ones to a collection agency. Before I do that, I'll send several dun letters. If those don't produce a positive response, off to the agency. Be aware, though, of what a collection agency can, and cannot, do for you. They can make people worry about their credit rating because good agencies report debts to one or more of the national credit rating agencies. This is probably the biggest leverage an agency has to induce a debtor to pay. With proper authorization from you, an agency can sue out bad accounts. More about what suing someone will do for you later in this article. However, a collection agency can't work miracles. They are subject to the same restrictions you face in trying to force money out of someone who doesn't want to pay you.

Attorney's liens

The statute allows an attorney a lien against any money or property involved in the action the attorney has handled for a client. M.S. 481.13. If you intend to claim and enforce your lien against real estate of the client, review carefully Subdivisions 2 and 3 for the procedure you must follow. Be aware that there is a one year limitation dating from the date of filing of notice of intention to claim a lien. There is also a prohibition against enforcing any such lien against a client's homestead under the general exemption laws, unless the client has knowingly waived the exemption in proper written form. Minn. Stats. Chapter 510. During the pendency of the divorce your ability to get the client to waive the homestead exemption to give you security for future payment of fees is blocked by a decision of the Minnesota Court of Appeals. Where the homestead is in the names of both parties, any waiver of the homestead exemption must be signed by both parties. Minn. Stat. § 418.13, subs. 2 and 3; *Peterson v. Hinz*, 605 N.W.2d 414 (Minn. App. 2000); "Repeal of Homestead Lien Ethics Opinion", Bench and Bar, May/June 2003; *Peterson v. Lenz*, (Minn. App. 2004) A04-374. I'd suggest you read the original Hennepin County District Court Order which resulted in the *Peterson v. Hinz* appeal case – the District Court opinion is much more informative than the appellate opinion on the homestead exemption issue.

I would read the preceding materials very carefully if the homestead were only in the name of your client and you planned to get a homestead exemption waiver and take a voluntary lien **while the dissolution was still pending** – the spouse not on the title probably still has a homestead interest which would require a written waiver by that spouse also. Bottom line is, what are the chances

that the opposing party will sign a waiver so that you, the attorney he/she has learned to hate, will get paid?

After the dissolution is completed you may be able to foreclose an attorney's lien against your client's own homestead if his/ her equity in the homestead exceeds \$300,000. Any person may claim as exempt equity in a homestead up to the amount of \$300,000. Minn. Stat. §510.02. Presumably any equity over \$300,000 would be subject to foreclosure for your statutory lien under Minn. Stat. §481.13. There are different provisions for agricultural property with a higher exemption amount (currently \$750,000). There is also an area limitation for homesteads, currently 160 acres.

In my opinion an attorney's lien with a homestead exemption waiver signed by your client is valid if the client is awarded the homestead property and the lien and waiver are given after the divorce is final. The waiver must be done with informed consent – you must make sure that your client understands all of the homestead exemption rights before a waiver will be valid. Obviously, that waiver should be written. So if you have a large receivable and the divorce is completed, you might suggest to your client that you'll accept reasonable monthly payments from your client if, in exchange, your client grants you a mortgage against his/her homestead and a waiver of the homestead exemption. I would do a mortgage (with promissory note) instead of the statutory attorney's lien because the mortgage wouldn't have the one year limitation for foreclosure like the statutory attorney's lien does.

If your client is awarded **non homestead** real property in the dissolution, the statute gives you a lien and you can enforce collection of your account receivable against this asset without a waiver of any sort by your client. The same is true for other assets awarded to

your client in the dissolution – provided the asset is not one that is protected from creditors (qualified retirement plans, for example) and there is actually equity in the asset, you can enforce your statutory lien.

If you intend to pursue collection of your fees using an attorney's lien you need to read the applicable statute carefully. Failure to follow the correct procedure will invalidate your lien and make collection of your fees dubious at best.

Security interests

I have taken voluntary security interests in cars, boats, guns and the like during the divorce process where a client had no access to a retainer. On those items, where titled in your client's name, you should be able to perfect a security interest. The only question that occurs to me is what would happen if you take a security interest in a motor vehicle titled in your client's name, for instance, and then the vehicle is awarded to the other party? Sorry, I don't have the answer!

When I take the step of taking a security interest, I hire someone who knows what they're doing to prepare the documents and handle the filing and other perfection details for me. I'm a family law lawyer, not a debtor/creditor lawyer – I recognize my limitations and hire someone to do the work for me. See my following paragraph regarding the cost of hiring someone. The same is true if I want to actually foreclose a lien against property, whether it be real estate or personal property – I hire an expert to handle the legal work for me.

If you are smart you will have in your written retainer agreement a provision that awards reasonable attorney fees if you have to take any legal action to collect your fees from

your client. The language should state that fees are payable regardless of whether you do it, one of your firm members does it or you hire some outside lawyer to do the legal work to collect. Sample language:

"In the event that it shall become necessary for our law firm to undertake collection proceedings due to nonpayment of such billing(s), you agree to pay all costs of collection, including reasonable attorney's fees. If any attorney, whether or not associated with this office, spends time in the collection process, you agree to pay \$_____ per hour for the time spent by such attorney."

Judgments

What if your client is awarded attorney fees to be paid by the other side and, surprise, surprise the other party doesn't pay? If your client wants to pay you to collect them (don't do it free – it's their divorce, not yours, remember), many of the same remedies are available. You can reduce the order for fees to judgment by filing an Affidavit of Identification, Non Military Status and Costs and Disbursements along with a request that the Court Administrator file money judgment against the non paying party. When the Judgment is entered, you can then serve a levy of execution upon an employer, upon a bank or credit union or upon any party who owes money to the non paying party. Once again, when it gets to that point, unless you really know the intricacies of enforcing judgments it's wise to have an expert assisting you. I will often call one of my former partners who does this kind of thing to either hire him or to solicit free (hopefully) advice.

The above advice about entering judgment against a non paying opposing party, also applies to collecting receivables owed to you by your own clients. You can sue them, in small claims court if the amount is small enough, obtain judgment and enforce it against the same sources of funds described in the preceding paragraph. You can also docket the judgment and levy execution against your client's interest in non homestead real estate. Docketing the judgment in any county in which the client has an interest in real estate will often eventually pay off because lending institutions will often require the client to pay off the judgment in order to mortgage or remortgage the property.

Concluding remarks

This is not, by any means, an exhaustive list of possible ways to make sure you get paid. I'm sure expert collections attorneys would have other suggestions. But, at the risk of being repetitive, the best way to get paid is to get money in advance. Retainer, retainer, retainer! And, replenish the retainer, replenish the retainer, etc.! Got that?

Dennis Korman is a sole practitioner in Cloquet, Minnesota. He did his undergrad studies at St. John's University where he also played football for John Gagliardi. He received his J.D. from the University of Minnesota in 1971. Mr. Korman has restricted his practice to family law work for many years. He has previously served on the Minnesota Board of Professional Responsibility and many local committees and boards. He also enjoys volunteering for local sports activities for youth. Part of this article was taken from materials Mr. Korman prepared in connection with a seminar presentation on "Running an Efficient Law Practice" for Minnesota CLE.



How to Keep Your Sanity While Practicing Family Law

Jack Setterlund

There are only two ways for a family law lawyer to keep his or her sanity while practicing family law: (1) stop practicing family law and become what you wanted to be when you were ten years old, i.e. a professional baseball player, ballet dancer, president, etc., or (2) follow religiously the suggestions below.

Of course, you could choose the first option--follow your childhood dream and run away to join the circus--but then you would give up the benefits of practicing family law and, believe it or not, there are some. The most tangible benefit is the knowledge that you are actually helping people during, for most of them, the worst experience of their life. Assisting clients during the darkest period of their life is something that every family lawyer should be proud of, even if the client does not appreciate or understand what you have done for them.

Divorce is an emotional process. If you aren't comfortable dealing with people in trauma, then it really is time to think about joining the circus. It is not, however, your job to be their therapist, and if you believe they would benefit by working with a therapist, then recommend one to them.

A friend of mine is the chief public defender for northern Minnesota. Prior to becoming a full-time criminal law public defender, he also practiced family law. His statement about the two respective fields is telling. He says: "Handling criminal law cases is working with bad people at their best. Handling divorce cases

is working with good people at their worst." In his experience, the criminal defendants would "clean up their act" in order to put the best possible spin on their situation--new haircut, suit and tie in court, etc. On the other hand, the divorce clients, who are basically good people in the throes of emotional trauma, would end up making bad decisions laced with anger, spite, and frustration. They felt victimized by their spouse, the system, and life in general.

Accordingly, dealing with even your own family law clients can be difficult, much less dealing with opposing counsel. I have found the major difficulties in the practice that lead you down the path of insanity are:

- a. **It's an emotional process.** What can you do about that? Not much, other than to recognize it for what it is and be empathetic with your clients. However, it is equally as important to be objective. When your client is unreasonable and out of line in either their demands or their conduct, part of your job is to educate your client about the law and let them know their conduct is not helping them.
- b. **It is not "results oriented."** Your client is not likely to be "happy" when the case is done. This isn't like a personal injury case where you have successfully "won" and your client walks away with a million dollars. In most cases, one half of the marital couple does not want the divorce to happen in the first place, and to add insult to injury, they have to hire an attorney to represent them.

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- c. **Client expectations are often unrealistic and unreasonable.** Your client wonders if you are on his or her side when you tell him that his wife is entitled to one half of the marital share of his pension, or when you tell her that the fact that her husband ran off with his secretary isn't relevant to the case, and the judge won't punish him for it. The client's sense of "fair" and the law's sense of "fair" rarely intercept. This makes your job all the more difficult since you need to prepare your client for the likely result.

TIPS TO KEEP YOU SANE

I do not claim to be an expert in family law, psychology, "coaching," or anything else (other than my chili recipe, which my 92-year-old mother-in-law loves). I have, however, made a lot of mistakes in my 36 years of practicing family law from which I have learned valuable lessons. I have also spoken to many other family law attorneys about their insights and experiences. This wealth of information has encouraged me to offer the following tidbits of information to help you keep your sanity while still practicing family law. Take some time to write down everything you do not like about your practice and then think about anything and everything you could do to change that. Hopefully the following suggestions will help you:

1. Keep your own life in balance.

This is probably the single most important goal for any of us. In order to keep my life in balance, I schedule in my calendar 1½ hours around the noon hour to walk up to the YMCA and exercise. You don't need to be a marathon runner, but your mind, your body, and your spirit need balance. Even if your exercise consists of a walk every day, take

that break. You come back to your desk refreshed and the insurmountable problem you had at 11:00 miraculously becomes much more workable at 1:30 when you've stepped away from it for a while. Exercise isn't for you? Try yoga. Read a book. Lawyers telling me that they don't have "time" to get balance in their lives are kidding themselves. Do you have too many deadlines and you are just under stress all the time because you have too much work? Then start turning work down! I know that every lawyer has the constant worry that they are going to run out of work. When I used to express that to my wife, her response was always "Great! Now you can take more time off!"

We are happier and operate at peak performance when we have taken time for work, pleasure, relaxation, family, and the other important things in our lives. If that means we will end up with less billable hours and make less money, so what? I have seen many people in my career who have made a decision to get a cheaper house, an older car, and other money-saving decisions, which has resulted in them becoming much happier people.

2. Take vacations.

When was the last time you were out of your office for two straight weeks in a row? How about three straight weeks in a row? Lawyers are notoriously poor at scheduling and setting aside vacation time for themselves. Your family deserves to spend vacation time with you, and if you do not have a family, you deserve to spend vacation time with you. Again, "getting away" allows us to become re-energized and ready to jump back on the treadmill. I have always religiously scheduled vacation time and at least once a year I make sure that vacation time consists of two straight

weeks out of my office. The judges do it— why can't you? Believe it or not, the system goes forward and life goes on even if we are not there.

The key is to prepare your clients, fellow attorneys, and the Court. If I am going to be out of my office for a block of time, I plan in advance to make sure that no hearings will be scheduled during my anticipated vacation. I let my clients know when I will be out of my office and I give them the names of a couple of my fellow attorneys who have graciously agreed to handle any “emergencies” that come up in my absence. This rarely happens because it is surprising how the client's perceived “emergency” can wait until your return. A couple of years ago, my wife and I planned a trip to New Zealand to visit one of our children who was living there. I was out of my office for one month, and it was amazing how smoothly it went. I was very upfront with my clients and explained that I would be leaving. I encouraged any of them who were concerned about my unavailability to retain other counsel. None of them did. I informed new clients beginning three months before my trip that I would be out of my office for a period of time, but that I would have attorney friends available to answer any questions or deal with any emergencies they might have. Since the dissolution process moves slowly anyway, my absence from the office had little or no bearing on the speed with which my client's cases were completed. When I returned, the gracious attorneys who had agreed to be “on-call” reported only two contacts from my clients, only one of which really qualified as a call in which the attorney needed to do something. When I spoke with other attorneys prior to going to New Zealand, a number of them were simply convinced that it could not be done. When I asked them why, they really were not able to provide a description of any potential

problems that did not have an answer. Did I have a month where I made absolutely no money? Yes. Did I have a month in New Zealand that was one of the peak experiences of my life? Yes.

3. **Fire your bad clients.**

At last year's Family Law Institute, one of the speakers, Larry Rice of Memphis, Tennessee, told every family lawyer in the audience that if he or she gained nothing from his presentation, they should at least go back to work and fire their worst client. I agree with him wholeheartedly! In the early years of my career, I was afraid to do so and I still prefer when a client fires me rather than me having to fire the client. But at times it simply becomes necessary for your own sanity to jettison those clients who are uncooperative, unwilling to listen to you, argumentative, and unreasonable. Difficult clients are one of the primary frustrations of practicing family law, so why not get rid of them? You don't need to represent every person who comes through the door. Be especially wary of those clients who want to hire you because their present lawyer “isn't doing the job.” In rare circumstances, the client may have a legitimate complaint, but more likely than not, the client has unreasonable expectations and when those expectations aren't met, naturally blames his or her attorney.

One way to minimize having to fire bad clients is to be very selective relative to the clients whose cases you agree to accept. Certainly when we are all starting out we want every piece of work that comes through the door, but we quickly learn that for our own mental health, we really need to be selective regarding our choice of clients. With experience, you can get a pretty good “feel” for the client during the initial

interview. If your instincts tell you something, listen to them. It is the bad clients that cause us the frustration that lead us to insanity. Those are the cases that end up turning into large accounts receivable and I haven't met one lawyer yet who doesn't feel his or her accounts receivable are high enough already.

4. **Have reasonable expectations.**

In order to keep your sanity while practicing family law, not only does your client need to have reasonable expectations, but you also need to have reasonable expectations. First of all, you need reasonable expectations about what you can accomplish for your client. You can't take away the pain, the hurt, the frustration, or the anger. You can't deliver to them an ultimate result that they may think is "fair" but that isn't justified under the facts or under the law. I always explained to my clients that after spending nine months or a year, thousands of dollars in legal fees, and the emotional frustration of a trial, a judge will order what is fair and reasonable under the law. Why not do the same thing at the beginning of the case when the parties and their attorneys can have total control over the outcome? This will save thousands of dollars in legal fees and tremendous amounts of emotional energy.

Secondly, you need to have reasonable expectations about what appreciation you will receive from your clients. If you are going to practice family law, you need to have a deeper sense and understanding of the value of what you are doing, since you may not receive the thanks and gratitude from your client that you deserve. Very few clients are happy with the divorce process. In my own experience, I remember representing a woman married to a high-income individual and it was clear

from the beginning that she would never move from her perceived position as the "victim." After a long and contentious trial over the issue of spousal maintenance, for which I had given her realistic expectations which she refused to accept, the decision finally came forth from the judge. I remember opening the envelope in anticipation and being thrilled with the spousal maintenance award. At that time, I think it was the highest or one of the highest awards in our area. I knew that her accountant had testified well, my client had testified well, my cross-examination had gone in perfectly, and I had done an excellent job representing her. I called the client and informed her of her maintenance award, which was well above what I considered to be a reasonable number in her case. Her response to me was, "The judge doesn't expect me to live on *that*, does he?!" She then muttered, "Well, Jack, I guess you lost the case." I knew I wasn't going to be getting an annual Christmas card from her (or any referrals!)

I contrast that story with the clients who have sent me thank-you notes after their case has been completed, thanking me for my work on their behalf. I still get an annual Christmas card from a man who I represented in a difficult custody case about 20 years ago when his son was two years old. This year's card showed his son, now an adult, over in England.

Although it is wonderful to have a "happy client" at the end of a divorce case, don't count on it. You need to have reasonable expectations about how much positive feedback you will get from your clients, because if you practice law in this area, that positive feedback from a client is sometimes sparse.

5. Get paid.

One way we lose our sanity as family law attorneys is because we become so frustrated after having busted our butts for our clients and they don't seem to want to pay us. We feel unappreciated and it feels like a slap in the face. One way to avoid this is to be very selective of your client, as I mentioned above. The other way is to make sure you get paid for your hard work. I used to have a lot more unpaid accounts receivable than I do now after 36 years. I still do pro bono work and I still do work at a reduced rate, and I think all lawyers should, but if I need a new roof or need my car fixed, the provider of this service expects to get paid. So here is what I have learned over the years:

a. **Get a retainer.** Don't accept the case without a retainer. The hungrier you are, the lower the retainer can be, but if you don't get a retainer, you are going to get an account receivable, and once the divorce is done, no one wants to pay for a "dead horse."

b. **When the retainer has been used, get another retainer.** If you've had to put a lot of time into the case due to the difficulty of the case, the difficulty of the client, or the difficulty of the other spouse, it's not your fault. My clients know that the fee is based entirely on the time involved, and they get billed monthly. By receiving a bill monthly, which is then paid from their retainer, they are kept up to date on the financial status of their case. They know as well as you do when a case becomes difficult and time consuming. Every lawyer has had the experience of telling a client that the lawyer will need to withdraw because a client won't bring in an initial retainer or a secondary retainer, and miraculously, three days later the retainer appears. I still agree in some instances to take monthly payments after the initial retainer is gone when I feel it is clearly justified

and I have a reasonable client, but in most cases, good practice dictates that a second retainer be received or some other security be provided to make sure your bill gets paid. An excellent family law attorney on the Iron Range always gives this answer to clients who say they don't have the money to pay for his services: "I can't solve your financial problems by making them my financial problems." How true!

CONCLUSION

Being a lawyer is truly an honorable profession. Lawyer jokes notwithstanding, it is the lawyers in a society who have by and large been responsible for ensuring that fairness and justice be provided to all citizens. It is an honor for us to be a part of that calling. Those of us who work in the difficult area of family law can be especially proud of our efforts because we deal with people in their worst time of crisis. I believe that helping individuals through the divorce process is much more satisfying than helping a large corporation with its tax problems. If you agree, pat yourself on the back since your clients may not do it enough. Keep your life and your law practice in balance and make whatever changes you need to in order to accomplish that goal. You will be happy you did.

Jack Setterlund has practiced family law in the Duluth area for 36 years. A graduate of Gustavus Adolphus College and the University of Minnesota Law School, he has been a frequent CLE lecturer. Although he has been selected for several years running as a "Super Lawyer" and has also taught for many years at the Family Law Institute CLE, he indicates that there is a difference of opinion among many people as to whether or not, after 36 years of practice, he has continued to maintain his sanity.

Marketing Basics for the Small Firm and Solo Practitioner

Brian Huffman

"Success usually comes to those who are too busy to be looking for it."

- Henry David Thoreau

You have already proven your success in marketing by reading this article. Marketing should be a priority of each and every attorney. Never let up. Always keep your marketing alive so you always attract new clients.

Most lawyers left law school without any knowledge of marketing or even a glimmer of the need to market their services. It's true that the practice of law is sometimes as much a business and often more than the cases and skills we learned in law school. Most of us have never owned or even worked for a small business before and therefore were never prepared to market our own business.

Many of our colleagues find reasons not to market (lack of knowledge, time or money or need). Those who don't market can't see the forest for the trees. It's a basic fact you have plenty of time to market when you have no clients. The reason you market is to bring in the clients (and hence the money) – it's an investment you make that, if planned and executed properly, will pay off.

For ease of examining this topic I shall divide marketing into three categories: Free Systems, Low Cost Approaches and Higher Cost Methods. I do not arbitrarily select expense as a way of dividing marketing for I believe it is cost more than time that prohibits effective marketing. I could easily spend an entire article on each of

these categories and on their subgroups but instead my goal is to give you an overview and some suggestions so you can develop your own personal marketing plan.

Free Systems

- Networking – friends, family, the neighbor (use those business cards). This should be each lawyer's basic everyday approach to marketing. Make sure you keep in touch with all those you see. Let them know about your new projects, your successes, even your tribulations. Hand your business card to each and every person you make contact with.
- Client Referral – Always ask your clients for their referral business and remember to keep their businesses in mind if you are able to reciprocate a referral. We all know the power of a happy client. But sometimes we just forget to ask for their business. Don't assume they will send others to you.
- Lawyer Referral – Just like you, other people are looking for referrals for their own business. Whenever you meet someone, ask who would make a good referral for them. Then refer someone if you have the right candidate. The best way to demonstrate that you care about this person's wellbeing is to help them first. Give first and without expectation and don't keep track of quid pro quo.

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- Bar Association/Organizational Referral – Get your name and address out there. Let everyone know what you do and how to find you. Become active in your local bar association and in the sections you practice. MSBA has a referral service. Join and get listed.
 - Publish Articles – BLOG, newspaper, trade journal. Find a venue for your knowledge. Do it frequently and update the world on what’s new in your practice area. The goal is to be the go-to person in your area of practice. Find the proper place for your article with the right readers and make it informative and interesting. Make them come back for more. Perhaps author a column in a magazine or newspaper.
 - Speaking Opportunities – Once you know your area of law well enough share the knowledge with your colleagues and the public. Be a presenter on forums, give informative CLEs, and locate opportunities to speak to the public, etc.
 - Listservs – Join various bulletin boards, message discussion boards and listservs in the different areas of law you practice. Not only is it a good way to keep up to date on the law and ask and answer questions of colleagues but it is a way to be seen and get known.
 - Newsletters – Produce a newsletter and mail/e-mail it periodically. Keep it short and interesting.
 - Internet Referral (general attorney or practice-specific) – There are websites designed to be found when people are searching on the Internet. Sites such as *FindLaw.com* and *Lawyers.com* are good examples of paid-for advertising on the Internet. For a monthly these websites can send people to your website or a biography on your firm.
 - Birthday/Holiday Cards – A personal and rather inexpensive method of marketing is to keep a database of client birthdates and send them birthday cards. It’s a nice personal touch and lets the client know you are still thinking of them on their special day. Holidays can merit a card as well.

Low Cost Approaches

- Website Presence – Build a website that is informative, user-friendly and that stands out from the crowd. But some thought into this. Don’t use cookie-cutter pictures of Minneapolis or the scales of justice. Do something original. Update the information and keep it fresh. Hire out a web design firm unless you have the time and knowledge to do the work.
- E-mail – Make use of e-mail to send blasts to clients, family and friends. Keep your contacts updated on recent activities in your office and in the practice you are in. Harvest e-mail addresses from potential clients who visit your webpage.
- Website Optimization – There are methods (largely unknown to the casual Internet user) where certain websites can be more readily found when searched on website search engines like Google. These methods require effective coding and placement of key words on each page of your website. You can also pay a nominal fee to have web searchers find your page versus someone else’s when using certain keywords. Think of it like a bidding war for clients searching for certain keywords like “personal injury” and “DUI”.

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- Send a Free Fact Kit – Develop a free fact kit to send your marketing message to prospective clients. This kit allows lawyers to put their message into prospects' hands when they first think about their problem and want to learn about solutions. When possible clients discover that you offer free information, they call your office and request the fact kit. This is a variation of offering the same fact kit through your letters, advertising, publicity, newsletters and Internet sites.¹

Higher Cost Methods

- Radio Advertising – When you are ready to spend the big bucks and want more exposure the radio is a good place to turn. Be prepared to study the demographics and audience of the station you choose. Be sure to develop a plan with the radio staff. Find a radio personality to voice your ad and develop a rapport with that individual. Become known and become a minor star. If possible, host a radio program and dispense your knowledge and become sought after.
 - Print Advertising (yellow pages, newspapers/magazines) – The tried and true of advertising. Some find this useful; others swear it never works. Again, study the publication and make sure your service and area of law makes sense for that publication. Find a way to stick out and be seen. Be original and creative.
 - Hire a Marketing Coach or Firm – If you want a professional to help you market your firm and practice, hire one. There are marketing firms and coaches who help you think out a strategy and the best methods to accomplish the goal as a package deal. The firms will even do all the work for you. Be prepared to pay for this service. If your practice is successful and you don't have any time to market then this might make sense if you are looking to expand your practice to take on more clients.
- In general, regardless of the marketing path you choose and the components you utilize, please keep in mind these general principles:
- Branding – Develop a brand name and look. Utilize this on your stationary, business cards, website, newsletters and anything else you produce and utilize in your marketing plan. Symbols are powerful and reducing your practice to a symbol may be ideal.
 - Develop a Niche and Be Known as an Expert in Your Area – We can't know everything and most clients realize this. They want their lawyer to know and be good in the area they do practice in. If your area is permanent spousal maintenance then know all the recent case law and intricacies of that area of the law. Wow your clients and colleagues with your extensive knowledge but refer all cases regarding other areas (e.g. personal injury or immigration) to other lawyers who know those areas as well as you know your own niche.
 - Remain Positive and Informative – At all times maintain a positive and informative stance with new clients and in your marketing strategies. Negative advertising never pays off. Adopt an informative approach to marketing instead of viewing your task as garden-variety sales. You need not be a salesperson. You have the information people want and they will pay you for it if you are able to help them. Lawyers are in the service profession above all else.

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- Think Outside the Box – Be prepared to embody a creative and novel approach in your marketing. People think lawyers are stuffy, aggressive, arrogant and nasty. Make them realize this is not the case. Take off the suit, hide the law books, smile and tell them you are a person who cares and wants to help them. Make the practice as fun and interesting for the client as possible and enjoy your work more. It will pay off in the end.

These are some tools and tips every lawyer, from the solo practitioner to the partner in a large firm, can use in their everyday practice to increase the marketing of their service. Put some or all to use and I sincerely hope the seeds you sow reap a handsome and fruitful outcome.

Notes

¹ Ryder, Trey. “Marketing Secrets of Superstar Lawyers by Trey Ryder” < <http://www.treyryder.com/superstar.asp>>.

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QDRO's From a Benefits Attorney's Perspective: Tips on Navigating the Process

Scott Becker

Introduction

Qualified retirement plans such as 401(k)'s and profit sharing plans now comprise over \$7 trillion of assets, making them one of the most financially valuable assets in a marital estate when settling a divorce. Yet, one of the more annoying and even tormenting chores for a family lawyer in a divorce setting is completing the division of qualified plan assets through a Qualified Domestic

Relations Order, commonly called a QDRO. Often the QDRO process is seen as a confusing and burdensome trip through a maze of rules and laws that only become more confusing as the journey runs its course.

QDRO's, as defined in Section 414(p) of the Internal Revenue Code (IRC) and Section 206(d)(3) of the Employee Retirement Income Security Act (ERISA), are required when participants assign part

of the benefits available from a retirement plan to other parties. Usually this occurs in a divorce, and since benefits in an ERISA plan are not normally assignable, special provisions are required, as detailed by the IRC and ERISA. In its most basic form, a QDRO is a court order that divides qualified retirement plan benefits between a participant in the plan and an alternate payee, usually an ex-spouse. The DRO (Domestic Relations Order) portion is the responsibility of the applicable court. The Q (Qualified) portion is the domain of the retirement plan and its administrator. Before a QDRO can be finalized, the retirement plan must approve the language and terms of the order.

As an attorney who spends much of his time working in the area of employee benefits, I regularly encounter Qualified Domestic Relations Orders (QDRO's). Sometimes I am hired to draft the QDRO for the participant or the alternate payee; sometimes I review the proposed QDRO for the plan. Often the same mistakes are made in completing the process of getting a QDRO approved. In this article, I will address three common problem areas encountered during the QDRO process: 1) insufficient language in the Judgment and Decree, 2) lack of timely filing, and 3) failure to comply with ERISA and IRC requirements. This article will finish with a new issue arising in the QDRO process pertaining to fees charged by the plan for review and finalization.

Three Primary Trouble Makers in the QDRO Process

- a) Insufficient language in the Judgment and Decree

The Judgment and Decree (J&D), or possibly the Marital Termination Agreement, are intended to define the terms of the divorce and the ultimate separation of property. A QDRO for retirement plan assets, which is almost always completed after the J&D has been filed, is drafted based on the language in the J&D. Often times the J&D will simply state something approximate to the following, "Ex-spouse shall receive 50% of the Participant's retirement plan." Though this may seem sufficient, there are many issues that are not addressed with such a simple division of a much more complicated asset.

First, the plan is not specifically named in the J&D. If the participant's spouse is entitled to benefits from more than one plan, it is difficult to know which plan, or plans, the J&D intends to divide. If the participant-spouse has worked for multiple companies in the past and participated in multiple plans with multiple companies, it is that much more difficult to determine the intended plan. Second, the benefit actually to be received is difficult to define. Fifty percent of a piece of real estate might be rather simple to divide. But 50% of an asset invested in securities, mutual funds, and other investments which changes value on a daily basis is much more slippery. Does the 50% include the entire benefit due to the participant, or only the portion accrued during the marriage? Does the 50% include earnings and losses from the date of divorce? Should the 50% include any additional contributions made after the J&D filing but attributable to a period during the marriage? If any cost-of-living benefits are applied to the benefit, should the 50% consider such cost-of-living benefits as well? If the plan is a defined benefit plan instead of a defined contribution plan, the formula for division might be very different. Some or all of these questions should be considered when finalizing the J&D to allow for a smoother process when drafting the QDRO.

The better defined the division and the actual asset (i.e. name of the plan), the easier it becomes to draft and get approved a valid QDRO, which saves time for the attorney and money for the client.

b) Lack of Timely Filing

As mentioned above, a QDRO in a divorce setting is always completed after the J&D has been filed. There is no statutory guidance on just how long 'after' the J&D filing occurs a QDRO might be filed. My personal record for a QDRO that I have been asked to draft is 12 years after the J&D was filed, although this record has been threatened numerous times with plenty of QDRO's drafted at least 10 years after the J&D was filed. By waiting to file a QDRO, several issues may arise.

First, any ambiguity in the J&D becomes harder to define as time passes. If the formula for division is unclear, waiting for an extended period of time usually does not help the drafting process. The plan administrator will be, or should be, insistent on a clear formula and if the drafter is left to guess what the parties originally wanted, one of the parties may not get the full benefit of the bargain in the J&D.

Second, the plan asset may change in valuation. For example, if a 401(k) account was divided in 2000 but a QDRO was not done until 2002, it is pretty likely that the value of the portion of the 401(k) account being divided was lower in 2002, making for an unhappy alternate payee. Does this affect the division of all assets? Perhaps not, but it might be hard to be certain and is unlikely to please the client.

Third, one of the parties may die before the assets are divided by the QDRO. If the plan is not aware of a pending QDRO, or does not

receive notification of a possible QDRO, either party or his/her estate might be shortchanged in the outcome.

Fourth, from the attorney's perspective, delay in completing the QDRO process may be cause for complaints to the disciplinary committee, and perhaps even a malpractice suit.

It is not the intended result for either party to get less, nor necessarily more, than what was agreed to under the J&D. However, by not completing the QDRO in a reasonable time period after the J&D filing, this balance may be left in a precarious state.

While no required time frame exists for filing a QDRO, it would be the author's recommendations to consider the drafting and filing of QDRO's as part of the divorce process and they should be done immediately following the filing of the judgment and decree.

c) Failure to Comply with ERISA and IRC Requirements

If the first two issues addressed above are avoided through good draftsmanship and timely filing, QDRO's should be more formality than substance.

Federal law, under ERISA and the IRC, requires several pieces of specific information, including the name of the retirement plan, and the names and addresses of the parties. Most plans will also require dates of birth and social security numbers of the parties. In addition, QDRO's must have language clearly stating the benefit to be paid by the plan and the manner in which such dollar amount or percentage is to be determined and the number of payments or period to which the QDRO applies. Finally,

QDRO's may not require a plan to provide any type or form of benefit not otherwise available, nor to increase any benefit, nor to pay benefits already reserved for a previous alternate payee.

While there are certainly other requirements of the plan regarding notification of the parties, accounting for the divided benefit, and distribution of benefits to the proper party, each of the parties, with their counsel, can do much to smooth the QDRO process by submitting a properly drafted document.

Plan administrators may have sample documents to start drafting from that include certain language required in a QDRO. Whether all of this language is applicable or even preferred by the parties is reason for review and probably revision of the sample to account for the terms found in the J&D. It is highly recommended that sample drafts be treated as only that and that such drafts be scrutinized for properly applicable terms and provisions.

New Issue – Fees Charged by Plan for QDRO Review

Until recently, it was well-settled law and procedure that expenses incurred by the Plan for a QDRO review and approval were absorbed by the Plan itself and paid by all participants. This rule did not satisfy many participants or administrators because QDRO's can easily be viewed as a special requirement of the Plan that is not required for all participants and therefore should not be paid for by all participants. Individuals requesting loans pay fees. So why should all participants bear the cost of a service such as QDRO review that is only performed for a select group?

After several years, the Department of Labor issued a ruling in early 2003¹ changing the rule on paying expenses for QDRO review. The Plan is now permitted to assess a fee to the individual account of the participant requesting a QDRO review and approval. The fee merely needs to be a reasonable one. To begin assessing such fees, plans must be amended to include a QDRO policy that includes language notifying participants that a fee will apply to QDRO reviews. Some plans have been slower to respond to the new rule than others. The Summary Plan Description can provide information on the way QDRO costs are apportioned in a client's plan.

Conclusion - Possible Solutions

Clearly, the QDRO process is a far more complicated process might be expected. Diligent plan administrators will require detailed, well-drafted QDRO's before accepting the documents as final. Therefore, family law attorneys might consider one of two routes in maneuvering through the QDRO process. The family law attorney can try to navigate it alone, picking up advice and information and learning the process along the way. This way may or may not be more time consuming than the attorney may wish to invest in this unfortunate quagmire.

The second route would be to find a specialist who is experienced in drafting QDRO's and completing the QDRO process. For example, our office frequently drafts QDRO's for individuals upon referral from their family law attorneys. In addition, benefits attorneys prefer to be involved prior to the finalization of the J&D to ensure adequate drafting of the terms in the final judgment and decree. The process can be completed timely, accurately, and efficiently at a reasonable cost. Based on the size of the asset that a qualified retirement

plan usually contains, eliminating the QDRO process from the multiple issues that a family attorney usually encounters in a divorce setting may be well worth the cost to the attorney and the client.

While appearing daunting and unnecessarily complicated at times, the QDRO process can be handled quickly and with relatively little difficulty by paying detailed attention to the language of the Judgment & Decree, filing the QDRO in a reasonable time after the Judgment & Decree is finalized, and by taking care to comply with the statutory requirements. Attention to these areas, as well as an eye on costs, can help the process go more smoothly and quickly, which is great for the attorney and the client.

Notes

¹ 2 DOL Field Assistance Bulletin 2003-3

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Handling Real Estate in Family Law Cases

Bob Beutel

In a family law case, the real estate is a low importance, low urgency matter, but it is one of those things which can come back to haunt the lawyer later. The last thing a practitioner needs is a call from a former client crying that the loan officer says that the ex-spouse is still in title. It is one of those moments you regret ever thinking of a career in the law.

Information Gathering is Essential:

Diligent preparation is the key to avoiding such problems. Accurate information must be obtained from the client and from other sources, which is then confirmed. Appended to this article is a suggested checklist for the gathering of such information. Ask the client to bring whatever documents might be on hand,

such as the closing file given to the client at the time of purchase or refinance. In that file you should find a HUD 1 closing statement and a copy of the deed or mortgage.

If the closing file is not available, request that the client bring in the real estate tax statement and the mortgage payment documents. If even these are lacking, use the street address of the property to start your detective work.. Note that the checklist appended refers to information phone numbers or web sites for a few of the counties, from which you may obtain the legal description. However, the legal descriptions in the tax records are notoriously inaccurate.

A title report prepared by a title company, an abstractor, or a legal service company is usually invaluable. At to the minimum, you should get an owners and encumbrancers report. This should show in what names the client and spouse hold the title and any outstanding mortgages against the property. Even better is what is referred to as a “two owner” report, which will show a little history of the property. These reports typically cost \$75 to \$100.

You or the client should order an assumption statement or a payoff statement from the mortgage holder to confirm the balance due, escrow balances, monthly payments, defaults, and other pertinent information. There is normally no charge for obtaining this information, except for expedited fax or delivery service.

Drafting:

When drafting the summons and petition, assume the worst, meaning that jurisdiction must be obtained by publication or that the other party will not be cooperative. Both the summons and of the petition must contain the full and accurate legal description of the real estate and the petition must pray for in the disposition thereof, although you need not demand an award to the petitioner.

Confirm and cross-check all available information to determine correct legal description, purchase of adjoining lots, sale of parcels, existence of easements, etc.

There are a variety of options in negotiating the marital termination agreement or requesting the disposition by the court:

1. Outright award to one of the parties.
2. Award to one of the parties with a lien to the other:
 - a. Fixed dollar amount lien, or
 - b. Floating lien with value determined at time of sale.
Interest on a lien is seldom awarded; if it is, the statutory rate on judgments (Minnesota Statutes 549.09) is usually employed.
3. Sale of property and division of proceeds.
4. Appraisal and buy-out by one party.
5. Both parties remain in title as tenants in common.
6. Both parties continue in title as joint tenants - seldom allowed. (Useful when neither party has any close family.)
7. Mortgage to secure payment of maintenance and support (Minnesota Statutes 518.24).

Homestead Tax Status:

Homestead Tax Status: (Minnesota Statutes 273.124) Some counties require that after title is changed in a dissolution proceeding, the party retaining the occupancy rights must re-apply for property tax homestead status.

In drafting the marital termination agreement and decree, use the full and correct legal description of each parcel.

In every case, the Decree ought to include the “magic language” which will effect a transfer of the real estate by the Decree alone, if necessary, in substantially the following form:

“Petitioner/Respondent shall, after the entry of the decree herein, execute and deliver a quit claim deed conveying said land to Respondent/Petitioner (subject to a lien in the amount of \$XXXX). In lieu of said deed,

the recording of a certified copy of the decree herein shall effectuate said transfer.”

The SREDJ statute provides the power of conveyance, so no additional language is required.

The best practice is to obtain and record a quit claim deed from the divested former spouse as it stops any further action against the real estate. However, non-cooperation will not stymie the transfer if the “magic language” is in the Decree.

In drafting the Decree, you must include Minnesota Statutes 518.583 Notice on Capital Gain on Sale of Principal Residence. This article will not deal with the tax consequences of the disposition of real estate in a dissolution.

I cannot be too emphatic in urging family law practitioners to use the Summary Real Estate Disposition Judgment, Uniform Conveyancing Blank Form 80.1.2 (old Form No.126-M) (Minnesota Statutes 518.191) to minimize exposure of private and embarrassing information. Despite the fact that the court file is open to public inspection, there is absolutely no reason to publish the parties’ “dirty laundry” or financial data in the real estate records. These Decrees are read by title company and county employees, and they do furnish meat for coffee room gossip. In particular, it is shameful to force the children of abuse or neglect to be re-victimized by this exposure. The SREDJ tracks the form of the Decree, so elementary word processing efforts should produce it without additional input of data.

If a Quit Claim Deed is called for, be sure it is dated and signed after the decree is entered (Minnesota Statutes 519.06). If it signed prior to

the entry of the Decree, title is conceivably still subject to marital rights. In the “subject to” clause, set out specifically the lien, if any, awarded to the grantor. The lien is extinguished by the deed if not explicitly reserved.

If a party’s name is changed in the Judgment and Decree, use the new name in the Quit Claim Deed.

Record a certified copy of the Summary Real Estate Disposition Judgment (or the Decree if there is no concern over privacy) and the quit claim deed, if any, as soon as possible to cut off the effects of State and Federal Tax Liens, judgments or bankruptcies entered against the grantor subsequent to the decree. Consider using duplicate filing copy (sometimes referred to as an “Attested Copy”) to obtain filing data immediately.

If there is no deed and the land is Torrens, deliver a certified copy of the SREDJ or the Decree to the Examiner of Titles office for approval prior to filing in the office of the Registrar of Titles. In some counties, there is a fee payable to the Examiner of Titles.

Representing the divested spouse:

Double check the MTA, SREDJ or decree, and quit claim deed (if you have not drafted it yourself) to insure the preservation of your client’s lien or interest. Follow up on its recording by noting the recording data of the SREDJ or decree and quit claim deed and furnishing that data or copies of the recorded documents to your client. Review triggering events with your client, making explicit the extent of responsibility you are assuming or disclaiming for acting on the triggering events. If the youngest child is a toddler, for instance, your tickler system needs to be very long range if you retain responsibility for enforcing a lien when that child turns 18 or 22.

Protecting your client’s security interest:

The lien granted in a dissolution is subject to the prior lien of mortgages or contracts for deed. Monitor payments on such prior liens by checking periodically with the mortgage company or contract for deed seller. Request notice of default to be sent to your client to permit curing of default and prompt post decree motion. File a Request for Notice (Uniform Conveyancing Blank Form 60.6.1, old Form 127-M) with the County Recorder or Registrar of Titles to receive copies of any Notice of Foreclosure Sale.

Post decree matters:

Judgments for arrears in maintenance and support must be docketed to become a lien on debtor’s real estate. (Minnesota Statutes 548.09 Subd. 1). If real estate is Torrens, the judgment must also be recorded with the Registrar of Titles to be a lien. (Minnesota Statutes 508.63)

Release of Lien:

A lien granted in a dissolution may be released by:

1. Quit claim deed (recite ‘this deed is given to release that lien granted by paragraph No. ____ in Summary Real Estate Disposition Judgment (or Decree) entered _____, 20____, _____ County, District Court File No. _____’.
2. Release of Lien (Uniform Conveyancing Blank Form 80.1.1, old Form 36-M) One advantage in using this form is that any new spouse need not join in.

Removing ex-spouse’s name from the mortgage:

The client may find it irritating to receive payment books and advertisements from the mortgage company addressed to Mr. and Mrs. _____. Use the mortgage holder’s assumption procedure to reflect the new state

of the title. Contact the mortgage service company for the application and rules.

“My former lawyer really messed this up” or how to cure the defects:

Property omitted from the original decree can be handled by a motion to amend judgment. Whether notice need be given to the former spouse depends whether the omission is more in the nature of a clerical mistake, such as leaving out the 5 foot strip acquired from a neighbor to cure a garage encroachment, which would be a Rule 60 ex parte motion, or a material omission such as not disposing of the lake cabin. A SREDJ is what you should have the judge sign, rather than an Amended Judgment and Decree, which might trigger a title company demand to record the original J & D.

Misdescribed property may be corrected with a Rule 60 ex parte motion to amend, as with omitted property, or, if the property is Torrens, by a Proceedings Subsequent through the Examiner of Titles office.

The case of the missing ex-spouse:

The interest of a missing ex-spouse may be handled by a Motion for Order to sell, determine apportionment and deposit the ex-spouse’s share of the net proceeds in the Court Administrator’s office.

Occasionally, the decease of an ex-spouse holding a lien will require the appointment of a Personal Representative by the Probate Court to release the lien. If the deceased’s heirs are the minor children, there will be the need to appoint a conservator to hold the lien interest. If, at the time of entering a Marital Termination Agreement the lien holding party is in poor health or seriously chemically dependent and will acknowledge that, you could appoint a trustee in the MTA to take ownership of the lien. Whether a court has

the power to make such a disposition for the benefit of the children without the consent of the lien holder is an open question. You might also want to consider putting time limits on lien with self executing Statute of Limitations in the Marital Termination Agreement and SREDJ and J & D. There have been a few occasions where the lien has been paid off informally (that is, without a sale or refinance occurring), and the lienor died or disappeared without executing a release. Many years later, after the title holding ex-spouse dies or tries to sell or refinance, no release is obtainable.

Ethical considerations:

A violation of the rules of professional discipline may occur if the attorney is not sufficiently competent or currently educated in the real estate law related to the dissolution of marriages. One safe harbor is to associate with a real estate practitioner to consult with or refer out the real estate issues. When the author was in a group office situation many years ago, his family law colleague required his clients to have me, or another real estate attorney, do the title work and draft the dispositive clauses and deeds. The family law colleague had been burned a couple of times by some of the problems discussed above with misdescribed property or recording failures.

Conflict of interest:

Be sure you disclaim to pro se party any representation or liability for his/her interest in real estate documents you draft, and put in writing the strong recommendation that independent counsel be retained.

Authorities and resources:

- MSBA Real Property Section Title Standard 84
- Title Standards 7, 11, 12, 21, 84A and 92

- Minnesota Statutes 518.191 and 518.54, Subd. 5
- Searles v. Searles, 420 N.W.2d 581 (Minn. Sup. Ct. 1988) continuing marital interest in non-titled lands.

Forms Online:

- General Family Law: <http://www.practicelaw.org/files/familylaw/Ol/forms.htm>
<http://www.courts.state.mn.us/districts/FourthGeneral/onlineforms.htm>
- Uniform Conveyance Blanks: <http://www.practicelaw.org/files/realproperty/index3.htm>
- Summary Real Estate Disposition Judgment (Form 80.1.2, old form 126-M) <http://practicelaw.org/files/familylaw/Ol/newdiv24.Htm>
- Quit Claim Deed (Form 10.3.1, old form 27-M)
- Release of Land from Lien in Marital Dissolution (Form 80.1.1, old form 36-M)
- Request for Notice (Form 60.6.1, old form 127-M)
- The form online is for corporation, but it can be changed)
- Ramsey County Examiner of Titles: <http://v.co.ramsey.mn.us/et/form.asp>

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Handling Real Estate in Family Law Cases

Checklist - Real Estate in Dissolutions

I. Before commencing proceedings:

A. Collect information on real estate:

1. Homestead:

Address: _____

Legal Description: _____

Source: Copy of Certificate of Title, deed, abstract, mortgage, tax statement or assessor's office

Abstract Property Torrens Property

Location of abstract: _____ or Certificate of Title No. : _____

Names of title holders: _____

Date of purchase: _____

Purchase price: _____

Source of down payment: _____

Any change in title since purchase: _____

Current market value: _____

Tax value: _____

Estimated or appraised value: _____

Mortgage or contract for deed holder: _____

Address: _____

Loan No.: _____

Balance: \$ _____ as of _____, 20 _____

Monthly payment: \$ _____

Taxes and Insurance escrowed in payment: \$ _____

Property Taxes: \$ _____ per year 20 _____

Insurance: \$ _____ per year 20 _____

Second Financing: _____

Other Liens: Federal and State Tax Liens, bankruptcy, judgments

Improvements made to this property since purchase: _____

Value: \$ _____ Source of Funds: _____

2. Other real estate: (same information)

3. Seller's interest in contract for deed: _____

Date of acquisition: _____, 20 _____

Principal balance due: \$ _____ as of _____, 20 _____

Payor's name and address: _____

Mortgages or contracts for deed superior to this contract: _____

Loan No.: _____

Payments made by: Seller OR Buyer

Location of signed contract for deed: _____

Location of abstract: _____

Any assignments: _____

B. Confirm and cross-check all available information to determine correct legal description, purchase of adjoining lots, sale of parcels, existence of easements, etc.

To obtain legal descriptions from street address and other related property issues:

Ramsey County	651-266-2000	www.co.ramsey.mn.us/prr
Anoka County	763-323-5400	www.co.anoka.mn.us
Dakota County	651-438-4532	www.co.dakota.mn.us
Hennepin County	Abstract 612-348-3050 Torrens 612-348-3070 Copies of Docs/Ctfs of Title 612-348-5139	www2.co.hennepin.mn.us/pins
Washington County	Abstract 651-430-6755 Torrens 651-430-6756	www.co.washington.mn.us *password required* To obtain password call 651-430-6755

C. Order assumption statement or payoff statement from mortgage holder to confirm balance due, escrow balances, monthly payments, defaults, etc.

D. Obtain abstract and/or contract for deed for property awarded to client.

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ADDENDUM

When Home is Where the Hurt Is: Minnesota's Address Confidentiality Program Keeps Battered Women Safer

Jenna Yauch

In Minnesota, battered women¹ account for over 25% of crime victims.² The proportion of women who will face violence at the hands of an intimate partner in their lifetime is staggering. Many of the women who live in these abusive relationships end up running, sometimes for their lives. But women who leave their batterers are at an even greater risk of harm than those who stay. Women who are separated or divorced from their partners report a rate of physical violence that is fourteen times greater than women who still live with their partners.³ When a battered woman has relocated, or is in the process of fleeing, the confidentiality of her location is of the utmost importance. Batterers will use any means available to locate their partner, and if found, she will undoubtedly suffer violence at his hands. This article thus begins with a discussion of the importance of confidentiality in the lives of battered women.

States have long tried to aid battered women by creating laws that protect their information, including addresses, medical records, and name changes. I explore legislative methods states have historically used to provide confidentiality and safety for battered women in Part B of Section I. Beginning in the 1990s, a new form of domestic violence legislation emerged nationally that fundamentally changed confidentiality laws aimed at protecting battered women. Address Confidentiality Programs (ACPs) began in Washington state and soon spread across the United States;

twenty-four states currently have ACP statutes. Address Confidentiality Programs keep the locations of battered women safe by providing the women with an alternate address to use in place of their own. Section Two discusses Address Confidentiality Programs and describes how they protect battered women.

It was not until 2006 that Minnesota joined the list of states with an Address Confidentiality Program, but when we did, it was with gusto.⁴ The Address Confidentiality Program that Minnesota created provides battered women with safety and confidentiality and improves upon similar state laws by, most importantly, requiring every person, agency, and entity to accept ACP participants' "designated address." Unlike previous ACPs, which merely required government agencies to accept the address, Minnesota's law provides more comprehensive confidentiality for battered women's addresses. This is a huge step forward for battered women in Minnesota because they are now able to substitute another address for their true location in virtually every interaction where an address is necessary. This substituted address minimizes the chances of being located by an abuser, the primary concern for relocated battered women. Part B of Section Two details Minnesota's ACP and examines how the changes Minnesota made improve the quality of life for battered women by providing them with additional

safety and confidentiality. Minnesota, though behind in enacting an ACP, is once again leading the country in its innovation in protecting battered women. This article urges other states to look to Minnesota for leadership and enact similar legislation.

I. Confidentiality for Battered Women

A. Confidentiality is Essential to Battered Women's Safety

Confidentiality is one of the most essential needs of a battered woman who has recently relocated or who is fleeing an abusive relationship. Battered women need their information and location kept confidential to ensure that they are safe from their batterers who may likely try to find them. If society created more methods by which battered women could accomplish confidentiality, more battered women may feel empowered to leave their abusive relationships.

Each year, 1.3 million women suffer the evils of domestic violence including physical harm, emotional abuse, and other controls placed on their life by an intimate partner.⁵ 1247 women were killed by an intimate in 2001.⁶ Battered women are beaten, kicked, slapped, burned, punched, choked, and threatened with any number of weapons.⁷ In addition, they are attacked verbally by their batterers who humiliate and insult them daily.⁸ Many of these women will not escape their abusive relationships because they have few resources to assist them in getting away and staying away safely.⁹

If a woman is successful in leaving her abusive relationship, she may be in greater danger. Domestic violence tends not only to intensify over time, but also to escalate when the batterer senses or discovers that he is about to be left by his partner.¹⁰ A battered

woman is 75 percent more likely to be killed by her abuser when she attempts to leave or has left her partner, than if she had stayed in the relationship.¹¹ Given this very real threat of harm, it is not surprising that many battered women stay with their abusers for years.

Battered women who decide to leave their abusers face many obstacles.¹² There are few resources to assist battered women in leaving their relationships, and some, like the police, may cause more harm due to a lack of understanding of domestic violence. One of the main concerns a woman leaving her batterer has is where she will live, especially if she has children. Housing is hard to come by and often too expensive, particularly for women who have never earned their own income.¹³ Shelters are an option, but they are never large enough to accommodate every battered woman who needs housing and do not provide the comfort and stability that battered women and their families need.¹⁴ Battered women need to earn money to support themselves, but without work history or childcare, this can be a struggle as well.¹⁵

Fleeing an abusive relationship creates any number of legal questions and numerous confidentiality issues. Due to the threat of being located through public records, or even by receiving medical care, many battered women will seek to change their identity.¹⁶ This sometimes means using the courts for a legal name change and other times means unofficially assuming a new name and identity. There are challenges with either of these options. Even with a legal name change, in certain situations the two identities will remain linked. Employers, for example, may require background checks of both the old and new identities.¹⁷ While the employer might never use the information attached to an old identity for harmful purposes, the fact that the two identities are connected is

problematic for a woman seeking that very disconnection from her old identity. Battered women who want to seek a divorce also face difficult questions, as this process could force them to reveal their location, either in the complaint or by appearing at a hearing.¹⁸ Additionally, battered women face danger from public records that contain their address. The government is required to give the public access to such records without a statutory exemption permitting them not to.¹⁹

Due to the reality of domestic violence and the dangers it presents, keeping certain information confidential becomes the focal point of safety planning for battered women who decide to leave their relationships. A battered woman's safety hinges on the confidentiality of her location and keeping her batterer from locating her. Maintaining the confidentiality of an address is not an easy thing to do. There are many situations in which an address will be requested, and in some of these, the location needs to be divulged, such as in accounts with public utility companies. This danger has compelled states to step in and attempt to remedy the situation.

B. Legal Methods to Protect Battered Women's Confidentiality

Prior to the creation of the first Address Confidentiality Program in 1991, states used various other legislative means to protect battered women's locations. Such laws typically covered situations in which a battered woman could be compelled to disclose her actual location, such as registering to vote or applying for a driver's license, and allowed for some form of suppression of a battered woman's actual address. Such legislation no doubt achieved its goal of keeping battered women's addresses out of certain public

spheres, but at best, these laws provided merely piecemeal protection to battered women. What good is a confidential voting record if your actual address is still floating around in cyberspace, or in the file at your child's school?

One common type of legislation that protects battered women involves the confidentiality of shelter locations and records. Because domestic violence shelters are often the first step battered women take to leave abusive relationships, it is important that shelter locations be kept secret, especially from batterers infuriated by their partners leaving them. In New York, for example, the address of any shelter program applying for state funding under the Domestic Violence Prevention Act is kept confidential.²⁰

Furthermore, New York requires that the address or general location of any structure that is "anticipated to house a residential program for victims of domestic violence" and is included on an application to a state agency should be kept confidential even if that program has not yet applied for state funds.²¹ This purposeful protection of shelter locations demonstrates the extent to which the women who reside within them are in constant danger.

Another category of laws aimed at keeping battered women's locations safe are those that suppress addresses in protective order documents and proceedings. These laws typically include a provision that if disclosing her address would make the battered woman or her family members at risk of violence, the address can be omitted from the petition.²² Frequently these laws also suppress a domestic violence shelter's address if this is the battered woman's residence at the time she files the petition.²³

States also protect the location of battered women by suppressing their addresses in general records, most commonly in the context of motor vehicle or driver's license records.²⁴ But although statutory provisions for the omission of addresses in these records exist, the process for getting such protection is not always easy. For example, in Delaware to keep personal information out of Department of Motor Vehicles records, applicants must submit a notarized affidavit swearing that they fear harm from another person.²⁵ But even if a battered woman was to take this step and her address was kept out of DMV records, there are always exceptions. For instance, in the case of Delaware, government agencies including law enforcement and insurance providers can still access the DMV information that is otherwise kept confidential.²⁶ With these exceptions, there are ways for a clever batterer to find his partner—if he is not an insurance salesman or police officer, he may know one of these people who could access her location for him.

The existence of statutes providing confidentiality in voting records shows that everyone should be able to vote without fear for their safety. At times these laws are very general, and allow any person who fears for her safety, for any reason, to apply to have her address kept confidential in voting records. This type of law does not specify battered women as a group that needs protection. Instead, all voters can utilize the law to enhance their own safety. Any number of people who want to keep their addresses hidden might use this statute, including victims of other crimes like stalking, or even judges who fear retaliation against their decisions. Other versions of voter safety laws do indicate the group that they intend to protect. In Virginia, parties granted a protective order can put a post office box on

their voter registration instead of their actual location.²⁸ The recognition of voting as an essential right is enumerated in laws that give people in fear a means to vote without increasing that fear.

States have developed numerous other methods to protect confidentiality that are universal in nature and that battered women can use to their advantage. One example is laws geared toward all crime victims. Alaska protects the residential and business addresses and telephone numbers of all crime victims from public view when this information appears in government documents.²⁹ Thus battered women in Alaska who have reported domestic violence (and thus are crime victims) can trust that their addresses and telephone numbers in the possession of law enforcement or the courts are kept in those places alone. Connecticut protects information specifically about victims of sexual-assault crimes.³⁰ Because battered women are often also victims of rape, they can be protected under this kind of statute. While not directly focused on protecting battered women, such laws are indicative of the importance of confidentiality for crime victims of all kinds.

All of the legislation aimed at protecting crime victims and others who fear for their safety is laudable. The fact that states have long been creating means for battered women to fully participate in life, civic and otherwise, speaks to the reality that battered women are often kept from leading full lives by their abusers. States have effectively acknowledged the danger that is a constant for battered women. Yet this manner of assistance does not offer a battered woman complete confidentiality. The laws simply admit that there is a danger in divulging your location and attempt to provide a partial remedy.

II. Address Confidentiality Programs

A. Washington Changes the Face of Domestic Violence Law

Beginning in Washington in 1991, a new type of law emerged that would provide battered women with a greater level of safety, the Address Confidentiality Program (ACP). Washington's law represented the first attempt at a comprehensive approach to confidentiality for battered women. Now instead of being allowed to suppress their actual address in certain limited situations, battered women could get a substitute address from the program and use this in multiple situations. While not foolproof, the ACP made a leap in the right direction.

Washington's Address Confidentiality Program was created as a reaction to the possibility that batterers could use public records to locate their partners.³¹ Underlying this concern is the understanding that some batterers will go to any end to locate their partner who has left them, and that public records are a relatively easy means of doing so. Public records are an essential part of life, and things like registering to vote and getting a driver's license are taken for granted by people who have no reason to fear for their safety. Yet these types of public records contain a person's address, and thus create a dangerous situation for battered women.

Washington had a particular reason to fear the possibilities that public records provided to batterers. The Public Records Act in Washington, which was designed to help the public monitor the government, provided batterers with a legal means to find their partners who had escaped and were in hiding.³² Although the Act was later amended to allow for an exception for anyone who felt disclosure of their address

posed a safety concern, it proved problematic in action.³³ Persons who wanted their address kept from public disclosure had to make this request to each individual government agency, making absolute confidentiality difficult to obtain.³⁴ The Address Confidentiality Program was Washington's way to respond to concerns about public records and confidentiality; the state legislature made a law that would provide battered women with a more comprehensive approach to confidentiality.

The Address Confidentiality Program in Washington is an independent program operated by the Office of the Secretary of State.³⁵ It was the first program in the nation to use a "state-established substitute address and mail forwarding system" to protect battered women from being located by their batterers.³⁶ The substitute address is the key to the program. Battered women can use this address instead of their actual address when interacting with any state agency. ACP participants in Washington used the substitute address in records including driver's licenses, library cards, public utility bills, birth records, parking tickets, worker's compensation, school records, and many more.³⁷

To become a participant in the Washington ACP, a person has to file an application with the Secretary of State.³⁸ Adults can file on behalf of themselves, and parents or guardians can apply for minors or incapacitated persons.³⁹ Most ACP participants in Washington were aided in applying by a certified "application assistant" who worked at a service agency or shelter program for battered women and was trained by the state.⁴⁰ These application assistants helped with filling out and submitting the application after ensuring that the applicant could "appropriately make use of the program."⁴¹

To be certified in the ACP, an applicant must swear that she or the person for whom she is applying is a victim of domestic violence and fears for her safety.⁴² The applicant must also designate the Secretary of State as her agent for service of process and receipt of mail.⁴³ This step is taken so that participants cannot use the program to avoid legal responsibilities; participants cannot evade service because it can be made on the Secretary of State. The application also must include a mailing address where the applicant can be reached and the address that is to be kept confidential.⁴⁴ One of the most crucial requirements for participation in the ACP is that the applicant must reside in a location unknown to her abuser.⁴⁵ Because the ACP's protection of addresses is only proactive and old public records are not expunged, if an applicant was living in a location her abuser already knew about, the protection would be moot. The program is required by statute to certify every applicant who submits a completed application.⁴⁶

In essence, Washington's ACP provides the substitute address that battered women use in their interactions with state and local agencies, forwards first-class mail to participants, and allows confidential voter registration and marriage records. The voting provision is of particular importance. Washington accomplished this by allowing ACP participants to become "protected records voters," thereby keeping their addresses off the voter rolls.⁴⁷

There are only three circumstances under which Washington's ACP can legally divulge a participant's address. An address can be disclosed at the request of a law enforcement agency or a court order.⁴⁸ Washington believed that there was a "significant policy reason" for allowing these exceptions, namely that law enforcement officers need to

be able to locate criminals and the court needs to be able to locate parties in litigation.⁴⁹ Additionally, Washington allows for the disclosure of information for the purpose of verifying participation, but in this case the state may only "confirm information supplied by the requester."⁵⁰ This exception is actually the most dangerous of all three. Washington's Administrative Code specifies the manner in which disclosure is to be made, and places limitations on the ability of law enforcement to access the information. For instance, a request for a participant's actual address from law enforcement must be on agency letterhead, contain the signature of the chief law enforcement officer, and state the reason and purpose for the request.⁵¹ This provides battered women with some degree of safety from batterers who are law enforcement officers. But the third exception creates the possibility that a batterer could telephone a staff person at the ACP program and ask them to verify that their partner is in the program. Under the statute, nothing would keep that staff person from verifying the information they were given. And although this information in and of itself may not be damaging, the batterer would now know for certain that his partner is living in the state. If he had any other information to offer the staff person, who is to say they would not verify other data crucial to her confidentiality?

Since 1991, twenty-three other states have passed Address Confidentiality programs.⁵² The spread of the model across the nation suggests not only the continued problem of domestic violence, but the efficacy of the program at providing at least some protection for battered women. As ACPs have developed, additional components have been added and are now standard, such as specifying a procedure for withdrawing from the program.⁵³

Additionally, there has been a movement to broaden the prospective membership to more than just battered women. Now, most states allow survivors of sexual assault and stalking to apply as well.⁵⁴ Along with making the program accessible to more groups of people, some states have included requirements that applicants to the ACP must prove their status as a victim of domestic violence, sexual assault, or stalking by including police reports or sworn statements by third parties.⁵⁵

B. Minnesota's Address Confidentiality Program

1. *Passage.* In 2006 the Minnesota legislature passed Minnesota Statute § 5B authorizing the state's own Address Confidentiality Program. The legislature noted that the purpose of the ACP is to "enable state and local agencies to respond to requests for data without disclosing the location of a victim of domestic violence. . . and to enable program participants to use an address designated by the secretary of state as a substitute mailing address."⁵⁶ The statutory language of § 5B was drafted by Beth Fraser, Director of Governmental Affairs of the Secretary of State; Bert Black, Legal Advisor of the Secretary of State; and Lonna Stevens, Director of the Sheila Wellstone Institute.⁵⁷ A deliberate effort was made to draft and pass the statute in skeletal form, as a frame for the administrative rules that would guide the operation of the program within the Secretary of State's Office. The fact that Stevens, an advocate, was included in the process from the beginning signals that Minnesota strived for a policy centered on battered women's needs and realities, which was furthered by giving advocacy groups a voice in the decision-making process.

Another example of Minnesota's cooperation with advocacy groups occurred when the Secretary of State wanted to include statutory language criminalizing applicants who made false statements on their applications to the program. Stevens and other advocates found such provisions antithetical to the bill's underlying purpose, and preferred to use other means to discourage and handle false statements on applications, such as using trained application assistants to screen for appropriate applicants. In the end, the criminalizing language was not included after strong urging from the advocates involved in the drafting of the bill.

2. *Structure and Operation.* Minnesota's Address Confidentiality Program provides latitude to people seeking participation in the program. Victims of domestic violence, sexual assault or stalking all qualify and if a minor or an incapacitated person is a victim of one of these crimes, someone can apply on the minor's behalf. Minnesota does not require any proof that the applicant is a victim of these crimes, but rather trusts that only those who truly need the protection-and hardship-of the program will apply. Minnesota additionally allows any person who is afraid for her safety to apply to the program.⁵⁸ Although most applicants may be women, there is no reason that men cannot apply for the program if they fear for their safety.

Applicants to Minnesota's ACP must utilize persons designated as "application assistants," who are typically employed by a service agency that works with battered women⁵⁹ and have gone through an application process and training.⁶⁰ This requirement serves at least two main purposes. First, application assistants function as gatekeepers for the program so that the ACP cannot be used to evade law

enforcement. In Minnesota, the specific fear was that sex offenders would enroll in the program. While an assistant would never turn away a person who could benefit from the program, her training and experience enables her to screen out persons who might be applying for inappropriate reasons. Another important function of application assistants is to give applicants information about how the program operates and about other resources available to them. The application assistant requirement may seem like an unnecessary burden, but it ensures that applications will be complete enough for program certification. The Secretary of State's Office plans to ease the burden of this requirement by ensuring that there are trained application assistants in all areas of the state and by posting the application assistants' locations online.

The application for Minnesota's Address Confidentiality Program includes the applicant's name, date of birth, and a listing of all minor children in the household.⁶¹ The applicant must state that she is not applying to avoid prosecution for a crime and that she has survived domestic violence, sexual assault or stalking, or that she fears for her safety.⁶² On the application she must designate the Secretary of State as her agent for service of process and receipt of mail.⁶³ The application must include a mailing address and telephone number where the applicant can be reached, as well as the actual address or addresses that the applicant is seeking to keep confidential.⁶⁴ The applicant must acknowledge if she is involved in any pending civil or criminal legal actions.⁶⁵

When a completed application is received, the Address Confidentiality program certifies the applicant to use the substituted address for four years.⁶⁶ Within two days of certification the program sends each participant an identification card to be used to

prove participation in the program and establish the substitute address. These cards include the participant's name, the substitute address, certification expiration date, and a space for the signature of the participant.⁶⁷

During the four years of certification, a program participant may choose to leave the program and may do so by completing a withdrawal request.⁶⁸ This option allows for participants who no longer feel the program suits their needs to cease their participation formally. When the four years have elapsed, participants have the option to renew their certification in the program by filling out an application nearly identical to their initial one.⁶⁹ Participants can also be cancelled from the program by the Secretary of State if their mail cannot be delivered to their actual address or if they do not notify the Secretary of State of a change in information such as moving to a new address.⁷⁰ In these two situations, a participant who is cancelled from the program may reapply and be recertified. The only situation in which a participant may be cancelled and not allowed to reapply is if she is found by a court to have knowingly provided false information when applying to the program.⁷¹

When an ACP participant is asked for her address, whether this request is from a person, business, public agency, or any other entity, she can direct them to use the designated substitute address listed on her ACP card. When this request is made, "[e]very public or private person or entity shall accept the designated address as the true address of the program participant."⁷² When presented with an ACP identification card, the person or entity is to assume that the person with the card is an ACP participant.⁷³ Participants are not required to respond to inquiries about their participation in the program.⁷⁴ If persons or entities have

questions they are to direct them to the Secretary of State's Office.

Minnesota's ACP will only provide access to information about a program participant when required to do so by court order.⁷⁵ The administrative rules indicate that the Secretary of State will establish a process for law enforcement agencies to access this information, but only after a court order has been granted.⁷⁶ There are situations where a person or entity will have a legitimate need for a participant's address. For instance, utility companies need to know their customer's actual address to provide services. There are other circumstances where federal law requires an actual address. In these cases, the administrative rules suggest the entity should only use the portion of the address needed to provide services, which may allow for the name to be kept off the record.⁷⁷ Also, Minnesota urges that these entities should only use the actual address when absolutely necessary to do so.⁷⁸

Under Minnesota's ACP, a participant can also register to vote safely and become an ongoing absentee ballot voter.⁷⁹ Under this provision, the participant's name will not be included in the statewide voter registration system. If a participant has already registered to vote the Secretary of State will provide a form letter to send to the county auditor requesting that her voter record be removed. The Secretary of State has established methods to ensure that ballots of program participants are handled by as few persons as possible.

3. *Minnesota's Leap Forward.* Although Minnesota's Address Confidentiality Program was patterned on others, including Washington's, this law takes confidentiality to another level and is a huge step forward for battered women. In contrast to other states, Minnesota's law provides battered women with more safety.

The largest and most important difference in Minnesota's law is the requirement of every person or entity, public or private, to accept the designated substitute address, a departure from the previous trend of requiring only public agencies to accept the address.⁸⁰ Minnesota is the first state to take this step and extend the requirement beyond government agencies. This development means that if a battered woman is asked for her address—by her hairdresser in order to send her coupons, when applying for college, when applying for a store credit card—she can give the designated address as her own. This limits the methods that her batterer can use to find her, which provides not only a greater level of confidentiality, but in turn greater safety and peace of mind for battered women.

When Washington created the first ACP, its concern was that batterers could use public records to locate and harm their partner.⁸¹ It was natural for Washington to focus its ACP on public agencies and require that only state and local entities use the substitute address; this solved the issue of batterers locating women through public records. As time went on however, it became clear that there are many other avenues to a person's address and that any of these create danger for a battered woman. Under Minnesota's law, any person or entity that asks for addresses is compelled to accept the substitute address of ACP participants as a real address. The designated ACP address will be the same for every Minnesota ACP participant, although a unique identifier will be used for the sorting of mail by the program. Because most ACP participants will present their ACP card as proof of their address, persons and entities they interact with will necessarily know that they are in the program. But, where a participant's address is used in documents or entered into

computer systems, it will only appear as the designated program address; it cannot ever be used to locate her.

Another new development in the Minnesota ACP is the apparent refusal to give state agencies blanket access to ACP participant information through specific exemptions. Some states exempt certain agencies from their ACP program, and almost all states exempt their law enforcement agencies.⁸² Minnesota's program took another stand for battered women by stating that they will only divulge a participant's information by court order. While the proposed rules for the program say that the Secretary of State will establish a process by which law enforcement agencies can access the information, it still requires a court order, which acknowledges that police officers can be batterers and that granting a blanket exception to any group is bad practice.⁸³

Minnesota's ACP also makes the program as helpful as possible. Asking whether an applicant is involved in pending legal action may appear unnecessary, but it is the response to this information that proves helpful. If an ACP participant is involved in legal action when she becomes certified in the program, she must utilize form letters provided by the program to inform the other parties of the legal action that she has a new address status.⁸⁴ This step may seem to be a hassle, but it will improve the confidentiality of a battered woman's information. The form letters signal that she should only be contacted at the substitute address from that point onward and ensure that she will not have to use her actual address for service of process. These letters are used to communicate with other parties in litigation, not with the court. But, unless the court directs otherwise, there is no reason why the court's documents could

not utilize the substitute address instead of a participant's actual address as well.

There are other elements of Minnesota's ACP that should be followed by subsequent states creating ACPs. As other states before, Minnesota's ACP is open to more people than just battered women. To successfully apply to the program, a person must state that they have survived domestic violence, sexual assault or stalking, or that they are in fear for any other reason.⁸⁵ Allowing for broader membership is a positive addition to the ACP model. While the program may be most useful for women fleeing violent relationships, it makes little sense to limit eligibility and exclude others who have safety concerns. No one should be kept from the benefits of the program who rightfully needs them.

Minnesota's ACP should also be a model because of its lack of a requirement that applicants prove their victimization. Minnesota does not require any evidence to establish that the applicant is truly a victim of domestic violence, sexual assault or stalking. Other states require different kinds of proof, including sworn statements or police reports. Not every battered woman will have reported the abuse to law enforcement. Minnesota assumes that applicants to the program are telling the truth, and that entering the program requires numerous sacrifices that are not entered into lightly or by any person who does not truly need the program's protection. Although in other legal contexts, battered women may be compelled to prove their victimization, in this situation where a service is voluntarily requested, the requirement for battered women to prove their abuse is unnecessary.

All future ACPs should follow Minnesota's model of voting safety for participants. The Minnesota ACP recognizes that voting is an essential right of American citizens and that battered women often do not vote out of fear of being located. Minnesota's program allows for battered women to become ongoing absentee ballot voters.⁸⁶ But the Minnesota ACP takes even more steps to ensure voting safety. When battered women who are already registered to vote apply to the program, their application assistant will provide them with a form letter to send to their county auditor requesting that their voter record be removed.⁸⁷ Although this seems like a small step, voter records are easy for the public to access, and without help from the ACP, battered women may not know the danger their voter records could cause, or may not know what steps to take to remove their voter records.

In the future, states drafting ACP legislation should include domestic violence advocates in the process as Minnesota did. In the drafting of both the ACP statute and the administrative rules governing it, Minnesota's Secretary of State's Office gave domestic violence advocates a voice and a place at the table. In addition to Stevens from the Sheila Wellstone Institute, representatives from the Minnesota Coalition for Battered Women were involved with the drafting of the administrative rules. The advocates' participation provided the Secretary of State staff with critical information about battered women's realities and what they need from a program like the ACP.

Because Minnesota's ACP has yet to be fully implemented, there are certain unknowns about the program's operation. Even though by law all persons and entities have to accept the designated address of an

ACP program participant, there is no way for the Secretary of State to enforce this. Participants have ACP identification cards as proof of their certification, but this does not mean they will not be hassled and questioned about the program. It is likely that participants will have to be their own advocates in getting people and entities to accept the substitute address. But, participants are backed by a program and a law that supports them; Minnesota's battered women who choose to enter the ACP will be safer than they could be anywhere else in the country.

Conclusion

The problem of domestic violence has not gone away since Washington created the first ACP in 1991. The objective of an ACP is not to lessen the occurrence of domestic violence, but to aid those whose lives are endangered because of it. Battered women are only as safe as their location. And while states have tried different means of keeping battered women's addresses safe, the most comprehensive approach is an Address Confidentiality Program. Minnesota's ACP is the best in the field and provides the most safety possible by mandating that all persons and entities accept the designated address. For this reason, Minnesota's Address Confidentiality Program should serve as a model for other states who are working on ACP legislation.

Notes

¹ Throughout this paper I refer to battered *women* and use female pronouns because even though domestic abuse exists in same-sex relationships and women batter men, women are battered by their partners far more often than are men. Shannan Catalano, *Intimate Partner Violence in the United States*, Bureau of Justice Statistics (2006).

² National Coalition Against Domestic Violence, *Minnesota Domestic Violence Facts*, on file with author.

³ Joan Zorza, *Recognizing and Protecting the Privacy and Confidentiality Needs of Battered Women*, 29 Fam. L.Q. 273 (1995-1996).

⁴ During the summer of 2007, I interned with the Sheila Wellstone Institute, an organization of Wellstone Action! focused on empowering survivors of domestic violence and supporting policy that benefits these survivors. My main project was working with the Secretary of State's Office to create the forms necessary to implement Minnesota's Safe at Home Address Confidentiality Program. This meant that I researched other states' laws, administrative rules, and forms and then drafted forms such as an application for Minnesota. In the course of my internship, I also had the privilege to attend and participate in meetings where the Minnesota Administrative Rules governing the ACP were drafted. I explain my background first to acknowledge my bias in favor of Minnesota's policy and also to justify what may appear to be a lack of authority for some of my assertions. My work over the summer provided insight into certain decisions and strategies used in our state as well as exposure to discussions about implementation and future functioning of the program that I could not have discovered through any traditional research means.

⁵ Patricia Tjaden & Nancy Thoennes, *Full Report of the Prevalence, Incidence, and Consequences of Violence Against Women*, National Institute of Justice (2000).

⁶ Callie Marie Rennison, *Intimate Partner Violence 1993-2001*, U.S. Dep't of Justice (2003) at <http://www.ojp.usdoj.gov/bjs/pub/pdf/ipv01.pdf>

⁷ Dana Harrington Conner, *To Protect or to Serve: Confidentiality, Client Protection, and Domestic Violence*, 79 Temp. L. Rev. 877, 879 (2006).

⁸ *Id.*

⁹ Zorza, *supra* n. 3.

¹⁰ *Id.* at 274.

¹¹ Conner, *supra* n. 7.

¹² *Id.* at 885. The first hurdle is deciding to leave. Battered women stay with their abusers out of fear, but also out of love, shame, financial limitations, children, and even hope. If a battered woman tells her abuser she is leaving, he will often threaten her, her children, and anyone or anything else she loves to intimidate her into staying.

¹³ Zorza, *supra* n. 3, at 275.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Leigh Goodmark, *Going Underground: The Ethics of Advising a Battered Woman Fleeing an Abusive Relationship*, 75 UMKC L. Rev. 999, 1001 (2006-2007).

¹⁷ *Id.* at 1002.

¹⁸ *Id.* at 1003.

¹⁹ Jeffrey T. Even, *Washington's Address Confidentiality Program: Relocation Assistance for Victims of Domestic Violence*, 31 Gonz. L. Rev. 523, 525 (1995-1996).

²⁰ N.Y. Soc. Serv. Law § 459 (McKinney 2007).

²¹ *Id.*

²² See Miss. Code Ann. § 93-21-9 (2007).

²³ See Md. Fam. Law Code Ann. § 4-504(b)(2) (2007).

²⁴ See e.g. Ark. Code Ann. § 27-16-811 (2007).

²⁵ Del. Code Ann. tit. 21, § 305 (2007).

²⁶ *Id.*

²⁷ See Ariz. Rev. Stat. § 16-153 (2007), Del. Code Ann. tit. 15, § 1303 (2007).

²⁸ Va. Code Ann. § 24.2-418 (2007)

²⁹ Alaska Stat. § 12.61.110 (2007).

³⁰ Conn. Gen. Stat. § 54-86e (2007).

³¹ Even, *supra* n. 19.

³² *Id.* at 526.

³³ *Id.* at 527.

³⁴ *Id.*

³⁵ *Id.* at 530.

³⁶ *Id.*

³⁷ *Id.* at 529.

³⁸ Wash. Rev. Code § 40.24.030 (2007).

³⁹ Wash. Rev. Code § 40.24.030(1) (2007).

⁴⁰ Even, *supra* n. 19, at 531.

⁴¹ *Id.* This phrase seems to imply that there is some screening that happens to "weed out" anyone who might be applying for the wrong reasons.

⁴² Wash. Rev. Code § 40.24.030(1)(a) (2007).

⁴³ Wash. Rev. Code § 40.24.030(1)(b) (2007).

⁴⁴ Wash. Rev. Code § 40.24.030(1)(c)-(d) (2007).

⁴⁵ Even, *supra* n. 19, at 533.

⁴⁶ Wash. Rev. Code § 40.24.030(3) (2007).

⁴⁷ Even, *supra* n. 19, at 537.

⁴⁸ Wash. Rev. Code § 40.24.070 (2007). In these two circumstances the statute allows for disclosure only to the law enforcement agency directly or to the person named in the court order.

⁴⁹ Even, *supra* n. 19, at 541.

⁵⁰ Wash. Rev. Code § 40.24.070(3) (2007).

⁵¹ Wash. Admin. Code 434-840-060 (1995).

⁵² California (Cal. Gov. Code Ann. § 6206), Connecticut (Conn. Gen. Stat. § 54-240a), Florida (Fla. Stat. § 741.403), Kansas (Kan. Stat. Ann. § 75-451), Louisiana (La. Rev. Stat. Ann. § 44.52), Maine (5 Me. Rev. Stat. Ann. § 90-B), Maryland (Md. Fam. Code Ann. § 4-519), Massachusetts (Mass. Gen. Laws ch. 9A § 2), Montana (Mont. Code Ann. § 40-15-117), Nebraska (Neb. Rev. Stat. § 42-1201), Nevada (Nev. Rev. Stat. § 217.462), New Hampshire (N.H. Rev. Stat. Ann. § 7.43), New Jersey N.J. Stat. Ann. § 47.4-4), North Carolina (N.C. Gen. Stat. § 15C-3), Oklahoma

(Okla. Stat. tit. 22, § 60.14), Oregon (Or. Rev. Stat. Ann. § 192.822), Pennsylvania (23 Pa. Consol. Stat. § 6703), Rhode Island (R.I. Gen. Laws § 17-28-3), and Vermont (Vt. Stat. Ann. tit. 15 § 1150). Not all states use the ACP title. Some state ACPs are called Safe at Home programs, while others are called Confidential Address Programs or Substitute Address ACPs. There are no discernible substantive differences between these programs beyond the name variations, however.

⁵³ See e.g. Cal. Govt. Code Ann. § 6206.7(a) (West 2001). Participation in an ACP places many limitations on the everyday lives of participants. A procedure for withdrawal is important for those participants who may feel that they no longer need the protection, and the hassle, of the program.

⁵⁴ See e.g. Ind. Code § 5-26.5-2-2 (2)(1)(A); Colo. Rev. Stat. § 24-21-202(1).

⁵⁵ See Md. Fam. Code Ann. § 4-522(b)(2); Kan. Stat. Ann. § 75-453(a)(5); Conn. Gen. Stat. § 54-240c(2).

⁵⁶ Minn. Stat. § 5B.01 (2006).

⁵⁷ I worked with these individuals in the summer of 2007 and learned that they drafted the bill that became Minnesota's ACP and worked on its passage in the Minnesota legislature.

⁵⁸ Minn. Stat. § 5B.02(2)(i)-(ii) (2006).

⁵⁹ 32 Minn. Register 966 (November 26, 2007), to be published as Minn. R. 8290.0300(2) (Supp. 2007).

⁶⁰ 32 Minn. Register 970 (November 26, 2007), to be published as Minn. R. 8290.0900 (Supp. 2007).

⁶¹ 32 Minn. Register 966 (November 26, 2007), to be published as Minn. R. 8290.0300(1)(A)-(C) (Supp. 2007).

⁶² 32 Minn. Register 966 (November 26, 2007), to be published as Minn. R. 8290.0300(1)(D) (Supp. 2007).

⁶³ 32 Minn. Register 966 (November 26, 2007), to be published as Minn. R. 8290.0300(1)(E) (Supp. 2007).

⁶⁴ 32 Minn. Register 966 (November 26, 2007), to be published as Minn. R. 8290.0300(1)(F)-(G) (Supp. 2007).

⁶⁵ 32 Minn. Register 966 (November 26, 2007), to be published as Minn. R. 8290.0300(1)(J)-(K) (Supp. 2007).

⁶⁶ Minn. Stat. § 5B.03(3) (2006).

⁶⁷ 32 Minn. Register 967 (November 26, 2007), to be published as Minn. R. 8290.0400(4) (Supp. 2007).

⁶⁸ 32 Minn. Register 969 (November 26, 2007), to be published as Minn. R. 8290.0800 (Supp. 2007).

⁶⁹ 32 Minn. Register 968 (November 26, 2007), to be published as Minn. R. 8290.0500 (Supp. 2007).

⁷⁰ Minn. Stat. § 5B.04(b)-(c) (2006).

⁷¹ 32 Minn. Register 969 (November 26, 2007), to be published as Minn. R. 8209.0700(4) (Supp. 2007). Minnesota purposely made this a difficult standard to reach. To ensure that cancellation for providing false

information would be impartially decided, the rules indicate that a participant would have to be found guilty of perjury for this to happen.

⁷² 32 Minn. Register 971 (November 26, 2007), to be published as Minn. R. 8290.1100(2) (Supp. 2007).

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ 32 Minn. Register 971 (November 26, 2007), to be published as Minn. R. 8290.1100(3) (Supp. 2007).

⁷⁶ *Id.*

⁷⁷ 32 Minn. Register 971 (November 26, 2007), to be published as Minn. R. 8290.1100(4)(B) (Supp. 2007).

⁷⁸ 32 Minn. Register 971 (November 26, 2007), to be published as Minn. R. 8290.1100(4)(D) (Supp. 2007).

⁷⁹ Minn. Stat. § 5B.06 (2006).

⁸⁰ Minn. Stat. § 5B.05 (2006).

⁸¹ See *supra* n. 29 and accompanying text.

⁸² Most states with ACPs give a statutory exemption to their law enforcement agencies which allow disclosure of participant info. See California (Cal. Gov. Code Ann. § 6206), Kansas (Kan. Stat. Ann. § 75-451), Louisiana, Maine (5 Me. Rev. Stat. Ann. § 90-B). Other states' ACPs establish a process by which any government agency can request exempt status. See Connecticut (Conn. Gen. Stat. § 54-240a), Florida (Fla. Stat. § 741.403), Maryland (Md. Fam. Code Ann. § 4-519).

⁸³ 32 Minn. Register 971 (November 26, 2007), to be published as Minn. R. 8290.1100(3) (Supp. 2007).

⁸⁴ 32 Minn. Register 967 (November 26, 2007), to be published as Minn. R. 8290.0400(7)(A)-(B) (Supp. 2007).

⁸⁵ Minn. Stat. § 5B.03(1)(2)(i) (2006).

⁸⁶ Minn. Stat. § 5B.06 (2006).

⁸⁷ 32 Minn. Register 972 (November 26, 2007), to be published as Minn. R. 8209.1400(4) (Supp. 2007).

Jenna Yauch is a senior at Hamline University. She is a Social Justice and Legal Studies double major and Sociology minor. Jenna will be presenting her work on Minnesota's Address Confidentiality Program at the National Conference for Undergraduate Research in Maryland this spring. After graduating in May, she is looking forward to continued work on domestic violence advocacy this summer and entering law school in the fall.

EXTRAS

Family Law Bush League

Jade Johnson

The Family Law Bush League arose out of the Academy of Matrimonial Lawyer's "Divorce Camp 2005," after a number of younger and/or newer family law professionals thought it would be beneficial to see each other again outside of the courtroom.

Originally, an e-mail was sent to the Divorce Camp 2005 attendees, and a group met for a happy hour in November. Since then, the Bush League has averaged an event every other month. We try to rotate professional development events that include guest speakers on relevant topics to our practice area with social events like bowling, golf, Canterbury Park, happy hours, and poker tournaments designed to build relationships and collegiality among our members.

At present, we have grown to 60+ members. Our mission statement provides that our goals are to promote professionalism, competence, integrity and collegiality among emerging Minnesota family law professionals. We hope to continue to achieve these aims through our social and educational events and through new projects currently being developed.

Membership is limited to attorneys and other professionals with ten (10) years or

less of family law practice experience, and who devote at least 75% of their practice to family law. The Bush League recently drafted by-laws, and are in the process of creating a website. Our Divorce Camp Golf Tournament in 2007 was a resounding success, and events are planned through the first quarter of 2008.

The Bush League contacts its members through email and evite. It is a great way for the newer members of the family law professional community to communicate with one another about open jobs, professional and family announcements, and pro bono and volunteer possibilities. We are also able to support one another's practice and answer peer-to-peer questions and provide other resources. Our membership also includes a number of Minnesota's "Rising Stars."

A question that the Bush League often receives is: "Where did the name come from and does it refer to the current presidential administration?" The "bush league" is actually a baseball term, referring to minor leagues or people that have not yet been called up to the "big show;" it was chosen to demonstrate both that the group was new and that they were eager to learn and become involved in the family law community. "Bush League" also reflects our sense of humor!

The current board of directors consists of:

Co-Chairs

- . Samantha Gemberling
- . Scott Rodman

Secretary/Event Planner

- . Jade Johnson

Treasurer

- . Zachary Kretchmer

Professional Liaison (Non-Attorney Representative)

- . Mitch Irwin

Recruitment Chair

- . Bill Casey

The Bush League is a developing and continually growing resource for younger and/or newer family law professionals, and the collegiality our members achieve with other members will continue to benefit their practice for many years to come. For information regarding joining the Family Law Bush League, contact Jade Johnson at jjohnson@nbjlaw.com.

Helpful Websites for Solos and Small Firms

Linda Wold

As a solo practitioner, I have always found it advantageous to lessen my workload or research time through the use of useful websites. I have collected an array of them below that you may find helpful too. I make no guarantees as to their convenience to your practice but worthy of some exploration on your part to make such a determination. Let me know what you think and feel free to offer some “gems” of your own for future issues of the Family Law Forum.

You can access all Minnesota bankruptcy filings at www.mnb.uscourts.gov. This site provides much information and also allows access to the filings through a system called PACER. They charge a nominal fee per page (8 cents) for accessing information. You can directly access PACER at: <http://pacer.psc.uscourts.gov/>

Minnesota Occupational Data & Employment Statistics homepage data tool allows you to select, view and download data for multiple occupations and/or regions and be accessed at: <http://www.deed.state.mn.us/lmi/tools/oes/default.aspx>

The Secretary of State maintains a list of all Minnesota legal newspapers at: <http://www.sos.state.mn.us/docs/lnews052006.xls> they are listed by county, name of newspaper, address and phone number.

Minnesota Housing Finance Agency webpage for information on foreclosure assistance can be accessed at: <http://www.mnhousing.gov/consumers/home-owners/foreclosure/index.aspx>

A legal resource that assists low-income clients is <http://lawhelpmn.org/>. It offers information and resources in several languages and topics.

Free Anti-virus protection software can be found at: <http://free.grisoft.com/doc/help/us/>. Additional protection downloads for anti-spyware, anti-spam and firewall can be purchased for nominal costs at the same website.

Determining the death of an individual can be found on the Social Security Death Indices site at: <http://ssdi.rootsweb.com/>.

To report mail theft, mail fraud, identity theft, false change of address and unsolicited sexually oriented advertising online: <http://postalinspectors.uspis.gov/contactUs/filecomplaint.aspx>

GovBenefits.gov is the official benefits website of the U.S. government, with information on over 1,000 benefit and assistance programs, including both state and federal programs. By checking off items on their benefits questionnaire, you can find the benefits programs that will assist your clients. Find the online site at <http://www.govbenefits.gov>.

Notice of Income Withholding can be found at: <http://www.acf.hhs.gov/programs/cse/forms/OMB-0970-0154.pdf>.

Currently, U.S. Customs and Border Protection (CBP) officers may accept oral declarations of citizenship from U.S. and Canadian citizens seeking entry into the United States through a land or sea border. However, as of January 31, 2008:

- Oral declarations of citizenship alone will no longer be accepted
- U.S. and Canadian citizens ages 19 and older will need to present a government-issued photo ID, such as a driver's license, along with proof of citizenship, such as a birth certificate or naturalization certificate
- Children ages 18 and under will only

be required to present proof of citizenship, such as a birth certificate

- Passports and trusted traveler program cards - NEXUS, SENTRI and FAST - will continue to be accepted for cross-border travel.

All existing nonimmigrant visa and passport requirements will remain in effect and will not be altered by this change.

DOS reminds the public that the current turnaround time for a passport is four to six weeks, so Americans planning international travel may wish to apply now.

For information on obtaining a U.S. Passport visit www.travel.state.gov or call 1-877-487-2778. Specific documentation requirements for land, sea and air travel may be found at www.cbp.gov/xp/cgov/travel/vacation/ready_set_go/. Much more helpful information can be found on this site.

The Hennepin County Law Library, located in the Government Center on the 24th floor, offers some unique benefits to those who become subscribers:

- Access to Lexis at the library
- No limit on the number of items that may be checked out;
- Invoicing for fax, photocopy and e-mail requests -- first 20 pages per week are no charge;
- No charge to attend training sessions; and
- Access periodical indexes from office or home via the Internet

For an annual fee of \$60 for resident attorneys and \$70 for non-resident attorneys, you can become a subscriber. You can find the form and information at: <http://hclaw.co.hennepin.mn.us/screens/membership.html>

Three Poems:

Portia Explains the Mirage on the Road, Portia's Cowboy Divorce, Opening Arguments

Susan Stevens Chambers

Portia Explains the Mirage on the Road Ahead

When I talk of a settlement
without a trial,
she cries.
So I begin again, strategies
For the upcoming hearing date.
She cries.

Her face wears her agony.
I cannot get her to shift,
layers of mistrust prevent
her from helping herself.
We must proceed to pretrial
or sign an agreement.
Each takes strength
she seems to lack.

Her calls distress my assistant
who thinks she attacks me.
But this is just pain,
it pours out of the phone.
These tears do not improve her
outlook, only swell her face,
cloud the road before her.

I tell her I will help,
but my sounds waver on her highway,
she has no faith in their image.
I must push her through.
After we have passed the mirror
she will see,
you can take the path
and not tumble into the shiny lake.

Portia's Cowboy Divorce

He wears boots that ride up
half the length of his long legs.
Fluorescent lights bounce off his hat,
eyes hidden in the shadow.
Her face is two decades older than her years.
She stubs out one cigarette, lights another.
They stand in my waiting room
among ferns and slick magazines.
They ask me for a quickie divorce.

I watch their faces
while I discuss the conflict,
explain I can only talk to one.

Everything in their life has been quick:
their meeting, the kisses across the many bars,
hustling past Texas Line Dance buddies
to wake up the justice of peace,
their fights as they trucked across state lines.

I see his eyes when I tell them my fee
will be around three thousand dollars.
Coughing she snatches up her jeans jacket.
As they back out he says they might just
take some time on this one,
maybe give the marriage another week.

Opening Arguments

Call me Portia. Look at
the three caskets in front of us.
I am buried deep inside one.
Select wisely when you lift
one heavy lid.

The journey you choose is difficult.
I come to show how poplar leaves
can flick silver next season.
I help you hear the cardinal's spring call
Warbling across a snow shrouded field.

I am Portia.

Mercy drops into my middle name.
I strain to sing with the same quality
as the river from my home in the woods.
Those sounds help me through
cement days.

Some mornings I wake, eager
to come to you, certain this is a day
sun will keep my back warm;
last night's sleet forgotten.
Some days I plunge into your swamp,
certain I will pass through without
muck splattering my hem.
At night I drag home.

I am Portia. If I did not come,
your penalty could go higher,
carve deeper against your heart.
I know this, as the robin knows
The placement of her nest shapes
all her coming summer days.

Today I stand up for you.
The judge on his high bench frowns,
Counsel to my left snickers
Behind a skuzzy moustache.
I look at you and begin.

Susan Stevens Chambers has practiced family law for the past 28 years. She recently retired from her law firm to devote her time exclusively to alternative dispute resolution; mediation, Early Neutral Evaluation and Expediting. She has been a long time poet and is published in many anthologies, and won numerous awards in contests. She also teaches poetry and speaks around the country.

