

FAMILY LAWYER

November 2012

MAGAZINE

Feathers and fur can grow your practice

Technology/social media wake-up call

Judge: Be better prepared for court

Losing clients one at a time

Post-divorce financial pitfalls

Your QDRO questions answered

How to choose better clients

2 controversial investigative issues

Military divorce and custody

Personal vs entity goodwill

Family lawyer news

Regaining balance



TABLE OF CONTENTS



FROM THE BENCH

- 9 An Interview with Judge McCarthy: Lack of preparation for court costs clients, the system and the lawyers



LEGAL

- 5 How Feathers and Fur Can Grow Your Practice
- 23 The Uniform Deployed Parent Custody & Visitation Act
- 37 Educational Consultant Witness, a Lawyer's Secret Weapon
- 39 Controversial Investigative Issues in Family Law



FINANCIAL MATTERS

- 12 Post-Divorce Financial Pitfalls
- 14 FAQs on Pensions and QDROs
- 25 The Distinction between Personal and Enterprise Goodwill



PRACTICE MANAGEMENT/DEVELOPMENT

- 20 Losing Clients One at a Time
- 30 Manage Your Time Better by Selecting Clients Wisely
- 38 Professional Divorce Coaching for Clients



TECHNOLOGY

- 18 Social Media: Get out of it what you put in



FAMILY LAWYER LIFE

- 28 Family Lawyer Magazine News
- 31 Regaining Balance



PROFESSIONALS & SERVICES DIRECTORY

- 32 Listing of Professionals and Services in the U.S.
- 36 Listing of Professionals and Services in Canada

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The response to FamilyLawyerMagazine.com, Family Lawyer Magazine and our quarterly e-newsletter has been overwhelmingly positive. It goes without saying that we're extremely pleased to have accomplished our goal of assisting family lawyers improve their practice and work/life balance.

Your tremendous response inspired us to publish this unscheduled issue of Family Lawyer Magazine in electronic format. I would like to take a moment to share some comments we have received in the past few months:

"Family Lawyer Magazine is absolutely the best magazine for me. I've gotten more helpful advice from this magazine than from the last ten CLE seminars I've attended."

~ C.C., Family Lawyer, PA

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"I was very happy to receive the premiere issue of your Family Lawyer Magazine. It's an excellent publication for family law attorneys. I'm sure all family lawyers will be glad to receive it. Please keep the issues coming."

~ A.M., Family Lawyer, PA

In this issue, we feature articles that help you expand the breadth of your practice by developing an expertise in pet custody, a crash course on how social media can grow your practice and how you can regain work/life balance. We also have an interview with a Judge on how to better prepare for court, a brand new column on "News" and a section devoted to QDROs.

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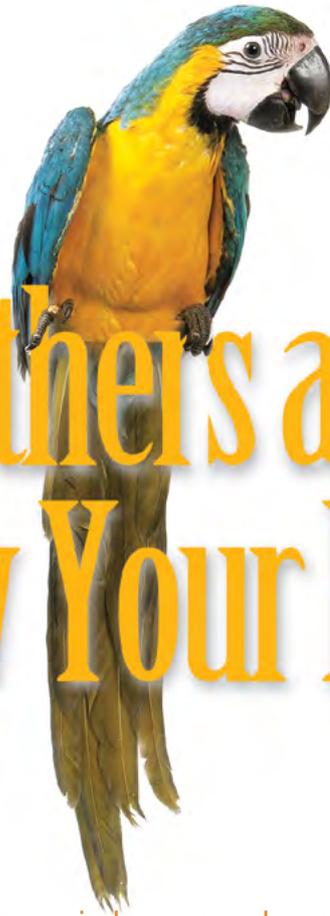
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How Feathers and Fur Can Grow Your Practice

By David T. Pisarra, Family Lawyer

While pets may be considered property more judges are acknowledging roles pets play in our lives. By developing an expertise in pet custody you can increase the breadth of your practice.

“Your Honor? I think it’s clear that my client is better suited to be awarded full custody. He’s more financially stable, has the type of work schedule that will allow him more physical interaction and has a living situation that is much more conducive to the special needs of this case. Further, he has been more fully involved in each stage of Rex’s development. Some may see Rex as just a dog, Your Honor. But to my client he is so much more.”

Pet Custody Battles are On the Rise

Having represented hundreds of spouses over the years, I can say that I’ve seen couples battling with the same ferocity over the family dog or cat as they do over their children. Because of this sea of change, a new area of representation is opening up to family law attorneys amidst a contraction in our industry due to paralegals and DIY online divorce services.

Our thinking about pets has changed over the decades. While man first started domesticating dogs, cats and horses from as far back as 13,000 B.C., it is a relatively recent occurrence that we’ve come to view our pets as members of the family. And with roughly 55% of all households in the U.S. and Canada owning at least one pet, and a host of recent scientific studies proving the benefits that come from pet ownership, there is no question that our furred and feathered friends have ingratiated themselves into our lives. No longer are they an afterthought in the divorce process. As a matter of fact, for many childless couples, who often view their pets as “starter babies,” pet custody is front and center.





While pets are still considered property by the courts, representing a client seeking pet custody demands a more strategic approach than what is found when arguing for the car.

The Best Approach to Seeking Pet Custody

When I was going through my own breakup, which was the basis for my book “What About Wally? Co-Parenting A Pet With Your Ex,” I found the best way to go about this was to substitute “Pet” for “Child.” The reality is that the majority of us own a pet so the odds are a judge will be a pet owner as well. And while they are bound by the law they may be more empathetic to the emotional component pets bring to our lives in much the same way they acknowledge the bond between parent and child.

When approaching a pet custody case we want to have access to documentation of involvement in much the same way we would when handling a child custody case. We want to prove that our client has been a more active participant and taken chief responsibility for the care of the pet. We want to compile registration papers with our client listed as the legal owner, veterinary bills showing our client’s financial involvement, and even receipts for training and food. The goal is to show an active participation in the pet’s life in much the same way we would when showing a parent’s involvement in a child’s upbringing.

In lieu of those documents, or in support of them, be prepared to explore the emotional relationship between client and pet as well as the type of living situation the pet will have if custody is granted. If your dog-owning client is moving out of the home he or she shared with a spouse, provide photos of an ample backyard or nearby dog park. If applicable, highlight the fact that your client has a more conducive work schedule and will be more available to the pet. And if your client is seeking primary custody of the children, don’t hesitate to argue the importance of the pet in their lives.

Shared Custody

Another option that can prove to be very beneficial for all concerned is the concept of shared custody of the pet. This requires an acknowledgement from both parties that each loves the pet and wants to have an active role in its life. In many ways this will mirror the components found in shared child custody. Obviously, proximity of the ex-spouses is important as is the pair working together as a team. If one pet parent allows Fido to jump on the couch while the other doesn’t, Fido could develop behavioral problems. This also holds true with making sure the same food and toys are available at each pet parent’s home. But what I’ve seen through others, and in my own personal experience as a co-parent of a dog with my ex, is that coming together over a shared love has a way of helping to heal old wounds.

While pets are still considered property more judges are acknowledging the role pets play in our lives. And if you’ve ever



represented a pet-owning client you know that in most cases they don't just toss the family dog in to the property mix. So as it is with child custody cases, where we should strive to act in the best interest of the child who often is unable to speak for him or herself, we should employ the same strategies when arguing on behalf of our client's pets.

By developing an expertise in pet custody you are not only increasing the breadth of your practice but reaching out to an often neglected, but large sector of the population. ■



Los Angeles-based Family Law Attorney, author, public speaker and newspaper columnist. David T. Pisarra, Esq., heads the law firm of Pisarra and Grist, as well as MensFamilyLaw.com, dedicated to providing support and representation to men navigating the tumultuous waters of divorce.

More Related Articles on Pet Custody

Pet Custody Cases Should be Taken Seriously

By Peter Walzer, Family Lawyer

The parties can be creative in giving one party "visitation", but the courts may be unwilling to make and enforce such an order. www.familylawyermagazine.com/articles/pet-custody-cases-should-be-taken-seriously.

Dino and Kirby: An Unexpected Custody Battle

By David G. Sarif

A case where child custody was resolved within the first two minutes of mediation, but a lot of time, letters and attorney's fees were spent fighting over the pet dog and snake. www.familylawyermagazine.com/articles/dino-and-kirby-an-unexpected-custody-battle.

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An Interview with Judge McCarthy: Lack of Preparation for Court Costs Clients, the System and the Lawyers



Judge Kathleen McCarthy speaks with Family Lawyer Magazine publisher and CEO, Dan Couvrette, on what she sees family lawyers can do to be better prepared, and help the overall system work better.

Can you compare the better prepared lawyers with the not-so-well prepared lawyers?

Wayne County is one of the largest counties in the United States and we serve over 42 cities, so we have a very active docket. There are twelve judges

that sit in our division and we're responsible for about 900 active cases and 25,000 post judgment cases at any one time.

So from our perspective, moving our docket rapidly through the court system within our time constraints is important. Lawyers need to come prepared to the case-management conference, which is usually our first opportunity to meet them and the family they are representing. This is an opportunity for the attorneys to come to court, sit down with the other side in one of our conference rooms, discuss the issues that are remaining and find ways to move that case forward. For example, you might want to discuss who you'd want as a mediator, or a real estate expert, or a business expert, and so on.

There will be lawyers who tell their clients not to bother coming to court on this date, and that they've got it handled. Often in these cases they just fly into the courtroom. They don't speak to the other side, or use the opportunity to bring in their client, or have a four-way meeting. There's no effort to streamline the process or mediate using their own professionalism — which would also help keep their clients' costs down.

In a divorce case, there are many opportunities to do an informal discovery,

and for attorneys to work with their clients to produce basic financial documentation. I think some lawyers figure that it's just a court date, and all they need to do is make an appearance.

Are there consequences for being unprepared?

Unfortunately, no. Perhaps there should be. I think different judges handle things in different ways. I try to be cognizant that attorneys have busy lives. I appreciate that, but for a family going through a divorce, that is the only important thing going on in their life, and every time they appear in court is a very stressful experience for them.

Shouldn't there be a checklist telling lawyers what they need to have for the initial meeting in order to speed up the process and alleviate its complexity?

I agree with you wholeheartedly that this should exist. However, it's never been adopted in Wayne County because of the significant number of cases that are filed here. I think that's something that we could do better. In fact, that's a pet peeve of many family court lawyers.

But the more the lawyer has to prepare, the more the cost is to the client, right?

Yes, that's true. But of course, you

know these are simple documents that are within the people's discretion and control that speeds along a divorce. It's quite shocking to me as a judge that these basic documents are routinely not available to the attorneys.

What advice would you give lawyers to do a better job for their clients?

Well, I think explaining what a courtroom can and cannot do for their client is important. Clearly a courtroom and a judge are not equipped to deal with their client's emotional needs, and clearly the emotional situation involved in a divorce is the most significant. A lot also depends on where a client is emotionally. I always recommend that lawyers help their clients see a therapist, or at least have therapeutic books their clients can read in their offices, or a list of books that will help them move through that emotional journey. I also strongly recommend sitting down in a four-way meeting with both lawyers and focusing on the budgets and things that the financial professionals routinely do with their clients — but divorce lawyers don't necessarily think that way.

You've been practicing in the area of family law, either as a judge or in your private practice, for 17 years, have you seen things change?

Well, divorce is certainly more prevalent. I think the stigma is gone. I think if you walked into a room of 50 people, close to

35 will have been divorced at some point. This is much different than it was 17 years ago. So in that regard, it's a little easier, because everyone knows somebody who has gone through divorce and can talk with them about it. Also, obviously our economic climate has dramatically changed in the last five to six years. There are fewer and fewer assets. Most people's primary asset is their pension and retirement, and lawyers today are still ill-equipped to properly deal with dividing those.

I find that having worked with many CDFAs and accountants, that it's a little surprising more lawyers haven't brought in that group to help them navigate these issues, and to help them see having a pension or a retirement asset can be used in different ways.

The other huge difference is how astronomically the amount of pro se litigants coming through our courtroom has grown. When I started, maybe a quarter of the litigants were without legal representation. Now it has grown to an incredible amount, which I think is a significant disadvantage to the litigants.

What percentage of cases are self-represented now?

I don't even know if it's as high as 50%, but it's on the rise. Also, the number of actual divorces is down because fewer people are getting married. We have so many more paternity



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and custody cases where people are living together without the benefit of marriage — many of whom are unrepresented. I'm always surprised that in something as significant as a custody or parenting-time dispute, there are so many unrepresented individuals.

It always amazes me how complicated the whole issue of family law is. Would you agree?

Yes, you know there are significant financial issues, pension issues, business issues, custody and parenting time, and child support issues. Truly, the benefit of having developed a family court in so many of our states is that more attention is being called to these significant issues — especially compared to the past. ■

Judge Kathleen McCarthy is a Wayne County Circuit Court Judge in Michigan, in the family law division. Prior to that, she was a family lawyer and a personal injury lawyer.

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Lynne Z. Gold-Bikin

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By Kevin Karlson

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By Kimberly A. Quach

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Post-Divorce Financial Pitfalls

Regarding Named Beneficiaries on Retirement Accounts

By Justin Reckers, CFP®, CDFA™, AIF®

Without exception, our clients want to move on with their lives as quickly as possible after they complete the financial negotiations of their divorce. Moving on includes taking control of their own finances.

We regularly engage with clients to complete these items and there is one simple (to us) but infuriating (to clients) road-block that almost all face: changing or naming beneficiaries in the event of the client's death. The first steps should include opening new retirement accounts; in most cases, this will be an IRA. New account paperwork for an IRA contains a section for designation of beneficiary: the party who would inherit the account funds in the event of the account owner's death. While married, most people want their spouse to inherit the funds in their retirement accounts; after divorce, however, they will often want to name their children or siblings as beneficiaries.

Not so fast, though. If you live in a community property or marital property state, your client will need to obtain a signed consent from their current spouse to name someone else as beneficiary. In fact, most financial institutions require a spousal consent for a non-spouse beneficiary designation regardless of where the IRA owner resides.

Depending on a number of factors — including the divorce agreement — retirement savings accounts such as IRAs and 401Ks may require your client's former spouse to remain the beneficiary even after they have reached agreements around the division of assets.

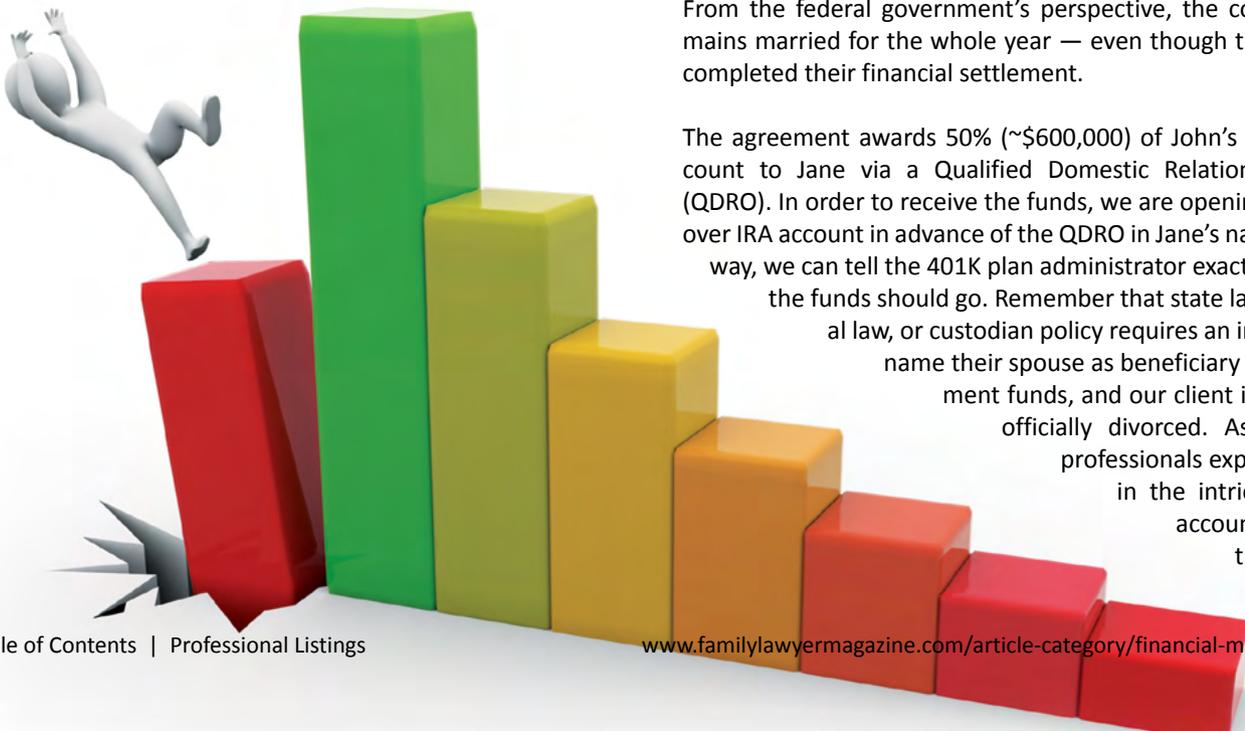
Planning Consideration: Timing

Many people will negotiate the date on which they will take status as single individuals for tax or other purposes. Waiting until January 1st of the year following the separation may be mandated by state-instituted waiting periods, income tax planning, insurance eligibility, or any number of other practical financial considerations. This complication provides a perfect example of an unintended consequence of negotiations: if a specific status date is negotiated into an agreement, it may have unintended consequences on a client's financial future.

Here's an example. The final divorce agreement for our client, Jane Smith, was filed with the court on June 30, 2012. Part of her agreement with her ex-husband, John, says they will take status as single individuals on January 1, 2013. This was done because the couple's tax preparer advised them that they could save \$2,000 in federal taxes by filing their tax return married jointly for the current year (2012).

From the federal government's perspective, the couple remains married for the whole year — even though they have completed their financial settlement.

The agreement awards 50% (~\$600,000) of John's 401K account to Jane via a Qualified Domestic Relations Order (QDRO). In order to receive the funds, we are opening a Roll-over IRA account in advance of the QDRO in Jane's name. This way, we can tell the 401K plan administrator exactly where the funds should go. Remember that state law, federal law, or custodian policy requires an individual name their spouse as beneficiary of retirement funds, and our client is not yet officially divorced. As CDFA™ professionals experienced in the intricacies of account transition, we



will inform Jane that she has three options to remedy the situation and at least one to make it worse:

1. Obtain the former spouse's signature on a Spousal Consent for the new account paperwork. John must effectively agree to allow Jane to name her children as the beneficiary of the funds she was just awarded in the divorce.
 - a. Client Quote: "You mean I just spent 18 months and \$50,000 fighting over this money and I still need his permission to do what I want with my money?!"
 - b. Practical Consideration: What if the relationship has deteriorated to the point where John refuses to agree to the change in beneficiary? It may cost thousands of dollars in attorney fees to force her to do so.
 - c. Practical Consideration: What if Jane doesn't want John to know who her financial advisor will be post-divorce?
2. Name the former spouse as beneficiary temporarily. In really bad circumstances, when a couple no longer communicates at all, it may be advisable to simply name the former spouse as beneficiary with the intent of modifying this as soon as the judgment is final.
3. Delay the transfer of funds. QDROs take time: the QDRO cannot be carried out until the final judgment is signed by a judge in most circumstances, and it is rare to see a QDRO completed in close proximity to a judgment of dissolution.
4. Ignore the problem. We certainly would not recommend this option.

The complications of such simple things as paperwork, as evidenced above, can have prolonged and lasting effects on your clients' lives when the power-struggle continues after the financial agreements are reached. ■



Justin A. Reckers, CFP®, CDFA™, AIF® is Managing Director of Pacific Divorce Management, www.pacdivorce.com, Director of Financial Planning at Pacific Wealth Management® www.pacwealth.com, and a Member of the Board of Advisors for the Institute for Divorce Financial Analysts™, www.institutedfa.com.

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Read the practical considerations for options 2, 3 and 4 and the full article @ www.familylawyermagazine.com/articles/a-look-at-common-post-divorce-financial-pitfalls.

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By Noah Rosenfarb

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FAQs on Pensions and QDROs

If there is insufficient cash for immediate offset, does a QDRO have to award 50% of the marital portion to the non-employee spouse?

Mark K. Altschuler, actuary, and President of Pension Analysis Consultants, Inc. (PAC) serving all 50 states from offices in PA and FL answers:

If there are other marital assets in addition to the pension, counsel for the employee spouse should consider the fact that giving the non-employee spouse 50% may be too much. An offset calculation can be used to determine the cash owed to the non-employee spouse, after the pension is valued. If the liquid assets are sufficient, the equitable distribution can be settled by immediate offset. If not, the QDRO percentage is determined by dividing the cash owed the non-employee spouse by the marital value of the pension. For example, suppose the non-employee spouse is owed \$80,000, the marital present value of the pension is \$250,000, and the employee spouse has insufficient cash for immediate offset. Under the QDRO, the non-employee spouse will receive $\$80,000/\$250,000$, or 32% of the marital portion, which is significantly less than 50%.

Can a QDRO be prepared before a divorce is finalized?

Richard D. Johnston, Jr. operates QDRO Services, LLC in The Woodlands, Texas and assists attorneys and their clients with

the division of retirement benefits and QDRO solutions. He answers:

In many cases, we are engaged to prepare a QDRO after the divorce has been finalized. However, this can result in costly delays (both emotional and financial), and in extreme cases loss of benefits. We encourage attorneys to prepare or have the QDRO(s) prepared once a settlement has been reached, so that the document(s) can be signed and entered with the Divorce Decree or Settlement Agreement. It is generally much easier to get the participant's signature on the QDRO and the Divorce Decree at the same time. After the Divorce Decree or Settlement Agreement has been finalized, many participants can be difficult to locate.

If the Divorce Decree is finalized without the completion of a QDRO, and the participant dies before a QDRO can be entered and accepted, an alternate payee's awarded benefit may be forfeited or at the very least require further action to determine whether the alternate payee may receive his/her benefit.

How Do I Know if the Judgement Drafted Sufficiently Protects My Client's Rights to the Ex-Spouses's Pension Benefits?

QDRO Counsel Inc., a professional law corporation, which focuses on providing QDROs for the division of retirement benefits throughout the United States, the principal attorney, Louise Nixon, answers:

The family law attorney's first goal when drafting judgment language dividing a pension is to create a "domestic relations order" sufficient to place a hold on that pension benefit until a qualified domestic relations order is served on the pension that complies with ERISA for a private plan, or until a domestic relations order is served on the pension that meets the criteria for implementation for a public plan. (Both public and private domestic relations orders are collectively referred to as "QDROs" in this article). And the family law attorney's second goal is to protect survivorship rights for the nonparticipant spouse in the event the participant dies before a QDRO is completed.

Some very general sample judgment language dividing 2 retirement plans is as follows:



“Wife is awarded a separate marital property interest equal to one-half of all benefits accrued or to be accrued under any retirement plan in which Husband has accrued a benefit as a result of Husband’s employment during the marriage, including but not limited to the following retirement or pension plans:

- ABC, INC. DEFINED BENEFIT PLAN
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Until a subsequent domestic relations order is filed, in the event Husband predeceases Wife, the Plans shall, as allowed by law and the terms of the Plans, continue to treat the parties as married for purposes of survivor rights or benefits available under the Plans to the extent necessary for payment of an amount equal to Wife’s marital property interest, or for all of the survivor benefit if at the time of death of Husband there is no other eligible recipient of the survivor benefit.”

Then after the judgment is filed, serve it on the plan(s)! In most cases, your client will then be protected for a while until a QDRO is filed.

My client was awarded 50% of the marital portion of her ex-husband’s 401(k), but why does the plan administrator keep rejecting the QDRO?

Tim Voit, a financial analyst, founder of Voit Econometrics Groups Inc. and author of Federal Retirement Plans in Divorce — Strategies and Issues, and Retirement Benefits & QDROs in Divorce, answers:

This is because very few 401k administrators will compute contributions and earnings between two points in time (e.g. date of marriage to date of divorce). Unfortunately, there is no magic key on the computer for a plan administrator to press and compute marital values of 401(k)s or Thrift Savings Plans.

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therefore, in long-term marriages it is difficult to get any cooperation from the plan. All too often we see settlement agreements stating that one spouse is awarded 50% of the marital portion of the other spouse's 401k. The divorce is over and the spouse is left with trying to find someone or some way to compute the marital portion, or worse, getting the plan administrator to accept some form of QDRO.

Calculations would have to be done independently using all of the quarterly

account statements if possible, where contributions and earnings are tracked with a proportionate share of the earnings being assigned to either the marital or premarital estate. It can be a long, time-consuming calculation, especially if there are loans involved. To be accurate, a thorough analysis is the best approach, and often beneficial to the plan participant since the premarital portion is often more valuable than most people would think, but it costs money to have it done.

Another option is to subtract the date of marriage account balance from the current account balance, but this assumes no growth in the premarital portion. Regardless, the date of marriage account balance must be known and provided. Also loans should be addressed, which is another interesting issue since if loans are taken from the 401(k) or TSP early on in the marriage, the marital portion is actually in the red (as it borrowed from the premarital estate). Coverture fractions do not work since the contributions and earnings have nothing to do with years of marriage, or of service, and should be avoided.

Rather than having the non-401(k) spouse hassle with trying to get a QDRO awarding 50% of the "marital" portion, place the burden on the plan participant spouse to have the premarital portion calculated and excluded. If they do not, perhaps by a certain date, deem it all marital. Sometimes you have to light a fire so the plan participant spouse has incentive to cooperate. After all, isn't the goal of awarding half of the marital portion to exclude the premarital portion? Don't just put in a settlement agreement or final judgment that the one spouse is awarded 50% of the marital portion without specifying who is to do the calculations, or how it is to be done.

Lastly, if there are loans on the 401(k) existing, emphasize just how much of the loan(s) the spouse is responsible for, and whether their awarded share is to be adjusted or reduced. This point is often missed.

QDRO Basics: What Family Lawyers Should Consider while Negotiating the Divorce?

Robert G. Hetsler, J.D., CPA, CVA, CFF, FCPA is a financial specialist in the division of retirement and pension accounts with Hetsler Mediation & Valuation, Inc., a Forensic & Investigative Accounting Firm. He answers:

1. What is the name of the plan? Have your clients shown you



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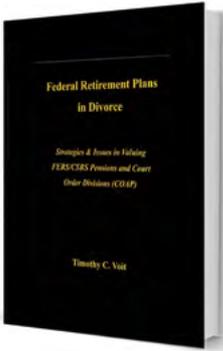
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1. documentation and included the actual plan name and type of plan in the document? The financial institution where the plan is held is not the name of the plan.
2. Does the plan accept an order to divide the assets, and if so, does it accept a QDRO? This is the most frequent problem with pensions. Many governmental plans are NOT subject to QDROs, and you need to research what division is possible. If a QDRO is not accepted the divorce may need to order the participant to pay the ex-spouse directly. Is that a scenario the clients are comfortable with or is there a better division of assets that can be made?
3. Can the client take a lump sum distribution? Many times clients come to us to write a QDRO thinking they will be getting a lump sum distribution immediately, only to find out that they must wait until their ex-spouse retires, and then only get a monthly payment until such time as he dies. They are often very angry when they realize this, and would

have preferred different arrangements in the negotiation. In order to represent their interests, you must know what the plan allows.

4. Define the details. Put it all in writing. Should interest accrue on the account from the time of divorce until time the account is separated? Should loans be included? Who should pay for the QDRO? Separate vs shared interest in pension funds? Survivor Benefits (again make sure you know what the plan allows)?
5. Clearly state the amount or percentage. The plan will not calculate this for you. \$50,000 less 33% of his bonus for the next 6 years is not reasonable. The plan will reject the QDRO and leave your clients in a bind. If a percentage is used, clearly state how that percentage is to be calculated.
6. Do not include conditions. The plan will not be your monitoring service. Do not include things like if they are not remarried, or if they do not make over \$XX,000 per year. Again, the plan will not accept the QDRO. ■

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Social Media: Get out of it what you put in

By John E. Harding, Family Lawyer

I am on the website committee for a lawyer organization that I belong to, and this organization is redesigning its website. Prominently displayed up in the right hand corner of the new design were the one-click buttons for Google+ LinkedIn, Facebook and Twitter. All the committee members liked how the buttons looked. However, things got a bit complicated once the question was asked: "Who is going to post the content to the social media pages?"

"Post content? What do you mean? I thought stuff just appeared about us when we put the buttons on our website?" It became very clear that no one on the committee had the foggiest idea what LinkedIn or Facebook or Twitter did. Another very good question asked was: "Why do we need a Google+ page if we already have a website?"

Here is what you need to know my friends: Goggle+ pages, and LinkedIn accounts, and Facebook pages and Twitter accounts are blank billboards. If you want your message to get out, you have to write your message. Then post it on your social media page. Then you have to create and post a new message. And another one. And so on, and so on.

You want a Facebook page or a Goggle+ page in addition to a website to get your message out to a broader audience. Just like you might have a billboard downtown, one in the suburbs, and an ad in the phone book. A website and a social media site increase your exposure to search engines, and act as cross-pollinators for your internet presence. People viewing your website click over to your LinkedIn page, and people

viewing your LinkedIn page then click over to your website, etc., etc.

Let's look at an example. I write a tech blog. Each post gets posted on my blog. A summary of the post, along with the picture are simultaneously posted to my Google+, Facebook, Twitter and LinkedIn pages. The people who are subscribers to my blog automatically receive a copy of the post in their email inbox. When someone does a Google search of, for example, "social media for lawyers," Google could very well post a link to my blog post. A few days later I will generate a report to see how many people have read my post. It will probably be about 150 to 200 people. That means 200 people will read the name John Harding and the name Harding & Associates Family Law. 200 people will have the opportunity to click on the link to my website that appears at the bottom of my post. Guess what? About 75 to 100 people actually will click on that

link to my website. That's pretty good! But it took some effort on my part. I had to come up with an idea to write about, and then I had to spend about 15 minutes doing the writing. Not a lot of time, but I did have to make the effort. And that is the key to social media. You get out of it what you put into it. ■



John E. Harding, JD, CFLS is the principal lawyer at Harding & Associates, in California. He is a Fellow of the AAML and is certified as a Certified Family Law Specialist by The State Bar of California Board of Legal Specialization. He is the publisher of the Family Law Lawyer Tech and Practice Blog, from which this article was excerpted. Read the entire post at www.familylawyertech.blogspot.ca/2012/09/social-media-aint-easy.html. His firm's website is www.HardingLaw.com.

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Losing Business One Client at a Time

Embracing technology and marketing can ensure your law practice succeeds in the future.

By Dan Couvrette
Marketing Consultant

I recently read an article about how a series of changes, most of them slow and over the course of 15 years, brought some of the newspaper industry’s players to their knees. But the article was also about how the industry and these players could have avoided its current predicament, or at least minimized it, by adapting and being more proactive.

Family law firms are experiencing similar challenges. Some are losing clients because:

1. The internet has dramatically increased the public’s access to information on legal issues, resulting in more do-it-yourself divorces.
2. There is increased competition for business and the Internet has had a significant impact on how and why a family lawyer is found and hired.
3. Less people are divorcing. In fact, about 25% less over the past 30 years.
4. More lawyers who did very little family law are taking on such cases to offset business lost in other practice areas due to the economic downturn.

I have been helping family lawyers market their services for over 16 years and have noticed that for the most part they have been reactive rather than proactive to these changes. This is particularly true of more established law firms that have traditionally relied heavily on referrals for their business. In fact, it is these firms who stand to lose business, one client at a time, to new lawyers and law firms who are aware of the need to market their practice, and who take advantage of what technology has to offer.

Are Family Law Firms Adjusting to Change?

In the past three months I have visited over 60 well-established family lawyers in various states including New Mexico, Missouri, Oklahoma, Indianapolis, Ohio, Massachusetts, Connecticut, New York, New Jersey, Pennsylvania and South Carolina. I also attended the American Bar Association Family Law Section October meeting in Philadelphia, where I spoke with over 30 family lawyers from across the country. Almost without exception, all of these lawyers expressed how their family law practice has changed. They conveyed how:

- Business is not as robust as it has been, compared to just a few years ago.
- It has become more of a challenge to secure good, quality clients.
- Increasingly, the opposing counsels are lawyers they have never dealt with before, and they wonder

I once did tell Dan (many years ago) “Why would anyone want to advertise on the Internet?” And I have eaten those words as many meals.

- how these lawyers managed to get the case.
- Tried and true referral sources are no longer as dependable.

The very fortunate few who found themselves still as busy also acknowledged they were not turning away the quantity of clients they once did.

Do any of these comments ring true for your practice?

When asked what they were doing to adapt to these changes, most shrugged their shoulders and said they had done little to nothing, and expected things would “get back to normal” when the economy picked up. A very small percentage said they were revamping their

websites, connecting more frequently with their referral sources, getting more active on LinkedIn.com, and creating or expanding their Facebook presence. Essentially, embracing technology to make them more effective and help them stay connected with their clients.

Law Practices Growing through the Economic Downturn

Surely the slower economy over the past few years would explain why business has not been as good, right? Well, not necessarily. Among the clients of our marketing agency, we have seen examples of growth that would make a lot of family law firms envious. One client has grown from one lawyer to 15 in less than four years. Another has grown

from three to six lawyers, and another from 12 to 16 lawyers. There are also countless examples of family lawyers striking out on their own after working for other law firms.

Through the years, we have built websites for law firms, promoted their websites through search engines, social media and pay per click campaigns, advised and redirected their advertising budget from the printed Yellow Pages to advertising on targeted websites. We have also shown them how to generate leads and stay in touch with their referral sources in a systematic manner. It has not been an easy task, but they almost always pay off for our clients. Just this week, a client said this to our V.P. of Marketing: I once did tell Dan (many years ago) “Why would anyone want to advertise on the Internet?” And I have eaten those words as many meals.

Those family lawyers who are embracing change and asking questions like, “What do I need to do to prepare my law firm for the future?” will likely thrive and take business away from the family law firms who are not adapting. Those lawyers who said to me they will “Wait it out” or “Get around to doing a more effective job of marketing their firm when they have the time and money to do so” will continue to blame the economy for the slowing down of their business. And it will likely get worse.

An Example of Embracing Technology and Marketing

Yesterday a family lawyer contacted our firm for help with marketing her new practice. She is leaving a prominent family law firm to “go out on her own”. She mentioned that her current firm had “no interest in marketing” and how crazy that approach was in this day and age. She did not need to be convinced of the value of marketing, or why, and instead was asking how to best market herself. She contacted our agency after reading an article we wrote on marketing in *Family Lawyer Magazine*. Within one day of contacting us, she retained our agency to:

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This is what one young, single practitioner is doing to take advantage of technology and to market a family law practice she has yet to name.

What about you? When you meet her, or somebody like her, as your opposing counsel you shouldn't need to wonder how she got the case. You'd know they did it by embracing technology and marketing to build their practice, one client at a time. ■



Dan Couvrette is the CEO of Divorce Marketing Group and Publisher of Family Lawyer Magazine and Divorce Magazine. Divorce Marketing Group is a marketing agency dedicated to promoting family lawyers and divorce professionals. His firm's website is www.DivorceMarketingGroup.com.

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The Uniform Deployed Parent Custody & Visitation Act

By Mark E. Sullivan, Family Lawyer

The Uniform Deployed Parent Custody and Visitation Act is a vast step forward in providing standard steps, rights and procedure to use when a military parent leaves on unaccompanied military business. States should give serious consideration to its passage.

With widespread military forces around the world, America's military places unique challenges before the men and women in uniform who make up the Army, Navy, Air Force, Marine Corps and Coast Guard. A high operational tempo means stress at home and less time for families. As a result, divorce rates in the uniformed services are higher than the general population.

Mobilizations, TDY (temporary duty), deployments and remote assignments can take their toll on the judges who handle custody cases, as well as the parents who are parties to the lawsuit. It often appears there are no clear rules to guide them when a family separation arises and there is a dispute over the care of children. The single biggest area of change in family law in the last ten years has been the movement among states to enact legislation protecting the rights of servicemembers (SMs) and their children in custody and visitation matters.

What about the SCRA?

Some lawyers and legislators cannot understand why any change is needed. Why isn't the status quo sufficient protection? After all, they claim, there's always the Servicemembers Civil Relief Act, and surely that provides enough protections for members of the armed forces.

The SCRA only provides procedural protections for the SM. Nothing in the Act gives any substantive rights regarding parental access, joint decision-making, notice of relocation, visitation or primary custody of the children. This federal law was never intended to prescribe rules for legal custody and visitation decisions. It was created to prevent harm to SMs, not to create rights for them irrespective of state cases and codes. The issue of custody and visitation rules and rights for military members is solely the province of state law and appellate decisions, not the U.S. Code.

The Uniform Law Commission

The Uniform Law Commission is an assembly of about 350 commissioners that are appointed by the states to draft legislation. About two years ago, a committee of the ULC began meeting to address a mounting problem in a mobile military population — the provisions for custody, visitation and decision-making when one parent is absent due to military duties. The issues with which judges, lawyers and parents have struggled include substitute visitation by step-parents and grandparents during deployment, consideration of military service as a factor in custody determinations, and whether a temporary custody order can or should be made permanent when a parent comes back from a military absence, such as a deployment.

In July, 2012 the ULC met in Nashville and passed the newest tool for dealing with deployment and custody, adopting the latest in a series of "uniform laws" which serve as models for state legislation. This act, the Uniform Deployed Parents Custody and Visitation Act, may be found here. The UDPCVA adopts the best provisions found in the state court decisions and state statutes, fine-tunes them, and bundles them into a single act.



The rest of this article briefly explains what the Act does, and what protections it provides in the complex world of military custody and visitation.

The UDPCVA

The first Article covers definitions, such as “deploying parent,” “family member” and “uniformed service.” It also covers enforcement, attorney fees and a requirement that the residence of a parent not be changed by reason of deployment. Parents are required to provide notice of impending deployment and of address changes during a deployment. A court may not consider a parent’s past deployment or possible future deployment — by itself — in deciding the best interest of the child. The court may, however, consider material effects on the child’s best interest associated with past or future deployments.

Articles 2 and 3 deal with matters that come up upon notice of deployment and during the actual absence, depending on whether the case is resolved by settlement or litigation. The Act encourages parents who wish to settle visitation and custody issues. Where there is a negotiated settlement, Article 2 sets out the substantive terms and procedural protections which cover the agreement. When parents cannot agree, Article 3 states provisions for a court’s resolution of the issues of custody and visitation.

Article 4 governs the return from deployment. This includes termination of the temporary custody arrangement following the SM’s return, with one set of procedures for mutual agreement to end a temporary custody settlement, another for mutual agreement to terminate a court order for temporary custody, and a third to deal with the situation where a court’s intervention is required.

The final part is Article 5. This contains the effective date provision and a transition provision regarding prior orders for temporary custody entered before the effective date of the Act.

Conclusion

The Uniform Deployed Parent Custody and Visitation Act is a vast step forward in providing standard steps, rights and procedure to use when a military parent leaves on unaccompanied military business. These absences are never easy for single parents in uniform. The Act is a step in the right direction to protect those who protect our freedoms, and states should give serious consideration to passage of this model act. ■



Mark E. Sullivan, a retired Army Reserve colonel, practices family law in Raleigh, NC and is the author of The Military Divorce Handbook (ABA., 2nd Ed. 2011), from which portions of this article are adapted. He is a Fellow of the AAML and a board-certified specialist in family law. He works with attorneys nationwide as a consultant on military divorce issues. www.ncfamilylaw.com

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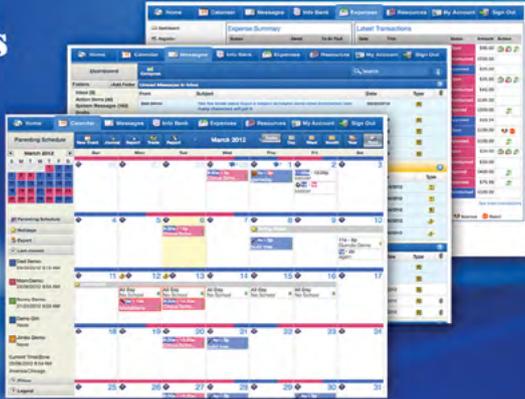
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The Distinction between Personal and Enterprise Goodwill

By Shannon Pratt and Alina V. Niculita, Business Valuers

The distinction between personal and enterprise goodwill is becoming an increasingly important aspect of business valuation. This is primarily true in conjunction with marital dissolution disputes, where an increasing number of states are requiring a separation of personal versus enterprise goodwill, and excluding personal goodwill from the marital estate. The distinction can sometimes be a factor in corporate taxation, where the source of proceeds from a liquidation can be considered personal goodwill and therefore not subject to taxation.

Enterprise Goodwill Characteristics

Enterprise goodwill is that part of goodwill attributable to the entity as opposed to the individual. The following characteristics would be indicative of enterprise goodwill:

- Company has written contracts with major customers
- Company has written contracts with major suppliers
- Company has written employment and/or noncompete agreements with key employees
- Advantageous location

- Large business with formalized organizational structure, systems, and controls
- Company has formalized production methods and business systems
- Business or practice is not heavily dependent on personal service performed by the owner(s)
- Company sales result from company name recognition and/or sales force

Personal Goodwill Characteristics

Personal goodwill is that part of goodwill attributable to the individual as opposed to the entity. The following characteristics would be indicative of personal goodwill:

- Small entrepreneurial business that are highly dependent on owner's personal skills and relationships
- No noncompete or employment agreements
- Personal services provided by the owner(s) an important feature in the company's products or services
- Sales largely dependent on owner's personal relationship with clients
- Product and/or services know-how and supplier relationships rest primarily with the owner(s)

Two Examples of Divorce Cases

In a large neuropsychiatry practice that the authors valued, the doctor, who owned 100% of the stock, had largely institutionalized the goodwill. The company had a staff of about 60 doctors and therapists, some as employees and some as independent contractors. It had employment and noncompete agreements with all the department heads and key doctors. It also had contracts with all

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the hospitals it serviced, and most of the doctors had their own patient relationships. The doctor/owner personally saw few patients, but he negotiated the contracts with the hospitals and hired all the key professionals. The court concluded that the goodwill was 70% institutional and 30% personal.

The president of a specialized niche insurance agency had personal relationships with all the underwriters and most of the larger customers. He had developed very loyal relationships with all of the largest producing agents. The agency had no contracts with any customers and no employment or noncompete agreements. In this case, most of the goodwill was found to be personal. ■



Shannon P. Pratt, CFA, ARM, ABAR, FASA, MCBA, CM&AA, is the founder and Alina V. Niculita, CFA, ASA, MBA, is the president of Shannon Pratt Valuations, Inc., a national business valuation firm located in Portland, OR. Dr. Pratt has over 10 books in print on business valuation and has testified on several cases. www.shannonpratt.com



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“Underwater Properties” Taxable Income Exemption to Expire December 31, 2012



In 2007, Congress passed the “Mortgage Forgiveness Debt Relief Act and Debt Cancellation” to address the number of principal properties worth less than their mortgage, and promote a more orderly exit strategy for these homeowners through short sales and mortgage modification. With the Act,

debt forgiven by a lending institution on “qualified principal residences” is no longer considered taxable income to the seller. If your clients are considering the sale of an “underwater” principal residence, they will need to have the sale completed by December 31, 2012 to potentially qualify for this debt forgiveness exemption.

Read the full article by Loretta Hutchinson, Certified Divorce Financial Analyst: www.familylawyermagazine.com/articles/underwater-properties-taxable-income-exemption.

Ex-wife of a Dead Ontario Man got Awarded his Pension

On November 1, 2012, the Ontario Court of Appeal in Canada awarded a deceased man’s pension to his estranged wife. His common-law spouse who lived with him for 12 years until his death was initially awarded the pension by an Ontario Superior Court trial judge. But this decision was reversed in a rare 2-1 split decision by the Ontario Court of Appeal. Read the judges’ comments: www.divorcemag.com/articles/Divorce-Law-and-Court-Cases/ontario-divorce-pension-laws.shtml.

Read an article on this exact topic on page 12.

First Mother to Daughter Uterus Transplant Performed in Sweden

It is no secret that infertility rates have increased, consequently giving rise to the use of third party assisted reproduction like surrogacy. The ever increasing turn to third party reproductive assistance has made gamete donation and surrogacy more common than ever, but now there may be another type of third party reproductive assistance: uterus transplants.

Ten surgeons recently performed a mother to daughter uterus transplant at the University of Gothenburg’s hospital in Sweden. Could this be another way for people to successfully have children and have the joy of expanding their families?

For more information and the full article by Robert Terenzio, Reproductive Law Attorney: www.familylawyermagazine.com/articles/surrogacy-uterus-transplant.



California’s Surrogacy Laws Most Progressive in the U.S.

In September 2012, California Family Code sec. 7960 was amended and is arguably the most progressive surrogacy statute to date in the United States. Put simply, same sex couples and individuals who seek surrogacy as a way to build their families are going to be afforded the same protections as married heterosexual couples.

Read the full article by Leslie Schreiber, Attorney and Counselor, at www.familylawyermagazine.com/articles/california-progressive-surrogacy-statute.

December 31, 2012: Last Date to Vote for your Favorite Charity to win a \$6,000 Prize

The Charity Funding Challenge initiative was started by Family Lawyer Magazine and Divorce Magazine as our way to support the generous efforts of family lawyers who donate money and their skills to charities. Several non profit organizations that provide family law related services have been nominated by family lawyers to win a prize donation of \$6,000 in cash and marketing services. The deadline to vote is December 31, 2012.

Please follow the link and do not miss the opportunity to participate in this worthy cause. Vote here: www.familylawyermagazine.com/articles/charity-funding-challenge.

IAML Expanding the Scope of its Annual Meetings

Earlier this year, the USA Chapter of the International Academy of Matrimonial Lawyers hosted a two-day symposium for 15 delegates from the Japan Bar Association and Ministry of Foreign Affairs. A panel of lawyers, judges and mental health professionals shared information and practical advice on the handling of legal proceedings under the Hague Convention on International Child Abduction.

There was also a symposium in Singapore where lawyers from Hong Kong, Singapore, Japan, New Zealand, England, Australia and the U.S. discussed the issue of child abduction and international relocation.

For more information and the full article by Family Lawyer Nancy Zalusky Berg: www.familylawyermagazine.com/articles/iaml-expanding-the-scope-of-its-annual-meetings. ■

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Manage Your Time Better by Selecting Clients Wisely

By Mark Powers & Shawn McNalis,
Coaches for Attorneys

The traits that make a good attorney don't always make a good businessperson. The lawyer who is not buoyed by the natural sense of optimism which supports and sustains most other professionals lives in constant fear that their practice may not survive. Driven by this sense of impending doom, and underscored by the lack of true business training attorneys receive, they tend to make poor business decisions.

Among the worst is their failure to effectively screen new clients. Unfortunately, practicing "threshold law" (working with anyone who crosses your threshold) often feels like the right thing to do but invariably leads to further distress because of the many problematic (non-paying and uncooperative) clients who get in the door. If you want to effectively manage your time, start with the cases you accept.

Take a look at the following checklist of symptoms signaling an overload of problematic clients:

- High outstanding receivables
- Clients leave prematurely or often threaten to seek the services of another attorney
- Clients often fail to show for scheduled appointments
- Clients often fail to bring requested documents or to follow directions
- Staff feel abused by clients who misdirect their anger and scream at them or act unreasonably
- Experience of a constant sense of crisis and tension that is attributable to specific clients and/or specific opposing counsel
- Staff and attorneys dread going to work and dealing with certain clients
- Staff and attorneys often feel they

can't meet the high expectations of some clients

- Staff and attorneys who never hear "thank you" or any acknowledgement for their efforts — even when major victories occur for certain clients

If you checked off more than one of these symptoms, it's time to take control of the situation you may have unwittingly created by not screening for clients who will pay you, cooperate with you and appreciate your efforts. You owe it to yourself, your team and your firm's bottom line to raise your standards.

We maintain that the quality of your practice is determined largely by the quality of your clients. Carefully selecting the clients you work with not only helps protect you against malpractice problems, it has the added benefit of saving you a lot of time, improving office morale, minimizing collections problems and restoring peace in an otherwise crisis-driven practice. Believe it or not, to better manage your time, develop your client selection skills. The impact on your peace of mind will be significant. ■



Mark Powers and Shawn McNalis co-authored "The Making of a Rainmaker: An Ethical Approach to Marketing for Solo and Small Firm Practitioners." Mark Powers, President of Atticus, is the founder and developer of the first personalized training program dedicated to teaching attorneys the lasting skill and habits necessary for practice development. Shawn McNalis, Curriculum Director/Practice Advisor of Atticus coaches attorneys and provides training and certification to Atticus' coaches. www.atticusonline.com

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Regaining Balance

By Odette Pollar, Consultant

Time for You

You have probably noticed that if you wait to take care of yourself in time left over after handling all other responsibilities, you are often the loser. This is why it is crucial that you set time aside in your calendar just for you, and that you guard it jealously.

What's wrong with setting 3–5 p.m. Saturday for a long stint in the garden, or 9–11 p.m. on Monday evening to read? Start with a two-hour block of time for yourself each week and gradually increase it over time until you are feeling in better balance.

The way you manage time is often based on habit. But habits that were once helpful can get in your way. Changing your old behavior patterns can help you manage time more effectively.

The Only Person that Can Manage You is You

Follow these seven steps to launching a new behavior and watch the transformation:

1. Identify the new behavior
2. Think about ways to practice the new behavior with gusto
3. Publicly announce the new behavior for a strong beginning
4. Do the new behavior every day for 21 days consecutively
5. Post signs to help remind you of the new habit
6. Be willing to feel slightly uncomfortable until the new behavior takes hold
7. Change the environment to reinforce the new behavior

Be diligent, at least in the first three weeks. Try not to deviate from your new behavior until it is firmly rooted. When a crisis hits, you are likely to swing into action automatically, reacting

in the old ways you know best. Once in a crisis, your attention is on the immediate problem, not on your new routine. You may lapse into the old automatic behavior. If you do find yourself slipping, simply go back to the new behavior and start the 21 cycle again.

Be aware of the things that trigger or cue your habitual behavior. Most behavior is a response to stimulus, such as getting hungry at the sight of delicious food. Recognize what triggers the behaviors you want to change. Once you have the trigger event identified, you have three ways to approach habit change — change the trigger event, change your response to the trigger event, or change both. ■



Odette Pollar is a speaker, author, and consultant. She is President of the management consulting firm, Smart Ways to Work based in Oakland, CA. This excerpt has been condensed and reprinted with permission from her most recent book: A Life Worth Living: How to Regain Balance and Simplify Your Daily Life.

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Educational Consultant Witness, *a Lawyer's Secret Weapon*

By Dr. Judith Greenberg,
Educational Consultant

What can an educational consultant do for you and your client in a divorce case? By comparing the feeder schools (elementary, middle and high school, public or private), and even pre-schools, in the mother's and father's boundary schools, it is possible to show the court which parent is the more appropriate person to be a primary decision maker and thus have legal custody of the child(ren). It also helps in cases where a 50/50 parenting plan has been decided. Comparing schools helps to determine which school system is best for the child. There are always interesting turns and places to look for information. For example: How many sex offenders live within a few block radius of one of the parent's home and school district? Which school has a higher graduation percentage? Etc.

A consultant can use these sources, all of which can be found on internet sites but they do not usually make sense to a non-educational professional. Yes, anyone can find the information, however the interpretation of such evidence and an opinion of an expert makes a world of a difference.

Judges will actually mention the information from the educational expert as a reason for their decisions. The vast differences in school programs are amazing and easy to chart, so the attorneys and judge can see the differences and respond in a favorable decision.

An educational expert can testify to what type of elementary, middle or high school the child attends. If the child has special needs, a consultant can read the IEP or 504 plan and testify as to whether or not the school is meeting the needs of the child, or if another school placement is needed. A consultant can also interview parents, grandparents, teachers and principals

to get a good picture of the child and the school. The report from an educational consultant can trigger one parent to settle or give the judge the necessary information to give custody and/or locate the child in your client's school district. If you have never used an educational expert, try it; you might like this secret weapon. ■



Judith Greenberg, Ph.D. is an educational consultant, who has many years of experience as an expert witness in divorce cases.
www.schoolfinders.net

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By Margaret "Pegi" S. Price

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Professional Divorce Coaching for Clients

By Allison Pescosolido, Divorce Recovery Expert

Experienced divorce attorneys know all too well how the stress and emotional baggage that typically accompany the separation process can negatively affect their clients. Those seeking the services of a lawyer rarely do so with a completely clear mind or a reasonably constructive attitude.

Don't let your clients' delicate and confused mental state get in the way of the important legal business that you need to discuss. By encouraging them to obtain professional life coaching before delving into the myriad nuanced details necessary to divorce, you can ensure your clients are better equipped to work efficiently, engage cooperatively and face the realities of their situation head on.

A life coach can help your clients in the following ways:

- **Be better equipped for your meetings** — Armed with a bit of information and knowing approximately what to expect, your clients will feel more prepared and less intimidated to confer with a legal counsel.
- **Feel more comfortable discussing legal matters** — A good life coach will help your clients compartmentalize their emotions so that they



can more effectively discuss the matter at hand. By acquainting them with common divorce proceedings and what lies ahead, the coaching process helps to put clients at ease in a legal setting.

- **Focus more clearly on the necessary details** — Coaching can help your clients concentrate on prioritizing what's important and what isn't.
- **Communicate more effectively with you** — When the lines of communication breakdown, the client is bound to become dissatisfied... even if he or she is partially to blame. Communication problems can be eliminated by enabling clients to

reach a clearer, less-troubled emotional and psychological outlook.

- **Separate the emotional issues from the financial issues** — Your clients can prevent emotional turmoil from affecting crucial financial decisions.
- **Take full advantage of your legal advice** — Attorneys are not life coaches. Yet clients in fragile emotional states often try to treat you as such. By acquiring the services of a life coach in addition to the legal services provided by an attorney, your clients will be better equipped to check their emotional baggage at your office door, giving you the time and space that you need to do what you do best: practice law. ■



Allison Pescosolido M.A. is co-founder of Divorce Detox. With advanced degrees in the field of Psychology and as certified Grief Recovery Specialists® by The Grief

Recovery Institute, Divorce Detox is a full service center dedicated to transforming the lives of individuals transitioning through divorce across the U.S. www.divorcedetox.com

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Controversial Investigative Issues in Family Law

By Rob L. Kimmons, Security Consultant



subject trash, witness interviews, serving garnishments on financial institutions, etc. Family law attorneys should be wary of investigators or information brokers who continue to claim they can legally obtain bank account and stock account information by any other means.

Vehicle Tracking

Vehicle trackers have become very advanced and effective. When a tracker is in use, a single investigator with a laptop and wireless internet access can easily locate a vehicle through tracking software. Most states have statutes stating that a licensed private investigator, who has the written consent of a vehicle owner or lessee, can legally install and monitor a tracking device. They can enhance surveillance results, and reduce client cost in a surveillance case.

Family Law Attorneys may want to have their clients' vehicles swept to determine if a tracker has been installed by opposing parties. ■



Rob Kimmons is President of Kimmons Investigative Services, Inc. which has offices in Houston, Dallas, and Austin, Texas. Kimmons is a former Houston Police Officer and Houston Fire Fighter. He holds the certifications of Certified Protection Professional (CPP), Certified Fraud Examiner (CFE) and Certified Homeland Security Expert (CHS III). www.Kimmonsinv.com

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Legal & Ethical Considerations for Attorneys Working with Investigators

By Nicholas G. Himonidis

A lawyer has responsibility for how an investigator handles his case. www.familylawyer magazine.com/articles/legal-ethical-considerations-for-attorneys-working-with-investigators.

Family law investigations often involve surveillance, asset investigation, due diligence, computer and cell phone forensics, locating and interviewing pertinent witnesses and countermeasures (debugging) etc. There are two specific areas of domestic investigations that are particularly controversial and sensitive: asset discovery and vehicle tracking.

Asset Discovery

Investigation and due diligence regarding tangible assets are routine for competent investigators. Tangible assets include: real property, vehicles, boats, aircraft, company affiliations, equipment, etc. The more difficult and challenging area of asset discovery involves locating bank accounts, stocks and bonds, trust funds, other cash accounts, mutual fund accounts, etc. The Federal Law (113 stat.1446, section 521) Gramm-Leach Bliley Act of 1999, imposed strict penalties for individuals who obtain information about a third party bank or brokerage account through pretext of deceit.

The few information brokers still operating are not reliable in obtaining certain types of financial account information (banking, brokerage, mutual funds). Existing laws regulating these types of financial investigations make it nearly impossible for information brokers to obtain reliable results legally. If an information broker is able to accurately identify bank accounts and balances, it may be by scamming or pitching financial institutions through illegal pretenses. Obviously, this is something none of us would want to be a part of. However, investigators can sometimes identify financial accounts through legitimate sources, such as surveillance, legal monitoring of