TRIAL TIPS FOR CLIENTS

PREPARATION:

Preparation is the key to successfully presenting accurate information in court. Our office will schedule one or two trial preparation conferences. One conference will be a week or so beforehand to make preliminary preparations. We also like to meet with our clients for an hour or two on the day prior to trial. In the final conference, we will conduct a dress rehearsal of your testimony.

Depositions: If the opposing party has taken your deposition, it is important to read your deposition carefully. When the opposing counsel is cross-examining you, we may ask you the same or similar questions as those asked in your deposition. If you answer the question differently, opposing counsel will use the deposition to show the court that you have changed your answer. This is called "impeaching" a witness. If you see that your answer at trial might be different than in your deposition, please advise your lawyer of that in one of your trial preparation conferences.

Suggestions: You can be a big help in preparation. You should make lists of suggested questions for yourself and for the opposing party and for witnesses.

Dress Rehearsal: If you would like, one of our staff members will be happy to accompany you to the courtroom in advance of trial so you can become familiar with the setting. This type of dress rehearsal can reduce anxiety and create a feeling of confidence.

WHAT TO WEAR?

We advise our clients to dress conservatively. Court is a somber, conservative and non-colorful environment, so the dress should be consistent with that. Solid navy blue outfits are almost always appropriate. Men can wear either a solid brown, blue, or black suit, or khaki pants and a blue blazer. White button-down shirts with

a red, blue or red and blue tie. Men should avoid broad pin stripes or expensive fabrics. Alligator or other expensive shoes and cuff links should be avoided. Women may wear dresses, skirts or slacks. Coats for women look good in court. Blouses should be plain with no designs or "frills." Women should not wear clothing that is tight or too colorful. Red, zebra, leopard, or leather should be avoided at all costs. High heels should not be worn.

Neither men nor women should wear expensive or excessive jewelry. Men should wear one simple ring and a simple watch. (Again, expensive rings or watches should not be worn, e.g., diamonds, Rolex, Gucci, etc.) Women should wear a ring, a simple watch and perhaps a simple bracelet or necklace. Earrings may be worn, but they should not be expensive or "dangly." Hairstyles for men or women should be "conventional."

WHEN TO ARRIVE?

One half-hour early. You will be apprised of the time of your trial well in advance. We prefer our clients arrive at least one half-hour early. **YOU MUST NOT BE LATE FOR COURT AT ANY TIME**.

WHAT HAPPENS WHEN YOU GET THERE?

It is typical that the time shortly before the court is somewhat hectic and disorganized. This is normal. Do not be alarmed by it. There may be several cases or "motions" which are also set for that day, so other lawyers, parties and witnesses may be there at the same time, milling about. Your attorney may be involved in conversations with court personnel or with lining up witnesses. There may also be some time for a little more preparation.

Typically, the Judge asks to see the lawyers for each party in the Judge's office. The purpose is to find out about the case, what issues are to be decided and how the trial is to be managed. The court may also explore a settlement. As a matter of fact, it is quite common that extensive settlement negotiations are conducted on the day of trial with the assistance of the Court. Many times, cases are settled on the day of trial, and no testimony is ever presented.

Settlement on the day of trial is so common that it bears further discussion. When the judge hears from the lawyers about what facts may be presented at trial, he

gives the lawyers guidance as to how he might rule. The lawyers use this guidance to formulate appropriate settlement positions for their clients. You should understand, however, that the court is rarely actually deciding an issue or "prejudging" the case. And, settlement on the day of trial is just that, settlement. You always have the option of deciding not to settle any issue on the day of trial. If you feel any pressure to settle, please advise your lawyer.

CONDUCT AT TRIAL:

You should conduct yourself in court with decorum. You should not be boisterous or engaged in joke-telling or laughing. You should not curse, either on the stand or in and around the courthouse. You should be in complete control of your demeanor and your emotions. Do not react to the other party or to any testimony you hear or rulings made by the court. The Court will be watching how you conduct yourself. Avoid expressions, shaking your head, glaring, scoffing, wincing, wiggling, or sound making.

If you need to communicate with your lawyer, write a note on a piece of paper and pass it to him or her. Communication is important, but take care to make the communication discreet and not so frequent that is becomes distracting to the lawyer.

Completely avoid chewing gum, hard candy or chewing tobacco or snuff in the courthouse.

WITNESSES:

Witnesses who are friendly to your case do not necessarily need to be subpoenaed, unless they need one to be excused from work or school. Although witnesses should be present at the beginning of trial, it is usually possible to allow them to wait until their turn, provided they are available to respond by phone and travel to the courthouse on short notice.

CHILDREN:

The courts often have special rules for children testifying. We will need to get a court order prior to any child testifying in court. If you think that a child's testimony is important let your attorney know as soon as possible. Older children,

such as those who are 12 and over, may testify in open court, just like any other witness after the court enters an order allowing for their testimony. The younger the child, however, the more likely that special accommodation is made. The matter is handled in a number of different ways. It is most common for the court to interview child witnesses in the judge's office in the presence of the attorneys, but not the parties. Courts are aware that children may be very uncomfortable testifying in front of their parents.

ORDER OF PROOF:

The plaintiff presents his or her proof and witnesses first, then the defendant. The plaintiff may then conclude with what is known as "rebuttal." The plaintiff gets the last word. If you are a defendant, do not worry too much about this advantage. The Court is aware that you do not have this opportunity. You may be called to the stand as a part of the other party's case. This is called being called "as an adverse witness." For example, a petitioner might call the respondent as the very first witness in the case. If this happens to you, do not be alarmed by it. The key is that you are now aware beforehand that it could happen.

ORDER OF QUESTIONING:

When a party puts a witness on the stand, that witness is subjected to what is known as "direct examination." During this portion of the examination, the attorney must ask questions in a way that does not suggest the answer. When the direct examination is complete, the other attorney has the right to ask questions during the phase known as "cross examination." Cross examination can be somewhat difficult. The cross examiner has a wide latitude in the subject and manner of questioning. An effective cross-examiner will use "leading questions," that is, questions that suggest the answer. "Isn't it true that...." When cross is finished, the other lawyer has the right to more questions in what is known as "redirect." On occasion, the Judge will ask questions. Do not be alarmed if this happens.

TAKING THE STAND:

When you take the stand, you will be given an oath by the Courtroom deputy or bailiff. Afterwards, take your seat and look kindly at the Judge. Sit comfortably, leaning forward slightly with your feet on the floor. Do not cross your legs, lean

back, swat back and forth, or slouch. Your job is to listen carefully to the question and respond accurately.

TESTIFYING:

When being asked a question, look at the person asking the question. When answering, look at the Judge. The Judge is the one you are communicating to, not the attorney asking the questions. When opposing counsel is questioning you, look at him or her, but do not become transfixed. Again, remember, your purpose is to communicate with the Judge, not to impress or beat or outsmart the opposing counsel. Take your time. There is no hurry. This is not a test and you are not being graded for the speed of your answers. If you do not understand a question, say so. Make sure you understand exactly what is being asked. If you do not recall something, state that you do not recall. Opposing counsel may try to get you to speculate or guess. Do not fall into that trap, but you must also avoid being difficult as a witness. When answering questions, try to answer the question, first by saying yes or no, if that is what is called for. After answering, begin explaining or qualifying your answer. A witness who refuses to answer questions directly appears to be avoiding the truth.

If you are asked if you have talked to anyone about your testimony or your case, answer, "of course, I have talked with my attorney." Then answer whom else you have talked to. Many people fear this question and the answer. Don't. There is nothing wrong with talking to people about your case, and it is appropriate, of course, to prepare for trial with your attorney.

When answering, do not say "uh huh," or simply nod your head. You must say, yes or no. The reason is that the if there is a court reporter present the court reporter must record your testimony.

Do not talk too fast. This makes it difficult for the reporter to transcribe your testimony. Don't talk too slow, as that may appear unnatural.

Do not talk when someone else is speaking. Wait for the questioner to finish his or her question.

Do not argue. Do not ask questions. If you have a question, say, "I don't understand," and explain why.

Under no circumstances should you lose your temper. If you have emotion about something, it is appropriate to display it, but never attempt to show emotion because you think it will help. Try to avoid too much crying. Judges can be turned off by too much emotion or crying and some Judges have been known to direct witnesses to stop crying.

When there is an objection, stop talking. The judge will rule on the objection and instruct you whether or not and how to answer the question.

A common objection is to "hearsay." Hearsay consists of out of court statements that are made for the truth of the matter asserted. Simply, it consists of what someone told you. Do not worry too much about whether what you have to say is hearsay. That is a complicated legal determination. But once a court sustains an objection to hearsay, you must avoid telling what someone told you. Failure to respect the Court's ruling can give the court the impression you do not respect it.

Do not argue with the Judge or address questions to him or her.

If you are asked a question that may require you to answer about a possible crime, say, "I'm not sure how to answer that. May I confer with my attorney?" The most common questions in family law cases that deal with crimes are the use of drugs or questions dealing with failure to report income on income tax returns.

Be prepared to tell the court exactly what you want. Do not say "noble" things like, "I just want what's fair." You must say what you want.

SEQUESTRATION:

There is a rule in court called, the "rule" or the "rule of sequestration." What that means is that witnesses other than the parties are prohibited from hearing the testimony of other witnesses before they testify. The rule is "invoked" in most cases. This means that the witnesses who have not testified will be kept out of the courtroom. During lunch or overnight, or during other breaks, you and your witnesses must avoid talking about the case. If you do that, the entire trial could be jeopardized. Once a witness has testified, they can remain in the courtroom and discuss the case with you.

SUPPORT:

A trial is a very difficult thing. We recommend that our clients bring a group of supporters to the trial. This group can consist of parents, sisters and brothers, neighbors, people from church, or people from work. This group of people serves many purposes. First, it serves as moral support. Second, it shows the other side and the court that you have good people on your side. It can also be somewhat intimidating to the other side. When bringing your support group, make sure they are aware of the rules stated here. They, too, should avoid showing emotion or hostility, or making faces or gestures in the courtroom.

CONDUCT IN THE COURTHOUSE:

Remember, when you are in the courthouse or around it, court personnel or people connected with the other side may be watching or hearing you. Conduct yourself as though you are on camera. You must assume that anything you say or do will be observed and heard.

COURT PERSONNEL:

The personnel of the court, such as the bailiff and court reporter, are often friendly and interested in you. You may talk to them, but do not put on an act for them. They do not make the decisions and have no input into the decisions.

CONDUCT OF THE ATTORNEYS:

Attorneys and litigants are expected to conduct themselves with courtesy and civility. Many attorneys know each other well. Whether or not attorneys know each other or even like each other, you may see the attorneys acting very friendly with each other. This is not something to be concerned about. As a matter of fact, the better the lawyer, the more likely it is that he or she will treat opposing counsel with a great deal of courtesy.

LENGTH OF TRIAL:

Most trials are completed in one day. However, it is not unusual for a case to take more than one day.

THE RULING:

In relatively small cases, it is not unusual for the judge to render his or her ruling at the end of the trial. However, in cases that are difficult or complicated, it is common for the court to "take the matter under advisement." It is common in those cases for the Court to ask the lawyers to prepare suggested findings for the court to read. Decisions can typically be expected within 30 days from the date that the trial is over or the court receives the suggested findings. However, it is possible for a court to take as much as six months to make a decision.

AFTER TRIAL:

It is traditional for attorneys to shake hands with the opposing counsel and maybe even the opposing party and witnesses at the conclusion of the trial. If there is some animosity between the parties, this should not be exhibited in the courtroom. It is acceptable in these circumstances to exit the courtroom and the courthouse at different times in order to avoid difficult or awkward circumstances.

ARE WE WINNING?

A trial can be like a prize fight. Punches are thrown by each side. Both parties get bruised. The real "winner" is not known until the end. Often, you cannot tell how you are doing. When you put on your side of the case, you often feel like you are "winning." When the other side puts on their case, one often feels that the other side is "winning." Do not fall into this trap. Don't try to anticipate the result. I often tell clients that I judge myself only by whether I planned the case properly and achieved what I set out to achieve in the case. If I do that, I cannot worry about the result and must have faith.