PREPARING AND PRESENTING YOUR CASE BEFORE THE COURT

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CHAPTER 5.1

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PREPARING AND PRESENTING YOUR CASE BEFORE THE COURT

I. INTRODUCTION

As a young attorney, it can feel overwhelming to watch the old-timers smoothly navigating their way through the courtroom, greeting staff like old friends, and seemingly always knowing what to ask for. Much of this knowledge is obtained through trial and error. In this paper, judges offer their perspective on things that young attorneys can do to prepare and present their cases before courts while looking smooth and professional in front of clients and judges.

II. THE DAY OF TRIAL

You've worked your case for months. You've exhausted all the pre-trial traps. Mediation failed. Your Motion for Summary Judgment, though excellent, has been denied. All the Special Exceptions have been addressed. The only thing left is the actual trial. This section is intended to guide you through that battle.

Many of these steps are pretty rudimentary. They may have been taught in your Trial Ad class in law school. The thing of it is, in the *"fog of war"* people tend to forget the basics. Trial can come at you quickly. You may feel like you're drinking from a fire hose. If you employ these basics, hopefully you can slow things down and feel more confident at trial. If you feel more confident, you'll be more persuasive.

A. Prepare a Witness List

This list is not just for you, but it can be helpful to you. You should have two drafts of your witness list. One that simply lists the names of the witnesses you intend to call. They do not have to be listed in any particular order. They can be in alphabetical order, the order you plan to call them to the stand, by height, or simply listed as you remembered them when sitting down to generate the list. This list is for the court reporter, opposing counsel, and the judge. If you provide this to the court reporter and let them know your list has all the names with proper spellings, the court reporter will love you. She may even name a child after you. Along these lines, if you know you will be using some unique terminology, a list of those difficult to spell words provided to the court reporter might just make them love you enough to mention you in her Will.

The second draft is for you. Bulleted under each witness's name should be the exhibits you plan to use with that witness. I've included a sample Witness List with this paper as an addendum.

Notice how the Witness List references the Exhibit number. When that witness takes the stand, your trial partner can be collecting all the exhibits you will need. If they have already been admitted and are with the Court Reporter, your partner can collect them. If they are yet to be admitted and still in your trial box next to the table, your partner can find them and put them near you as you get to that topic. You can focus on the witness.

You should have an outline for each witness (more on that later) but your paralegal or trial partner can use this quick bullet list to make sure you have covered everything with each witness. For example, in an original divorce, you will need to ask the pertinent questions about residence and domicile, and date of marriage, and when they ceased to live together as husband and wife.

You'll want to make this list while you go over your file for trial preparation. As you think about each aspect of your case, you will need to think about how you will get that information before the court. Which witness will talk about each topic? Perhaps in your bullets you can also list each exhibit you plan to sponsor through that witness, and which exhibits you plan to question that witness about.

After putting together a list like this, you will probably find yourself not even referring to it during trial. It takes a lot of time and energy to analyze your case this much. In doing this type of prep, you are burning your case into your brain. You are also realizing where you may have holes. You may not be able to fix the hole, but it feels a lot worse to discover the hole *in* trial than it does *before* trial.

B. Prepare an Exhibit List

Same principle applies here. Your Exhibit List helps you prepare for trial because the process of making the list makes you think about each piece of evidence you will need. Additionally, the list provides you a safeguard during trial. You can keep track of each piece of evidence so you know what you have admitted and what has been left out.

I've included a sample Exhibit List with this paper as an addendum. Note the list contains much more than simply a list of the exhibits. Each exhibit has a list of names after it. These names are the witnesses with whom you plan to talk about each exhibit. This feature weaves together with the Witness List that has the exhibits after each witness's name. As with the Witness List, you want to make sure your list has all the information. The copies you provide to opposing counsel and the Court do not need to have all the extra information.

C. Prepare Exhibit Notebook

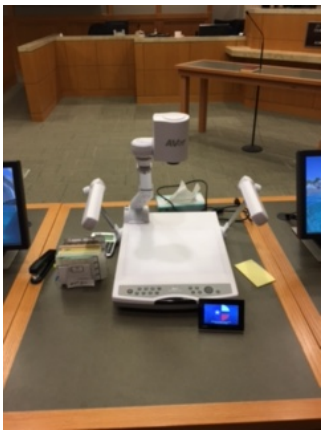
Much of your time in trial can be wasted pacing around the courtroom from your table, to the witness stand, to opposing counsel, to the bench, all just to get

a piece of evidence admitted. Not only does it burn up time (and in the 219th time is precious), it breaks the flow of your presentation. When you begin that kabuki dance around the courtroom, it makes it hard to remember what point you were trying to make with the exhibit in the first place. If you can't remember what point you were trying to make, it will be harder for the judge to make the connection.

Preparing a notebook with each exhibit tabbed inside will help in many ways. First, less mileage for you to walk around the courtroom. I know you may want to be next to the witness looking over their shoulder at the same document. You think your mere presence will cow them into giving you the answer you want. That only works in Hollywood. In real life, you look like you're trying to bully the witness. You're better off placing the tabbed exhibit notebook on the witness stand for each witness to use during their testimony. When you want to talk to them about a particular exhibit, you can simply tell them what tab to flip to, patiently wait for them to find the right tab, then give them a page and paragraph to find. As you proceed through this patiently, you look in control. You are conveying organization and confidence. If you are confident (not cocky) the judge is more inclined to follow your line of thought. Getting the judge to follow you is half the battle of getting them to give you what you want.

You can also provide the same notebook for the court. However, some judges like me prefer the digital version (more on that later). For now it is enough to say the digital version may be preferred when you have a large amount of exhibits.

Another tactic to consider is the use of the overhead projector. Many courts have these projectors for displaying documents. Ours looks like what you see below.



Many times witnesses will have trouble finding the exhibit you want them to find. Or they may feign difficulty at locating the specific text you want them to find. Their difficulty may be genuine as they are nervous. (If it's an opposing witness we all know they are faking nervousness and just messin' with you). If you place the exhibit on the document camera so everyone is looking at the same thing at the same time, you do not need to wait for them to find the magic text you are trying to point out. This can be particularly effective with detailed spreadsheets or bank statements. It can be hard to decode the importance of the information written in the bank records. But if you point to it on the big screen everyone in the room can see where Dad has taken money out of an ATM at a strip club, or Mom has used her credit card at Neiman's 36 times in a month.

Electronic Format — Even for the Courts that prefer the hard copies, I suggest having an e-version as well. This will once again put you in the good graces of the Court Reporter. Remember that court staffs talk about lawyers too. If the staff likes you, it will harder for the judge not to like you. If the judge likes you, it won't win your case, but it helps. Court reporters will appreciate the e-version because of appeals. The appellate courts require the record to be submitted electronically. This means all the hard copies of exhibits have to be scanned by the Court Reporter to be included in the record. If you have already provided an e-version for the court reporter, you have sped up her ability to produce the record. This actually helps you get your appeal turned around more quickly as well. You can provide this e-version on a common CD or thumb drive. Just make sure the only materials on the drive are from the instant case. You should just use a clean new CD or thumb drive and label it accordingly. We don't want to accidentally see pictures of your most recent family trip to Disney World.

D. Pre-Mark Your Exhibits

When you are in trial it can be difficult to keep track of what your next exhibit number is. Even if you have a super computer for a brain, or a photographic memory like the kid in *Suits*, why waste that brain power on memorizing your next exhibit sticker. Save that part of your brain for something else useful in trial, like listening to the witness or the judge.

Instead, number all of your exhibits before you get to court. There is no rule requiring exhibits be introduced in numerical order. In fact, if you have that rare animal, a Family Law jury trial, it might serve you well not to make Exhibit 1 your first exhibit. When I tried cases before a jury, I made sure the first exhibit I entered was somewhere at least in the twenties. If you start with Exhibit 29, the jury subconsciously thinks, there must be at least twenty-eight[1] more pieces of evidence to come. Often times, to juries, more is better.

Numbering ahead of time also helps you look smooth and in control. If you forget what number you were on, you might accidentally have two exhibits with the same number. Nobody looks organized if they have to stop what they were talking about and check with the court reporter what the next exhibit number was. Plus, you can't link your Exhibit List to your Witness List unless the exhibits are pre-marked.

[1] Be careful not to overdo this principle. While more can be better, there is a spot where there can be too much.

E. Test Your Equipment in Courtroom Ahead of Time

Today's courtrooms have a lot of technology available. Many of you grew up seeing and using PowerPoint in class and other forms of technology in your everyday life. You can use all that tech to your advantage, especially if your opponent does not know how. Of course if they do, you need to know how so you don't look like the Caveman Lawyer, or Lionel Hutz from *The Simpsons* (two excellent Phil Hartman characters—but I digress).

Your stomach may never feel worse than when you have a beautiful digital presentation planned, and cannot hook up your laptop to the projector because you don't have the proper converter. Whether you run VGA, or HDMI, or don't know what those initials mean, if you plan to present information in court electronically, make sure your gear works with the court's gear.[2] Most courts will let you in to test-drive your stuff if you ask nicely. Make sure to ask a few days ahead of your trial date. If the court is not busy in the courtroom they may give you the run of the place during normal business hours. If we are slammed for the days leading up to your trial, I'll make some time after hours to make sure you can do a quick dry run.

Even if you are not going to use a hi-tech approach, you should scout the courtroom to see what tools are available. In the newer courthouses, with the upgrades to all this new digital way of presenting information, the old easels and flip charts can be hard to find. Even if there are easels and flipcharts, there may not be any markers. You need to know these things and prepare accordingly before trial.

Conversely, if you want to use a hi-tech approach, but are going to be in an older courthouse, you need to make sure you can do the things you want. Some of our more rural courthouses simply do not have enough power outlets, or they are not located conveniently. Forget about Wi-Fi. These things can be overcome with extension cords, power strips and mobile hotspots. But you will need to communicate with the court ahead of time to make sure all of that is okay. If not, then obviously you need to adjust to the tools available in the courtroom. Whether the judge of that courtroom will let you use the equipment you want leads to the next tip.

F. Scout your judge—learn their likes/dislikes

I like technology. If you're submitting something to me, I probably won't accept a paper copy. I'd prefer it in PDF and e-mailed to me. However, that only covers the 219th. Within our own courthouse are 10 other district judges. I'm certain there is at least one that would prefer paper. So if you're in front of that judge, you need to have paper ready for them.

I pretty strictly enforce time limits in the 219th — ask around. I'm sure there is no shortage of jokes about it. However, the other ten judges may or may not be as strict as I am about time limits. You need to know where you are. In baseball, the Boston Red Sox play at Fenway Park. It's famous for the Green Monster in left field. The whole outfield has odd-angled corners and nooks for a ball to bounce weirdly. Visiting players have to adjust to that park or they're at a disadvantage. Knowing how to play the Green Monster may not win the game for them. But misplaying the Green Monster can certainly lose a game for them. Same thing in court. Knowing a particular judge's likes and dislikes will not win you a case. But messing them up can be costly. It adds a hurdle for you to overcome that does not need to be there. You make your job harder than it needs to be.

G. Summaries of Requested Relief

A written summary of requested relief helps me tremendously. It focuses the case. Many times at the end of a case I cannot tell what the lawyer wants me to do. If I have a list I can refer to, it helps. The list does not have to be too detailed. It should cover the basics like:

- Conservatorship
- Possession Schedule
- Primary Residence
- Whether you are asking for a disproportionate distribution
- Child Support
- Geographic Restriction
- Property Characterization
- Spousal Support
- Possession Schedule

In a nutshell this summary tells me what you want if you win. In longer trials this can be very helpful. After listening to all the testimony for a couple of days, I might forget something your client testified about on the first day. If I don't make a ruling, then you need a follow-up hearing to clarify. It can be quite cumbersome.

H. Conclusion

So these were a few simple things you can do to be more organized. If you're more organized you can more clearly make your arguments and respond to your opponent's arguments. None of these tips are a substitute for having the facts or the law on your side. But these should help you get out of your own way and let those good facts and law shine for you when they are on your side.

[2] If you really don't know the difference between VGA and HDMI, I've attached photos of each in and addendum.

III. IMPORTANT PEOPLE AT TRIAL

Although being a family law attorney can seem like a solo effort, there are many other people that can influence how smoothly your trial goes. This section includes tips for how to try to work with others at the courthouse.

A. Working with Court Staff

Court staff are very important. It goes without saying that you should always be courteous. However, don't feel shy to form relationships with the professionals who work at the courthouse and to ask for things that they may be able to help you with. Introduce yourself. Ask questions about what they do and how you can better help them get what they need. It's not their job to teach you how to be a good lawyer, but if you're friendly, brief, and respectful, they will generally give you some good tips.

1. Court Coordinator

The court coordinator is typically the judge's right-hand person. Knowing the court coordinators' names and personalities is a key first step in being able to work efficiently with courts.

The court coordinator handles scheduling. They carry out the judge's preferences and policies about what gets set and when. If you want to get dates for hearings or trials, you will contact the court coordinator. If you haven't worked with that court before, it may be worth your time to stop by in person for a brief chat. You can find out how the judge sets the court calendar:

- Some courts set all trials on Mondays and expect you to be ready to proceed any day that week.
- Some judges will set aside different weeks for each type of case, for example, the court may have a set criminal jury trial week, family bench trial week, civil jury trial week, etc. Your type of case will only be set during the appropriate week, which may significantly impact your expectations about scheduling.
- Certain types of motions may be heard only on certain days of the week, for example, all enforcements on Thursdays, or all discovery issues on Friday afternoons.
- There may be specific requirements for that court, such as requiring mediation or requiring a certain form scheduling order.
- The court may have guidelines about whether additional pleadings may be added on to an existing hearing date.
- Courts have different willingness to hear multiple temporary orders hearings or to set motions to reconsider for hearing.

If you can develop a positive relationship with the court coordinator, you can learn the policies and procedures so that your expectations and your client's expectations are in line with what will happen when you get to court.

The court coordinator also handles communication with the court. If you need to communicate information to the court, find out information from the court, or ask for a special request, the court coordinator is going to be the go-between. Because no one wants to risk having ex parte communications with a judge, you should involve the other side in communications, either by stopping by the court's chambers with opposing counsel or copying opposing counsel on e-mails. Examples of special requests the court coordinator may be able to help with:

- If you have an uncommon type of motion, need a special type of hearing, or have uncommon relief in your motion, you can bring it to the court coordinator's attention and ask the best way to set it. This may ensure that it gets set properly on a day that the court has time to hear it and that the judge knows to carefully read the pleadings in advance.
- Setting a hearing at an odd time to accommodate a unique scheduling issue. If you have a witness who can only be present at a specific time, or if you are going to be in another court or another county, ask the court coordinator whether you can be on the docket for an out-of-the-ordinary time, such as 10:30 a.m. or 3:00 p.m.
- If there is an issue that you think could be resolved quickly and cost-efficiently through a phone conference with the judge, the coordinator may be able to set it up. This can be very effective, for example, if you need clarifications about a judge's previous ruling or if you are having trouble selecting a mediator/counselor/other professional. A phone conference is generally not on the record, so substantive issues should still be addressed through formal hearings.

Ex parte pleadings are another area where the court coordinator can be helpful. In some courts you may be able to have an ex parte request ruled on 100% electronically, avoiding any need to make a trip to the courthouse. Other courts may have different procedures. Contact the court coordinator to alert them that you have filed ex parte relief and find out what you can do to most efficiently get what you want. For example, Judge Miskel rejects ex parte TROs that contain lots of requests and largely overlap the county's standing orders. She prefers that ex parte

relief be limited and specific, and that the restraining order only contain the few items that are genuinely important. Contacting the coordinator in advance to find this out would help you to present the pleading and order that is most likely to be persuasive.

2. Bailiff

In the courtroom itself, the bailiff generally handles questions and communicates with the court. The bailiff helps the judge manage the docket efficiently by helping to understand who's ready, how long things will take, and which matters are more urgent than others. You can help the docket proceed most efficiently by communicating the following pieces of information to the bailiff:

- Check in. The bailiff needs to know that you're there so he or she can let the judge know which cases are even ready to be called.
- Whether you're ready to start your hearing. If you're waiting on your client, talking to the other side, etc., just let the bailiff know. The court may be able to call other matters before getting to you.
- How long your matter will take. If you just need five minutes for something short, the bailiff may be able to let the judge know to call you earlier or fit you in between other things.
- Witnesses. If your witness has a time constraint, if you're paying them, or for any other reason you'd like to get the witness finished ASAP, let the bailiff know. The court may be able to call your case sooner or let you take that witness out of order.
- Finding people. If you can't find an opposing party or witness, let the bailiff know. The bailiff has a good idea of who's present for what matter and may be able to point you in the right direction.
- Coordinating with other courts. If you have multiple matters set in different courts at the same time, let the bailiffs know. Different courts are more or less flexible and the bailiff can help the judge understand to call you sooner or later to accommodate the other court. Also, leave your cell phone number with the bailiff so the court can find you.
- Witnesses by phone. If an attorney, party, or witness will be appearing by phone, give the contact number to the bailiff when you first check in.
- Technology. If you will be using the courtroom technology or setting up your own technology, arrive early and let the bailiff know. It may be helpful to get things set up before docket begins. The bailiff can let you know the court's preferences and help things move smoothly.
- Conflict and safety. If you know that lots of extended family are showing up, or that a party has been arrested, or for any other reason there are likely to be security concerns, let the bailiff know when you arrive. They may decide to have extra security on hand.

If you have questions or concerns when you're in the courtroom for the hearing or trial, confer with the bailiff. The worst that can happen is that you make a request that cannot be accommodated, but you haven't lost anything by asking.

3. Court Reporter

The court reporter's job is to accurately write down everything everyone says, keep the exhibits, and prepare the official transcripts. The court reporter's job is a tough one, and there are many things you can do to help:

- At the beginning of each hearing or trial, introduce your name and the party you represent. If you don't know the court reporter, give him/her one of your business cards with your bar number written on it.
- If there is a substitute court reporter or a court reporter you're unfamiliar with, get his/her card. If you want a transcript, you'll have to contact him/her directly, so you'll need to have the contact information.
- Speak loudly and clearly. Remember, you're not talking for yourself and you're not having a private conversation with the witness. The purpose is to persuade the fact-finder and leave a clear record.
- If a witness's name is difficult, if you're using technical terms, or if you're referring to a case name, spell the words for the court reporter, otherwise, he/she has to research it later. If you have a copy of a case that's been discussed, leave it with the court reporter. Court reporters really do try to look up the citations after the hearing.
- Don't talk on top of anyone—the court reporter can only write down what one person is saying.
- Always stand to object. Since you're going to have to be talking on top of someone, this helps the court reporter focus on you and record what you say.
- If there is an interpreter, you must pause frequently for the interpreter to translate. Break your statements up into short bursts so the interpreter can translate. One of the most

frustrating experiences for all involved is when attorneys talk on top of the interpreter or talk too long without a pause.

- Give a copy of your witness list and exhibit list to the court reporter.
- Leave all exhibits with the court reporter – admitted or not. Once an exhibit has been offered, even if it is not admitted, the court reporter has to keep a copy. If you leave without giving the court reporter a copy, he/she will have to track you down afterwards.
- If there have been many exhibits offered, go over to the court reporter immediately after the hearing has concluded and confirm that he/she has all the exhibits.
- Always pre-mark your exhibits before the hearing. If you haven't pre-marked, don't waste time trying to get exhibit stickers from the court reporter—just handwrite the exhibit number on the exhibit.

Court reporters charge parties for transcripts. If you need a transcript, e-mail the court reporter and ask for an estimate. The court reporter will give you an estimate for the cost and how long it will take to prepare. If you need the transcript to be used at an upcoming hearing, tell the court reporter the date you need it. There may be a rush charge. You may also be able to get a rough draft before the final draft is ready, if it's really needed for a hearing. You may not need to request and pay for the whole transcript. If you just need the court's ruling, or one witness's testimony, let the court reporter know. That will cost less and typically take less time. The court reporter will not start working on the transcript until he/she receives payment.

4. Clerks

The clerk's office can seem impenetrable if you treat it like a call center with anonymous employees. However, there may be specific clerks (with names) who work for each court. Try to find out who the court's clerks are, and if you have questions, try to reach out to those clerks directly. Certain counties have friendlier clerks than others, but the worst that can happen is that someone is unhelpful. The upside is that the clerk can answer your questions and help you make things much more efficient. Clerks can help you with:

- Getting citation and notice prepared
- Service, including service by publication
- Getting capiases and writs issued if an adult or child needs to be taken into custody
- Getting protective orders issued and served, including entering the information into law enforcement systems and sending the information to schools
- Interfacing with constables if constables will be executing something.

5. Constables and their Deputies

Like the clerks, constables are individual people who have deputies and administrative assistants. If you're dealing with a tricky issue (someone dodging service, a child who has to be taken into custody on a writ), figure out the constable in charge, and contact them directly. Your county may be divided into precincts, so find the relevant geographic precinct, and contact that constable's staff personally. Constables typically help with:

- Service
- Writs
- Protective orders with kickout language, where someone is being excluded from the marital residence

6. Conclusion

The bottom line is that courthouse staff are people, too. For the most part, they want to help and do a professional job. Learning their names and what they do can make all the difference in your work getting to the right place at the right time.

B. Working with Witnesses

As a new attorney, it can be stressful to try to coordinate witnesses' calendars with the court's calendar. Here are some tips for working more smoothly with witnesses:

If you have a witness with important work, a tight schedule, or a high fee, you may want to minimize the time they spend waiting at the courthouse. Find out how far your witness is from the courthouse, and call them when it looks like they'll be needed. For example, if your witness is 30 minutes from the courthouse, you may wait to tell them to come until your case has been called. The best approach is to tell the bailiff and the judge that you have a witness who's 30 minutes away, and you'll need to step out to call them at the appropriate time. If you're well-organized and have a good reason, courts are generally accommodating. However, if you don't plan well and end up wasting the court's time, the judge will be frustrated.

If there is a witness that is unavailable, outside subpoena range, or just flat-out expensive, ask whether that witness may be permitted to testify by telephone. Some courts are very flexible with allowing witnesses to testify by phone. However, you will be safest if you've filed a written motion requesting telephonic testimony enough time before the hearing. Remember, though, that an in-person witness is likely to be more persuasive, so you will always want your critical witnesses to be present at trial.

Calling witnesses "out-of-order"—if you have a witness who has to get back to work or is charging a high fee for court time, let the bailiff know. Ask the court if you can call that witness out of order so the witness can leave. The court may allow you to call the witness as the first witness in the case. The court may also allow you to call the witness first, even if the court will not be able to get to the rest of your case until later. Don't wait until the court calls your case to let the judge know about your witness—tell the bailiff and court upon arrival. Often the court will accommodate if possible.

If you subpoena a witness to trial and find out that the witness will not be available on that day, you can file a pre-trial motion asking that the witness be allowed to give testimony on an earlier or later day. This is an extreme form of taking a witness out of order, but it may be permitted if the witness is very important and a continuance is undesirable.

Witnesses may have physical limitations that make their testimony frustrating. For example, a witness may be hard of hearing or sight. If you're experiencing frustration in your testimony, ask the judge if you can stand next to the witness. If the other side is going to stand next to the witness, ask if you can too. The court will likely appreciate anything that will move the testimony along. Similarly, if everyone is sharing one copy of an exhibit, it's not inappropriate to ask if the attorneys can stand next to the witness. The better practice, though, is to bring enough copies of each exhibit!

If your client or witness needs an interpreter, you are responsible for bringing and providing the interpreter. Courts may or may not have a Spanish interpreter available, but you should not count on it unless you've confirmed it in advance.

C. Working with Opposing Counsel

Many times, you may confer with opposing counsel and reach mutual agreements on issues that are not truly contested. Of course there will be opposing counsel who will never agree to anything, but they are in the minority, and you should always at least ask:

- Try to reach agreement before the trial or hearing. Even if you're unable to reach agreement on all issues, you may be able to save time by limiting the issues that are truly contested.
- Attempt to reach agreement on admitting deposition excerpts.
- Stipulate to the admission of some exhibits. Many exhibits may be uncontroversial, such as the parties' tax returns, bank records, family photos, etc. Save time by attempting to reach agreement with opposing counsel prior to the hearing as to which exhibits will be admitted without objection and which are objected to. That way neither side needs to waste time laying foundations for unobjectionable exhibits.
- Stipulate to expert qualifications. Some experts will absolutely be objected to. However, many experts in family law cases are known by both sides to be qualified as an expert. Confer with the other side to see whether opposing counsel will stipulate that an expert is qualified. This may apply to attorneys, counselors, the court-appointed custody evaluator, a well-known drug or DNA test expert, etc.

Of course you will not reach agreement on the truly contested issues, but by reaching agreement on the minor things, both sides will be able to spend their time more wisely and will be able to focus on and highlight what the court really needs to decide.

IV. DON'T TAKE NO FOR AN ANSWER (POLITELY)

One skill that attorneys learn as they get more experienced is how to gracefully push back when their requests are denied. It is never productive to be obstinate or aggressive with judges, but you can respectfully and politely express your point in a way that may change the judge's mind, or at the very least, preserve your complaint for appeal. Remember your job is to persuade, and that job does not end the first time you're told "no." If you've made a mistake, there's always something you can ask for to fix it. You may still get told "no," but you should always try.

- Trial amendment – if the other side objects that you're asking for something that isn't in your pleadings, you can ask for leave to make a trial amendment.
- If you realize something needs to be in writing and filed, don't hesitate to handwrite your pleading on notebook paper and file it right then and there. Of course you would have preferred to type out something professional in advance, but something handwritten is better than nothing at all.
- If a pre-trial motion goes against you, you should still attempt to readdress the issue at trial. For example, if a witness is excluded at a pretrial hearing, you should still attempt to call that witness at trial. If a document was excluded, still attempt to introduce it at the relevant time at trial. If a claim was thrown out, after more evidence has been put on at trial, reassert it and argue why it should be allowed. At the very least, you've preserved your objection for appeal, but the judge may

change his/her mind after hearing additional information.

- If the other side objects to hearsay, come up with something in response. The best practice is to have prepared hearsay responses/exceptions for all your exhibits in advance. If you get caught off guard, and the judge asks "do you have a response to the hearsay objection?" never say "uhhh, no." Come up with something! Learn the hearsay exceptions so that you can at least try to get your evidence in.
- If the judge excludes evidence that you think should have been admitted, you can ask to make an offer of proof. The judge should listen while you make the offer, because the judge may reconsider the ruling. At the very least you've preserved the issue for appeal. Don't be tedious and do this for every excluded exhibit, but if an exhibit or witness testimony is critical, and an objection is sustained, put on your offer of proof.
- If you get to the end of your case and the other side alleges that you've failed to offer critical evidence, ask to reopen the evidence. If you discover new evidence after the hearing or trial has concluded, file a motion asking for leave to reopen the evidence. Again, you may be denied, but you should never just give up.
- If you get a ruling that you believe is in error or that the judge failed to understand something critical, file a motion to reconsider. Focus your motion on the one or two really important things. A well-written motion citing statute and caselaw or drawing attention to an overlooked fact can be very persuasive. Try to set it for hearing. Again, this is not something you should do for any minor issue, but if something is really important, and you think the judge got it wrong, try again to persuade him/her.

V. CONCLUSION

You will learn many tips and tricks over time as you practice and as you observe more experienced attorneys. Try to watch the old-timers to learn their ways, and don't be overly intimidated by them. Don't be afraid to take your case to trial or hearing. You will only improve through practice.

APPENDIX A

Cause No. 219-_____-2016

IN THE INTEREST OF BLAH BLAH BLAH, *a minor child*	**IN THE DISTRICT COURT** **219TH JUDICIAL DISTRICT** **COLLIN COUNTY, TEXAS**

Witness List

Witness
1. John Jones • Summary of Requested Relief **(Ex. 3)** • Photos with kids **(Ex. 1)** • E-mails from Mom **(Ex. 2)** • Texts from Mom **(Ex. 11 & 12)** • Photos of kids room **(Ex. 4)** • Facebook posts **(Ex. 6 & 13)** • Proposed possession schedule **(Ex. 7)** • FIS **(Ex. 8)** • Child Support Calcs **(Ex. 9)** • DWI Arrest Report **(Ex. 10)** • Photos of empties in Mom's trash **(Ex. 14)**
2. Ofcr. Leo • DWI Arrest Report **(Ex. 10)** • DWI Video **(Ex. 15)**
3. Jane Jones • E-mail from her to Dad **(Ex. 2)** • Texts from her to Dad **(Ex. 11 & 12)** • Facebook posts **(Ex. 6 & 13)** • Photos of Empties in trash **(Ex. 14)** • DWI Video **(Ex. 15)**

Cause No. 219-_____-2016

IN THE INTEREST OF BLAH BLAH BLAH, *a minor child*	**IN THE DISTRICT COURT** **219TH JUDICIAL DISTRICT** **COLLIN COUNTY, TEXAS**

Exhibit List

Exhibit Description	Offered	Admitted
1. Photograph Dad w/child @ 6-Flags (Dad)		
2. E-mail 1/15/14 re: late for visitation (Dad/Mom)		
3. Summary of Requested Relief (Dad)		
4. Photo of kids room (Dad)		
5. Text message (Dad/Mom)		
6. Facebook post (Dad/Mom)		
7. Proposed Possession Schedule (Dad)		
8. FIS (Dad)		
9. Child Support Calculations (Dad)		
10. DWI Arrest Report (Dad/Ofcr. Leo)		
11. Text message #2 (Dad/Mom)		
12. Text message #3 (Dad/Mom)		
13. Facebook post #2 (Mom)		
14. Photo of empty wine bottles in mom's trash (Dad/Mom)		
15. DWI Video (Ofcr		

VGA

HDMI