

THE ULTIMATE JUDGE'S NOTEBOOK

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State Bar of Texas

ULTIMATE TRIAL NOTEBOOK: FAMILY LAW

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EDUCATION

J.D. Southern Methodist
University 1993
B.S., *Summa Cum Laude*
Texas Woman's University &
Candidate for M.S., Marriage
& Family Therapy (ABT)

LICENSURE * CERTIFICATION

State Bar of Texas, 1993
Texas Supreme Court, 1993
U.S. Supreme Court, 1998
Board Certified in Family Law by
Texas Board of Legal
Specialization, 2000
Certified Mediator &
Credentialed-Advanced
Mediator (TMCA)
Collaborative Lawyer

AWARDS * RECOGNITION

Best CLE Article of 2007, State
Bar of Texas, Family Law
Section
Listed in *Texas Super Lawyers*®,
Texas Monthly Magazine,
2003, 2004, 2005, 2006,
2007, 2008, 2009
Listed in *Texas Super Lawyers*®,
Texas Monthly Magazine,
Top Fifty Female Attorneys in
Texas, 2005
Listed in *Texas Super Lawyers*®,
Texas Monthly Magazine,
Top 100 *Super Lawyers*® in
Dallas/Fort Worth, 2005
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PERSONAL

Charla Bradshaw Conner was
born in Post, Texas in 1962. She
is married to Coye Conner, Jr.
and she has two daughters,
Rachel and Erin Bradshaw.

PROFESSIONAL & CLE ACTIVITIES

Member, State Bar of Texas Family Law Council, since April, 2005;
Committee Chair of Awards Committee; Legislative Committee
Chair, Section 14, State Bar of Texas Grievance Committee (since 2008)
Officer, Texas Academy of Family Law Specialists (since September 2005)
(Director 2002-2005) (Member since 2000)
Delegate, Family Law Council of Community Property States (2002 - 2005)
Member, State Bar of Texas, Texas Family Law Practice Manual Form Book
Committee since 1998
Fellow, American Academy of Matrimonial Lawyers, 2006 to present
TAFLS Trial Institute 2008 Course Director
New Frontiers, Course Director 2008
Editor, TAFLS Newsletter, "Family Law Forum" (2002 - 2005)
Member, Collaborative Law Institute of Texas and of Denton County
Member, Denton, Tarrant, Collin & Dallas County Bar Associations
Member, College of the State Bar of Texas
Member, Texas Family Law Foundation
Member, State Bar of Texas, Family Law Section

PUBLICATIONS

Author, *Texas Annotated Family Code* (LexisNexis-Matthew
Bender, 2005 Edition, 2007 Edition, 2008 Edition)
Co-Author, SBOT, Texas Family Law Council Checklist Committee for
"Checklist" Publication, Volumes I and II
2009 AFLC: "The Latest Causes of Action in Family Law"
2009 AFLC: "Exploring Employment Plans and Benefits, and Drafting
QDROs"
2008 AFLC: "How to Calculate, Prove & Present Financial Issues"
2008 AFLC: "New or Developing Causes of Action in the 21st Century in
Family Law: Including Fiduciary Litigation
2008 Marriage Dissolution Institute "Retirement Benefits"
2008 Small Business Seminar "Mixing Love and Business"
2007 AFLC: Moderator of Retirement Workshop: "What Every Lawyer Should
Know About Dividing and Drawing Orders Which Divide Qualified
Retirement Plans"
2007 Marriage Dissolution Course: "Employee Benefits – QDROs"
2007 & 2006 Small Business Seminar: "Avoiding Divorce Disasters"
2006 AFLC: "What Every Lawyer Should Know About Dividing and Drawing
Orders Which Divide Qualified Retirement Plans"
2006 AFLC: "Some of that Retirement is Mine: The Current State of Qualified
Retirement Plans (Defined Contribution & Defined Benefit)"
2006 Marriage Dissolution Course: "Drafting QDROs"
2006 TAFLS Trial Institute: "Litigating the Case: Children's Issues"
2005 AFLC: "Avoiding the Equal Property Division: When Equitable Doesn't
Mean Equal"
2005 Family Law Council of Community Property States: "Economic
Contribution and Reimbursement"
2004 AFLC: "Retirement: QDROs for Defined Benefit and Contribution
Qualified Plans under ERISA"
2004 TAFLS Trial Institute: "Twenty-Five Essential Factors When Drafting or
Reviewing QDROs"
2004 Family Law Council of Community Property States: "Business
Valuation"
2003 Family Law Practice Seminar, University of Houston: "Retirement:
QDROs for Qualified Plans under ERISA (including using QDROs for Child
Support)"
2003 AFLC: "Retirement: QDROs for Qualified Plans under ERISA (including
using QDROs for Child Support)"
2002 AFLC: "ERISA Retirement Plans: An Analysis of the New Texas Family
Law Practice Manual QDRO Forms and QDRO Drafting Tips"
2001 AFLC: "Handling ERISA Retirement Plans: An Overview and
Explanation of the Texas Family Law Practice Manual QDRO Forms and
Drafting tips for Alternative Clauses"
2000 AFLC: "Retirement Plans: What to Do When No QDRO is Honored"
1999 Family Law Practice Seminar, University of Houston Law Center:
"QDROs and Retirement Benefits"
1999 AFLC: Expert Witness Workshop

1998 AFLC: "Retirement Overview and a Walk Through the QDRO"
1998 Family Law Practice Seminar, University of Houston: "QDROs: What
You Don't Know Can Hurt You"
1997 AFLC: "Retirement, Pensions and that Ugly Word...QDROs"
1996 Distinctive Lifestyles of Northeast Tarrant County: "New Alimony Law in
Texas Adds Protection", March/April 1996 edition
1995 AFLC: "QDROs and Checklists"

TABLE OF CONTENTS

I. THE NOTEBOOK WILL BE YOUR JUDGE’S GUIDE TO YOUR CASE 1

II. ORGANIZATION OF THE NOTEBOOK 1

 A. Preparation 1

 B. Basic Organization..... 1

 C. Other Miscellaneous Ideas for the Judge’s Notebook..... 1

III. THE PHYSICAL NOTEBOOK 2

 A. Binders 2

 B. Dividers/Tabs 2

 C. Exhibit Holders 2

IV. CONCLUSION..... 2

APPENDIX A EXHIBITS 3

THE ULTIMATE JUDGE'S NOTEBOOK

I. THE NOTEBOOK WILL BE YOUR JUDGE'S GUIDE TO YOUR CASE

The Judge's notebook should be considered a guide to your client's case. The judge's notebook should provide the Court an idea of the relief you are seeking from the court in your hearing or trial.

The notebook should be organized and tailored to each case. This article is intended as a practical guide to putting together the judge's notebook. I would like to acknowledge and thank all the Texas trial attorneys and Judges who provided trial tips for use in this paper. For the remainder of this paper, the judge's notebook shall be referred to as the "notebook."

II. ORGANIZATION OF THE NOTEBOOK

A. Preparation

While it can be helpful to prepare a trial notebook as the case develops, the preparation of a Judge's notebook can be most useful right before trial. Critically thinking through what to present to the Judge can help an attorney focus on the themes, evidence, and testimony to be presented each day. At a minimum, the attorney should examine the pleadings to ensure every cause of action and defense is supported by evidence sufficient to meet the required burden of proof. Beyond that, the preparation of a Judge's notebook can force an attorney to think about the arguments and evidence from the Judge's perspective. The attorney should examine the case she intends to present and ask what is relevant to the Judge. This will assist not only in the creation of a trial notebook but in preparing the case for presentation to the Court.

Consideration should be given to the theme or disputed issues in the case and you should organize the Judge's notebook accordingly.

B. Basic Organization

An organized Judge's notebook not only helps the Court better follow your case but also impresses upon the Court that you are prepared and you consider your client's case very important.

The notebook should be organized to follow the logical order of the case. Success depends on a command of the information and the ability to retrieve the information at a moment's notice. It is suggested that indexes be used for each general section of the trial notebook and updated accordingly. Organization and a command of the information are the keys to success at trial. The contents of a Judge's Notebook might differ based on whether the matter is a divorce or a modification.

For a divorce, the following sections may be relevant:

1. List of relief requested
2. Summary of disputed issues
3. Stipulations or agreements
4. Relevant pleadings and orders
5. Proposed division of property
6. Inventory and appraisal form
7. Appraisals
8. Business valuations
9. Proposed parenting plan
10. Social studies
11. Discovery
12. Witness list
13. Designations of fact and expert witnesses
14. Deposition transcripts
15. Expert reports
16. Exhibit list
17. List of agreed exhibits
18. Trial briefs on special points of law, together with relevant cases

For a modification case, the attorney may also want to consider including the following if relevant:

1. Checklist of rights and duties
2. Possible visitation schedules
3. Travel schedules and expenses
4. Proposed child support
5. Parenting coordinator / facilitator proposals
6. Counseling requests or reports

C. Other Miscellaneous Ideas for the Judge's Notebook

The attorney should prepare a summary for the hearing, including matters that need to be addressed or reported to the court before the trial begins.

In addition, the attorney should make a list of all items to be ruled on. I call this the "issue list", which is each and every item to be ruled on by the court. This should be a very detailed list so that the order can be drafted easily. I also include a list of questions for the court if necessary. Be sure to include such things as asking for beginning dates of payments and when the order of the court is effective in that often it takes a while for the order to be entered after the ruling.

I suggest that case law be organized, as Jim Loveless points out, in a section I call "Special Law Points." This is very helpful and is a quick reference sheet that contains the issue, the case, and the point of law, in a 3-column format. This is easily created as the attorney reads the cases during preparation.

The other items in the Trial/Hearing Tabs section are vital to the trial and are self-explanatory as listed on Appendix A.

III. THE PHYSICAL NOTEBOOK

A. Binders

The first consideration in preparing the notebook is choosing the actual materials that will be needed. This will depend on personal preference, however most attorneys concur that a type of 2 or 3-ring binder is best. The size of the binder will depend on the case. Most attorneys begin with a 2 or 3 inch binder. A 2 or 3-ring binder will provide easy access to information, allow for constant insertion/expansion and amendment, and allow for the ultimate in organization. Attorneys whose cases might require several volumes of binders should consider creating daily notebooks for the issues, witnesses or evidence to be introduced each day of the hearing or trial.

It is important to have file pockets for loose papers and those that do not allow for hole-punching. These will be of use throughout the entire notebook where necessary.

B. Dividers/Tabs

In Appendix A of this paper you will find an index list of tabs for the notebook. This is the heart of the notebook. It is suggested that dividers be purchased in the color of your preference, but for each section to have a separate color for easy identification, access and retrieval (e.g. General Tabs, Discovery Tabs, Trial/Hearing Tabs, and Exhibit tabs). The actual tabs should be clear and should be printed when the file is opened. Any unused tabs can be placed in the back pocket of the first binder and utilized as each section becomes necessary.

C. Exhibit Holders

Exhibit holders are imperative in a family law case as many exhibits are not conducive to 3-hole punching (e.g. pictures, report cards, and letters). It is suggested that clear sheet protectors be used that are hole-punched on the left. These will allow for the exhibit and additional copies to be placed inside. These clear sheet protectors come in a variety of thickness. These sheet protector-type folders will allow evidence to stay undamaged and prevent loss of or damage to the evidence.

IV. CONCLUSION

It is vital that the Judge's notebook be well thought-out and organized appropriately so that it is helpful to the Court. The Judge's notebook can serve as a roadmap to the themes of the case. It is a tangible guide to the story the attorney is telling. With this in mind, the Judge's notebook can accomplish the ultimate in organization, command of the information, and ultimately, victory for your client.

STYLE OF CASE

{NAME OF YOUR CLIENT}
REQUESTED RELIEF / RULING EXHIBIT

{NAME}: Petitioner/Mother/Wife – Attorney {name}
{NAME}: Respondent/Father/Husband – Attorney {name}

Name:
Sex:
Birth date:

Divorce

_____ Grant the divorce on the grounds of insupportability.

Conservatorship

_____ Appoint Petitioner and Respondent joint managing conservators.

_____ Mother to be designated as the conservator who has the exclusive right to designate the primary residence of the children within Denton County, Texas and counties contiguous thereto for so long as Father lives within Denton County, Texas and contiguous thereto..

_____ Mother to have the exclusive right to make education decisions.

_____ Mother to have the exclusive right to make decisions of substantial legal significance concerning the children.

_____ Mother shall have the exclusive right to consent to medical, dental, and surgical treatment involving invasive procedures.

_____ Mother shall have the exclusive right to consent to psychiatric and psychological treatment of the children.

_____ The parents shall each have the right independently to represent the children in legal action.

_____ The parents shall agree to consent to marriage and to enlistment in the armed forces of the United States.

_____ Mother shall have the exclusive right to the to the services and earnings of the children.

Requested Relief Exhibit of {name} - Page 1

_____ The parents shall have the independent right to act as an agent of the children in relation to the children[s] estate[s] if the children's action is required by a state, the United States, or a foreign government.

_____ The parents shall each have the duty to manage the estate[s] of the children to the extent the estate[s] [has/have] been created by community property or the joint property of the parents.

Child Support

_____ Mother to have the exclusive right to receive child support above the guidelines as set in the TEX. FAM. CODE and Father to pay child support in the amount of \$ _____ per month beginning on _____, 2009.

_____ Father to obtain and maintain a life insurance policy payable to Mother *for the benefit of the children* to be applied toward Father's support obligations under the child support order in the event of Father's death.

_____ A wage withholding for child support shall be issued.

_____ Child support (in the amount after a step-down for Landon Coats) for Lauren Coats shall be continued after the child's eighteenth birthday and paid as TEX. FAM. CODE chapter 8 nondeductible spousal maintenance to Mother for the benefit of Lauren Coats.

_____ Father to obtain and maintain a life insurance policy payable to Mother *for the benefit of the children* to be applied toward Father's TEX. FAM. CODE chapter 8 spousal maintenance obligations in the event of Father's death.

_____ Father to continue the health insurance in effect for the children and pay for same at his sole cost and expense and any subsequent health insurance to be at a minimum the equivalent of the health insurance now in effect for the children.

_____ Father to pay a disproportionate share in Mother's favor of the uninsured medical expenses of the children with Father paying _____% and Mother paying _____%.

_____ Father's child support payments to survive his death and become the obligations of his estate.

Requested Relief Exhibit of {name} - Page 2

Possession and Access

_____ Father to be awarded the expanded standard possession schedule as set out in the TEX. FAM. CODE (as of the date of this trial) with the weekly Thursday possession to begin on Thursday at the time school is dismissed and end at the time school resumes on Friday and with the weekend possession to begin on Friday at the time school is dismissed (and at 1:00 p.m. in the summer) and end at the time school resumes on Monday.

_____ Father shall pick up and deliver the children for all his weekly and weekend periods of possession.

_____ Mother and Father shall pick up the children for all their periods of possession as set out in the TEX. FAM. CODE.

Childrens' Property

_____ The parents shall remain the co-trustees of the trusts T. Coats & M. Coats Trustee, The Coats Revocable Trust, currently in existence for Lauren and such property shall remain in the trust for Lauren.

_____ Landon's two education accounts shall remain and the funds shall not be withdrawn by either parent and shall be used only for Landon.

_____ Mother shall be the trustee on both of Landon's education accounts.

Division of Community Property

_____ Wife shall receive a disproportionate division of the community estate.

_____ Wife shall receive _____% of the community estate and Husband shall receive _____% of the community estate.

The office building

- _____ Sell and keep for sale until sold
- _____ Tenant rent to be split each month with Wife receiving _____% and Husband receiving _____%
- _____ Husband upkeep the property and keep it in saleable and showable condition
- _____ Husband pay liens on property until sold
- _____ Husband pay property taxes until sold
- _____ Parties to agree on sales price and realtor and if unable to agree on either then\ they each choose a realtor and the realtors together pick a third realtor who will set the sales/price and serve as the realtor to sell the property, whichever is applicable

_____ Either party may apply to the court for a receiver to sell the property at any time

_____ All income taxes from the date of marriage through 2008 to be paid by Husband.

_____ 2009 Each party shall pay income taxes on their own income from January 1 forward.

Separate Property

_____ Wife shall have the items set out in her inventory and appraisal confirmed as her separate property.

Postdivorce Spousal Maintenance under Chapter 8 of the TEX. FAM. CODE

_____ Wife shall receive postdivorce maintenance for an indefinite period / _____ in the amount of \$_____ to begin on _____, 2009.

_____ The court will issue a withholding order from Husband's wages.

_____ Husband is to obtain and maintain a life insurance policy payable to Wife to be applied toward Husband's maintenance obligations in the event of Respondent's death.

Temporary Orders

_____ The temporary orders are terminated save and except for any unpaid financial obligations.

Style

[FOR TEMPORAY ORDERS HEARING WITH CHILDREN]~~REQUESTED RELIEF EXHIBIT~~-{name}**CHILDREN**

1. Appoint Petitioner the sole managing conservator.
2. Petitioner requests the court to order that Petitioner have the exclusive right to establish the children's residence, to make their education decisions, and to make all psychiatric and psychological decisions on behalf of the children.
3. Order that children shall not be in the presence of {name} until recommended by the children's respective counselor(s).
4. Order that the children the subject of this suit shall not drive themselves to and from the residence of Respondent.
5. Order Respondent to pay above-guideline child support, any college deposits or college-related expenses to come due during this case, private school tuition, health insurance premiums for coverage on the children, and all of the children's uninsured medical expenses, including mental health costs, while this case is pending.
6. Order that Petitioner have possession and access to the children from the time school is dismissed for the Christmas holiday and ending on December 28, _____ at noon, to effectuate the previous agreement of the parties regarding these holidays.
7. Order a possession and access schedule, and the terms and conditions for such possession and access schedule that is conducive to the childrens' emotion and mental states and in their best interest.
8. Petitioner requests that the court order that any mental health records of the children be provided to the court in camera before being released to the parties, or experts, or attorneys in the case and to make any necessary orders concerning the childrens' mental health records.
9. Petitioner requests the court to interview the children in chambers with regard to such possession and access schedule if the court deems necessary. Petitioner

requests that any testimony necessary to be given by any children the subject of this suit be given in chambers without the attorneys present.

PROPERTY

10. Award Petitioner the exclusive use and possession of the residence and the entire premises of the marital residence at _____, as well as the furniture, furnishings, and other personal property at that residence, while this case is pending, and enjoin Respondent from entering or remaining on the premises of the residence, and any other structures or premises and exercising possession or control of any of the personal property, except as authorized by order of this Court.
11. Order that Husband vacate the marital residence located at _____ and the surrounding premises on or before _____.
12. Award Petitioner exclusive use and control of the following motor vehicles and equipment:
13. Petitioner has insufficient income available to her for support, and Petitioner requests the Court to order Respondent to make payments for the support of Petitioner until a final decree is signed or other orders as the court deems appropriate under the circumstances of this case.
14. Order that Petitioner have the use of the (accounts/credit cards), _____ and that Respondent timely pay the balances on same at the end of each month.
15. Petitioner requests that Respondent be ordered to pay reasonable interim attorney's fees and expenses, including but not limited to fees for appraisals, accountants, actuaries, valuations, and so forth, and further, that for every dollar that Respondent pays his attorney, that a like amount be paid to Petitioner's attorney, and that Respondent be ordered to pay a lump-sum to Petitioner's attorney by a date certain for interim attorneys fees. Petitioner is not in control of sufficient community assets to pay attorney's fees and anticipated expenses.
16. Petitioner requests that Respondent be ordered to pay any ad valorem taxes and insurance premiums as due on all the properties of the parties.

INCOME TAXES

17. Petitioner requests that Respondent provide all documents per the request of the IRS for same, by a date certain.

PROCEDURAL

18. Order Respondent to provide a sworn inventory and appraisal of all the separate and community property owned or claimed by the parties and all debts and liabilities owed by the parties substantially in the form and detail prescribed by the *Texas Family Law Practice Manual* (2d ed.), form 7-1, by a date certain, *and to attach all supporting documentation to the Inventory and Appraisal that supports each entry.*
19. Order the parties to participate in an alternative dispute resolution process before trial of this matter.
20. Order Respondent to execute all necessary releases required by Petitioner to obtain any discovery allowed by the Texas Rules of Civil Procedure.
21. Order a pretrial conference to simplify the issues in this case and determine the stipulations of the parties and for any other matters the Court deems appropriate.

Style

STIPULATIONS

Petitioner:

1. Petitioner is _____.
2. _____ was a resident of Denton County for 90 days and a resident of Texas for 6 months before he/she filed for divorce.
3. _____ is 46 years old.
4. _____ has a {degree}.
5. _____ is currently employed with {name}.
6. _____ earns approximately _____ per year.
7. _____ earns approximately _____ per month.
8. _____ pays approximately _____ per month for her health insurance through her employer.
9. _____ owns her residence _____, subject to the mortgage which is solely in her name, and said residence is titled in her name.

Respondent:

10. Respondent is _____.
11. _____ is 45 years old.
12. _____ has a {education}.
13. _____ owns his own residence at _____, subject to the mortgage which is solely in his name, and said residence is titled in his name.

Marriage:

14. Parties were married on _____.
15. Parties ceased living together on _____.
16. Party's marriage has become insupportable due to conflict or discord.
17. Neither party has sought or is seeking a protective order.

Children of the Marriage:

18. _____ is ___ years old and a child of the.
19. _____ attends _____.
20. _____ is in the _____ grade.
21. _____ has special needs.
22. _____ is _____ state needs.
23. _____ is _____ years old and is a child of the
24. _____ attends _____.
25. _____ is in the _____ grade.

Conservatorship and Domicile:

26. The parties will be joint managing conservators of the child.
27. _____ will have the right to designate the children's primary residence within Denton County, Texas and counties contiguous thereto.
28. Each party shall have the right subject to the agreement of the other conservator to consent to marriage and enlistment in the armed services.

Periods of Possession:

29. _____ has elected to have possession of the children on the 1st, 3rd and 5th weekends beginning on Friday at 6:00 and ending on Sunday at 3:00 p.m.
30. _____ has elected to have possession of the children every Tuesday during the school year from 6 p.m. to 8 p.m.
31. _____ has elected to have two weeks uninterrupted, for summer, after notice to _____ by April 1st of each year.
32. _____ has elected to have two weeks of uninterrupted, for summer, after notice to _____ by April 15th of each year.
33. Each party shall pick up and deliver for their periods of possession the other conservator's residence.

Child and Medical Support:

34. No agreement on child support.
35. _____ currently pays _____ per month for child support.
36. _____ currently pays for all child care for _____.
37. _____ currently provides and pays for the health insurance for the children.
38. _____ currently pays for 50% of the children's health insurance.
39. _____ child support shall be an obligation of his estate.
40. _____ shall maintain a life insurance policy payable to _____ in the amount equal to the remaining child support obligations, which may be adjusted annually.

Spousal Maintenance:

41. No agreement on spousal maintenance.

Sale of the Marital Residence during the Case and the Proceeds There from:

42. The parties agree to place the marital residence for sale with _____.
43. No agreement has been made for the selling price of the marital residence.
44. No agreement has been made on the disbursement of funds from the sale of the marital residence.

Property to be awarded to _____:

- 45. The business known as _____ is awarded to _____.
- 46. Lexus awarded to _____.
- 47. The residence located at _____ along with all obligations and debts is awarded to _____ and _____ fully indemnifies _____ and her property there from.
- 48. Personal property in _____ possession awarded to him.
- 49. Furniture, fixtures and electronic equipment in _____ possession awarded to him.
- 50. Life insurance policies insurance _____ life awarded to him.
- 51. _____ stock (share) awarded to _____.

Property to be awarded to _____:

- 52. The residence located at _____ along with all obligations and debts is awarded to _____.
- 53. Chrysler is awarded to _____.
- 54. Retirement account _____.
- 55. Bank Account _____ awarded to _____.
- 56. Personal property in _____ possession awarded to her.
- 57. Furniture, fixtures and electronic equipment in _____ possession awarded to her.

STIPULATIONS SO AGREED:

, Attorney for _____

, Attorney for Respondent

