At least one trip to court is required in most dissolution cases. This might be either for an Order to Show Cause hearing or trial. Regardless of the type of hearing, it is important for you to know what to expect and what is expected of you when you go to court.

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Getting Ready

The night before you go to court you should get to be early and get plenty of sleep., For obvious reasons, court can be a stressful and tiring experience. So, it is important that you come to court completely rested and ready to participate in the proceedings with a clear head.

If you have not been to court before, be sure you know how to get there If you are unsure of the location of the courthouse, parking facilities or the courtroom, please contact our office. You might also consider writing down directions to the courthouse the night before.

Determine how long it will take you to drive to court, and then increase that time by 50% to account for rush hour traffic and any other unforeseeable delays you might encounter. For example, if you estimate it will take you 30 minutes to get to court, plan on leaving home at least 45 minutes before you are to be there.

Make sure that you have completed your court preparation on the night before your court date. By doing this, you will avoid rushing around the following morning. You should assemble any documents that your attorney has asked you to bring with you. Lay out your clothes for the next day and, in general, have everything ready to go for when you get up.

Arriving at Court

Before your court day, be sure to ask your attorney where he wishes to meet you. This will usually be in the hallway outside the courtroom where your case is set to be heard. When you get to the courthouse, go directly to the courtroom where your matter is schedule to be heard, unless Your attorney has asked you to go somewhere else.

Most courthouses now have metal detectors at the front door. Make sure you are not carrying anything that might be considered a weapon, such as a pocket knife.

Outside the courtroom the bailiff or clerk will have posted the Docket, which is a listing of cases scheduled for that day. The cases are usually listed in alphabetical order. Make sure your case is listed on the Docket. If it is not, you might be in the wrong courtroom.

If you do not see your name on the Docket and cannot find your attorney, go into the courtroom and talk to the bailiff or the clerk. If, after talking to the courtroom personnel, you still do not know where you are to be, go to the nearest telephone and call our office for instructions.

Court Personnel

Besides the judge, there are usually three other people in most courtroom.

The Bailiff

The bailiff is a uniformed officer who is assigned to assist in the operation of the courtroom. He or she (many bailiffs are women) is usually the first person you talk to when you enter the courtroom.

The bailiff has various functions in the courtroom. Primary among this is the job of maintain order. This applies to anything from asking people to stop talking while court is in session to physically subduing people who become violent.

The Court Clerk

The court clerk is the man or woman who is responsible for the management of the court. In the morning, before court starts, the clerk gets all of the files for the day from the clerk's office and gives them to the judge. When the court opens up, the attorneys and the people who are there without attorneys are usually required to "check in" with the clerk. This means that they are to advise the clerk that they are present.

When court is in session the clerk administers the oath to all witnesses, hands documents and exhibits to the judge and generally serves as the judge's clerical assistant.

The Court Reporter

As depicted in numerous theatrical courtroom scenes, the court reporter records everything that is said while court is in session, using a silent recording machine. After your hearing is completed, Your attorney or the other attorney may request the court report to prepare a transcript of the proceedings. This a verbatim script of everything that was said by the judge, attorneys and witnesses in your case.

In some courthouses, court reporters are being replaced by sophisticated tape recording and video systems that are operated by court technicians. Because they are significantly less expensive than a court reporter, these systems are becoming more popular, although some people believe they are not as accurate as a court reporter.

Docket Call

After taking the bench the first thing the judge does is call the Docket. The purpose of this is to enable the judge to determine how many cases are actually going to be heard and how long each one will take. With this information, the judge can plan the sequence of the hearings.

When the Docket is called the judge simply calls each case in numerical order (older cases last) and asks the attorneys or people who are representing themselves how long they estimate it will take to have the case heard. If different hearing times are given, the judge will usually take the long estimate so that each party will have as much time as possible.

During the Docket call there may be one or more cases that are not ready to be heard, either because one or the attorneys has not arrived or because the attorneys are negotiating the case in the hallway. When this happens, the case is put on "second call." This means that the judge will call the case later in the morning.

When the Docket call is completed, the judge has a list of cases that are ready to be heard. The judge will then call the cases for hearing, with the shortest time estates being called first. These are usually cases in which the attorneys are simply going to recite the terms of an agreement or where one party has defaulted and is not expected to show up.

Hearing or Trial Preliminaries

Review of Pleadings

Court rules require the attorneys to file their papers ("pleadings") before the hearing date. This gives the judge and the attorneys an opportunity to know what each side is going to as the judge to do. Before the judge comes out in the morning he or she will usually have read the court papers that have been filed and will be familiar with the "issues" that are to be decided.

If you are in court for the final trial of your case, both attorneys will have given the judge a "trial brief." This is an outline of the case and the issues which are going to be litigated.

Where there is a complex or unique legal issue, the attorneys might also give the judge a "Memorandum of Points and Authorities," which is a discussion of relevant legal precedents.

If financial issues, such as child support, spousal support or attorneys fees and costs, are to be decided, each attorney will also be required to give the judge their client's current Financial Information Statement (a summary of all income and all expenses of each party and the children), the last two (2) years' federal income tax returns of the parties and the last two pay stubs for each party.

The attorneys will also provide the judge with a Proposed Parenting Plan for each party and a Proposed Division of the Estate for each party.

Stating of Appearances

When your case is called by the judge, both attorneys and the clients (the "parties") step forward and take their places at the counsel table or at the bench, as directed by the judge. Usually the attorneys sit on the inside chairs and the clients sit in the chairs at opposite ends of the table. The Attorneys will first state their "appearances for the record." For example, Your attorney will say, "Good morning, your honor. I am Jennifer “Broussard, counsel for Petitioner Jane Jones, who is present."

Administering the Oath

Before anything takes place the clerk will administer the following oath to both parties by instructing them to raise their right hands. The clerk will then ask:

> "Do you solemnly swear to tell the truth, the whole truth and nothing but the truth, so help you God?"

In a clear and audible voice, both parties are required to say "I do."

If your religious convictions prevent you from swearing to God the clerk will administer another oath that does not contain a reference to God. Please advise Your attorney if you wish the alternative oath administered to you.

In either case, you should understand that your testimony is being given under penalty of perjury. This means that you can be charged with and convicted of a crime if you knowingly tell a lie when you testify.

Stipulations and Unresolved Issues

The judge will then want to determine which issues have been settled by agreement ("stipulations") and which ones remain unresolved. One of the attorneys will then recite any agreements and list the issues which remain "contested." In many courts, the judges insist that all agreement be put in writing and given to the clerk before the case is called.

After the judge reviews the written agreement or listens to the statement of the settled issues, he or she will ask the parties if they understand the agreement. Once the parties tell the judge that they understand the agreement and are willing to abide by its terms, the judge will usually make a statement confirming the agreement as a court order, such as, "The court accepts the stipulations of the parties and confirms it as an order of this court."

Testimony

Once the preliminaries are completed the actual hearing or trial begins. If the hearing is an Order to Show Cause for temporary orders or for modification of an

existing orders, the party who filed the Order to Show Cause puts on his or her case first. In the case of a dissolution trial, the petitioner - the person who filed the case - goes first.

Direct Examination

The hearing usually begins with the attorney calling his or her client for "direct examination," although that is not always done. Sometimes an attorney will decide to call a witness "out of order" because that witness cannot stay long or for strategic reasons.

During direct examination the attorney will ask questions that will enable the judge to understand his or her client's position. In most cases the attorney will have previously discussed direct testimony with the client and witnesses, so the questions should not come as a surprise.

Rules of Evidence in Direct Examination

In conducting direct examination, there are certain rules of evidence that must be followed. The most common rule is that any question must be "relevant" to the subject matter. For example, if the only contested issue is child support, a question about the client's political affiliation would be irrelevant and, therefore, objectionable.

A question cannot call for "hearsay" testimony. Hearsay is anything said by another person who is not present in court. The question is objectionable if the answer to the question is being offered for its truth. An example of a question that is objectionable under the hearsay rule is the following:

> Mrs. Smith, did Mr. Smith's employer tell you how much Mr. Smith is being paid?"

The only way this information can be presented to the judge is to actually subpoena the employer to come to court or to subpoena the employer's records.

Another important rule of evidence in direct examination is that the question must not "lead" the witness. A leading question is one that suggests the answer. For example, where the issue is spousal support, it would be improper for the wife's attorney to ask the wife,

> "You haven't had a job for twenty years, have you, Mrs. Smith?"

Instead, the attorney should ask,

> "When is the last time you had a job?"

If the attorney has properly prepared the wife for her direct testimony, she should quickly answer,

> "Twenty years ago."

Cross-Examination

After direct examination is completed the other attorney is permitted to cross-examine the witness. Cross-examination gives the other attorney an opportunity to test the credibility of the witness and, on occasion, show the weaknesses in the other party's case.

In cross-examination the attorney asking the questions is limited to the scope of the questions asked on direct examination. Thus, if the direct examination was limited to question concerning child support, the attorney conducting cross-examination cannot ask questions about community property.

Rules of Evidence in Cross-Examination

The attorney asking questions on cross-examination must also follow the rules of evidence, but some flexibility is allowed. For example, leading questions, which are not allowed in direct examination, are permitted in cross-examination. However, the rules of relevance and hearsay must still be followed.

During cross-examination, the attorney is not permitted to pose questions that are "argumentative." For example, an improper question would be,

> "Mr. Smith, are you seriously asking the court to believe that you can't find a job?"

These types of questions may be common in courtroom scenes on television, but they are not allowed in real hearing and trials.

Further Examinations

After the completion of cross-examination, the attorney who called the witness is permitted to conduct "re-direct examination." These questions must be limited to the subject matter of the cross-examination.

An attorney will ordinarily conduct re-direct examination if his or her witness said something inaccurate or misleading while being cross-examined. For instance, where the issue is child custody, under cross-examination the following question and answer might take place:

> Question: Isn't it true that you leave your child home alone?
>
> Answer: Yes, it is.

If the parent's attorney knows that his client does not actually leave the child home alone, he might ask the following question during re-direct examination:

> Question: When you were being cross-examined, you said you leave your child home Alone. Isn't that true?
>
> Answer: Well, not exactly.
>
> Question: What did you intend to say?
>
> Answer: Sometimes I leave my child home alone with her 16 year-old sister.

After re-direct examination is completed, the other attorney can ask more questions in "re-cross examination," in which the scope of questions is limited to the scope of the re-direct examination.

General Rules for Testimony

Regardless of which attorney is conducting the examination, there are several rules that you should follow when you are testifying:

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Listen carefully to the question that you are being asked.

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Do not guess at the answer to a question. Instead of guessing, simply say that you do not know or do not remember the information requested. However, you may estimate an answer, such as an approximate date or amount of money.

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Wait until the question has been completed before you start to give your answer. This is important for several reasons:

* If you prematurely answer a question you might give the cross-examining attorney some information that he or she had not thought of asking.

* The court reporter can only record one person talking at a time. So, if you start talking while the attorney is asking the question, the court reporter may not be able to keep a clear record of the proceedings.

* If the other attorney questioning you and Your attorney wishes to object, he will not have any opportunity to make the objection if you answer immediately.

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State your answers clearly. If the question asks for yes or no answer say "yes" or "no," instead of "uh huh" or "uh uh."

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Answer only the question that is asked. Never go beyond the scope of the question.

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Pause a few moments after the question has been asked before you start talking. This will give you time to think about the question and formulate your answer. It will also give Your attorney time to make appropriate objections to the judge.

- Stop talking if the judge or either of the attorneys starts to talk.
- If you feel physically or emotionally unable to continue with the examination you should make that fact known to the judge immediately.

Documentary Evidence

A judge decides the case by applying the law to the facts of the case. The facts are based on the evidence that is present to the judge during the trial.

Evidence is usually presented in two forms: oral testimony and documents. When an attorney wishes to present documentary evidence there are several steps that must be followed:

Marking of Exhibits

The first this the attorney does is to request that the clerk "mark" the document as an exhibit. This involves assigning a number or letter to the document so that it can be easily identified whiled the trial is in progress. In most courts written evidence submitted by the Petitioner is assigned numbers, while the Respondent's exhibits are given letters.

When an attorney wants to have an exhibit marked, he or she says, "Your honor, I would like this [letter, contract, etc.] to be marked as Petitioner's Exhibit 1."

If there are going to be a significant number of exhibits presented, the judge will want the attorneys to have the exhibits marked before the trial starts. This avoids using court time to mark exhibits.

Foundation

Marking an exhibit does not guarantee that the judge will allow it to be "received." Before that happens, the attorney must first establish the "foundation" for the receipt of the document. "Laying a foundation" is the process by which the attorney submitting a document shows the judge that it is authentic.

In dissolution cases it is common for a spouse's payroll records to be subpoenaed to court. Before the judge can consider such records, the attorney submitting them must first have the spouse's employer testify that the document is true and correct. Once this is done, the records will be received as evidence.

Receiving Evidence

Once the foundation has been properly laid, the propounding attorney will ask,

"Your honor, I am requesting that this document be received as Petitioner's exhibit 1."

Before the judge receives an exhibit, the other attorney will be asked if there are any objections to the document. As with oral testimony, there are many grounds for objecting to the receipt of documentary evidence, such as relevancy or hearsay.

Respondent's or Responding Party's Case

After the requesting party in an Order to Show Cause hearing or the Petitioner in a trial has presented all of his or her evidence, that party's attorney will say, "Your honor, Petitioner rests." It is then time for the other party's attorney to present his or her case. The same procedures and rules discussed above are followed during the presentation of the other party's case.

Rebuttal

When the responding party or the Respondent has finished his or her case, the trial is not necessarily over. The first party's attorney now has the right to call "rebuttal" witnesses to contract the other party's evidence. The most common rebuttal witness is the other party, but any witness can be called for rebuttal purposes.

Closing Arguments

Once the testimony stage of the trial s completed it is time for the attorneys to make their "closing arguments" to the judge. In the closing argument each attorney summarizes the important points of the case and tells the judge why his or her client should win on the various issues involved in the case. In their closing arguments the attorneys will often refer to statutes or relevant appellate court decisions that are relevant to the case.

Some judges prefer to have the attorneys submit their arguments in writing. Where this is the practice, the judge will usually order the Petitioner's attorney to submit a closing argument within two weeks, followed by the Respondent's closing argument two weeks later, and then a rebuttal argument by the Petitioner one or two weeks after that.

After the arguments are completed the judge can either announce the decision orally in open court or take the matter "under submission." This

means that the judge is going to think the case over and issue a written decision within a few weeks.

Completion of the Hearing or Trial

The reference in the title of this discussion to your day in court is somewhat misleading. Because of the staggering number of dissolution cases that are being filed, family law courts are becoming overburdened with cases. This means that even if your case is on Docket for a particular day, there is no guarantee that will be completed, or even started, on that day.

In fact, in many family law courts as many as one-half of the matters on Docket in a particular day have to be continued to another day for completion. In some courts, it can take many separate court days, spread out over six months to a year, to complete a lengthy trial. This can cause problems for the attorneys in the presentation of their cases, not to mention the inconvenience to the parties and witnesses. Unfortunately, it is a fact of life in the judicial system