

# FAMILY LAWYER

Winter/Spring 2015

MAGAZINE

## Advice from Leading Financial Professionals

Business and Pension Valuation

Reforming the Divorce Process

Is your Website Smartphone Friendly?

Negotiating with the Pro Se Party

Family Lawyers' Top Software Picks

Cleaning-Up Clients' Social Media Pages

What Drives our Decisions: Reason or Emotion?

Mindfulness-Based Stress Reduction

Networking Outside Your Comfort Zone



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## COMPLICATED FINANCIALS, COMPLICATED DIVORCES

If there are pensions or businesses to value, if there are valuable assets or high incomes involved, if the divorcing parties can't agree on how to divide what's on the table – much less what should be on the table in the first place – then your case may require financial expertise outside the knowledge and resources available at your law firm.

As a family lawyer, you may be called on to play many different roles: from accountant to financial planner to business and pension valuator. Some of these roles may be a better fit for your skill-set and personality than others – and some are so far outside your area of expertise that you probably shouldn't even consider tackling them. Over the last 20 years, I have met more and more family lawyers with the wisdom to engage financial professionals with the specific training and expertise to handle certain portions of their cases. When you choose the right expert, you can offer better service to your clients, reduce your liability for providing the wrong advice, and increase your own job satisfaction since you're no longer faced with time-consuming tasks you dislike and/or lack the tools and training to accomplish effectively.

This issue of *Family Lawyer Magazine* offers advice from leading financial professionals who focus their practices on family law. Feature articles include:

- Business valuation and divorce
- Using restricted stock and pre-IPO data to estimate discounts
- How to choose and work with QDRO experts
- Common mistakes when valuing pensions.

We've also included articles to help you better serve your clients and grow your practice

(page 56); how to know if your website is really smartphone-friendly (page 8); time management tips (page 38); reviews of software and apps for family lawyers (page 26); how far you can go in "cleaning up" a client's problematic social media pages (page 36); and advice on how to network outside your comfort zone to grow your referral base (page 34).

Since no issue would be complete without input from the legal community, we asked family lawyers and judges to submit their ideas for reforming divorce; look for that article starting on page 40 of this issue, and join the conversation at [www.FamilyLawyerMagazine.com/blog/divorce-reform](http://www.FamilyLawyerMagazine.com/blog/divorce-reform). You can comment on the ideas in this article, or make suggestions of your own. While you're visiting the website, please take part in our Quick Poll on Divorce Reform at [www.FamilyLawyerMagazine.com/poll](http://www.FamilyLawyerMagazine.com/poll).

If you're looking for resources and referrals – including listings for legal and non-legal divorce professionals – check out the Professional Directory starting on page 48, and visit [www.FamilyLawyerMagazine.com/professional-listings](http://www.FamilyLawyerMagazine.com/professional-listings) and [www.DivorceMag.com/directory](http://www.DivorceMag.com/directory).

The quality of a divorcing client's professional team will shape his/her life and influence his/her family's financial and emotional well-being – today, and for many years into the future. You owe it to your clients – and to your law firm – to find the right expert to complete each part of the "divorce puzzle".

Dan Couvrette

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# QDRO PREPARATION – WHEN EXPERIENCE MATTERS

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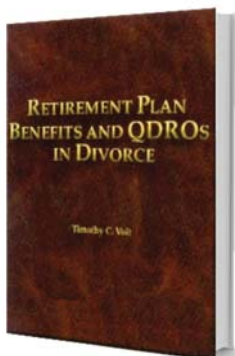
Tim Voit has been retained in legal malpractice cases to resolve QDRO issues or compute damages, and bears the title of Forensic Economist. Todd Voit teaches investment analysis and advanced investments at both the undergraduate/graduate levels and manages assets for retirement plans and individuals. He also has one of the only Masters' Theses in the country on the valuation of retirement plans in divorce. These two experts are not only leading the way on QDRO preparation, they're paving it as well.

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# Business Valuation & Divorce

Sylvia Golden, the Legal Editor at *Business Valuation Resources*, interviews prominent attorney Sanford K. Ain and business valuator Stuart Rosenberg about divorce and valuation related issues – especially when representing a lawyer who is going through divorce.

**Q Sylvia Golden: What is it like to have a lawyer as a client – particularly in an emotionally-fraught situation like divorce?**

**Sandy Ain:** Representing lawyers is challenging at times, but also easy in many respects. Lawyers tend to be bright and inquisitive; if you educate them about divorce law, they can be very helpful in bringing their case to a successful conclusion. Education is the principle ingredient in representing lawyers: the more you educate them, the better clients you have. Many lawyers do not hire experts until they're well into the case: sometimes, so shortly before the trial that discovery has ended. That's a grave error. I often engage an expert at the initial meeting with the client. Once the client and I have decided to work together, I will frequently call an expert during the course of that meeting and engage them. That's part of the education process in representing lawyers, but it's important in representing any client.

**Stuart Rosenberg:** As far as controlling an attorney-client, I leave that completely up to their attorney – other than trying to convince a Type A personality attorney that their situation isn't unique, that the judges have seen it before, we have seen it before, and the lawyers involved have seen the issues before. It might be overwhelming or unique to them because they're emotionally involved, but it's not unique to the experts, lawyers, and judges involved in the case.

**Q Golden: What documentation do you require from the client to perform the valuation?**

**Rosenberg:** Over the years, we've developed a reasonable information request list. Unlike some litigation situations, where the purpose of a discovery request might be to annoy or harass the parties, we've come up with a list of about 19 items that allow us to be credible in doing our valuation.

Number one on that list is a partnership agreement or shareholders agreement. A description of the compensation system of the firm is very important; usually we ask for K1s or W2s for the past five years. The information on the income statement and balance sheet has some relevance, but not great relevance – especially for large law firms. The footnotes to financial statements are often a great source of information that describes how the partnership itself operates as it relates to distributions, capital, and retirement plans.

We ask for information going back five years regarding certain attributes of the individual partners, such as what their chargeable hours are, their total hours, billing rate, fee origination, and allocation of profits and owner distributions. Then we ask the firm to compare that to the average for the firm as a whole so we can see how an individual partner compares to the firm itself.

Then we ask for (but often don't receive) information regarding fees related to either groups of clients or particular clients that are redacted. There's usually resistance when we start getting into information regarding clients. Having a standard request that we utilize whether we're representing the partner or the partner's spouse makes the whole process much simpler.

**Q Golden: In divorce cases, two key issues are standard of value and personal goodwill. Can you explain what the term "standard of value" means in your jurisdiction, and how that expresses itself in a case?**

**Ain:** I'm licensed to practice in Maryland, the District of Columbia, and Virginia, and regularly practice in all three jurisdictions in addition to being hired by people in other states and working with local counsel. In our local jurisdictions, the

standard of value in Maryland and Washington D.C is fair market value, which is common around the country. Virginia is unusual in that the standard of value is the intrinsic value, which is defined as the value of the interest in the enterprise to the parties – which may be greater and in some rare cases less than fair market value. We use business valuers who are very familiar with how to arrive at either fair market value or intrinsic value; Stuart can explain the differences between the two.

**Rosenberg:** Most of the work I do is in Maryland and Virginia and, as Sandy stated, they have two different standards of value. Although they have different definitions, there's not as much of a difference in the approaches to the valuation as one might think. In fact, in one of the landmark cases in Virginia, it states that the parties must rely on accepted methods of valuation. However, the particular methods of valuation and the precise application of the method to the singular facts of the case must vary with the myriad of situations that exist among married couples. The approach and the methodologies are practically the same, as they may be under fair market value standard. The biggest difference is in the back-end of the valuation where discounts are often applied under fair market value. Intrinsic value says that if you have a restrictive agreement stating you can't sell your interests at all, or at least back to the operating company, that's not something that gets taken into consideration. In Maryland, we're under the fair market value standard; provisions that could restrict sale could lead to larger discounts.

**Q** Golden: The next issue is personal goodwill, which one court called “the most intangible of intangibles”. What is personal goodwill and how do you capture it?

**Ain:** Personal goodwill is distinct from enterprise goodwill. Personal goodwill is not divisible as marital property in most jurisdictions. When courts are evaluating personal goodwill, they have to distinguish it from enterprise goodwill – that is, the goodwill of the entity. It's up to the business valuation professional to come up with a rational distinction between the two. Trial courts are frequently reversed by appellate courts when the distinction between enterprise goodwill and personal goodwill is not based on a rational foundation.

**“Personal goodwill is distinct from enterprise goodwill. Personal goodwill is not divisible as marital property in most jurisdictions.” – Sandy Ain**

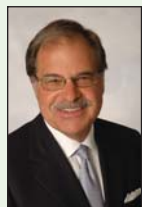
It's up to the expert to explain the distinction to the courts, and doing so is more of an art than a science. The best business valuers are able to distinguish between enterprise and personal goodwill in a way that a layperson – that is, the judge – would understand, so that they can back out the personal goodwill from the value that the divorcing party has.

**Rosenberg:** The first step is to evaluate if there is goodwill of any type. From an accounting perspective, goodwill really means the value above the adjusted fair market value of the net assets. Just because an entity is big or profitable doesn't necessarily mean that there is goodwill. After establishing whether there is goodwill, the big issue in divorce is, who does it belong to? Does it belong to the individual or does it belong to the enterprise?

The hardest part in doing this analysis is determining why somebody makes the amount they make. In the instance of a law firm, it could be very obvious or it could be very opaque. It's distinguishing their skills, training, expertise, and reputation, versus what the firm has to offer, including their financial capacity, management, and so forth. You have to understand what and why the lawyer earns what he does, and then come up with a method to compare that to their peer or comparison group. That is also very difficult and greatly depends on the size of the law firm involved.

**Ain:** In assessing personal or professional goodwill as compared to enterprise goodwill, the real difference is distinguishing the characteristics of the individual – including their experience, training, knowledge, age, health, reputation, and work ethic – compared to looking at the enterprise as a whole. It involves the workforce, the facility, the size of the enterprise, the financial capacity of the enterprise, the investment

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*Sanford (“Sandy”) K. Ain is a principal and co-founder of Ain & Bank. He has practiced family law for more than 40 years and has successfully resolved some of the most notable and complex family law cases in the country. He is a frequent lecturer, speaker, and panelist on family law issues throughout the country.*



*Stuart A. Rosenberg is a partner in Aronson LLC's Forensic & Valuation Services group. An expert who has spent more than 30 years in the industry, Stuart specializes in litigation support services, including valuations of closely-held businesses, financial analysis and investigations, and related expert testimony and forensic support services.*



*Sylvia Golden is the legal editor at Business Valuation Resources. She prepares the monthly litigation updates and writes articles for Business Valuation Update on cases that discuss expert testimony and financial evidence; in addition, she contributes to BVWire and co-hosts a regular case law discussion for Business Valuation Resources.*

# Is Your Website Really Smartphone-Friendly?

It only takes days (and a nominal fee) to build a true smartphone-friendly version of your website – so why hinder the success of your law firm by settling for outdated technology?

By Dan Couvrette and Martha Chan, Marketing Experts to Family Lawyers

The number of Americans accessing the internet using smartphones is on the rise. In 2014, more smartphone manufacturers started offering larger screens (up to 6.5" tall) to make surfing on the go easier. One report forecasts that in 2015, 182.6 million Americans will have smartphones, and that number will increase to 220 million by 2018<sup>[1]</sup>.

## Your Prospective Clients are Smartphone Users

A 2014 study shows that smartphone users are educated and affluent<sup>[2]</sup>:

- 71% of smartphone owners have more than a college education, and 67% have some college education.
- 81% of smartphone owners' annual household income falls into the highest bracket of the survey: \$75,000+.
- 58% of American adults have a smartphone; 74% of those aged 30–49, 49% of those aged 50–64, and 19% of people 65 and over own a smartphone.

You likely have a smartphone and keep it within reach so you can receive email and search online wherever you are. Chances are your prospective clients – including those referred to you by their friends and families – are using their smartphones to check out your firm's website. It stands to reason

that you and your law firm will be judged based on what they see. Yet most family lawyers we have talked to have never visited their own websites on smartphones, nor have they ensured their websites are really optimized for smartphones.

## Three Not-So-User-Friendly Smartphone Websites

When we ask family lawyers to check their own websites using their smartphones, the majority of them are surprised and dissatisfied by what they see; this is because most of them do not have websites that are specifically designed for smartphones. Instead, what they have are modified versions of their websites that generally fall into one of these three categories:

### 1. An illegible website that is frustrating to use (Exhibit 1).

This website has been shrunk to fit the small screen of a smartphone, and as a result, it is totally illegible. To be able to read the content, a visitor has to enlarge the text and scroll from left to right as well as top to bottom. Navigating through the site and finding that all important "Contact Us" page is difficult – and should a visitor manage to find the phone number, they have to write it down and call you later! Clicking on the wrong tab/link is inevitable when they are so small. This frustrating experience is an



Exhibit 1



Exhibit 2



Exhibit 3

Note: Exhibits 2 and 3 were created to illustrate this article; they are not actual websites.

When we ask family lawyers to check their own websites using their smartphones, the majority of them are surprised and dissatisfied by what they see.

invitation for visitors to leave your website instead of calling or emailing your law firm to set up a consultation while they have their smartphones in their hands.

**2. A bland looking website that bears little resemblance to the desktop version (Exhibit 2).**

This is a generic-looking smartphone version that is stripped of all the branding, pictures, logos, colors, and design the law firm has spent time and thousands of dollars on. All you see is an unmemorable website with pages of text in a small-but-legible font size. Also, it is not clear to a visitor that there are other pages or how to find the other pages on the website. Companies that provide this kind of website may claim the website is smartphone-friendly because the text is legible, but this is dated technology. A website that is really smartphone-friendly has a lot more to offer than this.

**3. A smartphone version of a “responsive” website (Exhibit 3).**

A “responsive” website adjusts itself to display all the content of a web page according to the device the visitor is using – be it desktop, tablet, or smartphone. (Very few family law websites have taken advantage of this new technology. If you have, congratulations!) The text is legible and most of the design elements are retained, but this smartphone version has a downside: it neither encourages nor makes it easy for a visitor to call or email you with just one touch. It also does not direct visitors to the most important pages they need to visit while they are “content snacking” on the go.

## What is a True Smartphone-Friendly Website?

If you look at Exhibit 4, you will see a website that is specifically designed for smartphones.

This website has distinct advantages over the three options above:

**1. It is action-oriented and clearly invites visitors to contact your law firm.**

This well-designed smartphone-friendly website makes it really easy to call, email, or text you, or find your office with just one touch. Visitors do not need to guess where they have to click and what they have to do; they do not need to find the navigation bar or the Contact Us page before they can contact you. This design helps your website generate more clients for your law firm.

**2. It clearly displays and directs visitors to the pages you want them to visit.**

At a glance, visitors can see tabs that invite them to click and read the “Firm Overview”, “Partners”, “Practice Areas” pages, etc. With this design, you can drive traffic to select pages you deem most important to convert visitors into clients. Smartphone users are “content snacking” and you need to be strategic with your offering of information to make your first impression count.

**3. It retains your branding and design.**

This smartphone-friendly web-site shows the attorneys’

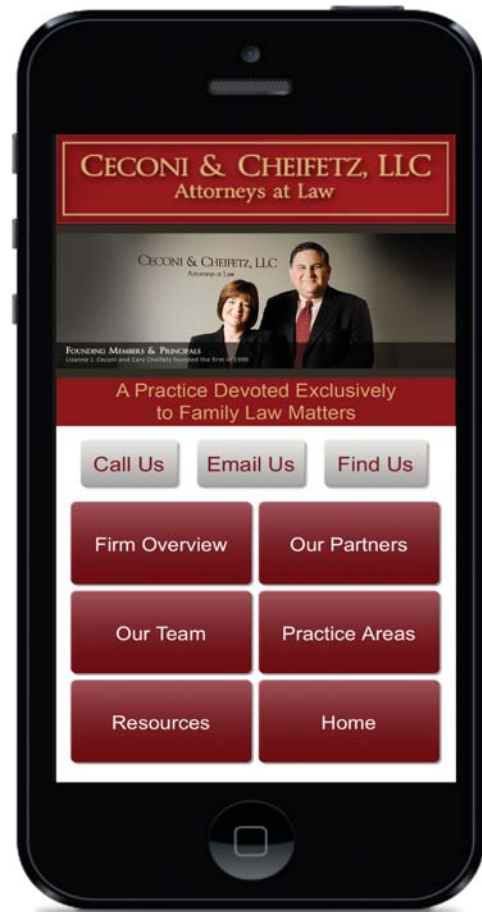


Exhibit 4

picture, the firm’s logo, and their tagline. It also retains the colors and design elements from the desktop version of the website. This way, should the visitor go to your website on another device, they will have familiarity and know they have come to the right place. Don’t settle for a generic version (as seen in Exhibit 2)!

**4. It is thumb-friendly.**

With big tabs like the ones in Exhibit 4, there is no chance of hitting the neighboring tab by mistake and ending up on the wrong page – a small but crucially-important detail for delivering a satisfying experience to your visitors.

**5. It is legible.**

## You can get a Smartphone-Friendly Website in a Week

Even if you don’t like your current website, or you are tied up by a multi-year contract that does not allow you to change your website and/or provider without a penalty, you can

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- [1] [www.statista.com/statistics/201182/forecast-of-smartphone-users-in-the-us](http://www.statista.com/statistics/201182/forecast-of-smartphone-users-in-the-us)
- [2] [www.pewinternet.org/fact-sheets/mobile-technology-fact-sheet](http://www.pewinternet.org/fact-sheets/mobile-technology-fact-sheet)



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# Common Mistakes when Valuing Pensions

Pension and QDRO expert Mark Altschuler talks about common mistakes when valuing defined benefit and defined contribution plans – including partial offsets and tax consequences – with *Family Lawyer Magazine* publisher Dan Couvrette.

## Dan Couvrette: What's wrong with using a present value of a defined benefit plan in a marital settlement agreement?

**Mark Altschuler:** In a state that uses coverture – which is roughly half the country – the marital portion is the benefit at retirement multiplied by the coverture fraction. The coverture fraction is determined at retirement, so it's going to be a much larger benefit than the current benefit. If the alternate payee is offered a present value, she might get a certain sum per month until that number's reached; even if she gets an accrued benefit that has the present value stated, that is going to be less than the coverture formula. A perfect example of that was the Able case in New Jersey. They valued the pension at \$100,000, and there wasn't enough money for a complete immediate offset. They should have done a partial offset, but instead, they did a 50% QDRO. The mistake was compounded because they specified that she was to get \$50,000 dollars – but New Jersey follows the coverture methodology, so by specifying a dollar amount, the husband argued that she wasn't entitled to 50% of the coverture portion. So there was a dual mistake made in getting the pension present valued: not using that present value because there wasn't enough for a complete offset, and then stating the present value in a property settlement agreement. In general, putting a present value of a pension in a property settlement agreement is a big mistake. It will shortchange the alternate payee.

## Couvrette: Why should a defined contribution plan be valued?

**Altschuler:** A defined benefit pension is a monthly benefit in the future. We're valuing the defined benefit pension today, but how are we going to value the 401(k) if their cut-off date is years ago? We've seen cases where the cut-off date has been 20 years in the past. We can't use a balance as of three or four years ago because that doesn't include gains and losses since that date. It has to be brought forward with gains and losses

since that date – then it can be compared to the house and the other assets.

## Couvrette: What was the impetus for launching your new website, DivorceTools.com?

**Altschuler:** Most attorneys really struggle with doing partial offsets. If there are multiple assets, it requires the attorney to create his own spreadsheet, input all the numbers and do the offset – and they usually can't or don't do this. This is why we don't see too many partial offsets. Or we see cases where the house is split and sold and the pensions divided 50/50 rather than doing offset. Our partial offset methodology makes it very easy for someone with no algebraic or spreadsheet skills to create offsets and achieve the desired overall split, if it's 50/50, 60/40, etc. It also handles multiple pensions; if you have six different pensions, you don't want to do six different QDROs. Our partial offset methodology will do an offset and a single QDRO.

## Couvrette: What about tax consequences?

**Altschuler:** If you look at pension versus cash, the pension is a pre-tax asset and cash is a post-tax asset. Some jurisdictions – New York, for example – are very stringent about taking tax into effect. You have to establish exactly what the participant's tax rate is before you can discount a pension for taxes. Other states, like Pennsylvania, are more lenient and will leave it up to the discretion of the court to discount the pension for taxes. Since the pension pays in the future, you would need to estimate a potential tax rate; we recommend the parties settle on some reasonable tax factor between 12% and 20%. Our partial offset methodology will enable you to gross-down that pension to compare it to cash. ■

This article has been condensed from the original; to read the full version, go to [www.familylawyermagazine.com/articles/QDRO-interview-Altschuler](http://www.familylawyermagazine.com/articles/QDRO-interview-Altschuler).



*An actuary and the president of Pension Analysis Consultants (PAC), Mark Altschuler has performed more than 20,000 pension evaluations. In addition to writing multiple articles for legal publications, he is a noted CLE speaker on pension and QDRO issues.*  
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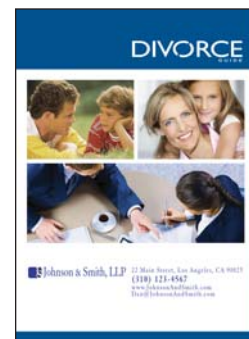
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that the enterprise has made in capital, the depth of the management, the name recognition of the enterprise, and the customer base of the enterprise – those are the primary characteristics that are distinguished between the personal goodwill and the enterprise goodwill. A business valuator quantifies each of those elements, both personally and for the enterprise, to come up with a distinction. There might be personal goodwill that could be traced to the enterprise.

**Q Golden: How do non-compete agreements and employment contracts fit into situations where personal goodwill can never be traded?**

**Ain:** In certain professions, that might be the case. A retiring dentist might be able to transfer relationships with his patients to a new dentist, who would pay for this. It's very difficult with law firms since many client relationships cannot be sold. Some law firms have creative pseudo non-compete agreements embedded in their agreements; you very rarely see a binding non-compete agreement in a law firm situation. In that sense, a lawyer is in a different position than another professional might be – say, a doctor or an accountant who might also be practicing at a larger firm.

**Rosenberg:** The general rule is the more specialized the profession, the less transferable those relationships are.

**Q Golden: How is viewing the personal goodwill of a partner in a large law firm different from the personal goodwill of a solo practitioner?**

**Rosenberg:** From my perspective, the largest law firms generally have agreements that are very complex and written so that no one – including the partners of the firm – really understands them. The large firms usually have a compensation system where a lot of statistics are analyzed by a small group of people and the result is conveyed to the partners in a very cursory way. In a large law firm, trying to determine why somebody's making what they're making can be very difficult, and oftentimes the party doesn't know themselves.

With large law firms, it can be difficult to find reliable information to determine what a lawyer's peer or comparison group is. Most of the data either deals with mid-size or small law firms. If you look at the Amlaw Top 200, the average partner compensation in the top 200 firms is \$960,000; in the top 50 firms, it's \$1.5 million. It's pretty hard to find comparable information to determine whether a lawyer is making more-or-less the same as their peer group.

**Q Golden: What other divorce and valuation related issues are you keeping your eyes on?**

**Ain:** One of the big topics in divorce valuation is the concept of professional or celebrity goodwill. What's the value of someone's celebrity status? There are cases from New York and New Jersey that have dealt with celebrity goodwill in a favorable way; in most other jurisdictions, it either

**“From my perspective, the largest law firms generally have agreements that are very complex and written so that no one – including the partners of the firm – really understands them.”**  
– Stuart Rosenberg

hasn't arisen or hasn't been decided favorably. As time goes on, we're going to see more of that concept being argued and litigated.

**Rosenberg:** Related to the goodwill issue, we see more and more cases with non-traditional businesses and parties making arguments that they have personal goodwill – such as a manufacturing or a sales business that you wouldn't necessarily consider to be a typical professional practice. Oftentimes, the owner of the business will make the argument that the business will fail without their involvement. I've represented owner-chefs of restaurants that say that the restaurant would fail without them – then you have the other side wondering how can they be in ten restaurants at the same time cooking every meal.

The other issue that continues to be difficult to deal with in certain jurisdictions is the increase in value of a business during the marriage and what that's attributable to. If the increase is attributable to passive factors, that's not considered to be a marital asset, whereas if its attributable to the personal efforts of one party, it is considered to be a marital asset – which is kind of the opposite of personal goodwill where an owner of a business who doesn't want the value to be a marital asset claims that it was just luck or market forces. Sometimes they even try to make both sides of the argument at the same time, claiming that it is personal goodwill and they had nothing to do with it. Most of the litigation that actually goes to trial involves increase in value of assets during the marriage. ■

*This interview has been edited for length. To read the full interview online, go to [www.familylawyermagazine.com/articles/interview-ain-rosenberg](http://www.familylawyermagazine.com/articles/interview-ain-rosenberg).*

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By Shannon Pratt and Alina Niculita

The distinction between personal and enterprise goodwill is becoming an increasingly important aspect of business valuation.

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# Discounts for Lack of Marketability



Restricted stock and pre-IPO data are the most often used and misused sources for estimating discounts for lack of marketability. Here's how to know whether an appraiser has used the data correctly in cases of disputed valuations of closely-held stock.

By Dr. Shannon P. Pratt and Alina V. Niculita, Valuers

**R**estricted stock and pre-IPO data are the most often used – and misused – sources for estimating discounts for lack of marketability (DLOM). And the DLOM is likely to be the biggest dollar issue in most disputed valuations of closely-held stock.

“Restricted stocks” are stocks of public companies that are identical in all respects to freely-traded stocks except that they have restrictions on their trading. Only institutions and high net worth investors can trade them. The percentage discount between the price of an open-market transaction in a stock and the price of a restricted stock transaction on the same day in the same stock is a proxy for the DLOM.

Here are the correct steps to take when estimating DLOM.

## 1. Select the Best Transactions

Most analysts just select some average number from one or more of the restricted stock and/or pre-IPO databases and use it for the DLOM. But, to derive the most valid results, the analyst should use the transactions in the databases that have characteristics most similar

to the characteristics of the subject company.

Both the FMV restricted stock database and the Valuation Advisors pre-IPO database have enough transactions and enough data points per transaction (60 for FMV and 18 for Valuation Advisors) to select those transactions with characteristics closest to your subject company rather than relying on the mean or some other statistic in the database.

The most obvious metrics for comparability are size and profits. As both size and profits go up, the tendency is for the DLOM to go down. Size can be measured in terms of either sales or assets. For profits, any of several measures of profits can be used, and either the dollar amounts or the profits as a percentage of sales are good measures.

Unlike the restricted stock databases – which report the restricted stock and the freely-traded stock transactions on the same day – the pre-IPO events and the transactions when the company was private are usually months apart. To be a valid comparison, the analyst must make

some adjustment for changes occurring between the two dates.

## 2. State Search Parameters in the Report

The analyst should state the parameters of the search in the report, and consider all items that meet the parameters. Insiders have various relationships to the company and other stockholders, so there may be some unexplained outliers in the DLOMs that should be disclosed and eliminated from the averages. Using the medians instead of the means as the measure of central tendency also blunts the impact of outliers.

The lower the range of DLOMs, the fewer transactions are needed. If the search produces too few transactions, the parameters can be widened.

Using the FMV restricted stock database, after a certain meaningful level – say 20% – the DLOM rises as the number of shares as a percentage of the shares outstanding goes up. Thus, a 35% block tends to have

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# A Contested and Complex Family Law Firm



For more than three decades, Echols & Associates has been providing legal advice and representation to clients in contested and complex family law cases in the valuation and division of marital estates, determination of marital and separate property, business valuations, requests for and defense of requests for support alimony, contested child custody and visitation and support, as well as jurisdictional disputes, including international law issues, paternity, guardianship, probate and domestic violence.

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"Our attorneys take a unique team approach to the practice of law by working together on cases," says senior attorney David Echols. "Clients look to our firm for unparalleled quality as well as the personalized attention needed for domestic cases."

This year, the firm celebrates the selection of M. Eileen Echols and David W. Echols to the Oklahoma Super Lawyers list and Jonathan D. Echols and Amy L. Howe to the Oklahoma Rising Stars list.

**M. Eileen Echols** is a former family law judge, twice named "Outstanding Family Law Judge" for the state of Oklahoma by the Oklahoma Bar Association's family law section. She is a former adjunct law professor and is a frequent lecturer on the topic of family law.

**David W. Echols** is a fellow in the American Academy of Matrimonial Lawyers and has been an AV-rated attorney by Martindale-Hubbell for more than 20 years. Along with Eileen, he has been selected to the Super Lawyers list multiple times and has been Chair of the Oklahoma Bar Association's Family Law Section. He is an adjunct law professor and frequently lectures on the topic of family law to Oklahoma lawyers.

**Jonathan D. Echols** graduated first in his law school class at OCU. He has been selected to the Rising Stars list since 2011 and, along with the other lawyers of Echols & Associates, concentrates his practice on contested, complex family law issues.

**Amy L. Howe** has been selected by her peers to the Rising Stars list since 2013. In 2014, she was named to The National Trial Lawyers "Top 40 Under 40," and the National Academy of Family Law Attorneys "Top 10 Under 40." She also focuses her practice on contested, complex family law issues.

Completing the team are these distinguished attorneys: **Lindsey W. Andrews**, recipient of the 2013 The Journal Record Leadership in Law Award from the Oklahoma County Bar Association. **Benjamin P. Sisney** who, prior to joining the firm, clerked for United States District Judge Gregory K. Frizzell in Tulsa, Oklahoma. **Ashley D. Rahill** (not pictured) is the newest attorney to join our firm. She was a recipient of the Oklahoma Bar Association's President's Award in 2012, and graduated from the OBA's Leadership Academy in 2014.



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## What Drives Our Decisions:

# REASON



# OR EMOTION?

Why making a case for a decision that is emotionally appealing rather than congested with data and reason can win people over faster and more easily.

By Mark Powers and Michael Hammond,  
Practice Advisors

**S**uccess in business and in life often requires getting “Yes” decisions from others. The most successful people get things done with and through other people; they always have and they always will. Many of the best lawyers we know also happen to be the most persuasive people we know. They are the ones who build law firms, grow client bases, increase their referral sources, convert prospects into clients, and convince juries to see their view of the case. The world’s best attorneys have at least one thing in common: the ability to persuade. Persuasion is critical to many areas in a legal career. Your success in family law often hinges on your power to persuade.

### Aristotle Was Wrong

Aristotle was so fascinated by the power of persuasion that he wrote three volumes on the subject, surmising that logic, reason, and cognitive thought were always the best ways to persuade others. He believed it was a human failing to allow ourselves to

be persuaded by emotion. Scientists, psychologists, and researchers have followed the Aristotle line for 2,500 years – until we discovered he was wrong!

Dramatic developments in neuroscience in the last decade have provided startling insights into how the brain really works. We can now see – in real time – how blood, oxygen, and neurons flow, activating various parts of the brain. We can actually watch the various components of the human brain light up as they are activated. By introducing a decision request, we can watch the brain’s decision-making process at work. Logic and reason have their place, but just not the place we always thought.

In fact, emotions rule our decision-making. From birth, we each build an emotional database of past experiences and actions. As we mature, we create our own internal navigation system from this emotional database of human experiences. This individual navigation system for our lives triggers

immediate, automatic decisions that are right for us based upon our accumulated experience.

### The Amygdala Rules

The brain’s emotional trigger point is a small almond-shaped component called the amygdala. The emotion-based request for a decision triggers a subconscious emotional memory from our database, and we get a quick, automatic “gut feeling” for the right way to go, the right decision to make. The amygdala is so central to decision-making that if it is damaged, a human being can still have 100% of his or her rational, cognitive brain functions but be totally incapable of making even the simplest decision.

So, how do these triggers for our internal navigation system work? A trigger is a decision shortcut that our brain uses to avoid the time-consuming and laborious effort required for analytical evaluation. Think about it: our human

Cont. on page 20

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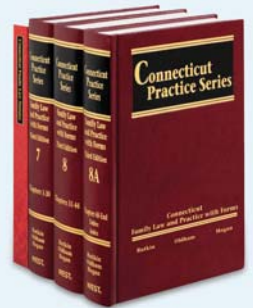
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need for decision-making never stops. Our brain is bombarded every day with literally thousands of decision requests – some simple, others complex, a few significant, many trivial. If we had to analytically evaluate each decision we are confronted with every day, we would be overwhelmed and probably go insane in short order. Our triggers help us make quick, automatic decisions in an efficient and effective way based upon our own unique database of accumulated personal experiences.

### The Seven Triggers

In his book, *The 7 Triggers to Yes: The New Science Behind Influencing People's Decisions* (McGraw-Hill, 2007), author Russell Granger makes the case that instead of using the old, logical Aristotelian approach, we should instead tap into these emotional triggers when attempting to persuade others. He goes on to say that in order

to benefit from the triggers, we first must activate them. "Remember that the triggers lie within the other person. We evaluate each of the 7 triggers, then determine which triggers are most likely to activate the other person's decision process," Granger says.

In his book, Granger provides a chapter for each of the seven essential triggers, which include: Friendship, Authority, Consistency, Reciprocity, Contrast, Reason Why, and Hope. Let's take a look at the first two triggers. The first, Friendship, is an important one for attorneys. Many attorneys do not take the time to initiate a friendship – or, activate the Friendship Trigger – when cultivating a new client or referral source.

Granger explains that the Friendship Trigger is a cue that was built into our emotional system at birth. "We bond with and trust those who care for us. We are more easily persuaded by those we believe to be like us. To activate the Friendship Trigger, we need to find

common interests. Friendship generates trust and trust activates a powerful internal trigger." Not surprisingly, the Friendship Trigger makes it easier to activate every other trigger.

When meeting with clients for the first time, it's also important to activate the Authority Trigger. When clients have complex issues to resolve, they need to believe that their attorney has the necessary legal knowledge and experience to solve their problem. Everything the attorney says and does will either add to or subtract from this initial impression. Believe it or not, basic visual cues like diplomas or certificates on the wall can help to activate this trigger. Though maligned by some as "ego walls," diplomas, awards, and plaques on display underscore the attorney's education and expertise, which helps trigger the belief that they are an authority in their field.

Activating both the Friendship and Authority Triggers at the same time generates a powerful first impression,



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which, in turn, can lead to a higher number of potential clients being persuaded to become paying clients much more quickly.

### Feeling Machines That Think

Perhaps the whole concept of emotion-based decision making is much more obvious to family law practitioners who spend much of their time trying to understand and deal with families, spouses, and children involved in complex, emotionally-charged situations. But, bottom line, the important point for all attorneys to remember is that most people do not act on logic and reason. Human beings make emotional decisions and then justify them with reason and logic. This is why persuasion techniques that stimulate the amygdala – making a case for a decision that is emotionally appealing rather than congested with data and reason – can win people over faster and more easily. When it comes to persuading others, using logic is like

taking the long way around the block. In the words of Dr. Richard Restak, neuropsychologist and author of the book and five-part PBS series *The Life of the Brain*, “We are not thinking machines; we are feeling machines that think.” ■



**Mark Powers (MA)**, Founder and President of Atticus, Inc., co-authored *How Good Attorneys Become Great Rainmakers*, *Time Management for Attorneys*, and *Hire Slow, Fire Fast: A Lawyer's Guide to Building a High Performance Team* and is a featured marketing writer for Lawyers Weekly.



**Michael Hammond (JD)** is a “founding father” of Atticus and is a Certified Practice Advisor. A licensed attorney since 1983, he has spent his entire career either practicing law or

supporting and promoting the practice of law. He is currently a featured writer for Lawyers Weekly and a number of other publications. [www.atticusonline.com](http://www.atticusonline.com)

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## Hiring a QDRO Expert? Choose Carefully!

*Family Lawyer Magazine* publisher Dan Couvrette recently interviewed pension and QDRO expert Tim Voit about the role of the QDRO expert in red-flagging potential issues and time-bombs, and reducing a family lawyer's liability.

### **Dan Couvrette: What problems have you seen in settlement agreements regarding pensions and QDROs?**

**Tim Voit:** There's a whole host of issues – from lack of providing survivor benefits in the event that the spouse with the plan predeceases the other spouse, to simply stating the spouse is entitled to 50% of the marital portion without realizing that, when it comes to 401(k)s, the plan's not going to calculate the marital portion. The attorneys will write in the settlement agreement that the spouse is entitled to 50% of the marital portion of the 401(k), and they assume that the plan's going to calculate contributions and earnings on the marital portion. But the plan administrator really doesn't have any means to calculate marital portions for divorces around the country. A settlement agreement might state that a spouse is entitled to 50% of pension and survivor benefits without realizing that the plan will not recognize former spouses as beneficiaries. With government, municipal plans, or even the state plans, an attorney doesn't want a client to come back into their office ten years from now saying "What happened to my money?!" Neither the attorney nor the client knew that when that ex-spouse with the pension dies, that money's gone: it's forfeited to the plan or paid to somebody else. You need to look into

these kinds of issues – or talk to someone knowledgeable with QDROs or retirement plan administration to get all the facts – before signing off on a settlement agreement, because the court cannot order a plan to do anything that the plan doesn't otherwise provide.

### **Have you seen cases where a lawyer ended up being liable for a bad QDRO?**

**Voit:** That's happened quite a bit. In one particular case, the wife was only supposed to get \$124,000, but she ended up getting \$255,000 because the attorney who was retained to draft the QDRO put in the wrong cut-off date. The husband's attorney ended up having to retain us to fix the QDRO to reverse the transaction. Just because one attorney hires another attorney to do some of the work doesn't mean the first attorney is off the hook in terms of liability.

### **What should family lawyers be looking for when choosing a QDRO expert?**

**Voit:** Years of experience and educational background are key. There are quite a few professionals who don't have an undergraduate degree in finance or actuarial science – or even math, for that matter. And that's important because you need to be able to look at a paragraph – whether it's a settlement agreement or the QDRO itself – and

be able to quantify what the spouse is going to get. I had a recent case where they offset the values of two retirement accounts for the husband and wife, and they came up with an equalization payment. They put a flat dollar amount in the settlement agreement – they didn't put it "as of" date, even though the offset occurred the year before date of filing – so that spouse lost out on about \$30,000 in gains. Understanding the logistics of the plan, and how they carve up these accounts or pension benefits, is important. An expert with years of experience will be familiar with all these plans: how they interpret the QDROs, and what they're looking for. Each plan has preferences regarding what they want to see in the QDRO – and what might mean one thing in one plan might mean something else to another plan. ■

This article has been condensed from the original; to read the full version, go to [www.familylawyermagazine.com/articles/QDRO-interview-Voit](http://www.familylawyermagazine.com/articles/QDRO-interview-Voit).



*Tim Voit is a financial analyst and the president of Voit Econometrics Group. He concentrates on QDROs and QDRO distribution, evaluation of retirement plans, and securities litigation. [www.vecon.com](http://www.vecon.com)*

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# Family Lawyers' Top Software Picks

We asked family lawyers about the software and apps they find invaluable in their daily practice of family law, and why they would recommend them. Here are some of their favorites.



Family law attorneys need the same kinds of practice and case management software as their colleagues working in other areas of the law, but they also have unique needs, such as: performing calculations regarding child and spousal support payments, calculating the tax implications of property division, and creating/tracking child custody arrangements, to name just a few. Whether it be filtering your document for run-on sentences, simplifying child custody and visitation, or managing your practice's billable hours, there's likely to be software or an app to help improve your productivity and better serve your clients. We reached out to judges and family lawyers for a sampling of products they thought were integral to their daily practice of family law; here's what some of them had to say.

**WordRake**  
[www.WordRake.com](http://www.WordRake.com)

**WORDRAKE**  
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Writing is one of a lawyer's primary stocks in trade. It is bewildering to me why so many of us write so badly. We should be better at writing given that we get paid to do it. Beyond the core spelling and grammar functions of the eponymous word processor, I have come across a wonderful software app called WordRake. It is an add-on for Microsoft Word that places an icon driven menu bar in your Microsoft Word software. With a click of a few buttons in Word, WordRake becomes your computerized proofreader. WordRake filters your document for run-on sentences, redundancy, and other grammatical mistakes far beyond what Word can do. It does it all from the comfort of a visually appealing, user-friendly interface. Because it is a Word add-on, it runs within Word: no cumbersome bouncing in and out of independent programs. You create a document and run WordRake while you are working on the document in Word; it then analyzes all of your text, highlights the problem portions, and includes recommended text to fix the problems.

— **John E. Harding**, family lawyer and principal of Harding & Associates in Pleasanton, CA.

**Our Family Wizard**  
[www.OurFamilyWizard.com](http://www.OurFamilyWizard.com)



During my tenure as a domestic relations judge, I heard many cases where parents were not able to communicate with one another appropriately. This behavior by one or both of the parents took on a life of its own and provided an extremely negative approach to parenting issues. When parents were not able to communicate appropriately, it often adversely affected the children. In these cases, I would order the parties to exclusively (barring an emergency) utilize Our Family Wizard for communication and scheduling. I monitored these cases by having them appear monthly until I was comfortable that the communication had improved. Included in my court order was authorization for the guardian ad litem or child representative to review all communications and to report to the court at each monthly court date. In my experience, communication improved, and as a result there was a positive focus on the children. The feedback I received from attorneys and litigants was encouraging. Everyone involved in these cases felt that Our Family Wizard was a benefit in placing the emphasis on the children rather than the animosity between the parents.

— **Barbara M Meyer**, retired judge, Circuit Court of Cook County IL, Domestic Relations Division.

**Family Law Software**  
[www.FamilyLawSoftware.com](http://www.FamilyLawSoftware.com)



Family Law Software easily handles all of the financial issues in a divorce case. It not only computes guideline child support in my state (and 20 others plus all of Canada), but it also allows me to see alimony and property division options to create complete settlement scenarios and variations. The built-in ability to generate Financial Disclosure statements

Cont. on page 28



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for the Court with one click is a bonus. We start every case with entry of the financial data from the client – which the clients can directly enter for themselves easily and securely. Once the data is entered, you have the ability to see the entire financial picture of the marital and non-marital estates, cash flow, and even projections of net income and net worth up to 50 years out. The tax computations are reliably accurate, and the one-click reports – such as “Best Filing Status in the Current Year” or “Best Use of Dependent Exemptions” – are incredibly useful. I use Family Law Software in every family law case involving a financial issue that comes in to my office.

– **Nancy Chausow Shafer**, family lawyer and principal at Chausow Shafer, PC in Highland Park, IL.

**MyCase**  
[www.MyCase.com](http://www.MyCase.com)



I researched and tested a number of cloud-based practice-management programs, and chose MyCase because it offers a robust set of features that save my practice time and money. Affordable and powerful, the software helps me manage all aspects of my law practice, including contacts, calendars, cases, documents, time tracking, and billing. It also allows all members of my team – whether in the office or working remotely – to access the digital file at any time. The MyCase iPhone/iPad app makes it easy for me to bill time on the go; using my mobile devices, I can capture billable time no matter where I happen to be. Before MyCase, I often lost valuable, billable time because I wasn’t necessarily at my desk when responding to clients or opposing counsel. I am capturing so much more of my billable time that MyCase is nearly paying for itself every month. As a solo practitioner shouldering a fast-paced domestic practice, I consider MyCase to be my secret weapon: it allows me to focus on serving my clients rather than worrying about case management and billing issues.

– **David E. Wells**, principal and founder of Wells Law Firm, PC in Myrtle Beach, SC.

**Day One**  
[www.DayOneApp.com](http://www.DayOneApp.com)



Day One journaling app for iPhone/iPad is an exceptional way to create a virtual timeline with images of specific facts relevant to the issues in your client’s divorce. This is significant because until such apps existed, most preparation had to be done by clients telling their story directly to the attorney or paralegal, and printing out pictures or evidence. Day One allows your client to create a chronological timeline of activity, with pictures and descriptions; the file is password-protected, can sync with iCloud or DropBox, and the client

can email an entry (with photo) or the entire timeline in PDF format to you or anyone in your office. The client simply snaps a photo (of event, screenshot of text conversation, or other), and then adds a description to that photo. If you are using a cloud-based practice management system (and I recommend them strongly), you could have your client email or upload the timeline directly to your portal so that it is in your client’s “virtual case file”. The program allows you, your client, or paralegal to have virtual access to a time-based series of events to better understand or convey the situation to a mediator or judge, if necessary.

– **Mark I. Unger**, family lawyer, mediator, and consultant at The Unger Law Firm in San Antonio, TX.

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Our firm has been using CosmoLex for a few months and is very impressed with how much it has improved productivity. CosmoLex is a cloud-based product, so all upgrades are automatic. Easy and accessible, CosmoLex has freed-up my time, allowing me to focus on my firm and clients. In the past, we needed to stop throughout the day to write receipts and track work that was manually documented on time sheets. With CosmoLex, we spend a total of about 20-30 minutes at the end of each day recording everything. This saves tremendous time and increases productivity. We can now easily run reports that reflect information requested by the court.

– **William L. Peebles**, family lawyer in Hattiesburg, MS.

**PhoneView**  
[www.Ecomm.com](http://www.Ecomm.com)



I have recently discovered a new piece of technology that I have begun to use in my family law practice. Called PhoneView, this Mac application accesses iMessages, SMS/MMS, WhatsApp messages, contacts, call history, voice-mails, app data, Safari web bookmarks, and web history from iPhones, iPads, and iPod touch devices. The most useful tool for my family law practice is the ability for clients to download an unpleasant text thread between themselves and their spouse. Gone are the days when clients took multiple screenshots of text messages that were hard to read and identify the sender. Instead, PhoneView puts the text thread in chronological order by date and time; identifies the sender; and attaches the sender’s message to each entry. This format makes it much easier for judges to read the text thread and for the lawyer to authenticate it as evidence. A key piece of advice would be to not download a client’s text message history to your own Mac computer: instead, get the client to download the thread and print the text conversation for you. You do not want any other information that is downloaded to

Cont. on page 54

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# Mindfulness-Based Stress Reduction to Help You Deal with Stress

Mindfulness meditation teaches us to approach each moment with more calmness, clarity, and wisdom.

By Dr. Mel Borins

**M**indfulness-based stress reduction (MBSR) is a therapy program that was founded by Jon Kabat-Zinn in 1979 in the Department of Behavioral Medicine at the University of Massachusetts Medical Center. Patients were taught to develop non-judgmental, moment-to-moment awareness of thoughts, feelings, and body sensations through a number of mind-body practices. Many subsequent programs have been modeled on this one, and a number of research studies have shown the approach useful for pain, anxiety, depression, and many other divergent conditions.

## Mindfulness Meditation

Meditation is the intentional self-regulation of attention from moment to moment. Mindfulness is a non-judgmental and non-reactive way of paying attention in the present moment to what is happening within us and around us whether we are meditating or doing something active. Rather than restricting attention to one focus point, this approach emphasizes detached observation of a constantly changing field of focus points. Over a number of sessions, patients learn to expand their field of attention to include all physical and mental events such as body sensations, thoughts, memories, emotions,

perceptions, intuitions, and fantasies.

In awareness meditation practice, no event is considered a distraction but simply another object of observation. No mental event is accorded any relative or absolute value or importance in terms of its content. All thoughts are just noted as they arise and are not judged. The implication is that, when we pay attention without judgment, we see things more clearly and develop a greater understanding of why things are the way they are. The intention is to approach each moment with more calmness, clarity, and wisdom. Patients learn to respond consciously rather than react automatically to events. They also learn to be more mindful of what is occurring in the body, to be less judging, and more accepting of themselves and life's challenges, and to be more compassionate and kind with themselves and others.

## Mindfulness Meditation Practice

Mindfulness meditation practice includes:

- Doing a "body sweep" or "scan" while being aware of posture, movement, resistance, spatial orientation, and using periodic suggestions of relaxation and breath awareness;
- Mindfulness of breath, thoughts, emotions, and other perceptions;

- Hatha yoga involving simple stretches and postures;
- Doing eating, walking, and standing mindfulness meditation exercises;
- Reading informative material regarding physiology and coping with stress.

The intention of the program is to teach patients simple techniques that they can continue to practice and utilize in their daily lives after the program is over.

## MBSR for Stress

Twenty-eight individuals who participated in an eight-week stress-reduction program based on training in mindfulness meditation had significantly greater reductions in overall psychological distress symptoms, an increase in a sense of control in their lives, and higher scores on a measure of spiritual experiences when compared with controls.

Two studies done on medical students showed the program significantly improved the way students handled stress. They had decreased anxiety and depression, increased scores on overall empathy levels, and increased scores on a measure of spiritual experiences after the program.

Fifty-nine adults in an eight-week program showed significant decreases



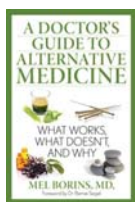
from baseline in: daily hassles (24%), psychological distress (44%), and medical symptoms (46%). These results were maintained at the three-month follow-up compared to control subjects.

### MBSR Compared to Relaxation Techniques

In 2007, researchers assigned 83 university students to one of three groups: mindfulness meditation, somatic relaxation techniques, or a no-treatment control. After a brief training, students in the first two groups practiced the intervention treatment over a 30-day period. Throughout the trial, measurements were taken for positive state of mind and for distractive and ruminative thoughts. Results showed that practice of either mindfulness meditation or somatic relaxation techniques significantly reduced distress and improved mood over the no-treatment control group. Researchers also found that those who learned mindfulness techniques had a larger stress-reduction effect and, unlike the relaxation group, showed a significant decrease in distractive and ruminative thoughts.

### Conclusion

Most people with a variety of conditions can benefit from attending mindfulness-based stress reduction classes. Many of my patients have taken MBSR courses and have noticed dramatic improvement in their health. I highly recommend this effective program for improving well-being. ■



This article has been excerpted from *A Doctor's Guide to Alternative Medicine: What Works, What Doesn't, and Why* by Dr. Mel Borins (Globe Pequot Press, 2014).



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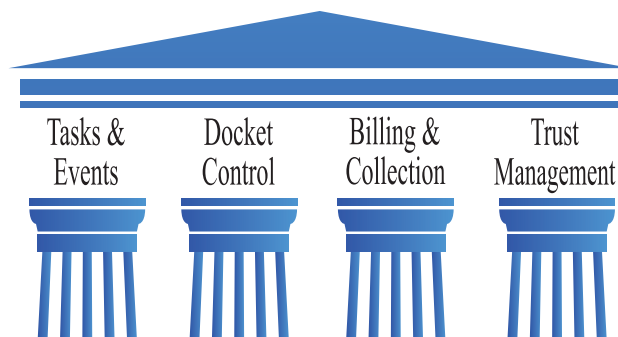
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# THE FOUR PILLARS OF FAMILY LAW PRACTICE MANAGEMENT



Most family law attorneys understand the four pillars of practice management – calendar and task tracking, docket management, billing, and trust management – but few appreciate how they must work together for maximum efficiency.

By Dr. Rick Kabra, Technology Specialist

Small law firms often struggle with practice management, and that can sink the business. Your success as a family law attorney has at least as much to do with how well you run your office as it does with your knowledge of the law. Although you may understand the four key areas of practice management, if you fail to appreciate how they interconnect and how they relate to law office management software, then you could face failed cases, lost revenue, and even malpractice charges.

## The Four Pillars

- 1. Calendar and Event Tracking** seems straightforward, but without a team calendar application, it is difficult to synchronize individual schedules to find time for collaboration within the firm. In addition, without a centralized, matter-oriented tracking system, trying to locate all appointments and events associated with a case is nearly impossible.
- 2. Docket Control** is more than simply noting a court date on a calendar. Missed deadlines are one of the leading sources of malpractice complaints, which is why malpractice insurance companies want attorneys to have robust docket control tools in place.
- 3. Billing and Collection** is the heart of

any business. Managing your billing process through accurate invoices, timely billing, and proactive follow-up on unpaid accounts ensures your law firm has a healthy cash flow. Collection can be especially difficult for family law attorneys when clients are going through the financial challenges of divorce.

- 4. Trust Management** is an issue faced by nearly every law firm. Family law practices depend on fee advances (retainers) to secure cash flow, but those monies don't technically belong to the firm until earned, so they must be kept in trust accounts rather than operating accounts. Rules regarding trust and IOLTA accounts are much more stringent than those covering operating accounts, and the penalties for mistakes are more severe.



## Exponential Increase in Efficiency

It's not enough to perform each of these crucial tasks individually. Imagine a group of people driving a car. One operates the gas, another the brakes, a third the steering, and a fourth looks out the windshield to see what's ahead. That sounds ridiculous, and yet that's how practice management works if you don't coordinate actions among these four areas.

Each practice-management area might work well, but if the components don't communicate with each other, you will quickly have an organizational disaster on your hands. In addition, all case information has to be associated with the appropriate matter. If you imagine these four areas as making up a wheel as we've shown (left), then matter-based organization is the axle that turns the wheel. When anyone looks at a matter, all information related to that matter – filing dates, tasks, billing and trust transactions – should be easily accessible.

Consider some typical practice-management situations faced by a family law practice:

- Docket Control has to work with Calendaring so you can coordinate dozens of activities across multiple attorneys, paralegals and clerks to meet a court filing deadline.
- Calendaring has to work with Billing

so that appointments and events automatically move into the billing workflow, and you can be sure your firm bills for every billable activity associated with a matter.

- Billing has to work with Trust Account Management so that if an invoice is paid from a security retainer, then the money is taken only from the matter's trust account and not any other client funds. Trust and operating account balances are updated appropriately.
- All of this information is linked to the matter so that if the client files a malpractice action against you – a common occurrence in the emotionally charged area of family law – you can immediately prove your innocence by producing a list of all events, appointments, hours, expenses, invoices, payments and other data associated with a specific matter.

## A Unified Approach

A unified approach to practice management that embraces each of the four key areas, enhanced by specialized cloud-based law practice management software, will supercharge your law firm's operations. You will get the convenience of centralized, matter-based organization, the ease of collaboration across team-focused cloud applications, and improved compliance with Bar Association requirements. Your practice will be in a better position to help your clients, and have a competitive advantage over firms that take a piecemeal approach to organization. ■



*This article has been condensed from the original; to read the full version, go to [www.familylawyer-magazine.com/articles/four-pillars](http://www.familylawyer-magazine.com/articles/four-pillars). The CEO of CosmoLex, Dr. Rick Kabra*

*has years of experience in the legal software industry, catering to the specialized technology needs of small to mid-sized law firms. [www.cosmolex.com](http://www.cosmolex.com)*



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# Networking Outside Your Comfort Zone

By Sean Ditzel, Family Lawyer

**F**amily law attorneys acquire new clients in many ways. Perhaps the most rewarding way we get new business is through referrals from other professionals. When someone gives your name as a person to be trusted, it is easy to feel a sense of obligation to live up to that reputation and do a great job in the case. Are you getting enough of these coveted recommendations from your network of peers? Consider these five tips for networking outside your own comfort zone to maximize and grow your referral base.

## 1 Connect With Other Types of Practitioners.

Although it is sometimes nice to see the familiar faces of your fellow family law practitioners at a meeting or in a quasi-social setting, those people are not likely to send you new cases unless they are conflicted out or deem the case to be poor after speaking with the potential client. So, instead of spending your precious time amongst a group of people all scrapping for the same good business, why not get to know attorneys in other areas of practice? You will find that many sections of your State Bar will welcome you with open arms to attend their meetings, and will appreciate your interest in branching out. In addition to making your name known in other circles, you will also meet people to whom you could send your non-family law referrals, thereby



Consider these five tips for networking outside your own comfort zone to maximize and grow your referral base.

creating a possibly symbiotic and continuing relationship. If you are a younger lawyer, many bar organizations have a Young Lawyer Division (YLD) which promotes this very idea. Young lawyers from each branch of the profession and from all corners of the map are involved in YLD programs, and they can be a great way to learn networking skills from the beginning of your career.

## 2 Interact With Non-Lawyer Professionals.

Similar to networking with non-family law attorneys, the family law practitioner can and should cast a wider net of referral sources amongst non-lawyer professionals in his or her community. Many professionals such as physicians, psychologists, accountants, and engineers have well-funded national and state-wide organizations that hold meetings, throw mixers, and organize fundraisers. There are also many networking groups set up for the exact purpose of meeting people outside of your profession. There is great opportunity to

cross-pollinate with these professionals and develop friendships with people with whom you might otherwise never have the chance to interact. Consider researching opportunities to become involved with or volunteer your time to non-attorney organizations in your area as another way to grow your referral base.

## 3 Don't Just Attend Meetings, Lead.

If you do decide to invest time in family lawyer organizations, make it your goal to become involved in leadership. After all, if you are not likely to garner referrals from the other family law practitioners sitting with you, you should find a way to distinguish yourself to outsiders looking to your organization for possible case referrals. Beyond simply leading meetings and introducing speakers, leadership in family law gives the practitioner greater opportunities to speak at continuing legal education conferences, write articles and teach family law to other professionals. Leadership

of family law organizations is also often called upon to give their opinions on developing legal issues and speak on behalf of the group that they lead. Having a higher profile within your organization can certainly result in your name being given to those looking for a family law attorney.

#### 4 Carefully Maintain Your Social Media Presence.

In today's society of smart phones and instant connectedness, most family law professionals have a presence on social media as part of their networking plan. But are you doing enough – and are you doing it intelligently? Any attorney can set up a LinkedIn or Facebook page for themselves or their business, but passively maintaining such pages does little to engage your network; these pages are nothing more than placeholders. To truly set yourself apart, consider taking the time to actually reach out to your

connections and friends, learn and inquire about their business, and figure out ways that you can help each other. Also consider posting regularly about your own practice to educate your connections about the various cases, causes, and organizations with which you are involved.

#### 5 The Next Step: One-On-One Networking.

If you do any or all of the above, you will meet and interact with a great many possible referral sources, and you might secure some business therefrom. However, to truly earn the trust of a professional who may send you cases on a consistent basis, it often requires extra attention. Keep the business cards you get. Send a follow up email to tell someone it was nice to meet them. Invite people to lunch. Having more of a one-on-one experience with members of your network will allow those people to really learn who

you are – and why they should send you business. ■



*Sean Ditzel is an attorney at Kessler & Solomiany, LLC in Atlanta, Georgia. Mr. Ditzel is on the Board of Directors of the Young Lawyers Division of the State Bar of Georgia, and has served in many leadership roles within the Bar. Mr. Ditzel's entire practice is dedicated to domestic relations.*

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# A Clean Slate

## How far can attorneys go in “cleaning up” a client’s Facebook page?

By John Browning, Trial Lawyer

Imagine yourself in a situation that’s become increasingly common for the average family lawyer in the digital age. Shortly after taking on representation, you learn that your client’s postings on Facebook, Twitter, Instagram, or other social networking sites negatively impact his or her positions in the case – perhaps about custody issues or even marital property. And there are other postings as well – perhaps not directly relevant to the case, but which certainly don’t paint your client in a flattering light. Just how far can you go in advising your client to “clean up” her Facebook page or other online presence?

The uncertainties surrounding the answer to that question have left some attorneys stumbling in an ethical minefield. In one Virginia wrongful death case, the plaintiff’s attorney learned of photos on the surviving husband’s Facebook page that depicted him drinking, surrounded by women, and wearing a T-shirt that read “I [heart]

hot moms” – hardly the portrait of a grieving widower! The attorney emailed his paralegal instructing her to have the client “clean up” his Facebook page because “[w]e do not want any blow-ups of this stuff at trial.” In addition to deleting the photos, the lawyer had his client (after deactivating his social networking account) sign sworn answers to interrogatories that he did not have a Facebook account. When the spoliation was brought to light, the court gave two adverse inference instructions to the jury and sanctioned the plaintiff’s attorney and his client a total of \$722,000 (\$542,000 against the lawyer and \$180,000 against the client). In July 2013, Virginia State Bar disciplinary proceedings against the attorney resulted in a five-year suspension of his law license.

There can be consequences even under somewhat more benign circumstances. In a recent federal court case in North Dakota,

the plaintiff testified that she had deactivated her Facebook account “on the advice of her attorney,” since she rarely used it for anything other than communicating with nieces and nephews. Nevertheless, the court granted the defense’s motion to compel and ordered the plaintiff and her counsel to make “a reasonable, good-faith attempt to reactivate” the Facebook account. And in an adversary proceeding in a Texas bankruptcy court, one federal judge held that the defendant’s mere act of taking his Facebook account private (after the incident that spawned the underlying personal injury suit) supported an adverse inference that the defendant acted with the specific intent to injure the plaintiff, making the debt non-dischargeable.

So just what can a lawyer advise a client regarding social media postings? Several ethics authorities have provided



some guidance on this issue. In New York County Lawyers Association Ethics Opinion 745 in 2013, for example, that group concluded that given the realities of litigation in the digital age – in which opposing counsel and others regularly scour social networking platforms for information – “[t]here is no ethical restraint in advising a client to use the highest level of privacy/security settings that is available.” This is simply good common sense, akin to telling the client to keep the shades down at his house or to avoid discussing the case with outsiders. Similarly, Ethics Opinion 745 holds that a lawyer can review what a client plans to post on social media and “guide the client appropriately” on social media usage; it even provides a checklist of tasks that a lawyer can do in counseling her client, including discussing how the posts might be perceived by third parties. More troubling, however, is the fleeting answer the Opinion gives to the question of whether lawyers may instruct clients to “take down” existing content from social media sites. Without explanation or rationale, the Opinion concludes that “provided that such removal does not violate the substantive law regarding destruction or spoliation of evidence, there is no ethical bar to ‘taking down’ such material, particularly in as much as the substance of the posting is generally preserved in cyberspace or on the user’s computer.”

Other ethics authorities have echoed this position while taking care to explicitly caution against spoliating evidence. In July, the Philadelphia Bar Association Professional Guidance Committee concluded that while a lawyer may advise a client to change the privacy settings on the client’s Facebook page, a lawyer “may not instruct or permit the client to delete/destroy a relevant photo, link, text, or other content, so that it no longer exists.” Furthermore, the opinion directs the lawyer to take affirmative steps to preserve social networking evidence, including obtaining “a copy of a photograph, link, or other content posted by the client

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# Time Management Tips



You can't really manage time – but you can manage your activities to increase your productivity.

By Allison C. Shields, Practice Advisor

**Y**ou can't really "manage" time. The only thing you can control is what you do with your time: in other words, your activities. Here are a few ways to manage your activities to increase your productivity.

## Give Up Multitasking

If you multitask, you probably think that you're being productive. But the truth is that you can't accomplish two things that require you to expend mental energy at once; you can only do one at a time. When you "multitask," what you're really doing is constantly switching between one activity and another. In his book *The Myth of Multitasking*, author Dave Crenshaw calls this "switchtasking."

Multitasking – or switchtasking – will always cost you time; you will always be less effective if you are multitasking than if you focus on one thing at a time. According to "The Magic of Doing One Thing at a Time" (Harvard Business Review, March 14, 2012), author Tony Schwartz points out that when you switch from doing a primary task to doing something else, you increase the time it takes to finish the original task by 25%.

Most lawyers will be unable to eliminate multitasking entirely, but working more proactively can significantly enhance both productivity and daily job satisfaction. Some strategies for doing so include:

- Set specific times when you are available for meetings or to check in with those you supervise (or ask your supervisor for a time when you can meet so you aren't trying to catch them whenever they are in the office).
- Plan ahead: decide which tasks are priorities and be sure you are prepared for each task before you begin.
- Work uninterrupted for a block of time on high-level priorities – during these times, don't let yourself be interrupted by drop-ins, the phone, or email. If necessary, leave your office to accomplish this, or tell people you are unavailable for a 60-90 minute block of time.

The next time you're in the midst of work, before you decide to answer that phone or wave that staff member into your office, consider the potential cost to your productivity.

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DLOMs / Cont. from page 16

a higher DLOM than a 5% block. This is because of the blockage factor: a large block of stock is harder to place than a smaller block. Dr. Shannon Pratt has used this factor to successfully defend a 50% DLOM in court<sup>[1]</sup>

### 3. Correct for Non-concurrent Dates Using Pre-IPO Data

DLOMs based on pre-IPO data have come under attack in the literature and have been rejected in the courts for the wrong reasons. The pre-IPO data are actually the most relevant data for DLOMs because they measure the percentage difference in price when the company was private vs. when the same company was public. (Dr. Shannon Pratt has used pre-IPO data very successfully in court<sup>[2]</sup>)

When an IPO occurs, the SEC requires disclosure of financials for the last three years. Therefore, the most important adjustment is

to multiply the reported discount by the ratio of the price/earnings ratio (P/E) of the private transaction to the P/E at the time of the IPO. Another possible adjustment would be to multiply the DLOM result from above times the ratio of the industry P/E ratio at the time of the private transaction to the industry P/E ratio at the time of the IPO, because companies tend to have IPOs at high points in their industry P/Es.

### 4. Adjust Opposing Appraiser's Numbers

If your appraiser has used these databases without taking the above steps, you should send him or her back to the drawing board. If the opposing appraiser has used these databases without taking the above steps, you should have your appraiser take the steps and apply them to the opposing appraiser's calculations to see where he or she would come out. ■



*Shannon Pratt is the founder and Alina Niculita the president of Shannon Pratt Valuations, Inc. Dr. Pratt has more than ten books in print on various business valuation topics and has testified on hundreds of occasions in various types of litigated matters. Ms. Niculita manages valuation engagements and has contributed*



*to several business valuation books.*  
[www.shannonpratt.com](http://www.shannonpratt.com)

[1] Howard v. Shay, 1998 U.S. Dist. LEXIS 23146 (C.D. Cal.).

[2] Okerlund v. United States, 365 F.3d 1044 (Fed. Cir. 2004) and Estate of Artemus D. Davis v. Commissioner, 110 T.C. 530, 1998 U.S. tax Ct. LEXIS 35, 110 T.C. No. 35 (1998).

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# Reforming the Divorce Process

We asked practicing divorce lawyers and judges what changes they'd suggest to improve the process in family law courts. Here are some suggestions from the front lines.

The main problem in many divorce proceedings is a delay in moving the case forward and towards a conclusion. Divorce cases are often drawn out over a long period of time, during which the lives of the parties are placed on hold. The solution to this problem would be to "fast-track" divorce cases with the help of judges who actively enforce this approach. A case is fast-tracked when a set schedule is put in place immediately after the case is filed, setting time limits for the various phases of the case, including the final trial. In order for cases to be successfully expedited, family law judges would have to strictly enforce the time limits, and urge divorce lawyers to move things along.

*Jay Frank is a senior matrimonial attorney and AAML member who represents clients on a local, national, and international basis. Elected annually as an Illinois "Super Lawyer" since 2005, he is a lecturer, writer, and co-founder of Legal Netlink Alliance. [www.agdglaw.com](http://www.agdglaw.com)*

Two recommendations for making the family law court system more effective and cost-efficient:

1. Case Management: One judge should be assigned from a case's commencement to the point of trial, removing the need to repeatedly explain the situation to new judges.
2. Mandatory Mediation: The parties should be required to mediate for no fewer than two sessions to determine if there is a chance of resolution or partial resolution before the first court appearance. Encouraging settlement prior to litigation can potentially reduce costs.

*Ken Nathens is a founding partner of Nathens, Siegel LLP in Toronto, ON. Ken has published and lectured on various family law matters, including mediation. [www.nathenssiegel.com](http://www.nathenssiegel.com)*

The current divorce process provides family law judges with too much power for a single person. Litigants in divorce and custody cases would benefit from the opportunity to request a trial by jury rather than by a single judge. It would also be better for litigants to have several of their peers deciding their very important legal matters of family and money, rather than a judge who may be jaded and exhausted from his or her years on the Bench. Judges tend to adopt rules of thumb that replace the fresh consideration of various family law cases and scenarios. Although the cost of litigation would increase if the divorcing parties were permitted a jury trial, the trade-off would be well worth it.

*Ronald V. Thomas is a family law attorney and a former Judge Pro Tempore of the Maricopa County Superior Court in AZ. [www.thomaslawoffice.net](http://www.thomaslawoffice.net)*

From the perspective of a former family law litigator who now focuses on mediation and collaborative divorce, more should be done to reduce the frequency of contentious divorce litigation. Public education and guidance toward Alternative Dispute Resolution (ADR) – particularly mediation – by the courts themselves would be an obvious first step that many states have yet to take. ADR doesn't have to be made mandatory, but many divorcing couples aren't even aware that alternatives to litigation exist. The courts are in a unique position as gatekeepers to educate divorcing couples about the available alternatives.

*Rackham Karlsson is a family law mediator and collaborative attorney based in Cambridge, MA. [www.zephyrlaw.com](http://www.zephyrlaw.com)*

Ohio's current child support calculations are outdated and unfair. Our courts presently approach parenting time on the basis of a 50/50 division. However, Ohio's child support mechanism – which was last modified more than 15 years ago – allocates on a 75/25 split. Thus, a paying parent's real costs have increased by 100% (from 25 to 50). The parent may seek a deviation in

child support, but a judge has the power to deny it. An automatic 50% reduction in guideline child support under current calculations would remedy the problem. Then, if either party dislikes the automatic deviated amount, or have agreed to some other amount, they can seek a judicial change.

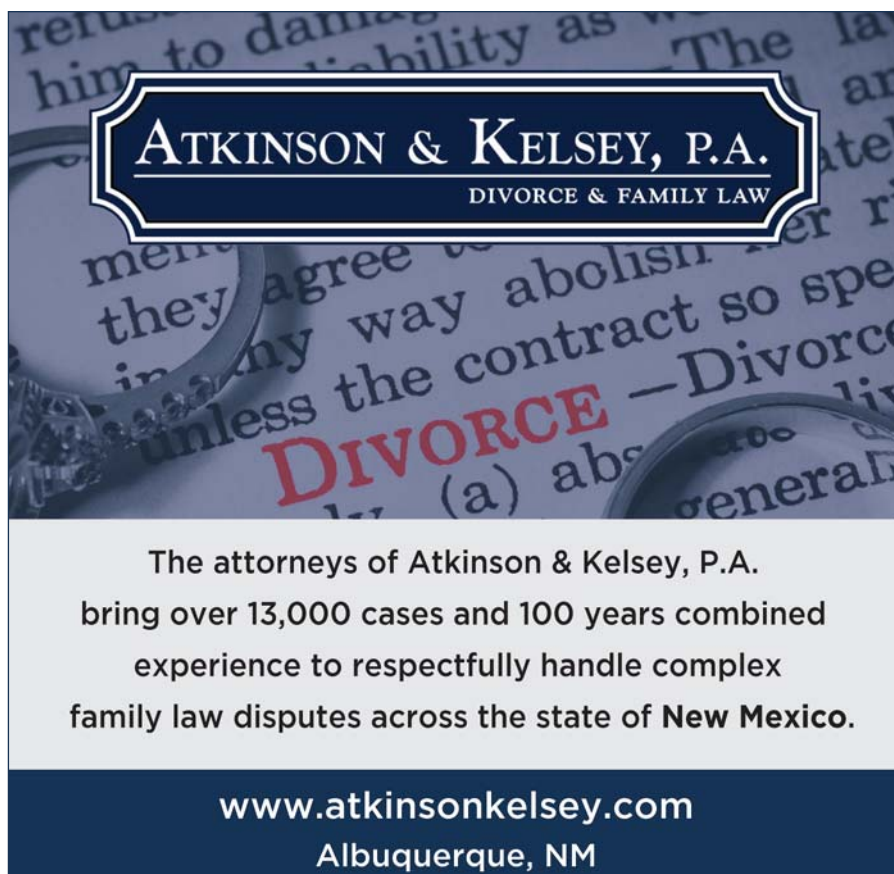
*Jack L. Moser, Jr. is an attorney practicing throughout Ohio.  
[www.jmoserlaw.com](http://www.jmoserlaw.com)*

The divorce process should be "re-formatted" so that children's issues (such as custody, parenting times, and schooling decisions) are addressed and concluded as soon as possible – not just with temporary orders, but with final orders regarding the children. Oftentimes, serious family law situations involving the children are not addressed properly until the date of the final trial or the signing of a settlement – either of which occur too long after the issues were originally brought to the attention of and placed within the jurisdiction and power of the court. In the interim, the children are helpless victims of circumstance without a voice in the matter or any control over the outcome of the case. Too often, children of divorce are used as pawns in the battle over financial issues, while the whole divorce proceeding is prolonged because of the non-resolution of the child-related issues.

*William L. Geary is a family attorney with 35 years' experience who focuses his practice on litigation in Columbus, OH. [www.columbusfamilylawyer.com](http://www.columbusfamilylawyer.com)*

Judges should identify positive and negative parenting practices for both sides in a divorce case. More often than not, judicial rulings fail to weigh the statutory parenting factors as to both parents. Sometimes, the "winner" feels that what may be highly inappropriate parenting

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# NEGOTIATING WITH THE PRO SE PARTY

Self-represented litigants create a difficult situation for the other party and his/her counsel. You must handle these cases carefully to ensure the best representation for your client while maintaining your dignity and professionalism.

By Gregg Herman, Family Lawyer

**P**ro se parties are perfectly capable of winning cases – perhaps even more so than licensed lawyers, since courts often strive to protect them. Therefore, the first thought when dealing with a pro se litigant should not be how you are going to win at trial, but what strategies you can employ to avoid the risk of trial.

## Negotiation Strategies

Some lawyers would argue that the only effective strategy for handling the pro se litigant is avoidance. However, I believe that negotiating with the pro se litigant is necessary, and that special strategies must be applied to that circumstance. Which strategy to use depends on the nature of the pro se litigant, who tends to fit into one of the following categories:

- A litigant who cannot afford an attorney (the attorney for the other side is retained either due to an economic disparity or because the lawyer made a mistake in thinking he would be paid);
- A litigant who is trying to save money;
- A litigant who has a license to prac-

tice law but is violating the “client who represents himself” maxim;

- An evil litigant who wants to run up costs;
- A mentally-ill litigant.

## The Impoverished Litigant

Probably the easiest variety of pro se litigant, an impoverished one, is neither evil nor seeking an advantage. The settlement strategy is simple because no one is being manipulative and there is little to negotiate.

In this circumstance, the lawyer must protect himself from the perception that he is representing both parties. In cases where one side was pro se we often hear someone say, “One lawyer represented both of us.” But when we look at the file, there are notations in which the lawyer made clear that he was only representing one party.

The disclaimer “I am only representing your spouse” should be made in virtually every communication to the unrepresented party and should advise the pro se party to hire his/her own attorney. Here is some sample language that can be adapted to suit your own style:

“One lawyer cannot represent both parties in a lawsuit, and a divorce action is a lawsuit. Therefore, I am representing only your spouse and not you. Although I will disclose any material facts to you, I have no obligation to give you legal advice, so please don’t ask me for it. If you feel that anything that I say falls into the area of advice rather than information, you rely on it at your own peril. It is highly recommended that you retain your own independent legal counselor to give you legal advice and representation.”

## The Penny Pincher: Penny Wise and Pound Foolish

You likely don’t know anyone who selects a doctor by cost. Yet many people look for the cheapest representation during divorce. And others, although they can afford and need representation, go without a lawyer solely to save money.

In some jurisdictions, the best strategy for dealing with the penny pincher is to advise him that going without representation requires sharing in your cost. For jurisdictions that are not good at ordering fee contributions, the

strategy follows that of the “no funds available” case: do not give legal advice to the pro se party and make ample use of disclaimers in writing.

### The “Fool for a Client”

Among the most frustrating variety of pro se opposing parties is the self-represented lawyer who proves the maxim: “A lawyer who represents himself has a fool for a client.” It is unclear which is more frustrating: the lawyer who has practiced (or, worse, is practicing) family law, or the lawyer who has never practiced in this field. For the former variety, a little bit of knowledge is a dangerous thing. For the latter, the lack of experience is a gross deficit.

As with the penny pincher, if the fool is representing himself to save money, the threat of a contribution may be successful. After all, the fool should prefer to pay his own lawyer rather than the spouse’s.

### The Evil One

As all lawyers know from bitter experience, some pro se litigants are pure evil. The evil manifests itself in numerous ways: ignoring the law, ignoring court orders, taking unreasonable positions, engaging in intense litigation, and more.

There is no effective means of dealing with pure evil. The best strategy is to avoid it as no case is worth the aggravation. If you cannot avoid it, you must minimize harm to your client (and yourself). Under no circumstances should you play the evildoer’s game. Your best hope is that the legal system does its job of punishing evildoers and protecting their victims. However, reliance on the legal system should be a fallback position. Avoidance is the best strategy.

### The Mentally-Ill One

The mentally-ill pro se litigant is a subset of the evil one; and, once again, there is no perfect strategy. In fact, I’m not sure there is any effective strategy.

Sometimes, all you can do is try not to make things worse. First, recognize the problem and your inability to fix it. Second, avoid being crazy yourself. The

court does not need two crazy lawyers, even if one is acting that way in retaliation. If you are caught in this impossible situation, maintain your professionalism and demeanor at all times. Create a contrast, not a duplicate.

### Risks in Negotiating with Pro Se Parties

Special risks exist when the other side is not represented. Other attorneys may misrepresent what you say, but in situations in which the other side has a license to practice law, at least rules apply to mitigate the risk. No such rules apply with the pro se opposing party, so it’s important to always have a witness whenever you meet with the pro se party.

Attorney Sondra Harris notes: “It is important not to overreach or try to make an agreement ‘too good’ when negotiating with an unrepresented party. A court will set aside an agreement if the court feels that it is unfair as opposed to simply being a ‘bad’ deal. Thus, a lawyer must strike a balance between getting as much as possible for the client and still striking a fair, good-faith settlement that will stand up to court scrutiny.”

Harris advises having written ground rules agreed upon prior to a meeting, including start and end times, no rude behavior, an agenda, and rules of conduct specific to the circumstances.

Another risk is that the pro se party is feeling you out for compromises and taking any proposed deal to another lawyer to see if it can be sweetened. Therefore, don’t back yourself into a

corner with any proposed settlement. Rather, if a settlement is close but the pro se party seems to be leaving room for late maneuvering, don’t make your final offer. Leave room for future negotiating so that you can make some final compromises and still end up with an acceptable settlement. ■

This article has been edited and excerpted from *Settlement Negotiation Techniques in Family Law* © 2013 American Bar Association. With permission from the author. It is available for purchase on the ABA website. The full version of this article is available on [FamilyLawyerMagazine.com](http://FamilyLawyerMagazine.com)



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By Brian James

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## Do the Worst First

Let's face it – not everything you do as a lawyer is enjoyable; not every case is interesting and not every client is a joy to work with. But the more you avoid the tasks, clients, and cases that you dislike, the less productive you're likely to be because while you're working on other things, that terrible task is lurking in the back of your mind and distracting you.

The tasks you dread or dislike the most may be precisely the tasks you should do first. Get them out of the way and keep them from cluttering up your thinking and pulling focus from the other things you're working on.

Once you get started, the offending task might not be as bad as you thought it would be. But even if it's awful, you'll feel better when it has been completed. You'll be free to focus on everything else that needs to be done – and you'll find it is much easier to do so when your mind is clear of thoughts about that nasty task or file.

## Use the Power of Three

The principle behind the Power of Three is that the brain easily grasps and remembers ideas in threes. But once we start adding more, we start to become overwhelmed.

If you limit your daily to-do list to three main items, more often than not, you can accomplish all three. And that feeling of accomplishment translates into higher productivity and a better overall feeling about your day – powering the next day's work and so on.

To use the Power of Three, ask yourself: "What three things will I do today so that, if I accomplish nothing else, I will feel that I had a productive day?"

Write down your three daily goals or tasks to help focus your attention on those tasks and cement your commitment to getting them done.

## Schedule Time to Complete Work

Your calendar most likely contains court dates, client meetings, and other appointments that occur on a specific date or at a specific time. It also

probably includes deadlines, such as the last day to file a motion or brief, the day you promised the client you would provide them with a draft of a document, etc. But some tasks don't have built-in deadlines. In those cases, you need to create your own deadlines and document them.

But creating and documenting deadlines is only the first step. Next, you've got to actually do the work: you need to write the brief, prepare for the client meeting, draft the documents, write the marketing copy, etc.

Instead of just entering a deadline into your calendar and adding the task or project to your to-do list, schedule a specific time on your calendar to do the work. Some people call this "time-blocking." You don't necessarily need to block all of the time necessary to complete the task at once; try simply blocking time to complete the first step necessary to move the project forward. When that is complete, schedule the next step, and so on.

Treat each time block as you would an appointment with a client. If something more pressing arises that you must do during the time scheduled to complete the task, instead of simply not doing the work you'd planned, move the appointment to another place on your calendar.

## Create a Daily Plan

Do you have a plan for the day, or do you constantly just react to what comes up – emails, telephone calls, or other interruptions? If you're just reacting, you're probably not as productive as you could be.

Before every day, week, or month begins, you should know what you plan to accomplish. When you have a plan, it's much easier to say no to interruptions.

Don't let yourself be overwhelmed or paralyzed by the amount of work you need to accomplish. Instead, determine daily which actions or tasks are the most important and make sure those take center-stage in your day.

Next, estimate the amount of time each activity will take to accomplish.

Don't be stingy with your estimate; estimating too little time will add stress and confusion to your schedule.

Finally, decide on a specific time when you will perform that activity and physically schedule it on your calendar. Make sure you leave some empty space or "downtime" on your calendar in addition to the personal and family time that you schedule.

Be flexible: recognize that the schedule is not entirely set in stone. It is likely that there will be last-minute emergencies, unforeseen circumstances, or client crises that must be addressed. Build in a cushion for the unexpected.

The advantage to setting specific times to accomplish important tasks is that as soon as the crisis or emergency has passed, you can return to your schedule without missing a beat. ■



*For more time management tips, see [How to do More in Less Time: The Complete Guide to Increasing your Productivity and Improving your Bottom Line](#) (ABA Law Practice Division, 2014) by Allison C. Shields, Esq. and Daniel J. Siegel. Allison is the president of Legal Ease Consulting, Inc., which provides practice management, leadership, marketing and business development, coaching and consulting services for lawyers and law firms nationwide. [www.LegalEaseConsulting.com](http://www.LegalEaseConsulting.com)*

[1] <http://blogs.hbr.org/2012/03/the-magic-of-doing-one-thing-a/>



# How Financial Experts Help Lawyers

One of the many benefits of working with a financial professional specializing in divorce issues is reduced liability: they make sure that all the financial “bases” are covered to avoid nasty surprises from unhappy clients down the road.

By Laurie E. Ingwersen, Financial Professional

**S**ome industries have to deal with lawsuits more often than others. The American Bar Association (ABA) reports that family law attorneys, who often deal with divorce, are the third most sued group of attorneys, behind personal injury and real estate attorneys. The ABA reported that between 1995 and 2007 the number of lawsuits against family law attorneys doubled. According to the ABA<sup>[1]</sup>, the top ten reasons matrimonial lawyers get sued are:

1. Client emotion
2. Unreasonable expectations
3. Incomplete information
4. Settlement perception
5. Retaining experts
6. Fee disputes
7. Client selection
8. Drafting documents
9. Multi-jurisdictional issues
10. Poor client relations

## Unreasonable Expectations and Clients' Emotions

One of the biggest reasons attorneys find themselves dealing with lawsuits is that the client has unreasonable expectations of what they are going to get from their divorce. Add in the fact that divorce is an emotionally

charged situation and the result may be a client who is disappointed with the final settlement. “A second opinion from a financial professional is useful to help clients accept reality,” says attorney Gina Ghioldi. A financial professional working in the divorce arena can work with clients and attorneys to evaluate a client’s financial future based on a proposed settlement.

## Incomplete Information

Divorce is an emotional time and most people don’t make sound financial decisions when they are in this state of mind. Important information can be missed because clients may be distracted by their feelings. Attorneys working in partnership with financial professionals can utilize their expertise to help gather all of the relevant financial information and work on uncovering assets that will be part of the final settlement. Many allegations against divorce attorneys revolve around lawyers not searching hard enough for hidden assets. Settlements negotiated before any hidden assets are uncovered could easily result in a significant loss, and this may open up the potential for a malpractice lawsuit against the attorney.

## Settlement Perception and Retaining Experts

A substantial portion of lawsuits against family law attorneys result from advice that leads to financial losses to their client. These losses can result from advice given on division of retirement assets, the forced sale of a home to cover liabilities, or simply not understanding what the long-term effects of the settlement offer will be. According to an article in the *New York Law Journal* by Noeleen G. Walder, a doctor brought a claim against his divorce attorney when he had to pay significant taxes after withdrawing a large sum from his retirement accounts to fulfill his settlement agreement.<sup>[2]</sup> Had a financial expert been consulted, this tax liability could have been addressed.

## Working with a Financial Pro

A financial pro can help gather the necessary financial data, run long-term projections of settlement options, give advice on how retirement assets are treated differently, and provide the client with a clearer picture of what to expect in the future. A financial pro will make sure your client understands the short-term and long-term financial impact of different settlement



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#### Protect Your Clients from These Financial Mistakes

The Institute for Divorce Financial Analysts™ recently asked its members to share the worst financial mistakes they've seen divorce-industry pros make; here's a taste of what they had to say.

[www.familylawyer magazine.com/articles/mistakes-industry-pros](http://www.familylawyer magazine.com/articles/mistakes-industry-pros)

[1] [www.alm.law.com/jsp/article.jsp?id=1202432970675](http://www.alm.law.com/jsp/article.jsp?id=1202432970675)

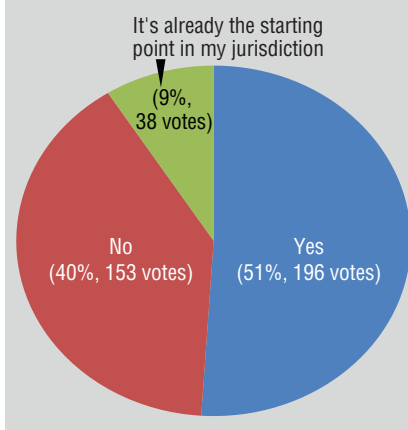
[2] [www.americanbar.org/content/newsletter/publications/youraba/201210article07.html](http://www.americanbar.org/content/newsletter/publications/youraba/201210article07.html)

behaviors have been validated by the "win" in court – thereby placing the entire family on a trajectory of visitation violations, alienation, open hostility, and so forth after they have left the courtroom. The legacy of errant judges in such cases are children who have poor self images, emotional disorders that manifest in criminal behaviors or substance abuse, and, in some cases, children who don't understand why they feel so badly about themselves. In order to stop the emotional trauma inflicted on children by one-sided views in custody and visitation rulings, family law judges should begin telling the "winning" side what they are doing wrong and where they can improve as parents. ■

*Based in in Port Richey, FL, James A. Boyko is a semi-retired attorney after 26 years of practice.  
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Smartphone / Cont. from page 9

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on the client's Facebook page" about which the lawyer is aware "if the lawyer knows or reasonably believes it has not been produced by the client."

Soon after, the Pennsylvania Bar Association issued its Formal Opinion 2014-300, which expressly adopted the Philadelphia Bar Ethics Opinion's guidance. It agreed that "a competent lawyer should advise clients about the content that they post publicly online and how it can affect a case or other legal dispute." And while the Pennsylvania Bar cautioned that lawyers may not counsel a client to alter, destroy, or conceal any relevant information, there is nothing wrong with changing a client's profile to "private" or with instructing a client "to delete information that may be damaging from the client's page, provided the conduct does not constitute spoliation or is otherwise illegal, but must take appropriate action to preserve the information in the event it is discoverable or becomes relevant to the client's matter."

In North Carolina, a proposed ethics opinion provides that "If removing postings does not constitute spoliation and is not otherwise illegal or a violation of a court order, the lawyer may instruct the client to remove existing postings on social media." However, the Opinion cautions lawyers giving such advice to also preserve the postings "by printing the material, or saving the material to a memory stick, compact disc, DVD, or other technology." And in Florida, a proposed Advisory Opinion on "cleaning up" social media likewise concludes that while a lawyer may advise a client to adopt stricter privacy settings, she may not advise the client to remove relevant information from a social media page unless a copy of the removed information is maintained and as long as the removal does not violate substantive law (Florida's Committee is also considering an alternative approach, mandating against removal period, regardless of steps taken to preserve the social media content).

While these opinions make it clear that an attorney can certainly advise clients on managing their privacy

settings and even the content that they post, the issue of "cleaning up" or removing Facebook postings remains somewhat murky. Attorneys are best advised not only to take appropriate measures to preserve potentially relevant social media evidence, but also to remember that the duty of competence now includes an obligation to be aware of the benefits and risks associated with technology. This includes counseling clients not only on the consequences of what they post, but also on the ramifications of deleting such posts. As the judge in one recent case of Facebook spoliation admonished, "Once Plaintiff retained counsel, her counsel should have informed her of her duty to preserve evidence and further explained to Plaintiff the full extent of that obligation." ■

*John G. Browning is the founding partner of the Dallas, TX office of Lewis Brisbois Bisgaard & Smith, where he handles civil litigation in state and federal courts. He is the author of The Lawyer's Guide to Social*



*Networking: Understanding Social Media's Impact on the Law (Aspatore Books, 2010), and is considered a leading authority on the topic.*

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the program on your computer in case the client has sent inappropriate texts that might violate federal or state wire-tapping laws.

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# What Family Lawyers Need to Know

Divorce-industry professionals offer expert advice to help you serve your clients and grow your practice.

**1 Whenever possible, encourage clients to seek shared-parenting arrangements – which is supported by the overwhelming majority of the science in the field.** When parents oppose shared parenting, it is often because they are afraid. Parents feel very vulnerable during divorce and are afraid of losing control over access to their kids; they also fear loss of financial security. It is tempting to appeal to their sense of outrage and stoke their anger toward the other parent. Parents will seize on these feelings because they feel more powerful, but it is only a short-term fix. In the end, their ability to cooperate with the other parent and to put the children's needs first will determine their long-term comfort and happiness. Divorce professionals can show their humanity for these frightened parents by asking themselves if their advice serves the long-term goal of cooperative co-parenting, or undermines it by stoking the fires of outrage and conflict. Even if parents are not currently demonstrating respectful communication and cooperation, most parents can learn these skills.

– **Donald A. Gordon (Ph.D.)**, *Executive Director, Center for Divorce Education*, [www.online.divorce-education.com/attorney](http://www.online.divorce-education.com/attorney)

**2 Be realistic with clients regarding financial outcomes, and make sure the financial affidavit is rock-solid.** Don't overestimate the likely outcome just to secure a client's business. Setting achievable client expectations regarding assets, liabilities, and support will help your client

recognize and accept a reasonable settlement proposal – and make sure that divorce costs and taxes are factored into your projections. If spousal support will be an issue, hire an independent financial expert to perform a lifestyle analysis: tracking the marital lifestyle will ensure that no expenses are overlooked and will assist with keeping client expectations in check. A detailed financial affidavit is the foundation on which you will build your case. If that foundation is full of holes, your case will likely collapse. If your firm does not have the time and/or expertise to help your client to identify and then find all the necessary documentation to create an accurate financial affidavit, make a referral to a financial professional who can lead the client through the process – and ensure there are no nasty surprises if your case goes to trial.

– **Cathy Belmonte Newman (CDFA, MBA)**, *Principal, F4 Financial*, [www.f4financial.com](http://www.f4financial.com)

**3 Don't forget the taxes!** Attorneys often forget to address taxes in settlement agreements: items such as child exemptions, taxable alimony deduction, carry forwards such as capital losses, NOLs & foreign tax credits, and prior year tax refunds applied to the current year, just to name a few. Always look at the prior year's tax return to make sure your client receives their fair share of tax credits and deductions; although it won't supply cash up-front, it

Cont. on page 58



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**4 Offer Payment Options.** When two law firms are equally qualified, clients may choose the firm that offers a more convenient payment plan. A firm that works with clients to create an agreed-upon payment plan will increase the likelihood of getting paid on-time and in-full. This can be beneficial in a divorce situation where funds may be closely monitored or the client is on a fixed monthly budget. Some firms offer on-time payment discounts: if a client pays within five business days, for example, they receive 10% off their bill. You will need to find the right combination to motivate your particular clients.

– **Amy Porter** (CPP), *CEO of LawPay*, [www.lawpay.com](http://www.lawpay.com)

**5 Carefully examine all financial documents – bank statements, credit card statements, etc. – to determine possible hidden assets and income.** As a forensic accountant, the first items I ask for in a divorce case are the bank account and credit-card statements. These show the habits of the individual. For example, were the appliances purchased for the workplace or were they for the home? Why does the company credit-card show a down-payment on an auto when the company that s/he is employed for pays the lease of the auto that the employee is driving? Why is the business doing so poorly that they are increasing the line of credit if sales are on the rise? It is crucial for an attorney to thoroughly discover all financial matters in a divorce case – usually with the assistance of an accredited forensic accountant.

– **Larry Goldsmith** (CPA, JD, CFF, MAFF), *Head of Forensic Accounting and Litigation Support, CJBS*, [www.CJBS.com](http://www.CJBS.com)

**6 If there have been allegations of alcohol abuse in your case, think “3-3-3” to choose the right test for your needs.** The most objective alcohol testing results are accomplished using direct alcohol biomarkers such as EtG and PEth. EtG and PEth are direct products of alcohol metabolism; indirect biomarkers (e.g., MCV and CDT) indicate physiological effects of alcohol consumption on the body. These physiological effects can also be attributed to non-alcohol related disease states, such as chronic liver disease, so results using indirect biomarkers are easily challenged. A positive EtG result in fingernail or hair specimens can indicate multiple occurrences of high alcohol consumption within a three-month window

of detection prior to testing. High alcohol consumption is any drinking that elevates blood alcohol concentration to 0.08 g/dl or higher. PEth is detected in dried blood spot samples and can indicate high alcohol consumption within the three weeks prior to specimen collection. In urine, an EtG positive can indicate alcohol consumption within three days of specimen collection. When requesting alcohol testing, think “3-3-3” – three days, three weeks, three months – to figure out which test meets your needs.

– **Joseph Salerno** (MS), *Science Writer, United States Drug Testing Laboratories*, [www.USDTL.com](http://www.USDTL.com)

**7 Use a neutral forensic accountant to prepare all of the financial aspects of a divorce to save your clients time, money and energy.** If each spouse engages a forensic accountant, chances are that the two accountants will agree on 80% or more of the financial issues. Then the accountants spend time together to see if they can agree on the remaining 20%; if not, then outstanding items will end up being negotiated in mediation or decided by a judge. Having one neutral forensic accountant reduces the accounting fees almost by half, saves time in collecting and sharing documents, and makes discovery much easier because there is less tendency to hide information. There will still be some issues that the husband and wife will not agree on; those can be negotiated in mediation or decided by a judge. Mediation is also less expensive when there is only one forensic accountant attending; often times, the neutral accountant can assist the mediator in the financial aspects of the divorce negotiations.

– **Harriett I. Fox** (CPA, MBA), [www.harriettfoxcpa.com](http://www.harriettfoxcpa.com)

**8 Make sure your clients’ spousal and/or child support income is protected if the payor-spouse becomes disabled.** Most attorneys advise clients to obtain life insurance to protect income from support payments – but what happens if the payor becomes totally disabled and cannot work? Given the fact that disability is 2–3 times more likely to occur than a premature death, disability insurance for support payments is crucial. This kind of policy protects all the parties involved: for the recipient, it eliminates the concern that the ex-spouse would be unable to meet the obligation if he/she became disabled; and for the payor, it means that he/she will not have to go back to court to argue for reduced payments because of the disability, or be forced to liquidate personal or business assets to cover support payments. ■

– **Matthew M. Bloch**, *Director of Operations, Family ValueGuard*, [www.FamilyValueGuard.com](http://www.FamilyValueGuard.com)

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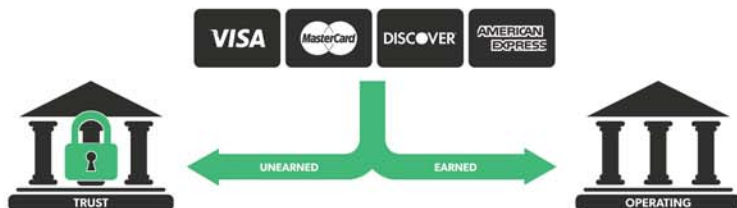
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