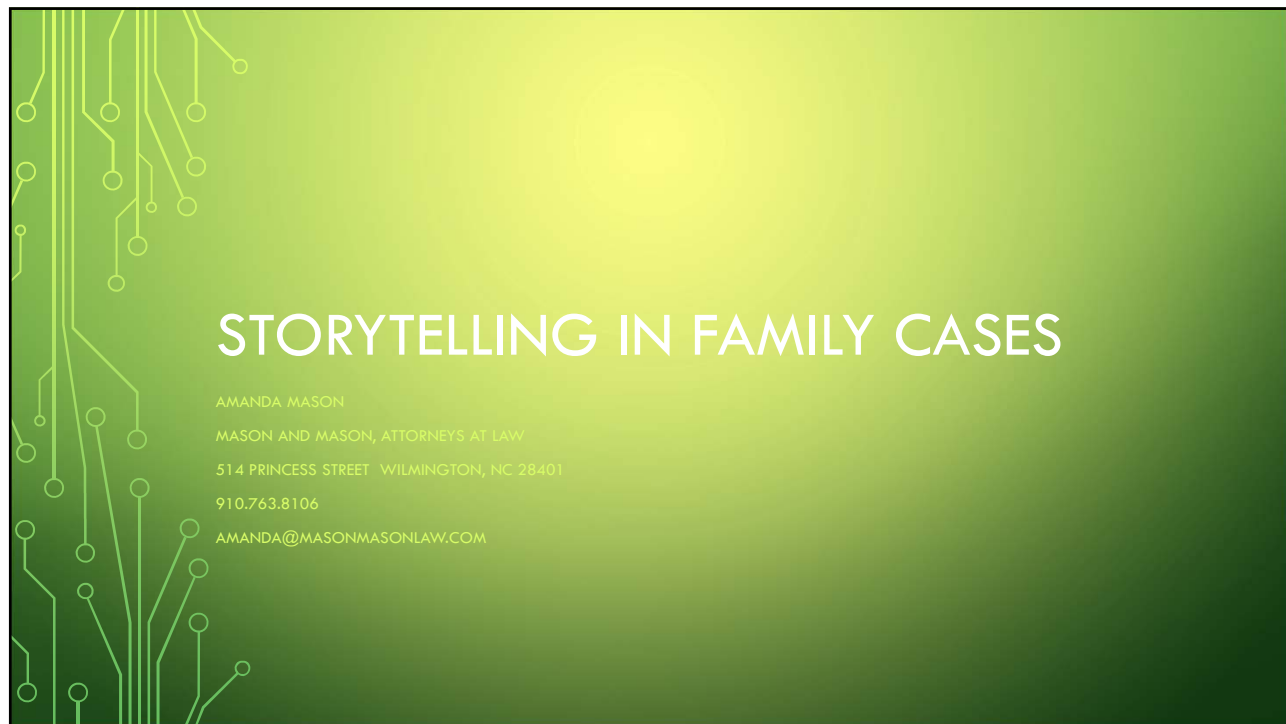


NCPA's 39th ANNUAL MEETING & SEMINAR
April 11, 2019 – April 13, 2019



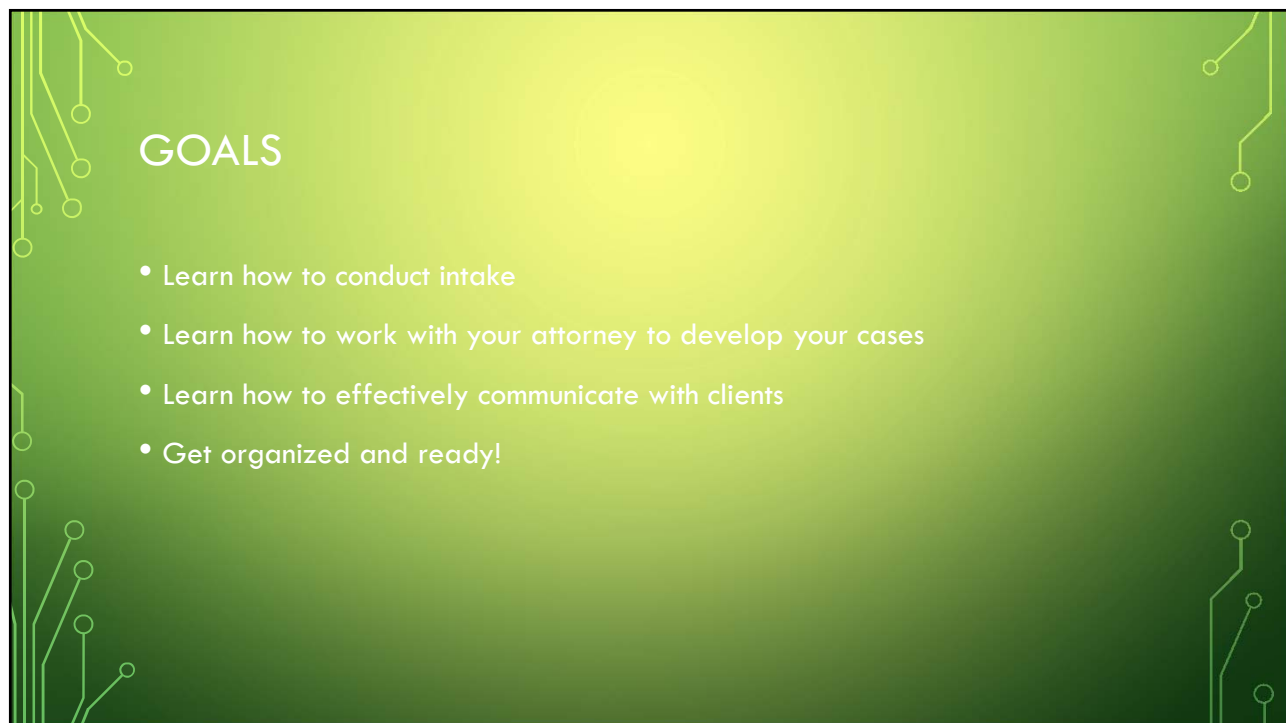
Family Law

Amanda B. Mason
Mason & Mason



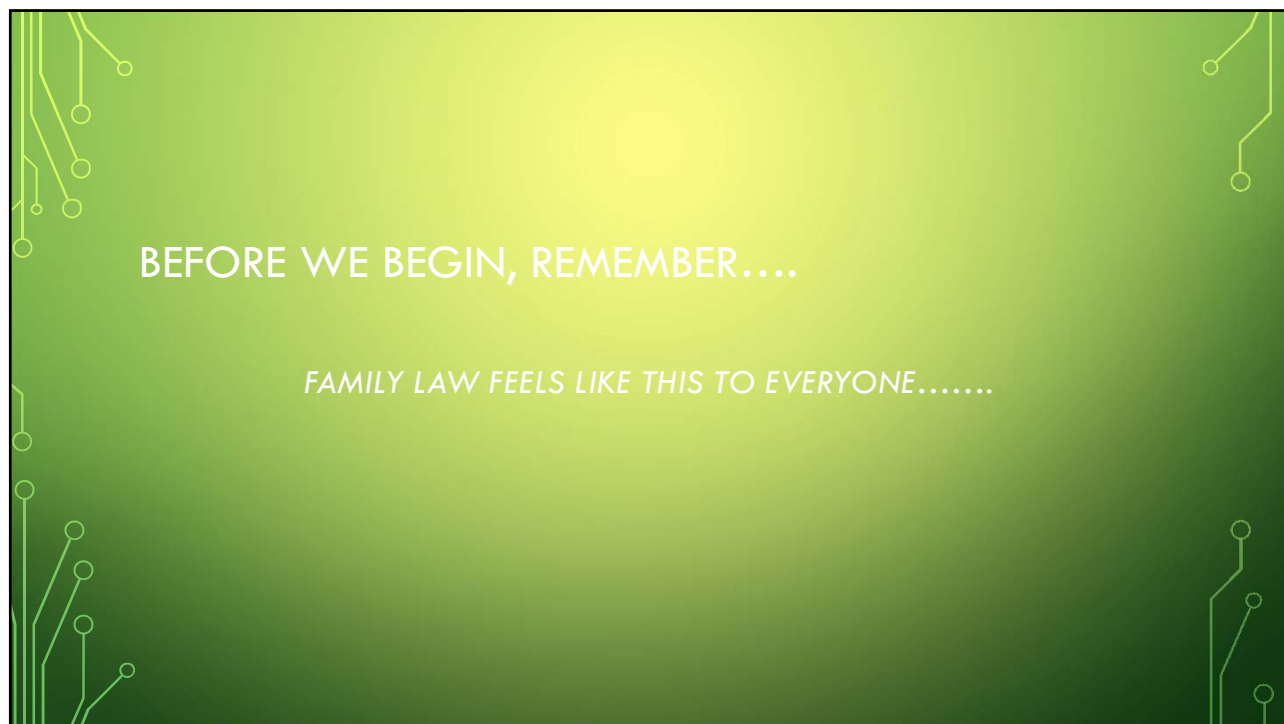
STORYTELLING IN FAMILY CASES

AMANDA MASON
MASON AND MASON, ATTORNEYS AT LAW
514 PRINCESS STREET WILMINGTON, NC 28401
910.763.8106
AMANDA@MASONMASONLAW.COM



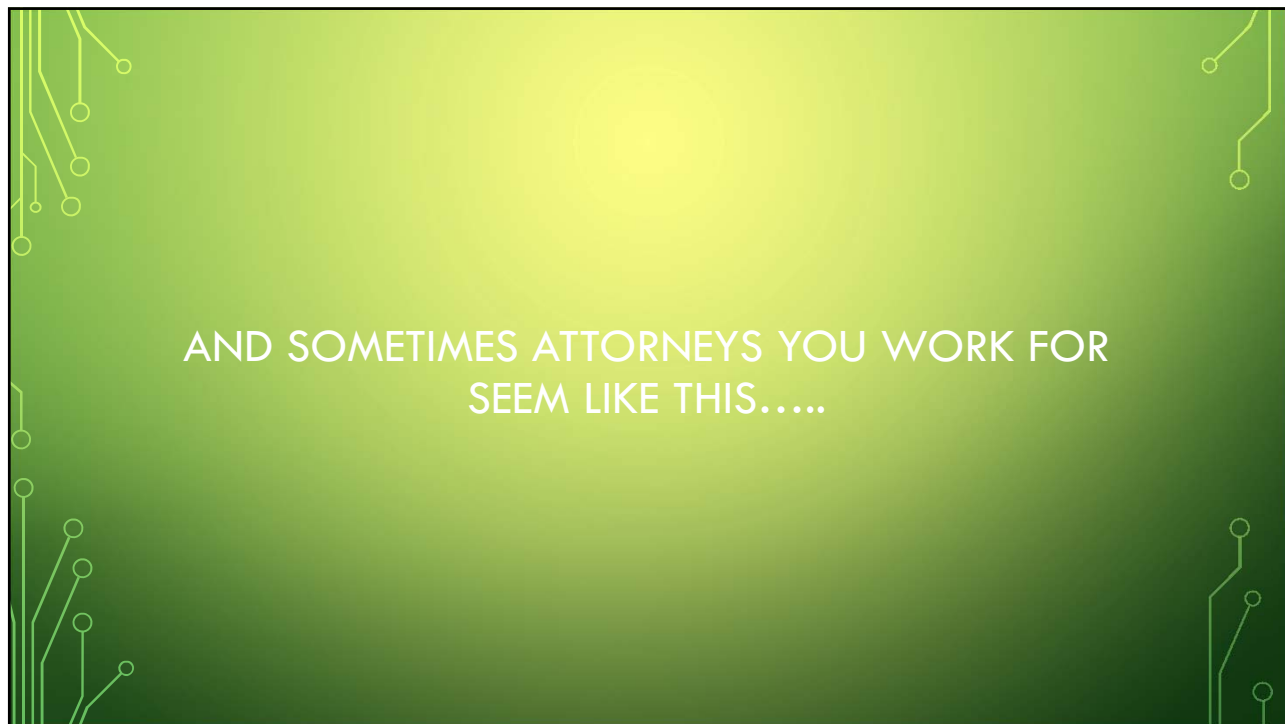
GOALS

- Learn how to conduct intake
- Learn how to work with your attorney to develop your cases
- Learn how to effectively communicate with clients
- Get organized and ready!



AND TO MANY OF OUR CLIENTS
IT FEELS LIKE THIS....





AND SO TO THE CLIENTS YOU,
THE PARALEGAL,
ARE THIS.....



THREE “BASIC” STEPS

STEP ONE: EXCELLENT INTAKE PROCEDURES

STEP TWO: DEVELOP THE THEME OF THE CASE

STEP THREE: GET READY FOR TRIAL (so ya’ll can settle the thing)

FOUR MAJOR TYPES OF FAMILY CASES (AND THE QUESTIONS CLIENTS ASK)

- Equitable Distribution: “How do we divide our the stuff up?”
- Child Custody: “Will I ever see little Johnny and Susie again?”
- PSS/Alimony: “Am I gonna get screwed and, if so, for how long?”
- Child Support: “Am I gonna get screwed and, if so, for how long?”

STEP ONE: EXCELLENT INTAKE PROCEDURES

- Remember: you are this person's first contact at the most vulnerable time in their life.
- Know your phone speech. Know how to handle money questions. Know how to sell your attorney.
- Have a basic data collection form that you or your attorney complete, and include a space for a conflict check.
- Have internal procedures.

STEP ONE: EXCELLENT INTAKE PROCEDURES

- Upon hiring, immediately enter a notice of appearance if the case is in litigation. If not in litigation, ask your attorney if you should send a letter to the opposing side informing of your representation...sometimes there are reasons to wait, but the attorney would decide that.
- Review EVERY SINGLE possible deadline.
- Check the court file! Sometimes more documents exist than the client will know about.
- Calendar deadlines and inform the attorney of them.

STEP TWO: DEVELOP THE THEME OF THE CASE

- SET REGULAR MEETINGS! Have discussions with your attorney to identify issues.
- Talk about your case strengths and weaknesses
- Determine the narrative... what's the story of the case? What will the opposing side's story be? How do we get ahead of that?
- What does your attorney think are your client's main goals?
- Discuss the client's main sensitivities – and vow to be sensitive to them!

STEP THREE: PREPARE FOR TRIAL

- **Trial preparation doesn't begin the week before trial!**
- Collecting other party's information is as important. Who has it? Who was the family book keeper?
- Send targeted discovery requests to each issue.
- Will any special discovery tools be helpful? Affordable? Client usually gets to decide if they want to spend the extra money.
- Depositions, private investigators, therapists, business valuations, other expert witnesses (vocational experts?), subpoenas, drug testing... others?

STEP THREE: PREPARE FOR TRIAL

- Be organized. Use trial notebooks with a table of contents and an exhibit tab.
- Know what belongs in a trial notebook and what doesn't.
- Make sure that the notebook flows in a logical order. Use page numbers.

STORYTELLING THROUGH TRIAL NOTEBOOKS- PSS/ALIMONY

- The issues are similar but NOT the same.
- Both require that one spouse is supporting and the other is dependent.
- PSS is generally NOT going to be about fault of the supporting spouse
- Both will require a discussion of income/income earning ability along with the reasonable financial needs of the parties.

§ 50-16.2A. POSTSEPARATION SUPPORT (EXCERPT)

- (b) In ordering postseparation support, the court shall base its award on the financial needs of the parties, considering the parties' accustomed standard of living, the present employment income and other recurring earnings of each party from any source, their income-earning abilities, the separate and marital debt service obligations, those expenses reasonably necessary to support each of the parties, and each party's respective legal obligations to support any other persons.
- (c) Except when subsection (d) of this section applies, a dependent spouse is entitled to an award of postseparation support if, ...the court finds that the resources of the dependent spouse are not adequate to meet his or her reasonable needs and the supporting spouse has the ability to pay.
- (d) At a hearing on postseparation support, the judge shall consider marital misconduct by the dependent spouse occurring prior to or on the date of separation in deciding whether to award postseparation support and in deciding the amount of postseparation support. When the judge considers these acts by the dependent spouse, the judge shall also consider any marital misconduct by the supporting spouse in deciding whether to award postseparation support and in deciding the amount of postseparation support.

§ 50-16.3A. ALIMONY (EXCERPTS)

- (a) Entitlement. - In an action brought pursuant to Chapter 50 of the General Statutes, either party may move for alimony. The court shall award alimony to the dependent spouse upon a finding that one spouse is a dependent spouse, that the other spouse is a supporting spouse, and that an award of alimony is equitable after considering all relevant factors, including those set out in subsection (b) of this section. If the court finds that the dependent spouse participated in an act of illicit sexual behavior, as defined in G.S. 50-16.1A(3)a., during the marriage and prior to or on the date of separation, the court shall not award alimony. If the court finds that the supporting spouse participated in an act of illicit sexual behavior, as defined in G.S. 50-16.1A(3)a., during the marriage and prior to or on the date of separation, then the court shall order that alimony be paid to a dependent spouse. If the court finds that the dependent and the supporting spouse each participated in an act of illicit sexual behavior during the marriage and prior to or on the date of separation, then alimony shall be denied or awarded in the discretion of the court after consideration of all of the circumstances. Any act of illicit sexual behavior by either party that has been condoned by the other party shall not be considered by the court.

§ 50-16.3A. ALIMONY (EXCERPTS)

(b) Amount and Duration. - The court shall exercise its discretion in determining the amount, duration, and manner of payment of alimony. The duration of the award may be for a specified or for an indefinite term. In determining the amount, duration, and manner of payment of alimony, the court shall consider all relevant factors, including:

- (1) The marital misconduct of either of the spouses. Nothing herein shall prevent a court from considering incidents of post date-of-separation marital misconduct as corroborating evidence supporting other evidence that marital misconduct occurred during the marriage and prior to date of separation;
- (2) The relative earnings and earning capacities of the spouses;
- (3) The ages and the physical, mental, and emotional conditions of the spouses;
- (4) The amount and sources of earned and unearned income of both spouses, including, but not limited to, earnings, dividends, and benefits such as medical, retirement, insurance, social security, or others;
- (5) The duration of the marriage;
- (6) The contribution by one spouse to the education, training, or increased earning power of the other spouse;
- (7) The extent to which the earning power, expenses, or financial obligations of a spouse will be affected by reason of serving as the custodian of a minor child;
- (8) The standard of living of the spouses established during the marriage;

§ 50-16.3A. ALIMONY (EXCERPTS)

(b) Amount and Duration. - The court shall exercise its discretion in determining the amount, duration, and manner of payment of alimony. The duration of the award may be for a specified or for an indefinite term. In determining the amount, duration, and manner of payment of alimony, the court shall consider all relevant factors, including:

- (8) The standard of living of the spouses established during the marriage;
- (9) The relative education of the spouses and the time necessary to acquire sufficient education or training to enable the spouse seeking alimony to find employment to meet his or her reasonable economic needs;
- (10) The relative assets and liabilities of the spouses and the relative debt service requirements of the spouses, including legal obligations of support;
- (11) The property brought to the marriage by either spouse;
- (12) The contribution of a spouse as homemaker;
- (13) The relative needs of the spouses;
- (14) The federal, State, and local tax ramifications of the alimony award;
- (15) Any other factor relating to the economic circumstances of the parties that the court finds to be just and proper.
- (16) The fact that income received by either party was previously considered by the court in determining the value of a marital or divisible asset in an equitable distribution of the parties' marital or divisible property.

PSS/ALIMONY HYPOTHETICAL

- Mrs. Jones calls you crying. She's just learned her husband has had an affair and kicked him out of the house. What do you say to her?
- Once hired, what kinds of information would you want to collect?
- What discovery tools will you use to do so?
- What if you are representing Mr. Jones instead?

STORYTELLING THROUGH TRIAL NOTEBOOKS- PSS/ALIMONY – SAMPLE ORGANIZATION

Table of Contents

- Exhibit 1: Financial Standing Affidavit (review and re-review with client. Things change over time!)
- Exhibit 2: Paystubs for client (along with withholding information)
- Exhibit 3: Paystubs for opposing party.
- Exhibit 4: Evidence of bills/regular expenses during the marriage and now.
- Exhibit 5: ????

Category	
Gross wages	
Overtime	
Commissions	
Bonus	
Interest	
Dividends	
Trust Fund	
Social Security	
Pension/Retirement	
Business profit	
Rents	
Unemployment	
Other _____	
Other _____	
Other _____	
TOTAL	\$ \$

Deductions	
Federal Income Tax	
State Income Tax	
Social Security	
Medicare	
Retirement	
Medical Insurance	
Dental Insurance	
Life Insurance	
Other	
Total Gross Income	
Total Deductions	
Net Income	

Expense	Self	Child 1	Child 2	Total
Rent or Mortgage				
Homeowners' Dues/Property Insurance				
Electricity				
Gas, Fuel, Oil				
Water and Sewer				
House and Yard/Trash				
Other Utilities				
Telephone				
Cable or Satellite TV/Internet				
Home Maintenance and Repair				
Household Supplies				
Newspapers and Magazines				
Auto Payments, Insurance Gas				
Food (at home)				
Food (away from home)				
Clothing				
Personal Upkeep (grooming, hair)				
Laundry/Dry Cleaning				
Uninsured Medical, Dental				
Medical Insurance Premium				
Parking Fees				
Child Care				
Education Expenses (tuition, supplies)				
Dues (professional, social, school)				
Special activities (music, dance, sports)				
Pledges to church				
Recreation				
Annual Vacation				
Holiday, Birthday, Special Occasions				
Pet/Animal Needs				
TOTAL MONTHLY EXPENSES				

STORYTELLING THROUGH TRIAL NOTEBOOKS- EQUITABLE DISTRIBUTION

- Start working on the EDIA immediately upon being hired in an ED case. Statutorily required and it will help you be organized.
- Also helps cover yourself if assets or debts are later discovered (sometimes your clients won't know about it or won't tell you everything).
- ED is where excellent organization pays off the most, IMHO.

§ 50-20. DISTRIBUTION BY COURT OF MARITAL AND DIVISIBLE PROPERTY. (EXCERPTS)

- (1) "Marital property" means all real and personal property acquired by either spouse or both spouses during the course of the marriage and before the date of the separation of the parties, and presently owned, except property determined to be separate property or divisible property in accordance with subdivision (2) or (4) of this subsection. Marital property includes all vested and nonvested pension, retirement, and other deferred compensation rights, and vested and nonvested military pensions eligible under the federal Uniformed Services Former Spouses' Protection Act. It is presumed that all property acquired after the date of marriage and before the date of separation is marital property except property which is separate property under subdivision (2) of this subsection. It is presumed that all real property creating a tenancy by the entirety acquired after the date of marriage and before the date of separation is marital property. Either presumption may be rebutted by the greater weight of the evidence.
- (2) "Separate property" means all real and personal property acquired by a spouse before marriage or acquired by a spouse by devise, descent, or gift during the course of the marriage. However, property acquired by gift from the other spouse during the course of the marriage shall be considered separate property only if such an intention is stated in the conveyance. Property acquired in exchange for separate property shall remain separate property regardless of whether the title is in the name of the husband or wife or both and shall not be considered to be marital property unless a contrary intention is expressly stated in the conveyance. The increase in value of separate property and the income derived from separate property shall be considered separate property. All professional licenses and business licenses which would terminate on transfer shall be considered separate property.
- (3) "Distributive award" means payments that are payable either in a lump sum or over a period of time in fixed amounts, but shall not include alimony payments or other similar payments for support and maintenance which are treated as ordinary income to the recipient under the Internal Revenue Code.

§ 50-20. DISTRIBUTION BY COURT OF MARITAL AND DIVISIBLE PROPERTY. (EXCERPTS)

- (4) "Divisible property" means all real and personal property as set forth below:
 - a. All appreciation and diminution in value of marital property and divisible property of the parties occurring after the date of separation and prior to the date of distribution, except that appreciation or diminution in value which is the result of postseparation actions or activities of a spouse shall not be treated as divisible property.
 - b. All property, property rights, or any portion thereof received after the date of separation but before the date of distribution that was acquired as a result of the efforts of either spouse during the marriage and before the date of separation, including, but not limited to, commissions, bonuses, and contractual rights.
 - c. Passive income from marital property received after the date of separation, including, but not limited to, interest and dividends.
 - d. Passive increases and passive decreases in marital debt and financing charges and interest related to marital debt.

§ 50-20. DISTRIBUTION BY COURT OF MARITAL AND DIVISIBLE PROPERTY. (EXCERPTS)

Distributional Factors: (Excerpts)

- (1) The income, property, and liabilities of each party at the time the division of property is to become effective.
- (3) The duration of the marriage and the age and physical and mental health of both parties.
- (4) The need of a parent with custody of a child or children of the marriage to occupy or own the marital residence and to use or own its household effects.
- (5) The expectation of pension, retirement, or other deferred compensation rights that are not marital property.
- (6) Any equitable claim to, interest in, or direct or indirect contribution made to the acquisition of such marital property by the party not having title, including joint efforts or expenditures and contributions and services, or lack thereof, as a spouse, parent, wage earner or homemaker.
- (7) Any direct or indirect contribution made by one spouse to help educate or develop the career potential of the other spouse.

§ 50-20. DISTRIBUTION BY COURT OF MARITAL AND DIVISIBLE PROPERTY. (EXCERPTS)

Distributional Factors: (Excerpts)

- (8) Any direct contribution to an increase in value of separate property which occurs during the course of the marriage.
- (9) The liquid or nonliquid character of all marital property and divisible property.
- (10) The difficulty of evaluating any component asset or any interest in a business, corporation or profession, and the economic desirability of retaining such asset or interest, intact and free from any claim or interference by the other party.
- (11a) Acts of either party to maintain, preserve, develop, or expand; or to waste, neglect, devalue or convert the marital property or divisible property, or both, during the period after separation of the parties and before the time of distribution.

ED HYPOTHETICAL

- Mrs. Jones is a homemaker. She and Dr. Jones are divorcing. They have three children, ages 14, 16 and 18. Mrs. Jones was a successful lawyer before they got married 20 years ago.
- Once hired, what kinds of information would you want to collect?
- What discovery tools will you use to do so?
- What if you are representing Dr. Jones instead?

Financial Document Inventory					RPD #	Date provided/ received.
PERRY v. Brand- 00 CVD 0000						
OUR DOCUMENTS Financial and ED - Client Employment History						
Job	Job Description	Date	YTD Earnings	Notes		
Law firm X	Office Administrator	May-13	\$12,000	Bi-weekly	7	01/02/2003
Law firm X	Office Administrator	5/30/2013	Need still		7	01/02/2003
Law Firm X	Senior Admin	6/15/2013		Promotion?	7	01/02/2003
Accounting Firm					7	01/02/2003
Accounting Firm					7	01/02/2003
Our Documents Financial and ED - Bank Accounts						
Type and Acct. Number	Type	Owner	Statement Dates	Statement Balance		
Bank of America 111-234-555-66	Savings	W	Mar-13	\$12,500	9	01/02/2003
Bank of America 111-234-555-66	Savings	W	Apr-13	\$14,000	9	01/02/2003
Wells Fargo 1-2222-333-04	Checking	Joint	14-May		9	01/02/2003
Our Documents Financial and ED - Credit Cards						
Type and Acct. Number	Type	Owner	Statement Dates	Statement Balance		
Amex 111-233-444-55	Business platinum	Joint	Mar-13	\$5,500	10	01/02/2003
OP Documents Financial and ED - OP Employment History						
Job	Job Description	Date	YTD Earnings	Notes		
Comedian	Raucous edgy stand up		\$5,000,000		4	02/01/2003
Movie Star	Raucous edgy characters		\$10,000,000	Good Alimony claim	4	02/01/2003

STORYTELLING THROUGH TRIAL NOTEBOOKS- ED- SAMPLE ORGANIZATION

Table of Contents

- Exhibit 1: Proposed Distributional Spreadsheet
- Exhibit 2: Date of Acquisition Document for Marital Residence
- Exhibit 3: DOS Documents for Marital Residence.
- Exhibit 4: DOT Documents for Marital Residence
- Exhibits 5-???: Rinse and Repeat

STORYTELLING THROUGH TRIAL NOTEBOOKS- CHILD CUSTODY

- This is the most story-telling driven area of family law. Every case is different. Every child is different and every parent is different. Patterns do exist.
- Too many statutes and cases govern child custody actions to list.
- Very factually driven.
- A caution about photographs
- A caution about text messages/emails

CUSTODY HYPOTHETICAL

- Mrs. Jones is a SAHM. She and Dr. Jones are divorcing. They have three children, ages 14, 16 and 18.
- Once hired, what kinds of information would you want to collect?
- What discovery tools will you use to do so?
- What if the children are 4, 6, and 8?
- What if you are representing Dr. Jones instead?
- What if they are BOTH physicians?

STORYTELLING THROUGH TRIAL NOTEBOOKS- CUSTODY- SAMPLE ORGANIZATION

Table of Contents

- Exhibit 1: Photographs
- Exhibit 2: Medical Records for Minor Child (Why?)
- Exhibit 3: Text Messages Demonstrating (ANY NUMBER OF THINGS)
- Exhibit 4: Affidavits (Temporary Custody Only)
- Exhibits 5-???: Limitless depending upon the issues

§ 50-13.4. ACTION FOR SUPPORT OF MINOR CHILD. (EXCERPTS)

(a) Any parent, or any person, agency, organization or institution having custody of a minor child, or bringing an action or proceeding for the custody of such child, or a minor child by his guardian may institute an action for the support of such child as hereinafter provided.

(c1) ...the Conference of Chief District Judges shall prescribe uniform statewide presumptive guidelines for the computation of child support obligations, including retroactive support obligations...and shall develop criteria for determining when, in a particular case, application of the guidelines would be unjust or inappropriate. The purpose of the guidelines and criteria shall be to ensure that payments ordered for the support of a minor child are in such amount as to meet the reasonable needs of the child for health, education, and maintenance, having due regard to the estates, earnings, conditions, accustomed standard of living of the child and the parties, the child care and homemaker contributions of each party, and other facts of the particular case. The guidelines shall include a procedure for setting child support, if any, in a joint or shared custody arrangement which shall reflect the other statutory requirements herein.

STORYTELLING THROUGH TRIAL NOTEBOOKS- CHILD SUPPORT

- Three different potential worksheets: A, B and C
- DETERMINE what worksheet you will be on and follow it.
- Sometimes there is a question about the appropriate worksheet. If custody is undecided. Have a contingency plan in place. How does your attorney want to handle it?

CHILD SUPPORT HYPOTHETICAL (SAME AS CUSTODY)

- Mrs. Jones is a SAHM. She and Dr. Jones are divorcing. They have three children, ages 14, 16 and 18.
- Once hired, what kinds of information would you want to collect?
- What discovery tools will you use to do so?
- What if you are representing Dr. Jones instead?
- What if they are BOTH physicians?

STORYTELLING THROUGH TRIAL NOTEBOOKS- CHILD SUPPORT– SAMPLE ORGANIZATION

Table of Contents

- Exhibit 1: Worksheet You contend most likely applies (remember there may be multiple – see attorney for guidance)
- Exhibit 2: Paystubs for client (along with withholding information)
- Exhibit 3: Paystubs for opposing party.
- Exhibit 4: Tax Returns for last 3 years
- Exhibits 5-???: Evidence of Work Related Childcare, Medical Expenses, Extraordinary Expenses

QUESTIONS?

Amanda Mason

Mason and Mason, Attorneys at Law

Amanda@masonmasonlaw.com

910-763-8106