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Challenging Your Thinking One Article at a Time

Having travelled extensively this year and met with many family lawyers across the U.S., I kept encountering a familiar and consistent theme: that of keeping up. Many of the family lawyers I had the pleasure of visiting were running to keep up with the changing court system, with technology, with their clients’ demands, and running to keep up with their competition — who are promoting and marketing their practices more aggressively than ever.

In short, these meetings served as the nucleus for the theme of this issue of Family Lawyer Magazine. We invited divorce professionals from across the country to contribute articles with a focus on making your practice of family law and the management of your firm the best that it can be: competitive, efficient, and highly regarded. What we have ended up with is an issue we are tremendously pleased with.

Some of the articles we’ve selected for this issue include: Mark Powers and Shawn McNalis looking at more effective methods to track, monitor, and gain control of your firm’s finances; Gregg Herman offering valuable tips on bettering your negotiation skills; David Sarif gives advice on the unique challenges that representing high profile clients entail; John Browning considers if and when a judge’s use of social media violates canons of judicial ethics; and I look at a hypothetical that should challenge your thinking regarding the future of your practice: What if Mercedes Benz got into the practice of family law? These, and an array of other topics including: the perils and potential consequences of entrusting others to collect information for your case, succeeding with a financial expert in court, protecting your clients’ digital assets, among other informative articles, round out this fourth issue of Family Lawyer Magazine.

Family Lawyer Magazine is published by Divorce Marketing Group, which also owns www.DivorceMagazine.com. We invite all divorce professionals to contribute articles to our publications and websites. Please send your article suggestions to our editor, John Matias at John@DivorceMarketingGroup.com. I also invite you to visit our website at www.FamilyLawyerMagazine.com where you will find hundreds of articles, family law case updates, and where you can sign up to receive our quarterly e-newsletter.

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Before getting into the potential pros and cons of representing a high-profile client, it is prudent to define who exactly qualifies as a “high-profile” client. For most people, the first thing that comes to mind when they think of a high-profile person is a celebrity, such as a movie star, television actor, singer, or professional athlete. However, there are also plenty of non-famous yet “high-profile” clients who may also require special or unique treatment, such as successful business owners, executives, community leaders, public officials, and politicians.

Identifying and recognizing potential clients as high-profile is a critical, yet an often overlooked step of proper and effective representation. For if an attorney fails to identify a client as high profile, he or she could make a critical mistake that could severely compromise either the privacy of the client, or even circumvent a favorable outcome in the case.

A few issues for attorneys to consider when deciding whether or not to undertake such representation include:

1. Whether you are in business to meet famous people or to make money.
2. Whether you are intimidated by meeting someone famous and if so, whether you can keep it under control.
3. Whether you can properly handle the media and press that will likely follow the case.
4. Whether you can deal with the intermediaries throughout the process that often run high-profile clients’ lives such as other attorneys, agents, financial advisors, business managers, significant others, and/or marketing specialists.

Further, although high-profile clients often have a higher ability to pay than the majority of people, some will
nonetheless expect either free or discounted services, citing the publicity and attention they bring by virtue of them being your client (i.e. some will feel that you “owe” them for choosing your firm). In the end, only you can decide whether the publicity that the high-profile client brings with them is worth it, and whether the high stakes and expectations involved are overly burdensome or exciting, challenging, and rewarding.

High-Profile Representation Strategies

If you ultimately determine that you want to undertake representation of a high-profile client, there are certain nuances and strategic decisions that must be considered apart from the normal scope of representation. As an initial matter, you must understand who in your client’s personal life will and will not be most helpful to your representation. For example, people like the client’s mother or father will usually be very helpful, given that generally there is a much lower probability they have their own agenda. On the other hand, groupies and entourage members are not likely to provide much, if any, help at all, given that they are typically only around for their own interests rather than the client’s.

There are several strategic decisions to address early in the representation whenever possible. Understandably, high-profile clients are often concerned about their information, especially financial information, being leaked to the media or made available for public scrutiny. Accordingly, depending on the individual circumstances of the case, a confidentiality order is often appropriate, and obtaining one by agreement with the other side is ideal. Also, to further assist your client in realizing his or her goals, engage proper experts, such as financial and custody experts, as early as possible. Furthermore, be sure to remind the client that everything they put on social media is public, and that anything they say in digital form (i.e. text messages) can leak out at any time and cause irreparable damage to both their image and to the case.

Recognizing High-Profile Challenges

Other challenges attorneys are likely to face in representing high-profile clients include potentially intense media scrutiny of your client and the case, potentially high-maintenance clients with an overinflated sense of self-worth, competition from other attorneys willing to tell the client whatever they want to hear just to get their business (including second guessing your work in the media), and defending your client from disparaging internet gossip. Further, you must recognize that there are many different personality types and it is very possible that you will have to deal with some extremes, either with the client or their representatives. Also, keep in mind that their family and representatives are often there to protect and shield them from the outside world (including their attorneys), which makes it more difficult to deliver advice that the client needs to hear since they are so accustomed to being in control of any given situation.

Another difficulty presents itself in situations where the client does not want to be involved in the case. This issue could be either positive or negative, but regardless, the fact remains that the client must be the one to sign off on all documents in your presence, not their agent. Remember, it is alright to reject or fire a client who is unwilling to cooperate with such simple requests. Ultimately, you must ask yourself whether you are willing to risk your reputation simply to allow a high-profile client to bend the rules.

Like with all cases and clients, acknowledging and preparing for potential challenges and complexities ahead of time will help ensure a positive experience for both the client and the attorney alike. While these are all manageable challenges that should not necessarily prevent you from accepting the representation, they are issues that you must be willing to deal with from the outset.

David G. Sarif is an Associate at Kessler & Solomine, LLC. Mr. Sarif has been honored as a Georgia Super Lawyers Rising Star in multiple years, and has represented numerous high-profile entertainers, musicians, and professional athletes. He devotes 100% of his practice to family law. www.ksfamilylaw.com

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We asked five renowned lawyers from the Faculty of the Houston Family Trial Institute to share some of their insights on courtroom skills and strategies.

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An Interview with Stephen Kolodny: Lawyer to the Stars
By Dan Couvrette
Stephen Kolodny discusses how to properly prepare for trial and deal with high net worth divorce cases.

Gain Control of Your Firm’s Finances with a Financial Dashboard

By Mark Powers & Shawn McNalis, Practice Advisors

“If I was good at math I would have become a doctor,” joked one of the attorneys we began working with recently, in response to a question regarding how he managed his firm’s finances. Like so many of the attorneys we work with he was a highly skilled legal practitioner, but his practice management skills were weak. In his case, he had flirted with financial disaster often enough to finally seek help.

Fortunately, he had a part-time bookkeeper on board who wanted to assist. Unfortunately, she was making the situation worse by flooding him with too much information. On a monthly basis she’d deliver a stack of reports to his office. Overwhelmed by all of the detail, he’d glance at the pile and tell himself he’d look through it all when he had the time. But in fact, only when a financial crisis loomed would he give his bookkeeper the opportunity to discuss corrective actions. He managed his firm’s finances in a highly reactive manner, never able to properly predict cash flow. Operating this way left him feeling out of control and he was motivated to change.

We recommended he take a systematic and proactive approach so he could have the information he needed, but in a more digestible form. We instructed his bookkeeper to keep running his monthly reports, but then to summarize the key financial data and put it into what we call a financial “Dashboard,” which displays the firm’s key financial information similar to the way the gauges in the console of a car display speed, battery charge, and fuel.

By prominently displaying your key financial indicators, the financial Dashboard serves the same purpose and allows you to either keep moving forward at your current course and speed, or stop to make important adjustments.

The Advantage of Using a Dashboard

The form is basically a bottom-line summary of several different reports which provides a snapshot of a firm’s financial status. It gathers the most essential data from your profit and loss statement, your hourly billing report, your expense report, your account receivables report and your financial operations report. Added to this are your monthly marketing statistics as it’s important to see the trends developing in this area as well. Marketing activities drive business in the door, which serves as fuel to the firm. If the number of activities starts to decrease in the marketing categories, it will negatively impact the firm’s finances down the road.

Here’s a brief overview of the sections of the Dashboard:

1. **The Revenue Section:** Divided into two areas, shows the fees and costs that were billed for the month, along with costs and interest payments that were collected for the month.

2. **The Monthly Billing Section (for hourly billing practices):** This section lists the total hours billed for the month by each timekeeper.

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When “Friends” Complicate Trials

Most lawyers — and many clients — have heard the old saying “A good lawyer knows the law; a great lawyer knows the judge.” But in this digital age, in which over 72% of all adult Americans have at least one social networking profile and sites like Facebook boast more than 1.12 billion users worldwide, what are the consequences when a lawyer or even a party happens to be Facebook “friends” with a judge?

Recent Challenges

The family law arena has been the scene of recent challenges to judicial impartiality based on Facebook “friendship,” even when the online relationship is an attenuated one. At least ten states — New York, California, Kentucky, South Carolina, Florida, Oklahoma, Maryland, Massachusetts, Ohio, and Tennessee — have issued judicial ethics advisory opinions providing guidance on judges’ social media activity. In addition, in February 2013, the ABA Standing Committee on Ethics and Professional Responsibility came out with Formal Opinion 462 on “Judges’ Use of Electronic Social Networking Media.” Most of the states to address this subject, along with the ABA Formal Opinion 462, have given a cautious “thumbs up” to judges wishing to venture onto sites like Facebook and Twitter. While they remind judges that existing canons of judicial conduct will still apply in cyberspace, these opinions simultaneously acknowledge that being a judge’s “friend” on Facebook doesn’t indicate that one has a special relationship and position of influence with that judge.

An exception to this pragmatic approach is Florida, whose Supreme Court Judicial Ethics Advisory Committee takes a much more draconian view of judges and social networking. Not only does Florida not permit judges to have Facebook “friends,” an attorney’s “friend” status with a judge is automatic grounds for that judge’s disqualification. See, for example, Domville v. State of Florida, a 2012 Florida appellate case that rationalized that because “judges do not have the unfettered social freedom of teenagers,” maintaining “the appearance of impartiality requires the avoidance of entanglements and relationships that compromise that appearance.”

In Lacy v. Lacy, a 2013 custody case from Georgia, a father appealed three different trial court orders (from three different judges). Regarding one of the orders in this contentious case, Mr. Lacy argued that the trial judge should have recused himself *sua sponte* on grounds of bias toward Mrs. Lacy. As support for his argument, Mr. Lacy produced a copy of a comment on his Facebook page — allegedly made by the mother weeks after the hearing in question — in which she boasted “Judge Parrot and my dad had a meeting the week before our case and guess what, you lost your kids.” But the appellate court was not persuaded that such an accusation held any merit, holding that “the mother’s reference on Facebook to a meeting is not evidence that the judge obtained information relevant to the case from an extra-judicial source, much less that he based his ruling on any such external information.” It’s also worth noting that this same case was so rife with disparaging comments being made by

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Echoes & Associates is primarily engaged in contested and complex family law cases, 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, visitation and support, jurisdictional disputes, including international law issues, paternity, guardianship, probate, and domestic violence. Established in 1979, the firm has been recognized for many years by the Bar Register of Preeminent Lawyers rated by Martindale-Hubbell for both legal ability and adherence to the highest professional standards. The firm's eight attorneys have a combined experience of over 100 years in the practice of family law. The attorneys have dedicated themselves to helping their domestic clients find their future, while honoring their past, through compassionate, knowledgeable and experienced representation in the Family Courts of Oklahoma.

M. Eileen Echols, the Managing Attorney and Senior Litigator, innovated a team approach to provide exemplary service. Each case is assigned a minimum of two attorneys, who work together with the firm’s other attorneys, to provide quality legal services. Eileen is a former Family Law Judge, twice named Outstanding Family Law Judge for the State of Oklahoma, by the Family Law Section of the Oklahoma Bar Association.

David W. Echols is a Fellow in the American Academy of Matrimonial Lawyers, and he has been an AV rated attorney by Martindale Hubbell for over twenty (20) years. Both David and Eileen have been selected as SuperLawyers, by review of their peers; both are former Chairs of the Oklahoma Bar Association’s Family Law Section, former Adjunct Law Professors, and both are frequent teachers and lecturers on the topic of Family Law to Oklahoma lawyers.

Completing the team are distinguished attorneys Jonathan D. Echols, selected as a Rising Star, since 2011, by SuperLawyers, graduated first in his law school class at OCU and was named the Outstanding Law School Graduate of 2005; Amy L. Howe, selected as a Rising Star, by SuperLawyers; Lindsey W. Andrews, recipient of the 2013 Journal Record Leadership in Law Award from the Oklahoma County Bar Association; Benjamin P. Sisney, who prior to joining the firm, clerked for U.S. District Judge Gregory K. Frizzell, Tulsa, Oklahoma; Richard E. Smailey, IV, who has received an AV rating from Martindale-Hubbell, by his peers for legal ability and adherence to the highest professional standards and Allyson E. Dow, who was awarded the Outstanding Family Law Student Award for 2012, by Professor Robert Spector of the University of Oklahoma.
It is always advisable for the family lawyer and the financial expert to walk through the testimony prior to depositions and trials. During preparation, the attorney should share the litigation strategy so that the expert can keep it in mind while preparing for testimony.

Court testimony can be enhanced with visual aids. Some people do not learn well with only auditory information and need visual information in order to fully comprehend the financial issues. Graphs and charts relative to the numbers in a divorce case can ensure that the judge fully understands the evidence.

While preparing, consider counter-arguments or evidence that opposing counsel may try to use to their advantage. Opposing counsel may try to diminish the credibility of the expert, or may point out errors or weaknesses in the expert’s report. The financial expert should prepare for criticism and consider how to respond during testimony.

The Report

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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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The Perils of Pretexting

Entrusting others to collect information for your case means you need to be aware of the possible violations of the law.

By Marshall Waller, Family Lawyer

Pretexting usually takes the form of someone pretending to be someone else, also known as identity theft. For example, when someone sets up a social media account in another person’s name in order to gain access to that person’s friends and personal information, they think their case can be helped. Whether it be pretending to be someone else in an attempt to gain information, or hiring a private investigator to perform pretexting services, liability attaches.

Cause for Disbarment or License Suspension

Counsel is ethically prohibited from using information obtained through pretexting or risk disciplinary acts, including losing the license to practice law. California Business and Professions Code section 6106 (Moral Turpitude, Dishonesty or Corruption Irrespective of Criminal Conviction) provides that an act “involving moral turpitude, dishonesty or corruption,” constitutes a cause for disbarment or license suspension. Although it seems obvious that lawyers cannot knowingly use information that has been illegally obtained without violating their oath as an attorney, far too often we see this type of behavior in court, in depositions and in settlement negotiations.

Another example is when a client uses a Global Positioning System (GPS) device to track and monitor their spouse’s movements and driving behaviours. That client may be prosecuted for stalking under California Penal Code section 637.7, and more important to the representative counsel, Subsection (f) essentially provides for revocation of licensure as a punishment for violation.

Be Aware of Your Information Sources

Also, use care in the acceptance of information from a client, and be aware that such information might have been obtained illegally, either innocently or intentionally. A client that attempts to use information from another’s private emails can suffer serious, even criminal, consequences in court, as hacking into private emails can be found to be an act of domestic violence. Further, if the client brings in communications between a spouse and their lawyer, counsel must immediately stop reviewing it and permanently remove it from the file and office or risk being involved in prohibited activity.

Notable Pretexting Case Examples

• **Nadkarni v. Nadkarni** (2009): A former husband that accessed, used and publicly disclosed his former wife’s confidential email was prosecuted for statutorily offensive conduct under subsection (a) of the California Family Code section 6320, under the definition of “abuse.”

• **California v. Dunn** (2006): A CEO of Hewlett-Packard hired outside investigators to discover a source of internal information leaks by pretexting to obtain the personal and professional phone records of employees.
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The Servicemember’s Civil Relief Act and the Family Lawyer

The Servicemember’s Civil Relief Act has many provisions and protections that can complicate or delay a divorce case.

By Karen Robbins, Family Lawyer

As a family law practitioner, you will likely represent a client whose spouse is either an active military servicemember, a reservist, or a national guardsman at some point during your career. If the spouse is not on active duty, your case will proceed as any other. However, if the spouse is on active duty, the Servicemember’s Civil Relief Act, 50 USC 500 et seq (the “Act”) requires yours and your client’s compliance. The Act creates both a minefield for the unsuspecting practitioner and opportunities for creative settlement.

Most family lawyers know that in order to obtain a default judgment, they must file a required affidavit concerning military service with their request. If the spouse is on active duty with the military and may have a meritorious defense to the action, the Court may not enter a default unless it follows the Act requirements, which include a mandatory 90 day stay of proceedings and an appointed attorney to

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If the financially responsible spouse and payor of alimony or child support payments becomes disabled, the payments may be reduced or terminated. Most divorce agreements protect support payments against death, but do not include disability protection.

Given the fact that disability is more likely to occur than a premature death, those support payments need to be protected.

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1. 2001 JHA Disability Fact Book
2. Social Security Administration, Fact Sheet 2009

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The Act creates both a minefield for the unsuspecting practitioner and opportunities for creative settlement.

Every family lawyer will, at some point in their career, give counsel in a case that somehow involves the Act. An attorney who is experienced in cases involving the Act can help guide you through the many requirements. Attorneys who practice in this area are usually generous with their time and knowledge, and are often happy to help. Prepare by going to the Judge Advocate General’s website (www.jagnet.army.mil/legal) and obtaining the publication JA 260. You can also obtain a wealth of information at the American Bar Association, Family Law Section, Military Committee website.

Karen Robbins is a practicing family lawyer in Maryland. She is an active member of the American Bar Association, Family Law Section’s Military Committee, and has presented on military issues in divorce on state and national levels. www.KarenRobbinsLaw.com

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The National Conference on Divorce: Where Top Lawyers and Top Financial Experts Meet

Family Lawyer Magazine spoke to several prominent experts who will be presenting at the AICPA/AAML 2014 National Conference on Divorce. This Conference is uniquely geared to lawyers and CPAs, business valuators and other financial professionals working in divorce related fields, and focuses on complex financial, litigation, and settlement-related issues common to divorce lawyers, accounting professionals, business appraisers and others. Held at the Bellagio Hotel in Las Vegas on April 24th and 25th, 2014, the Conference presents opportunities for valuable networking and a highly enjoyable forum to earn CLE credits.

Nancy Fannon on Divorce Valuation Hot Topics

Nancy Fannon has 25 years of professional valuation and damages experience. Nancy says that the experts at the National Conference on Divorce always have well-prepared presentations and put together sessions on very important topics specific to a divorce niche practice. She will be discussing important issues that come up often in valuations for divorce purposes, as well as the latest research and related court cases. As a bonus to attendees she is offering a white paper on valuation of corporations at the Conference, and a subscription to her newsletter. Nancy will give advice on hot topics in divorce valuation, such as what professionals should do when the court doesn’t accept certain valuation methodologies that the appraiser may think is relevant, and other specific divorce valuation related issues, such as:

- Tax affecting and calculating discounts for lack of marketability
- Using fair value or fair market value in particular states
- How to calculate the increase in value due to marital effort
- An expert witness session geared towards lawyers
- How to use experts most effectively in court or in settlement process

Nancy Fannon is a partner in charge of litigation services at Meyers, Harrison & Pia, a firm specializing in business valuation, economic damages and litigation support services. She published two professional reference books on valuation and was inducted into the American Institute of Certified Public Accountants Business Valuation Hall of Fame for lifetime achievement. www.mhpcpa.com

To read or listen to the full interview please visit: www.familylawyermagazine.com/articles/nancy-fannon.

Jay Fishman on Valuation Controversies

Jay Fishman, one of the most highly respected valuation experts in the country, has been actively engaged in the appraisal profession since 1974. He has co-authored several books including the highly acclaimed Guide to Business Valuations and Standards of Value. Jay says that everyone at the AICPA/AAML Conference is a teacher and that the formal and informal learning opportunities provided are invaluable. He is offering material from recent speaking engagements and copies of the second edition of his book, Standards of Value, as give-aways to attendees. Jay’s presentation will be focusing on controversial and ambiguous areas in valuation for divorce purposes, including:

- The issue of separating personal assets from enterprise assets
- The difference between saleable personal good will vs. enterprise goodwill
- The models used in business valuation
- The pitfalls to look out for when valuating
- How to conduct yourself with an expert in a business valuation issue

CONTINUED ON PAGE 44
AICPA members receive a $300 discount. (Use coupon code AAML14 at checkout.)
Save an additional $75 with the early bird rate, and register by March 3, 2014!
(This discount is applied automatically at checkout.)

AICPA/AAML National Conference on Divorce

April 24–25, 2014 • Bellagio, Las Vegas, NV

Pre-Conference Workshops: April 23

The American Institute of CPAs and the American Academy of Matrimonial Lawyers teamed up to develop a unique, comprehensive, high-level event. This conference is designed to provide you with innovative ideas, new strategic solutions on how to split marital assets, access to key case studies, and cutting-edge thinking that will prepare you for any issue your client experiences.

Who Should Attend?
This conference is open to all family lawyers and all divorce financial experts. You do not have to be a CPA or an AAML member to attend this conference. You should also attend this conference if you are a business valuator, pension valuator, CDFA, or financial planner whose practice involves divorce.

Learn more or register at
How can your clients protect themselves when their electronic communications and confidential digital information is specifically targeted by those who have physical access to their devices?

Many recently reported cases have demonstrated that an acrimonious divorce or custody battle can be fertile ground for hacking email accounts, the use of illegal spyware and unlawfully accessing private computer and cellphone data. With physical access to the devices in question, virtually all traditional computer security protocols can be defeated.

The following protocol, known as “Digital Defense 101,” can neutralize the threat of digital compromise from adverse litigants with physical access to the client’s home, office or personal spaces.

Specific Defenses to Specific Threats

Computer or smartphone spyware silently documents activity and relays information to the installer. Such programs consistently avoid detection by commercial anti-virus/anti-malware scanners and professional forensic examinations to locate these threats, and can cost upwards of $3,500 per device.

Any client who feels their digital information is at risk during the course of an acrimonious litigation should follow these steps to defeat the threat.

1. Stop using the devices immediately, and copy specifically recognized user-created, uploaded or downloaded files to a removable drive.
2. Replace the smartphone. Refrain from connecting it to the old phone. If calling records are compromised (i.e. the bill showing incoming/outgoing calls), an unlisted prepaid phone with no bill should be purchased instead.
3. Replace the computer used for internet access with one that either has built-in independent internet access (3G/4G) or a separate physically-connected 4G AirCard. A high quality anti-virus/anti-malware scanner must be used on the removable drive before transferring the files.
4. Configure both devices outside the suspect wireless network’s range, eliminating any chance of accidental connection. Your client should learn to enable and disable each device’s wireless adaptors so that Wi-Fi access is only enabled when secure and disabled in suspect locations.
5. Limiting unauthorized access by someone with physical access to the new devices will prevent spyware installation and guard against data being copied:
   • Phones: Enable all security features. Your client must choose and memorize a random password, enable a short time period before auto-lock and small number of wrong password entries, and always lock their phone. Remind your client to hide the phone in addition to using the password lockdown feature.
   • Computers: Use the BIOS setup menu upon computer reboot to enable a BIOS Level Password. BIOS Level passwords are extraordinarily difficult to bypass even by computer forensic professionals. Remind your client to shut down the computer regularly so the BIOS Password is always required.
   • Remember: Your client must only use independent internet connections built into or attached to the new device.
6. Using the new computer and secure, independent internet connection.

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High-Net-Worth and Complex Divorces Require Exceptional Attorneys

Setting Precedent, Advancing Law and People’s Lives
Founded in 1982, Rutkin, Oldham & Griffin, LLC is a well-established family law firm in Connecticut with a team of exceptional attorneys who practice family law exclusively. We have litigated landmark cases and have testified and caused changes to important legislation impacting custody, child support, asset division and arbitration for divorces.

Authors of the Book on Connecticut Family Law
Our distinguished attorneys have published and lectured prolifically in the field of family law. Members of our firm have coauthored Connecticut Family Law and Practice, an essential resource for judges and family lawyers.

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Our firm chooses to work with select clients who often have legally, financially and/or emotionally challenging cases because of the high income and considerable family and business assets at stake, or because alimony, child support and custody are being contested. We are able to provide the best service our sophisticated clients require and deserve by limiting the number of clients we represent.

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When litigation is necessary, we advocate aggressively on your behalf. We have been involved in countless custody and relocation cases and have always put the children first in divorce. We will investigate financial data and assess the value of your properties, businesses, investment portfolios, retirement plans and other assets to help you make decisions that often have long-term financial impact.

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Our attorneys bring nearly 150 years of combined legal experience to every case, along with their prior experience with a family-run business, in real estate law, as a hospital Chairman and as a psychologist. We know when and how to assemble a team that fits your specific needs. Your team may include outside forensic financial, custody and other experts. To achieve the best outcome, we prepare for trial, yet know how to settle. You will benefit from the creative solutions that often come from our collective expertise.

Top Service with Integrity and Compassion
Our senior partners have personal experience with divorce. We know and appreciate what you are going through. You can count on us to deliver highly personalized service with compassion and to always provide legal guidance with your best interest at heart.

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A look at the three main pitfalls facing lawyers needing QDROs for clients.

By Mark Altschuler, Actuary

1. Survivor Benefit Language

When formulating QDROs for clients, the biggest pitfall is in the survivor benefit language, which is critical to maintain benefit levels in various plans. In most state and federal plans, more than one survivor is allowed, which means that even if the language is not explicitly formulated in the agreement, it still applies and can be claimed. There are certain exceptions, such as the New York City Employee Retirement System, which only allows one survivor, and the Florida Retirement System, which allows none — regardless of the language used in the agreement. For military service members, the survivor benefit language is imperative because there can’t be two survivors. The Military Court Order (i.e. a QDRO in the military) usually provides that the first spouse is the survivor, so the second spouse cannot be added to the agreement. The only workaround possible is if the first spouse agrees to indemnify the second spouse as the sole survivor beneficiary. Language must be previously implemented in the marital settlement agreement to be enforced, especially in military orders, and must be clear even in plans that automatically delegate the alternate payee’s portion, or risk the benefit half when the plan holder dies.

2. Understanding The Concept of Coverture

Another big pitfall is the misunderstanding of the concept of coverture. Many attorneys will put language in their agreements that the alternate payee’s portion would be 50% of the benefit accrued from marriage until the cut-off date. Where the marital piece of the pension ends at the cut-off date is a concept called bright line, and only applies in Virginia, Texas and Florida. Most states follow the coverture method, where the marital piece doesn’t end at the cut-off date but is a continued benefit during retirement called the coverture fraction, which is service during the marriage divided by total service. If you put in language “one half the marital portion” then in a coverture state it automatically means that — yet many agreements say that one half the benefit accrued between marriage and the cut-off date, which means you could be short-changing your client.

3. Dollar Amounts and Lump Sums in Defined Benefit Plans

The third of the QDRO pitfalls is including a dollar amount or lump sum value in a defined benefit pension plan marital settlement agreement. In one case, the marital pension valuation was $96,000. Typically, you take a valuation, the pension’s dollar lump sum value, and do an offset with any other involved assets, such as the house, to come to a percentage award. Another good solution is a complete cash buyout. According to the language in the faulty Marital Settlement Agreement, the alternate payee gets 50%, “half of $96,000”. A valuation is unnecessary if the alternate payee gets 50%, but the extra language referencing $96,000 could limit the award to the alternate payee. The participant said that the spouse was only entitled to half of $96,000, because of the superfluous language referencing $96,000. Limiting the Alternate Payee’s award to $48,000 disallows a coverture QDRO. In addition, $48,000 cannot be paid as a lump sum from a defined benefit pension.
Which “half” your client gets makes all the difference!

Can your client afford to accept the proposed settlement? Would you stake your reputation on it?

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Institute for Divorce Financial Analysts™
People’s financial preferences are often unclear or ill-informed when they are set in the midst of ambiguity created by life experiences, so it’s perhaps not surprising that “economic irrationality” is plentiful in the financial decisions of divorce.

Discoveries made in cognitive psychology since its founding in the 1970s have shaped how psychologists and economists perceive the science behind cognitive processes in financial decisions. By considering some common intersections of psychology and economic theory in the context of financial decision-making, you will be better prepared as an advisor to serve your clients.

Things to Consider:

- **The financial negotiations of divorce** made by your clients during and immediately after a divorce process will be the largest financial transaction most individuals will ever participate in, and those decisions may determine the individual client’s feelings of financial comfort and security for many years to come.
- **Couples make plans together.** A couple may have decided to reinvest all of the profits from their small business back into growth instead of paying down a mortgage or saving for retirement. When it comes time for divorce it is often not possible to turn that business into cash because a sale is not advisable.
- **Divorce is anxiety provoking, even scary.** The ambiguity of a now unknown financial future creates high levels of anxiety in clients navigating divorce. High net worth clients are just as anxious as the less financially fortunate. Losing half of $10,000,000 hurts a lot more than losing half of $500,000.
- **Ambiguity is rampant in divorce.** Clients are often left without clear guidelines for what to do and how to manage things during the proceedings. They are advised by lawyers, friends and family members and the advice is usually different from one person to the next.
- **The financial status quo is always preferred.** Almost every divorcing person you will ever encounter will prefer that things, at least their financial situation, remain the same post divorce. Reality is, the paycheck won’t go as far, so everyone loses financially in divorce.
- **Trust is not easy to come by.** It is common to see a marriage ending because of loss of trust related to deception. You would be surprised how often that loss has money as a main factor. Financial infidelity is more common than the average advisor knows. Also, when a client losses trust in their spouse over money issues it often results in a costly effort to uncover hidden assets.
- **Hyperbolic discounting is completely rational** in the economics of divorce. There is a very real possibility that taking less, or paying more, today will turn into a far better deal than the alternative, when your client incorporates the emotional and economic costs of ongoing litigation and ambiguity of the outcomes.

Understanding the client’s wants, needs, preferences, inclinations and biases will allow you to help your clients make economically “rational” decisions as they navigate the largest financial transactions of their lives, set amidst the greatest emotional chaos they will ever experience.

This article has been condensed. For the full version visit: www.familylawyermagazine.com/articles/clients-choices.

**Justin A. Reckers, CFP®, CDFA™ Chief Executive Officer of Pacific Divorce Management, a national network of financial advisors specializing in the financial intricacies of divorce and Director of Financial Planning at Pacific Wealth Management®.** www.pacdivorce.com

**Robert A. Simon, Ph.D. is a forensic psychologist, author, trial consultant, expert witness and alternative dispute resolution specialist based in Del Mar, CA.** www.dr-simon.com
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Discovering “Hidden” Income Using Individual Tax Returns

A review of personal tax returns can enable attorneys to gain an understanding of the possibility of hidden income.

By Kim Onisko and JB Rizzo, Forensic Accountants

Clients often allege hidden income, but are not necessarily accurate in their allegations. It is invaluable for a lawyer to quickly assess these claims. The lawyer can then moderate the expectations of the client or call in a forensic accountant for further expert-investigation.

In general, the ability to “hide income” is primarily available to owners of closely held businesses. However, do not begin this analysis with the corporate or partnership tax returns; begin with the individual tax returns. Our caveat is that there are many ways to obscure and underreport income to the taxing authorities, some sophisticated and many not so sophisticated, our method is designed to establish the fact that further investigation is necessary. In other words, it serves as one of your tools to assess the cost/benefit analysis of bringing on a forensic accounting expert to your client’s team. Our method will not uncover every instance of underreported income.

A quick review of selected elements of the last three years of personal tax returns can give you an idea of the truth of hidden income allegations. You are looking at three years, or longer, to give you a large enough cross section to eliminate one-time tax event variables and/or to compare current tax return information to prior years, ideally to recognize a time when a spouse had not planned to divorce, if possible.

While tax returns appear formidable and unintelligible, you just need to know some basics. The first two pages of the tax return are all you need to do this analysis. These pages are labeled “Form 1040, Personal Tax Return”. These two pages are the summary of all the data found in all the pages, forms and schedules following.

Our analysis is a simple question: does this tax return show enough income to pay for the expenses of the family unit?

The interviews you have had with the client will assist you in honing your analysis. These questions are the same you analyze in attempting to understand the marital standard of living. Remember to quantify amounts, asking follow-up questions to establish reasonable cost estimates. These costs of living are not deductible, with some exceptions, and therefore are not listed on tax returns. Gain an understanding of how much money the family spends, saves, or reduces debts on an annual basis.

1. Do the kids go to private schools?
2. Are the kids involved in expensive sports or hobbies?
3. Does the family travel frequently?
What does CohnReznick think?

Today’s world is challenging enough. When complex divorces demand insight and advice, matrimonial attorneys and their clients turn to CohnReznick Advisory Group for the expertise and efficiency of a proven single resource for business valuation, litigation support, and financial advisory needs. Find out what CohnReznick thinks at CohnReznick.com/divorce.

CohnReznick. Where forward thinking creates results.
4. What are the other living expenses?
5. Are there increasing savings in bank or investment accounts?
6. Are their debts increasing or decreasing?

Business-owner taxpayers have an obvious financial incentive to under-report income to the government and our government lacks the resources to vet business income reported. A taxpayer’s financial transgressions, fortunately, are aggregated and pop out as one number on a personal tax return as “Taxable Income”.

Taxable income is found on “Form 1040, Personal Tax Return”, page 2, line 43. Observe this number and compare it to the family unit’s living expenses estimated during your interview. Does taxable income exceed the estimated living expenses of the family unit, excluding mortgage interest paid and property taxes (common housing costs that are deducted on the tax returns to arrive at taxable income)? If you suspect it does not, you might have a hidden income issue.

Example:
Take the “Taxable Income” figure and subtract estimated expenses (not including the above-mentioned housing costs). Estimated expenses were determined in your interview and/or an examination of bank statements and credit cards. If it is a negative number, it makes sense to hire a forensic accounting expert as unreported income may exist.

<table>
<thead>
<tr>
<th>Taxable Income</th>
<th>$100,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Known living expenses</td>
<td></td>
</tr>
<tr>
<td>Auto expenses</td>
<td>$20,000</td>
</tr>
<tr>
<td>Private school tuition</td>
<td>$40,000</td>
</tr>
<tr>
<td>Spending on credit cards</td>
<td>$70,000</td>
</tr>
<tr>
<td></td>
<td>($130,000)</td>
</tr>
<tr>
<td>Increase in savings (non-pension)</td>
<td></td>
</tr>
<tr>
<td>Investment accounts</td>
<td>$25,000</td>
</tr>
<tr>
<td>Loan payoffs</td>
<td>$30,000</td>
</tr>
<tr>
<td></td>
<td>($55,000)</td>
</tr>
<tr>
<td></td>
<td>($85,000)</td>
</tr>
</tbody>
</table>

Further inquiries are necessary. How is the family unit funding $85,000, almost double their reported income? Savings increased, debts decreased, and there is no one else providing funds, such as relatives. Hence, this analysis supports an instance of “hidden” income. In many cases, forensic accountants examining the business books and records will uncover these personal costs, which is a common form of underreporting income.

Kim Onisko and JB Rizzo are forensic accounting experts serving clients involved in business and marital dissolution litigation, mediation/arbitration or Collaborative Law dispute resolution situations. www.OniskoScholz.com
1. Why not to retain another attorney to prepare a QDRO

In an actual case two attorneys, one attorney who represented the husband in the divorce, and the attorney hired to prepare the QDRO, agreed and signed off on a QDRO that led to the alternate payee spouse receiving twice as much as the amount intended (in the hundreds of thousands of dollars). The wrong date of segregation (of the account) was used and when gains and losses were applied it was misunderstood by both attorneys as to whether or not gains and losses should have applied, and if so, as of what date. The attorney retained to prepare the QDRO washed his hands of the case and pointed the finger at the attorney who hired him. This problem was eventually resolved by submitting an amended order, prepared by none other than a non-attorney QDRO specialization firm.

2. Examine the background of who you retain to prepare the QDRO

Does their educational background make them an expert in QDROs? Do they have more than 15 years of QDRO experience? Why over 15 years? Because QDROs often do not mature, or go into effect for 15 or more years. You would therefore know if the firm had prepared faulty QDROs from the past.

3. Confusing what can be done in the private sector with what is done with governmental retirement plans

The term “QDRO” pertains to the private sector and is a product of the Retirement Equity Act of 1984, as an amendment to ERSIA of 1974. Government plans include the military, federal, railroad (through the Railroad Retirement Board), state, and municipal plans. These plans are exempt from ERISA and therefore exempt from QDROs. However, most (except municipal pensions) accept the functional equivalent of a QDRO to carve out a portion of the pension as marital property, alimony or for child support.

Pre-retirement survivor benefits, however, may need to be included in the verbiage of the QDRO to secure the alternate payee’s share prior to their commencement. Also, keep in mind separate interest is not possible with a government pension. Here, the spouse can only share in the monthly pension amount at the time the participant spouse retires and only for the lifetime of the plan participant.

A further distinction is that under a separate interest an alternate payee spouse can receive their share at any time after the earliest retirement age.
of the participant spouse, regardless of whether or not the participant spouse retires. This, however, is not true of government pensions. The spouse must wait until the participant spouse retires to receive their share and they can only receive their share at the time of retirement.

4. The words, “if, should, or if any” cannot be overused in a settlement agreement or QDRO

When trying to achieve an equitable distribution of a retirement plan asset you do not want to specify an age at which a spouse is to receive their share. Rather, point out that the spouse is to receive their own separate independent interest if possible with benefits commencing at the time of the other spouse’s retirement, or earlier if permitted by the terms of the plan.

Tim Voit is a recognized expert, financial analyst and founder of Voit Econometrics Group Inc. He is the author of Retirement Benefits & QDROs in Divorce, and Federal Retirement Plans in Divorce — Strategies and Issues. www.vecon.com

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By Louise Nixon
Key tips for identifying various retirement plans in divorce cases.
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9 Reasons Why Plan Administrators Reject QDROS
By Theodore K. Long
There are many reasons why proposed QDROS are rejected, and here are some common ones.
www.familylawyermagazine.com/articles/9-reasons-reject-qdros
there can be many definitions (and interpretations of definitions) of value. Unfortunately, in most states, the definition of value for marital dissolution purposes is not clearly spelled out, leaving much room for interpretation. The lack of clear definitions and interpretations challenges appraisers and lawyers to work together to assist the courts in creating some sound precedential case law that will clear up much of the existing confusion.

Family law courts sometimes use a fair value standard of value that can be inferred from the language and rulings in the case. When this standard is used, it usually is not intended to be synonymous with “fair value” as used in dissenting stockholder actions, although some marital dissolution decisions have expressly referred to the fair value standard used in shareholder oppression and appraisal actions. Rather, it usually means something akin to fair market value with some (usually not-well-defined) modification(s). Some traits characteristic of fair value cases are that distributions are made on a pro rata share of enterprise value with no discounts; there are no "shareholder level" discounts such as discounts for lack of marketability or lack of control; some element of goodwill is included, but discounts are disallowed; the case emphasizes that the spouses are unwilling sellers (or buyers); or the case emphasizes that the distribution must be "fair."

Some states, such as Florida, Hawaii, Illinois, Missouri, Pennsylvania, South Carolina, Texas, and Wisconsin adhere quite strictly to the standard of fair market value, the price at which the property would change hands between well-informed, willing buyers and sellers on an arm’s-length basis. Some states, such as Arkansas and Louisiana mandate this standard by statute for the valuation of certain types of marital property. Those espousing the fair market value standard say that it is unfair to value the property that one spouse will receive at more than that spouse could actually realize in a sale.

Other states adhere to the concept of value to the owner, reflecting whatever special circumstances may make the property more valuable to that owner than to someone else. Although the courts are not consistent in what they call this value, both business appraisers and real estate appraisers call it investment value. States that have used an investment value standard of value include Arizona, California, Colorado, Kentucky, Michigan, Montana, Nevada, New Mexico, North Carolina, and Washington (however, such use has not precluded the application of other standards in these states). Depending on the owner’s special circumstances, this value could be much higher than the value to other investors. The rationale for this position is that if a sale is not imminent, the question of how much the property would bring is irrelevant. States do not have totally consistent positions on this critical issue.

This article has been condensed. For the full version visit: www.familylawyermagazine.com/articles/standard-value.
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Could you provide us with the background on “Children Held Hostage” and its origins?

The book actually started as a research project back in the late ‘70s and early ‘80s. We discovered this problem, which some call alienation but we refer to as programming and brainwashing. It goes by about 50 other terms as well. This was occurring in many, if not all, cases of conflict in family matters. The courts, attorneys and therapists were searching for an understanding of who was responsible, why and what was happening to the children — and more recently, what can be done to undo such damage and help children re-affiliate with their parents. Originally we had a sample of about 700 families, and that was published in 1991. This new edition adds another 300 families for a total of 1,000, and has about 8 new chapters with updated research from the 1990s.
At Atticus, we believe that a well run law firm allows you to help a tremendous number of people, gives you great personal freedom and offers abundant financial rewards. But your firm can only deliver on its potential if you can build a highly productive team. *Hire Slow, Fire Fast* provides you with an easy-to-follow system to help you first build, and then manage and motivate that team. You’ll find a comprehensive set of tools that you can use to:

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Can you explain the difference between brainwashing and parental alienation?

We break brainwashing down to a more complex process. Whereas alienation is a term that’s become global, and there’s a confusion of the process, the methods and the results. In the book we show a delineation between motivation, techniques, impact and, more recently, we’re looking at reunification and what can be done if a child is alienated. But basically they all mean the same thing. And this is where a parent intentionally or unintentionally sends messages about the other parent with the goal of damaging that relationship either in terms of physical contact, or their ability to love that parent.

Most of it has to do with distorting the child’s perception of the reality. If a parent is successful in distorting such a perception, the end result is ultimately a brainwashed child. For example, a child may come to believe that his mother never had anything to do with him, and valuators and therapists will hear this said in the evaluation. You then gather, as an expert, independent information that shows the mother did everything from breastfeeding to teaching the child how to read, and the like. And yet you’re sitting and listening to a child who is saying my mother has done nothing for me. These kinds of assertions are what we call distortions. The child has come to believe a lie. In fact, they then live out the lie because often they will say they don’t want to see or be with that particular parent, which some therapists think is a conundrum.

What are some of the driving factors for parents to do this to their children?

In the book there are about fifteen motivational factors that we identify. We are talking about cases where there is no objective basis for abuse. The motivations can be everything from revenge for leaving the marriage, revenge for having a new life, revenge for being successful, all the way down to practical measures. Sometimes if a parent gets more custody, they are likely to get more financial support. They might even get the marital residence. Another motivation could be their belief that they are a superior parent. In some cases, keeping these conflicts going is actually a way of maintaining the marital relationship.

How do you assess the qualifications of professionals working with brainwashed children?

It’s a field that’s becoming glutted, meaning that every time a phenomenon is important, you have professionals rushing in, in good faith and bad faith, to offer their opinions. An individual that’s going to be helpful to an attorney here should have clinical and research experience, at least to know the research completely, and be able to differentiate the weak studies from the strong studies. They also should have a lot of grassroots experience in working with families in high-conflict divorces and forensics. They should be able to have expertise, whether it’s forensic sociology or forensic psychology.

Regular therapists may be able to share some information but they’re not going to be of paramount use in these kinds of cases. You need to look at a professional’s history objectively. Is their history one where courts generally appoint them for objective evaluations? Do they work with both sides in what are called attorney agreed-upon cases? You’re looking for professionals who have a solid ethical and procedural reputation and are going to give as fair an opinion as they can. Most importantly, the professional has to have expertise in taking comprehensive social histories. Without a comprehensive social history in the case you’re not going to be able to delineate if this phenomenon exists.

By bringing in a comprehensive history, you can effectively determine whether a child’s view is distorted or not. There is a popular opinion in some disciplines,
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including psychology, that perception is reality. Well, in these kinds of cases, perception is not reality. When a child believes that his father abandoned him, but never did, that’s a distortion. That is not reality. And so the professional has to be able to distinguish between what is perceptual and historically factual. That is what becomes the hub of these cases.

**Have lawyers embraced the need for developing more knowledge in this field?**

In my travels around the country I have found lawyers and judges extremely receptive to new information. They’re the ones sitting in the middle of these problems, either having to guide their clients, or the very judges having to make decisions. I find that most judges and lawyers want to get educated. The turnouts at continuing legal education meetings, for example, are very high. The participation is very intense, and the questions often challenging. So I believe there is a thirst for more knowledge, which is one of the reasons we published this second edition — with what we hope are some new ideas.

**There are new chapters in the second edition of your book. Tell us about them.**

Yes. And one of the more interesting chapters, at least from our point of view, is Chapter 14, which is the smallest chapter actually. It’s called “Children’s Statements.” We decided to put together, over the years, statements that children have made about their life. These are children who have often been educated and clinically helped to understand that their views — for example, hostility, hatred, misperceptions, are in fact not accurate. And once they come into a kind of clearer view of their parents and their family life, they often have made statements to us which are somewhat astounding about their views of what their parents have done.

There’s been some question as to whether this phenomenon really exists. Well, when you work with these children who are going through different stages of redefining their social perceptions and then their behaviors — including kids who have said I’ll never see my mother, I’ll never see my father — and then through the interventions that we do, you see them starting to re-affiliate and those are very powerful, not just clinical experiences, but human experiences. They can be children of all ages. We have very young children, we’ve had teenagers who will often say because of my age the court or others have to honor my opinion, but if their opinion is based on ten years of brainwashing and subsequent distortions, then their opinion may be invalid.

**Stanley S. Clawar is a Professor at Rosemount College. He is also director of Walden Counseling and Therapy Center in Bryn Mawr, Pennsylvania, and a certified clinical sociologist. Dr. Clawar has been a consultant on approximately 2,500 cases involving domestic-relations issues. Children are sent to his clinic from around the country for help. He co-authored the book Children Held Hostage: Identifying Brainwashed Children, Presenting a Case, and Crafting Solutions, Second Edition, with Brynette V. Rivlin. This book is available at the American Bar Association website. www.ShopABA.org**

**Related Articles**

**Parental Alienation in Child Custody Disputes**

By Marlene Moses & Beth Townsend

The public policy of encouraging the parent/child relationship.

[www.familylawyermagazine.com/articles/alienation-custody-disputes](http://www.familylawyermagazine.com/articles/alienation-custody-disputes)

**Helping Your Clients When Parental Alienation Happens**

By Plinio J. Garcia

Attorneys should be aware that they can help families avoid or minimize the effects of parental alienation.

[www.familylawyermagazine.com/articles/clients-alienation](http://www.familylawyermagazine.com/articles/clients-alienation)
Among the anomalies involved in the practice of law is the disparity between the substance of continuing legal education (CLE) programs and the reality of practice. As a rough, totally unscientific estimate, 90 percent of CLE programs in family law involve, in one sense or another, litigation skills. However, my surveys of family law attorneys across the country reveal that 90 percent — or more — of family law cases are resolved through negotiations. If you accept these estimates (or anywhere near them), that means that 90 percent of CLE deals with what lawyers actually do only 10% of their time.

Being a good trial lawyer requires skills and experience. The same applies to being a good negotiator, rather than just being a lawyer who negotiates. The difference in negotiations is more profound, however. Not only do the enhanced skills afford the client a better financial result, but, done skillfully, negotiating can enhance the opportunity for a more peaceful relationship with the ex-spouse in the future.

So, if negotiating is not solely intuitive, what can you do to become a better negotiator? Below are a few suggestions on the topic.

Read Other Material

There is a huge amount of material on the art of negotiations, ranging from philosophical to practical to intellectual. A starting point surely is Roger Fisher and William Ury’s classic book Getting to YES: Negotiating Agreement Without Giving In. In addition, there are substantial resources on how to negotiate in numerous different forums, many of which can be adopted for family law cases.

Watch Other Lawyers

I had the privilege of watching Leonard Loeb, my boss and later my partner, negotiate divorce cases. Although some of his style does not fit my personality, I learned and adopted a great deal of his technique.

For example, I saw one session in which Leonard was representing a wife in a long-term marriage whose wealthy husband had been caught philandering. Leonard opened the negotiating session as follows:

“When I asked my client what she truly wanted arising from this divorce, she assured me that she really didn’t care about property division or support. What she really wanted was to use a rusty razor and make him eligible for membership in the Vienna Boys Choir. Now, I assured her that the goal was not attainable in a literal sense, so I’ve had her translate it to dollars.”

Although there is no way that I could ever make such an “opening statement” and keep a straight face, watching his style — and the reaction of the other lawyer — was highly instructive.

Take Courses in Negotiating

Just because you have been negotiating for years doesn’t mean you can’t do it better. Although, as stated above, there are far more courses offered on litigation, there are, fortunately, quite a few on the skills of negotiating.

Take Courses in Related Skills

Negotiating well requires a large set of skills, not all of which are taught in courses on negotiations. Courses in psychology, physiology, human development, marketing, and conflict negotiations all have skill sets that can be highly useful in negotiation sessions.

Be Self-Critical

I heard a story once about a professional speaker. He said that when he gives a speech, there are three versions. There is the one that he plans

CONTINUED ON PAGE 51
What if Mercedes-Benz Could Launch a Family Law Division?

By Dan Couvrete, Marketing Consultant

Why you need to look at your law firm like a business owner and consider the power of branding and marketing.

The Impact of Marketing and Branding

In the U.S. only lawyers are allowed to have an ownership interest in, or be managers of a law firm. The United Kingdom had a similar rule barring non-lawyer ownership, but in recent years firms have been able to take a limited number of non-lawyer partners. The reasons behind this rule is a topic for a separate discussion, and one we won’t get into here. Rather, for the sake of argument, I am interested in approaching this as a hypothetical to have you thinking about your firm like a business owner. What if non-lawyer ownership of firms was allowed in the U.S.? What if Mercedes-Benz could launch a Family Law Division?

You might say to yourself: How would Mercedes-Benz compete with me? They know cars, not the law. The truth is that it is not as far-fetched a concept as you may think.

Ikea Wind Farms and Google Health

Many known brands have leveraged their assets and brand loyalty to branch outside of their “core” business. They know they can command almost instant interest and market shares, despite the industry already being filled with well-established brands.
Shannon Pratt Valuations is a full service national business valuation firm. Dr. Shannon Pratt has more than ten books in print on various business valuations topics including valuations for marital dissolution purposes. He has testified on hundreds of occasions in various types of litigated matters, including divorce cases. Ms. Niculita and other staff members manage valuations engagements, testify, and contribute to professional reference business valuation books.

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For example, ikea, one of the world’s biggest furniture retailers, has economy hotels and restaurants in Sweden and is partnering with the Marriott Hotel to create another 150 hotels in Europe. Ikea has also partnered with a Swedish construction giant to build affordable homes. It doesn’t stop there. In 2012, Ikea launched its own beer, and in November of this year added Canada to its list of countries where they own wind farms. Ikea also partnered with Sbab to create the bank, Ikano, which operates in 10 countries. Carl-Viggo Ostlund, CEO of Sbab, has said, “Where we can make a real difference is on the customer experience…”

Google is another example. It now offers online productivity software that competes with Microsoft Office’s Outlook, Word, and Excel. Google also has its own social networking (Google+), its Android mobile operating system, Nexus smartphones and tablets, and Google Glass. In September, Google established Calico, a biotech company that focuses on aging and associated diseases. Larry Page, one of Google’s founders has said, “There’s tremendous potential for technology, more generally to improve people’s lives. So don’t be surprised if we invest in projects that seem strange or speculative.”

What Mercedes-Benz Family Law Division Could Offer

Mercedes-Benz has invested heavily not just in engineering, but also in marketing. Whether you own a Mercedes-Benz or not, you likely “know” the brand means luxury, innovation, reliability, quality product and service. Were Mercedes-Benz to open up a Family Law Division, this same brand quality would likely be a given in the eyes of those seeking a lawyer for their divorce.

By simply extending some of the services it currently offers its automobile customers to family law clients, Mercedes-Benz would reinforce its reputation and provide solid reasons to be the law firm of choice. For example:

- **Financing** — Extend credit to clients over 60 months at 1% annual interest rate. After all, legal fees for a divorce can cost more than a Mercedes.
- **eBills** — Clients could pay by check, automatic monthly withdrawal, online or by phone.
- **An App** — To monitor the progress, manage payments and contact the lawyer.
- **Insurance** — Mercedes-Benz could also take care of insurance for spousal and child payments.
- **Express Service** — Clients could drop in with no appointments and be guaranteed they will not wait for more than 15 minutes to see a lawyer about their case.
- **Hotel Upgrade** — For clients who need to move out of their matrimonial home in a hurry.

How Mercedes-Benz Would Market its Family Law Division

If Mercedes-Benz wanted to, they could...
have a network of law offices through their dealerships, giving them national prominence fairly quickly. They have 11 million fans on their Facebook page and a huge budget for print, radio, TV and online marketing. Unlike a lot of “highly qualified” family law firms, Mercedes-Benz is likely not going to be shy about advertising their family law division and its lawyers. By the way, I don’t think they will have issues recruiting good lawyers who want to focus on lawyering without the need to worry about bringing in the business or billing their clients.

Mercedes-Benz knows that a Mercedes is an emotional purchase, not just a need. They have mastered the ability to provide an experience for would-be owners of their product. One of their print advertisements has this headline: “If you don’t enjoy your money, your ex-wif will. The ultra-luxurious S-Class. Spoil yourself.” Hiring a family lawyer for a divorce or any other family law matter is making an emotional purchase at a highly emotional time. You can count on marketing-savvy companies such as Mercedes-Benz to know how to create the experience these prospective clients can relate to.

**How Would Your Law Practice Compare to Mercedes-Benz?**

If you were to ask individuals from a city what comes to mind when you name your law firm, or for that matter, one that has been around for 50 years, it’s likely there would be little to no recognition of either name, service level or reputation.

Isn’t it ironic that a divorcing person could potentially have a clear expectation of a firm that does not exist such as Mercedes-Benz Family Law LLP, and no idea about a firm that has been around for 50 years? This is the power of branding and marketing.

**A Paradigm Shift: Embrace Marketing**

Your firm will not become a household name overnight, but it could, and you do have to begin somewhere. For most family law practices, the first step is to have a paradigm shift in how they perceive the business of family law. You are not just practicing law; you are running a business, and this business needs to be marketed. Appropriate and strategic marketing can build trust and position your firm as one that’s associated with quality. Once you have made this shift, you will then want to do the following:

- **Define Your Business Goals** — The first step to defining your market and brand is to create clear business goals, a clear mission statement, a clear set of procedures, policies and strategies.

- **Define Your Brand** — Think of ways to differentiate your firm from other family law practices. Who are your preferred clients? What benefits can you offer them? What else could you do for your clients that would...
Jay Fishman, Managing Director of Financial Research Associates, specializes in the valuations of business enterprises and their intangible assets. He has taught courses on business valuation around the world, is editor of the Business Valuation Review and vice-chair of the Appraisal Practice Board of the Appraisal Foundation. www.finresearch.com

To read or listen to the full interview visit: www.familylawyermagazine.com/articles/jay-fishman.

Christopher Mercer on the Five Big Valuation Issues in Divorce

Christopher Mercer, who is a fourth-time returning speaker at the Conference, says that the big advantages of attending the event is the opportunity of meeting with some of the best divorce attorneys and variety of experts, from valuation to forensic, which no other conference offers. Chris has been engaged in divorces around the country from California to New York to Florida, and places in between, when a substantial business is involved. Chris maintains that family lawyers with a greater understanding of valuation principles will have a real competitive advantage. His presentation will look at:

- The build-up discount rates and components of discount rates
- Valuation confusion in using control premiums and minority interest discounts
- Valuation adjustments to the income statement to normalize for excess owner compensation
- The guideline public company method and the guideline transactions method
- Fundamental adjustments of public multiples that apply to a private company

Christopher Mercer has prepared, overseen or contributed to more than 1000 valuations for purposes related to mergers and acquisitions, litigation and tax, among others. He is also the president of Financial Consulting Group, the nation’s largest organization of business valuation and litigation service firms. Visit his website at www.finvaluation.com

To read or listen to the full interview visit: www.familylawyermagazine.com/articles/james-hitchner.

James Hitchner on Business Valuation

James Hitchner, a repeat presenter at the Conference, founded Valuation Products and Services, a company devoted to business valuation education. He has over 33 years of valuation experience and is the co-author and editor of several publications, as well as the Editor in Chief of Financial Valuation and Litigation Expert, a bi-monthly journal featuring views and tools from experts in the field. Jim will be offering attendees a free sample of the journal and some published articles, as well as a newsletter subscription discount. Jim will be moderating an open-forum session on business valuation between Jay Fishman, Chris Mercer and Nancy Fannon. He will also be presenting on mistakes and biases in valuation as well as on discounts for lack of marketability and S corps. His topics include:

- Business valuation mistakes and how to avoid them
- How to detect intentional and unintentional biases
- How to detect a rigged business valuation
- Discounts for lack of marketability and S corps
- Hot areas in business valuation

James Hitchner is Managing Director with Financial Valuation Advisors, a firm specializing in valuation, financial and litigation forensic services. He is also the president of Financial Consulting Group, the nation’s largest organization of business valuation and litigation service firms. Visit his website at www.finvaluation.com

To read or listen to the full interview visit: www.familylawyermagazine.com/articles/james-hitchner.
both parents via social media that the trial judge entered an injunction (upheld by the appellate court) barring both parties from making comments about the other on social networking sites.

A similar challenge was made in another 2013 contentious divorce case, this time in Alabama. In *Clore v. Clore*, the trial court entered an order dividing up the marital assets and awarding some rehabilitative alimony to the ex-wife, albeit considerably less than she had sought. The ex-wife moved for a new trial, arguing that the judge’s social networking connection with the parties’ adult daughter (who grew up in the trial venue but had since moved to England) had somehow tainted the judge’s ruling and warranted her recusal. The trial judge denied the motion, pointing out that:

“This Facebook is a social networking site where the word “friend” is used in a way that doesn’t have anything to do with the way before this Facebook.com ever existed — the way we used the word “friend.” Just because a person is connected to me on here in this manner doesn’t have anything to do with a personal relationship. I don’t have a personal relationship with this “friend.” We all live in a small town. I have heard both of you all’s names. I heard the daughter’s name before we came in here today.”

The appellate court agreed, noting that a showing of something more than the “bare status of the parties’ daughter as a friend of the judge” would be necessary before any recusal could be granted.

A phrase from social media’s own contributions to our lexicon might be an appropriate way to characterize the views toward being Facebook “friends” with a judge — it’s complicated. Judges should proceed with caution regarding social media, but they should still proceed.

Related Article

**Social Media in Divorce Proceedings**

By Judge Michele Lowrance and Pamela J. Hutul

Lawyers must modify and change the way they prepare for highly conflictual cases in these changing times. [www.familylawyermagazine.com/articles/social-media-in-divorce-proceedings](http://www.familylawyermagazine.com/articles/social-media-in-divorce-proceedings)
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One investigator was sentenced to three months by the federal government.

- **People v. Gibbons** (1989): A defendant set up a video camera in his closet to record himself in “the most intimate and private form of communication between two people” with an unsuspecting woman. This offense of pretexting, when confidential communication is divulged, as supported by the privacy act, is a criminal charge prosecuted as a felony or misdemeanor under California’s Penal Code.

- **Noble v. Sears, Roebuck** (1973): A private investigator, retained by the attorneys, had an employee find the address of a witness through pretexting. The attorneys and private investigator were held liable for invasion of privacy by reason of unreasonably intrusive investigation, as covered under California’s “Peeping Tom Statute.”

The moral of this story is to exercise caution when managing and processing cases. The license to practice law is obtained with difficulty and is easily lost. Care must be given to play by the rules and not get caught up with a client that doesn’t.

This article has been condensed. For the full version visit: www.familylawyer magazine.com/articles/perils-pretexting.

Marshall Waller is a Certified Family Law Specialist with Feinberg & Waller in Beverly Hills and Calabasas, CA. He has gained a reputation as a dynamic and entertaining speaker and has spoken nationally and locally to trade, civic, and private organizations. www.feinbergwaller.com

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PRETEXTING / CONTINUED FROM PAGE 14
3. **The Expenses Section**: This provides the attorney with an overview of the Fixed, Variable and Client Reimbursed expenses, followed by the Payroll total and the Payroll taxes.

4. **The Accounts Receivable Section**: The top section allows the professional to see what was billed for the month against what was collected and what was collected in the 30, 60 and 90 days outstanding categories.

5. **The Marketing Stats Section**: This area is dedicated to a quick summary of client development activities that occurred during the month, a list of new referrals that were sent and a list of the types of cases being referred.

6. **The New Business Section**: This area captures the number of new client inquiry calls, the number of calls that are scheduled for an initial consultation, the number of engagement letters which are given to prospective clients, the number of matters closed and how many matters are currently open.

7. **The Financial Operations Section**: This last section is dedicated to showing what is in the operating account and what is in the trust account.

Most attorneys are not trained to evaluate cash flow and do not have an adequate system to display the trends in their finances. This easy-to-read summary allows them to view the most important information all in one spot. It covers all of the most important areas that provide “fuel” for the firm. Attorneys should review this form once a month if they are in a relatively stable financial situation and cash flow is good. If they are in a financial crisis and have a large collections problem, they might review this form once a week.

The bookkeeper or office manager should manually fill in the information on this sheet for the attorney to read and then they should go over it with the attorney in a regularly scheduled meeting. Detailed reports from the firm’s bookkeeping software should be used to gather the information and be included behind the summary sheet.

By using this form on a monthly basis, even attorneys who aren’t good at math can track, monitor and hopefully gain control of their finances based on the trends revealed by the Dashboard.

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Mark Powers, the President of Atticus, Inc. and Shawn McNalis, co-authored How Good Attorneys Become Great Rainmakers, Time Management for Attorneys, Hire Slow Fire Fast and are featured writers for Lawyers Weekly and a number of other publications. www.atticusonline.com

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**RESULTS**: We have obtained significant compensation for injury victims, and resolved countless divorces and business disputes to our clients’ satisfaction.
connection, your client can create a new email account. No identifying features should be used and a random, complex, alphanumerical password should be memorized. The old email should not be used as an alternative or password reset information may be sent to the compromised account.

Your client will have now succeeded in setting up an extremely secure computing and communications environment; however, one deviation can result in re-infection. Remind your client to follow these rules:

- Do not connect to any network that the suspect has physical or virtual access to.
- Disable wireless adaptors whenever in proximity to any suspect locations.
- Disable Bluetooth if not used. Otherwise disable “discovery” after connecting your devices so the device cannot be seen.
- Only use new removable drives as an infected USB can re-compromise your devices.
- Only access the new email from the new devices.
- Never connect the new devices to the old for any reason.

Nicholas G. Himonidis is an attorney, licensed private investigator, certified fraud examiner and certified computer forensic specialist. He is Vice President of Investigations at T&M Protection Resources, LLC in New York City. www.tmprotection.com

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to give. There is the one that he actually delivers when he improves on the original version while actually giving the speech. And “if you want to hear a truly great speech,” he said, “drive home with me afterward and hear the speech that I should have given.”

**Get Feedback from Other Attorneys**

Many times, our egos prevent us from asking for assistance. However, especially if you are a young lawyer, there is a great deal of experience available from lawyers who have been doing this for a long time. And many of these experienced lawyers would be pleased — even flattered — to share feedback.

**Get Feedback from Former Clients**

Asking a former client for feedback may be helpful. Yes, there is a danger in this as you may hear things you don’t want to hear. And there is a natural tendency to get defensive. But if you can park your ego at the door for a while, you may get a lot out of this exercise. It is, after all, the client whom you are serving.

In my firm, we do this in two different ways. First, we hold a post-judgement meeting after every case. And approximately once a year, we mail an evaluation form that can be sent in anonymously.

**Be Creative**

Don’t believe that just because “that’s the way it’s always been done” means that “that’s the only way to do it.” Experiment. Learn. Then, please, share. Life is a learning process.

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The future of law. It sounds so fancy, huh? Weren't we supposed to be living in a society run by robots at this point (à la the Jetsons)? We're not there yet, obviously. And, your practice is not run only by technology.

That said, it is coming. Technology is playing a greater role week to week in how clients are served. Emerging business models are being announced on a regular basis. It is truly an exciting time to rethink how legal services are delivered.

Does this mean that every lawyer in America is going to give up their office, their paper and ditch past practices for virtual (or other new-age) models? Of course not.

Regardless of where a particular practice stands on the scale of use of technology, that use cannot be ignored. ABA Model Rule 1.1, Comment 8, provides that competency includes a lawyer's understanding of the "risks and benefits of technology" as applied to the delivery of legal services. Competency includes technology? You bet. In other words, lawyers can no longer stick their heads in the sand and wear their fear of technology as a badge of honor. Lawyers have to look at technology in a way that benefits their clients.

We can save discussions on the wholesale disruption of the traditional firm model and focus on something that can be done today: maximizing mobility. Anyone reading this article should at the very least be using a smartphone. Yes, there are flip phones in circulation but they are basically dead. Having such a device empowers lawyers to practice on the go. Add a tablet to the mix with the right structure internally in a firm, and lawyers can practice from anywhere.

So how do we get there? To increase mobility there are three areas to focus upon: (1) mindset; (2) the actual technology; and (3) internal firm structure.

CONTINUED ON PAGE 56
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Getting Your Head in the Game

Not to sound too hippy-like, but adopting new practices regarding mobility starts with how lawyers think about their practice. It is easy to get entrenched in the "way things have always been done" mentality. It’s easier, right? Changing behavior takes work and you already have enough work from clients.

If mobility is desired, then change must occur. It is not just about picking up a smartphone and leaving the office. As discussed below, some structural change is needed to maximize mobility. So once you get your head in the right place, the remaining factors are easier to swallow.

Replacing Old Technology

When was the last time you thought about your firm’s technological structure? Have you adopted a paperless environment? Or, like many firms, are your files stacked on tables or shoved away in file cabinets only to see the light of day if you are physically standing in your office and can find that folder or piece of paper? This makes a big difference for mobility. You need to access your client data from anywhere while on the go.

Going paperless is a start. But, even with a legacy server on site, that won’t get you home (literally or figuratively) to access your data. That is where cloud or web-based technology comes into play. Platforms exist that allow lawyers to access their documents and other firm data from anywhere with an Internet connection. For example, Clio is a cloud-based law practice management platform that includes time and billing, calendar, contacts, reports, documents and communication functionality, among other features. All of this can be accessed from a tablet or smartphone. Box is another example of content management. This cloud-based solution allows lawyers to store documents and access them from mobile devices. (Both of these platforms have competitors that can be vetted online and elsewhere, it just so happens the author uses these.)

This is just the tip of the iceberg for technology ideas. More and more developers are finding innovative ways for lawyers and professionals to operate on the go.

Getting the Structure in Place

Adopting the technology is a critical piece, but under traditional firm models, that means a change in behavior for the team. If you are a true solo, that makes it much easier. However, if you have other team members, including lawyers or administrative staff, they need to buy into this mobility and technological change concept. Of course, not only will it benefit them, but if they do not follow policies and procedures developed to enable mobility, then the proponent of mobility can be hamstrung if the information is not available through the chosen platforms.

This is where outsourcing administrative work to virtual assistants and receptionists comes into play. If administrative functionality is mobile, that enables lawyers to be mobile as well. Virtual assistant relationships can be set up to fit a particular practice’s needs. This comes back to that change in mindset concept discussed above. Previously, having staff meant having people onsite. That is not necessarily true anymore.

Moving Forward

It is not expected that every lawyer will abandon how they have done business for years or decades. Instead, starting to think about ways to become more mobile in the practice of law will have a positive effect on delivering legal services to clients. Being chained to an office is not necessary anymore. So go, be free from the surrounding walls of an office. You work too much already, you might as well do it from a space that you actually enjoy.

Chad E. Burton is the Managing Partner of Burton Law (burton-law.com), a virtual law firm model based in Ohio, North Carolina and Washington, D.C. He is also the CEO of Curo Legal (curolegal.com), a new venture focused on helping lawyers restructure their law practice to position for the future.

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A Kerala Vacation: The Perfect Therapeutic Destination

A Kerala vacation in India could be the perfect therapeutic destination, filled with fascinating sights, a diversity of cultural experiences and opportunities for rest and relaxation.

Taking a vacation is a great way to break the pattern of daily stress and help you reevaluate your life with a change of scenery, environment and experiences. Kerala, with its friendly people, beautiful beaches and tropical greenery, holds some of the oldest religious architecture, and is famous for the interlocking rivers, lakes and canals called the backwaters. The great climate and cheap prices add to the therapeutic and educational benefits.

The City of Cochin

Our first two nights we stayed at the elegant Ramada Resort in Cochin. The resort has a huge meandering swimming pool and luxurious rooms, with all the comforts of home. Our spacious room overlooked the Arabian Sea, a peaceful haven to retreat to after a busy day of touring.

We boarded a large boat, the St. Sebastian, at the Fort Cochin Ferry dock for our private tour of the harbor. We saw the city landscape, the famous Chinese fishing nets, ship building and repair facilities, and the gigantic loading docks with containers from all over the world. The best part was seeing the dolphins swimming and frolicking beside our boat.

We visited the oldest European church in India, the impressive St. Francis Church, originally built in 1503. Vasco da Gama, who discovered the sea route from Europe to India, was initially buried in this church. Nearby, the imposing Santa Cruz Basilica was built in 1505, destroyed by the British in 1795 and rebuilt in 1887. The Christians of Kerala, which make up about 16% of the...
Alleppey, an area of many inland waterways called the “Backwaters,” famous for its floating houseboats. After checking into the Punnamada Spa Resort, we boarded our luxury houseboat docked directly outside our waterfront room. We traveled all day on a converted rice barge, used in the early days for the transportation of goods from the isolated interior villages to the towns. These houseboats, about 67 feet long and 13 feet wide, have fully furnished single and double bedrooms with ensuite washrooms, sundecks, private balconies and full kitchens.

A cruise on a houseboat is a fabulous way to explore the picturesque beauty of the backwaters and witness the Kerala simple way of life on the river and canals. Many tourists sleep on the elegant houseboats, with all their meals prepared from local provisions plucked, caught or bought in the backwaters.

We awoke to songbirds and watched an amazing sunrise through the coconut palms. Then we drove to the Abad Whispering Palms resort, located at Kumarakom, a tiny settlement on lovely Vembanad Lake, one of the largest in India. We took another riverboat cruise through the Mangrove forests, emerald green paddy fields and coconut groves interspersed with enchanting waterways and canals adorned with white lilies and a plethora of birds.

The most impressive thing about India is the unexpected. While driving to the beaches of Kovalam, we stopped due to a religious Hindu procession. Many slender young men, entranced, with ten-foot-long steel rods piercing through their cheeks, walked towards the temple. Teenage boys, also entranced, danced, eyes closed, to the rhythm of temple drums. Men with huge, colorful, four-foot-tall headdress precariously balanced on their heads, followed, with a procession of flutes.

India’s 1.2 billion inhabitants face many challenges. A people’s greatness is measured by how they cope with adversity. Despite a wealthy minority and growing middle class, most Indians live without sanitation and in poor conditions. We were inspired by the tenacity, good will and generosity of the Indian people, proof that joy and inner peace is not about wealth and possessions.

Dr. Borins will be leading a cultural and educational tour to India February 2014. If you would like to join him go to www.doctorsontour.ca/cme-programs-india-south-upcoming.php.

Mel Borins is a family physician in a private practice and a staff member at St. Joseph’s Health Centre in Toronto, Canada. He helps train physicians in complementary and alternative medicine, counselling and psychotherapy, stress management and communications. He is a leading expert in health and wellness. www.melborinscreative.com

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Our firm, Aronberg, Goldgehn, Davis & Garisma, has worked with Dan Couvrette and DMG for the past 12 years or so. During that time, I have had the opportunity to get to know Dan, his wife Martha Chan, and their staff. I must say that it has truly been a pleasure to work with these folks and their advice and products have, without question, enhanced our family law practice group here at the firm.

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We plan to be with Dan, Martha and their staff for another 12 years, and another 12 years after that, and so on. It has been a wonderful relationship.

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I have the utmost respect for Dan Couvrette and his team at Divorce Marketing Group. I cannot give a greater endorsement of anyone or any business than Dan and Divorce Marketing Group. They will help you grow your business into the future before you even know what the future is.