WHEN DISASTER STRIKES:
YOUR CLIENT, YOUR CASE OR YOU

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BOARD CERTIFICATION

Family Law - Texas Board of Legal Specialization

AREAS OF PRACTICE

Complex divorces and child custody cases. Protection of separate property and pursuit of reimbursement claims through tracing at time of divorce and/or economic contribution. Prenuptial and post-nuptial agreements. Grandparent and third party conservatorship claims. Interstate and international compacts. Surrogate issues.

LECTURER & AUTHOR

Recent Cases and Legislation, Smith County Bar Assoc., Family Law Section, Spring, 2003
Current Issues in Family Law – TAALP, Spring, 2003
Texas Private Schools: Family Law Issues and School Responsibility - 2002
Economic Contribution – Smith County Bar Assoc. - 2002
Economic Contribution – Texas Panhandle Family Law Assoc. - 2002
Modification of Custody – State Bar of Texas – Pro Bono Project - 2001
The New Discovery Rules – Smith County Bar Assoc. - 1998
ATLA Family Law Section Newsletter - Contributor

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Smith County Bar Association – Secretary, 2002-2003; Director, 2001-2002
American Trial Lawyers Association
American Bar Association

EDUCATION

South Texas College of Law – J.D.
University of Mississippi – B.B.A.

PERSONAL

Married to Martha for 11 great years; full time father to three wonderful boys which only allows me to be a part-time outdoorsman and golfer.

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WHEN DISASTER STRIKES: YOUR CLIENT, YOUR CASE OR YOU

I. INTRODUCTION

Choose your poison:

- your client dies;
- your client's house burns during the case;
- you discover your star witness has a prior family violence conviction; or
- your client fails a drug test.

Unquestionably all are disasters, but the severity of the damage can be controlled by the groundwork you have prepared prior to the problem arising, as well as your immediate response to the calamity.

This paper does not cover discovery disputes (*see* Kevin Fuller, Chapter 7) nor does it cover evidentiary issues (*see* Warren Cole, Chapter 54, and Coy Conner, Chapter 12;) or pleading questions.

This paper will cover a handful of issues directly related to your client, the case in general and your position as an attorney. Each section is not intended to be a comprehensive discussion of all potential catastrophes, but covers some of the more likely occurrences and most problematic situations. Since an ounce of prevention is worth a pound of cure, being aware of potential problem issues before they arise will help minimize the damage you could have to control later.

II. YOUR CLIENT

My clients are flawless, just like yours. They have always provided me both sides of the story, never have a blemish on their record as a parent or a spouse, and always keep me well informed as the case progresses. Then my alarm sounds.

Each client brings to your office his or her own baggage. The trick is to both know its contents as well as prevent the other side from using it effectively against you. It is easier to lay the basis for the bad information than to try to explain why it occurred.

A. Arrest

An arrest is upsetting for the client – regardless of the reason. Whether he is in custody due to an outstanding traffic ticket or theft charge, the appropriate disaster response is to obtain your client's release. Contempt findings and subsequent jail is covered *infra* in section, II, C. 2. This section applies if your client's arrest is other than due to contempt.

If your client is arrested at a hearing, he and his family will expect you to get him out of jail. If you practice criminal defense work, your client will be out soon. If not, call a criminal defense lawyer. Hopefully, one you know well enough that he will immediately begin helping you. An able and well-informed criminal defense lawyer may be able to arrange a personal recognizance bond, or know a short cut for freeing your client. Your job at the very minimum is to begin the process to free your client.

If you are unable to obtain a criminal defense attorney's assistance, your next option is finding a bail bondsman. But which one? The client's family can pick one out of the yellow pages as easily as you can. But a better solution that will shorten the chaos is for you to create and maintain a relationship with a bondsman so that you are on at least a professional first name basis. This could help ensure that a call from you will get his staff working quicker than a cold call from the next convict.

Do not guarantee the bond or front the money for the bond (unless there is money in trust). Just a bad idea that may create a crisis for you.

Your next concern is to find the jail. Know its location, know how to get there, be ready to provide your client's family with directions, and know the paperwork process necessary to free your client. Have a reasonable expectation of the time it takes to obtain a bond, complete the paperwork and process your client in and out. Be conservative when you speak with the family regarding time for release because anything longer will aggravate them and be viewed as your incompetence. Conversely, anything shorter makes you look like a hero.

Your client's arrest can easily be prevented by a simple question – are there any outstanding warrants for your arrest? This includes the full range from traffic citations to felonies. Why is this a potential problem? Some local bailiffs have the habit of passing the time during testimony by running each witness' name through their crime computer system. On more than one occasion, witnesses have finished their

testimony only to be arrested for an outstanding warrant. This would certainly cast a negative light on their testimony.

If your client's outstanding warrant is due to a traffic citation, typically a phone call from a local lawyer to the Justice of the Peace's office can lead to the warrant being rescinded, leaving the citation's resolution pending. A phone call during the initial office conference to the JP is much more efficient than scrambling at the hearing while your client is being held in the courtroom's jury box awaiting transfer to the jail. Or you may arrange for your office staff to immediately travel to the municipal court and pay the fine, thus negating the warrant.

B. Family Violence

Family violence is easy to allege and difficult to defend. The necessity of protective orders is sometimes over-shadowed by their improper use in custody litigation. When this occurs, your client's disaster is magnified because your role as his legal adviser must be partitioned between a family law context and a criminal law defensive posture.

From the family law perspective, we are ready to explain the incident and defend allegations. But our client's best interest may be served by staying quiet until the family violence (or criminal) allegation is resolved. If your client chooses to answer questions, ensure that his Miranda rights are read to him. This has the dual purpose of (1) impressing upon the parties and the judge the importance of the testimony, and (2) allowing the district attorney's office to utilize the testimony in the potential criminal action.

If your client is the one accused, arm him with the appropriate defensive weapon. Appendix "A" is a proposed form the client may read to invoke both his federal and state constitutional rights against self-incrimination. Ensure that when your client asserts his rights, he explains that he does so on advice of counsel. Don't forget that a knowingly false report of child abuse, that could be the basis of a protective order, may be used against the one who made the false allegation. TEX. FAM. CODE § 153.013. But the statute is only applicable between parties, not third parties, and only during the pendency of the suit, not for a report made before filing. *Id.*

One concern regarding not testifying due to a criminal prosecution is that the underlying custody modification may be dismissed. The opposing party asserts you are using it both as a sword, asking for a custody modification, and as a shield, refusal to testify. But least one Court of Appeals has ruled that a Petitioner's invocation of her right to remain silent during a custody case cannot be used as a basis to dismiss her custody case. *See Travis v. Finley*, 548 S.E.2d 906 (Virginia 2001).

If a protective order is entered against your client, inform him quickly and in writing that he is prohibited from possessing firearms and/or ammunition. Immediately arrange for someone else to remove and maintain those items until the protective order is resolved. Recall that possession of firearms is not only prohibited during a protective order but also during the pendency of a temporary injunction that prohibits family violence, such as that contained within form of the Texas Family Law Practice Manual. Specifically, 18 U.S.C. §922 (g)(8) states that any person "after notice and hearing" who is ordered restrained from threatening a family member is prohibited from having firearms or ammunition. Hunting season is coming soon.

Although a temporary restraining order is not applicable to this prohibition due to its lack of prior notice, the typical agreement to renew and extend a temporary restraining order places your client in a precarious position. Specifically 18 U.S.C. §922 (g)(8)(a) states that one who is subject to a court order that "is issued after a hearing of which such person received actual notice and at which such person had an opportunity to participate." Id. This would include the initial hearing that is rescheduled due to time conflicts. Therefore, don't agree to a resetting without having that phrase deleted or be sure to inform your client of the repercussions and the necessary precautions to take in regards to firearms and ammunition.

Providing your client with Appendix "B" or "C" easily prevents these significant repercussions.[1] Each handout summarizes how federal law may apply against one charge with family violence or placed under a protective order. So when your client is being prosecuted for possession of a firearm, he will not have the

[1] Appendices B and C were prepared by Tyler attorney, Sean Healy, and included by permission.

defense that his lawyer did not inform him of the prohibition. This disaster becomes your disaster for a potential grievance and/or malpractice.

See Patricia Lasher, Chapter 65.

See SBOT, *What Every Texas Lawyer Needs to Know about Firearms Law*, October, 2003, Houston.

C. Contempt

Contempt motions for custody disputes are becoming more common. Just like a child support contempt motion, warn your client about contempt and its penalties (attorney fees), and jail time. Then evaluate the case to determine if negotiation is appropriate or if taking a 'damn the torpedoes' approach is a better course of action.

Don't forget that if your client is on community supervision for a criminal offense, he is usually ordered to report to his probation officer all alleged violations of laws as well as criminal convictions. A contempt finding is such a violation.

The terms of community supervision could and probably will include the requirement to support his dependents. TEX C. CRIM. P. art. 42.12 § 11 (a)(9). My experience is that most probation officers won't take adverse actions because of a contempt finding for failure to pay child support or denial of visitation as long as the probationer timely reports the initial assertion and court ruling. The converse is that the probation officer can recommend revocation of probation for not reporting the contempt finding and failure to keep the probation officer reasonably informed.

In a nutshell, the probation officer is similar to the judge in that he has the power to make your client's life difficult. The degree of difficulty depends on the attitude of the supervisor or the judge.

1. Is Your Judge a Master or "the" Judge?

Typically, the sitting judge of the court of continuing jurisdiction hears custody contempt allegations. But if contempt is asserted in a IV-D case and its concurrent master docket, pay attention to the judge. A little known point of distinction with big consequences is whether the judge hearing your client's IV-D case is an appointed master under the Texas Family Code or is the court's sitting judge under the Texas Government Code.

If the judge is sitting as a master, pursuant to TEX. FAM. CODE, § 201.101, *et seq.*, any adverse ruling may be immediately appealed to the sitting judge of the court for which the master is appointed. TEX. FAM. CODE § 201.1042. The relief can be a relatively quick release from jail as well as a trial de novo on the facts. But the 'new' law allows for a master's contempt findings resulting in incarceration to be enforced until the sitting judge can hear the appeal - in one to five days. TEX. FAM. CODE § 201.013(c).

If the judge appointed is a sitting judge for the court pursuant to the TEX. GOV. CODE, § 74.052, *et seq*., then any judgment entered by him is final, and "an appeal" or habeas corpus lies with the appellate court.

This distinction 'with a difference' could be your client's disaster because of the significant amount of time and expense necessary to prepare an appeal and/or habeas corpus petition to the court of appeals as compared with an appeal of the master's ruling to the trial court.

Furthermore, release from incarceration after a contempt finding due to child support delinquency more often than not requires a cash bond. You must inform your client that that cash bond will be forfeited to the obligee if the delinquency is upheld. TEX. FAM. CODE § 157.106

2. Habeas Corpus

No one likes jail. But before taking a potential client's habeas corpus case, make sure that you have three things readily at hand (1) his retainer, (2) time necessary to adequately brief the issue and (3) the court reporter's statement of facts. A habeas corpus case requires immediate attention and all of your attention. The client is in jail and filing the writ a week or two later does him no good.

Be up front with his family members that you must have the retainer completely paid prior to your beginning any work. You waste every one's time if they believe they can visit with you, offer a down payment and then when he gets out, they will pay you the rest. Explain that he can pay them back when he gets out, but you are not willing to be paid later for work done now.

D. Lying Client

The only experience I have with this topic is from dealings with opposing parties, because my

clients never lie (at least not that I have known - lol.)

Rarely does your client tell you prior to testifying that he intends to lie. This usually happens only when he is on the stand and a question elicits a response that you know is untrue.

Your first reaction depends whether you are questioning your client or if he is under cross-examination. If your client is on direct, the appropriate next question is, "Perhaps you did not understand my question. Let me rephrase it so that the record is clear." This allows the client to rethink his prior statement as well as protect the integrity of the record.

If your client does not clue in, ask for a brief recess to review with the client the definition of perjury, its penalties, both civil and criminal, and your ethical obligations as an officer of the court (*see infra*, Section IV, B). Then rephrase the question again in such a manner that the client can offer a brief statement that his lack of understanding of your question led to the inappropriate response.

If your client is being cross examined, determine which approach is best (1) ask to take him on voir dire to clarify his answer, (2) correct the error during your redirect, or (3) ask for a break immediately to discuss the perjury repercussion. Regardless of the tact, you must take necessary action so that the record is accurate.

E. Named as Civil Defendant

Since your client is already in litigation, if he is named as a party in some other action, you will probably be informed. But not always. Ask if there is any other litigation or claims outstanding, either personally or professionally. And when he is sued, obtain a copy of the pleading, and begin providing written notice to all potential insurance carriers and let the carrier take over the defense costs. Any potential conflict in advice can be averted because good divorce advice is rarely good personal injury advice and vice versa. Ensure that your client knows to inform you of all out of the ordinary occurrences.

1. Child Related Liabilities.

It's no surprise that children react to their parents' divorce. Younger children typically regress in behavior and older children typically act out. The type of rebellion drives the issue in any resulting liability the parents may have for property damage done by the child. TEX. FAM. CODE 41.001 *et seq.*

A consideration during custody negotiations regarding rights, duties and privileges should be the attitude of the child, specifically teenagers. If the child is apparently becoming a menace, either before the separation or as a result of the divorce, then confirm that the rights of the parents are spelled out for each parent for specific possession times. The Texas Family Code's default rights and duties during periods of possession, state that a conservator has, "the duty of care, control and reasonable discipline of the child." TEX. FAM. CODE § 153.074(1). This standard, rarely questioned, becomes important if the child damages a third person's property. And as such, that conservator (not just parent) is responsible for his failure to control the child during his period of possession. TEX. FAM. CODE § 41.001, *et seq*. Therefore, if the child causes any type of damage, review the last custody order to determine your client' potential liability for the child's actions.

See Sondra Kaighen; "*She Got the Goldmine, I Got the Shaft;*"; Advanced Family 2001.

2. Client's Own Actions

Insurance will usually provide coverage if a car wreck or business calamity occurs. So be involved in your client's life enough to know what is happening. A common excuse for not informing you of significant legal events is your hourly cost or the idea that you are just the divorce attorney. (The last statement indicates you need to better cross-market your capabilities.)

What you can provide is guidance to your client during the semi critical initial stages of litigation – including appropriate response and document management. Since you are the perceived holder of all documents, check to see what, if any insurance coverage is available. When in doubt, notify the carrier and agent in writing of the claim. Inform your client that one nice thing about insurance, other than covering liability losses, is they pay his attorney fees. You typically then will have to explain that there is no divorce insurance.

F. Child Passport Issues

Although the return of a child due to international abduction is becoming easier, it is

far better to prevent the departure of the child. It used to be that a parent could surreptitiously obtain a duplicate passport for their child, making it easy for that parent to abscond with the child. No more.

The federal government, our friends who are always there to help, actually did enact a law, effective July 21, 2001, that helps protect the innocent parent. Both parents' signatures are now required for a passport application and its issuance or re-issuance. Alternatively, there must be a specific finding that one parent has been given the exclusive right to make application for the passport.

If a parent is concerned regarding the unauthorized departure or obtaining a passport, all she has to do is to fill out a form and forward it to the Department of State. The Department of State will then flag that child's information so as to notify the parent prior to a passport being issued. *See* Appendix D – *Application for Entry into the Children's Passport Issuance Alert Program.*

A good argument is made that a sole managing conservator has the right, exclusive of the other parent, to apply for and receive the child's passport. The "right to represent the child in legal action and to make other decisions of substantial legal significance concerning the child" and "except when a guardian of the child's estate or a guardian or attorney ad litem has been appointed for the child, the right to act as an agent of the child in relation to the child's estate if the child's action is required by a state, the United States, or a foreign government," both support that one parent has the exclusive right for passport application. TEX. FAM. CODE § 153.132(4) and (8).

Additionally, negotiate decree language that requires each parent to obtain the specific written permission from the other parent prior to the child traveling internationally. And, demand specific wording within the orders that the terms of the Hague Convention apply if there is an abduction or wrongful retention. And ask for a bond to be posted prior to departure to ensure return of the child or funds necessary to fight for return of the child.

See Brian Webb, Lynn Kamin, Angela Pence and Doug Woodburn, Chapter 40.

G. Death or Incapacity of Your Client

Sometimes we may no longer want to represent our clients, but we certainly do not want it to be due to their death.

If your client dies, there is more to be done than just closing the file. What about original documents; what about remaining monies owed or left in trust? What distinction should be made if your client is a party or intervenor?

It goes without saying that the initial concern is the children's safety and care given by appropriate family members. After that, your client's position in the case dictates your response.

1. Death

If your client is a party and dies, you should file a Suggestion of Death, *see* Appendix E. This informs the court of the need for dismissal of the lawsuit – if the party is a parent and there are no intervenors. All remaining rights to the children revert to the surviving conservator, usually the parent. If a divorce action is pending, the property will vest according to the decedent's will. Do you have a copy?

At an initial case evaluation, your client's will should be reviewed to ensure it continues to accurately state his desires. If necessary, arrange for preparation and execution of another will and maintain it. This is fertile ground to let your client's wishes regarding custody be known, which in turn may support an intervention.

Be aware that a reasonable amount of time will be necessary to close the file and payment for your time should be requested. Any fees left in trust can be applied to outstanding time previously earned, and unpaid, fees and expense. The contract is still valid. But any remaining funds should be returned to the estate through the executor. Hold the funds until an estate is established and an executor is named. Any additional amounts owed you can also be claimed as an expense of the estate and should be filed as such.

But wait, what about being hired by an intervenor grandparent to continue the custody fight? This can be done if a new will was prepared. Or the disaster arises with the old will because the now widow is the executor and refuses to waive the attorney client privilege such that you may represent another party in the same suit.

If your client is an intervenor, a suggestion of death is still required. But if the intervention is on behalf of grandparents jointly, then be explicit that the intervention is not to be dismissed due to a still surviving intervenor.

2. Incapacity

The easy way to view guardianship of an adult "is simply a managing conservatorship" in the probate court. *In Re Guardianship of Henson*, 551 S.W.2d 136, 139 (Tex.Civ.App. Corpus Christi, 1997, no writ.) But the difficulty, and easily agreed disaster, is in making the decision that your client has become incapacitated.

The varieties of unique situations that arise in these scenarios prohibit an in-depth analysis within this paper. Ultimately, you must determine independently as well as collectively that your client has become incompetent. This is accomplished by reviewing your contact with him, his family members, coworkers and witnesses. If you suspect a mental defect, you must maintain your role as the client's advocate and protect his privileges.

See Robert S. Hoffman, *What To Do With the NCM Client*, Advanced Family, August, 2002; The Journal of the American Academy of Matrimonial Lawyers, Vol. 16, No.2, Summer 2000, *The Impaired Matrimonial Client.*

H. Insurance

Although tort reform is now in place 'to protect us,' insurance rates continue to skyrocket. The insurance companies all claim premium rates are higher due to high claims paid. Regardless of the reason, insurance premiums must be paid during the pendency of the case.

Imagine your client's surprise when a car accident occurs or a typical Texas thunderstorm damages the house, or the client develops a serious medical condition, and only then is informed that insurance has lapsed. All these disasters are easily covered by insurance. It is not a stretch to conceive the denial of any of these claims by asserting no coverage, and therefore no duty to defend, because the policy lapsed due to lack of payment. Who is at fault?

The typical divorce temporary orders include provisions for one party to maintain the health and casualty insurance currently in place for all parties. But allowing your client access to the insuring entities and agents prevents the disaster. Notify the client's agent of the pending divorce and request a declaration sheet of all insurance. Provide this document to your client so that he may confirm what is covered, the coverage amounts and when the next renewal is due. Then make a written request to the agent that either you or your client to be notified when the premiums are paid, as well as if they are not.

And when the divorce is over and an obligor is ordered to maintain life insurance in a policy amount no less than the current fair market value of the remaining child support amounts, ensure the children are the listed beneficiaries and the custodial parent is allowed to review and determine active coverage. It does little good if the custodial parent cannot review the policy and satisfy herself that it is active.

See Susan Myers; *What Every Family Lawyer Should Know About Insurance Policies;* Family Law on The Front Lines, UT School of Law CLE , April, 2002.

See Sally Holt Emerson, *Insurance Aspects of Divorce*; Marriage Dissolution, May, 2000.

III. DISASTERS FOR YOUR CASE

Although surprises for your client tend to cause you more grief, a case wide disaster still provides you plenty of opportunities to demonstrate your skill. Your advocacy and ability to represent your client can truly shine if you are able to take a disaster affecting both parties and have your client come out on top, or at least not worse than the opposing party.

A. Drug Testing

Drug testing continues to take an active role in custody litigation. The courts are increasingly taking the position that if you use drugs, you can't have possession of your children. Therefore, it makes little difference to argue about the ages of the children or about the type of drug used. This movement in position may be due to an increase in the number and effects of designer drugs, the experiences of the judge or the increase in rehabilitation opportunities available to all those that desire help. Regardless of the reason, know your judge's propensities and keep the following in mind to make sure a disaster does not occur when your judge orders a drug test at a hearing.

1. Zero tolerance

Ask your client at the initial office conference if either party has used drugs and, if

so, ascertain the length of use and type of drug used. If your client admits previous drug use, tell the client to stay clean and hopefully obtain a tactical advantage against the other party. But, my experience tells me that if one parent uses drugs, usually both use drugs.

An easy upper-hand advantage is to have your client take an immediate drug test. If the results are negative, prepare for your temporary orders hearing. If the results are positive, bide your time with written instructions to your client to stay clean. Even if your client has used drugs, if you can prove your client has been clean for 3 or 4 weeks before the initial hearing, it will go a long way in helping convince the court that your client does not have a long-term problem. If you know how the judge will respond, you can advise your client.

Determine the cost and where different testing facilities are located -- at the county probation office, a health care facility, or private lab. Know if the judge has a preference. Know the turn around time for results.

Does the judge in your case usually put the case on hold until results are obtained? In East Texas, we are often able to get drug tests performed and obtain the results within a few hours. Therefore, East Texas courts usually stop the hearing, send both parties for testing, await the results, and continue the hearing that afternoon or the next day.

Be aware of your court's tolerance position on illegal drugs. One local judge is of the opinion that you cannot use any illegal or nonprescription drug and have unsupervised access to the children. Consider, however, the conflicting attitudes about drug and alcohol use. A court will agree for an alcoholic to care for the children, just as long as he doesn't drink 12 hours prior to or during possession of the children. But the argument will rarely be accepted that a parent can be a good parent if the parent only uses drugs when the parent does not have possession of the children. Courts regularly find that if drugs are in a person's system, even if they were used while the party did not have the children in his or her possession, the drug use will adversely affect his or her ability to care for the children.

If your court is of the opinion that zero tolerance is an appropriate standard, make certain that your motion and order directs the testing facility to test on a zero-tolerance level. *See* Appendices F & G – *Motion* and *Order for Zero Tolerance Drug Screening*. Most testing facilities allow a nominal amount of drugs in the system before a positive result is reported due to their cut-off levels. Although marijuana may be in the system, its concentration may be below the cut-off level and therefore create a technically negative result. Nonetheless, the only way marijuana can be introduced into the system is through illegal use. If the order directs the testing facility to register any level of drugs in the person's system as a positive result, then you may have the advantage.

The other important distinction is the creatinine level within the urine. Creatinine is a naturally occurring enzyme that is released and flushed out of the system at a regular rate. The over-the- counter flushing agents skew this creatinine level to facilitate lower test results. Learn about this enzyme. A good predictor of the amount of drug use and its timing of use is to compare the creatinine levels over several days. Know if your judge feels that the presence of a flushing agent or even a diluted sample creates a presumption in the court's mind of a positive result.

2. Timing

An advantage may be achieved by the timeliness of your filing, both the original pleading and request for testing. You obviously don't want to file a motion for drug screening on a Wednesday and not have the hearing until the following Monday or Tuesday. Therefore, I recommend the motion be filed immediately before a temporary hearing so the opposing party does not have time to ingest any commercially available flushing agent. You may have a concern regarding improper notice, so assert and provide supporting facts for an emergency and ask that the order be implemented *instanter*.

The best position for you to take is the proverbial argument "if he has nothing to hide, he should not fear taking the test." Similarly, include in your motion and order a provision that the parties not consume any substance of any kind from the time they leave the courtroom until their arrival at the lab for their observed collection. *See* Appendix F for a proposed motion and Appendix G for a proposed order.

And have a temporary plan to present to the court for the care of the children pending results

of the drug testing and continuation of the temporary hearing. Are there grandparents or other persons available who will step in to take temporary possession or supervise the parent until the Court makes additional temporary orders?

See Earle Lilly, George Glass, Hon. Lisa Beebe, Chapter 46.

See Texas Family Law Practice Manual, Section 8, Forms 8-61 and 8-62.

B. Federal Government Agencies

How is a paper about disasters, including death, complete without a section regarding taxes. Does the old adage "We are from the government and we are here to help," give you that warm fuzzy feeling? Me neither.

1. IRS

Did one party fail to file their tax return? Did some contract labor styled income fail to make it on the return and the other party is aware of it? If so, an improper or incomplete tax return becomes a double-edged sword.

If no tax returns have been filed, immediately coordinate with the opposing party's attorney for the clients to jointly hire a CPA to assist in filing returns. If the parties can't agree on a joint CPA, send your client anyway. Convince your client that dealing with the IRS later is worse than dealing with their soon to be ex-spouse. If a property settlement is negotiated, and a past tax liability arises later, the higher wage earning spouse will usually take the hit. It is better to put off the divorce to let the IRS determine liability, than to have an unknown debt.

Similarly, if the IRS debt is negotiated, the obligor has a good argument that his child support should be lower because of the federally mandated community property taxes due. TEX. FAM. CODE § 154.123(b)(16).

Always review the tax returns and compare them with the inventory and appraisement as well as applications for credits. Lying on a loan application to a federally insured money lending institution is subject to prosecution. Can anyone say "Dan Morales"?

Lindsey Short, Jr.; *Estate Planning vs. Family Law (aka IRS vs. Spouse);* Advanced Family, August, 2000.

2. INS

Typically, the Texas family courts don't care if your client is a US citizen, naturalized permanent resident, or undocumented immigrant. But the other side does, and you should too.

Do not rush into a hearing, which requires both parties to be under oath until you determine your client's immigration status. Obviously, a citizen has no problem going forward, but a naturalized permanent resident continues with the concern of accusation of criminal activity – either family violence or otherwise.

Many undocumented aliens either have pending applications or have overstayed their visas. Either one presents the unique challenge of protecting their interest of not being detained or deported. And not only is it in the client's best interest, but also usually that of their soon to ex-spouse either for monetary reasons or for child rearing.

Resolve this issue early on with your client and provide to them in writing your mutual decision on how to proceed. Then coordinate, it at all possible, with opposing counsel to ensure that both parties' interests are maintained.

C. Receiver

Receivers are typically case wide disasters because the net proceeds from the sale of property is substantially reduced after paying the receiver's fees; or if a business is involved, it will be difficult to recover after the hiatus of the proprietor.

Although receivers are rarely appointed, the applicant must only show that the parties' property is in danger of being lost, removed, or materially injured and a less harsh remedy is unavailable. TEX. FAM. CODE § 6.502. This seemingly easy burden of proof is difficult in practice. Rarely will a party be successful in asserting the need for a receiver at the very beginning of the case.

An urban legend had rooted in my mind that receivers were not allowed to be appointed at temporary orders hearing. This, like most urban legends, is bunk. Receivers may be appoint upon proper pleadings, notice and proof. But one saving grace is that each party is entitled to three days notice, TEX. R. CIV. P. 695. So, a temporary orders hearing may indeed be a premature venue to determine whether a receiver is necessary.

The other item that you as the family law attorney may take some comfort in is that a court is only allowed to appoint a receiver, via the Texas Family Code, for the parties' benefit, not that of a third party. *Mallow v. Payne and Vendig*, 750 S.W.2d 251, 256 (Tex.Civ.App.-Dallas 1988, writ den.) If a third party intervenes in the underlying divorce and seeks a receiver, carefully consider hiring separate counsel to defend that action. Check on insurance availability, not likely applicable, and pay the new counsel from the business to assist you in the ongoing case(s). You may be able to play good cop, bad cop with either the intervenor or the opposing spouse.

Another improper use of receivers is for the court to order a party, via turnover statutes, to pay his wages to the receiver to satisfy child support arrearage. *Caulley v. Caulley*, 806 S.W.2d 795, 797 (Tex. 1991.)

See Barbra Runge, *Who's Minding The Store? Dealing With Receiverships*, Advance Family Law, 2001.

See Joseph Indelicato, Jr., *Real Estate Appraisals and Receivers-How to Use and Abuse*, Marriage Dissolution, May, 2003.

D. Mandamus or Disqualification

Changing judges midstream is costly and difficult to decide. The factors to consider in each situation are best suited for its own article. *See* Georganna Simpson and James Vaught, Chapter 47. Regardless of the reasons, be sure your client understands and consents in writing the reasons for your decisions, the potential repercussions and cost in money and time.

Although visiting judges will not be as prevalent in the future as in the past due to the state budgetary constraints, an unwanted visiting judge can ruin your case. This disaster is easily prevented by carrying with you a typed, but blank, form for objection to the assigned judge. Any objection to an assigned or visiting judge must be made in writing specifically identifying the judge and be filed prior to the first hearing over which that judge presides. GOV'T CODE § 74.053(c). You get unlimited number of objections to visiting judges, but each party only gets only one objection to an assigned judge – so choose wisely, for the devil known, may be better than the devil unknown.

E. Witness Issues

The typical custody case can turn on the testimony of a single quality witness. No matter how you discover them, interview them independent from your client before they take the stand. It is amazing how candid they become when speaking with a lawyer and away from your client. Although you may not be able to prevent a disaster from occurring with the opposing party's witness, your damage control begins before they take the stand.

Question your opposing party's witness before they take the stand. If they speak with you, you are able to craft questions and appropriate retorts if applicable. Your client may be able to lessen the sting of the testimony before it is said by offering a brief explanation. Of if the witness refuses to speak with you prior to taking the stand, that becomes your first question to discredit his credibility. If he is unwilling to speak with you, what is he trying to hide or why is he refusing to provide the information. Don't forget that your competent legal assistant can be fully utilized to visit with a potential witness who may identify with her, either as a non-lawyer or as a female, better than with you.

1. Arrest

Before you present any witness, ask them two questions: (1) are there any criminal issues, past or present, that you or I need to worry about, and (2) are there any questions you are afraid to answer? Typically, the criminal issues can be fleshed out such that they can be neutralized, and if they are not, then you can decide whether to include an explanation up front or not call the witness at all.

The second question regarding feared questions typically elicits bad information on behalf of your client that becomes very important. The witness wants to help you and wants to tell the truth, both reasons for testifying. And since the desire to help is present, the witness will tell you what may hurt your client's case.

2. Violation of "The Rule"

All lawyers know about "The Rule." We know how to invoke it, to whom it applies, what it means and the consequences for it being violated. But our clients and our witnesses do not.

A brief explanation of the Rule is so easy to cover with clients and witnesses. Explain what it is, why it is in place and for how long it is applicable. And then give them the attached Appendix H so they have no question about being informed.

If a client violates the rule, beware the wrath of the court. But what constitutes a violation? Can you visit with a witness who is under the Rule with your client present? If not, why not? No one will say you can't turn around and tell your client exactly what the witness just said.

What about telling one witness who is under the rule what testimony a prior witness has provided? Is that a violation of the rule?

For further discussion of evidentiary issues, *see* Sydney Beckman, Chapter 70.

F. Bankruptcy

Much has been written on this topic and in more detail than is appropriate to cover here. Suffice to say that bankruptcy courts do not grant the latitude that the typical state court provides in deadlines, pleading and proof requirements. As such, enlist the assistance of a knowledgeable bankruptcy attorney to facilitate the lifting of the stay. Be aware that if you are dividing property during a divorce, that the divorce court's property division is subject to review by the bankruptcy court.

See Chapter 59, Joseph Friedman

See Appendices I, J, and K – *Notice of Bankruptcy, Motion to Lift Stay,* and *Order Lifting Stay.*

G. Fire, Flood or Wind Storm

By anyone's definition, a fire, flood or windstorm is a disaster for the case and the clients. You nor the client has any control of the weather but you can ensure that the legal damage is minimized. Wind storms or floods are acts of nature, and hard to say they were caused by the other side, even if he is a blow hard. Fire, on the other hand, is not always fortuitous.

The initial factor to review is who had possession of the property. Then determine if either party had reason to destroy the property or would benefit by its destruction. Do not forget to consider the property's ownership – community property or separate property. But be careful regarding allegations of arson due to the criminal repercussions, either for the arson itself or for the potential insurance fraud.

But there is potential recourse to the innocent spouse regarding insurance. The Texas Supreme Court has determined that the "…illegal destruction of jointly owned property by one co-insured shall not bar recovery under an insurance policy by an innocent co-insured. *Kulubis v. Texas Bureau Underwriters,* 706 S.W.2d 953, 955 (Tex. 1986)*; Cf: Jones v. Fidelity & Guaranty Ins. Co.,* 250 S.W.2d 281 (Tex.Civ.App.-Waco 1952, writ ref'd.) With this in hand, you don't always have to shy away from asserting a potential arson charge, if appropriate.

If the insurance agrees to pay, what do you do with the funds? Consider having the court order the insurance company to make the insurance proceeds check payable to you as trustee of the parties. But, clarify within the order that your trustee position is only as to the insurance funds and ends at time of disbursement.

See Susan Myers, *What Every Family Lawyer Should Know About Insurance Policies;* Family Law on The Front Lines, UT School of Law CLE , April, 2002.

See Sally Holt Emerson, *Insurance Aspects of Divorce*; Marriage Dissolution, May, 2000.

H. Docket Issues

Every client wants to feel that their case is the only one you have, wants every hearing to be heard when it is scheduled, and wants every deadline upheld. We try, but are not always successful.

Explain how the particular court their case drew works and how the judge and coordinators typically handle the hearings, schedules and trials. Expound that other cases are set with yours, and theirs may be heard ahead of yours and why.

When a case is specially set, we tend to prepare a little more. We know the odds are in our favor that the hearing will be reached. If your case is not specially set, then prepare an opening statement to the judge for when he calls the docket.

You client's case, and a dozen others, are all competing for that one time slot for the day. Instead of stating, "Your honor, Bruce Bain on behalf of Respondent, Joe Smith, and we are ready on temporary orders hearing," announce, Your honor, Bruce Bain on behalf of Joe Smith, Respondent and we are ready for temporary

orders hearing because Mr. Smith has not seen his children for over a week." Think ahead and announce to the court the one or two sentence reason why your client's case must be heard that day.

I. Death or Incapacity of Opposing Party

Similar to the death of your client, a suggestion of death should be prepared and filed. *See* Appendix E. Again, review the decedent's will, if applicable, and inform you client of the probate procedures he can expect. If he was the soon to be ex-spouse, another family member may assert he is unqualified to serve as executor. Prepare your client that his divorce fight in regards to community or separate property may continue into the probate estate.

IV. PERSONAL DISASTERS

Most of us want to practice law for fun and profit. Profits are important and necessary. But the fun aspect sometimes takes a backseat. Your client never wants to hear from his doctor or his lawyer that his case in interesting. But that is what we want to see regularly – a new issue, an unknown fact pattern or application of new law. When we stop viewing our cases as interesting, then we set our selves up for disaster.

A. Your Own Health (or Lack Thereof)

Practice family law because you want to help others, you enjoy doing what you do and you are good at it. Otherwise, you will dread the workday, delay beginning projects and miss deadlines.

See Jim Loveless, Chapter 60.

See Justice Ann McClure, *Lust, Lawyers and Liability: Alice in Search of Wonderland,* Advanced Family Law, August, 2002.

B. Grievance

The sun has not set on the State Bar, but the grievance procedure is changing again due to the twilight. It appears that the 'old rules' will apply for all grievances filed on or before December 31, 2003. Any grievance filed after January 1, 2003 will be applied under the new procedures, which are incomplete as of this paper's publication.

The two most commonly cited pieces of advice are: (1) do not ignore a grievance letter. Recall that failure to respond to a grievance inquiry is itself a separate violation that warrants a grievance.

And (2) ask another lawyer to assist you in your response. Another lawyer has reviewed the complaint and believes that it may have some merit. But a fresh, candid perspective is what will allow you to respond in the best manner possible.

See Edwin Davis, Chapter 32.

C. You Are Held In Contempt

Most judges do not want to hold attorneys in contempt. There is a lot of paperwork involved. No amount of writing or discussion can flesh out all possible ways you may find yourself in this all too likely a situation. But what will make a difference is how you respond to the words, "Counselor, you are in contempt of this court."

When the judge threatens to hold you in contempt or actually so finds, you should immediately stop talking. During this heavy period of silence consider each of the following items.

- What was said, by whom and how was it said. Consider the tone of voice and what statements occurred immediately preceding the fateful exchange.
- You are the advocate, not the client. The questions, not statements, should have been directed to the witness. Were they? Was the statement a sidebar comment?
- The court is the neutral fact finder and is due respect. Was the court afforded the appropriate deference?
- Was the statement a response to another statement or a declaration?

After you review all the above in about three seconds, then you should sincerely apologize, if appropriate and possible. You do not have to admit that you were wrong, that the statement was unfounded or that the statement could not be properly advanced in another format. But a declaration by you that the statement was inappropriate coupled with some amount of contrition will go a long way in diverting the disaster.

If the court continues to insist on an adverse monetary action against you, request if you may pay the 'voluntary' contribution to a local charity, such as CASA or a local Legal Aid clinic. This middle ground is a much more palatable solution for all involved allowing each person to save face. And when you pay the contribution, carefully consider whether it needs

to be from an anonymous donor or in the honor of the judge.

If the judge continues to insist on the contempt ruling and requests the bailiff to take you into custody, say nothing further other than to request permission to retrieve a document from your brief case. That document is an application for personal recognizance. *See* attached Appendix L. Our attorney legislators have allowed us, as an officer of the court, to an automatic personal recognizance bond upon a contempt finding by the judge. TEX. GOV'T CODE § 21.002(d).

V. CONCLUSION

Some of the advice is common sense. Some of the advice is statutory reminders. And some of the advice is learned from the trenches. But the common thread that ties them all together is that it is better to know about the problem before it either occurs or is made known to the judge. Only with proper preparation will your client, his case and your sanity emerge intact.

INVOCATION OF CONSTITUTIONAL RIGHTS

Upon advice of counsel, I choose to remain silent and not answer that question based on the rights afforded me pursuant to both the United States Constitution, via the 5th and 14th Amendments, and the Texas Constitution, Article 1, section 10.

APPENDIX A

WARNING

YOU WILL BE **PROHIBITED FROM POSSESSING ANY FIREARMS FOR LIFE**, IF YOU ARE CONVICTED OF A MISDEMEANOR CRIME OF DOMESTIC VIOLENCE.

Please consult with your attorney and/or review the law if it affects you!

18 U.S.C. § 922(g)(9) states:

> It shall be **unlawful** for any person . . . who has been **convicted** in any court of a **misdemeanor crime of domestic violence**, **to** ship or transport in interstate or foreign commerce, or **possess** in or affecting commerce, **any firearm or ammunition**; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

18 U.S.C. 921(a)(33)(A) defines "misdemeanor crime of family violence" as a crime which:

> "has, as an element, the **use or attempted use of physical force**, or the **threatened use of a deadly weapon**, committed **by a current or former spouse, parent, or guardian** of the victim, by a person with whom the victim **shares a child** in common, by a person who is **cohabiting** with or has cohabited with the victim as a spouse, parent, or guardian, or by a **person similarly situated** to a spouse, parent, or guardian of the victim.

VIOLATION OF 18 U.S.C. § 922(g)(9) IS A **FEDERAL FELONY** WHICH CAN SUBJECT YOU TO **IMPRISONMENT AND A FINE!**

I acknowledge that I have been advised of this law.

_____ _____

Signature Date

APPENDIX B

WARNING

YOU MAY BE **PROHIBITED FROM POSSESSING ANY FIREARMS**, IF THIS COURT ISSUES AN ORDER WHICH RESTRAINS YOU FROM HARASSING YOUR SPOUSE OR OTHER INTIMATE PARTNER.

This includes **restraining orders**, **protective orders**, **temporary injunctions**, **permanent injunctions**, and any other orders meeting the definition. Please consult with your attorney and/or review the law if it affects you!

18 U.S.C. § 922(g)(8) states in part:

"It shall be **unlawful** for any person . . . who is subject to a **court order** that -

(A) was issued after a **hearing** of which such person received **actual notice**, and at which such person had an **opportunity to participate**;

(B) **restrains such person from harassing**, stalking, or threatening an **intimate partner** of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(i) includes a **finding that** such person represents a **credible threat to the physical safety** of such intimate partner or child; or

(ii) by its terms explicitly **prohibits the use**, attempted use, or threatened use **of physical force** against such intimate partner or child that would reasonably be expected to cause bodily injury

to ship or transport in interstate or foreign commerce, or **possess in or affecting commerce, any firearm or ammunition**; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

VIOLATION OF 18 U.S.C. § 922(g)(8) IS A **FEDERAL FELONY** WHICH CAN SUBJECT YOU TO **IMPRISONMENT AND A FINE!**

I acknowledge that I have been advised of this law.

_____ _____

Signature Date

APPENDIX C

ENTRY INTO THE CHILDREN'S PASSPORT ISSUANCE ALERT PROGRAM

REQUEST FORM. Complete one form for EACH child, and submit the completed and SIGNED request to the Office of Children's Issues by mail or fax.

Please provide information about each child in order to make the alert system effective. Please PRINT CLEARLY OR TYPE the information.

Child's Full Name:
Date of Birth:
Place of Birth:
Sex:
Social Security Number:
US Passport Number(s):
Foreign Passport Number(s). List any other country involved:

Please provide the following information about yourself so that we can acknowledge your request, and alert you in the future.

Your Name:
Relationship to the child shown above:
Mailing address:
Telephone Numbers/Fax Numbers:

I request that my child's name, as shown above, be entered into the Children's Passport Issuance Alert Program. Please notify me of any pending United States passport applications, and any United States passports still valid for travel.

Signed: _____ Dated: _____

(Customary legal signature of parent or guardian)

Please mail or fax the completed, signed form(s) to:

Office of Children's Issues
2401 E. Street, NW, SA-1, Room L-127
Washington, DC 20037
FAX: 202-312-9743

APPENDIX D

CAUSE NO. _____

IN THE MATTER OF	§	IN THE COURT
THE MARRIAGE OF	§	
	§	
PETITIONER	§	IN AND FOR
AND	§	
RESPONDENT	§	_____COUNTY, TEXAS

SUGGESTION OF DEATH

COMES NOW (Attorney's name), Movant, who formerly served as the attorney for (client's name), and files this Suggestion of Death in accordance with TEX. R. CIV. PROC. 150, 151, and 63, and in support thereof would respectfully show the Court as follows:

I.

Movant has been advised by _____ that (client's name) recently died. Movant [does/does not] have a copy of the Death Certificate.

II.

The death of a party abates an action where the relief requested is purely personal, for example a divorce and its incidental inquiries of property rights and child custody. *Whatley v. Bacon*, 649 S.W.2d 297 (Tex. 1983).

The proper procedural disposition of a divorce action when one of the parties dies is dismissal. *Garcia v. Daggett*, 742 S.W.2d 808 (1987).

PRAYER

WHEREFORE PREMISES CONSIDERED, Movant requests that the Court resolve this matter in accordance with the requirements of the law.

ATTORNEY'S CLOSING

CERTIFICATE OF SERVICE

APPENDIX E

CAUSE NO. _____

IN THE MATTER OF	§	IN THE COURT
THE MARRIAGE OF	§	
	§	
PETITIONER	§	
AND	§	
RESPONDENT	§	IN AND FOR
	§	
AND IN THE INTEREST OF	§	
CHILD NAME	§	
A MINOR CHILD	§	_____ COUNTY, TEXAS

MOTION FOR EMERGENCY DRUG SCREENING

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW (client's name), Petitioner, and files this *Motion for Emergency Drug Screening*, and in support thereof would show the Court the following:

Petitioner, based upon information and belief, asserts that Respondent has used illegal drugs or non-prescription during his/her possession of the child in the immediate past for which he/she does not have a valid prescription.

Petitioner therefore requests the Court to order Respondent to submit himself/herself *instanter* to determine the presence of illegal substances.

Petitioner requests the Court to order Respondent not to consume any substance of any kind until he/she submits himself/herself to and performs the required screening.

Petitioner requests the Court order that the costs associated with this testing be initially paid by Petitioner, and if Respondent tests positive for the presence of a controlled or illegal substance, than Respondent be ordered to reimburse Petitioner within 7 days of receipt of the results.

Petitioner requests the testing facility be ordered to utilize a zero tolerance level for detection of controlled substances and illegal drugs and if any positive results are obtained, additional testing is performed to determine, if possible, the identity of the detected drug or substance.

Petitioner requests if (Respondent's name) tests positive for a controlled substance for which he/she does not have a valid prescription or for illegal drug or fails to comply with the terms of the court's order when requested to submit to a drug screening, all periods of possession by (Respondent's name) shall be discontinued until further order of the Court.

WHEREFORE PREMISES CONSIDERED, Petitioner prays the Court grant this Motion and order the drug screening *instanter* as requested above.

Petitioner further prays that he/she be awarded such additional relief to which he/she is entitled.

ATTORNEY CLOSING

CERTIFICATE OF SERVICE

CERTIFICATE OF CONFERENCE

CAUSE NO. _____

IN THE MATTER OF	§	IN THE COURT
THE MARRIAGE OF	§	
	§	
PETITIONER	§	
AND	§	
RESPONDENT	§	IN AND FOR
	§	
AND IN THE INTEREST OF	§	
CHILD NAME	§	
A MINOR CHILD	§	_____ COUNTY, TEXAS

ORDER FOR DRUG SCREENING INSTANTER

On _____, 2003, it was requested and the Court finds that Respondent, (Respondent's name), should undergo random drug screening *instanter* before 5 p.m. on _____, 2003 to determine the presence of illegal substances.

IT IS THERFORE ORDERED that the testing facility utilize a zero tolerance level for detection of controlled substances and illegal drugs and if any positive results are obtained, additional testing is performed to determine, if possible, the identity of the detected drug or substance.

IT IS FURTHER ORDERED that Respondent, (Respondent's name), present himself/herself to (the lab's name) located at _____, and submit to a ten-panel urinalysis *instanter* to determine any presence of controlled or illegal substances. (Respondent's name) is ORDERED to sign whatever

authorization is necessary to permit the laboratory conducting the drug screening to furnish the drug screening results of the spontaneous drug screening directly to the attorneys for both parties.

IT IS FURTHER ORDERED that Respondent is not to consume any substance of any kind until he/she submits himself/herself to and performs the required screening.

IT IS FURTHER ORDERED that Respondent provide a copy of this order to the testing facility when he/she presents himself/herself for the screening.

If (Respondent's name) tests positive for a controlled substance for which he/she does not have a valid prescription or illegal drug or fails to comply with the terms of this order when requested to submit to a drug screening, all periods of possession by (Respondent's name) shall be discontinued until further order of the Court.

IT IS FURTHER ORDERED that the cost of such testing shall be initially borne by the Petitioner, (Petitioner's name), unless a positive result is obtained. If a positive result is obtained, the Respondent is ORDERED to reimburse Petitioner the cost of the screening within 7 days of receipt of the results.

SIGNED on _____, 2003.

_____

JUDGE PRESIDING

THE RULE

(To be Given to Witnesses)

Texas Rules of Evidence 614

At the request of a party the court shall order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order of its own motion.

…

Texas Rules of Civil Procedure 267

a.) At the request of either party, in a civil case, the witnesses on both sides shall be sworn and removed out of the courtroom to some place where they cannot hear the testimony as delivered by any other witness in this cause. This is termed placing witnesses under the Rule.

…

d.) Witnesses, when placed under Rule 614 of the Texas Rules of Civil Evidence, shall be instructed by the Court that they are not to converse with each other or with any other person about the case other than the attorneys in the case, except by permission of the court, and that they are not to read any report of or comment upon the testimony in the case while under the Rule.

e.) Any witness or other person violating such instructions may be punished for contempt of Court.

VIOLATIONS OF THE RULE BY A WITNESS CAN BE PUNISHED BY THE COURT BY PUTTING THE WITNESS IN JAIL!

VIOLATION OF THE RULE CAN LEAD TO A WITNESS' TESTIMONY BEING EXCLUDED FROM TRIAL!

THIS COURT WILL NOT TOLERATE A VIOLATION OF THE RULE!

APPENDIX H

CAUSE NO. _____

IN THE INTEREST OF	§	IN THE COURT
	§	
	§	
CHILD NAME	§	IN AND FOR
	§	
A MINOR CHILD	§	_____ COUNTY, TEXAS

SUGGESTION OF BANKRUPTCY

(Name of client) informs this Court that (name of person filing bankruptcy), [Petitioner/Respondent] herein, filed for bankruptcy on _____, 2003, under Chapter [7/12/13] of Title 11 of the United States Code in the United States Bankruptcy Court for the [Western/Eastern/Southern/Northern] District of Texas, _____ Division.

A file-marked copy of the Petition in Case No. _____ is attached as Exhibit A and incorporated by reference.

ATTORNEY CLOSING

CERTIFICATE OF SERVICE

APPENDIX I

BRUCE D. BAIN
BAIN, FILES, JARRETT & BAIN
A Professional Corporation
109 West Ferguson
P.O. Box 2013
Tyler, Texas 75710-2013
903/595-3573
903/597-7322 (FAX)

ATTORNEYS FOR _____

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE _____ DISTRICT OF TEXAS
_____ DIVISION

IN RE:	**§**	
	§	
_____	**§**	**CASE NO. _____**
	§	
DEBTOR	**§**	**CHAPTER [7/12/13]**

MOTION OF (Name of Client)
FOR RELIEF FROM AUTOMATIC STAY AND
WAIVER OF 30-DAY HEARING REQUIREMENT,
AND REQUEST FOR HEARING IN _____, TEXAS

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now (name of client), and files this his/her *Motion for Relief from Automatic Stay and Waiver of 30-Day Hearing Requirement and Request for Hearing in _____, Texas,* to permit him/her to pursue all matters pending or to be filed in Cause No. _____ in the _____ Judicial District Court, _____ County, Texas.

Cause No. _____ referenced above is styled **IN THE INTEREST OF _____, A MINOR CHILD**, and involves issues relating to conservatorship and child support of the minor child.

1. If the Bankruptcy Court has jurisdiction over this proceeding pursuant to 11 U.S.C. §362 of the United States Bankruptcy Code, the stay should be lifted to permit the pending issues and any issues to be filed to proceed in that state court cause of action.

NOTICE

ANY OBJECTION OR REQUEST FOR HEARING MUST BE FILED WITH:

UNITED STATES BANKRUPTCY COURT
[COMPLETE ADDRESS]

UNLESS A WRITTEN OBJECTION OR REQUEST FOR HEARING IS FILED WITHIN 15 DAYS, INCLUSIVE OF MAILING TIME, FROM THE DATE SHOWN IN THE CERTIFICATE OF SERVICE HEREIN, THIS MOTION SHALL BE DEEMED TO BE UNOPPOSED AND THE COURT MAY ENTER AN ORDER WITHOUT A HEARING REFLECTING THAT THE AUTOMATIC STAY HAS LIFTED.

WHEREFORE, PREMISES CONSIDERED, (name of client) (Movant), prays that the automatic stay be lifted to permit all pending causes of action and issues to be filed to proceed in Cause No. _____, _____ Judicial District Court, _____ County, Texas.

ATTORNEY CLOSING

CERTIFICATE OF SERVICE (MUST INCLUDE TRUSTEE, AND OTHERS)

BRUCE D. BAIN
BAIN, FILES, JARRETT & BAIN
A Professional Corporation
109 West Ferguson
P.O. Box 2013
Tyler, Texas 75710-2013
903/595-3573
903/597-7322 (FAX)

ATTORNEYS FOR _____

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE _____ DISTRICT OF TEXAS
_____ DIVISION

IN RE:	**§**	
	§	
_____	**§**	**CASE NO. _____**
	§	
DEBTOR	**§**	**CHAPTER [7/12/13]**

ORDER ON MOTION FOR RELIEF FROM STAY

On this day, came on to be considered the Motion of (name of client) for Relief From Automatic Stay and the Court finding that no objection has been filed and that the Motion should be in all things granted;

IT IS ACCORDINGLY ORDERED that stay is hereby lifted to permit all pending causes of action and issues to be filed relating to the conservatorship and support of (name of child) to proceed in Cause No. _____, ____ Judicial District Court, _____ County, Texas.

SIGNED on _____, 2003.

_____
JUDGE PRESIDING

APPENDIX K

CAUSE NO. _____

IN THE INTEREST OF	§	IN THE COURT
	§	
	§	
CHILD NAME	§	IN AND FOR
	§	
A MINOR CHILD	§	_____ COUNTY, TEXAS

MOTION FOR RELEASE ON OWN RECOGNIZANCE AND HEARING BEFORE ASSIGNED JUDGE ON CHARGE OF CONTEMPT

TO THE HONORABLE JUDGE OF SAID COURT;

(Name of Movant), Movant, makes this motion to secure his/her release on his/her own recognizance and a hearing before an assigned judge on the charge of contempt of court.

I.

Section 21.002(d) of the Government Code provides that an officer of a court who is held in contempt by the trial court must, on proper motion filed in the court, be released on his or her own personal recognizance pending a determination of guilt or innocence by an assigned judge who is not the judge of the offended court.

II.

Movant is the attorney for the petitioner/respondent in the above entitled and numbered cause. Movant is therefore an officer of the court entitled to invoke the procedure set out in Government Code Section 21.002(d).

III.

On [date], the Honorable Judge _____ of the _____ District Court held Movant in contempt of court and sentenced Movant to ____ days confinement in county jail and a fine of $_____.

IV.

The contempt order resulted from Movant's _____.

WHEREFORE PREMISES CONSIDERED, Movant requests the court to:

Issue an order releasing Movant on his/her own recognizance [add if appropriate, request that order be directed to sheriff if contemnor is currently confined];

Request the presiding judge of the administrative judicial region to assign a judge to determine Movant's guilt or innocence of the alleged contempt;

Issue or cause to be issued a show cause order setting forth with specificity the charges against Movant, and giving reasonable notice of the time and place of the hearing.

Attorney Closing

Certificate of Service