

Agenda

“How To Handle Your First _____” CLE

Charleston County Family Court Liaison Committee

June 3, 2011

Course Number 112280

8:30 – 8:45 AM	Registration	
8:45 AM	Opening remarks	Greg Forman
9:00 – 9:30 AM	First <i>Ex Parte</i> Motion	Elizabeth Stringer
9:30 – 10:00 AM	First Temporary Hearing	Natalie Parker Bluestein
10:00 – 10:30 AM	First Domestic Abuse case	Rita Roache
10:30 – 10:45 AM	BREAK	
10:45 – 11:15 AM	First Rule To Show Cause Prosecution	Alex Cash
11:15 – 11:45 AM	First Rule To Show Cause Defense	Emily Johnston
11:45 – 1:00	LUNCH (on your own)	
1:00 – 2:00 PM	First Trial	Melissa F. Brown and Thomas McDow
2:00 – 2:30 PM	First Deposition (defending and taking)	Paul Tinkler
2:30 – 2:45 PM	BREAK	
2:45 – 3:15 PM	First Custody case	Joseph P. Cerato
3:15 – 3:45 PM	First DSS Abuse and Neglect case	Mary Ann Hall
3:45 – 4:15 PM	First Motion to Compel	Diane C. Current
4:15 – 4:45 PM	First Grievance	Tex Davis

TABLE OF CONTENTS

June 3, 2011 CLE *Handling Your First*
CLE, #112280

Handling Your First Ex Parte Motion	Elizabeth Stringer.. 3
Handling Your First Temporary Hearing	Natalie Parker Bluestein.. 17
Handling Your First Domestic Abuse case	Rita Roache. 75
Handling Your First Rule To Show Cause Prosecution	Alex Cash.. 108
Handling Your First Rule To Show Cause Defense	Emily Johnston.. 112
Handling Your First Trial	Melissa F. Brown.. 126
	Thomas McDow.. 150
Handling Your First Deposition (defending and taking)	Paul Tinkler. 173
Handling Your First Custody case	Joseph P. Cerato.. 176
Handling Your First DSS Abuse and Neglect case	Mary Ann Hall. 192
Handling Your First Motion to Compel	Diane C. Current. 199

Requesting Ex Parte Relief,

Elizabeth J. Stringer, Esq.

- Introduction.

WHAT IS IT?

Various Definitions of “Ex parte”:

--“Ex parte” means: “On one side only; by or for one party....A judicial proceeding, order, injunction, etc. is said to be *ex parte* when it is taken or granted at the instance and for the benefit of one party only, and without notice to, or contestation by, any person adversely interested.” (See: BLACK’S LAW DICTIONARY, 6th Ed. 1990).

--“A temporary restraining order that is issued without notice to the adverse party to prevent ‘immediate and irreparable injury, loss, or damage’ is a temporary stopgap measure to preserve the status quo....” In re Stephanie B., 826 A.2d 985 (R.I. 2003)

--“An injunction is a drastic remedy issued by the court in its discretion to prevent irreparable harm suffered by the plaintiff.” Scratch Golf Co. v. Dunes West Residential Golf Properties, Inc., 361 S.C. 117 (S.C. 2004).

-- By their nature, Ex parte Orders are contrary to the Fourteenth Amendment to the United States Constitution because they suspend the requirement that the other party be notified and heard prior to their being issued. Because Ex parte Orders deprive an individual of their due process rights, they are only to be used in certain select circumstances.

--One example of ex parte relief is found under SC Code, §63-7-740 which provides for ex parte emergency protective custody of a child without notice to the child's parents or guardians if the parents or guardians are unavailable and if "there is probable cause to believe that by reason of abuse or neglect there exists an imminent and substantial danger to the child's life, health, or physical safety."

WHEN DO I USE IT?

--Pursuant to SC Rule 65 (b), a Temporary Restraining Order (which is issued through an Ex parte Order), shall not be issued "unless it clearly appears from specific facts shown by affidavit or by a verified complaint that immediate and irreparable injury, loss or damage will result to the applicant before notice can be served and a hearing had thereon."

--Think of this as an ambulance ride to the hospital. You simply want the ambulance (ex parte relief) to get you to the hospital (temporary hearing) for a full work up (hearing allowing both parties to be heard) leading to the necessary treatment (Temporary Order with proper notice to both parties). In sum, ex parte Orders are triage just to keep your client or the children from being harmed.

-- In addition to the Department of Social Services use of Ex Parte Orders to obtain emergency protective custody of a child, Ex Parte Orders may be used in situations where one parent's visitation needs to be suspended because of an immediate fear that a child will be harmed. They also can be used in conjunction with the UCCJA in order to request a temporary custody order where one parent has absconded with the child (an interesting case discussing the use of an Ex parte Order on a case involving the UCCJA is Duffy v. Reeves, 619 A.2d 1094 (R.I. 1993)). I can also see ex parte relief requested in the event that one

party was disposing of an asset (selling a house) and the Court needs to intervene with the proper restraining order.

WHAT ARE THE ELEMENTS?

--Generally for a Plaintiff to succeed in obtaining a preliminary injunction/temporary restraining order (issued per an Ex Parte Order), the Plaintiff must establish:

- 1) he would suffer irreparable harm if the injunction is not granted;
- 2) he will likely succeed on the merits of the litigation; and
- 3) there is an inadequate remedy at law.

Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc., 361 S.C. 117 (2004).

--Must look at each element prior to filing to make certain that this case falls into the category of warranting a temporary restraining order/Ex parte Order. This is a mechanism of LAST RESORT.

WHAT PLEADINGS DO I FILE?

- 1) Ex Parte Order (proposed Order for the judge);
- 2) Affidavit supporting request for ex parte relief OR a verified Complaint (or both!);
- 3) Motion for Expedited (or Emergency) Relief;
- 4) Summons and Complaint (if the case has already been opened this may be unnecessary. Obviously this would be necessary in a new action.); and
- 5) Verification.

WHAT ARE THE REQUIREMENTS OF AN EX PARTE ORDER?

- 1) Specific facts must be stated as to why the Ex Parte Order is being issued (what the harm is that the Court is trying to prevent);

2) Court must make a *prima facie* finding that failure to grant the requested relief will lead to irreparable harm. *Prima facie* case means, “A case which has proceeded upon sufficient proof to that stage where it will support a finding if evidence to the contrary is disregarded.” (See: BLACK’S LAW DICTIONARY, 6th Ed. 1990).

3) Expiration date must be stated and cannot last longer than 10 days;

4) Ex Parte Orders must, pursuant to SCRPC 65(c) address the requirement of security (or bond). However, this requirement of a security is discretionary for most family court Ex Parte Orders, SCRPC 65 (c) reads:

Except in divorce, child custody and non-support actions where the giving of security is discretionary, no restraining order or temporary injunction shall issue except upon the giving of security....

5) The attorney seeking the ex parte relief needs to “move” for that relief on the Order.

-- See attached example “Ex-Parte Order” as provided by Gregory Forman, Esq. and thank you to Greg!

--See also attached Rule 65 of the SCRPC which outlines exactly the requirements of an effectual Ex Parte Order.

WHAT ARE THE REQUIREMENTS OF THE AFFIDAVIT (OR VERIFIED COMPLAINT)?

1) The applicant’s Affidavit or the Verified Complaint must state a **FACTUAL** basis for the Temporary Restraining Order and must have evidentiary support. This factual basis must be fully developed and not based on mere fears, thoughts or allegations of the applicant. The granting of a Temporary Restraining order is at the judge’s discretion but must be utilized only in the rare situations which we previously discussed. Zabinski v. Bright Acres Associates, 346 S.C. 580 (S.C. 2001).

- 2) See attached Bar Ethics Opinion 2008-14 regarding the requirements of affidavits which contain hearsay. In short, hearsay in support of ex parte requests or temporary hearings is allowed so long as the hearsay is clearly identified as such.
- 3) In addition, under SC Rules of Professional Conduct, Rule 3.3 (d): “In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision whether or not the facts are adverse.” This is discussed more fully below in the “Potential Ethical Concerns” section.

REMEMBER TO FILE A NOTICE OF MOTION AND MOTION FOR AN EXPEDITED TEMPORARY HEARING!

--Simultaneous with your Ex Parte Order you must file for an Expedited hearing as the Ex Parte Order expires no later than 10 days. Please see attached example of an Expedited Motion.

--Please see Rule 21(a): “Motion for Temporary Relief. A written motion for temporary relief, and notice of the hearing thereof, shall be served not later than five days before the time specified for the hearing, unless a different period is fixed by order of the court. In an emergency situation, such order may be made on ex parte application.”

POTENTIAL ETHICAL CONCERNS

RULE 3.3

(a): A lawyer shall not knowingly:

- (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by a lawyer.
- (3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer’s client, or a witness called by the lawyer, has offered material

evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonable believes is false.

(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

Interpretation of Rule 3.3 as applied to Ex Parte Orders:

i) You cannot present any falsehood to the Court AND you must correct any falsehood once you find it to be untrue. You are responsible for your statements, your client's statements and your staff. Do not present an Affidavit or a Summons and Complaint if you know it to be inaccurate.

ii) Requirement under 3.3 (a) is best summarized by Comment to Rule 3.3 (8), "although a lawyer should resolve doubts about the veracity of testimony or other evidence in favor of the client, the lawyer cannot ignore an obvious falsehood."

iii) Make certain the Affidavits are properly notarized. Do not notarize or allow your staff to notarize documents that are not witnessed. Please see In Re Woods, 390 S.C. 446 (S.C. 2010). You cannot notarize over the phone.

iv) Be candid with the Court if you have made a misstatement or made a mistake. Trying to cover it up will open you up to potential ethics violations. Please see In re Dodds, 366 S.C. 304 (S.C. 2005).

v) Requirement under 3.3 (d) is best summarized by Comment to Rule 3.3 (14)

Ordinarily an advocate has the limited responsibility of presenting one side of the matters that the tribunal should consider in reaching a decision; the conflicting position is expected to be presented by the opposing party. However, in any ex parte proceeding, such as an application for a temporary restraining order, there is no balance of presentation by opposing advocates. The object of an ex parte proceeding is nevertheless to yield a substantially just result. The judge has an affirmative responsibility to accord the absent party just consideration. The lawyer for the represented party has the correlative duty to make disclosures of material facts known to the lawyer and that the lawyer reasonably believes are necessary to an informed decision

- **Conclusion.**
--Fight a fair fight and don't cry wolf!

Rule 65. INJUNCTIONS; MANDAMUS, HABEAS CORPUS, AND OTHER REMEDIAL WRITS.

South Carolina Rules

SOUTH CAROLINA RULES OF CIVIL PROCEDURE

VIII. Provisional and Final Remedies and Special Proceedings

As amended through January 19, 2011

Rule 65. INJUNCTIONS; MANDAMUS, HABEAS CORPUS, AND OTHER REMEDIAL WRITS

(a) Temporary Injunction; Notice. No temporary injunction shall be issued without notice to the adverse party.

(b) Temporary Restraining Order; Notice; Hearing; Duration. No temporary restraining order shall be granted without notice of motion for the order to the adverse party unless it clearly appears from specific facts shown by affidavit or by a verified complaint that immediate and irreparable injury, loss or damage will result to the applicant before notice can be served and a hearing had thereon. Every temporary restraining order granted without notice shall be endorsed with the date and hour of issuance; shall be filed forthwith in the clerk's office and entered of record; shall be served, together with a summons and complaint in the event no summons and complaint have previously been served in the action, upon the adverse party in accordance with the provisions of Rule 4; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after entry, not to exceed 10 days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record. In case a temporary restraining order is granted without notice, the motion for a temporary injunction shall be set down for hearing at the earliest possible time and takes precedence of all matters except older matters of the same character; and when the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a temporary injunction and, if he does not do so, the court shall dissolve the temporary restraining order. On two days' notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its dissolution or modification and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

(c) Security. Except in divorce, child custody and non-support actions where the giving of security is discretionary, no restraining order or temporary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the State or of an officer or agency thereof. A surety upon a bond or undertaking under this rule submits himself to the jurisdiction of the court and irrevocably appoints the clerk of court as his agent upon whom any papers affecting his liability on the bond or undertaking may be served. His liability may be enforced on motion without necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of court who shall forthwith mail copies to the persons giving the security if their addresses are known.

(d) Form and Scope of Injunction or Restraining Order. Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

(e) Injunction to Suspend Business. No temporary restraining order shall be granted to suspend the general and ordinary business of an individual, partnership, association or corporation. Same may be suspended only by injunction after notice.

(f)(1) Remedial Writs. No writ of mandamus, habeas corpus, or other remedial writ shall be granted without notice of motion for the writ to the adverse party, which notice shall be served, together with the summons and complaint, in event no summons and complaint have previously been filed and served in the action, upon the adverse party in accordance with the provisions of Rules 4 and 5. Such notice and motion shall be supported by affidavit or verified complaint setting forth clearly the facts entitling the moving party to such writ. The motion shall be heard upon such notice as the court may prescribe, and the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require. Unless a different time be prescribed by the court, the adverse party shall plead to the complaint and respond to such motion in the time prescribed by these rules for other civil actions.

(2) Damages; Costs; Fees. A claim for any other relief to which a party may be entitled in the action may be joined with a claim for writ of mandamus, habeas corpus, or other remedial writ, in accordance with these rules, including a claim for damages. The prevailing party upon the motion for such writ shall be entitled to recover costs in accordance with the practice as it heretofore existed in the courts of this State, including attorneys fees where proper.

Note:

This Rule 65, except for the additions concerning mandamus, habeas corpus and other remedial writs, is substantially the Federal Rule which, in turn, is very much the same as present State practice. To conform to the "one form of action" requirement of Rule 2, a summons and verified complaint must be filed and served with the notice and motion for temporary injunction, unless the action has already been commenced by filing and service of the summons and complaint. An action may no longer be commenced by the service of an order or "rule to show cause" only. This Rule 65 makes it clear that the various remedial writs are not causes of action but remedies or relief, the right to which must be supported by the law and the facts. Therefore, the injunction or other writ granted does not become permanent or final until final judgment in the action. Rule 65 (f) is added to the Federal Rule to both preserve and modernize the procedure for obtaining other remedial writs in addition to injunction.

Note to 1986 Amendment:

This amendment [to Rule 65(c)] makes clear that the court may, but need not, order the applicant seeking an injunction or restraining order in a Family Court case to give security.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE FAMILY COURT
) FOR THE NINTH JUDICIAL CIRCUIT

) CASE NO: 2011-DR-10-

) **EX-PARTE ORDER**

Plaintiff(s),

v.

Defendant(s).

This matter comes before the court on the *ex-parte* application of the Plaintiff to suspend the visitation of the Defendant pending a hearing on his expedited motion for temporary relief. After reviewing the affidavits¹ of the Plaintiff and the minor child’s counselor, this court finds that immediate and irreparable injury, loss or damage² will result to the parties’ minor child if the *ex-parte* relief requested is not granted. Therefore pursuant to Rule 65(b), SCRPC,³ the Defendant’s visitation with the minor child is suspended pending hearing on the Plaintiff’s expedited motion for temporary relief. The court grants this relief because the Plaintiff has presented a *prima facie*⁴ case that continuing unsupervised visitation with the minor child is causing her irreparable harm. The order shall expire⁵ on June 13, 2011 or at such time as the order from the Plaintiff’s expedited motion for temporary relief issues. Because this matter

¹ Factual allegations to support *ex-parte* request need to be based on affidavits(s)

² Court needs to find immediate and irreparable injury loss or damage if *ex-parte* relief is not granted

³ Rule 65(b), SCRPC, is the legal basis for the court’s authority to grand *ex-parte* relief

⁴ To grant *ex-parte* relief the court needs to make a *prima facie* finding that failure to grant the requested relief will lead to irreparable harm

⁵ *Ex-parte* orders require an expiration date and need to expire within ten days

involves child custody, no security is required.⁶ See Rule 65(c), SCRPC.

IT IS SO ORDERED!

PRESIDING JUDGE, FAMILY COURT

Charleston, South Carolina
_____, 201__

I SO MOVE!⁷

ELIZABETH STRINGER, ESQUIRE
ATTORNEY FOR PLAINTIFF

⁶ *Ex-parte* orders need to address the requirement of security. However Rule 65(c), SCRPC, makes such security discretionary for most family court *ex-parte* orders:

Except in divorce, child custody and non-support actions where the giving of security is discretionary, no restraining order or temporary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.

⁷ The attorney seeking the *ex-parte* relief actually needs to “move” for that relief

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 _____)
)
 Plaintiff,)
)
 vs.)
)
 _____)
)
 Defendant.)
 _____)

IN THE FAMILY COURT FOR THE
 NINTH JUDICIAL CIRCUIT
 C.A. NO.: 2011-DR-10-_____

NOTICE OF MOTION and MOTION FOR
 EXPEDITED HEARING FOR TEMPORARY
 RELIEF

TO THE DEFENDANT AND/OR HIS ATTORNEY;

PLEASE TAKE NOTICE that the Plaintiff, _____, through her attorney, Elizabeth J. Stringer, will move before the Presiding Judge of the Family Court of Charleston County the ____ day of _____, 2011 at _____ for a Temporary Order granting the following temporary relief, which will last only until a final hearing can be held in this matter:

ONE: For a decree of Separation Support and Maintenance;

TWO: For custody of the minor child, temporarily and permanently;

THREE: For a parental fitness exam as recommended by the child's therapist to be completed upon the Defendant;

FOUR: For Defendant's visitation to be suspended until he is evaluated through the parental fitness exam and is seen as a fit individual to care for his daughter;

FIVE: For a Guardian *ad Litem* to be appointed to represent the best interest of the minor child and for the Defendant to pay for all costs and fees associated with the Guardian *ad Litem*;

SIX: For the Defendant to pay child support to Plaintiff, temporarily and permanently;

SEVEN: For temporary possession of certain marital assets as outlined on the Complaint attached hereto;

EIGHT: For the Defendant to pay the premiums for the Plaintiff and child's health insurance, temporarily and permanently;

NINE: For the Defendant to pay his proportionate share of the uninsured medical or dental expenses incurred by the minor child, temporarily and permanently, as may be determined in discretion of the Court;

TEN: For certain restraining orders as outlined in the Complaint attached hereto, temporarily and permanently;

ELEVEN: For such other and further relief as this Court may deem just and proper.

PLEASE BE PRESENT to defend against this Motion if you do not agree with it.

Elizabeth J. Stringer
P.O. Box 12370
753 Folly Road
Charleston, SC 29422-2370

CHARLESTON, S.C.

_____, 2011

2008-14.

Bar Ethics Opinions**2008.****2008-14.**

SC Rules of Professional Conduct: 3.3(a) & (d)

Opinion 08-14

December 9, 2008

Facts

Lawyer A, a family law practitioner, would like clarification on the propriety of including information in affidavits for temporary hearings that is not based on the witness's personal knowledge or is based on hearsay.

Question

May a lawyer representing a client in a divorce action file affidavits in support of *ex parte* requests or temporary hearings that include hearsay or information that is not based on the witness's personal knowledge?

Summary

A lawyer may file affidavits that include hearsay or information not based on a witness's personal knowledge in support of *ex parte* requests or temporary hearings so long as the hearsay or other information is clearly identified as such. The admissibility of that evidence is a matter of substantive law.

Opinion

While a lawyer may file affidavits which include hearsay, the hearsay must clearly be identified as such. Admissibility of the evidence is a matter of law. However, Rule 3.3 (a)(3) prohibits a lawyer from tendering false information to a court. Therefore, to the extent that the lawyer is preparing affidavits which contain hearsay for signature, the attorney has a duty to ensure that the affidavit clearly identifies such information as hearsay. For example, a lawyer may not knowingly present an affidavit in which Party A testifies to Fact X unless Party A has first-hand knowledge of Fact X; if Party A merely heard from Party B that Fact X occurred, the affidavit must so state. To the extent that the lawyer is submitting a pre-signed and sworn affidavit which the lawyer knows to contain hearsay not identified as such, the lawyer has a duty to advise the court of the hearsay. Furthermore, in *ex parte* proceedings, a lawyer must comply with the duties enunciated in Rule 3.3(d) and ensure that all material facts known to the lawyer will enable the court to make an informed decision.

“How To Handle Your First Temporary Hearing”

Natalie Parker Bluestein, Esquire
Bluestein & Douglas, LLC
One Carriage Lane, Building D
Charleston, SC 29407
(843) 769-0311
Natalie@BluesteinandDouglas.com

I. Filing an action

A. Action is commenced with filing a Summons and Complaint

1. Motion for Temporary Relief may be filed as part of pleadings or separately, at a later date
2. Separate \$25.00 fee is required to file a Notice and Motion for Temporary Relief, regardless of date filed
3. Motion should contain specific relief requested from the Court
4. Do not include final issues in Motion, such as dividing retirement (unless the parties are about to retire) or selling real property

II. Actions taken prior to the temporary hearing

A. If representing Defendant in case, call the Plaintiff’s attorney immediately after you are retained to let them know

1. File a Rule 8 Notice of Appearance with the Court
2. Use opportunity telephone call presents to discuss possible settlement of any issues counsel may agree on
 - a. Examples include mutual discovery, mutual restraining orders against selling, transferring, destroying, dissipating, or otherwise diminishing the marital estate and/or property, mutual restraining orders prohibiting the parties from incurring any further debt in the other party’s name or jointly, and from exposing the children to any paramours or romantic companions
 - b. Counsel may agree upon a Guardian ad litem prior to the temporary hearing, if one is needed in the case. A separate

Consent Order Appointing a GAL may be submitted to the Court

III. Procedural aspects

A. Service of Motion for Temporary Relief

1. 10 days prior to hearing, no less than 5 days, excluding weekends and legal holidays
2. Need to file Affidavit of Service and proof of mailing by certified mail (I always send by regular mail, as well – if the certified mail card is not received before the hearing, which is frequently the case, counsel can let the Court know that the regular mail has not been returned by the Post Office)

B. Return to Motion for Temporary Relief

1. Response to Motion – admit, deny, or answer with a combination of the two. In rare circumstances, there may not be enough information to admit or deny, so say that
2. Can be filed and provided to opposing counsel prior to or at Court

C. Evidence for hearing

1. All evidence is in writing at temporary hearings and is filed in the Clerk's Office prior to the hearing, if possible
 - a. In Charleston County, the Clerk's Office retains the original pleadings and Affidavits, so always bring an extra copy to have clocked for the Judge!
 - b. Not required, but courteous to have copies for opposing party and opposing counsel, as well as extras for GAL, if one will be appointed in case
2. Affidavits
 - a. Must be notarized to be used at hearing
 - b. Must say "Sworn to before me this ____ day of _____, 201__" above notary block on each Affidavit

- c. Should not contain any hearsay – if so, be sure to identify it so Judge may disregard hearsay portion of Affidavit
 - d. If handwritten, provide a typed transcript of Affidavit for Judge's convenience in reading
 - e. All Affidavits should have a cover page with a couple of sentences summarizing the Affidavit – never more than a paragraph. The paragraph should state who the person is, the relationship to your client, and what they have personally seen and heard.
 - f. Don't forget an Affidavit of Attorney's Fees
 - i. The Affidavit should have an itemized billing statement attached to it
3. Exception for school and medical records, and for letters from medical doctors on their letterhead – no notary required

IV. The temporary hearing

A. Oral argument

- 1. Must be supported by pleadings, Affidavits, and other documents submitted into evidence
- 2. An outline is useful so important points aren't forgotten or unmentioned in the heat of argument
- 3. Total time for hearing is 15 minutes, so make good use of time allotted
- 4. Some Judges do not allow oral argument, so make sure filed supporting evidence is effective in telling client's side of the story
- 5. Once Judge has rendered decision, do not argue with the Judge
 - a. Motion to Reconsider
 - b. Writ of supersedeas

B. Temporary Decision

- 1. Bring legal pad to take notes in case the Judge rules from the bench

2. If Judge takes case under advisement, he or she will fax the decision to both attorneys
 - a. When decision is received, Judge should have directions as to which attorney is to draft Temporary Order
 - i. Have Temporary Order back to Court within ten (10) days, along with enough copies for parties, attorneys, and GAL (if applicable) to each have certified copy
 - ii. Draft immediately and fax/e-mail to opposing counsel for review. In cover letter, be sure to state that, “if nothing heard from opposing counsel by close of business on _____, Temporary Order will be sent to Judge for signature”
 - iii. Judge Garfinkel’s cover letter form is helpful to send – lets Judge know what’s happened without going into *Ex Parte* communication
3. Temporary Order governs the case until another Order supersedes it
 - a. Exception is if nothing has happened administratively to the case; if case has not settled, no Pretrial hearing is requested and 365 days have passed since case was filed, the whole case can be administratively struck from the active docket
 - i. That means any Temporary Order is then null and void – the parties have to start completely over by filing a new case, and neither is bound by any past agreements or Orders

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE FAMILY COURT OF
THE NINTH JUDICIAL CIRCUIT
CASE NUMBER: 2010-DR-10-9999

,)
Plaintiff,)
)
Versus)
)
)
,)
Defendant.)
)

**NOTICE AND MOTION FOR
TEMPORARY RELIEF**

PLEASE TAKE NOTICE that the Plaintiff, _____, will move before the presiding Judge of the Family Court for the Ninth Judicial Circuit, at the Charleston County Family Court, 100 Broad Street, Courtroom _____, Charleston, South Carolina, on _____, 2010, at _____ o'clock _____ M. for a hearing granting Plaintiff the following temporary relief:

1. Granting the Plaintiff an Order of Separate Maintenance and Support from the Defendant;
2. Requiring the parties to submit to an alcohol abuse and drug test with Dr. Robert Bennett, with the Plaintiff remaining responsible for the initial expense of the tests;
3. That, should the Defendant's test results be positive for the presence of heavy alcohol use and/or any illegal drugs, requiring that the Defendant should have to immediately reimburse the Plaintiff for the expense of both parties' tests;
4. Awarding the Plaintiff sole care, custody, and control of the parties' minor child, with supervised visitation for the Defendant, provided that he does not consume alcohol or illegal drugs in the child's presence, and does not expose the minor children to persons consuming alcohol or illegal drugs;
5. Awarding the Plaintiff child support to be payable through the Charleston County Family Court, together with the 5% administrative fee, in accordance with the South Carolina Child Support Guidelines;
6. Requiring the Defendant to continue to pay all premiums on health and dental insurance for the Plaintiff and the parties' minor child, with the Defendant paying any and all non-covered medical, dental, orthodontic, and/or psychological and/or counseling expenses for

the child;

7. Allowing the Plaintiff and the parties' minor child the continued exclusive use and possession of the home in which they currently reside, and awarding the Plaintiff all of the equity therein, both temporarily and permanently;

8. Enjoining the parties from selling, deeding, allowing any property to be foreclosed, or otherwise disposing of their real property located at _____ Drive, _____ Street, _____ Street, _____ Street, and _____ Drive, all of which are located in Berkeley and/or Charleston counties, pending Order of this Court, and requiring that a *Lis Pendens* should be filed to prevent any such disposal of the marital assets prior to the Court's equitable division of such assets;

9. Requiring the parties to cooperate to close any and all joint checking, savings, and/or credit card accounts as soon as is practicable;

10. Allowing the parties to retain possession of the automobiles each currently drives, with each party remaining responsible for any and all expenses associated with his or her respective vehicle, both temporarily and permanently;

11. Requiring the parties to contribute towards their monthly obligations;

12. Requiring the parties to equitably divide all personal property acquired during the marriage, or including this distribution as part of its equitable division of marital assets and obligations;

13. Requiring that the parties should be solely responsible for their individual debts, each holding the other harmless from any debt or obligation that the other has incurred on his or her own behalf since the date of separation;

14. Requiring that the parties shall be mutually restrained from incurring any additional debt in the other's name or jointly;

15. Awarding the Plaintiff permanent periodic spousal support and/or alimony from the Defendant in an amount the Court feels is appropriate, pendente lite and permanently;

16. Equitably dividing the Defendant's retirement accounts, if any, pendente lite and permanently;

17. Enjoining the parties from selling, dissipating, destroying, hiding, encumbering, allowing to be foreclosed, and otherwise altering the marital assets pending distribution by this Court;

18. Requiring that the parties be mutually restrained from annoying, harassing, threatening, or interfering with the other party in any way whatsoever, particularly when the

Defendant is under the influence of alcohol and/or any illegal drugs;

19. Restraining the parties from discussing any aspect of this case with their minor child, or from allowing any third parties to do so;

20. That the Defendant, whose actions necessitated this action, should remain responsible for the Plaintiff's legal fees and expenses incurred in this matter; and

21. Granting such other and further relief as this Court may deem just and proper.

NATALIE PARKER BLUESTEIN

Bluestein & Douglas, L.L.C.
One Carriage Lane, Building D
Second Floor
Charleston, SC 29407
(843) 769-0311
Attorney for Plaintiff

Charleston, South Carolina
July 19, 2010

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE FAMILY COURT OF
THE NINTH JUDICIAL CIRCUIT
CASE NUMBER: 2010-DR-10-9999

)
Plaintiff,)
)
Versus)
)
)
Defendant.)
)
_____)

(AMENDED) SUMMONS

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is served upon you, and to serve a copy of your Answer to said Complaint on the subscriber at her office at One Carriage Lane, Building D, Second Floor, Charleston, South Carolina 29407 within thirty (30) days after service thereof, exclusive of the day of such service; and if you fail to answer, appear, or otherwise plead within the time aforesaid, the Plaintiff in this action will apply to the Court that you be held in default and that she be granted the relief demanded in the Complaint.

Natalie Parker Bluestein

Bluestein & Douglas, L.L.C.
One Carriage Lane, Building D
Second Floor
Charleston, SC 29407
(843) 769-0311

Attorney for Plaintiff

Charleston, South Carolina
July 19, 2010

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE FAMILY COURT OF
THE NINTH JUDICIAL CIRCUIT
CASE NUMBER: 2010-DR-10-9999

,)
Plaintiff,)
)
Versus)
)
,)
Defendant.)

COMPLAINT

The Plaintiff, complaining of the Defendant, alleges and states the following:

ONE: The parties are both residents of the State of South Carolina, County of Berkeley, that they have resided in said county for a period of more than three months prior to commencement of this action, that Berkeley County, South Carolina is the last place of marital domicile, and all matters and issues are within the jurisdiction of this Honorable Court.

TWO: The parties are husband and wife, having been lawfully married on February 14, 2004; that one child was born prior to, and legitimated by the marriage, _____, born on June 14, 2003, and no further children are expected.

THREE: Throughout the marriage, the Plaintiff has made every effort to be a true, competent, and dutiful wife, and to provide for the Defendant's needs, but the parties are unable to live together, due to the Defendant's habitual intoxication through alcohol and/or illegal substance abuse.

FOUR: That, as a result of the Defendant's habitual intoxication through alcohol and/or illegal substance abuse, he is unable to be a fit parent and custodian for the parties' minor child. That the Defendant is now frequently under the influence of alcohol and/or illegal substances, and has become paranoid and abusive to the Plaintiff. The Plaintiff is

informed and believes that the parties should be immediately tested for continual alcohol and/or illegal drug use by Dr. Robert Bennett, Ph.D., who is an expert toxicologist, which drug screens the Plaintiff agrees to pay for, pending the results. The Plaintiff is informed and believes that, if the Defendant's test results are positive for the indication of continual heavy drinking and/or illegal drugs, the Defendant should be required to reimburse the expense of the tests to the Plaintiff immediately.

FIVE: The Plaintiff is informed and believes that there is no chance of a reconciliation at this time, that she is entitled to live separate and apart from the Defendant, and that, therefore, she is entitled to an Order of Separate Maintenance and Support. The Plaintiff is further informed and believes that the Defendant's conduct equates to habitual intoxication by alcohol and/or illegal substance abuse, and that she is entitled to a divorce, *a vinculo matrimonii*, on that statutory ground.

SIX: The Plaintiff is informed and believes that she is a fit and proper person to have the sole care, custody, and control of the minor child, with supervised visitation for the Defendant, so long as he does not consume alcohol or drugs in the presence of the child or expose the minor child to other individuals consuming alcohol or illegal drugs.

SEVEN: The Plaintiff is informed and believes that she is entitled to child support for the parties' minor child payable through the Charleston County Family Court in accordance with the South Carolina Child Support Guidelines, together with the 5% administrative fee.

EIGHT: The Plaintiff is informed and believes that the Defendant should continue to pay the health and dental insurance premiums for the Plaintiff and the parties' minor child, with all non-covered expenses to be paid by the Defendant, *pendente lite* and permanently.

NINE: That during the marriage the parties acquired and managed real property located at _____ Drive, which is a former marital home, and where the Defendant currently resides, _____ Street, which is a rental property, _____ Street, which is where the Plaintiff, her mother, and the parties' minor son currently reside, _____ Street, the parties' former marital home, and _____ Drive, all of which are located in Berkeley and/or Charleston counties, and the Plaintiff is informed and believes that these properties should be divided as part of the Court's equitable distribution of marital assets and obligations. The Plaintiff and the parties' minor child should have the continued exclusive use and possession of the home in which they currently reside, with the Plaintiff receiving all of the equity interest therein, both temporarily and permanently. The Plaintiff is further informed and believes that the Defendant acquired numerous additional parcels of real property prior to the parties' marriage, towards whose maintenance and upkeep the Plaintiff contributed throughout the parties' marriage, and the Plaintiff is informed and believes that the Court should determine the portion of her contribution to each of these properties as part of its equitable division of marital property and debts, both temporarily and permanently.

TEN: The Plaintiff is informed and believes that the Defendant should be enjoined from selling, deeding, dissipating, allowing any properties to be foreclosed upon, or otherwise disposing of any real property pending Order of this Court, as most of the properties are mortgaged and titled solely in his name, and that a *Lis Pendens* should be filed on each property to prevent any such disposal of the marital assets prior to the Court's equitable division of such assets.

ELEVEN: The Plaintiff is informed and believes that the parties should be required to cooperate to close any and all joint checking, savings, and/or credit card accounts as

soon as is practicable, equally dividing any and all monies in the accounts between themselves.

TWELVE: The parties own vehicles, most of which are titled in the Defendant's name. The Plaintiff is informed and believes that the parties should each remain responsible for any and all expenses associated with the automobile each drives, including but not limited to payments, taxes, maintenance, and insurance, both temporarily and permanently. The Plaintiff is further informed and believes that the Defendant should be required to transfer title to the Chevrolet Blazer to her as soon as possible, both temporarily and permanently.

THIRTEEN: The Plaintiff is informed and believes that the Defendant should be required to contribute towards the parties' monthly obligations. That all personal property acquired during the marriage will be divided between the parties. That, in the event that the parties are unable to agree on an equitable division of their personal and household property, the Plaintiff is informed and believes that the Court should include this distribution as part of its equitable division of marital assets and obligations.

FOURTEEN: The Plaintiff received her General Equivalency Diploma in 2000 and has worked in managing the Defendant's mobile home park during the marriage. Since the parties separated, she has done commercial cleaning work. The Defendant has a high school diploma and is self-employed, earning in excess of two thousand five hundred dollars (\$2,500.00) per month. The Plaintiff is informed and believes that the Defendant also is at fault in the breakup of the parties' marriage due to his use of alcohol and/or illegal substances. The Plaintiff is therefore informed and believes that she should be entitled to spousal support and/or alimony, in an amount the Court feels is appropriate, *pendente lite* and permanently.

FIFTEEN: The Plaintiff is informed and believes that she does not have any retirement accounts, but that the Defendant's retirement accounts, if any, should be equitably

divided between the parties, *pendente lite* and permanently.

SIXTEEN: Each party should be solely responsible for the debts in his or her own name, and shall further each hold the other harmless from any debt or obligation that the other has incurred on his or her own behalf since the date of separation. The parties should be mutually restrained from incurring any additional debt in the other's name or jointly, with all joint accounts closed and all joint property refinanced or retitled to represent only the party in possession under the equitable distribution, *pendente lite* and permanently.

SEVENTEEN: The Plaintiff is informed and believes that the parties should be enjoined from selling, dissipating, destroying, hiding, encumbering, and otherwise altering the marital assets pending this Court's Order.

EIGHTEEN: The Plaintiff is informed and believes that the parties should be mutually restrained from annoying, harassing, threatening, or interfering with the other party in any manner whatsoever, particularly if the Defendant is under the influence of alcohol and/or any illegal substances, *pendente lite* and permanently.

NINETEEN: The Plaintiff is informed and believes that the parties should be restrained from discussing any aspect of this case with their minor child, and from allowing any third parties to do so, both temporarily and permanently.

TWENTY: The Plaintiff is informed and believes that, as the Defendant's actions have necessitated her legal fees and expenses incurred in this action, the Defendant should be responsible for the Plaintiff's legal fees and expenses in this action, in whole or in part.

WHEREFORE, PLAINTIFF PRAYS THIS HONORABLE COURT ISSUE ITS ORDER AS FOLLOWS:

1. Granting the Plaintiff an Order of Separate Maintenance and Support from the

Defendant;

2. Granting the Plaintiff a divorce on the ground of habitual intoxication by alcohol and/or illegal substance abuse;
3. Requiring the parties to submit to an alcohol abuse and drug test with Dr. Robert Bennett, with the Plaintiff remaining responsible for the initial expense of the tests;
4. That, should the Defendant's test results be positive for the presence of heavy alcohol use and/or any illegal drugs, requiring that the Defendant should have to immediately reimburse the Plaintiff for the expense of both parties' tests;
5. Awarding the Plaintiff sole care, custody, and control of the parties' minor child, with supervised visitation for the Defendant, provided that he does not consume alcohol or illegal drugs in the child's presence, and does not expose the minor children to persons consuming alcohol or illegal drugs;
6. Awarding the Plaintiff child support to be payable through the Charleston County Family Court, together with the 5% administrative fee, in accordance with the South Carolina Child Support Guidelines;
7. Requiring the Defendant to continue to pay all premiums on health and dental insurance for the Plaintiff and the parties' minor child, with the Defendant paying any and all non-covered medical, dental, orthodontic, and/or psychological and/or counseling expenses for the child;
8. Allowing the Plaintiff and the parties' minor child the continued exclusive use and possession of the home in which they currently reside, and awarding the Plaintiff all of the equity therein, both temporarily and permanently;
9. Enjoining the parties from selling, deeding, allowing any property to be

foreclosed, or otherwise disposing of their real property located at _____ Drive,

Street, _____ Street, _____ Robinson Street, and

Drive, all of which are located in Berkeley and/or Charleston
counties, pending Order of this Court, and requiring that a *Lis Pendens* should be filed to prevent
any such disposal of the marital assets prior to the Court's equitable division of such assets;

11. Requiring the parties to cooperate to close any and all joint checking, savings,
and/or credit card accounts as soon as is practicable;

12. Allowing the parties to retain possession of the automobiles each currently drives,
with each party remaining responsible for any and all expenses associated with his or her
respective vehicle, both temporarily and permanently;

13. Requiring the parties to contribute towards their monthly obligations;

14. Requiring the parties to equitably divide all personal property acquired during the
marriage, or including this distribution as part of its equitable division of marital assets and
obligations;

15. Requiring that the parties should be solely responsible for their individual debts,
each holding the other harmless from any debt or obligation that the other has incurred on his or
her own behalf since the date of separation;

16. Requiring that the parties shall be mutually restrained from incurring any
additional debt in the other's name or jointly;

17. Awarding the Plaintiff permanent periodic spousal support and/or alimony from
the Defendant in an amount the Court feels is appropriate, *pendente lite* and permanently;

18. Equitably dividing the Defendant's retirement accounts, if any, *pendente lite* and
permanently;

19. Enjoining the parties from selling, dissipating, destroying, hiding, encumbering, allowing to be foreclosed, and otherwise altering the marital assets pending distribution by this Court;

20. Requiring that the parties be mutually restrained from annoying, harassing, threatening, or interfering with the other party in any way whatsoever, particularly when the Defendant is under the influence of alcohol and/or any illegal drugs;

21. Restraining the parties from discussing any aspect of this case with their minor child, or from allowing any third parties to do so;

22. Requiring the Defendant, whose actions necessitated this action, should remain responsible for the Plaintiff's legal fees and expenses incurred in this matter; and

23. Granting such other and further relief as this Court may deem just and proper.

NATALIE PARKER BLUESTEIN

Bluestein & Douglas, L.L.P.
One Carriage Lane, Building D
Second Floor
Charleston, SC 29407
(843) 769-0311
Attorney for Plaintiff

Charleston, South Carolina
July 19, 2010

STATE OF SOUTH CAROLINA)
))
COUNTY OF CHARLESTON)

IN THE FAMILY COURT OF THE
NINTH JUDICIAL CIRCUIT
CASE NUMBER: 2010-DR-10-9999

 ,))
 Plaintiff,))
))
vs.))
))
 ,))
 Defendant.))
_____)

NOTICE OF APPEARANCE

TO: Charleston County Family Court
 , Esquire

PURSUANT to Family Court Rule Number 8, please take notice that the undersigned will be appearing and representing the Defendant,

Dated this _____ day of July, 2010.

Natalie Parker Bluestein

Bluestein & Douglas, L.L.C.
One Carriage Lane, Building D
Second Floor
Charleston, SC 29407
(843) 769-0311
(Fax) (843) 769-7079

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
)
)
)
Plaintiff,)
)
vs.)
)
)
)
)
Defendant.)

IN THE FAMILY COURT FOR THE
NINTH JUDICIAL CIRCUIT
CASE NO.: 2011-DR-10-9999

**CONSENT ORDER APPOINTING A
GUARDIAN *ad Litem***

On motion of both parties, by and through their undersigned attorneys, and it appearing that appointment of a Guardian *ad litem* is necessary in this case to protect the interest of the minor child, the following is hereby **ORDERED, ADJUDGED AND DECREED:**

ORDERED THAT _____, is appointed Guardian *Ad Litem*. He will be compensated at a rate of One Hundred Fifty Dollars (\$150.00) per hour. The initial authorized fee, not inclusive of out-of-pocket expenses, is Five Thousand Five Hundred Dollars (\$5000.00). He will not exceed this fee absent proper authorization pursuant to S.C. Code Ann § 63-3-850. It is further

ORDERED that each party shall deposit seven hundred fifty dollars (\$750.00) with the Guardian within five (5) days of the signing of this order and each party will be responsible for one half of the Guardian *ad Litem's* fees. The deposited funds will be applied by the Guardian toward expenses and authorized fees. These payments are made without prejudice to any party to request a reallocation of the fees at a Final Hearing. It is further

ORDERED that the Guardian shall provide monthly itemized statements to the parties showing the work that has been performed, the time expended, the fees incurred, and the amount of the retainer remaining to be applied toward fees. It is further

ORDERED that upon receipt of this Order, the Guardian shall make all findings and disclosures required by S.C. CODE ANN. § 63-3-820 and § 63-3-860 and fulfill the duties and responsibilities imposed by § 63-3-830, including but not limited to:

1. Representing the best interests of the child;
2. Conducting an independent, balanced, and impartial investigation to determine the facts relevant to the situation of the child and the family. The investigation must include, but is not limited to:
 - a. Obtaining and reviewing relevant documents, except that the Guardian *ad Litem* must not be compensated for reviewing documents related solely to financial matters not relevant to the suitability of the parents as to custody, visitation, or child support;
 - b. Meeting with and observing the child on at least one occasion;
 - c. Visiting the home settings if deemed appropriate;
 - d. Interviewing parents, care givers, school officials, law enforcement, and others with knowledge relevant to the case;
 - e. Obtaining the criminal history of each party when determined necessary; and
 - f. Considering the wishes of the child, if appropriate.
3. Advocating for the child's best interest by making specific and clear suggestions, when necessary, for evaluation, services and treatment for the child and the child's family;
4. Attending all court hearings related to custody and visitation issues except when attendance is excused by the Court or the absence is stipulated by both parties. The Guardian *ad Litem* is not required to attend a hearing related solely to a financial

matter if the matter is not relevant to the suitability of the parties as to custody, visitation, or child support. The Guardian *ad Litem* must provide accurate, current information directly to the Court, and that information must be relevant to matters pending before the Court;

5. Maintaining a complete file, including notes;
6. Presenting to the Court and all parties clear and comprehensive written reports including, but not limited to, a final written report regarding the child's best interests. The final written report may contain conclusions based upon the facts contained in the report. The final written report must be submitted to the Court and all parties no later than twenty days prior to the merits hearing, unless that time period is modified by the Court, but in no event later than ten days prior to the merits hearing. The ten day requirement for the submission of the final written report may only be waived by mutual consent of both parties. The final written report must not include a recommendation concerning which party should be awarded custody, nor may the Guardian *ad Litem* make a recommendation as to the issue of custody at the merits hearing unless requested by the court for reasons specifically set forth on the record. The Guardian *ad Litem* is subject to cross-examination on the facts and conclusions contained in the final written report. The final written report must include the names, addresses and telephone numbers of those interviewed during the investigation; and
7. Perform such other duties as directed by the Court. It is further

ORDERED that the parties shall allow access to the child's caretakers, whether the caretakers are individual, authorized agencies, health care providers or otherwise. It is further

ORDERED that the parties shall execute all releases necessary for the Guardian *ad Litem*

to obtain records to investigate this case, or obtain and provide such records at the request of the Guardian. It is further

ORDERED that the Guardian *ad Litem* shall be given access to all of the child's and parties' medical, psychological, and testing records. The Guardian is entitled to obtain copies of all relevant documents. It is further

ORDERED that the Guardian *ad Litem* is authorized to have access to records prepared or related to any medical and psychiatric treatment of the child or parties and to discuss the child's and parties' medical and psychological treatment with any appropriate medical or health professionals. This access is authorized by this Order, as provided by 45 CFR 164.512(e)(I)(I), the Health Insurance Portability and Accountability Act (HIPPA), which authorizes covered entities to disclose protected health information in the course of any judicial or administrative proceeding when responding to an Order of the Court. It is further

ORDERED that upon proof of appointment as Guardian *ad Litem* and upon request, the Guardian shall have access to information in the possession of medical and dental authorities, psychologists, social workers, counselors, schools, law enforcement personnel, and any private or public service providers about the parties and child for whom he is Guardian *ad Litem*. It is further

ORDERED the Guardian *ad Litem* shall be given notice of all hearings and proceedings involving this case, multi-disciplinary teams, interagency staffing, and any other hearing or meetings when the child's interests might be affected, or meetings or hearings the Guardian *ad Litem* may request. It is further

ORDERED that the Guardian *ad Litem* shall advocate for the child's best interest by making specific and clear suggestions, when necessary, for evaluation, services and treatment for the child and the child's family. It is further

ORDERED the Guardian *ad Litem* shall present to the Court and all parties clear and

comprehensive reports including, but not limited to, a final written report regarding the child's best interests. The final written report may contain conclusions based upon the facts contained in the report. The final written report must be submitted to the Court and all parties no later than twenty (20) days prior to the merits hearing, unless that period of time is modified by the Court, but in no event later than ten (10) days prior to the merits hearing. The ten (10) day requirement for the submission of the final written report must not include a recommendation concerning which party should be awarded custody at the merits hearing unless requested by the Court for reasons specifically set forth on the record. The Guardian *ad Litem* is subject to cross-examination on the facts and conclusions contained in the final written report. The final written report must include the names, addresses and telephone numbers of those interviewed during the investigation.

IT IS SO ORDERED this ___ day of _____, 2011, at Charleston, South Carolina.

Chief Administrative Judge
Charleston County Family Court

I so move:

I so move:

Attorney for the Plaintiff

Attorney for the Defendant

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
) IN THE FAMILY COURT FOR
) THE NINTH JUDICIAL CIRCUIT
) CASE NO. 2010-DR-10-9999

)
) Plaintiff,
)

vs.)

)
) Defendant.
)

TEMPORARY ORDER

DATE OF HEARING: SEPTEMBER 13 and SEPTEMBER 27, 2010
TRIAL JUDGE: HON. JOCELYN B. CATE
PLAINTIFF’S ATTORNEY: NATALIE PARKER BLUESTEIN
DEFENDANT’S ATTORNEY:
COURT REPORTER: PATRICIA DANNER

THIS MATTER came before the Court for a hearing on the Plaintiff’s Motion For Temporary Relief. Prior to the Hearing, the parties’ counsel advised the Court that the parties had reached a temporary agreement as to mediation to be scheduled with Mark Andrews, Esquire, and the Plaintiff’s temporary exclusive use and possession of the home located at _____.

Present at the September 13, 2004 hearing were the Plaintiff and her attorney, Natalie Parker Bluestein, and the Defendant and his attorney, _____.

That, pursuant to both parties’ allegations and the presence of alcohol and/or illegal drugs in both parties’ systems, a referral to the South Carolina Department of Social Services was made by the Court. That, in addition to the parties and their respective counsel, the Plaintiff’s mother, Mrs. _____, Ms. _____, a supervisor for Berkeley County Department of Social Services (DSS), and _____, Esquire, legal counsel

for DSS, also appeared at the September 27, 2010 hearing, at the Court's request.

Ms. _____ stated that a previous DSS case had been opened in 2008 involving the parties and the Plaintiff's older son, that the case was unfounded, although the child remained a ward of DSS until March, 2010, when he turned 18, and that it had been closed since September 17, 2008. She further stated that a complaint had been filed with her agency on September 13, 2008 alleging abuse of the parties' minor child, but the case had been closed as unfounded, and that a new case would be opened based on the results of the parties' substance abuse tests.

Mrs. _____ was duly sworn and her testimony was taken regarding her age, lack of investigation by DSS and criminal arrests or convictions.

The remaining issues were decided by the Court as follows:

ONE: The Court ordered both parties to undergo hair follicle testing, Carbohydrate Deficient Transferrin (CDT) tests, and urine screens for the appearance of drugs and/or alcohol with Dr. Robert Bennett within two (2) hours of the hearing held on September 13, 2010. The Plaintiff was to remain responsible for the costs for the hair follicle and urine tests, as well as the Defendant's CDT test, and the Defendant was to remain responsible for the Plaintiff's CDT test. That, in the event that any party's test was positive for drugs and/or alcohol, he or she must reimburse the paying party for the testing. The CDT results were negative for the Defendant and positive for the Plaintiff; she is therefore responsible for the cost of both tests, at a cost of \$180.00 each. The Defendant's urine screen was positive for alcohol and illegal drugs on September 13, 2010 and negative for the Plaintiff; the Defendant is therefore responsible for the costs of both urine screens, as well as an additional test he was required to

perform due to dilution of his urine samples, for a total of \$155.00. The Defendant's hair follicle test revealed the presence of illegal drugs (specifically, cocaine and crack cocaine); the Plaintiff's hair follicle test was negative for any illegal drugs. Therefore, the Defendant shall remain responsible for the cost of both hair follicle tests, a total of \$250.00. That said costs must be paid no later than thirty (30) days of the September 27, 2010 hearing.

TWO: Mrs. _____ is hereby made a party to this action.

THREE: That Mrs. _____ shall have the temporary care, custody, and control of the parties' minor son _____. The Defendant's visitation with the child shall be supervised by Mrs. _____ pursuant to her work schedule, so that he shall receive visitation every other weekend (on Mrs. _____'s weekends off) on Saturday and Sunday for three (3) hours each day. The Plaintiff resides with Mrs. _____ and the parties' minor child, and she is restrained from unsupervised contact with the parties' minor child. That Mrs. _____ is hereby restrained from allowing the Plaintiff to be left alone with the parties' minor child at any time pending further Order of this Court.

FOUR: Both parties shall sign any releases necessary so that DSS may receive complete copies of their respective drug and alcohol test results.

FIVE: Child support shall remain at the current amount, which is in compliance with the South Carolina Child Support Guidelines, but payments shall be transferred from the Berkeley County Family Court to the Charleston County Family Court, as jurisdiction of this case is now in Charleston County.

SIX: The Defendant shall continue to remain responsible for the minor child's health and dental insurance coverage, with the parties equally dividing any and all non-covered

medical, dental, counseling, orthodontic, and/or ophthalmic expenses for the child after satisfaction of the \$250.00 threshold amount each year.

SEVEN: The Plaintiff must enroll in a class for treatment of alcohol abuse within five (5) days of today's hearing and must attend all meetings and appointments. The Plaintiff shall submit to random urine screens at the request of the Guardian *ad litem*. The Plaintiff has agreed to have another CDT test performed by Dr. Robert Bennett in thirty (30) days to determine whether her body's alcohol levels have decreased.

EIGHT: The Defendant must enroll in a substance abuse class within five (5) days of today's hearing and must attend all meetings and appointments.

NINE: _____ is hereby appointed Guardian *ad litem* for the parties' minor child, and she is to be paid a one thousand dollar (\$1,000.00) retainer, for which each party shall be responsible for \$500.00, said sum to be paid within ten (10) days of the signing of this Order. That Ms. _____ may petition the Court for additional fees over three thousand dollars (\$3,000.00), if necessary, and both parties must remain current with his or her half of the Guardian *ad litem*'s fees.

TEN: The Plaintiff and the parties' minor child shall continue to have the temporary exclusive use and possession of the home located at _____, _____, South Carolina, and the Plaintiff shall remain responsible for the timely payment of the mortgage on the property.

ELEVEN: The Defendant has represented to the Court that the properties for which the Plaintiff has not paid the taxes are not in foreclosure at this time. If the properties are indeed in foreclosure, the Defendant must pay any and all amounts necessary to bring the

mortgages and taxes up to date.

TWELVE: The Defendant may continue to manage the mobile homes and property; however, he must provide to the Plaintiff a monthly accounting of the rents received, expenses paid, and profits earned for each of the mobile homes and properties under his control, commencing October 1, 2010.

THIRTEEN: The parties may each retain the exclusive use of the automobiles in his or her possession, with each party remaining responsible for any and all expenses associated with his or her respective vehicle, including but not limited to payments, insurance, taxes, and maintenance, pending further Order of this Court.

FOURTEEN: The parties shall be mutually restrained from incurring any new debt in the other party's name or jointly, and shall each hold the other party harmless from any debt either party has incurred on his or her own behalf.

FIFTEEN: The parties are mutually restrained from selling, dissipating, destroying, hiding, encumbering, allowing to be foreclosed, and otherwise altering any assets pending further Order of this Court.

SIXTEEN: The parties are mutually restrained from making any negative and/or derogatory comments about the other party or his or her family members in the presence of, or within the hearing, of their minor child.

SEVENTEEN: The parties are mutually restrained from discussing any aspect of this case in the presence of, or within the hearing, of their minor child.

EIGHTEEN: The parties are mutually restrained from annoying, bothering, threatening, harassing, harming, or intimidating the other party in any manner whatsoever, whether in person,

by telephone, or by other electronic means.

NINETEEN: All remaining issues shall be held in abeyance pending further hearings in this matter.

NOW, THEREFORE, based upon the pleadings, Affidavits, exhibits, drug and alcohol test results, and arguments of counsel, the Court finds that the foregoing should be made the Temporary Order of the Court, thereby subjecting the offending party to the contempt powers of the Court; and

IT IS SO ORDERED!

HON. JOCELYN B. CATE,
Presiding Judge
Family Court, Charleston County
Ninth Judicial Circuit

October _____, 2010
Charleston, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF)

IN THE FAMILY COURT OF THE
NINTH JUDICIAL CIRCUIT
CASE NO.:

,
Plaintiff,)
vs.)
,
Defendant.)
_____)

AFFIDAVIT OF PERSONAL SERVICE

PERSONALLY APPEARED before me, _____, who being first duly sworn,
deposes and says:

That on the _____ day of _____, 2008 at _____ o'clock P.M., he personally served
a certified copy of the _____
_____, in the within matter on _____ at the _____
_____.

That deponent knows the person so served to be that of _____, and
that deponent is not a party to the within action.

SWORN TO BEFORE ME, this
_____ day of _____, 2008.

Notary Public of South Carolina
My Commission Expires: _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF)

,)
)
Plaintiff,)
)
versus)
)
,)
)
Defendant.)
_____)

IN THE FAMILY COURT OF THE
____ JUDICIAL CIRCUIT
CASE NO:

AFFIDAVIT OF SERVICE
BY MAIL

Personally appeared before me the undersigned affiant, who being duly sworn, says that:

1. The Defendant, _____, was served with a certified copy of the _____ in this action through certified mail, restricted delivery, return receipt requested.
2. On or about date of letter, a certified letter (see Exhibit 1) containing the pleading was sent to the Defendant, _____, at the following address:

Address

3. The Defendant received this letter and its contents on date of receipt, as evidenced by a return receipt card bearing the signature "Name of Defendant." (see Exhibit 2).

Legal Assistant to
Natalie Parker Bluestein
Attorney for the Plaintiff

SWORN to before me this

___ day of _____, 2010

NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires _____.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 ,)
)
 Plaintiff,)
)
 Versus)
)
 ,)
)
 Defendant.)
 _____)

IN THE FAMILY COURT FOR
 THE NINTH JUDICIAL CIRCUIT
 CASE NUMBER: 2010-DR-10-9999

ACCEPTANCE OF SERVICE

I, _____, **ESQUIRE**, the Attorney for the Defendant in the above captioned action, do hereby accept service of a certified copy of the _____ served upon me this _____ day of July, 2010, and further warrant that I have the authority to do so on behalf of the Defendant.

 Attorney's name

SWORN TO BEFORE ME this
 _____ day of July, 2010.

 Notary Public for South Carolina
 My Commission Expires: _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE FAMILY COURT FOR THE
NINTH JUDICIAL CIRCUIT
CASE NO.: 2010-DR-10-9999

Plaintiff,)
)
Versus)
)
Defendant.)
_____)

**RETURN TO MOTION
FOR TEMPORARY RELIEF**

Defendant, _____, responding to Plaintiff's Notice of Motion and Motion for Temporary Relief, reiterates the Answer and Counterclaim filed herewith as if fully set out herein, and requests this Honorable Court to grant him the following temporary relief:

1. The Defendant admits that the Plaintiff should have primary custody of the parties' two minor children, as he works full-time, and that he should be entitled to liberal visitation with the children;

2. The Defendant denies that he should be required to be present at any and all visitation awarded to him, states that his visitation time is also the time his family members are allowed to spend time with his children, states that the children have always enjoyed a close relationship with his family, and demands strict proof otherwise;

3. The Defendant admits that he should continue to run his business to the best of his ability in this trying economy. The Defendant further admits that he should provide the Plaintiff with an accounting of his business assets through mutual discovery pursuant to the South Carolina Rules of Civil Procedure and the Rules of Family Court.

4. The Defendant admits that the Plaintiff has refused to obtain gainful employment

outside of the home, despite his requests that she do so, and despite her successful career prior to the birth of the parties' children. The Defendant admits, therefore, that the Plaintiff is in need of temporary spousal support. The Defendant denies that the Plaintiff is entitled to any portion of the sale proceeds from the Defendant's previous business, states further that the previous business was purchased with non-marital monies, that the current business is being funded from the proceeds of the former business, which was non-marital, and demands strict proof otherwise.

5. The Defendant is unaware that the Plaintiff has applied to any college or university, is further unaware whether she has been accepted to any college or university, and has further not been apprised of any costs involved with the Plaintiff's aspirations to higher education. The Defendant was unaware until two years ago that the Plaintiff had not obtained her Communications degree, is now informed and believes that the Plaintiff had previously finished all but one final examination to graduate with a four-year degree, denies that he should be required to contribute to any additional education for the Plaintiff at this time, and demands strict proof otherwise.

6. The Defendant denies that the parties' minor daughter, _____, is attending private school, states that she just graduated from pre-school, that the parties have planned for her to attend a public kindergarten program, and demands strict proof otherwise. The Defendant further denies that he should remain responsible for private pre-school for the parties' son, as he is unable to afford to do so, states that both children are currently enrolled at Drayton Hall Elementary School for the fall, states that the Plaintiff may choose to send the children to private school at her expense, and demands strict proof otherwise.

7. The Defendant admits that he should continue to remain responsible for health

insurance coverage for the parties' two minor children, pending further Order of this Court. The Defendant denies that he has ever provided dental insurance coverage for the children, states further that it is not available under his existing insurance, and demands strict proof thereof. The Defendant is informed and believes that the parties should remain responsible for any and all of their minor children's non-covered medical, dental, ophthalmic, orthodontic, and/or counseling expenses, after the Plaintiff satisfies the first \$250.00 for each child each year, on a *pro rata* basis, denies that he should be held solely responsible for these expenses without contribution from the Plaintiff, and demands strict proof otherwise.

8. The Defendant admits that an accounting of marital property should be completed as part of mutual discovery in this case.

9. The Defendant admits that the Plaintiff is entitled to an accounting of any monies invested with third parties as part of the discovery in this case, as is the Defendant. The Defendant denies that he has "given" any marital property to any third parties and demands strict proof otherwise.

10. The Defendant agrees that he should remain responsible for the mortgage, property taxes, insurance, and normal maintenance on the former marital, which is currently listed on the market for sale, until such time as it is sold or further Order of this Court, whichever is sooner. The Defendant denies that he should remain responsible for any additional expenses associated with the home pending its sale and demands strict proof otherwise.

11. The Defendant admits that each party's bank and credit card records should be provided to the other party as part of the mutual discovery in this case. The Defendant further states that he has provided copies of all recent statements for bank accounts and credit card

accounts to both the Plaintiff and her attorney, and demands strict proof otherwise. The Defendant denies that there are any “proceeds” from any credit card accounts of which he is aware, and demands strict proof otherwise.

12. The Defendant admits that he should continue to remain responsible for all expenses associated with his automobile, *pendente lite*. The Defendant further admits that he should remain responsible for the payment and insurance on the vehicle the Plaintiff drives, *pendente lite*, as the loan on the automobile is in his name. The Defendant denies the remaining allegations and demands strict proof thereof.

13. The Defendant states that the account which was formerly used to pay the premiums on his life insurance has been devoid of funds for several months, and he is unsure as to whether his policy has been canceled. He is therefore unable to admit or deny those allegations as set forth in Paragraph “M” of the Plaintiff’s Notice and Motion for Temporary Relief. The Defendant denies that the Plaintiff has ever had life insurance, states that he is unable to afford such premiums at this time, and demands strict proof thereof.

14. The Defendant admits that the parties should be mutually restrained from selling (except for the real properties already listed on the market for sale), trading, hiding, disposing, collateralizing, and/or decreasing the value of any and all marital property and from incurring any financial obligation for which the other party could be held liable, pending further Order of this Court.

15. The Defendant is informed and believes that the parties have a mutual restraining order preventing any contact except in regard to their minor children, and demands strict proof otherwise.

16. The Defendant admits the allegations as set forth in Plaintiff's Paragraph "P," states that the parties already have such a restraining order in place, and demands strict proof otherwise.

17. The Defendant denies that he has acted in any manner requiring the Plaintiff to waste monies on private investigators or forensic Certified Public Accountants, and that he has made reasonable offers of settlement in this case and has provided unimpeded access to his business Certified Public Accountant to the Plaintiff's attorney; the Defendant further denies that either party has the funds necessary to litigate this case, and requests, therefore, that mediation be scheduled as quickly as possible. The Defendant denies that he should be required to contribute towards the Plaintiff's legal and/or professional fees in this case, in whole or in part, and demands strict proof otherwise.

18. The Defendant has fully agreed to mutual discovery pursuant to the South Carolina Rules of Civil Procedure and the Rules of Family Court.

19. The Defendant is informed and believes that his business is being audited by the Internal Revenue Service, and that he and his Certified Public Accountant have repeatedly requested the Plaintiff, personally and through her attorney's office, to sign a release allowing the CPA to discuss the parties' joint tax returns with the IRS investigator. That, to date, the Plaintiff has refused to do so, which has caused the investigative process to take much longer than required, and which has caused unnecessary stress and additional expenses to the Defendant. The Defendant is informed and believes that he is entitled to an Order from this Court requiring the Plaintiff to sign a release for the CPA to discuss the parties' joint tax returns with the IRS investigator immediately. And

20. That the Court grant such other and further relief as it may deem just and proper.

Natalie Parker Bluestein

One Carriage Lane, Building D
Second Floor
Charleston, SC 29407
(843) 769-0311
Attorney for Defendant

Charleston, SC
June 15, 2009

STATE OF SOUTH CAROLINA	)	IN THE FAMILY COURT FOR
	)	THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2010-DR-10-9999
)	
Plaintiff,)	
	)	<u>AFFIDAVIT OF</u>
vs.	)	<u>JANE SMITH</u>
)	
)	
Defendant.)	
<hr style="width: 100%; border: 0.5px solid black;"/>		

Mrs. Smith is the Plaintiff's mother. She has had the opportunity to observe her daughter and the Defendant closely since they married.

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE FAMILY COURT FOR
THE NINTH JUDICIAL CIRCUIT
CASE NO. 2010-DR-10-9999

Plaintiff,)
,)
vs.)
)
)
)
Defendant.)
_____)

AFFIDAVIT OF _____

THE AFFIANT, _____, first being duly sworn, hereby states as follows:

1. I am a Defendant in this case. _____ and I married in Orlando, Florida on August 2, 2002. At the time, she told me she had a Bachelor's degree in Communications, and she was working as a district manager for Blockbuster Video. _____ was already pregnant with our daughter, _____, when we married, and she didn't go back to work after _____ was born. We moved to South Carolina, which is home for me. In July, 2004, our son _____ was born.

2. We separated while _____ was pregnant with _____, and a case was filed in Berkeley County, where we were living at the time. _____ filed for an emergency hearing then, which Judge Creech denied, as there was no basis. We received a Temporary Order and later reconciled. We separated about two years ago, but we reconciled then, too. Since then, our marriage has gone from bad to worse. Due to the economic downturn, my business has suffered financially, and I have found it very difficult to financially keep everything going. I have repeatedly asked Peggy to look for a job, even part-time, but she has refused. I even asked a _____ mutual friend of ours to provide day care for our children over the summer, which she agreed to do for a very reasonable cost. _____ would not hear of it. We were trying to work things

out in this case with our lawyers, to again keep costs down, and then _____ again tried to escalate things by claiming I had pushed her against a wall in our house. She also told my son that is what happened, although he was present at the time and later told me he knew it wasn't what happened.

3. I bought a bar, _____, with separate funds I had before the marriage when we moved back to South Carolina, and the business was pretty successful. I sold it a couple of years ago and started _____, my current business, with money from the sale. Under the terms of the sale, the new owner is paying off the debt in monthly installments to me, and I deposit the money into my new business. Unfortunately, no one has much money to spend on alcohol and entertainment right now, and my current business is not doing well financially. I am working as a bartender at night to earn extra money, and I'm putting everything I can into the business to keep it going. I am also trying to keep our house mortgage up to date, as well as two rental properties. While the properties are rented right now, I am already having trouble collecting the rent from one, and neither rent covers the mortgage, taxes, and insurance payments. I am also paying all of the bills, and it is a struggle each month.

4. _____ is very capable of working and worked when we were first married. She told me she had a degree in Communications, and I didn't know that wasn't true until a couple of years ago. She told me that she had missed her final exam in one class, and had never signed up to take it, so she didn't graduate. She should be lacking one class from her four-year degree. _____ quit working after _____ was born and has refused to go back to work, expecting me to pay for everything. Her not working has forced me to have to work longer hours, which has caused tension between us. While she has spent days with her friends or at the

pool with the children, I am trying to figure out ways to make ends meet so we don't go into foreclosure. She has been completely unsympathetic about our financial problems, and has not tried to help at all. I understand that she will need money to live on temporarily, but she needs to find a job to help out with expenses, as well. I just don't have or make enough money to pay for everything, plus another household, in addition to her car and insurance payments and child support.

5. I am very close to my children and have been since they were born. I have requested standard Family Court visitation with them, because of my job requirements, but _____ has placed restrictions even on that. I will pay whatever amount of child support I'm supposed to pay, and I have the children covered on my health insurance. I think _____ should have to pay her share of their non-covered medical expenses, just as I will, and I understand that as the primary custodial parent she is responsible for the first \$250.00 of each child's non-covered expenses each year.

6. Our children do not attend private school, and in fact, they are registered at _____ Elementary School for the fall. They did attend a private pre-school, but _____ and I had agreed before this case was filed that we did not have the money to pay for it any longer, and that's when she registered them in public school.

7. I told _____ months ago that we would have to sell our house. I finally listed it with a realtor when we were trying to work things out without going to Court, but I am still making repairs that are needed and cleaning the place in-between showings. _____ has bought bags of toys and other things that are still in their original packaging and are crammed into closets and all over the house. I'm trying to pack them into boxes and get them out of the

way so the house will show better. When we were living together, I helped with the house and the cooking and cleaning, even though I work outside the home all day and _____ is home with the children. She never found enough time for housework, but always found time for her friends, the pool, and church functions. I'd like to stay in the house so that it can be kept in marketable condition while we're trying to sell it. If _____ moves back in, I'm afraid the place will be dirty and cluttered in no time, and I don't think it will sell. There are too many other houses like it out there that are clean and in good shape. One of the rental properties is also on the market, although I haven't had any calls about it.

8. We already have restraining orders preventing us from discussing the case around the children, allowing anyone else to, and from making any negative or derogatory comments about the other parent around the children or allowing anyone else to. We have agreed to a list of what I've been told are the Family Court Judges' restricted behaviors for parents around their children. We have also agreed to no contact except as necessary regarding the children. I have no problem with continuing these restraining orders, as long as they are mutual.

9. I have already provided every account statement, mortgage, credit card statement, and any other financial information I can find to Peggy and her attorney. I have agreed to mutual ~~discovery~~ discovery in this case, as well. I do not agree that we should have a forensic CPA do a business valuation, because neither of us can afford to pay someone to do that. I have a CPA who is helping with my business, and he has access to everything _____ and her attorney might need. I have authorized him to speak with both attorneys to try to move this case along as inexpensively and quickly as possible.

10. My business is being audited right now by the Internal Revenue Service, and because

_____ and I have filed joint returns, my CPA needs her authorization on paperwork before he can cooperate with the IRS investigator. Both he and my attorney have spoken with _____ lawyer about this, and the CPA has left messages and written letters, as well. I would request that the Court require her to cooperate so that we can work with the IRS until the audit is completed.

10. I think each of us should be required to pay our own attorney's fees and costs in this case. I have done everything possible to keep the costs down by trying to work things out without going to Court and to be as reasonable as I can be financially without having everything fall apart. _____ has had unreasonable financial demands and has done everything possible to raise the drama level of the case, as well as the costs. We cannot afford to continue doing this, and I do not think I should have to pay for her continued refusal to face economic reality.

Further the affiant sayeth not!

SWORN to before me this

_____ Day of June, 2009.

NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: February 27, 2018.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 ,)
 Plaintiff/Wife,)
)
 vs)
)
 ,)
 Defendant/Husband.)
 _____)

IN THE FAMILY COURT FOR
 THE NINTH JUDICIAL CIRCUIT
 CASE NO: 2010-DR-10-9999

AFFIDAVIT OF
NATALIE PARKER BLUESTEIN
(Attorney's Fees)

PERSONALLY APPEARED before me NATALIE PARKER BLUESTEIN, Attorney for the Plaintiff herein, who, being first duly sworn, deposes and says as follows:

1. That she is the attorney for _____, the Plaintiff in the above captioned matter.

2. That she was admitted to the South Carolina Bar in 1994 and since that time has been engaged in public sector and private practice with the Richland County Public Defender Corporation, the Orleans Parish District Attorney's office, and the firms of Kronsberg & Bluestein, L.L.P., Bluestein & Douglas, L.L.P., and Bluestein & Douglas, L.L.C.

3. That she is, and has been, an active member of the South Carolina Bar, the Charleston Bar, the Louisiana Bar, and the American Bar Association, and that she is engaged in practice in the State Courts with approximately 95% of her practice in the Family Courts of the Tri-County area.

4. That she incorporates herein Rule 32, Rules of Practice of the South Carolina Supreme Court, which contains the Canons of Professional Ethics and further calls the attention of the Court to the holdings in Glasscock v. Glasscock, 304 S.C. 158, 403 S.E. 2d 313 (1991) and Epperly v. Epperly, 440 S.E.2d 884 (1994) concerning the factors and criteria which should be

considered in the awarding and setting of attorney's fees.

She relies upon the discretion of this Court in the awarding of attorney's fees and expenses based upon the beneficial result achieved for her client in this _____ hearing, the Plaintiff's limited income, the Defendant's superior financial position and limited current obligations, and the necessity of protecting the Plaintiff, the parties' child, home, and standard of living.

She further relies the discretion of this Court in the determination of the amount of the fees, based upon the Court's file, the Court's knowledge of the litigation between these parties, which reflects the difficulty of the services rendered, the time necessarily expended, the result accomplished, the fact that there is no contingency of compensation in domestic relations actions, the professional standing of counsel, and the fees customarily charged in this area for similar legal services.

5. That upon information and belief, her client has had a need for her representation not only during this hearing, but for information, and opinion.

6. That she is informed and believes that during the preparation of this case the time spent, as set forth more fully hereinafter, was necessary to document the _____, to attempt to reconcile the parties, and to address the financial disparities between _____ and _____. That any excessive hours devoted herein are due solely to _____ refusal to engage in meaningful mediation and attempts to settle this case.

7. That she is informed and believes that an award of legal fees and expenses is reasonable in this matter. The Defendant has the financial ability to contribute, and is responsible for the circumstances leading to the marital breakup; the Defendant's chronic

alcoholism and substance abuse has had a detrimental financial impact on the marital estate, and has unnecessarily caused undue hardship and embarrassment for _____ and the parties' child.

8. She is informed and believes that during the preparation of this case the time spent, as set forth more fully hereinafter, was necessary for the protection of _____'s interests.

9. Her legal services in this matter were billed at \$300.00 per hour, and paralegal/support services were billed at \$125.00 per hour. To date, her legal fees in this matter are \$ _____ and the costs and disbursements total \$ _____ as reflected in the attached itemized bill.

10. Based upon the time necessarily devoted to this case and the other criteria which have been held to be relevant in the setting of attorney's fees and costs of suit, the undersigned, on behalf of her client, requests this Court review the file herein, together with this Affidavit, and grant judgment in favor of the undersigned or her client, _____, against _____ in the amount indicated by the attached itemized bill or a sum which this Court determines to be reasonable to help _____ in paying her attorney's fees and costs incurred in this action, and that _____ be required to pay the same within a reasonable time as may be determined by this Court.

FURTHER THE AFFIANT SAYETH NOT!

NATALIE PARKER BLUESTEIN

SUBSCRIBED and SWORN TO before me
this ___ day of _____, 2010.

NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission expires: _____

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
 ,)
 Plaintiff,)
)
 -vs-)
)
 ,)
 Defendant.)
 _____)

IN THE FAMILY COURT
 NINTH JUDICIAL CIRCUIT
 CASE NO.: 2010-DR-10-9999

MOTION TO RECONSIDER
TEMPORARY ORDER

TO: _____, Attorney for the above – named Defendant:

PLEASE TAKE NOTICE that on the _____ day of _____, 2010, at _____ o'clock a.m./p.m., in Courtroom _____, the above – named Plaintiff will, by and through her undersigned counsel, move before the Honorable _____ for the Court's reexamination of the *pendente lite* issues contained in the pleadings and joined by the parties' Motions. Said Motion to be supported by and based upon such Affidavits and Memorandum as are appropriate.

 Natalie Parker Bluestein
 BLUESTEIN and DOUGLAS, L.L.C.
 One Carriage Lane, Building D
 Second Floor
 Charleston, South Carolina 29407
 (843)769-0311/769-7079 Fax

Attorney for the Plaintiff

Charleston, SC
 Date

VERIFICATION OF CONSULTATION
WITH OPPOSING COUNSEL

TRANSMITTAL TO COUNSEL

To:

Fax:

Date:

From:

Case caption:

Case No.:

Date Order is to be presented to Judge Garfinkel: _____

Please review the following Order and then notify my office of your suggested changes, if any, before the presentation date set forth above. In the event there are no changes to be requested, please advise, and I will submit the Order to the Judge prior to the presentation date. If I do not hear from you, the Order will be presented to the Judge on the date indicated.

Attorney for Plaintiff / Defendant

PRESENTATION TO JUDGE FOR SIGNATURE

To: Paul W. Garfinkel, Family Court Judge for the Ninth Judicial Circuit

Date:

The Attached Order is presented to you for your consideration and signature. As indicated above, the Order has been transmitted to opposing counsel for approval and/or changes and:

- _____ Counsel responded and approved the order
- _____ Changes were requested and have been incorporated into the Order and this final draft has been approved by all parties.
- _____ Counsel cannot agree to the final form and this proposed Order is submitted for your consideration with/without opposing counsel's requested changes attached.
- _____ Counsel has not responded and this proposed Order is submitted for your consideration.
- _____ The opposing side is Pro Se and has not reviewed the Order.

Attorney for Plaintiff / Defendant

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 ,)
 Plaintiff,)
)
 vs.)
)
 ,)
 Defendant.)
)

IN THE FAMILY COURT FOR
 THE NINTH JUDICIAL CIRCUIT
 CASE NO. 2010-DR-10-9999

TEMPORARY ORDER

DATE OF HEARING: SEPTEMBER 13 and SEPTEMBER 27, 2010
TRIAL JUDGE: HON. JOCELYN B. CATE
PLAINTIFF’S ATTORNEY: NATALIE PARKER BLUESTEIN
DEFENDANT’S ATTORNEY:
COURT REPORTER: PATRICIA DANNER

THIS MATTER came before the Court for a hearing on the Plaintiff’s Motion For Temporary Relief. Prior to the Hearing, the parties’ counsel advised the Court that the parties had reached a temporary agreement as to mediation to be scheduled with Mark Andrews, Esquire, and the Plaintiff’s temporary exclusive use and possession of the home located at _____.

Present at the September 13, 2004 hearing were the Plaintiff and her attorney, Natalie Parker Bluestein, and the Defendant and his attorney, _____.

That, pursuant to both parties’ allegations and the presence of alcohol and/or illegal drugs in both parties’ systems, a referral to the South Carolina Department of Social Services was made by the Court. That, in addition to the parties and their respective counsel, the Plaintiff’s mother, Mrs. _____, Ms. _____, a supervisor for Berkeley County Department of Social Services (DSS), and _____, Esquire, legal counsel

for DSS, also appeared at the September 27, 2010 hearing, at the Court's request.

Ms. _____ stated that a previous DSS case had been opened in 2008 involving the parties and the Plaintiff's older son, that the case was unfounded, although the child remained a ward of DSS until March, 2010, when he turned 18, and that it had been closed since September 17, 2008. She further stated that a complaint had been filed with her agency on September 13, 2008 alleging abuse of the parties' minor child, but the case had been closed as unfounded, and that a new case would be opened based on the results of the parties' substance abuse tests.

Mrs. _____ was duly sworn and her testimony was taken regarding her age, lack of investigation by DSS and criminal arrests or convictions.

The remaining issues were decided by the Court as follows:

ONE: The Court ordered both parties to undergo hair follicle testing, Carbohydrate Deficient Transferrin (CDT) tests, and urine screens for the appearance of drugs and/or alcohol with Dr. Robert Bennett within two (2) hours of the hearing held on September 13, 2010. The Plaintiff was to remain responsible for the costs for the hair follicle and urine tests, as well as the Defendant's CDT test, and the Defendant was to remain responsible for the Plaintiff's CDT test. That, in the event that any party's test was positive for drugs and/or alcohol, he or she must reimburse the paying party for the testing. The CDT results were negative for the Defendant and positive for the Plaintiff; she is therefore responsible for the cost of both tests, at a cost of \$180.00 each. The Defendant's urine screen was positive for alcohol and illegal drugs on September 13, 2010 and negative for the Plaintiff; the Defendant is therefore responsible for the costs of both urine screens, as well as an additional test he was required to

perform due to dilution of his urine samples, for a total of \$155.00. The Defendant's hair follicle test revealed the presence of illegal drugs (specifically, cocaine and crack cocaine); the Plaintiff's hair follicle test was negative for any illegal drugs. Therefore, the Defendant shall remain responsible for the cost of both hair follicle tests, a total of \$250.00. That said costs must be paid no later than thirty (30) days of the September 27, 2010 hearing.

TWO: Mrs. _____ is hereby made a party to this action.

THREE: That Mrs. _____ shall have the temporary care, custody, and control of the parties' minor son _____. The Defendant's visitation with the child shall be supervised by Mrs. _____ pursuant to her work schedule, so that he shall receive visitation every other weekend (on Mrs. _____'s weekends off) on Saturday and Sunday for three (3) hours each day. The Plaintiff resides with Mrs. _____ and the parties' minor child, and she is restrained from unsupervised contact with the parties' minor child. That Mrs. _____ is hereby restrained from allowing the Plaintiff to be left alone with the parties' minor child at any time pending further Order of this Court.

FOUR: Both parties shall sign any releases necessary so that DSS may receive complete copies of their respective drug and alcohol test results.

FIVE: Child support shall remain at the current amount, which is in compliance with the South Carolina Child Support Guidelines, but payments shall be transferred from the Berkeley County Family Court to the Charleston County Family Court, as jurisdiction of this case is now in Charleston County.

SIX: The Defendant shall continue to remain responsible for the minor child's health and dental insurance coverage, with the parties equally dividing any and all non-covered

medical, dental, counseling, orthodontic, and/or ophthalmic expenses for the child after satisfaction of the \$250.00 threshold amount each year.

SEVEN: The Plaintiff must enroll in a class for treatment of alcohol abuse within five (5) days of today's hearing and must attend all meetings and appointments. The Plaintiff shall submit to random urine screens at the request of the Guardian *ad litem*. The Plaintiff has agreed to have another CDT test performed by Dr. Robert Bennett in thirty (30) days to determine whether her body's alcohol levels have decreased.

EIGHT: The Defendant must enroll in a substance abuse class within five (5) days of today's hearing and must attend all meetings and appointments.

NINE: _____ is hereby appointed Guardian *ad litem* for the parties' minor child, and she is to be paid a one thousand dollar (\$1,000.00) retainer, for which each party shall be responsible for \$500.00, said sum to be paid within ten (10) days of the signing of this Order. That Ms. _____ may petition the Court for additional fees over three thousand dollars (\$3,000.00), if necessary, and both parties must remain current with his or her half of the Guardian *ad litem*'s fees.

TEN: The Plaintiff and the parties' minor child shall continue to have the temporary exclusive use and possession of the home located at _____, _____, South Carolina, and the Plaintiff shall remain responsible for the timely payment of the mortgage on the property.

ELEVEN: The Defendant has represented to the Court that the properties for which the Plaintiff has not paid the taxes are not in foreclosure at this time. If the properties are indeed in foreclosure, the Defendant must pay any and all amounts necessary to bring the

mortgages and taxes up to date.

TWELVE: The Defendant may continue to manage the mobile homes and property; however, he must provide to the Plaintiff a monthly accounting of the rents received, expenses paid, and profits earned for each of the mobile homes and properties under his control, commencing October 1, 2010.

THIRTEEN: The parties may each retain the exclusive use of the automobiles in his or her possession, with each party remaining responsible for any and all expenses associated with his or her respective vehicle, including but not limited to payments, insurance, taxes, and maintenance, pending further Order of this Court.

FOURTEEN: The parties shall be mutually restrained from incurring any new debt in the other party's name or jointly, and shall each hold the other party harmless from any debt either party has incurred on his or her own behalf.

FIFTEEN: The parties are mutually restrained from selling, dissipating, destroying, hiding, encumbering, allowing to be foreclosed, and otherwise altering any assets pending further Order of this Court.

SIXTEEN: The parties are mutually restrained from making any negative and/or derogatory comments about the other party or his or her family members in the presence of, or within the hearing, of their minor child.

SEVENTEEN: The parties are mutually restrained from discussing any aspect of this case in the presence of, or within the hearing, of their minor child.

EIGHTEEN: The parties are mutually restrained from annoying, bothering, threatening, harassing, harming, or intimidating the other party in any manner whatsoever, whether in person,

by telephone, or by other electronic means.

NINETEEN: All remaining issues shall be held in abeyance pending further hearings in this matter.

NOW, THEREFORE, based upon the pleadings, Affidavits, exhibits, drug and alcohol test results, and arguments of counsel, the Court finds that the foregoing should be made the Temporary Order of the Court, thereby subjecting the offending party to the contempt powers of the Court; and

IT IS SO ORDERED!

HON. JOCELYN B. CATE,
Presiding Judge
Family Court, Charleston County
Ninth Judicial Circuit

October _____, 2010
Charleston, South Carolina

TEMPORARY HEARING PREPARATION AND CHECK-LIST

As soon as possible before a temporary hearing is scheduled, do the following:

1. Set up an appointment with the client if you don't already have one.
2. Check file to see whether Financial Declaration is complete and to see what affidavits are completed.

At least one week before a temporary hearing is scheduled, do the following:

1. Check the file to make sure the original and copies proof of service of Summons, Complaint and Motion, to include:
 - a. Affidavit of personal service, or
 - b. Affidavit of service with attached copy of cover letter sending pleadings to Defendant, and certified mail certificate with signed certified receipt attached, or
 - c. Acceptance of service signed by the Defendant and notarized
2. Original and copies of completed Financial Declaration
3. Originals and copies of any and all Returns to Motion, Memoranda, and case law.
4. Originals and copies of all Affidavits. Be sure that they are all properly notarized, and that they are sealed if coming from out-of-state.
 - a. When checking the file at least a week before the hearing, catalogue any and all Affidavits which are already in the file, noting any that are not signed and properly notarized;
 - b. When meeting with client at least a week before the hearing, discuss what other Affidavits need to be obtained and the status of the client's Affidavit.
5. Originals and copies of any and all exhibits.

At least one day before the hearing, check to make sure we have the following:

1. Affidavit summaries of all affidavits which are over a page long. Summaries should have the caption and proper case number, and should be attached and copied with the affidavit.
2. Collated original and copies of the client's Financial Declaration
3. Collated originals and copies of all pleadings and Affidavits and exhibits.
4. Collated originals and copies of Attorney's Fees Affidavit.

ALWAYS BE SURE THAT THE CASE NUMBER IS CORRECT ON ALL AFFIDAVITS, LETTERS AND PLEADINGS, ESPECIALLY WHEN THERE IS MORE THAN ONE CASE PENDING BETWEEN THE PARTIES. CHECK EACH DOCUMENT, SINCE WORD PROCESSING ERRORS ARE SO EASY TO MAKE.

File Control Sheet (Divorce with children)

CLIENT: _____

MATTER: _____

Completed

- | | | |
|-----|---|-------|
| 1. | Conflict Check | _____ |
| 2. | Client's name, address, home telephone number,
employment and work number - Initial Consultation | _____ |
| 3. | Retainer Agreement | _____ |
| 4. | Domestic Case Information Sheet | _____ |
| 5. | Date of Marriage | _____ |
| 6. | Date of separation | _____ |
| 7. | DHEC Form draft from client | _____ |
| 8. | Summons & Complaint | _____ |
| | Date of filing | _____ |
| | Case Number | _____ |
| | Temporary Hearing Date | _____ |
| | Service | _____ |
| 9. | Answer and Counterclaim | _____ |
| 10. | Reply | _____ |
| 11. | Client's Financial Declaration
(If more than 6 months old, must update) | _____ |
| 12. | Defendant's Financial Declaration (copy for our file) | _____ |
| 13. | Affidavits (not needed if no Temporary Hearing) | _____ |
| 14. | Request for Hearing (Final) | _____ |
| 15. | Final Hearing Date | _____ |
| 16. | Direction of Payment of Child Support and Alimony | _____ |
| 17. | Designation: Payment of Court Costs form | _____ |

ORDER OF PROTECTION CHECKLIST

Charleston County Bar CLE June 3, 2011

- Is venue proper?
- Is Petition specific as to time, place and abuse?
- Is Petition Complete? Check relief.
- Restraining Orders.
- Custody.
- Visitation or No Visitation.
- Child Support.
- Alimony.
- Possession of the Residence.
- Other Relief.
- Witnesses.
- Police Reports.
- Pictures.
- Medical Reports.
- Other Evidence.
- Criminal Proceedings/Conviction(s).
- Prior Orders of Protection.
- Financial declaration.
- Witnesses.

Your First Order of Protection

Charleston County Bar CLE

June 3, 2011



Presented by Rita J. Roache, S.C. Legal Services

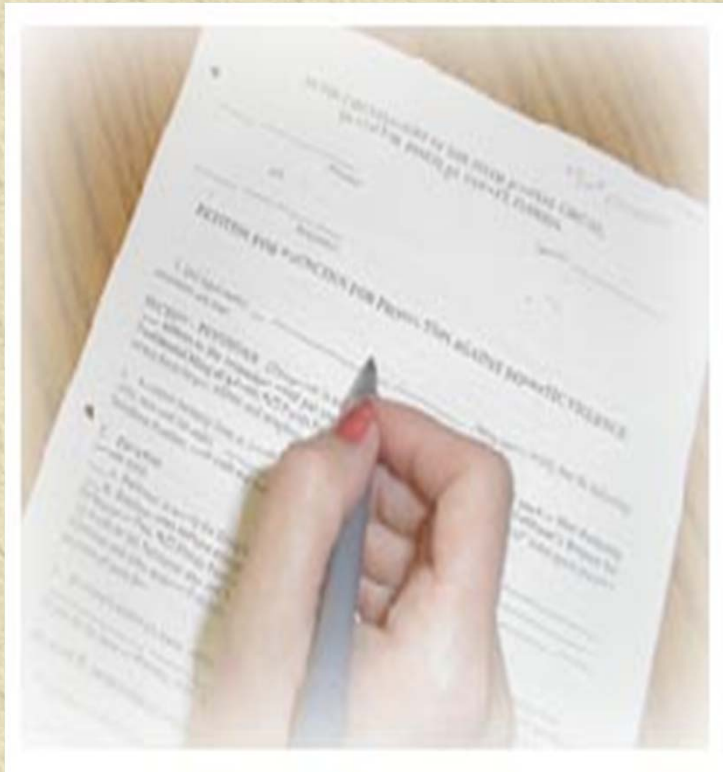
Orders of Protection

SC Code of Laws Title 20 Chapter 4:

- ✦ What is it?
- ✦ Who can file for one?
- ✦ In what county can you file?
- ✦ In what court can you file?
- ✦ What information should the Petition contain?
- ✦ When should it be heard?
- ✦ What relief can you seek?
- ✦ How long does it last?



What is an Order of Protection?



20-4-20(f) defines an Order of Protection as “an order...issued to protect the petitioner or minor household members from the abuse of another household member where the respondent has received notice of the proceedings and has had an opportunity to be heard.”

Who can file?

A Household Member

20-4-20(b) defines a household member as a spouse, former spouse, persons who have a child in common, and a male and female who are cohabiting or formerly have cohabited.



In what county should you file?



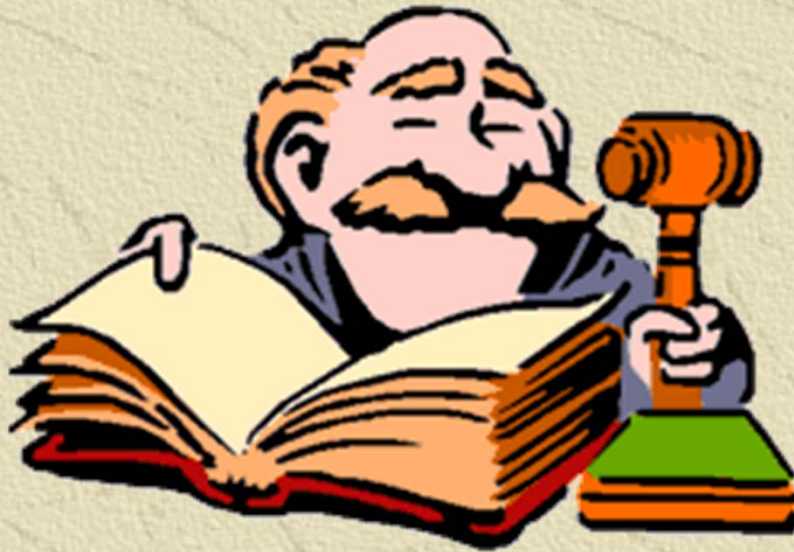
SC Code of Laws 20-4-30

- ✦ Where the alleged act of abuse occurred or;
- ✦ Where petitioner resides or is sheltered or;
- ✦ Where the respondent resides or;
- ✦ Where the parties last resided together.

In what court should you file?

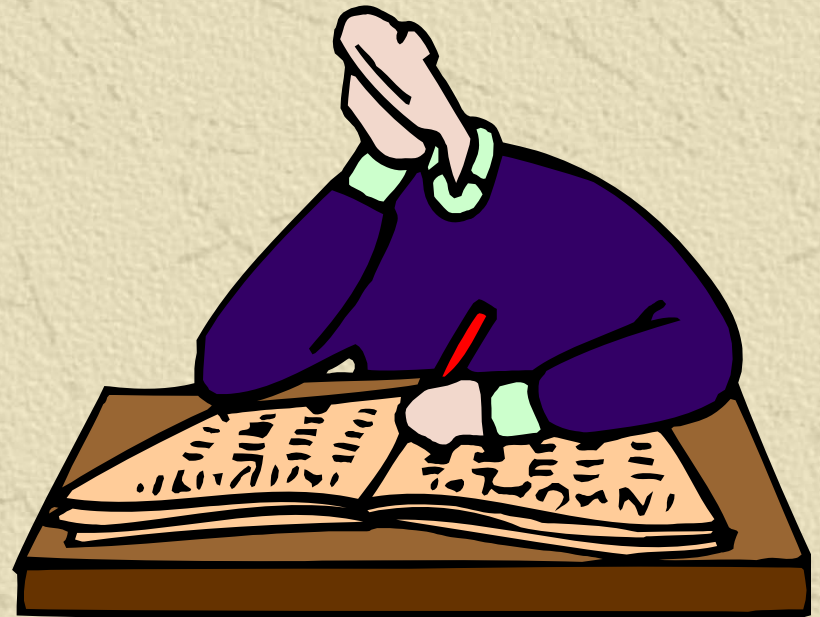
SC Code of Laws 20-4-30

- ✦ Family Court
- ✦ Magistrate's Court-
but only during non
business hours or at
other times when the
Family Court is not in
session.



What should you put in your petition?

- Allege the existence of abuse to a household member;
- List the specific time;
- Place;
- Details of abuse, and
- Any other facts and circumstances relevant.
- The petition must be verified.



Tips for Petitioner

- ✦ No fees.
- ✦ Clerk must provide forms.
- ✦ During pending action, file a motion.

Tips for the Respondent

- ✦ Read the petition carefully.
- ✦ Make sure it alleges abuse.
- ✦ Ask for venue change, if necessary.
- ✦ Petition indicates right to retain counsel.

When it should be heard?

✦ Emergency hearing: Held within 24 hours after service of petition upon respondent for good cause that includes prima facie showing of immediate and present danger of bodily injury, which may be verified by supporting affidavits.

✦ Typical hearing: Held within 15 days of the filing of the petition. Respondent should be served at least five days prior to the hearing and can ask for a continuance if served less than five days before hearing.

More on Emergency Relief

- ✦ See Moore v. Moore, 376 S.C. 467, 657 S.E.2d743(S.C. 2008) which holds: “...an Order of Protection issued pursuant to an emergency hearing is temporary and does not represent a final adjudication of the merits of the action.”
- ✦ In this case the finding of abuse should not be used against the Husband in future litigation.

What relief can you seek?

SC Code of Laws 20-4-60

- ✦ Restraining Order;
- ✦ Temporary Custody;
- ✦ Temporary Child Support;
- ✦ Temporary Spousal Support;
- ✦ Exclusive use and possession of marital home, and
- ✦ Prohibit transferring, destruction, encumbering or other disposal of real or personal marital property



Relief continued



- ✦ Provide law enforcement assistance with removing personal property;
- ✦ Health insurance premiums;
- ✦ Cost of medical, emotional, housing expenses and replacement of damaged possessions.

The Hearing

- ✦ Many different scenarios. Prepare client well.
- ✦ Judge may ask about mutual R/Os.
- ✦ Relief may be granted without a finding.
- ✦ Judge may say “Tell me why you are asking for this relief.”
- ✦ Judge may ask the opposing party what happened.

The Hearing

-
- ✦ Bear in mind that each Judge is different.
 - ✦ Also be cognizant of the fact that you may not even have the allotted 15 minutes.

Effect of a Finding of Abuse

- ✦ May have no effect on a physical cruelty divorce.
- ✦ May or may not impact CDV proceeding.
- ✦ CDV conviction may be enough for Order of Protection.

How long does it last?



- ✦ At least six months
- ✦ But no longer than a year
- ✦ ** It may be extended, but respondent must receive notice and a hearing on the extension of an order must be held within thirty days of the date upon which the order will expire.

Helpful Tips for Petitioner's Counsel

-
- ✦ Tell clients to keep copies of your protective order at all times.
 - ✦ Protective orders are enforceable in any jurisdiction inside South Carolina and outside under federal law.
 - ✦ Penalty for violation of protective order is imprisonment not more than thirty days and a fine not more than five hundred dollars. The court may suspend the imposition or execution of all or part of the sentence conditioned upon the offender completing, to the satisfaction of the court, a program designed to treat batterers.
 - ✦ If parties reconcile, an order of dismissal may be granted without a hearing if the petitioner appears personally at the clerk's office that issued the order, shows proper identification, and signs a written request to dismiss the matter.
 - ✦ If parties reconcile but they do not dismiss the order, the order is still valid and must be enforced by law enforcement.

QUESTIONS?????

-
- ✦ Thank you for your time and attention.
 - ✦ Call me at 266-2172 if I can be of assistance.

FORMS

www.judicial.state.sc.us

Family Court Order, Protection From Abuse Act

Family Court Order Denying Relief (Protection from Domestic Abuse Act)

Motion and Order for Dismissal (Protection from Domestic Abuse Act)

Notice and Motion to Extend Order of Protection

Petition for Citation for Contempt (Family Court Use)

Rule to Show Cause for Contempt of Court (Protection from Domestic Abuse Act)

Verification

Petition for Order of Protection (For Use in Magistrate's Court)

Magistrate Court Order Protection From Domestic Abuse Act

Summons (Restraining Order, Harassment and Stalking)

Complaint and Motion for Restraining Order (Harassment and Stalking)

Motion and Affidavit for Emergency Hearing (Temporary Restraining Order, Harassment and Stalking)

Restraining Order

Temporary (Ex Parte) Restraining Order

Subpoena of Witness (magistrate's court)

Notice and Motion to Extend Restraining Order (Harassment and Stalking)

Motion for Further Relief

Subpoena in a Civil Case

Charleston County

Order of Protection Packet

PETITIONER

RESPONDENT

NAME _____ NAME _____

ADDRESS _____ ADDRESS _____

CITY, ZIP CODE _____ CITY, ZIP CODE _____

SEX _____ RACE _____ DOB _____ SEX _____ RACE _____ DOB _____

SSN _____ SSN _____

HGT _____ WGT _____ HGT _____ WGT _____

EYES _____ HAIR _____ EYES _____ HAIR _____

EMPLOYMENT _____ EMPLOYMENT _____

HOME # _____ HOME # _____

WORK # _____ WORK # _____

CELL # _____ CELL # _____

VEHICLE MAKE & MODEL _____ VEHICLE MAKE & MODEL _____

TAG # _____ STATE _____ TAG # _____ STATE _____

DO YOU HAVE ANY PENDING CASES IN FAMILY COURT? ___ YES ___ NO

FOR COURT USE ONLY

FILE # _____

MUTUAL ORDER YES/NO

DATE GRANTED _____

EXPIRATION DATE _____

ISSUING JUDGE _____

STATE OF SOUTH CAROLINA)

IN THE FAMILY COURT
____ JUDICIAL CIRCUIT

COUNTY OF _____)

Petitioner,)

vs.)

Respondent.)

SUMMONS
(Protection From Domestic Abuse Act)

Docket No. _____

TO: _____, Respondent

The above named Petitioner having filed a Petition for Order of Protection,

YOU ARE HEREBY SUMMONED TO APPEAR before the Family Court at:

_____ in _____, South Carolina
(Street Address) (City or Town)

on (____/____/____), at ____:____ (a.m./ p.m.), to show cause why the Order of Protection prayed
for by the Petitioner should not be made.

On your failure to appear as directed, the relief prayed for in the Petition may be granted.

Date: _____, 20____

Family Court Judge

_____ S.C.

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE FAMILY COURT
NINTH JUDICIAL CIRCUIT

CASE NO. _____

Petitioner))

MOTION AND AFFIDAVIT FOR
EMERGENCY HEARING
(Protection from Domestic Abuse Act)

-vs.-)

Respondent,)

FILE NO: _____

I, _____ being duly sworn, state that I am (the Petitioner)
(making this Petition on behalf of the Petitioner) and that the Petitioner is in immediate and
present danger of bodily injury as shown by the following facts:

Therefore, I am requesting an emergency hearing.

Sworn to and Subscribed before me
This ___ day of _____, 20__

Notary Public for South Carolina

Signature of Petitioner or Person Making
Petition on Behalf of Petitioner

My Commission expires _____

ORDER

Request for emergency hearing granted.

(Judge of Family Court) (Magistrate)

_____, S.C.

_____ County, S.C.

from communicating or attempting to communicate with Petitioner in any way, and from entering or attempting to enter the home of the victim, place of employment, education, or other location as the Court may order.

d. issue an order granting Petitioner temporary custody of the following minor child(ren).

Name	Date of Birth	Address

grant reasonable visitation or deny visitation.

e. issue an order granting Petitioner temporary child support
(Financial Declaration [Form SCCA 430] MUST be completed and attached).

f. issue an order granting Petitioner temporary financial support
(Financial Declaration [Form SCCA 430] MUST be completed and attached).

g. issue an order granting Petitioner temporary exclusive use and possession of the home and furnishings.

h. issue an order which forbids Respondent from transferring, selling, destroying, encumbering, or otherwise disposing of real or personal property belonging to Petitioner or jointly owned.

i. issue an order which gives Petitioner assistance from law enforcement in that Petitioner will be accompanied:

(1) in removing Personal property from _____ (Street Address) in _____ (City) _____ (County), South Carolina.

(2) in placing Petitioner in possession of the home and furnishings at _____ (Street Address) in _____ (City) _____ (County), South Carolina.

j. issue an order reimbursing Petitioner for costs and attorney's fees.

k. hold a hearing within 15 days of the date of filing these papers.

l. hold an emergency hearing within 24 hours.

m. issue an order granting Petitioner the following additional requests: _____

Sworn to and Subscribed before me
this _____ day of _____, _____

Notary Public for South Carolina

Signature of Petitioner or
Person on Behalf of Petitioner under 18 years
old

My Commission expires _____

NOTICE TO RESPONDENT: YOU HAVE THE RIGHT TO EMPLOY COUNSEL TO REPRESENT YOU.

STATE OF SOUTH CAROLINA)

IN THE FAMILY COURT

COUNTY OF _____)

_____ JUDICIAL CIRCUIT

Petitioner,)

SUPPLEMENT TO THE
PETITION FOR ORDER OF PROTECTION
(For use in Family Court)

vs.)

Respondent.)

Docket No. _____

You must complete this form if you live or are sheltered in this county, but the abuse occurred in another county; the person who caused the abuse lives in another county; or both of you last lived together in another county.

1. I live or am sheltered in _____ County.

2. I am asking the court to transfer this case to _____ County for the hearing, because: (check one):

- a. The alleged act of abuse occurred in this county; or,
- b. The person who caused the abuse lives in this county; or
- c. The person who caused the abuse and I last lived together in this county.

The caption in the Petition for Order of Protection must designate the county identified in Item 2 above. (S.C. Code Ann. Section 20-4-30, as amended.)

Signature of Petitioner or
Person on Behalf of Petitioner under 18years old

This form is for Internal Use Only. Because of safety concerns, the petitioner should be contacted at the following address which shall be confidential and not subject to Public Disclosure.

Contact Person: _____

Address: _____

Phone: _____

STATE OF SOUTH CAROLINA)
 COUNTY OF)

IN THE FAMILY COURT OF THE)
 _____ JUDICIAL CIRCUIT)

FINANCIAL DECLARATION)
 OF _____)

 Plaintiff,)

vs.)

 Defendant.)

DOCKET NO. _____

HUSBAND/FATHER		WIFE/MOTHER	
Address		Address	
Age		Age	
Occupation		Occupation	
Employer		Employer	
Employer Address		Employer Address	

Gross Monthly Income	Husband/Father	Wife/Mother
Principal Earnings from Employment ¹		
Overtime, Tips, Commission, Bonuses ²		
Pensions, Retirement, and Annuities income		
Additional Employment income		
Social Security Benefits (SSA) and VA Benefits		
Disability and Worker's Compensation Benefits		
Unemployment and AFDC		
Spousal or Child Support (from other marriage/relationship)		
Dividends, Interest, Trust Income, and Capital Gains		
Rental Income and Business Profits		
Other (Specify):		
TOTAL GROSS MONTHLY INCOME		

Payroll Deductions from Monthly Income	Husband/Father	Wife/Mother
Federal Income Tax ³		
State Income Tax		
Social Security and Medicare Tax (FICA)		
Self-Employment Tax		
Health and Dental Insurance (Adult)		
Health and Dental Insurance (Child)		
Union Dues		
Voluntary Retirement Contribution (401(k), 457, IRA)		
Mandatory Retirement Contribution		
Savings Plan		
Other (Specify):		
TOTAL MONTHLY DEDUCTIONS		
NET MONTHLY INCOME ⁴		

Estimate monthly expenses: (Specify which party is the custodial parent and list name and relationship of all members of household whose expenses are included. _____)

MONTHLY EXPENSES ⁵	Husband/Father	Wife/Mother
Residential Rent Payment		
Note or Mortgage Payment on Residence(s)		
Food and Household Supplies ⁶		
Utilities, Water, and Garbage Collection		
Telephone and Cellular Phone		
Medical, Dental and Disability Insurance Premiums (not deducted from paycheck)		
Life Insurance Premiums (not deducted from paycheck)		
Child Support (from other relationship)		
Work Related Day Care		
Spousal Support (from prior marriage)		
Auto Payment		
Auto Insurance, taxes, gasoline, and maintenance ⁷		
SUBTOTAL: <input type="text"/>		
Real Property Tax on Residence(s)		
Maintenance for household ⁸		
Adult Clothing		
Children's Clothing ⁹		
Cable Television, Satellite, and Internet/Online Services		
Laundry and Dry Cleaning ¹⁰		
Medical and Dental Expenses (not paid by insurance)		
Prescriptions, Glasses, and Contacts (not paid by insurance)		
Children's incidental expenses ¹¹		
School lunches, supplies, field trips, and fees ¹²		
Entertainment ¹³		
Adult Incidental expenses ¹⁴		
All Installment payments ¹⁵		
Other (Specify):		
SUBTOTAL: <input type="text"/>		
TOTAL MONTHLY EXPENSES		

Installment Loan Payments Section

Creditor	For	Monthly Payment	Balance	Owed by ¹⁶

Other Debts and Obligations *not* payable in monthly installments

Creditor	For	Date Payable	Balance	Owed by ¹⁶

Are you currently in Bankruptcy? YES NO

Are any obligations listed above, including mortgage and note payments, in arrears? YES NO

If yes, please list the obligations in arrears.

All Marital Property Known to Parties

Assets	Husband/Father	Wife/Mother	Joint
Cash and Money in Checking Account(s)			
Money in Savings Account(s), Credit Union, Money Market, or Cert. of Dep.			
Value of Voluntary Retirement Account(s)			
Value of Pension Account			
Value of Publicly Held Stocks, Bonds, Securities, Mutual Funds			
Value of Privately Held Stocks and Other Business			
Value of Real Estate – Net of Mortgage Balances			
Value of All Other Property ¹⁷			
TOTAL ASSETS			

Any Non Marital Property Known to Parties

Description of Asset	Title Owner	Date of Acquisition	Source of Funds to Acquirer	Estimate Present market Value

If total assets are less than \$300,000.00, sign and have notarized.

If total assets are greater than \$300,000.00, itemize assets by completing additional sections below and sign and have notarized.

Financial Accounts Section¹⁸

Owner	Name of Institution	Type of Account	Balance

Voluntary Retirement Accounts and Pension Accounts Section

Type of Account	Value

Publicly Held Stocks, Bonds, Securities, Mutual Funds Section (Non-Retirement)¹⁹

Name of Company	Number of Shares/Type of Account	Value

Real Estate Section²⁰

Owner	Address	Value	Mortgage Balance	Mortgage Equity

Other Property Section¹⁷

Owner	Description of Asset	Value	Loan Balance	Equity

Signature

Sworn to before me this ____ of _____,
2 ____.

(SEAL)
Notary Public for South Carolina
My commission expires: _____

1. A recent paystub should be attached to the Financial Declaration. To compute Principal Earnings from Employment, first determine whether you are paid semi-monthly, biweekly, or weekly. If you are paid semi-monthly, multiply the gross amount of your pay check by two. If you are paid biweekly, multiply the gross amount of your pay check by 26 and then divide by 12. If you are paid weekly, multiply the amount of your paycheck by 52 and divide by twelve. Round to the nearest whole dollar.
2. To compute Overtime, Tips, Commission, and/or Bonuses, take an average of your monthly earnings from overtime, tips, commission, bonuses, etc. from the past three years or the length of employment if employed less than three years (including this year).
3. To compute State, Local, and Social Security Tax deductions, use the same formula used to compute principal earnings in endnote 1 above, or consult or have your attorney consult an accountant.
4. Net monthly Income is equal to Total Gross Monthly Income minus Total Monthly Deductions.
5. Do not include any expense in the Monthly Expenses section that has already been included in the Deductions from Gross Monthly Income on page one of the Declaration.
6. Food Expense is to include the cost of groceries, toiletries, cleaning supplies, and casual eating out.
7. Auto Expenses are to include gasoline, oil changes, tune-ups, tire replacement, maintenance, and related items.
8. Maintenance for Household is to include appliance and household repairs, landscaping, house cleaning, pest control, pool service, alarm service, and other related items.
9. Clothing Expense is to include shoes and clothing purchases, clothing repair and alterations, and related items.
10. Laundry Expense is to include the cost of laundry service, dry cleaning, and related items.
11. Children's Incidental Expenses are to include allowance, summer camp, baby sitters, lessons, activities, participatory sports, and related items.
12. School Expense is to include tuition, supplies, field trips, dues, tutors, locker rentals, school lunches, and other related items.
13. Entertainment is to include movies, theater, vacations, sporting events, compact discs, digital video discs, and related items.
14. Adult Incidental Expenses are to include cosmetics, hair and nail care, books, magazines, newspapers, business dues, memberships, pets, charity, religious dues or tithes, gifts, bank charges, hobbies, and related items.
15. All Installment Loan Payments is the total amount itemized in Installment Loan Payments Section, which should include all loan payments not already listed as a monthly expense. Examples: home equity loan, credit cards, etc.
16. Indicate which spouse legally owes the payment (husband, wife, or joint).
17. Other property is to include automobiles (minus loan balance), boats (minus loan balance), furniture, furnishings, china, silver, jewelry, collectibles, and other personal property.
18. Itemize Financial Accounts such as checking, savings, credit union, money market, or certificate of deposit accounts in the Financial Accounts Section.
19. Itemize Publicly Held Stocks, Bonds, Securities, Stock Options and Mutual Funds (excluding retirement accounts) in the Publicly Held Stocks, Bonds, Securities, Mutual Funds Section.
20. Itemize each parcel of Real Estate in the Real Estate Section.

HOW TO PROSECUTE A RULE TO SHOW CAUSE

Alex B. Cash
Rosen, Rosen & Hagood, LLC

THE BASICS

I. Drafting the Petition for a Rule to Show Cause

A. Keep it simple but also be specific

The Order says “xyz”

The opponent violated “xyz” by doing or failing to perform “xyz”

The Relief is “abc”

B. The Petition is an outline of your case

II. It’s a Trial without Discovery

A. Again - The Petition is your outline

B. You must show that there was a specific Order/Clause

C. You must prove that the Opponent Knew of the Order/Clause

D. You must prove that the Opponent willfully violated the Order/Clause

E. You must prove the relief sought

F. Who do you call as your witnesses?

G. Know the Rules of Evidence

III. Relief

What are you entitled to?

What is the purpose of the Rule?

To put your client back into the position he/she would have been but for the violation

CONTEMPT LAW

The Supreme Court of South Carolina has long held that the “power to punish for contempt is inherent in all Courts. Its’ existence is essential to the preservation of order in judicial proceedings, and to the enforcement of the judgments, orders and writs of the court, and consequently to the due administration of justice.” Curlee v. Howle, 277 S.C. 377, 382, 287 S.E.2d 915, 917 (1982); referring to the McLeod v. Hite, 272 S.C. 303, 251 S.C.2d 746 (1979);

State v. Goff, 228 S.C. 17, 88 S.C.2d 788 (1955). “Contempt results from the willful disobedience of an order of the Court, and before a person may be held in contempt, the record must be clear and specific as to the acts or conduct upon which such finding is based.” Id., 277 S.E., 287 S.E.2d 918.

“The determination of whether contempt is civil or criminal depends on the underlying purpose of the contempt ruling.” Miller v. Miller, 375 S.C. 443, 454, 652 S.E.2d 754, 761 (Ct. App. 2007). In Miller, the Court of Appeals reviewed the prior case law explaining the differences between the civil and criminal intent.

The major factor in determining whether a contempt is civil or criminal is the purpose for which the power is exercised, including the nature of the relief and the purpose for which the sentence is imposed. The purpose of civil contempt is to coerce the Defendant to do the thing required by the Order for the benefit of the Complainant,

The primary purpose of criminal contempt is to preserve the Court’s authority and to punish for disobedience of its Orders. If it is for civil contempt, the punishment is remedial, and for the benefit of the Complainant. But if it is for criminal contempt the sentence is punitive, to vindicate the authority of the Court.

An unconditional penalty is criminal in nature because it is solely and exclusively punitive in nature. The relief cannot undo or remedy what has been done nor afford any compensation and the contemnor cannot shorten the term by promising not to repeat his offense. If the relief provided is a sentence of imprisonment, ... it is punitive if the sentence is limited to imprisonment for a definite period. If the sanction is fine, it is punitive when it is paid to the Court. However, a fine that is payable to the Court may be remedial when the contemnor can avoid paying the fine simply by performing the affirmative act required by the Court’s Order.

In civil contempt cases, the sanctions are conditioned on compliance with the Court’s Order. The conditional nature of the punishment renders the relief civil in nature because the contemnor can end the sentence and discharge himself at any moment by doing what he had previously refused to do. If the relief provided is a sentence of imprisonment, it is remedial if the Defendant

stands committed unless and until he performs the affirmative act required by the Court's Order Those who are imprisoned until they obey the Order, carry the keys of their prison in their own pockets. If the sanction is a fine, it is remedial and civil if paid to the Plaintiff even though the contemnor has no opportunity to purge himself of the fine or if the contemnor can avoid the fine by complying with the Court's Order. Id., citing from Floyd v. Floyd, 365 S.C. 56, 75-76, 615 S.E.2d 465, 475-76 (Ct. App. 2005)(citing Poston v. Poston, 331 S.C. 106, 111-12, 502 S.E.2d 86, 88-89 (1998)).

In regard to the burden of proof, civil contempt "must be proven by clearing and convincing evidence." id.; referring to Durlach v. Durlach, 359 S.C. 64, 71, 596 S.E.2d 908, 912 (2004). In regard to a proceeding for a criminal contempt, the burden of proof "is beyond a reasonable doubt." Id.; referring to Floyd, 365 S.C. 76, 615 S.E.2d 476. "Intent for purposes of criminal contempt is subjective, not objective, and must necessarily be ascertained from all of the acts, words, and circumstances surrounding the occurrence. Id.

In a criminal contempt proceeding, the United States Supreme Court and our Supreme Court recognize that criminal defendants are entitled to a jury trial if the sentence of imprisonment is for more than six months. Id. However, civil contempt proceedings do not require the same constitutional protections. "A civil contempt proceeding resulting in incarceration does not require a jury trial." Id.; referring to Shillitani v. U.S., 384 U.S. 364, 86 S.Ct. 1531, 16 L.Ed.2d 622 (1966). Our Supreme Court in Curlee v. Howle, has followed this Shillitani test.

"A decision on contempt rests within the sound discretion of the trial court." Floyd v. Floyd, 365 S.C. 71, 615 S.E.2d 473. "On appeal, a decision regarding contempt should be reversed only if it is without evidentiary support or the trial judge has abused his discretion." id., 365 S.C. 71-71, 615 S.E.2d 473. In regard to relief sought in civil contempt cases, "compensatory contempt is a money award for the Plaintiff when the Defendant has injured the

Plaintiff by violating the previous court order. The goal is to indemnify the Plaintiff directly for the harm the contemnor cause by breaching the injunctions.” Floyd v. Floyd, 365 S.C. 79, 615 S.E.2d 477; citing from Curlee v. Howele, 277 S.C. 377, 287 S.E.2d 915 (1982). “Judicial sanctions in civil contempt proceedings may, in a proper case, be employed for either or both of two purposes: to coerce the Defendant in to compliance with the court’s Order and to compensate the complainant for losses sustained.” Id.; Floyd v. Floyd 365 S.C. 80, 615 S.E.2d at 478; referring to United States v. United Mine Workers of America, 330 U.S. 258, 304-305, 67 S.Ct.677, 701-702, 91 L.Ed. 884 (1947). Our courts have further held that, “The compensatory award should be limited to the Plaintiff’s actual loss. Included in the actual loss are the costs in defending and enforcing the court’s Order including litigation costs and attorney’s fees. The burden of showing what amount, if anything, the Complainant is entitled to recover by way of compensation should be on the Complainant.” Id.; citing from Curlee v. Howle, 277 S.C. 386-87, 287 S.E. 2d 919-20. Attorney’s fees and costs may be award as both a sanction for contempt and under the doctrine of compensatory contempt. See Floyd v. Floyd (affirming award of \$40,347.21 in attorney’s fees.)

HOW TO HANDLE YOUR FIRST RTSC – DEFENSE

EMILY G. JOHNSTON, ESQUIRE

egi@johnstonlawfirm.com

RULE 1: QUOTE A RETAINER AND DO NOT START WORK BEFORE YOU GET THE RETAINER.

A Rule is like any other pleading that takes our time. It is essentially a new action. It requires time, expertise and skill. So when your client insists that you to defend the RTSC for the “principle of the thing,” you should politely tell your client that you have principles too. They include a signed retainer agreement, payment of the retainer, and a billing process. Do not ever undertake representation of a client on a Rule without a separate retainer and a separate representation agreement. This is how you make a living.

RULE 2: DO NOT ACCEPT SERVICE OF A RTSC FOR YOUR CLIENT.

A rule to show cause includes the following order:

“IT IS ORDERED THAT YOU APPEAR BEFORE THE Family Court for Charleston County.”

Guess what? This is a Court Order, issued by a judge.

Failure to appear for a Rule to Show Cause if your client has been properly served is a violation of a court order, and a bench warrant will be issued for the non-appearing party (your client). Do not ever accept service of a Rule to Show Cause as this may lead to malpractice considerations. Think about this: You accept service of the RTSC for your client who wants to go Myrtle Beach, and your client does not appear at the designated time because he is riding the waves, so the Court issues a bench warrant for his arrest. Surfer dude is later arrested on a bench warrant. You would prefer not to be put in this position.

The general practice is to ask your friend, the other lawyer, to send you the RTSC with an acceptance of service, and then require your client to come into your office to sign the Acceptance. This also gives you an excellent opportunity for your discuss your retainer for your representation of your client for the Rule. Acceptance of Service saves the expense of a process server if your client is found in contempt (thus ultimately cutting his expenses), and it also telegraphs to the trial judge early on that you and your client have been cooperative. This practice also helps to generate goodwill in trying to actually resolve the RTSC.

Think carefully about the client whose position is that it is better to “run from the process server.” When it comes time to collect your fees for your excellent representation of your client, he may be running from his lawyer as well.

Many of our clients are new to this process and they think that if they get served with a RTSC, the police will swoop in and take him to jail in the middle of the night. You need to reassure the client that this will not happen, and advise him that if a process server shows up, he needs to simply accept the papers and bring them to your office the next day. Do not ever allow any client to leave a RTSC at your office without your looking at him face to face, without him signing a representation agreement, and without your collecting your fee.

RULE 3: MAKE SURE THAT SERVICE WAS APPROPRIATE

The Court has the authority to direct the manner of service and who may effectuate service of the RTSC. Most practitioners draft the RTSC to include the method of service. In Charleston County, you will most generally find the following paragraph within the RTSC:

AND IT IS FURTHER ORDERED that this Rule to Show Cause and verified Complaint for Contempt and Enforcement be served upon the Defendant as provided in Rule 4 of the South Carolina Rules of Civil Procedure or by any other person who is not less than eighteen (18) years of age and not an attorney in or a party to this action.

If this language is not found in the Rule and the rule was served by process server, the Court will find that service was not proper and will continue the Rule upon proper motion. So what do you do if your good friend Emily Johnston failed to include this language in the Rule and she serves your wonderful client by private process server:

a. You wait until you're in front of the trial judge at the RTSC and embarrass her by making a motion to dismiss the Rule for failure to properly serve the Rule, thereby promoting ill will and the possibility that your good friend Emily won't take you to lunch at SNOB that week, or

b. You call up your good friend Emily and tell her she's got defective service on her hands, and that you, being a great American, will agree to continue the Rule until she can send over the Acceptance of Service so that your client can sign it.

I like Solution B. We all get busy; we have new paralegals; we don't want to be embarrassed in front of our favorite judge; we don't want our clients to think we dropped the ball. In short, remember the words of the Honorable Paul W. Garfinkel: "What goes around comes around."

RULE 4: PREPARE A RETURN OR A REPLY AND ASK FOR FEES

Once the Rule is served, the burden shifts to the respondent to establish the justification for his inability to comply with the order. Pratt v. South Carolina Department of Social Services, 283 S.C. 550, 324 S.E.2d 97 (Ct. App. 1984). The alleged contemnor has several options, although the only real requirement is to show up at the scheduled hearing. It is best to file a "Return on the Rule" in response to a RTSC, which may deny or object to

the allegations made in the verified complaint or affidavit. The alleged contemnor may also file his or her own affidavit in opposition to the Rule, or his or her own RTSC to deny and contradict the Rule. A contemnor may also challenge the RTSC on the basis of lack of personal or subject matter jurisdiction. You will see all manner of Returns. In general, best to answer the Complaint for RTSC like a Complaint, and include every defense which applies to your set of facts.

RULE 5: DO NOT IGNORE A RTSC

It is never a good idea to ignore a RTSC. Failing to appear, or other non-compliance with the RTSC, may well result in a contempt charge, a bench warrant, and other appropriate sanctions, including jail time. If a defendant ignores a RTSC or fails to appear at the scheduled hearing, the court has the authority to find the defendant in contempt, and may have the defendant arrested and imprisoned. A neglected RTSC may result in the defendant acquiring status as a fugitive. See, e.g., *Scelba v. Scelba*, 342 S.C. 223, 535 S.E.2d 668 (Ct. App. 2000). It may also include surrendering a passport; requiring child support payments to be paid through the family court, etc.

RULE 6: DEFENSES AND STRATEGY

A. Is there willful disobedience?

In an action for contempt, the burden of proof is on the moving party. See, e.g., [*State v. Bowers*, 270 S.C. 124, 241 S.E. \(2d\) 409 \(1978\)](#). The use of a rule to show cause to initiate the proceeding does not shift the burden of proof to the respondent. 60 C.J.S., *Motions & Orders*, Section 37(5).

Contempt results from the willful disobedience of a court order. Before a court finds a person in contempt, the record must clearly and specifically reflect the contemptuous conduct. *Moseley v. Mosier*, 279 S.C. 348, 306 S.E. (2d) 624 (1983); *Bigham v. Bigham*, 264 S.C. 101, 212 S.E. (2d) 594 (1975). In a proceeding for contempt for violation of a court order, the moving party must show the existence of the order and the facts establishing the respondent's noncompliance. *Means v. Means*, 277 S.C. 428, 288 S.E. (2d) 811 (1982). The burden then shifts to the respondent to establish his defense and inability to comply with the order. *Id.*; *Pratt v. South Carolina Department of Social Services*, 283 S.C. 550, 324 S.E. (2d) 97 (Ct. App. 1984).

B. Is your client unable to comply?

It is generally recognized that where a contemnor is unable, without fault on his part, to obey an order of the court, he is not to be held in contempt. *Hicks v. Hicks*, 280 S.C. 378, 381, 312 S.E.2d 598, 599 (Ct. App. 1984).

C. Ask for enough time.

Rules are done with LIVE TESTIMONY. Prepare your examination. The rule must be set for enough time. How do you do this? Call the lawyer who filed the Rule and explain that he did not request enough time and ask him to agree to continue it (Rule 11). Then if there is no cooperation, file a Motion for Continuance and go ahead and throw in there a motion for discovery and a request for Pre-Trial Conference. If the Rule is complicated and there are questions about whether your client can comply, then you will most generally need discovery.

D. Is there a mediation requirement in the Final Order?

Many times there are mediation requirements burred within final orders that require the parties to go to mediation before any action is filed; sometimes this will apply to a RTSC, and sometimes, Rules are specifically exempted. Review the Order upon which the contempt is founded and determine whether you can use this as a defense.

RULE 7: SETTLE, NEGOTIATE AND COMPROMISE

Like any other case, a Rule can be settled and negotiated to each party's satisfaction. It takes time, strategy, money, and a willingness to admit that your client may not be in compliance. Always look at the amount of money involved and balance that against what it may cost your client to defend the Rule. You can still earn a decent fee by representing your client and negotiating a consent order to resolve the Rule. This is so much better than hearing Judge Creech announce to your client at the conclusion of your brilliant defense: "Sir, I find that you are guilty of civil contempt, and hereby sentence you to incarceration in the worst place on earth, the Berkeley County Jail. Please stand up and place your hands behind your back." It is so much better to negotiate your client's future than hearing the "clink" behind your client's back.

RULE 8: WHAT DO YOU DO WHEN JUDGE CREECH SENTENCES YOUR CLIENT TO INCARCERATION

Always advise your client who refuses to settle to have enough cash on hand to pay the court fees, the back support and whatever else may be in dispute. Have an emergency number for your client's family members in the event he goes to jail. Ask your client to put his cash somewhere other than his body (see Rule 9).

RULE 9: TELL YOU CLIENT TO EMPTY HIS POCKETS OF ALL OF HIS CASH

I once had a Rule where the “alleged contemnor” on the witness stand owed my client child support of \$800.00. I asked the poor fellow who was represented by counsel, to empty his pockets. He did, and produced a wad of cash in the amount of \$1,152.00. That was not great strategy on the alleged contemnor’s part.

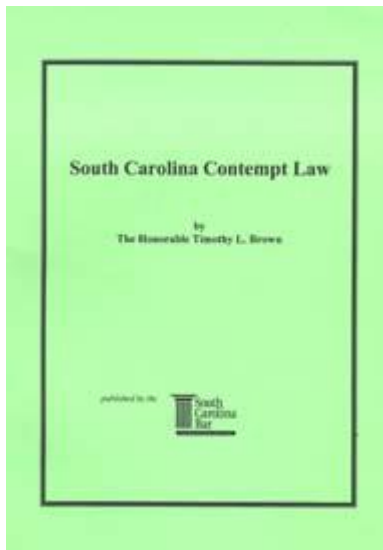
RULE 10: TELL YOUR CLIENT WHO OWES MONEY NOT TO WEAR GOLD CHAINS TO COURT.

This is a bad idea.

RULE 11: FIND \$15.00 AND ORDER A BOOK.

After you have been retained on your first Rule, take \$15.00 and call the South Carolina Bar. Tell them you need to order South Carolina Contempt Law by the Honorable Timothy L. Brown:

SC Contempt Law



Quantity in Basket: *None*
Code: **726**
Price: **\$15.00**

Quantity:

Promotion Code:

The Honorable Timothy L. Brown

©2006

The power of contempt is essential to the preservation of order in judicial proceedings and to the enforcement of judgments, orders and rules. The power is therefore not confined but inherent in all courts and necessary to the due and proper administration of justice. State v. Passmore, 363 SC 568, 611 S.E.2d 273 (S.C. App. 2005).

South Carolina Contempt Law is about the concepts relative to contempt. This helpful monograph is not only practical but it is also easy to understand. Written by Judge Timothy Brown to outline what should be understood to properly represent a client alleging or defending against contempt, this is a very valuable resource for South Carolina litigators.

Topics addressed include:

- Contempt Defined
- Basis for Issuing a Rule
- Service of Process of the Rule (Indirect Contempt)
- Venue
- Minimum Amount of Time between Notice and Trial
- Pleading
- The Elements of Contempt
- Judicial Notice
- Burden of Persuasion
- Categories of Contempt
- Defenses
- Remedies
- Effect of Compliance

RULE 12: CALL ME (OR ANYONE ELSE WHO LOOKS OLD) TO ASK HER QUESTIONS AND BEG FOR FORMS.

Emily G. Johnston
1051 Chuck Dawley Boulevard
Mount Pleasant, SC 29464
Office: 843-881-6866
Cell: 843-697-7000
egi@johnstonlawfirm.com

ATTACHMENTS: Criminal Contempt Order
Order Rescinding Bench Warrant

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

IN THE FAMILY COURT
NINTH JUDICIAL CIRCUIT
CASE NO.: DR-6

[REDACTED])

Plaintiff,)

vs.)

[REDACTED])

Defendant.)

ORDER FOR CRIMINAL CONTEMPT

DATE OF HEARING: [REDACTED]
TRIAL JUDGE: Wayne M. Creech
PLAINTIFF'S ATTORNEY: Pro Se
SPECIAL PROSECUTOR: Emily G. Johnston
GUARDIAN AD LITEM: [REDACTED]
COURT REPORTER: Leah Dupree

THIS MATTER comes before the Court on a Rule to Show Cause for Criminal Contempt. Present in the courtroom were Emily G. Johnston, Esquire, Special Prosecutor, the witnesses who had been subpoenaed for this proceeding, and [REDACTED]. The Plaintiff was properly served with the Rule to Show Cause. Based upon the testimony presented herein and evidence presented, the Court makes the following findings of fact:

1. That a bench warrant for the Plaintiff, [REDACTED] was issued herein February 26, 2004. [REDACTED] was advised by the Court that she has been charged with criminal contempt, and if found guilty of criminal contempt, she could be sentenced to a maximum sentence of six (6) months in jail, a fine of one thousand five hundred (\$1,500.00) dollars, and/or community service of three hundred (300) hours. She was further advised by the Court that if she is found guilty in this prosecution, she will have a criminal record.

2. [REDACTED] was further advised that she is entitled to be represented by counsel in this criminal prosecution, and that, if she could not afford a private lawyer, a lawyer would be appointed to represent her. Knowing this, she affirmed to the Court that she waived her right to counsel, and desired to proceed pro se.

3. The State offered Exhibit 1, the Affidavit of the Fees of the Special Prosecutor, and the Affidavit was admitted without objection.

4. During the hearing, [REDACTED] was served with a Notice of Final Hearing in the underlying domestic litigation.

5. During a hearing November 14, 2003, the Plaintiff, [REDACTED], was ordered not to contact certain witnesses in this case prior to an investigation being conducted by the Guardian ad Litem.

6. The witnesses presented by the State, [REDACTED] and [REDACTED] were contacted by [REDACTED] in contravention to this Court's ruling that she not contact the witnesses. This contact was made immediately after the hearing November 14, 2003 and before the Guardian ad Litem was able to contact the witnesses.

7. A significant issue in this case concerns an alleged romantic relationship between [REDACTED] and [REDACTED]. At the prior hearing, [REDACTED] adamantly denied the relationship under oath.

8. [REDACTED] offered testimony on November 14, 2003 intended to impress upon the Court that she was not romantically involved with [REDACTED].

9. [REDACTED] testified in this proceeding that he had been involved romantically with [REDACTED] for at least six months.

10. Another significant issue in this litigation is whether the minor child of the

parties was exposed to this romantic companion and safety issues relating to [REDACTED]. [REDACTED] denied the relationship and it is absolutely clear that her testimony was false and intended to mislead.

11. During the hearing on November 14, 2003, [REDACTED] was placed under oath and lied to this Court concerning her relationship with [REDACTED].

12. On November 14, 2003, [REDACTED] was clearly instructed by this Court not to contact the witnesses so that the Guardian ad Litem could contact them without interference. This was to allow the Court to address and investigate the potential safety issues concerning the minor child.

13. The State has proved, beyond a reasonable doubt, that [REDACTED] contacted the witnesses despite a clear warning from this Court not to do so. In so doing, she undermined the confidence of the community in this system and the ability of this Court to protect a minor child.

It is therefore

ORDERED, ADJUDGED, AND DECREED, that the Plaintiff, [REDACTED], is in criminal contempt of this Court's Order restraining her from contacting the witnesses herein; and it is further

ORDERED, ADJUDGED, AND DECREED, that the Plaintiff, [REDACTED], is sentenced to the Berkeley County Detention Center for a period of six (6) months, to be suspended after three (3) months service provided that the fees as ordered herein are paid to the Special Prosecutor as further ordered herein; and it is further

ORDERED, ADJUDGED, AND DECREED, that the Plaintiff, [REDACTED], is ordered to pay the attorneys fees of the Special Prosecutor, to be paid to the Special

Prosecutor, Emily G. Johnston, at 1002 Anna Knapp Blvd., Mt. Pleasant, S.C. 29464
(843) 881-6866, in the amount of Two Thousand Five Hundred Eighteen and 84/100
(\$2,518.84) Dollars; and it is further

ORDERED, ADJUDGED, AND DECREED, that should [REDACTED] pay the
fine within three (3) months, she shall be released after serving three (3) months in the
Berkeley County Detention Center, and shall be placed on probation for a period of three
(3) months; and it is further

ORDERED, ADJUDGED, AND DECREED, that upon her release, [REDACTED]
is required to register with the probation office for the jurisdiction where she resides.

AND IT IS SO ORDERED!

WAYNE M. CREECH
Judge of the Family Court

Moncks Corner, South Carolina

June _____, 2004

STATE OF SOUTH CAROLINA	)	IN THE FAMILY COURT FOR
	)	THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: [REDACTED] DR-10-[REDACTED]
[REDACTED]	)	DSS-Case No.: [REDACTED]
)	
Plaintiff,)	
)	
- vs -	)	ORDER OF DISMISSAL
	)	AND RESCINDING
[REDACTED]	)	BENCH WARRANT
)	
Defendant.)	
_____)	

IT APPEARING that Warrant No. W [REDACTED] was issued pursuant to a Bookkeeping Rule to Show Cause in 2009, and it further appearing that the parties, by and through their undersigned representatives, have agreed that the Defendant's child support is current as of August 20, 2010, and has been paid in advance through May, 2010, when the child support terminates by operation of law. It is, upon consent of the parties

ORDERED, ADJUDGED, AND DECREED, that the Defendant has satisfied his child support obligation herein; and it is further

ORDERED, ADJUDGED, AND DECREED, that Bench Warrant W [REDACTED] issued against Defendant is and shall be rescinded.

AND IT IS SO ORDERED!

 JOCELYN B. CATE
 Judge of the Family Court

Charleston, South Carolina
 August _____, 2010

I SO CONSENT:

EMILY G. JOHNSTON, ESQUIRE
Attorney for Respondent
1051 Chuck Dawley Blvd.
Mt. Pleasant, SC 29464
Telephone: (843) 881-6866
Facsimile: (843) 881-0317

I SO CONSENT:

JOHN M. MAGERA, ESQUIRE
Attorney for Petitioner
SCDSS
P.O. Box 150012
Charleston, SC 29415-0012
Telephone: (843) 953-9712
Facsimile: (843) 953-9155

YOUR FIRST TRIAL

How to Prepare & Try Your First Case

**2011 CHARLESTON COUNTY FAMILY LAW ASSOCIATION
FRIDAY, JUNE 3, 2011
CHARLESTON COUNTY JURY ROOM**

**Melissa F. Brown
Fellow, American Academy of Matrimonial Lawyers
Melissa F. Brown, LLC
145 King Street, Suite 405
Charleston, SC 29401
843.722.8900 (O)
melissa@melissa-brown.com
www.melissa-brown.com**



© 2011 Melissa F. Brown

www.scdivorcelaw.com

YOUR FIRST TRIAL

How to Prepare & Try Your First Case

2011 CHARLESTON COUNTY FAMILY LAW ASSOCIATION
FRIDAY, JUNE 3, 2011
CHARLESTON COUNTY JURY ROOM

Melissa F. Brown
Fellow, American Academy of Matrimonial Lawyers
Melissa F. Brown, LLC
145 King Street, Suite 405
Charleston, SC 29401
843.722.8900 (O)
melissa@melissa-brown.com
www.melissa-brown.com

©2011 Melissa F. Brown

www.scdivorcelaw.com



MINDMAP

2



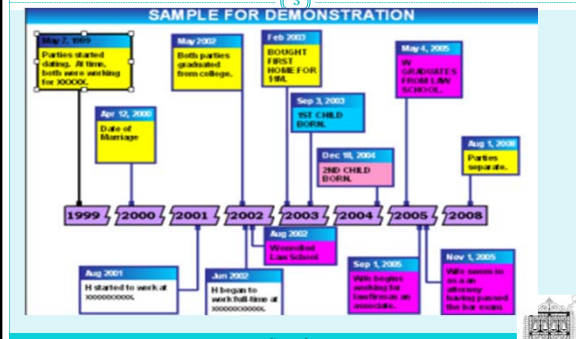
©2011 Melissa F. Brown

www.scdivorcelaw.com



TIMELINE

3



©2011 Melissa F. Brown

www.scdivorcelaw.com



EVIDENCE/PROOF CHART


4

Issue	Facts to Support	Witness	Evidence	Objection	Response	A/D

©2011 Melissa F. Brown www.scdivorcelaw.com

ROADMAP

5



**To avoid unnecessary detours;
Keeps you from getting lost; and
Guides you to the destination your
client desires to reach.**

©2011 Melissa F. Brown www.scdivorcelaw.com

HOW TO IDENTIFY YOUR CASE THEORY

6

1. What does the Judge need to know about my client in order for my client to achieve the result he/she desires?
2. What are the most important issues & supporting facts to enable the Judge to grant the client the relief, he/she requests?
3. How can I convey my theory to the Judge in a memorable way?

©2011 Melissa F. Brown www.scdivorcelaw.com

ANSWER

7

1. Tell the **STORY** of your case.
2. **TEACH** the Judge the rationale to rule in your client's favor; &
3. **PAINT** a memorable picture.



©2011 Melissa F. Brown

www.scdivorcelaw.com



WHAT IS MEMORABLE?

8

H	symbol																He
Li	Be											B	C	N	O	F	Ne
Na	Mg											Al	Si	P	S	Cl	Ar
K	Ca	Sc	Ti	V	Cr	Mn	Fe	Co	Ni	Cu	Zn	Ga	Ge	As	Se	Br	Kr
Rb	Sr	Y	Zr	Nb	Mo	Tc	Ru	Rh	Pd	Ag	Cd	In	Sn	Sb	Te	I	Xe
Cs	Ba	La	Hf	Ta	W	Re	Os	Ir	Pt	Au	Hg	Tl	Pb	Bi	Po	At	Rn
Fr	Ra	Lr	Rf	Db	Sg	Bh	Hs	Mt	Uun	Uuu	Uub	Uuq					
Lanthanoids		La	Ce	Pr	Nd	Pm	Sm	Eu	Gd	Tb	Dy	Ho	Er	Tm	Yb		
Actinoids		Ac	Th	Pa	U	Np	Pu	Am	Cm	Bk	Cf	Es	Fm	Md	No		

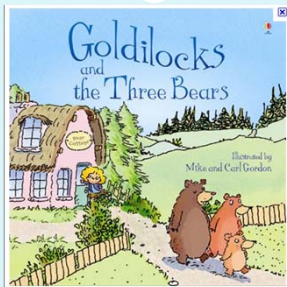
©2011 Melissa F. Brown

www.scdivorcelaw.com



REMEMBER THIS STORY?

9



©2011 Melissa F. Brown

www.scdivorcelaw.com



Moral = Theory → Requested Relief

10

TELL Your Client's STORY

STORY TEACHES A LESSON

LESSON = MORAL OF YOUR STORY

MORAL = THEORY OF YOUR CASE

THEORY with LAW & FACTS → REQUESTED RELIEF

©2011 Melissa F. Brown

www.scdivorcelaw.com



MEMORABLE QUOTES

11

“I Have a Dream”
Martin Luther King



©2011 Melissa F. Brown

www.scdivorcelaw.com



MEMORABLE QUOTES

12

“And so, my fellow Americans: ask not what your country can do for you - ask what you can do for your country.”

President John F. Kennedy



©2011 Melissa F. Brown

www.scdivorcelaw.com



COUNTRY MUSIC SONGS

13

“Because you’re mine, I walk the line.”
Johnny Cash



©2011 Melissa F. Brown www.scdivorcelaw.com

COUNTRY MUSIC SONGS

14

“It’s five o’clock somewhere”
Alan Jackson



©2011 Melissa F. Brown www.scdivorcelaw.com

WHY TELL A STORY?

15

Stories teach.

We are teachers.

We teach the judge.

©2011 Melissa F. Brown www.scdivorcelaw.com

WHY TELL A STORY?

16

Good Stories leave a **lasting impression.**

Lasting impressions are remembered.

©2011 Melissa F. Brown

www.scdivorcelaw.com



PROTECT YOUR RECORD

17

LEWIS v. LEWIS

“For attorneys who are skilled both inside the family courtroom and inside the appellate courts, the decision in this case will give them an emboldened new sword-and-shield. Finally, and unfortunately, for those family law attorneys who have never known “how to protect your trial record”, this opinion will either force you to learn how, or it will force you to call your malpractice insurance carrier to up your policy limits.”

Judge Barry Knobel

©2011 Melissa F. Brown

www.scdivorcelaw.com



OBJECTIONS

18

“Through the effective use of evidentiary objections, you may be able to control the flow of and introduce evidence and eliminate evidence that is harmful” to your client’s position.

Steve Kolodny, Co-Chair Houston Family Law Trial Institute

©2011 Melissa F. Brown

www.scdivorcelaw.com



GIVE THE JUDGE A HOOK

19



©2011 Melissa F. Brown www.scdivorcelaw.com

DIRECT EXAMINATION

20

**LET YOUR WITNESS
TELL THE STORY!**

©2011 Melissa F. Brown www.scdivorcelaw.com

DIRECT EXAMINATION

21

YOUR FRIENDS ON DIRECT

WHO?
What ?
Where?
When?
How?
Why?


©2011 Melissa F. Brown www.scdivorcelaw.com

MAKE YOUR QUESTIONS CLEAR!

22

**USE SHORT, BASIC QUESTIONS
SIMPLE
YET
DESCRIPTIVE WORDS**

©2011 Melissa F. Brown www.scdivorcelaw.com



CROSS EXAMINATION


23

Do not be Cross with your witness on cross-examination.

Remain calm

Ask one question with one fact at a time.

©2011 Melissa F. Brown www.scdivorcelaw.com




GOOD CROSS QUESTION?

24

Isn't it true that you love to drink and often passed out at night after consuming a 12 pack of beer, chased down with a shot of bourbon, correct?

©2011 Melissa F. Brown www.scdivorcelaw.com



GOOD CROSS QUESTIONS?

25

- You drink?
- You like to drink?
- You drink beer?
- You like to drink beer?
- You drink bourbon?
- You like to drink bourbon

©2011 Melissa F. Brown

www.scdivorcelaw.com



GOOD CROSS QUESTIONS?

26

- You like to drink shots of bourbon and chase it with beer?
- During the marriage, you frequently consumed these drinks?
- In fact, you consumed large amounts of these drinks?
- When you consumed these drinks, you sometimes passed out?

©2011 Melissa F. Brown

www.scdivorcelaw.com



GOOD CROSS QUESTIONS?

27

- You often forgot the events of the night before?
- You forgot conversations?
- You forgot your behavior?
- You refused to stop drinking at your wife's request?
- That's why we are here today?

©2011 Melissa F. Brown

www.scdivorcelaw.com




POWER OF REPETITION

28

- *No matter the time, he had a drink in his hand*
- *No matter the time, he was ready to unwind*
- *No matter the time, he drank b/c it was 5 o'clock somewhere.*

©2011 Melissa F. Brown www.scdivorcelaw.com




LOOP YOUR QUESTIONS

29

- You drink beer?
- You like to drink beer?
- You drink bourbon?
- You like to drink bourbon?
- *You like to drink shots of bourbon chased with a can of beer? [looping]*

©2011 Melissa F. Brown www.scdivorcelaw.com



USE WITNESS' OWN WORDS

30


Q: You like to drink when you get home from work?

A: *Yes. I need to unwind.*

Q: You like to unwind by drinking a beer?

Q: You like to unwind by drinking a beer after work?

©2011 Melissa F. Brown www.scdivorcelaw.com



IMPORTANT CONSIDERATIONS

31

1. No time to waste in family court.
2. Put winning facts before judge right away.
3. Watch your judge.
4. Try your own case.
5. Submit checklist of the relief your client desires to Judge.

©2011 Melissa F. Brown

www.scdivorcelaw.com



CONCLUSION

32

1. Your reputation & your credibility are key factors to winning any trial or motion.
2. Always Be HONEST.
3. "Credibility lost" is hard to ever regain.
4. If your peers cannot trust you, few judges will either.
5. Never sacrifice your ethics for any client or self-serving reason.

©2011 Melissa F. Brown

www.scdivorcelaw.com



FIRST AID TRIAL KIT

33

MALES

FEMALES



©2011 Melissa F. Brown

www.scdivorcelaw.com



APPENDIX TO “Trying your First Case”

MindMaps Software Programs

For the PC: www.mindjet.com

iPhone/iPad iMindMap & Mindjet

Mac: IThoughtHD

Timeline Software

For the PC: www.casesoft.com (Note it can be used as a visual, as part of the CaseMap Program & the software will convert the timeline to a Word format in two “clicks” of your mouse.)

iPhone/iPad: Timeline Eons

Mac: Timeline 3D


TIMELINE in Word Format

5

CaseMap Facts Report

Case: CLE for first time trial
Created: 5/27/11 3:53:39 PM

Date & Time	Fact Text
Fri 05/07/1999	Parties started dating. At time, both were working for XXXXX.
Wed 04/12/2000	Date of Marriage
08/??/2001	H started to work at XXXXXXXXXXX.
05/??/2002	Both parties graduated from college.
06/??/2002	H began to work full-time at XXXXXXXXXXX.
08/??/2002	W enrolled Law School
02/??/2003	BOUGHT FIRST HOME FOR \$1M.
Wed 09/03/2003	1ST CHILD BORN.
Sat 12/18/2004	2ND CHILD BORN.
Wed 05/04/2005	W GRADUATES FROM LAW SCHOOL.
Thu 09/01/2005	Wife begins working for law firm as an associate.
Tue 11/01/2005	Wife sworn in as an attorney having passed the bar exam.
Fri 08/01/2008	Parties separate.

©2011 Melissa F. Brownwww.divorce-law.com

EVIDENCE/PROOF CHART

<u>Issue</u>	<u>Facts to Support</u>	<u>Witness</u>	<u>Evidence</u>	<u>Objection</u>	<u>Response</u>	<u>A/D</u>

BOOKS TO TAKE TO COURT

SC Family Lawyer Tool Kit, 2d edition

SC Family Law Annotated, 2011, West Corporation, tabbed for frequently used sections

South Carolina Evidence Handbook Annotated, by Justin Kahn

South Carolina Rules of Civil Procedure Annotated, by Justin Kahn

Making and Meeting Objections II, Judge Robert A. Wenke

South Carolina Family Court Handbook, by Sandi Parise

Marital Litigation in South Carolina (Fourth Edition) by Roy Stuckey

Professor Syd Beckman's laminated Evidence Objection & Foundation list

BOOKS TO PREPARE FOR TRIAL

The Divorce Trial Manual, From Initial Interview to Closing Argument, Lynne Z. Gold-Bikin and Stephen Kolodny

So You're Going to Try Your First Case..., A Primer for Federal and State Jury Trials in South Carolina, by Warren Moise (While written for jury trials, Warren includes helpful information for bench trials as well.)

Evidentiary Foundations, Edward J. Imwinkelreid, 2008

Cross-Examination, Science and Techniques, Posner and Dodd

Cross-Examination for Law Students, Posner and Dodd

Trial Handbook for South Carolina Lawyers, 4th Ed. 2010, Alex Sanders and John S. Nichols

Nut and Bolts of South Carolina Substantive and Procedural Law, A Trial Notebook 2nd Ed, Judge Ralph King Anderson, Jr.

FIRST AID TRIAL KIT CONTENTS

Legal pads Laptop + charger Power strip with long cord iPhone & iPad + chargers Laser pointer with extra batteries Flash Drives Sticky notes (all sizes) Highlighters Pens Pencils and erasers Dry erase markers (multiple colors) plus dry-erase eraser Black Sharpie (permanent marker) Stapler, staples, and staple remover Scissors	Paper clips and large binder clips Rubber bands (large and small) Clear tape Duct tape Roll of quarters Bottled water Power bars Aspirin Breath mints Extra pair of stockings or clean, matching tie (as appropriate) Lipstick Chapstick
---	--

MORE SOFTWARE + APPS

SC: **Traxler Child Support** and **Alimony Calculator** software Programs

SC: **Sean Keefer's Child Support App** for your I-phone or I-pad

One of my favorite blogs to follow is **iPhoneJD**. Here is a link to the recent presentation he and a few other techie attorneys gave at the ABA Tech show in Chicago in April as well as links to his favorite 60 apps for 2009, 2008 & 2007:

<http://www2.americanbar.org/calendar/TECHSHOW/Pages/60Sitesin60Minutes.aspx>

Alex Rosen's Favorite Apps (local trial preparation expert)

RLTC Evidence (\$4.99) Evidence is image presentation software built for trial lawyers. Organize and annotate documents and images on the iPad, then present them via the standard Apple iPad VGA Adapter. Engineered to support standard 1024 x 768 resolution displays for near universal usage with projectors or external displays in courtrooms and presentation venues. However, it can only work with pdf's and it does not display what is on your screen. They hope to upgrade the app for use with the iPad2.

Exhibit A (\$9.99) Exhibit A is a powerful tool for organizing and presenting information. Ideal for presentations in the courtroom, in the boardroom, and in the classroom, Exhibit A gives you the tools to plan and present your message with power, clarity and precision.

TrialPad (\$89.99) TrialPad for iPad is an easy-to-use app for preparing and presenting compelling presentations for trial. It literally puts your next presentation into your own hands, at a fraction of the cost of traditional courtroom presentations.

Noterize (\$3.99) Noterize allows you to view and annotate any available PDF or PowerPoint document. The built-in web browser enables direct importing of files from the web (including university and corporate sites), while integration with Box.net and Dropbox makes transferring documents between your computer and iPad as simple as can be. Once your documents are in Noterize, use the PDF search functionality to quickly find what you are looking for. Annotate your documents in freehand using the pen and highlighter tools, or add typed text and sticky notes with the text box function. Insert extra pages of blank, lined, or grid paper wherever necessary if you need more space to take notes. Palm protection (both left and right-handed) is available.

iAnnotate (\$9.99) iAnnotate is an elegant PDF reader and a powerful annotation tool - and consistently one of the best-selling apps for the iPad. You can open documents from email, fill out forms, sign and send out contracts, enter notes for edits, sketch diagrams, copy text, and add highlights or underline with the drag of a finger! Join the thousands of students, researchers, lawyers, doctors, investors -- and even governments -- that are using iAnnotate every day to go paperless and work from anywhere.

SignMyPad (\$3.99) SignMyPad is a simple to use PDF reader and annotation tool. No more printing documents to sign them, then find a fax machine or scanner to send them back. Save trees!! With SignMyPad you can load PDF's right from your email, or dropbox and add text, date and your signature. Email it right back out from the app!

Power Presenter (\$1.99) This application is for Presentation. If you save the powerpoint as PDF file, this app will help you do the presentation on projector. If you can upload your file to a web site, it also can present that website for you. It automatically detects the projector and send the signal to the projector when connecting with the VGA cable. It actually mirror the screen to the projector using software. Therefore, you can not only see the presentation on the iPad screen but also on the projector. No need to turn your head back all the time as in Keynote. You can now also draw, highlight text on the slides and send your drawing to email. It also contains a blackboard and web content presenter so you can write your formula on a whiteboard or blackboard, show video clips using a single app. It is great tool for education.

CustomShow (Free) lets you play presentations right from your iPad, so you're always ready to present.

- Lets you play entire CustomShow presentations, including videos.
- Works both online and offline, so you never need an Internet connection to pitch.
- Presentations automatically update themselves when changes are made, so you always have the most up-to-date slides.
- Works with a projector or monitor, so you can lead big meetings right from the iPad.
- Creating and updating presentations is done from the CustomShow desktop application*, so you can make changes from both Macs and PCs and the updates are sent directly to the iPad over the Internet.
- Lets you email presentations from your iPad.

Create, manage, and update your slides in CustomShow and present them anywhere: on your computer, online, and now on your iPad.

A Texas Trial Attorney's favorite iPad Apps

Perfect Downloader. It allows you to download videos from the internet (including YouTube) and save to your iPad to include in presentations. It doesn't help the average lawyer that much but for those of us doing presentations it is great.

Dropbox Goodreader Fastcase Keynote Elements WhitePages Wikipanion Instapaper LogMeIn Zinio	ABA Journal Photoshop Express Zite Evidence Texas Legal DropVox Digits WPD Viewer Objections2 Bing
--	---

<p><u>Evidence Apps:</u> courtevidence Objections2</p> <p><u>Document Apps:</u> DropBox DocsToGo Sign It! Evernote ShapeWriter (write with pen or your finger) Write Now (write with pen or finger)</p> <p><u>Presentation apps:</u> i-Clkr (turns phone or iPad into a remote control for your Powerpoint Presentation & shows notes) Remote (same thing for Keynote) SnagIt (Easily captures and edits images from websites, documents & allows editing and insertion into documents and presentations such as PowerPoint & Keynote)</p> <p><u>Dictation:</u> Dragon Dictation Dictamus (dictates e-mails and texts)</p> <p><u>Billing:</u> My Timesheet</p> <p><u>Contacts Apps:</u> Bump Copy2Contact Groups (organizes contacts on iPhone iPad)</p>	<p><u>Law:</u> Fastcase (and it is free) civilprocedures (provides the civil procedure rules for all states; sadly, for SC, it does not include the Family Court rules) Blacks Law Dictionary Cost and Prep (designed by Texas family lawyer to help prepare clients for cost of their case)</p> <p><u>Child Support Guideline App:</u> SC has an app for calculating our Child Support Guidelines (check your state)</p> <p><u>Organizational Apps:</u> ActionMethod Toodledo Calvetica (organizes your calendar on iPhone and iPad better than apps that come with phone)</p> <p><u>Travel:</u> Flightcheck Navigon - great gps (allows for cars, bikes or walking directions) GPS (motion x) Yelp (good restaurants in area)</p> <p><u>Social:</u> Facebook Echofon Twitterific TweetDeck LinkedIn You Tube</p> <p><u>Other:</u> Light - turns iPhone into a bright light HeyTell – A great free app that turns your iPhone into a walkie talkie</p>

Making the defendant testify in the plaintiff's case in chief

Posted Saturday, February 12th, 2011 by Gregory Forman

Filed under [Litigation Strategy](#), [Of Interest to Family Law Attorneys](#), [South Carolina Specific](#)

Blog

Making the defendant testify in the plaintiff's case in chief

Posted Saturday, February 12th, 2011 by Gregory Forman

Filed under [Litigation Strategy](#), [Of Interest to Family Law Attorneys](#), [South Carolina Specific](#)

I have never understood the general preference of litigants and attorneys to be the plaintiff in family court proceedings. "You get to go first," is the sole explanation for this preference, which is indubitably true. The collerary is that the defendant gets to go last. In most competitions going last is considered a big advantage. I certainly find it an advantage in family court. Probably half the family court trials I have lost, I feel I lost because the opposing party testified last—after all the other witnesses had testified. The opposing party could then dance around gaps in my evidence (a fancy way of saying he or she lied like crazy) with relative impunity.

There's huge advantages in one's client testifying last even if the client isn't inclined to lie under oath. Testifying after one has heard all the other witnesses testify allows the client to comment on all past testimony and attempt to harmonize slightly conflicting testimony. It allows the client to comment on gaps or flaws in the other party's evidence. Finally, where the client's recollection of an event is different than previous witnesses for the client, one can simply have the client avoid testifying on that issue (assuming the issue is relatively unimportant) to avoid problems of the client or past witnesses appearing uncredible due to conflicting testimony. These advantages are one reason I will always try to have my client testify last in his or her case in chief.

However, the plaintiff has the ability to take the advantage of going last away from the defendant by calling the defendant as the plaintiff's first witness.^[1] [South Carolina Rule of Evidence 611\(c\)](#) specifically allows an attorney calling the adverse party as a witness to elicit testimony through leading questions ("When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions"). In my seventeen years of family law practice, I have never seen plaintiff's counsel do this to my defendant-client (though they have, on occasion, called my defendant-client in the plaintiff's case in chief). I routinely call the defendant as my first witness if I represent the plaintiff and, as noted above, have been repeatedly burned when I failed to do so.

It has been my experience that calling the defendant as the first witness in the plaintiff's case in chief leads to much more cautious and honest testimony from the defendant and makes it easier to highlight the defendant's lack of credibility through subsequent witnesses. Unable to be sure what evidence might be presented by subsequent witnesses, a defendant called as the plaintiff's first witness is typically less likely to make bold claims that might be contradicted by later testimony or evidence. Unable to know what gaps might exist in the plaintiff's evidence, the defendant is unable to testify in a way that highlights these gaps. Finally in being forced to testify first, rather than being allowed to testify last, the defendant loses the ability to harmonize his or her testimony with other witnesses.

Based on distinctions between the **South Carolina Rule of Evidence 611** and the **Federal Rule of Evidence 611**, in South Carolina there are two big risks for a plaintiff's attorney calling the defendant in the plaintiff's case in chief. The first risk is that the defendant's attorney will be allowed much greater latitude in questioning the defendant after the plaintiff's attorney is done with his or her examination of the defendant. Under the **Federal Rule of Evidence 611(b)**, "Cross-examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness." Under **South Carolina Rule of Evidence 611(b)**, "A witness may be cross-examined on any matter relevant to any issue in the case, including credibility." Thus, while in Federal court a defendant's attorney would be limited in questioning the defendant to issues plaintiff's attorney raised in his or her examination of the defendant, in South Carolina court a defendant's attorney is entitled to an "open cross" of his or her client and can present *all* desired testimony within the plaintiff's case in chief.

The second important distinction between South Carolina and Federal court is that the defendant's counsel is typically allowed to ask leading questions of the defendant on cross-examination in state court and isn't allowed to do so in Federal court. Under both the **South Carolina** and **Federal** Rule of Evidence 611(c), "Ordinarily leading questions should be permitted on cross-examination." The **notes to Federal Rule of Evidence 611** place a limitation on this general right to lead on cross-examination:

The purpose of the qualification "ordinarily" is to furnish a basis for denying the use of leading questions when the cross-examination is cross-examination in form only and not in fact, as for example the "cross-examination" of a party by his own counsel after being called by the opponent (savoring more of re-direct) or of an insured defendant who proves to be friendly to the plaintiff.

Applying these notes, a Federal judge will typically not allow defendant's counsel to lead the defendant when the defendant is called by the plaintiff. However South Carolina family court judges typically, although not uniformly, allow defendant's counsel to lead the defendant when the defendant is called by the plaintiff.

Applying these notes, a Federal judge will typically not allow defendant's counsel to lead the defendant when the defendant is called by the plaintiff. However South Carolina family court judges typically, although not uniformly, allow defendant's counsel to lead the defendant when the defendant is called by the plaintiff.

Despite the risks of calling a defendant as the first witness in a plaintiff's case in chief, there are too many countervailing risks in allowing the defendant to hear all the evidence before he or she is required to commit his or her story to oath.

A few caveats and warnings:

Sometimes one will want to cross examine a defendant using documents that may need to be authenticated. There is some risk that the defendant may challenge the authenticity of a document. While **South Carolina Rules of Evidence 104** and **1008** would seem to indicate the court should conditionally allow questioning on a document the defendant will not authenticate, subject to admitting the document when a subsequent witness authenticates the document, not every family court judge will allow such questioning. Often I prefer to have a defendant unreasonably refuse to authenticate a document—sometimes the defendant will refuse to authenticate his or her own document—so that a later authenticity witness can impeach the defendant. Sometimes it is better to call a witness to authenticate the document before calling the defendant.

When the defendant is called in the plaintiff's case in chief, defendant's counsel will be tempted to do a full "direct" examination of the defendant as part of the defendant's "cross-examination." The ability to lead one's client through his or her direct testimony is generally too tempting to pass up. However the advantages of testifying last is only partially lost if the defendant is called in the plaintiff's case in chief. Doing a full direct of the defendant within the plaintiff's case means these advantages are fully lost. If seeking to do a limited cross examination of one's client with the intent of recalling the defendant in the defendant's case in chief, make sure you seek leave of the court to recall the defendant in his or her case in chief before concluding one's examination. **South Carolina Rule of Evidence 611(d)** might preclude the defendant from being recalled otherwise ("After the examination of the witness has been concluded by all the parties to the action, that witness may be recalled only in the discretion of the court").

Finally if one is going to call the defendant in the plaintiff's case in chief, call the defendant first and definitely avoid calling the defendant after the plaintiff. Only one time in my career has an opposing attorney called my client in her case in chief after the plaintiff testified. During my "cross examination" of my client, I had him do his full direct examination and testify regarding disputes he had with the plaintiff's prior testimony. In my client's case in chief I avoided calling him as a witness even though there were a few items I wouldn't have minded him clarifying

In plaintiff's rebuttal, she attempted to dispute some of my client's testimony. I objected, noting that rebuttal was limited to challenging my client's case in chief and that my client had not testified in his case in chief. The plaintiff's attorney was completely precluded from having her client challenge my client's testimony. I have never understood opposing counsel's strategy in calling my client in her case in chief (a generally good idea) after my client testified (an inexplicable idea).

Despite the risks of allowing a defendant to present all of his or her testimony in my plaintiff's case in chief, while being led by his or her own attorney in doing so, I have routinely been burned when I have allowed the defendant to testify last and have often destroyed the defendant's credibility by preventing the defendant from hearing the other witnesses before committing his or her story to oath. Calling the defendant as the first witness in a plaintiff's case in chief is a strategy more family law attorneys should employ.

RULE 611 MODE AND ORDER OF INTERROGATION AND PRESENTATION

(a) Control by Court. The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.

(b) Scope of Cross-Examination. A witness **may be cross-examined on any matter relevant to any issue in the case**, including credibility. (DIFFERS FROM FRE!)

(c) Leading Questions. Leading questions should not be used on the direct examination of a witness **except as may be necessary to develop the witness' testimony**. Ordinarily leading questions should be permitted on cross-examination. **When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions.**

(d) Re-examination and Recall. A witness may be re-examined as to the same matters to which he testified only in the discretion of the court, but without exception he may be re-examined as to any new matter brought out during cross-examination. **After the examination of the witness has been concluded by all the parties to the action, that witness may be recalled only in the discretion of the court.** This rule shall not limit the right of any party to recall a witness in rebuttal.

Note:

The language of subsection (a) of this rule is identical to that used in the federal rule. It is consistent with the general rule in this State that the conduct of the trial, including the examination of witnesses, is within the sound discretion of the trial judge. See McMillan v. Ridges, 229 S.C. 76, 91 S.E.2d 883 (1956); State v. Nathari, 303 S.C. 188, 399 S.E.2d 597 (Ct. App. 1990). It should be noted that Rule 614 controls the calling and interrogation of witnesses by the court.

Under South Carolina law, cross-examination is limited only by the requirement that the inquiry relate to matters pertinent to the issues involved or to impeachment of the witness. See State v. Ham, 259 S.C. 118, 191 S.E.2d 13 (1972); Hansson v. General Insulation and Acoustics, 234 S.C. 177, 107 S.E.2d 41 (1959). The scope of cross-examination is within the discretion of the trial judge. State v. Sherard, 303 S.C. 172, 399 S.E.2d 595 (1991). Subsection (b) rejects the more restrictive language of the federal rule which limits cross-examination to the subject matter of direct examination and matters affecting the credibility of the witness.

Subsection (c) is consistent with former law. See Rule 43(b)(1), SCRCP; Rule 43(b)(2), SCRCP. The use of leading questions when examining a child, State v. Hale, 284 S.C. 348, 326 S.E.2d 418 (Ct. App. 1985), cert. denied, 286 S.C. 127, 332 S.E.2d 533 (1985), is still permissible under the first sentence of subsection (c) which allows leading questions when "necessary to develop the witness' testimony."

There was no provision in the federal rule as to re-examination and recall of witnesses. The provision concerning re-examination and recall of witnesses was added to the rule to make it consistent with South Carolina law. See Levy v. Outdoor Resorts of South Carolina, Inc., 304 S.C. 427, 405 S.E.2d 387 (1991); State v. Stroman, 281 S.C. 508, 316 S.E.2d 395 (1984); Huff v. Latimer, 33 S.C. 255, 11 S.E. 758 (1890).

How To Handle Your First Trial

June 3, 2011

Thomas F. McDow

Everyone tells us is that the key to success in trial is preparation. Less advice is available on how to prepare. Abraham Lincoln said “If I had eight hours to fell a tree, I would spend seven hours sharpening my ax.” No one, certainly not me, can teach you to “wing it,” going into trial thoroughly unprepared and prevailing solely on brilliant cross-examination and arguments. My goal is to teach you how to sharpen your ax. This is not a primer for going to trial tomorrow; it is a primer for going to court in weeks, months, or years in the future.

Unfortunately in South Carolina we do a better job of training high school students for mock trials than we do training lawyers to try real cases. Maybe the best advice I can give you is to go back to high school and sign up for a mock trial.

I have learned from some really good trial lawyers, including my wife Lucy, my brother Clarkson, and my good friend Tom Pope from Newberry, who in my opinion is the best lawyer in South Carolina. Lucy, Clarkson, and Tom are very different people but they have two common traits. First, they absolutely master the facts and the law in every case. Second, they are courteous and respectful to judges, lawyers, litigants, and witnesses. Not only do they commit every fact and authority to memory, they can instantly find the supporting document in court.

From the minute your client hires you, your goal should be to collect all of the relevant information. This information needs to be recorded in some form so that as trial nears, you can filter these facts and use only those that are necessary,

appealing, or useful. Some lawyers use trial notebooks, some use outlines, some use trial briefs. Less effective are legal pads, index cards, sticky notes, and the backs of envelopes. Personally, I use two devices, CaseMap which is a trial data base from Lexis Nevis, and a trial outline, a copy which follows this essay. When I do a really good job with either of these resources, my ten-year-old granddaughter should be able to go to court and try a decent case.

Likewise, you should be on the constant lookout for authorities that support your client's position. When you read the advance sheets, save a copy of each relevant case to your client's file.

A lawyer cannot watch too much court. It is an opportunity to learn about and from other lawyers. It is also a great way to learn about the preferences and idiosyncracies of judges. This personal example is from *My Favorite War Stories* from my book *Separation and Divorce in South Carolina: A Client's Guide*. The judge was Judge Robert R. Mallard who will always be one of my all time favorites.

Learning through Observation

A Charleston judge was presiding in York County for much of the fall of 1986. Because I did not know much about him, I tried to watch other lawyers try cases in his court. In one uncontested case the judge asked the corroborating witness how he knew that the husband and wife had not lived together for one year. The witness responded "because I've been living with the wife." It was the only time that I have ever seen a wife come close to losing custody of a young child when her husband was neither in court nor represented by a lawyer. This observation was a terrific benefit later when I tried a case involving a father with a live-in girlfriend. The father's lawyer, unaware of the judge's strong moral streak until it was too late, was stunned by the result. A lawyer cannot watch too much court.

The trial outline is the basic Lexis Nexis NoteMap outline that I insert into each client's computer file at the start of the case. I delete issues or items that clearly will not apply to my case. I use this outline, along with Lexis Nexis CaseMap, to collect facts and authorities. By the time I go to court, I should have my entire case scripted.

Following my trial outline is a series of one paragraph stores of *Lessons I Learned from Other Lawyers and Experience* that I wrote for some young lawyers in Rock Hill. Not all of them will apply to your first trial but many will be relevant to trial preparation and the actual trial. I placed a ✓ mark before the ones that I think may be particularly helpful in trial preparation.

The following are some are some dos and don'ts for the trial of a case:

DO be thoroughly familiar with the courtroom and the trial judge. It helps to watch another trial, even if it is uncontested, with the same judge in the same courtroom. I try to read every appellate decision in which the trial judge participated as a lawyer or as a judge because those opinions shape a judges biases, prejudices, idiosyncracies, and predisposition. It helps to cite cases that the judge won or was affirmed. It is not wise to cite cases that the judge lost or was reversed. Erin Urquhart once compiled in Adobe Acrobat our own *Judge Berry L. Mobley Reporter* to prepare for one custody case.

DO visit any places that will play a key roll in the trial, such as your client's home, the adverse party's home, the children's school, any church the family attends, and playgrounds the children frequent. Even if you do not go inside, you

will have a better feel for the case. I have never regretted going to a scene but I have regretted not going to a scene.

DO appear confident. Reflect “The calm confidence of a Christian holding four aces” as described by Mark Twain. The greatest source of confidence is being fully prepared. #8 and #28 from *What I Learned from Other Lawyers and Experience*. (Hereinafter, *What I Learned*). Also, consider your client’s appearance. See *What I Learned* #9. That was a criminal jury case but it also has family court implications. Erin Urquhart tried a major case in which the adverse party, holder of a Harvard MBA, put his head on counsel table while other witnesses were testifying. Consider your own appearance. See *What I Learned* #13, particularly if you are inclined to jiggle your leg. One way to be confident is to develop your confidence through a series of smaller cases before you try the multi-week custody-alimony-property case.

DO use your imagination. I left law school believing that I could win any case if I worked hard enough. Intellectually, I know that is not true but emotionally I believe it. One of my best case from an intellectual, but not financial, perspective is described at *What I Learned* #24.

DON’T try a case until you exhaust your procedural remedies. The example from *What I Learned* #12 occurred in the early 1950's but it is equally true today. Also, see #21 for how I blew a good case.

DO remember that pleadings count. We may be long gone from the days of common law pleading when many cases were won or lost on pleadings but they still make a difference. See *What I Learned*, #22. Also, do not have your client verify

pleadings unless it is absolutely necessary as a verified pleading just “sets the client up” for devastating cross-examination. So long as the pleading is not verified, you can accept the blame but if the pleading is verified then you are “throwing the client under the bus.” Also, be wary of trying issues that were not pled. I learned that lesson the hard way in *McCurry v. Keith*, 325 S.C. 441, 481 S.E.2d 166 (Ct. App. 1997), which is described in *What I Learned #25*.

DO consider whether you should settle the case. Do not learn the hard way my lesson #4 from *What I Learned*. That may have been a criminal case but I failed to settle some domestic cases that I should have settled. Do not take this advice too far and settle cases that you should try. I have done that too.

DON'T drink water or allow your client or witness to drink water during the trial. See *What I Learned #11*. Body language may make a huge difference.

DO make a trial outline. See *What I Learned #5* for how I started using outlines. This is not recommended by many experts but it works for me.

DON'T give anyone in the courtroom reason to believe that you are a jerk. You seek to persuade the judge who will “determine credibility” and “exercise discretion” and is likely to be influenced by your demeanor. Your appearance and your grammar matter.

My daughter and long-distance paralegal Mary asked if I am implying that the opinions of other people in the courtroom, such as the court reporter and bailiffs, count? Why do you care if they think you are a jerk? I do not expect any judge to ever admit it but cases are sometimes won or lost based on a remark of a court reporter or bailiff to a trial judge—and the lawyers never hear about it or get chance to respond.

See *What I Learned* #9. Also, remember that the other lawyer is not your enemy. See *What I Learned*, #17 and #19.

DO ask to make an opening statement in every contested case. I usually say something like, “Your Honor, if you allow each party to make a three to five minute opening statement, it should be beneficial in helping you understand the issues and should reduce the time of trial.” The opening statement is your best chance to have the judge listen to the testimony from your client’s perspective. See *What I Learned* #15.

DO remember your dual audience, the trial judge and the appellate court. Be sure to protect your record. If the judge sustains an objection to your question, make a proffer of the testimony so that it will be available to the appellate court.

DON’T ask your client questions that will elicit negative answers about his or her spouse. See *What I Learned* #14. You can handle the negative aspects on cross-examination or through other witnesses. In one of our best cases ever, Erin and I were seeking alimony from a two or three-year marriage that was our client’s fifth marriage. Erin asked a series of questions showing how good the courtship and marriage were. Then, without any question about the separation, Erin asked questions that showed our client’s devastation by the separation. The judge quickly decided that this was not a separation that our client caused or wanted.

DON’T ask leading questions on direct examination. Rule 2(a), SCRFC, seems to encourage leading questions but they are prohibited by Rule 611(c), SCRE. The real reason not ask leading questions is because they are not persuasive. You are

introducing your client to the trial judge and you can do it better by asking non-leading questions. For example, do not ask “Were you married on July 13, 1985?” Ask, “When were you married?” Avoiding leading questions on undisputed facts also develops good habits that will stand you in good stead when you are questioning about disputed facts.

DO understand how to introduce an exhibit. Q. Can you tell me what this is? A. Yes. Q. What is it? A. It is a letter from my wife to me regarding my 401(k). YOU: (as you are handing the document to the adverse attorney) Your Honor, I offer this into evidence as Plaintiff’s Exhibit Number One. Note that one does not move something into evidence. An exhibit is marked for identification only in two circumstances, first, when the party does not yet want to introduce it but needs to have it identified and second, when the trial judge sustains an object to the exhibit and it needs to be identified for the appellate.

DON’T argue with the judge over a ruling. It is prohibited by Rule 9(b), SCRFC, and Rule 43(i), SCRCP, but the real reason not to do it is because the judge will resent your argument and become more entrenched in his or her ruling.

DO stand when you address the court or examine a witness. Rule 43(h), requires “During examination in open court, the examining counsel shall stand.” If opposing counsel stands, sit down immediately. You will be amazed at how often this will fluster opposing counsel. I tell my client to watch the lawyers because more often than not the lawyer who spends the most time on his or her feet is the losing lawyer.

DON'T express outrage. Calmly present the facts and allow the judge to become outraged over those facts.

DO use plain and accurate English. Do not try to sound like a lawyer. Avoid adjectives. Ask simple questions that a ten-year-old could easily understand. Do not preface questions with dumb lawyer phrases like "Isn't it true" or "Do you admit?" See *What I Learned* #20.

DO require the witness to answer your questions but do not badger the witness. If you ask a simple yes or no question and the opposing witnesses does not give you a yes or now answer, say, "Yes ma'am, I understand, but my questions was Please answer it yes or no and then explain it however you like." If the witness still does not answer the question, ask the trial judge to require the witness to answer the question. I put my thumb beside the last question I asked on my trial outline and no matter how much the testimony rambles, I always come back to the question beside my thumb.

DO be prepared to explain to the trial judge why a particularly harsh case or statute should not be applied in your case. The doctrine of jury nullification can sometimes be persuasive with judges. See *What I Learned* #16.

DO prepare you client for the worst possible result. If the result is unfavorable, tell the client that you are angry and do not want to discuss it, that you can discuss it later when both of you have had time to reflect on the ruling, and that no immediate decision is necessary for a motion to reconsider or an appeal. See *What I Learned* #23 for how I learned this lesson.

When all is said and done, no one can teach you to try a case. You will learn gradually over the years, mostly from the cases you lose. The late Bob Carpenter often said, “I never learned anything from a case I won.” That is not quite true but I have learned much more from the losses than from the wins.

Nothing in this presentation is absolute Gospel truth. What works for me may not work for you. As we say in Alcoholics Anonymous, “take what fits and leave the rest.”

May 29, 2011

Case and Trial Outline

I. Court Facts and Data (Outline in Black Font, Example Material in Blue Font)

- A. Title of Case: Jeanette J. Smith versus Thomas L. Smith Jr.
- B. File Book #: 2004DR4600782.
- C. Date of Filing: May 12, 2004.
- D. Type of Hearing: Final hearing
- E. Date and Time of Hearing: 10:00 a.m. November 1, 2007
- F. Trial Judge: Robert E. Guess
- G. Court Reporter: Shannon E. McGilberry
- H. Plaintiff's Lawyer: Michael L. Brown Jr.
- I. Defendant's Lawyer: Thomas F. McDow
- J. Guardian ad Litem: None
- K. Mediator: Jane M. Randall

II. Exhibits

III. Plaintiff's exhibits

- A. #1 Rock Hill Herald newspaper page
- B. #2 Attorney's fees affidavit of Michael L. Brown Jr.

IV. Defendant's exhibits. None

V. Court's exhibits. None

VI. Time Line

- A. November 10, 1935. Thomas "Buddy" Smith was born at Columbia, South Carolina. Will be seventy-two-years-old in nine days.
- B. October 19, 1937. Jeanette Smith was born at Columbia, South Carolina, and is seventy-years old.
- C. February 3, 1958. Parties married at Newman, North Carolina. This was the first marriage for each party.
- D. December 16, 1959, Thomas L. Smith Jr. was born.
- E. October 24, 1961, Connie Denise Smith, now Poag, was born.
- F. December 25, 1962, James Edward "Eddie" Smith was born.
- G. 1978. Parties separated.
- H. October 31, 1980, order of dismissal for prior case.
- I. December 29, 2000, Buddy retired from Painting Specialist in Charlotte, North Carolina, at age 65.

- J. April 2004. Buddy returned to work, working for Scott Bolling.
- K. May 3, 2004, parties separated when Buddy moved from the marital home.
- L. May 12, 2004, marital litigation filed.

VII. Issues (as shown in CaseMap)

- A. Background and basics
- B. Procedural history
- C. Character and Credibility
- D. Jurisdiction and venue
- E. Marriage
- F. Separation, marital fault, and divorce
- G. Custody and visitation. **Not applicable. I would normally delete this when I opened the file.**
- H. Income, employment, and earning potential
- I. Child support. **Not applicable. I would normally delete this when I opened the file.**
- J. Alimony
- K. Equitable apportionment of property and debts
- L. Injunctive relief and restraining orders. **Not applicable. I would normally delete this when I opened the file.**
- M. Name change. **Not applicable. I would normally delete this when I opened the file.**
- N. Attorney's fees
- O. Settlement offer and negotiations
 - 1. Letter of September 25, 2005, from Thomas F. McDow to Michael L. Brown Jr. Divorce to wife for adultery, 50-50 division of property, \$250 per month permanent periodic alimony, and \$1,000 attorney's fees.
 - 2. February 23, 2006, Mediation with Jane M. Randall was unsuccessful.

VIII. Pretrial Matters

- A. Pre mark exhibits
- B. Submit financial declaration
- C. Submit trial brief
- D. Determine if the issue of attorney's fees will be bifurcated

E. Determine if witnesses will be sequestered

F. Motion in limine

1. The plaintiff is estopped from seeking an award of attorney's fees based upon her discovery responses.
 - a) In her answers to interrogatories, #18 she stated that the major obstacles to settlement of this case are alimony and the division of property. She did not mention attorney's fees as an issue. Standing alone, that would not mean anything. However:
 - b) Interrogatory #13 asked "State your fee agreement with Michael L. Brown Jr. or any other lawyer who has represented you in this case." Answer: Objection. The Plaintiff's agreement(s) (sic) with her respective attorney is confidential and privileged information."
 - c) Interrogatory #14 asked "Itemize all payments you have made to Michael L. Brown Jr. or any other lawyer in this case, including the date of payment, the amount of payment, the consideration for the payment, and the source of the funds for that payment." Answer: Plaintiff object (sic) to Interrogatory No. 15 as it seeks privileged information."
 - d) Interrogatory #15 asks "Itemize all charges for lawyer's fees, court incurred but in this case." Answer: Plaintiff object (sic) to Interrogatory No. 15 as it seeks privileged information."
 - e) Interrogatory #3 asks "List the names and addresses of any expert witnesses who you or your lawyer propose to use as witnesses at the trial of this case." "Answer: There are not (sic) at this time and no existing or recorded statements. The Plaintiff reserves the right to further supplement this response when such information is provided to her." Note that this response, signed by Mr. Brown, excludes himself as an expert witness and excludes any written or recorded statements of his attorney's fees.
2. Based upon the plaintiff's discovery responses, she is limited to one item of physical evidence.
 - a) Request to produce #6 requested "Any documents, photographs, charts, or other physical evidence that you intend to introduce at the trial of this case." "Answer There

are not (sic) at this time and no existing written or recorded statements. The Plaintiff reserves the right to further supplement this response when such information is provided to her."

- b) Late in the afternoon of October 31, 2007, the plaintiff produced a photocopy of a partial page of *The (Rock Hill) Herald* with a photograph that purports to be the defendant.
- G. Ask permission to make an opening statement
H. Ask permission to make an closing argument

IX. Opening Argument

X. Plaintiff's Case

- A. **Jeanette J. Smith** I am including only one segment of my cross-examination of the plaintiff but this should give you some idea of the detail I include in my outline.
- 1. Work history
 - a) Did you work full time during the marriage?
 - b) Was your son Eddie fifteen-years-old when you returned to work full time?
 - c) When did you retire?
 - 2. Income
 - a) What income do you presently have?
 - b) When did you retire? In working on this outline, I just realized that this question is redundant as I asked it two questions earlier.
 - c) Were you sixty-two-years-old on October 19, 1999?
 - d) Did you retire at age sixty-two rather than working until your full retirement age of sixty-five?
 - e) Did you earn \$21,460.10 in 1999, the last year you worked?
 - f) Is there any reason you could not have earned at least \$21,460.10 per year for the next three years?
 - g) If you had worked three more years at \$21,460.10, would you have earned an additional \$64,380.30?
 - h) When did Mr. Smith retire?
 - i) Did Mr. Smith retire at his full retirement age of sixty-five?
- B. **Thomas L. Smith Jr.** These were additional witnesses. I did not include my cross-examination for them.

- C. Kathy Smith
- D. Henry Keith Moss
- E. Thomas White
- F. Shirley Rothrock
- G. James E. Smith. Note: not listed as a witness in answers to interrogatories.

XI. Defendant's Case

- A. Employment during marriage I am including only one segment of my direct-examination of the defendant but this should give you some idea of the detail I include in my outline.
 1. Where did you work at the time you got married?
 2. Where were you stationed in the United States Air Force?
 3. How long did you remain in the Air Force?
 4. When were you discharged?
 5. What kind of discharge did you have?
 6. What day did you get out of the United States Air Force?
December 9, 1959.
 7. Where did you go to work after that?
 8. What did you do for your father? Painted.
 9. What did you do after that?
 10. How long did you continue working during the marriage?
 11. Did you retire?
 12. Where were you working when you retired?
 13. How much were you earning at that time? \$8.50 per hour.
 14. When did you retire? December 29, 2000.
 15. Did you draw full Social Security for retiring at age 65?
 16. When did you next go to work after that. Son Eddie \$100 per day. Stan Mullins, about six months at \$100 per day. Scott Bolling \$100 per day.
 17. Where do you work now?
 18. How much do you earn? \$100 per day.
 19. Is work available every day?
 20. Is this a copy of your pay stub for September 20, 2007?
 21. Is this the pay stub that was used to calculate your income for your financial declaration?

22. Did you have any other income?
23. What income was that?
24. How much did you receive as Social Security? \$1,239.
25. How long do you intend to continue working? As long as I am able, as long as my health will permit me.

XII. Plaintiff's Case in Reply

XIII. Closing Argument

XIV. Judge's Ruling

- A. Divorce
- B. Custody and visitation. Normally I would delete this at the outset as it was not an issue.
- C. Income
- D. Child support. Normally I would delete this at the outset as it was not an issue.
- E. Alimony
- F. Equitable apportionment of property and debts
- G. Injunctive relief and restraining orders. Normally I would delete this at the outset as it was not an issue.
- H. Name change. Normally I would delete this at the outset as it was not an issue.
- I. Attorney's fees
- J. Lawyer to prepare order. Michael L. Brown Jr.
- K. Did the trial judge rule on every issue?

XV. Post Trial Notes

- XVI. Issues actually tried
- XVII. Motions
- XVIII. Evidentiary rulings
- XIX. Grounds for motion to reconsider
- XX. Grounds for appeal
- XXI. Advice to client
- XXII. Loose ends

What I Learned from Other Lawyers and Experience
by Thomas F. McDow

1. When Emil Wald and I began practicing together in 1969, a popular quote among lawyers was Abraham Lincoln saying “A lawyer’s time and advice are his stock in trade.” Emil said that what we really sell is paper and that we should make that paper as attractive as possible. Over the years, I tried to have typewriters with attractive fonts and later computers with laser printers. In 2009 I discovered the web site typographyforlawyers.com that explains type styles and fonts. I found it absolutely fascinating and spent four hours reading it the first time and I have been back several times since. It is now a book. **Lesson: Consider the physical appearance of what you produce.**

2. Michael Brown and I have a continuing argument as to what clients want. He says they want to win. I disagree. Clients first want a lawyer who will listen to them, then they want the case concluded quickly, and winning is third on their priorities. Many times after a losing custody fight a parent says “I just wanted my child to know that I wanted custody and that I tried.” If I listen to what the client wants to tell me, the client feels that I care about him or her and the case. When I began practicing law, I was a good listener but then I got too busy to listen and took pride in fifteen minute initial interviews. As I matured, I paid more attention to clients and my initial interview now takes about two hours minimum. **Lesson: Listen to your clients and let them know that you hear, consider what they say, and end the case as quickly as possible.**

3. David White shocked the local bar in 1968 by getting a verdict of \$4,800 as the result of a malicious prosecution of Sam Jones, a poor Black, for a \$15 hold check he gave to Ivan Chase, a pawn shop owner to secure a \$10 loan. When a client came to me in early 1969 and said that the defendant was found not guilty when he prosecuted a \$10 hold check that was defended by Ed Jackson, I knew we were in trouble. I explained the Sam Jones case to my client and told him that he needed to be prepared to pay big bucks to settle the case but that we should try to mitigate damages by trying to settle it quickly. I called Ed to ask what we could do to settle the case. He said his client would pay the \$10. I was flabbergasted. I ask if he were looking to us for damages and Ed said, “No, he owes the money.” At the time, I thought Ed was wrong and that he failed to represent his client. I only saw the legal issues and disregarded the moral issues. The older I get, the more I think Ed was right, at least he was right if he explained the options to his client. **Lesson: Morally right generally trumps legally right.**

4. ✓ In the late sixties or early seventies my client was charged with reckless driving. The only evidence of recklessness was speeding, about ten miles per hour over the limit. Charlie Chiles, the city solicitor, offered to allow my client to plead guilty to speeding. Being young, cocky, and confident, I declined saying that the city could not prove reckless driving. The jury promptly found my client guilty. I begged

Judge George Gill to reduce it to speeding and fine my client accordingly. He refused saying “Let this be a lesson to always plead your client guilty when you get a chance to plead him guilty to what he is actually guilty of.” **Lesson: Accept reasonable results with no risk rather than risk a bad result trying to achieve a perfect result.**

5. ✓ Bob Carpenter was my friend and mentor and also a great public speaker and trial lawyer who always spoke without notes. I associated Bob on a personal injury case in the early seventies. That meant that I watched while Bob tried the case. We got a verdict for \$6,500, big money for a young lawyer at that time. On the way home I was telling Bob what a great job he had done but I asked why he failed to mention a particular point to the jury in his closing argument. Bob replied “I forgot.” I decided right then that if someone as good as Bob Carpenter could forget points, I would certainly forget points. Since then, I always outline my examination and arguments, even though the experts recommend against it. **Lesson: Outline your case.**

6. Judge Robert W. “Bob” Hayes was another mentor. I spent long hours in his office listening to advice and war stories. He told me that he always wore a blue suit so that jurors could remember him by what he wore if they forgot his face. He always tried to plead several people guilty early in the week while the jury panel was present before trying his contested case later in the week. His point was to let the jury see that he was willing to plead the guilty, the inference was that the client standing trial was not guilty. **Lesson: Every detail may have some impact on a potential juror.**

7. Hugh Simrill and his wife Martha were the adult leaders of our Pioneer Group at Oakland Avenue Presbyterian Church. Hugh and I continued our friendship after I began practicing law. Hugh was well-liked and was elected to the state legislature. He was also a very good trial lawyer and was quite successful, particularly in jury trials. While practicing with Charles Ridley Sr., Hugh probably made as much money practicing law as any lawyer in York County. But Hugh was not satisfied, he worried about his retirement. He invested in a real estate development where the lots did not “perk” and they got sued. He invested in Sunbelt Solar Systems, which was not successful. He bought a moving franchise but his employees stole his money. Hugh was much worse off financially than if he just practiced law. **Lesson: Concentrate on what you do well and do not be distracted by other opportunities to make money.**

8. ✓ Tom Pope from Newberry is my lawyer and, in my opinion, the best lawyer in the state. I watched Tom try several matters at the trial and appellate level and I learned one of the reasons that he is so good. He absolutely masters the facts in every case. He not only knows every fact and can quickly find the document to support the fact, but he understands how the different facts relate to each other. When asked a legal or factual question by a judge, Tom knows the answer without

fumbling through notes and documents. **Lesson: Preparation in the key to brilliance.**

9. ✓ I had a case with a young lawyer I did not know from another county. I invited him to go to lunch to discuss our case, which I intended to settle. The young lawyer, who had just come from court, was wearing a blue blazer with rumpled khaki pants. He used poor grammar and his table manners were atrocious. I decided that if he could not dress, talk, or eat properly, he probably could not try a case properly. I demanded more in settlement than I would have otherwise. We failed to settle and tried the case. The young lawyer tried a very good case but his client made a bad mistake that greatly offended the trial judge. We got a far better result than I ever expected. My adversary became a very fine trial lawyer and later a judge. **Lesson: Others may judge you by many criteria, including grammar, dress, and table manners.**

10. ✓ I dated Jane Rankin, who later married Palmer Freeman, for about two years while she was a counselor at Winthrop. She once went to court with me to observe a jury trial. On the way home, I asked her for a critique. She said that while the other lawyer and I were meeting with the judge before the case started, my client was sitting alone at the counsel table with nothing to do while the jurors were sitting in the courtroom with nothing to do but look at my client. She said that the client should look involved all of the time and suggested giving the client something to read, as if he were preparing something for the case. **Lesson: Be aware that the jury may form an impression of you or your client even before the trial begins.**

11. ✓ I sued a landlord who was also a lawyer. The jury returned a verdict for my client of \$1 actual damages and \$16,500 punitive damages. Over the next few months, I talked to at least six of the jurors and asked them about important points about the trial. The one thing that they all mentioned was that the defendant drank water while on the witness stand. Later I learned from an article on body language that a person who is not telling the truth gets a dry mouth, becomes thirsty, and drinks water. The message that drinking water sends is that the person is not telling the truth. **Lesson: Never let your client drink water in the presence of the trier of the facts, whether it is a judge or a jury and do not do it yourself.**

12. ✓ One of the treats of practicing law in the late sixties and early seventies in Rock Hill was having coffee in the mornings with Bob Ward, a labor lawyer and Congressman Tom Gettys' part-time aid. Bob told the story of my father who was having lunch with a bunch of lawyers. One of the lawyers stated a horrendous set of facts in a domestic relations case and asked the other lawyers how they would defend. The other lawyers had questions and suggestions about the facts of the case. Daddy asked the other lawyer, "What is the basis for jurisdiction and venue?" When that question was answered negatively, there was no local forum in which to

present the horrible facts. **Lesson: Always consider the basic procedural questions before dealing with the substantive facts.**

13. ✓ I read a book on how to be a successful trial lawyer. The only point I remember from the whole book is that good trial lawyers are able to sit perfectly still for hours on end in court so that the focus of the judge or jury is not on the lawyer. It specifically counseled against jiggling one's leg in court, which has the added disadvantage of telling the judge or the jury that you are nervous, uncomfortable, or ill-at-ease with your position or statements. Since then I am aware of the nervous habits of lawyers in the courtroom and I try to avoid those signs of nervousness. I particularly look for leg jiggling and I notice that the worst lawyers tend to jiggle their legs and the better lawyers do not. **Lesson: Do not jiggle your leg or drum your fingers in court.**

14. ✓ Erin Urquhart had been working in my office about six months. We were starting a five-day custody case. Our client, the mother, was the underdog. The first guardian strongly recommended in favor of the father and the second guardian considered it pretty much a draw, maybe 51% to 49% in our client's favor. Numerous experts, clergy, and neighbors were testifying against our client. We developed a trial strategy. I would cross-examine the father and his witnesses to make all of the negative points about the father. Erin would handle the direct examination of our client who would not say anything negative about the father unless it was absolutely dragged from her on cross-examination and honesty would not permit any other response. The direct examination of our client took twenty-eight minutes of a five-day trial. We won on every major point and most minor points. Since then, that strategy has become our standard operating procedure. **Lesson: A party in family court should not testify negatively about the mother or father of his or her children.**

15. ✓ Kathryn Williams worked for me for a semester before going to law school in 1979 so I felt obligated to go to the seminar she moderated years later on opening and closing arguments to juries. One thing I learned was to state first in opening argument in chronological order the facts that my side intended to prove and then in closing argument to state first in chronological order the facts that my side had proved. Within a few trials I was satisfied that this is a good structure for opening and closing arguments. Upon reflection, I realized this is what my mentor Bob Carpenter did and that it reflected Tom Pope's mastery of the facts. **Lesson: Organize your case around a chronological statement of the facts.**

16. ✓ The single most important case I have read may not be "good law" but it has helped me with jury and nonjury trials. I think it was Palmer Freeman who recommended that I read *United States v. Datcher*, 830 F. Supp. 564 (M.D. Tenn. 1993). *Datcher* stands for the principle that the defense should be able to argue the statutory punishment to the jury so that if the jury considers the punishment too draconian for the crime, it may refuse to find the defendant guilty, in short, jury

nullification. My argument to the judge or jury, after stating the facts, is “This case is not what the legislature had in mind when it enacted this statute. The legislature never intended that a person be severely punished under the facts of this case.”

Lesson: Never forget that the trier of the facts has the power to make a decision that flies in the face of the law and the facts if that is necessary to reach a fair and just decision.

17. ✓ Dixon Lee and I tried a three-day case involving all of the usual domestic relations issues. My client prevailed. Because some of the post-trial motions involved a bankruptcy issue, I associated my wife Lucy to help with those issues. We argued the motions before Judge Flynn of Union. On the way back to the office I asked Lucy, “What did you think?” I expected her to tell me in gushing terms what a great job I did on the merits of the motions. Instead, she replied, “I thought it was sad that you and Dixon did not speak to each other.” I thought about it for several days and then called Dixon. Today, Dixon Lee is one of my best friends at the bar and a mentor on whom I can always call for advice or a citation of authority.

Lesson: The case may be hard fought on both sides but it should not be personal with the lawyers.

18. Forrest Wilkerson has a wonderful habit. When he needs to serve motions, answers, discovery, or other documents on the adverse attorney, he does it personally rather than by mail or by having someone else do it. The result is personal contact that lessens the chance for hostility and increases the possibility of settlement. Lesson: Establish personal relationships with other lawyers and you will have a ready route for communication when you oppose each other.

19. ✓ My brother Clarkson told me that “Friends come and friends go but enemies pile up forever.” I tried to find the source of this quote on the internet but it is most commonly stated as an anonymous quote, “Friends come and friends go, but enemies accumulate.” It is true. Many of my friends from the seventies have moved away or we are no longer involved with each other but the enemies I made during the same period do not forget. No matter how despicable a person’s character nor how low his or her station in life, there is no benefit to having the person as an enemy. **Lesson: Do not make enemies lightly and do not think that others are as quick to “forgive and forget” as you may be.**

20. ✓ In the fall of 1963 I was teaching school in Atlanta. At the Lennox Bookstore I found *Thirty Days to a Better Vocabulary* and decided that was just what I needed. After a few days I tired of the big words and decided to learn to use the little words correctly. Sometimes the law may require a term of art but I find there is almost always a simple substitute such as “absolute divorce” for “divorce *a vinculo matrimonii*.” I never understood why lawyers ask lay witnesses questions about “this action,” a term the witness is not likely to understand, rather than “this case,” which everyone understands. Technically actions are at law and cases are in equity, making case the correct term in a domestic relations case. **Lesson: Use simple**

words that your audience will understand.

21. ✓ Trying a case before Judge Joseph R. Moss after he retired as Chief Justice of the Supreme Court of South Carolina, I represented an employment agency seeking to recover its commission for finding employment for a very pretty young woman. The evidence was susceptible of only one reasonable inference, that the woman owed the money. I did not move for a directed verdict at the close of the defendant's case. The jury returned a verdict for the defendant, meaning my client received nothing. The next day I asked Judge Moss if he would have granted my motion for a directed verdict if I had moved for it. With a twinkle in his eye, he responded "You can't live in the past son. You can't live in the past." I had no doubt he would have granted my motion. **Lesson: Include all procedural steps in your trial outline and never overlook a chance to win your case on procedural motion.**

22. ✓ I brought suit against the sellers for conversion for the wrongful repossession of a camper. In about three eight by fourteen inch pages I alleged in great detail how my client purchased the camper, how the defendants took it, and how he was damaged. At trial, Judge Agnew directed a verdict against my client. Outraged, I appealed to the Supreme Court who agreed and reversed the ruling. *Brown v. Reynolds*, 266 S.C. 41, 221 S.E.2d 396 (1975). I associated Bob Carpenter for the retrial. The jury returned a verdict for the defendants. I later learned from some of the jurors that they decided that we had not adequately proven some of my extraneous allegations. Since then, I have tried to avoid alleging anything that was not necessary to my case. **Lesson: In the words of Abraham Lincoln, "Allege not what you need not for fear that you will be required to prove that which you cannot."**

23. ✓ Hugh Simrill associated me on a case. By the time we got to trial, I knew that we had the worst side of the case. David White, my best friend, was on the other side. Judge McFadden granted the defendant's motion for an involuntary nonsuit. I knew that we should have lost before the jury but I thought Judge McFadden's involuntary nonsuit was premature and I was outraged. I outraged easily in those days. Once we were out of the courtroom, I angrily told the client and Hugh that the involuntary nonsuit was wrong and that we should appeal. Within a few days, I calmed down but the client had his heart set on an appeal and Hugh was unwilling to say no. Both quoted all that I said after the trial. We appealed. The Court of Appeals wasted no time in affirming the ruling. *Troutman v. Facetglas, Inc.*, 281 S.C. 598, 316 S.E.2d 424 (Ct. App. 1984). After this, I was aware that sometimes I have given a client the impression that a result was bad when the overall result was very good. **Lesson: Tell clients before and after trial that we do not make decisions until we have to and that we certainly do not make decisions on the day we receive a verdict or ruling.**

24. ✓ My client lost \$4,000 playing video poker machines. She came to me to ask if any relief were available. I remembered from my contracts class under Professor

Coleman Karesh that a person could recover gambling losses in excess of \$50. I brought suit for recovery. Judge Paul E. Short, the trial judge, dismissed the complaint on a Rule 12(b)(6) motion on the ground that the statute did not apply to legal gambling. Not easily discouraged, I appealed. The Supreme Court agreed with me. *Berkebile v. Outen*, 311 S.C. 50, 426 S.E.2d 760 (1993). I became the statewide expert in poker machine cases. We had some successful settlements but never fared well in front of juries because jurors did not think gamblers should be allowed to recover their losses. **Lesson: Use your imagination and “stick to your guns,” but also use some discretion.**

25. ✓ In a poker machine case I sued for the recovery of \$8,560. The defendants did not plead a setoff but testified that on other occasions my client won \$5,000. Judge Grier allowed the setoff. I appealed and lost. In *McCurry v. Keith*, 325 S.C. 441, 481 S.E.2d 166(Ct. App. 1997), the Court of Appeals found that the issue of the setoff, while not pled, was tried by consent. Had I objected to the testimony as irrelevant, my client would have received an additional \$5,000. **Lesson: Protect the record by objecting to irrelevant evidence, even when it seems harmless at the time.**

26. I frequently quote Tony Jones saying “Bluebirds do not marry buzzards” for the proposition the good people do not marry bad people. It is almost invariably true. If my client is a decent person, the other party is most likely a decent person. If I think the other party is a jerk, I usually find that my client is a jerk as well. Along the same line, I once heard my brother Clarkson tell a client, “The reason you do not trust anyone else is because you know that no one can trust you.” I likewise have found that when my client does not trust the other witnesses, it is usually because my client cannot be trusted. **Lesson: Do not be too quick to accept the client’s purity or the adverse party’s depravity.**

27. My brother Clarkson was advising a client who was about to quit a job. Clarkson asked the client if he were familiar with the Tarzan principle and the client responded negatively. Clarkson said, “Never turn loose of one vine before you have a hold on the next one.” **Lesson: No one should leave one job until they have another job in place. A related principle is that it is easier to find a job if you have a job so I advise clients to take whatever job is available and then try to find a better one.**

28. ✓ The best lessons I have learned in the practice of law come from my wife Lucy but not many of them provide direct quotes. She did say that “Judge’s hate lawyers who bicker.” She is right and lawyers should avoid presenting their spats to judges if at all possible. Lucy mostly teaches by example rather than by direct comment. She is the best prepared lawyer I have ever known. She reads advance sheets religiously, including between innings at baseball games. She refuses to hire even a part time assistant so that she will be personally familiar with every fact and principle of law in the case. She laughs easily and frequently, particularly at other

people's jokes. She refuses to criticize a lawyer to a judge. Representing plaintiffs, her settlement offers tend to increase rather than decrease and she has absolute nerves of steel when it comes to trying a case with the result that she gets settlements of which other lawyers can only dream. She does this while charging only \$150 per hour. **Lesson: Follow Mark Twain's advice, "Always do what's right. It will gratify some folks and astound others."**

29. American literature has value in the law office. I keep copies of *Tom Sawyer* by Mark Twain, *The Wonderful Tarbaby* by Joel Chandler Harris, and *The Ransom of Red Chief* by O. Henry in my office because they have such wonderful lessons in psychology that clients should understand. I often ask a client what Br'er Rabbit would say to Br'er Fox if Br'er Rabbit did not want to go to court. I often tell clients that they need to understand how Tom Sawyer got that fence whitewashed or why the kidnappers paid the banker \$1,000 to take his child back. Lesson: **Do not forget the lessons from your childhood books.**

Basic Deposition Procedure

By Paul Tinkler

Preliminarily, there must be an order of discovery in order to conduct a deposition. Rule 25 of the Family Court Rules provides that voluntary exchange of information should be the norm. We know, however, it is not. Lawyers and judges do not take this rule seriously and routinely agree to orders “allowing discovery in accordance with the Rules of Civil Procedure.” In my opinion, family court lawyers and judges should pay attention to Rule 25 because discovery and taking depositions in particular, is expensive.

Assuming there is an agreement or an order of discovery in place and you have determined that taking a deposition is cost effective; you must properly issue subpoenas and notices. Rules 30 (Depositions) and 45 (Subpoenas) govern the procedure. Some of the highlights are:

- A witness may be compelled to attend a deposition only in the county where he resides or is employed or transacts business in person – Rule 30(a)(2)
- The court may designate another county on proper motion
- The subpoena must be served with the witness fee of \$25 plus mileage between the witness’ residence and the location of the deposition
- Ten days notice must be given to opposing parties
- The notice to a party may also request production of documents and tangible things in accordance with the procedure set forth in Rule 34 – Rule 30(b)(5)
- A notice pursuant to 30(b)(6) may designate a business entity or organization at the deponent and describe “with reasonable particularity” the topic of examination
- The parties may stipulate or the court may order for a deposition to be taken by telephone – Rule 30(b)(7)
- A witness has the right to read and sign the deposition or waive that right – Rule 30(e)
- A deposition may be videotaped – Rule 30(h)
- A non-party witness may object to a subpoena requesting the production of documents within 14 days of service – Rule 45(c)(B)
- Rule 30(j) pertaining to conduct during a deposition has been added in recent years. It requires counsel to instruct the witness to ask

deposing counsel for clarification of questions, documents and the like. Nor can the lawyer defending the deposition suggest answers to the witness or generally engage in off-the-record conversations with the witness

- Rule 31 provides for depositions upon written questions, sometimes a useful tool

It should be noted that the subpoena power only extends as far as the state line. There has been a practice of lawyers sending “subpoenas” out of state to obtain documents. Professor Freeman wrote an article about this practice a number of years ago. It is improper for a lawyer to send a subpoena to someone out of state suggesting that it is enforceable. If you need documents from an out of state witness, you may send a “subpoena” but inform the witness that compliance is voluntary. To compel compliance, you need to domesticate the subpoena under the law of the foreign jurisdiction.

Twelve Suggestions for Taking or Defending Your First Deposition

1. Attempt to schedule the deposition with opposing counsel rather than sending a notice unilaterally.
2. Prepare your witness by giving the following advice: tell the truth; answer “yes or no” questions “yes” or “no”; you may explain, but do not give a speech; “I don’t know” is a good answer (if it is true); a deposition is not (within reason) a memory test and records may need to be consulted.
3. When defending a deposition, there is very little you can do, except object to the form of the question (for example, a question that assumes a fact not that is not true, e.g. When did you quit beating your wife?). You may object if a question is asked for the sole purpose of harassing or embarrassing a witness and, if the questioner insists on an answer, you may terminate the deposition, but you must file a motion for protective order within five days.
4. You cannot make “speaking objections” (as lawyers did in the good old days) to try to educate the witness on how to answer. Don’t do it or allow opposing counsel to do it.
5. Generally it is not to your advantage to ask questions of your own witness, unless you anticipate that the deposition will be used at trial in lieu of live testimony or unless some prior answer needs to be cleared up.
6. A deposition of a non-party may be used at trial in lieu of live testimony only by consent of the parties or if the witness resides more than 100 miles from the court.
7. If taking the deposition, you must keep in mind that the purpose of a deposition is radically different from trial testimony. Your purpose is to size up the witness, get information and to pin the witness down.

8. Do not attempt to browbeat the witness or show the witness how mean and nasty you are. You will get more information out of a witness by being decent.
9. Ask open-ended questions. Invite the witness to expound.
10. You definitely should ask "why" questions (in contrast to cross-examination at a trial, where the rule is almost never ask "why").
11. If the witness makes a damaging admission, keep a straight face and do not express surprise. Go on with the next question so as not to indicate that the witness just made a damaging admission.
12. Read and summarize the deposition yourself prior to the trial. Do not leave this task to a paralegal. When you get up to cross-examine the witness at trial, your summary, with page and line references, is often the foundation for an effective cross.

HOW TO HANDLE YOUR FIRST CUSTODY CASE

**Joseph P. Cerato, Esquire
215 East Bay Street
Charleston, South Carolina 29401**

- I. Enthusiasm and Passion**
 - A. Be Prepared**
 - 1. Law, facts, take action**
 - B. Communicate with the client**
- II. Maintain your objectivity**
- III. De novo or modification? To seek a change or ask for an investigation?**
- IV. The role of additional witnesses in Custody Actions**
 - A. Guardian ad litem**
 - B. Expert Witnesses**
 - 1. Role of the Child Psychologist**
 - 2. Considerations When Choosing the Psychology Expert**
 - 3. Nuts And Bolts of a Formal Individual Psychological Evaluation**
 - (A) Custody Evaluation**
 - (B) Tools of the Custody Evaluator**
- V. Trial of a Custody Dispute**
 - A. Effective Discovery in Family Law**
 - 1. Standard Discovery**
 - 2. Depositions**
 - 3. The Use of Subpoenas**

B. Using Financial Affidavits

C. Making Your Case With Evidence

1. Factors in a custody case

- (A) Parents' emotional stability and support network and willingness to share transportation costs for visitation and provide liberal visitation.
- (B) Each parents' character, fitness, attitude and inclination towards child rearing.
- (C) The morality of either parent as it relates either directly or indirectly to the welfare of the child.
- (D) Who has been the primary caretaker of the child.
- (E) Parents' schedule to allow available time to spend with the child.
- (F) Guardian ad Litem and Custody Evaluator recommendations.
- (G) Psychological, physical, environmental, spiritual, educational, medical, family, emotional and recreational aspects of the child's life.
- (H) The educational needs of the child and the attentiveness of each parent to those educational needs.
- (I) Factors specified in South Carolina Code Annotated §63-15-40 as to domestic violence, physical or sexual abuse.

- (J) A child's reasonable preference for custody. The Court will place weight on the preference based upon the child's age, experience, maturity, judgment and ability to express a preference. See South Carolina Code Annotated §63-15-30.
- (K) Religious faith shall be considered in determining custody. See South Carolina Annotated §6315-20.

2. South Carolina Family Court Rules

Rule 7

Rule 9(d)

Rule 21(b)

Rule 23(b) **Note:** South Carolina Code Annotated Section 19-1-180 allows an out of court statement by children under twelve (12) years concerning abuse or neglect if the child testifies at a proceeding or by video taped deposition or the child is unavailable to testify and the statement possesses guarantees of trustworthiness. This is in contradiction to Rule 23(b) of the Family Court Rules, which discourages use of child testimony unless it is essential to establish the facts alleged. Case law establishes a child is competent to testify if he/she can:

- (A) understand questions and narrate answers;
- (B) perceive facts accurately through the medium of the senses;
- (C) recall facts correctly;
- (D) relate a true version of the facts perceived;

- (E) know the difference between right and wrong;
- (F) understand it is right or good to tell the truth and wrong or bad to lie;
- (G) be willing to tell the truth in fear of punishment if he/she lies;

Rule 25 -

3. South Carolina Rules of Civil Procedure

Rule 15(b): amendments to pleadings;

Rule 26(b): Scope of discovery;

Rule 26(c): protective orders;

Rule 26(e): duty to supplement responses to interrogatories and request for production;

Rule 32: use of depositions at trial for contradiction, impeachment, any other purpose allowed;

Rule 33(d): use of interrogatories at trial;

Rule 35(a): use of physical/mental examinations at trial;

Rule 35(b): reports of examining physicians, see Family Court Rule 7(c);

Rule 37(b): prohibition from introducing designated matter and evidence;

Rule 43: witness examinations, leading questions; hostile and

adverse witnesses; record of excluded evidence; offer of proof;

Rule 43(m): expert testimony (wide latitude to express opinion);

Rule 45(b): subpoena for production of documentary evidence.

4. South Carolina Rules of Evidence

A. Rule 607

B. Rule 608

C. Rule 609

D. Rule 610

E. Rule 613

Familiarize yourself thoroughly with the rules of evidence to ensure you can admit the materials and testimony you need to prove your case, and just as important, to exclude materials and testimony your opponent may try to introduce which is inadmissible.

D. Use of Witnesses at Trial

1. Preparation of Witnesses

2. Theory of the Case

3. Timing and Presentation

4. Direct Examination

5. Cross Examination

E. Weight Given by Court at trial

STEPHEN G. DEY
DEY LAW FIRM, LLC
3 Gamecock Avenue , Suite 306
Charleston, South Carolina 29407
Telephone: 843- 556- 0848
Facsimile: 843-556-0219

DETAILED HISTORY QUESTIONNAIRE (GUARDIAN AD LITEM)

A. IDENTIFYING DATA:

Today's date: _____

Case Name and Number: _____

Your present name: _____

All other names used and when: _____

Your age: _____ Date of Birth: _____

Your place of birth: _____

Your religion: _____

Your home address: _____

Home/Cell phone: _____ Work phone: _____

Email Address: _____

Your Social Security Number: _____

B. EMPLOYMENT:

Employer: _____

Address of Employer: _____

Position: _____

Since: _____

Work Hours: _____

Distance from residence: _____

Supervisor: (Name and phone number): _____

**C. DESCRIBE THE CRITICAL ISSUES IN THIS CASE REGARDING CUSTODY/
VISITATION:** _____

D. CURRENT COURT ORDER/ CUSTODY ARRANGEMENT:

Since: _____

Court Order/arrangement: _____

Actual Practice (if any different than Order): _____

What has been the custody/visitation arrangement since the time of separation (please provide dates or approximate dates)._____

Custody/Visitation plan you think best:_____

Explain why:_____

(ATTACH ADDITIONAL SHEETS IF NECESSARY)

E: CHILDREN:

	NAME	BIRTH DATE	SCHOOL/TEACHER (Phone Number)
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____
4.	_____	_____	_____
5.	_____	_____	_____

PERSONALITY DESCRIPTIONS OF CHILDREN (INDICATE SPECIAL MEDICAL/EMOTIONAL NEEDS IF APPLICABLE):

School history for each child (performance, social adjustments, grade level, school(s) attended, teachers, etc.): _____

What are the recreational/entertainment/social/religious activities of the child(ren): _____

F. PARENTAL ISSUES AND CONCERNS:

Parental Concerns: What specific concerns do you have regarding your spouse (or ex-spouse) and his/her ability to effectively parent? _____

Spouse (or ex-spouse) as a **parent**: What are his/her strengths as a parent? _____

What are his/her weaknesses as a **parent**? _____

G. MARITAL HISTORY:

List all your marriages:

NAME OF SPOUSE	DATE OF MARRIAGE	DATE AND HOW TERMINATED	NUMBER OF CHILDREN
FIRST _____	/ _____	/ _____	/ _____
SECOND _____	/ _____	/ _____	/ _____
THIRD _____	/ _____	/ _____	/ _____

Have you **remarried**? YES _____ NO _____

If you have remarried please give the full name of your current spouse: _____

Are you contemplating remarriage at this time? YES _____ NO _____

If so please give full name: _____

Describe the marital history with the other parent(party) in this case as follows:

Met (when/where): _____

Married (when/where): _____

1st breakup (when/why): _____

2nd breakup (when/why): _____

Other breakup(s): _____

What did you love (or what attracted you to) the other party to this action?

Separated from the other party (when & why): _____

Whose decision was sit to get a divorce or end the relationship?

My decision. _____

His/her decision. _____

Mutual decision. _____

H. FAMILY OF ORIGIN:

Where born and raised? _____

Describe YOUR mother (describe occupation and your relationship): _____

YOUR father (describe occupation and relationship): _____

YOUR brothers and sisters (age and relationship): _____

YOUR parents (describe their relationship with each other): _____

Describe any mental illness in family of origin: _____

Describe any alcohol abuse in your family of origin: _____

Describe any drug abuse in your family of origin: _____

List any arrests or criminal convictions in family of origin: _____

I. PERSONAL DATA:

Education: _____

Military history: _____

List all prescribed medication: _____

Hospitalization history: _____

Describe any personal history you may have of alcohol/drug abuse: _____

Describe any personal psychotherapy (include marital counseling and give name/phone number of therapist/counselor): _____

Describe any other concerns (i.e. sexual abuse, romances, drug abuse, alcohol abuse, irresponsibility) in YOURSELF: _____

Describe any other concerns (i.e. sexual abuse, romances, drug abuse, alcohol abuse, irresponsibility) in the OTHER PARTY: _____

J. SIGNIFICANT RELATIONSHIP INFORMATION:

If you have remarried or if you now share OR plan to share your home with another adult, please complete the following questions in regard to the OTHER ADULT:

Full Name: _____

Age and date of birth _____

Place of birth: _____

Present Employer _____

Relationship to you: _____

Relationship with the child/children at issue in this case: _____

K. COLLATERAL INFORMATION: Provide the names and telephone numbers of three people who you feel are aware of your historical involvement as a parent and/or is aware of the nature of your current relationship with your child/children.

1. _____ Ph# _____

2. _____ Ph# _____

3. _____ Ph# _____

4. PEDIATRICIAN (Name and Phone) _____

5. DENTIST (Name and Phone) _____

6. OTHER PROFESSIONALS (Name and Phone) _____

How to Handle Your First DSS Abuse & Neglect Case

Mary Ann Hall

843-377-1341

mah@mahlawfirm.com

I. CLIENTS

A. Notice of Appointment

1. You should receive a filed Notice of Appointment in sufficient time for you to meet with your client and prepare for your first hearing. However, depending on the type of hearing this may be impossible.
2. If you failed to receive your Notice of Appointment in sufficient time to attend the hearing, check the Clerk of Court's website and find out which Judge is handling the DSS docket that day. Call the Judge's Secretary and tell them you will be filing a Notice of Motion and Motion for Continuance due to insufficient notice.
3. If you attempt to comply with the Rules of Civil Procedure and ask DSS for a continuance, you will likely be ignored. But send a written request to DSS by facsimile and save the transmission confirmation sheet to show the Court or use e-mail and bring a copy of it to court.
4. If you do not have sufficient time to contact the Court or DSS or file a Motion, then if you have time, go to Court and orally request a continuance. If you fail to appear in court you will receive a call from the Judge.

B. Client Information

1. You should receive client contact information with your Notice of Appointment. If you do not, contact DSS and ask for contact information. If you have contact information, get in touch with your client immediately.
2. Often, the contact information will already be out of date and you will get a disconnected telephone or no response. You may have to go through a relative or friend's telephone in order to contact your client.
3. Sometimes you have to send a letter. Use certified mail, restricted delivery, return receipt requested and regular mail. Often they will respond to regular mail but not certified mail.
4. Keep a copy of all correspondence.

C. Client Contact

1. Use common sense when meeting with client. Don't go to their residence. If they have transportation issues then offer to meet them in a public setting where you can talk with them in a quiet area.
2. It is preferable to have them come to your office. Do not schedule a meeting if you are alone in your office. Always make sure someone else is present in the event of any disturbance. This is my general rule for all clients.
3. Bring a blank HIPPA release and have your client sign it in blue ink. Then you can make copies and send it to whichever providers you need to get documents.
4. Motion to Be Relieved as Counsel. If you have made numerous attempts to contact your client and they refuse to respond to you, then file a Motion to Be Relieved as Counsel. Make sure you have made good faith efforts by certified mail and regular

mail. Use the returned mail as your evidence. Move to be relieved before trial dates are set.

II. DEPARTMENT OF SOCIAL SERVICES

A. Investigators

1. These are the people who investigate the allegations from Intake.
2. They will submit an Affidavit which is attached to the Complaint.
3. The Affidavit may be signed by someone other than the Investigator, such as their Supervisor.
4. Thoroughly review the Affidavit for inconsistencies in the allegations.

B. Case Workers

1. If you can't contact your client, you may have to call the DSS Case Worker. Their name and telephone number should be listed on the DSS pleadings but is not always. If it is not on the pleadings, call DSS Legal and they will be able to help you.
2. Case Workers often have full voice mail boxes so you may have to send a letter by facsimile to contact them.
3. Keep a copy of all correspondence with the transmission confirmation to DSS.
4. Be prepared to go through several Case Workers during your case. You will be the last the know this and will spend fruitless hours trying to contact a non-existent case worker.
5. For some reason DSS Case Worker's seem to relocate to far-flung states and enter the Witness Protection Program because DSS can never seem to find them after they terminate their employment. This is especially true if it is a contested matter and you want to call the Case Worker as a witness.
6. It is DSS policy that an attorney cannot speak with a Case Worker outside the presence of the DSS attorney, however, the DSS attorneys and Case Worker will often speak with your client outside of your presence so be aware and advise your client against speaking with the DSS attorney.

C. Supervisors

1. Every Case Worker has a Supervisor.
2. The Supervisors are generally present during all court hearings, but not always.
3. The Supervisors may be easier to work with because they are more experienced and are often, but not always, more level-headed than the Case Workers.

D. Attorneys and Paralegals

1. Attorneys:

Bonnie Brisbane Bonnie.Brisbane@dss.sc.gov
Handles majority of TPR cases

Frampton Durban Frampton.Durban@dss.sc.gov
Chief Legal Counsel

Corbitt Hinson Corbitt.Hinson@dss.sc.gov

Abigail Scudder Abigail.Scudder@dss.sc.gov

2. Paralegals:

Joni Iverson Joni.Iverson@dss.sc.gov

Works on dockets/hearings

Christina Sojourner Christina.Sojourner@dss.sc.gov

Works on Orders

Henry Thompson Henry.Thompson@dss.sc.gov

Works on dockets/hearings

E. Providers/Agencies. Many of these are contracted agencies which fall in and out of DSS favor depending on the contract negotiations. Sometimes DSS approves them and other times they don't. This is not a complete list.

1. Anger Management

Alternatives 767-4477

Family Services 744-1348 or www.fsisc.com

2. Children's Group Homes

Windwood Farms 884-5342

Lighthouse in Conway

Jenkins Home for Girls

CYDC (Children's Youth Division Charleston)

3. Drug Testing

Charleston Center 958-3300

Arcpoint (formerly Accudiagnosics)

4. Medical

MUSC

DNLCC 723-3600

5. Mental Health Facilities

Charleston Clinic 414-2351

Charleston-Dorchester Community Mental Health Center 852-3633

Palmetto Lowcountry Behavioral Health 747-5830

Tri-County Crisis Stabilization Center 958-3530

National Crime Victims Research and Treatment Center 792-7069

6. Parenting Classes

Dorchester Children's Center 875-1551

Family Services 744-1348 or www.fsisc.com

Kingdom Parenting 745-9150

Phoenix Center 553-9900

- 7. Parental Fitness Evaluations
 - Dr. Chris Fields at MUSC 792-1461
 - Dr. Gordon Teichner 849-9913
 - Dr. Randy Waid 881-2778

- 8. Psychological Evaluations
 - Department of Mental Health
 - Dr. L. William Mulbry, Jr. 795-2266
 - Dr. Gordon Teichner 849-9913
 - Dr. Randy Waid 881-2778

- 9. Substance Abuse
 - Alternatives 767-4477
 - Charleston Center 958-3300
 - Department of Mental Health.

III. VOLUNTEER GUARDIANS AD LITEM

These are trained volunteers who are appointed by statutory law to represent the best interests of the children. They are to remain independent from DSS and the parties. Thoroughly review their reports. You have the right to depose them and question them at trial.

A. Attorneys. These are contract positions so the attorney may change over time.

- Carolyn Berlin 224-2959
- Josh Roten 822-9608
- Sean Keefer (Berkeley County) 364-3341

B. Ninth Circuit Coordinator

- Lois D. Richter 577-6978
- lrichter@oepp.sc.gov

C. Case Managers

- Sharon Gadsden-David 577-6975
- Ruth Thornburg 577-6977
- Alexis Wade 577-6979
- Kimberly Walker-Scott 577-6980
- Office wide e-mail: galcharleston@oepp.sc.gov

IV. FOSTER CARE REVIEW BOARD

- 1. These are appointees, with an advisory role only, who review the placement of the children in foster care.
- 2. Do attend these review sessions with your client and state their position, their progress in their treatment plans and any other relevant information.

V. PROCEDURE

A. Service of Process

1. Watch out for cases in which the biological parents are never served. This lack of due process is generally noticed after the case has already been active for several months.
2. I actually heard a DSS attorney argue to the Court against serving a biological parent. As an Officer of the Court voice your objection to violations of due process as to anyone, even if they are not your client.

B. Pleadings/Motions

1. File an Answer.
2. Don't hesitate to file Motions as necessary.
3. Make DSS adhere to the statutory time frames.

C. Cases with Criminal Issues

1. You may get appointed in cases which have a criminal case pending regarding sexual molestation, shaken baby, etc.
2. Do make contact with the criminal defense attorney and work with them to ensure your client does not make any disclosures which would adversely affect their criminal case.
3. Try to often obtain a DSS agreement that nothing in the DSS case will be used against your client in the criminal case.

D. Hearings

1. If you have made contact with your client before court, advise them on proper attire and etiquette.
2. Often, you will arrive at court for a hearing only to learn that DSS failed to serve all necessary parties. DSS may continue the hearing or will go forward only as to the parties' present and without prejudice to the absent party.
3. DSS does not seem to have to comply with the Rules of Civility the way the rest of us attorney's do. DSS will seldom if ever give you advance notice that they failed to obtain service so as not to waste the time of the private, volunteer bar members.
4. You and your client will generally have about five minutes or less to review the DSS Treatment Plan, the volunteer GAL's Recommendations and decide if you can reach an agreement or not. As a general rule demand more time and if DSS won't oblige then consider it contested.
5. Take notes! Be certain you take extensive notes of the ruling to compare with the order DSS generates.
6. Obtain the names and contact information of the Guardian, DSS caseworker and every attorney.

E. Discovery

1. Always ask for a court order for discovery to obtain the DSS file including the disclosure of all HIPAA covered documents. The DSS file will generally be provided in no particular order and will contain a lot of duplicates. It will not contain any HIPAA covered documents from providers without a court order.
2. If you did not obtain a court order for the HIPAA covered records, then have your client execute a release for you. This will increase your costs because the providers will charge you for the records.
3. Take depositions, including the deposition of the child.

4. Go to LCC and review the tape of the forensic interview. If you watch enough of them you will see a pattern of questioning and how the interviewers respond to the answers of the child, which may raise an entire set of questions.
5. Update all discovery as necessary.

F. Mediation

1. Mediation is conducted by volunteer bar members.
2. Mediation requires good faith and compromise.
3. Scheduled for Friday mornings at the courthouse.
4. If agreement, get it on record and approved immediately after mediation.

G. Treatment Plan

1. Watch out for unconstitutional provisions or unenforceable provisions.
2. Do not let your client agree to a Treatment Plan which mandates employment in a right to work state because they can get fired for no reason at all. Employment is not a precondition for raising children.
3. If client already agreed to a Treatment Plan without your advice, then modify it as necessary.

H. Orders

1. Carefully compare your notes with the proposed order.
2. If your notes reflect substantive or factual differences, immediately draft a letter to the Court outlining your objections to the order as written. Copy this letter to all counsel.
3. If the Judge has already signed the order, file a Motion to Reconsider. Often, if you contact all the parties you can get an agreement to amend the order.

VI. RESOURCES

1. ABA Center on Children and the Law www.americanbar.org/groups/child_law.html
2. Children's Law Center www.childlaw.sc.edu
3. National District Attorney's Association www.ndaa.org
Formerly American Prosecutor's Research Institute which developed guidelines/techniques used in children's forensic interviews. Be cognizant of connection between "Finding Words" and RATAAC technique and its use by DNLCC. The goals of these forensic interviews are to not to seek the truth but to get evidence for convictions.
4. Science Daily www.sciencedaily.com
Offers up to date abstracts on various medical, psychological and social issues.
Check out new medical information on Shaken Baby Syndrome and addictions.

VII. CASE LAW

1. Stefan v. Stefan, 320 S.C. 419 (Ct.App.1995)
The Court must not delegate any authority to the Guardian or parenting specialist regarding visitation with the parents. It is the responsibility of the Court to devise a visitation schedule.
2. Hardy v. Gunter, 353 S.C. 128 (Ct.App.2003)
Upholds and emphasizes Stefan.
3. State v. Dempsey, 340 S.C. 565 (Ct.App.2000)
No psychotherapist may render an opinion as to whether a witness is credible in any trial in this state. Be certain you object if a therapist testifies that the child is a credible witness to the actions of the parent or caregiver.

4. Watch for pending SCOTUS decision in Alford v. Greene.
Whether the 4th Amendment requires a warrant, court order, parental consent or exigent circumstances, before law enforcement and child welfare officials may conduct a temporary seizure and interview at a public school of a child whom they reasonably suspect has been sexually molested.

HOW TO HANDLE YOUR FIRST FAMILY COURT MOTION TO COMPEL DISCOVERY

Diane C. Current

Craver & Current, PA
171 Church Street, Suite 120 (29401)
Post Office Box 1016 (29402)
Charleston, South Carolina
843-577-7557
843-577-0811 (facsimile)

These suggestions are to assist you in bringing a simple motion to compel written discovery responses to Interrogatories and/or Requests for Production of Documents.

Motions for Orders Compelling Discovery ("Motions to Compel") are governed by SCRPC 37(a), which addresses the court's authority to issue orders regarding the failure to respond to or cooperate in discovery.

***Note:** If you are defending a motion to compel, be certain that you have raised a proper objection to the interrogatory or request that you claim to be inappropriate. Consider a motion for protective order. Failure to respond may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order under SCRPC 26(c). See SCRPC 37(d).*

COMPELLING ANSWERS TO INTERROGATORIES AND THE PRODUCTION OF DOCUMENTS

1. PREPARE IN ADVANCE

It is important to be prepared if you want to be successful at a motion to compel discovery hearing, especially if you are hoping for an award of attorney's fees. The time for your motion is limited, and you need to be organized.

Begin preparing for a possible motion to compel even before you send your requests.

- Consider whether your requests are logical, not unreasonably cumulative or duplicative, not unreasonably burdensome, and not easily obtained by some other means (for example, from your own client). See SCRPC 26(a). Your requests must be reasonably calculated to lead to the discovery of admissible evidence. See SCRPC 26(b)(1).
- Give instructions and definitions in your requests. Ask for supplementation of responses, even though the Rules require it. See SCRPC 26(e).
- DO NOT send your original, signed discovery requests. Send COPIES. Retain the original request(s) for possible future use (such as, for a motion to compel). See SCRPC 26(g)(1).

Note: If you are planning to require the opposing party to follow the Rules of Civil Procedure and to provide complete, organized, and timely responses to discovery requests, you should be prepared to do the same.

2. FOLLOW THE RULES

Send written discovery according to the Rules of Civil Procedure.

- DO NOT send more interrogatories than the Rules allow.
 - If there is more than \$25,000 in controversy (do not forget child support), then you may serve no more than 50 “general” interrogatories –“including sub-parts”—to any one party (unless you have a court order allowing additional interrogatories). See *SCRCP 33(b)(9)*. (If the amount in controversy is less than \$25,000, then you may serve the “standard interrogatories” of *SCRCP 33(b)*. (The Court may allow additional interrogatories in any case for good cause shown. See *SCRCP 33(b)(9)*.)
- Correctly calculate the time for response.
 - Responses and objections must be served within 30 days generally. However, a defendant has at least 45 days from the date of service of the summons and complaint. See *SCRCP 33(a) and SCRCP 34(b)*.
 - See also, *SCRCP 6(e)*, adding five (5) days to respond if you serve by mail. (*Tip: If time is of the essence, do not mail.*)

Note: If opposing counsel requests an extension of time to respond, grant the extension as a matter of courtesy. Subsequent extensions require a court order. Of course, you may agree to sign a consent order to extend the time. See *SCRCP 6(b)*.

3. REVIEW AND ORGANIZE THE RESPONSES

Assuming that you receive responses, review them carefully. (If no responses are received, your job in preparing for your motion is easier. You may receive responses after the motion is filed. Do not dismiss your filed motion until you have reviewed them carefully.)

- Interrogatories
 - Read the Answers to Interrogatories.
 - Are the Answers verified by the opposing party? (See *SCRCP 33(a)*, requiring interrogatories to be answered “under oath” and “signed by the person making” the answers.)
 - Are they signed by an attorney? (See *SCRCP 33(a)*, requiring that any objections by opposing counsel must be signed by opposing counsel.)

- Are the Answers complete? (Are the Answers responsive to every subpart of each Interrogatory?)
- Are there any objections?
- Request for Production of Documents
 - Read the written Response to Request for Production of Documents. (*Note that Rule 34(b) requires a written response, not just the documents themselves.*)
 - Is the written Response verified by the opposing party?
 - Are the documents provided as stated in the written Response?
 - Are all documents that you expected to be provided included in the Response?
 - Are there any objections?
 - Are the documents organized or produced as they are kept in the usual course of business? (*See SCRCP 34(b).*)
- Make a list of the omitted or incomplete Answers to Interrogatories, in the order of your numbered Interrogatories.
- Organize the documents produced and make a specific list of documents not produced that coincides with the order of your Request for Production of Documents.

4. CORRESPOND WITH OPPOSING COUNSEL

- If you do not receive timely responses to your formal discovery requests, or if the responses or answers are incomplete or evasive, correspond with opposing counsel.
- Contact opposing counsel promptly to discuss any incomplete or omitted responses.
- If you correspond by telephone or e-mail, follow up with a letter.
- Keep a cumulative, chronological file of the correspondence with opposing counsel regarding the discovery requests (beginning with the letter that accompanied your requests when they were sent). This correspondence can be attached as exhibits to your Affidavit of Attorney's Fees, should you choose to request fees in your motion.

5. TRY TO RESOLVE ANY DISPUTES

- If there continues to be a dispute as to responses, or if you simply do not get a response despite your discovery requests, do your best to resolve the issue with opposing counsel.

(*SCRCP 11(a)*) requires affirmation by moving party's attorney that, prior to filing the motion, he or she has communicated—in writing or orally—with opposing counsel and attempted in good faith to resolve the matter OR that consultation would serve no useful purpose or could not be timely held.)

6. IF OBJECTIONS WERE RAISED, CONSIDER THEM

- Do not simply ignore opposing counsel's objections without consideration. Be certain that your position is warranted as to each interrogatory and each request for production.
- Has a motion for a protective order been filed?

7. ORGANIZE AND BE SPECIFIC IN YOUR MOTION

- Be organized and specific in drafting your motion. Do not simply say that documents are missing or the answer is incomplete. Detail what is omitted. This may create a very long motion, but it will be appreciated by the judge who must go through each request with you and opposing counsel at the hearing.
- *Tip: If you state each disputed interrogatory or request within your motion, followed by the corresponding answer or response received, it will assist the court in following your argument.*
- Attach a copy of your Interrogatories and/or Request for Production of Documents, along with a copy of the response(s) received, as exhibits to your motion.
- When setting your Motion for a hearing, be sure to consider the amount of time that may be required for oral argument by both sides on the issues, and request a reasonable and sufficient amount of time in your Motion and Order Information Form and Cover Sheet
- The filed Motion to Compel must be served on opposing counsel (or on the opposing party, *if pro se*) at least ten (10) days prior to your hearing date (Pursuant to SCRCP 6(d).) Complete and file a Certificate of Service.

Note: You will need to file your original discovery requests before the hearing. To avoid omitting this step, you may want to file them at the time you file your motion. See SCRCP 26(g)(1).

8. BE PREPARED TO ARGUE AS TO EACH INDIVIDUAL REQUEST OR INTERROGATORY

- Prepare for your hearing. (If documents have been provided subsequent to your motion, know what was provided and what was not.)
- Consider your argument as to each unproduced document and each unanswered interrogatory. Know why you need the response you are seeking. Why is it important to your case?
- Be prepared to address your arguments in the order of your motion.

Tip: Bring extra copies of everything you are presenting. Do not rely on the Clerk's ability to provide the judge with the originals in time for your hearing.

Note: *The opposing party may bring a motion asking the court to issue an order protecting a party or person from annoyance, embarrassment, oppression, or undue burden by expense, and the court may issue protective orders as justice requires. (See SCRCPP 26(c).)*

9. PREPARE AN AFFIDAVIT OF ATTORNEYS' FEES

- If you are successful in arguing your motion to compel, and have sought an award of attorney's fees and costs, chances are good that the Court will award some amount of attorneys' fees and costs to your client. (See SCRCPP 37(a)(4) and 37(d).) Make sure you prepare and file an Affidavit of Attorneys' Fees, attached to which should be the relevant correspondence with opposing counsel, in chronological order.

Note: *There is a reasonable concern that you are waiving the attorney-client privilege as to your billing records when you produce them for the Court's consideration.*

10. WRITE A CLEAR AND TIMELY ORDER

- First, be clear as to what was ordered. If you need clarification from the judge at the hearing, ask for clarification. If needed, ask for a telephone conference with the judge and opposing counsel.
- Of course, send the proposed order to opposing counsel for review. Attempt to resolve any language disputes. If you cannot resolve the disputes, send the relevant correspondence to the Court, so that the disputes are evident. BE SURE TO COPY OPPOSING COUNSEL ON ANY CORRESPONDENCE TO THE COURT. (**Tip:** Deliver the correspondence to opposing counsel BEFORE you deliver it to the Court.) Be prepared for a telephone conference with the Court as to any disputed language.

FOLLOWING THESE SUGGESTIONS WILL ASSIST THE COURT IN CONSIDERING YOUR MOTION AND SHOULD MAXIMIZE YOUR POTENTIAL TO COMPEL THE RESPONSES TO YOUR DISCOVERY REQUESTS AND TO COLLECT ATTORNEYS' FEES.

Note: *A motion to compel also can be used to compel compliance with other discovery requests (for example, to compel responses to questions asked in depositions). While this outline is not tailored to such motions, my suggestions for preparing other needed motions to compel would include: following the Rules of Civil Procedure, communicating with opposing counsel, drafting carefully, and preparing well.*

STATE OF SOUTH CAROLINA)
)
 COUNTY OF _____)
)
 _____)
 Plaintiff,)
 vs.)
)
 _____)
 Defendant.)

IN THE FAMILY COURT
 _____ JUDICIAL CIRCUIT

**MOTION AND ORDER INFORMATION
 FORM AND COVERSHEET**

Docket No. _____

Plaintiff's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____
<input checked="" type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: Motion to Compel and for Attorneys' Fees and Costs Estimated Time Needed: 1 Hour Court Reporter Needed: <input checked="" type="checkbox"/> YES / <input type="checkbox"/> NO	
SECTION II: Motion/Order Type	
<input type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
_____ Signature of Attorney for <input type="checkbox"/> Plaintiff / <input type="checkbox"/> Defendant Date submitted	
SECTION III: Motion Fee	
<input checked="" type="checkbox"/> PAID – AMOUNT: \$ _____ <input type="checkbox"/> EXEMPT: (check reason)	
<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ <input type="checkbox"/> Other: _____	
JUDGE'S SECTION	JUDGE'S SECTION
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: _____ Judge Signature: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____ <input type="checkbox"/> MOTION FEE COLLECTED: \$ _____ <input type="checkbox"/> CONTESTED – AMOUNT DUE: \$ _____	

Custodial Parent (if applicable): _____

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE FAMILY COURT
NINTH JUDICIAL CIRCUIT
Case No. _____

_____,
Plaintiff,
vs.
_____,
Defendant.

**NOTICE OF MOTION AND MOTION
TO COMPEL DISCOVERY
RESPONSES AND FOR ATTORNEYS'
FEES AND COSTS**

TO: _____, ATTORNEY FOR THE ABOVE-NAMED PLAINTIFF:

PLEASE TAKE NOTICE that the Defendant, _____, by and through his undersigned attorney, will move before the presiding judge of the Family Court of the Ninth Judicial Circuit, at the Charleston County Family Courthouse, 100 Broad Street, Charleston, South Carolina, on the _____ day of _____, 2011, at _____ o'clock __.m., or as soon thereafter as counsel may be heard, for an order compelling Plaintiff to provide answers to Defendant's First Set of Interrogatories to Plaintiff and responses to Defendant's First Request for Production of Documents to Plaintiff in accordance with Rules 33 and 34, South Carolina Rules of Civil Procedure. The Defendant will also seek an award of attorneys' fees and costs.

[Defendant's First Set of Interrogatories to Plaintiff]

1. The Defendant's First Set of Interrogatories to Plaintiff, a copy of which is attached hereto as **Exhibit A**, was served upon Plaintiff's counsel on January 1, 2011. On January 29, 2011, the Defendant granted Plaintiff a thirty-day extension to respond to Defendant's First Set of Interrogatories to Plaintiff, a copy of which is attached hereto as **Exhibit**

B. On March 10, 2011, the Plaintiff served Plaintiff's Answers to Defendant's First Set of Interrogatories on the Defendant, a copy of which is attached hereto as **Exhibit C**. On March 20, 2011 and April 1, 2011, the Defendant's counsel sent correspondence to the Plaintiff's counsel informing him that the answers to Interrogatory Numbers 10, 11, 13, and 14 were incomplete, copies of which are attached hereto as **Exhibits D** and **E**. To date, the Defendant's counsel has not received complete responses to Interrogatory Numbers 10, 11, 13, and 14.

2. The Interrogatories posed and the corresponding incomplete responses are as follows:

Defendant's Interrogatory Number 10:

Interrogatory Number 10 states:

Identify persons known to the parties or counsel to be witnesses concerning the facts of this case. Please be sure to list all business and home addresses for each person, as well as their current home and work telephone numbers and e-mail addresses.

Plaintiff's Answer to Defendant's Interrogatory Number 10 is as follows:

Sally Smith

Address: to be provided

Telephone number: see The Real Yellow Pages

Jane Doe

Address: South Carolina

Telephone number: see The Real Yellow Pages

Daniel Boone

Address: New York

Telephone number: see The Real Yellow Pages

Plaintiff's Answer to Defendant's Interrogatory Number 10 is incomplete, as it fails to provide the address, telephone number, or e-mail address of named witnesses Sally Smith, Jane Doe, and Daniel Boone.

Defendant's Interrogatory Number 11:

Interrogatory Number 11 states:

List all health care providers who have treated you for any illness or disorder or evaluated you during the past five (5) years.

Plaintiff's Answer to Defendant's Interrogatory Number 11 is as follows:

This Interrogatory is overly broad and burdensome

Plaintiff's Answer to Defendant's Interrogatory Number 11 is incomplete, as it fails to respond, alleging that the Interrogatory is overly broad and burdensome. However, Plaintiff has not asked this Court for a Protective Order and, more importantly, would not be entitled to a protective order, as the information requested is relevant to the child custody issues and necessary for the Defendant's preparation in this matter.

Defendant's Interrogatory Number 13:

Interrogatory Number 13 states:

List the names, current addresses, and telephone numbers of any and all Certified Public Accountant(s) or other tax preparer used by the Plaintiff since January 1, 2008.

Plaintiff's Answer to Defendant's Interrogatory Number 13 is as follows:

None.

Plaintiff's Answer to Defendant's Interrogatory Number 13 is incomplete, as it does not provide the name, address, and telephone number for the Certified Public Accountant used by the Plaintiff to prepare her 2009 taxes, which document was attached to her Financial Declaration filed at the June 1, 2010 Temporary Hearing. The Defendant has been unable to obtain this information, as this CPA has closed his business.

Defendant's Interrogatory Number 14:

Interrogatory Number 14 states:

Provide a list of all trips, business and otherwise, you have taken since January 1, 2007, including approximate dates, destinations, methods of travel, and travel companions.

Plaintiff's Answer to Defendant's Interrogatory Number 14 is as follows:

2007

January 1-February 16, 2007-travel to Santa Ana, California

November 22-December 26, 2007-travel to Chicago, Illinois

2009

No out-of-state travel.

2011

January 1-February 16, 2011-travel to Santa Ana, California

November 22-December 26, 2011-travel to Chicago, Illinois

Plaintiff's Answer to Defendant's Interrogatory Number 14 is incomplete, as it does not provide a list of the out-of-state travel of the Plaintiff for 2010 or 2008, does not provide information regarding the methods of travel, and does not list travel companions for the dates listed.

3. The Defendant's First Request for Production of Documents, a copy of which is attached hereto as **Exhibit F**, was served upon Plaintiff's counsel on January 1, 2011. On January 29, 2011, the Defendant granted Plaintiff a thirty-day extension to respond to Defendant's First Request for Production of Documents, a copy of which is attached hereto as **Exhibit B**. On March 10, 2011, the Plaintiff served Plaintiff's Responses to Defendant's First

Request for Production of Documents, a copy of which is attached hereto as **Exhibit G**. On March 20, 2011 and April 1, 2011, the Defendant's counsel sent correspondence to the Plaintiff's counsel informing him that the responses to Request Numbers 3 and 14 were incomplete, copies of which are attached hereto as **Exhibits D** and **E**. To date, the Defendant's counsel has not received complete responses to Request Numbers 3 and 14.

4. The Defendant's Requests and the corresponding incomplete responses are as follows:

[Request for Production of Documents]

Defendant's Request Number 3.

Request Number 3 states:

Copies of all of your monthly bank account records, canceled checks, deposit slips, and check registers since January 1, 2007. This request covers all accounts held in your name individually, held jointly with another individual, or other accounts in which you have deposited or withdrawn funds.

Plaintiff's written Response to Request Number 3* is as follows:

*Bank of America Money Market Account
Account number xxxxxxxx987*

*First Citizens Bank Checking Account
Account number xxxxxxxx98j*

*JP Morgan Chase Savings Account
Account number xxxxxxxxxxxx847*

*(*Number partially redacted – documents listed were provided.)*

Plaintiff's Response to Defendant's Request Number 3 is incomplete, as she did not produce any 2007, 2008, 2009, 2010, or 2011 statements for the Bank of America checking account listed on her Financial Declaration filed at the June 1, 2010 Temporary

Hearing.

Defendant's Request Number 14.

Request Number 14 states:

Copies of all monthly statements for credit cards that you have used, and/or on which you have had the ability to charge, at any time since January 1, 2007.

Plaintiff's Response to Request Number 14 is as follows:

This Request is overly broad and burdensome.

Plaintiff's Response to Defendant's Request Number 14 is incomplete, as it raises the objection that the production of the Plaintiff's credit card statements for 2007 through 2011 would be overly broad and burdensome. Further, Plaintiff has not asked this Court for a Protective Order and, more importantly, would not be entitled to a protective order, as the information requested is relevant to the financial issues raised in this case.

5. But for the lack of complete responses of the Plaintiff, this Motion would not have been necessary. Therefore, the Defendant seeks an award of reasonable attorneys' fees and costs associated with the bringing of this Motion.

[Attorney Signature Line]
ATTORNEYS FOR DEFENDANT

Charleston, South Carolina

_____, 2011

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE FAMILY COURT
NINTH JUDICIAL CIRCUIT
Case No. _____

Plaintiff,

vs.

Defendant.

RULE 11 AFFIRMATION

**RE: MOTION TO COMPEL DISCOVERY
RESPONSES AND FOR ATTORNEYS'
FEES AND COSTS**

Pursuant to Rule 11, SCRPC, the undersigned affirms that he/she either consulted with opposing counsel in an attempt to resolve the issues raised in Defendant's Motion to Compel Discovery Responses and for Attorneys' Fees and Costs or that such consultation would have served no useful purpose or that such consultation could not have been timely held.

[ATTORNEY SIGNATURE LINE]
[ADDRESS, ETC.]

Charleston, South Carolina

_____[DATE]_____

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE FAMILY COURT
NINTH JUDICIAL CIRCUIT
Case No. _____

,
Plaintiff,
vs.
,
Defendant.

CERTIFICATE OF SERVICE

I verify that a certified copy of the Defendant's **Notice of Motion and Motion to Compel Discovery Responses and for Attorneys' Fees and Costs, Rule 11 Affirmation and Motion and Order Information Form and Coversheet** (filed _____) in the above captioned matter has been served upon the Plaintiff, _____, by and through her counsel, _____, by hand delivering the same, addressed as shown below, this _____ day of _____, 2011.

Plaintiff's Counsel
1111 Elm Street
Charleston, SC 29412

LAW FIRM

By: _____

Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE FAMILY COURT
NINTH JUDICIAL CIRCUIT
Case No. _____

Plaintiff,

vs.

Defendant.

**ORDER ON MOTION TO COMPEL
DISCOVERY RESPONSES AND FOR
ATTORNEYS' FEES AND COSTS**

Plaintiff's Attorney:

Hearing Date:

Defendant's Attorney:

Judge:

Guardian *ad Litem*

Court Reporter:

This matter comes before the Court on _____, at _____ on Defendant's Motion to Compel Discovery Responses and for Attorneys' Fees and Costs ("Motion to Compel").

Present in the Courtroom were the Plaintiff, along with his attorney, _____, and the Defendant, along with her attorney, _____.

The Defendant seeks the following relief:

1. An order compelling Plaintiff to provide complete answers to Defendant's First Set of Interrogatories to Plaintiff and complete responses to Defendant's First Request for Production of Documents to Plaintiff in accordance with Rules 33 and 34 of the South Carolina Rules of Civil Procedure; and

2. An order requiring the Plaintiff to pay attorneys' fees and costs associated with the bringing of this Motion.

Based on arguments of counsel and this Court's record, the Court hereby makes the

following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The Plaintiff and Defendant were married February 14, 1950.
2. The Plaintiff and Defendant last lived as Husband and Wife in the County of Charleston, State of South Carolina, and had so resided for more than one (1) year prior to the commencement of this action.
3. This case commenced with the filing of the Plaintiff's Complaint for divorce on the ground of one year of continuous separation on March 1, 2010.
4. The parties, through their attorneys of record, entered into a Consent Order for Discovery on April 15, 2010.
5. The Defendant's First Set of Interrogatories to Plaintiff and Defendant's First Request for Production of Documents to Plaintiff were served upon Plaintiff's counsel on May 15, 2010.
6. On June 14, 2010, the Defendant's counsel sent correspondence to Plaintiff's counsel, granting a thirty-day extension of time to respond to Defendant's First Set of Interrogatories to Plaintiff and Defendant's First Request for Production of Documents to Plaintiff.
7. On June 25, 2010, an Order Relieving Counsel was filed, relieving Plaintiff's counsel of record.
8. No Notice of Appearance on behalf of the Plaintiff has been filed with the Family Court subsequent to the June 25, 2010 Order Relieving Counsel. (Mr. _____ represented to the Court that he was retained by the Plaintiff the day before this hearing on _____.)

9. Having received no correspondence from alternate counsel representing the Plaintiff, the Defendant's counsel sent a letter directly to Plaintiff at her last known address, 111 Avoidance Avenue, Charleston, South Carolina, by certified mail, return receipt requested, restricted delivery, along with a copy of Defendant's First Set of Interrogatories to Plaintiff and a copy of Defendant's First Request for Production of Documents to Plaintiff, which correspondence clearly requested a prompt response.

10. As of the date of this hearing, no discovery responses have been received from Plaintiff in response to Defendant's discovery requests.

11. The Court finds that the Plaintiff simply has failed and refused to respond to Defendant's discovery requests; and Plaintiff should be required to respond completely and accurately to Defendant's First Set of Interrogatories to Plaintiff and Defendant's First Request for Production of Documents to Plaintiff, within thirty (30) days of the date of the hearing on this matter, via U.S. Mail to Defendant's attorney at the address for Defendant's counsel as stated on the discovery requests.

12. The Court finds that the attorneys' fees and costs of the Defendant, as enumerated in the Affidavit of Attorneys' Fees and Costs submitted to the Court by Defendant's counsel, should be held in abeyance, pending further Court Order in the event of non-compliance with this Order or pending the final hearing on the merits of this case.

CONCLUSIONS OF LAW

1. The Court concludes that it has jurisdiction of this subject matter and the parties and that venue is proper.

2. The Court concludes that it is authorized by Rule 37(a)(4) of the South Carolina Rules of Civil Procedure to award fees and costs incurred by Defendant for the

bringing of a Motion to Compel requiring a party to respond to discovery requests.

NOW, THEREFORE, IT IS

ORDERED that the Plaintiff shall completely and accurately respond to Defendant's First Set of Interrogatories to Plaintiff and Defendant's First Request for Production of Documents to Plaintiff within thirty (30) days of the date of this hearing (on or before _____), via U.S. Mail to Defendant's attorney at the address for Defendant's counsel as stated on the discovery requests; it is further

ORDERED that the issue of attorneys' fees and costs of the Defendant, as enumerated in the Affidavit of Attorneys' Fees and Costs submitted by Defendant's counsel, shall be held in abeyance, pending further Court Order in the event of non-compliance with this Order or pending the final hearing of this matter.

AND IT IS SO ORDERED!

Family Court Judge, Ninth Judicial Circuit

Charleston, South Carolina

DATE