

PLANNING AND PREPARING FOR YOUR TEMPORARY ORDERS HEARING

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MARRIAGE DISSOLUTION 101
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CHAPTER 2

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PUBLICATIONS:

Creative Possession Schedules. 2016 STATE BAR OF TEXAS ANNUAL MEETING.

Property Demonstration: Top Evidentiary Problems. 2015 ADVANCED FAMILY LAW.

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The Attorney and Legal Assistant Team (with J. Loveless). 2005 MARRIAGE DISSOLUTION INSTITUTE.

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Mediation: Be Prepared and Have a Winning Notebook (with J. Loveless). 2000 ULTIMATE TRIAL NOTEBOOK CH. 1 and 2001 ADVANCED FAMILY LAW COURSE.

Characterization and Tracing (with G. Nickelson, S. Beckman, B. Beverly and R. Accipiter). 1999 ADVANCED FAMILY LAW COURSE.

Law Office Economics (with J. Loveless). 1999 ADVANCED FAMILY LAW COURSE.

Mediation - Be Prepared (with J. Loveless). 1999 MARRIAGE DISSOLUTION.

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PLANNING AND PREPARING FOR YOUR TEMPORARY ORDERS HEARING

I. INTRODUCTION

The temporary hearing can be one of the most important hearings in a family law case – and sometimes it is the only hearing in a family law case. This hearing, which is likely held within fourteen (14) days of the initial filing for divorce, results in orders regarding conservatorship and access to children, possession of property, control of businesses and payment of support and debt. These are crucial decisions that will affect the direction of your case and are many times made only days after a spouse may learn of the divorce. Being prepared is imperative!

I want to thank Lisa Hoppes for allowing me to borrow certain sections of her paper “Prepare and Present Temporary Orders”.

II. RULES

A. Texas Family Code

As with all preparation, the best starting point is to review the rules!

1. TFC §6.502 – Temporary Injunction & Other Temporary Orders

Tex. Fam. Code §6.502(a) provides that after notice and hearing, the Court may render an appropriate order, including the granting of a temporary injunction for the preservation of the property and protection of the parties as deemed necessary and equitable and including an order directed to one or both parties:

- (1) Requiring a sworn inventory and appraisal of the real and personal property owned or claimed by the parties and specifying the form, manner, and substance of the inventory and appraisal and list of debts and liabilities;
- (2) Requiring payments to be made for the support of either spouse;
- (3) Requiring the production of books, papers, documents, and tangible things by a party;
- (4) Ordering payment of reasonable attorney’s fees and expenses;
- (5) Appointing a receiver for the preservation and protection of the property of the parties;
- (6) Awarding one spouse the exclusive occupancy of the residence during the pendency of the case;
- (7) Prohibiting the parties, or either party, from spending funds beyond an amount the court determines to be for reasonable and necessary living expenses;

- (8) Awarding one spouse exclusive control of a party’s usual business or occupation; or
- (9) Prohibiting an act described in Section 6.501(a).

2. TFC §105.001 – Temporary Orders Before Final Order

With respect to suits affecting the parent-child relationship, Tex. Fam. Code §105.001 provides:

- (a) In a suit, the court may make a temporary order, including the modification of a prior temporary order, for the safety and welfare of the child, including an order:
 - (1) for the temporary conservatorship of the child;
 - (2) for the temporary support of the child;
 - (3) restraining a party from disturbing the peace of the child or another party;
 - (4) prohibiting a person from removing the child beyond a geographical area identified by the court; or
 - (5) for payment of reasonable attorney’s fees and expenses.

3. TFC §154.181 – Medical Support Order

Sometimes overlooked is Tex. Fam. Code §154.181 which requires:

- (b) Before a hearing on temporary orders or a final order, if no hearing on temporary orders is held, the court shall require the parties to the proceedings to disclose in a pleading or other statement:
 - (1) if private health insurance is in effect for the child, the identity of the insurance company providing the coverage, the policy number, which parent is responsible for payment of any insurance premium for the coverage, whether the coverage is provided through a parent’s employment, and the cost of the premium; or
 - (2) if private health insurance is not in effect for the child, whether:
 - (A) the child is receiving medical assistance under Chapter 32, Human Resources Code;
 - (B) The child is receiving health benefits coverage under the state child health plan under chapter 62 Health and Safety Code, and the cost of any premium; and

(C) Either parent has access to private health insurance as a reasonable cost to the obligor.

- (c) in rendering temporary orders, the court shall, except for good cause shown, order that any health insurance coverage in effect for the child continue in effect pending the rendition of a final order, except that the court may not require the continuation of any health insurance that is not available to the parent at reasonable cost to the obligor. If there is no health insurance coverage in effect for the child or if the insurance in effect is not available at a reasonable cost to the obligor, the court shall, except for good cause shown, order health care coverage for the child as provided under Section 154.182.

Attached as APPENDIX A is a form for Health Insurance Availability for your client to fill out regarding such insurance that you can either use in your pleading or as an exhibit at the temporary hearing.

4. TFC §160.624 – Temporary Orders (Uniform Parentage Act)

Tex. Fam. Code §160.624 provides that the court shall render a temporary order for child support for a child if the order is appropriate and the individual ordered to pay child support:

- (1) is a presumed father of the child;
- (2) is petitioning to have his paternity adjudicated;
- (3) is identified as the father through genetic testing under Section 160.505;
- (4) is an alleged father who has declined to submit to genetic testing;
- (5) is shown by clear and convincing evidence to be the father of the child; or
- (6) is the mother of the child.

This section goes on to state that such temporary order may include provisions for possession of or access to the child as provided by other laws of this state. See Tex. Fam. Code §160.624(b).

B. Presumptions and Burden of Proof

Be sure you know the presumptions that are applicable to the relief you are requesting and what you will have to prove in order for the court grant your relief. Explain those legal standards to your client before the hearing.

1. Conservatorship (JMC and SMC)

It is a rebuttable presumption that the appointment of the parents of a child as joint managing conservators

is in the best interest of the child. Tex. Fam. Code §153.131. If you represent a parent and your pleadings request that the court issue a temporary order regarding conservatorship, the JMC presumption is in your favor and there is very little evidence you will need to present at the temporary hearing for the court to order the parents be named JMC. A finding of a history of family violence involving the parents of a child removes the presumption. Tex. Fam. Code §153.131(b).

If a party is alleging domestic violence, Tex. Fam. Code §153.004 prohibits the appointment of JMC if credible evidence is presented of a history or pattern of past or present child neglect, or physical or sexual abuse by one parent directed against the other parent, a spouse, or a child.

“It is a rebuttable presumption that the appointment of a parent as the sole managing conservator of a child or as the conservator who has the exclusive right to determine the primary residence of the child is not in the best interest of the child if credible evidence is presented of a history or pattern of past or present child neglect, or physical or sexual abuse by that parent directed against the other parent, a spouse, or a child.” Tex. Fam. Code §153.004(b).

**** Author’s Note: If you are relying on Section 153.004 as grounds for seeking SMC, you need to be very familiar with the details of the statute and the relevant case law. The nuances and details of the statute are beyond the scope of this paper.

2. Presumption That Parent be Appointed MC

A non-parent can seek appointment as either JMC or SMC against the child’s parent or parents. Tex. Fam. Code §153.372 (JMC) and §153.371(SMC). However, the Family Code presumes that it is in the child’s best interest to appoint a parent SMC or both parents JMC. If you represent a non-parent seeking SMC or JMC against a parent or parents, you can rebut the presumption by showing that the appointment of the parent or parents would significantly impair the child’s physical health or emotional development. Tex. Fam. Code §153.131(a). The burden of proof is a preponderance of the evidence and requires evidence of specific acts or omissions by the parent which show that awarding custody to the parent would result in physical or emotional harm to the child or by direct evidence from which the trier of fact could reasonably reach that conclusion.

You can also rebut the parental presumption by showing that 1) the parent or parents voluntarily relinquished actual care, control and possession of the child to a nonparent for one year or more, a portion of

which was within ninety (90) days preceding the date filing of the suit and 2) the appointment of the nonparent is in the best interest of the child. Tex. Fam. Code §153.373.

Finally, a finding that the parent or parents have a history of domestic violence will rebut the parental presumption. Tex. Fam. Code §153.004(a)

3. Modification

The Texas Family Code allows the court to render temporary orders in a suit for modification. While a modification is pending, the court cannot render an order that has the effect of changing the designation of the person who has the exclusive right to determine the primary residence of the child unless the temporary order is in the child's best interest and the child's present circumstances would significantly impair the child's physical health or emotional development. See Tex. Fam. Code §156.006(b)(1).

In 2015 Texas Legislature amended the statute to require a party seeking a temporary order under §156.006(b)(1) to execute and attach an affidavit that contains facts that support the allegations that the child's present circumstances would significantly impair the child's physical health or emotional development. The affidavit must be made on the person's:

1. personal knowledge or belief; or
2. belief based on representations made to the person by a person with personal knowledge.

If the court determines that the facts stated in the affidavit adequately support the allegations, the court must set a time and place for the hearing on the motion. But if the court determines that the facts are not adequate to support the allegations, the court must deny the relief and decline to schedule a hearing on the motion. Tex. Fam. Code §156.006(b)(1). The amendment applies to modifications filed on or after September 1, 2015.

The court may also enter temporary orders in a modification suit if the person designated as having the exclusive right to designate the primary residence of the child has voluntarily relinquished the primary care and possession of the child for more than 6 months, or if the child is 12 years of age or older and has expressed to the court in chambers the name of the person the child prefers have the exclusive right to designate his primary residence. See Tex. Fam. Code §156.006(b)(2), (b)(3). The six (6) month voluntary relinquishment provision does not apply to a conservator who has the exclusive right to designate the primary residence of the child, and who has temporarily relinquished primary care and possession during military deployment, military mobilization, or temporary military duty. See Tex. Fam. Code §156.006(c).

4. Standard Possession Order

It seems that everyone (including our clients), is familiar with the Texas Standard Possession Order (SPO) found in sections 153.312-153.315 of the Texas Family Code. For children who are three or older, the SPO is presumed to be in the child's best interest and is presumed to provide the JMC or PC with reasonable minimum possession. See Tex. Fam. Code §153.251. This SPO presumption is rebuttable. See Tex. Fam. Code §153.252.

In general, the SPO order provides for pick-up and return of the child to occur at 6:00 p.m. However, a conservator can elect the alternative beginning and ending possession times provided for in section 153.317. However, the conservator must make the election before or at the time of rendition of the order and it must be made in a written document filed with the court or through an oral statement made in open court on the record. Tex. Fam. Code §153.317(b). The court must grant the election unless the court finds the election is not in the child's best interest. Tex. Fam. Code §153.317(a).

C. **Don't Forget the Local Rules**

In addition to the rules provided in the Texas Family Code, don't forget to review the Local Rules for the county in which the case is pending to determine if there are additional requirements for the temporary hearing with regards to setting, mediation or documents required.

III. PLANNING FOR YOUR TEMPORARY ORDERS HEARING

A. **Is a Hearing Necessary?**

1. Discuss with Client

Not all cases necessitate an immediate Temporary Restraining Order and hearing within fourteen (14) days of the initial filing for divorce. First discuss with your client the advantages and disadvantages of a temporary hearing. IF a temporary hearing is necessary, consider when the hearing may be the most advantageous for your client.

If custody is at issue, you may consider asking your client to complete a Client Custody Questionnaire (APPENDIX B) which may help you to evaluate their case. If you determine that custody may be an issue, you may want to give them a homework assignment (APPENDIX C) to keep them focused on the information you will need for the temporary hearing.

2. Other Options

Are there other options available such as settlement discussions or mediation? One of the things you might want to consider at the very onset of your case is whether or not the issues for the temporary hearing would be more properly handled before a mediator than before the court. If you have the right case, you might

want to take some time to discuss with your client at the initial interview about submitting the issues to a mediated forum as opposed to a hearing. As we all know, the temporary orders hearing gets a lot of emotions in play and it is very hard for the parties to work with one another once everybody has drawn battle lines and once everyone has told all of the bad facts about the other party in public, “to the judge”, in this particular case.

B. Drafting Your Motion for Temporary Orders

If you determine that a hearing is necessary, you will need to file the appropriate pleading. Start with asking your client to prepare a “Wish List” of what they would like to accomplish at the temporary hearing. While it is unlikely that you will be able to achieve everything on their list, it will give you great insight as to what is important to them and perhaps some issues that are not as important.

Make sure that your pleadings support the relief that you are requesting. REMEMBER – you cannot get what you haven’t asked for. On the other hand, be careful not to ask for relief that you can justify. Truly tailor your request to the facts of the case. So, what should you ask for? The following are some thoughts of relief you may want to consider:

1. Children

- a. Conservatorship including specific rights, duties and privileges of both parties
- b. Customized possession and access schedule
- c. Right of First Refusal
- d. Drug or alcohol testing
- e. Child custody evaluation
- f. Psychological evaluation
- g. Appointment of amicus attorney
- h. Counseling
- i. Appointment of Parenting Coordinator or Parenting Facilitator
- j. Interview of child
- k. Co-Parenting Classes
- l. Utilizing a co-parenting communication program such as Our Family Wizard
- m. Child Support
- n. Health Insurance and uninsured medical expenses

2. Housing, Cars and Household Goods

- a. Occupancy of residence(s)
- b. Sale of residence
- c. Award of vehicles
- d. Award of pets
- e. Inventory of residence or storage units

- f. Division of household goods and furniture

3. Income and Debt

- a. Possession of business
- b. Allocation of debts and expenses
- c. Spousal support
- d. Preservation of community income (i.e. capture of future bonus payments received)
- e. Payment of Taxes and/or Capture of Tax Refund
- f. Interim Attorney and Expert Fees

4. Ancillary Relief

- a. Injunctions
- b. Releases
- c. Deadline for Inventory and Appraisal
- d. Deadline for Mediation
- e. Pre-Trial Scheduling Order

If you are the Respondent, make sure you have filed a counter-petition outlining your client’s requested relief. If not, you are exposed to the possibility of a nonsuit if things start going badly - even in the middle of a trial. The opposing side is entitled to a nonsuit if you have no affirmative pleadings on file. You must file affirmative pleadings on file!

C. How Much Time Do You Need (Or How Much Time Will You Get???)

It is important to determine how much time you will need for you to present your case but probably more important it ascertaining whether or not the Court will implement a time limitation. If you have a lengthy temporary custody case go the court coordinator, the clerk of the court or to the judge with the other lawyer and explain to the court that this is going to be a lengthy custody hearing, that you have several witnesses and the other side has several witnesses and this is going to take an inordinate amount of time. It is much better to get a certain time and date set than to show up at the courthouse with all of your witnesses, who the other side will then see, only to get reset at a later date having now given your opposition a list of the people who they need to depose or need to investigate before the next setting. Also, courts appreciate the fact that you are worried about their time constraints and their docket control. Make sure that you spend a little time looking into this before showing up with a whole bunch of witnesses and a whole bunch of evidence to put on but not enough time to do it. Also, your client will be much happier if they get a resolution of the case the day they come to court as opposed to showing up at court, being prepared, being

psyched up to doing it, and then being sent home only to return at a later date. If the court is implementing the time limit, let your client know so that they understand that the testimony will have to be limited and your approach will have to be much different than they will probably expect.

D. Subpoenas and Depositions

Subpoenas are very important for temporary orders hearings. You may not have enough time to gather all the documentation you need for the temporary orders hearing. You may not have the time to interview all the people you need to talk to prior to the temporary orders hearing, but you need these people to bring the records to the court more than anything else. Subpoenas are quick and economical.

Many times there will not be time to take a deposition, but if there is time, take some quick depositions early on in the case. You will usually trap the other side as being unprepared. You will get some statements from the client before they have had a chance to discuss this with their lawyer to a great degree and you may find some very helpful information in those depositions that they can never effectively change.

IV. PREPARING FOR YOUR TEMPORARY ORDERS HEARING

A. Client and Witness Preparation

1. Meet With Client

Seems obvious but you have to meet with your client to prepare for the temporary hearing. You may do all the preparation and be 100% prepared but it doesn't matter if your client has not been involved with the preparation. Make this process a team effort – so that your client feels they are prepared and that they are involved in the process.

The critical information that you need to get from your client is:

- a. History of your client and their family, as well as that of the opposing side;
- b. Understanding of all of the issues that will be contested at the hearing (what is it that your client truly wants and what are they willing to give up to the other side, if anything);
- c. List of possible lay witnesses, including name, address, and telephone number, who would be important to testify at the temporary orders hearing;
- d. List of any possible expert witnesses that would be available, including name, address, and telephone number to testify at the temporary orders hearing; and
- e. Documents necessary for the hearing.

2. Meet or Talk to Possible Witnesses

Just as with your client, lay or expert witnesses need to be interviewed at least by telephone. Attached as APPENDIX D is a Witness Questionnaire for a Custody Case that may helpful in your interview or you can ask them to fill it out. REMEMBER – your discussions with a witness (or your client's conversations with a witness) are NOT protected by the attorney-client privilege. Therefore, be cautious of what you tell the witness and be prepared that the opposing attorney will ask them who they talked to prior to the hearing and what was discussed.

After you have talked to the witnesses, determine which witnesses are necessary for your case. Of course, time limitations may dictate the ability to call any additional witnesses. The decision of which witnesses are going to testify always need to lie with the lawyer. Your client will probably want to bring all the neighbors, the entire church congregation, all the teachers, and everyone who has known them since the birth of the children to testify what a good mother or father, etc. they are. Do not bring too many witnesses. Courts are always tired of listening to too many "me too" witnesses. Limit the amount of character witnesses for your client. There are many types of lay witnesses that will be helpful to your case. The following is a list of some of the people you might want to think about:

- Family
- Friends
- Neighbors
- Co-workers
- Coaches
- Teachers
- Principals
- Church members
- Daycare workers
- Parents of the children's friends
- Ministers
- Doctors
- Counselors/Psychologists
- Social Worker/CPS Worker

3. Prepare Your Client and/or Witnesses to Testify

Make your client and possible witnesses part of the trial team. You should at least have an outline of the questions that you intend to ask your client and the other witnesses. Share this outline with your client or the witness as it will ease their mind to understand what information you are trying to elicit. Practice a few questions/answers with them. Prepare them for cross-examination by reviewing with them the following rules:

Remind them of the key rules in testifying:

- They are sworn to tell the truth.
- Always tell the truth.
- Listen to the question
- Answer only the question that was asked
- Be concise but not be evasive – if you know the answer, answer it
- Do not volunteer any extra information – answer the question asked
- If you do not know, say so
- If you do not remember, say so
- Do not try to sell the case
- Do not argue with the other lawyer - be polite to all of the lawyers in the case.

In some cases, if you have a long time to prepare for the temporary orders hearing, it may be a good homework assignment to send your client to the courthouse to watch a case actually being tried. He or she can observe witnesses on the stand and pick up techniques that work well and other techniques that are horrible and that they do not want to emulate.

4. Review Exhibits and How Evidence is Introduced

You should review all the exhibits you intend to use with your client and be sure that they can identify any document you intend to introduce through their testimony. Briefly review how evidence is introduced and what predicate questions you will be asking them.

B. Exhibits

Exhibits are key to a temporary hearing, especially if you have a time limitation which necessitates you preparing and introducing summaries as exhibits.

If you have several exhibits, consider compiling a three-ring binder with the temporary orders proposal, income, expense and other exhibits (all premarked, of course) for the Judge, witness and opposing counsel. This is a useful and convenient tool to hand to the judge. Consider that some courts now request all documents be scanned onto a flash drive. Know what is liked by your judge and try to be accommodating.

There are certain exhibits which a court will not only anticipate but expect. Local rules may require them. Without these basic exhibits, the court will certainly question the substance of your case when trying to obtain any order for child support outside of the guidelines. Given the time constraints associated with a temporary orders hearing, you will usually not have time to discover some of the necessary documentation; therefore, if you cannot obtain an agreement to produce them in advance of the hearing, subpoena the documents from the opponent. The following is a non-exclusive list of some necessary, basic exhibits:

1. Proposed Relief Requested

An exhibit titled Proposed Relief Requested should be utilized anytime you have a hearing with the Court. This will outline for the Court what your client is requesting that they do. It is a roadmap for the Court to focus on the relief requested. To prepare, start with your pleadings and make sure that your pleadings cover what you are asking for – then prepare your relief requested outlining specifically what you client is asking the Court to do.

This exhibit will be necessary and helpful for all involved:

- Client – it will help your client know what they are asking for so that they will be able to answer not only your questions but the opposing attorney's questions. The worst thing to happen to a lawyer is to finish their questions and the Court has to ask your client....."What are you asking me to do".
- Judge – it provides the Judge a roadmap.
- You – it is a great outline for preparing your questions for your client.

See APPENDIX E and F for two examples of Proposed Relief Requested.

2. Rights, Duties and Privileges Chart

Most of the time our clients do not know the difference between "custody", "joint custody", "conservatorship", "shared custody", etc. Use the Rights, Duties and Privileges chart attached as APPENDIX G to review with them what the issues are with regards to "conservatorship". This chart helps your client focus on which of the rights and duties may be at issue. Use this chart as an attachment to your Proposed Relief Requested.

Don't let the Judge just order that the parties are JMC without making a ruling with regards to the specifics on the allocation of the rights, duties and privileges. Although the Court may be hesitant to making a determination on the right to designate the primary residence of the child on a temporary basis, the other rights should be determined.

3. Conservatorship and Possession/Access Exhibits

a. Scrapbook

Produce a scrapbook containing pictures of the children involved in extracurricular activities. Put them in some sort of logical order (e.g., chronological). You may include documents that reflect announcements of events or news clippings, etc. Be mindful that judges may question why the other party does not appear in any of your client's pictures.

b. Visitation/Access Schedules

If a party has had limited access to the children, perhaps a calendar indicating time spent with both parents may be helpful for the Court to visualize. You could color code blue for Dad and pink for Mom to show the Judge the allocation of time with both parents.

c. Our Family Wizard Communication

If the parties already use OFW, you can use the calendars or postings that are included on the account.

d. Emails, Text Messages

E-mails can also have an impact on proceedings. And while they are all too common a form of communication, be wary of evidentiary issues such as authentication and whether your client obtained them illegally.

e. School Records

Report cards, progress reports, registration forms or communication with the teachers may be helpful exhibits.

f. Child's medical records

If necessary, secure the child's medical records.

g. Social Networking

Locate your client and the other parties' Facebook and Twitter accounts. Print out what you find and have it ready for court. Litigants can be really careless and can reveal plenty about a person's character.

4. Financial Exhibits

a. Tax Returns

Usually three years is recommended. If separate returns have been filed, obtain the opponent's returns. Make sure returns have supporting documentation such as all schedules, W-2s and/or 1099s as applicable. If there is specific information on the tax returns you will want to point out to the Judge, you may want to consider preparing a Tax Return Summary (see APPENDIX H) and using it as a summary.

b. Income Statement

Most Courts will require an Income Statement (see APPENDIX I) and verification of income including copies of pay checks if stubs.

c. Expense Statement

Also likely a requirement per the Court's local rules is an expense statement (See APPENDIX J). Your client should be involved in preparing the expense statement because it will be up to them to defend it on the stand. Make sure you review the expense sheet with your client and that you understand how they have come up with the entries listed. This expense statement should not be inflated

or include expenses that are not currently being incurred. If, however, as a result of the divorce action a spouse anticipates additional expenses such as counseling or daycare, those expenses should be included but noted that they are an estimated future expense.

d. Credit Report

Credit reports can often provide valuable information. Have your client obtain a credit report on himself or herself. This report will often have information on both spouses, some of which you may find quite useful. Remember, you cannot pull a credit report on the other spouse alone, unless you comply with current Federal and State laws. Although you can usually obtain a release, this is sometimes difficult to do prior to the temporary orders hearing.

e. Bank Statements

Bank statements can be very important at a Temporary Hearing to show the Court the history of the parties' deposits and withdrawals or perhaps specific expenditures that are relevant to the relief you are requesting. If you intend to introduce several bank statements, you may want to prepare and offer a summary of the bank statements summarizing the information you want the Court to focus on. See APPENDIX K for a Bank Account Summary.

f. Banking Information

If you are going to ask the court to put excess funds into a bank account, be prepared to provide the court with specific examples of financial institutions. Have ready their full name, correct address, fees, requirements, etc. This does two things: it lets the judge know you put some thought into your request and did your homework, and this gives the judge the necessary information to put into the order if you prevail on your request.

C. Unusual Injunctive Relief

In addition to the standard temporary injunction, some circumstances may dictate the need for unusual injunctive relief. There may be concerns that a spouse may attempt to prepay expenses, taxes, or debts in an effort to deplete community resources. These concerns should be addressed with an appropriate injunction. Rent, mortgages, health insurance, life insurance, and taxes are examples of expenses that could be potentially prepaid. If these are concerns, ask the court to enjoin the opposing party from paying these obligations in advance of their due date. Oftentimes domestic litigation occurs around the time that a tax refund is due. Be sure to take this into account when seeking relief. You may want this divided now, later, or applied to some obligation (like

your fees). Address it at the temporary orders hearing. Do not wait for the check to arrive. Often the funds will disappear before you can obtain a hearing regardless of a restraining order. Add any additional injunction language to your proposed relief requested.

D. Interim Attorney's Fees

You are going to have to show the Court WHY you need interim attorney's fees, HOW MUCH you need and WHERE it is going to come from?

To obtain interim attorney's fees and expenses, an attorney must:

1. Plead for interim attorney's fees and expenses.
2. Prove the amount of and necessity for the fees for your services and related services, and expenses.
3. Demonstrate the reason that your client does not have the ability to pay for them.
4. Demonstrate the other spouse's ability to pay for them.
5. Demonstrate the source of payment for your fees and expenses.

Without proper pleading, one will not be able to prove attorney's fees over a properly lodged objection. An attorney seeking fees must affirmatively plead for relief. With regard specifically to interim attorney fees, the requesting party must not only plead for interim attorney's fees and expenses, but also convince the trial court that the award of interim fees is necessary to the prosecution of the case and is the fair thing to do. Parties seeking interim attorney fees should make presentations of proof with both oral and documentary evidence to support the claim. Simply testifying to an hourly rate and a rough estimate of the number of hours the attorney anticipates to expend in the matter. One should be prepared to present a detailed explanation of the work already performed and expenses already paid, as well as the anticipated work to be performed and future expenses to be paid. This can include experts, appraisers, receivers, etc. Legal assistant fees are a compensable component of attorney fees and are recoverable. Compensation for a legal assistant's work may be separately assessed and included in the award of attorney's fees if a legal assistant performs work traditionally done by an attorney. See APPENDIX L for a sample Interim Attorney Fees Request.

V. CONDUCTING YOUR TEMPORARY ORDERS HEARING

A. Preparation is the Key

If you follow the tips in Paragraph IV above, you will be well on your way to being prepared for your temporary hearing. Although the hearing may not always proceed as you expected (perhaps your client

hasn't told you everything?!), preparation will allow you to be ready to deal with any situation.

B. Tips for Cross-Examination

1. Ask leading questions.
2. Ask very short questions.
3. Use simple words.
4. Use headlines. "Let's talk about you Income Statement."
5. Ask for facts, not evaluations.
6. Get one fact at a time.

C. Tips for Impeachment of a Witness

1. Bias. Show the witness has a motive to lie.
2. Prior convictions.
3. Prior bad acts. Show they have lied about something else in the case.
4. Bad reputation.
5. Lack of personal knowledge.
6. Contradiction. When a witness contradicts another.
7. Prior inconsistent statements.

D. Tips for Cross-Examination of an Expert

1. Make him or her your witness. Use the other parties' witness to help your case, such as asking their expert about the reputation or respect for your expert.
2. Attack his or her field, such as, "Doctor, is psychology an exact science?"
3. Attack his/her qualifications. No matter how well qualified, there is always a higher level that they have not reached.
4. Expose his or her bias. Talk about the fees they are getting for testifying.
5. Attack his or her facts. Ask the witness a question of fact that you do not think the other side has told them that might change their opinion.
6. Vary the hypothetical. Change the facts around to see at what point the expert opinion is altered.
7. Impeach the expert with a learned treatise. If the expert does not agree with most people in their field, they could be wrong.

E. Know Your Judge

1. Know who you are talking to and know the tendencies of your judge if possible.
2. Watch the clock. Do not waste time on unimportant issues.
3. Give the judge a reason to rule for you.

4. Be prompt. Show up for hearings on time.
5. Make certain your clients and witnesses are on time.
6. Be scrupulously honest. Do not misstate the law, do not overstate any fact, and if you have made a mistake, correct it immediately.

F. Enforcing “The Rule”

Many times “the Rule” is simply not followed and witnesses often talk to each other, blatantly, even in the halls. To help watch this, have someone from your office hang around and watch and observe. Make sure that the opposing lawyer does not talk to the witnesses together. If the witnesses are huddled together while one, or more, engage in dialogue with the lawyer, this, too, may be violative of the rule. Also, be careful of the lawyer who asks that a witness be allowed to remain in the courtroom after his/her testimony. This is usually not a problem. However, some of the lawyers try to recall the witness later. Make sure the lawyer represents to the court that he will not recall the witness and, in fact, waives his right to recall the witness. The actual “Rule” is Texas Rules of Civil Procedure 267(a) and Texas Rules of Evidence 614.

G. Keeping Your Opponent in His Place

Many lawyers like to roam around the courtroom, hover over the witness, ask questions in front of the counsel table, etc. The rules require the attorneys to remain seated at the counsel table. The rule, which no one can ever find, is Texas Rules of Civil Procedure 269(h).

VI. CONCLUSION

As a concluding thought to this paper, temporary order hearings are some of the most difficult hearings that a family lawyer can ever have the responsibility to undertake. They occur without much notice or time to prepare and we usually don’t have a clue what the other side intends to present. We need to be ready to think quickly on our feet and get the necessary and relevant information in front of the Judge so that they can make an educated decision. While it is not a final trial, the issues at the temporary hearing are just as important. Remember that the primary objective at the temporary orders hearing is to stay focused on what the most important goals are for your client. Work diligently and efficiently with the time you have at the temporary orders hearing to accomplish those goals. Be brief. Be to the point with each and every witness. Be to the point with each and every piece of demonstrative evidence that you can possibly get admitted as evidence.

APPENDIX A

HEALTH INSURANCE AVAILABILITY

Name of person carrying coverage: _____ SSN: _____

1. Beside the name of each child, check all types of health insurance or benefits currently covering that child(ren):

| | Father's Employer | Mother's Employer | Private | Medicaid | CHIP | Other | None |
|---------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| Child's Name: _____ | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| DOB: _____ | | | | | | | |
| SSN: _____ | | | | | | | |

| | Father's Employer | Mother's Employer | Private | Medicaid | CHIP | Other | None |
|---------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| Child's Name: _____ | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| DOB: _____ | | | | | | | |
| SSN: _____ | | | | | | | |

2. For each insurance source, please list:

- a. Name of Insurance Company _____
- b. Group Policy ID Number _____
- c. Policy Holder Name & ID Number _____
- d. Name of Child covered _____
- e. Cost of premium to you (for child(ren)) _____

Are you paying the premium? NO ☐ YES ☐

- a. Name of Insurance Company _____
- b. Group Policy ID Number _____
- c. Policy Holder Name & ID Number _____
- d. Name of Child covered _____
- e. Cost of premium to you (for child(ren)) _____

Are you paying the premium? NO ☐ YES ☐

Signature of person completing form

Printed name: _____

APPENDIX B

CLIENT CUSTODY QUESTIONNAIRE

Please fill out this questionnaire and return it as soon as possible. It is important that you answer each question fully, completely and honestly. It is imperative that you be candid! You should answer all questions relevant to your case. If a question does not apply to your particular situation, please indicate by marking the question "N/A". If the answer to any question requires more space than has been provided on the form, please complete your answer on a separate sheet: Refer to the question number to which your answer applies and attach your answer to this questionnaire. Your responses to these questions will help to organize your case and will save you money on attorney's fees in trying to gather and assemble information after the case is in progress. Since your answers are being given to an attorney, you are assured of confidentiality and are protected by the attorney/client privilege.

ATTORNEY/CLIENT PRIVILEGE ASSERTED AS TO ALL INFORMATION CONTAINED HEREIN

BACKGROUND INFORMATION:

About you About your spouse or ex-spouse

Your name: _____

(Ex) Spouse's name: _____

Address: _____

Address: _____

Telephone: _____

Telephone: _____

Birthplace: _____

Birthplace: _____

Social Security # _____

Social Security # _____

Driver's license # _____

Driver's license # _____

Employer: _____

Employer: _____

Employer's Address: _____

Employer's Address: _____

Position: _____

Position: _____

How long with current employer? _____

How long with current employer? _____

Prior employment: _____

Prior employment: _____

Prior marriage: _____

Prior marriage: _____

Children of prior marriage? _____

Children of prior marriage? _____

Names and birth dates of children of prior marriage: _____

Names and birth dates of children of prior marriage: _____

DATE AND PLACE OF MARRIAGE TO SPOUSE OR EX-SPOUSE WITH WHOM THIS DISPUTE HAS ARISEN:

Date of marriage: _____

Place of marriage: _____

INFORMATION ABOUT DIVORCE FROM EX-SPOUSE (IF THIS IS AN ACTION FOR MODIFICATION):

Date of divorce: _____

Place of divorce: _____

Court: _____

Name of Judge: _____

Name of your previous attorney: _____

Have there been any changes in custody, visitation, or support - formally or informally? _____

If yes, please describe: _____

Was the order that is now under dispute entered by agreement or after a contest trial? _____

BASIC INFORMATION ABOUT CHILDREN OF THIS MARRIAGE:

NAME SEX BIRTHPLACE BIRTH DATE

| | | | |
|-------|------------|-------|-------|
| _____ | M/F | _____ | _____ |
| _____ | M/F | _____ | _____ |
| _____ | M/F | _____ | _____ |
| _____ | M/F | _____ | _____ |

If you want sole custody of your children, please tell me why you think you should have sole custody in fifty words or less:

With whom do the children currently live? _____

Period of time in which this living arrangement has been in effect: _____

Names and addresses of schools children attend, dates attended and name of teacher or principal there who is familiar with child:

Child's name: _____

School: _____

Address: _____

Dates attended: _____

Grade: _____

Teacher or principal: _____

Child's name: _____

School: _____

Address: _____

Dates attended: _____

Grade: _____

Teacher or principal: _____

Child's name: _____

School: _____

Address: _____

Dates attended: _____

Grade: _____

Teacher or principal: _____

CARE OF THE CHILDREN:

To the extent that both you and your spouse or ex-spouse have shared the responsibilities listed below, describe the degree to which the responsibilities have been shared:

Who helps the children get dressed in the morning? _____

Who bathes the children and grooms them? _____

Are any of the children nursing? _____

Who takes care of the children during the day? _____

Who arranges for getting the children together with playmates? _____

Who puts the children to bed at night? _____

Who prepares the meals? _____

Who arranges for medical and dental care and takes the children to doctor's appointments? _____

Who takes the children to school? _____

Who picks the children up from school? _____

Who shops for the children's clothes? _____

Who transports the children to extracurricular activities? _____

Do you or your spouse participate in recreational or educational activities? _____

Describe the nature of the activities and how often you and your spouse or ex-spouse participate in them. _____

Do the children receive religious training? _____

If so, from whom? _____

Who arranges the children's birthday parties? _____

Who helps the children with their homework? _____

Who attends parent-teacher conferences? _____

Are the children more likely to turn to you or to your spouse or ex-spouse when they have problems? _____

Do you feel the children are closer to you or your spouse or ex-spouse? _____

Are the children in day-care or with a sitter? _____

If so, how many hours per week? _____

Give name, address and telephone number of the day-care service or sitter: _____

Who arranges for the day-care or sitter? _____

Who cares for the children when they are ill? _____

Who disciplines the children? _____

By what method? _____

Has the division of responsibility for child care changed over the years? _____

If so, describe: _____

TIME AVAILABLE TO SPEND WITH THE CHILDREN AND PLANS FOR THEIR FUTURE CARE:

What are your working hours? _____

What time do you leave home? _____

When do you return? _____

Do you have flexible working hours? _____

Does your work require travel? _____

If so, what distance and amounts of time? _____

Is your work schedule likely to change in the future? _____

What are your plans for child care? _____

Describe your housing arrangements, including number bedrooms: _____

What are your spouse's or ex-spouse's working hours? _____

What time does your spouse or ex-spouse leave home? _____

When does your spouse or ex-spouse return? _____

Are your spouse's or ex-spouse's working hours flexible? _____

Does your spouse or ex-spouse's work require travel? _____

If so, what distances and amounts of time? _____

Is your spouse's or ex-spouse's work schedule likely to change in the future? _____

What are your spouse's or ex-spouse's plans for child care? _____

Describe your spouse or ex-spouse's household arrangements, including number of bedrooms: _____

SPECIAL NEEDS OF THE CHILDREN:

Do the children have any special or unusual educational or health care needs? _____

If so, describe them: _____

Who has worked to meet those needs? _____

Are you or your spouse or ex-spouse better able to meet those needs? _____

Has the children's academic performance changed in the last few years or months? _____

If so, what is the reason for the change? _____

INTERFERENCE WITH OTHER PARENT'S RELATIONSHIP WITH THE CHILDREN:

Have you or your ex-spouse interfered with the child's relationship with the other parent or spoken badly about the other parent to the child? _____

If so, explain: _____

Have you or your ex-spouse blocked the other parent's visitation with the children? _____

If so, explain, giving dates and frequency with which visitation was blocked: _____

Have you or your ex-spouse discouraged the child from having a good relationship with a step-parent or a "significant person" in the other parent's life? _____

If so, explain: _____

COOPERATION BETWEEN YOU AND YOUR SPOUSE OR EX-SPOUSE:

How well have you and your spouse or your ex-spouse been able to cooperate on matters concerning the children and on matters concerning visitation or access to the children? _____

To what extent do you and your spouse or ex-spouse share values regarding how the children should be raised, what type of education they should have, and what type of religious training they should have (if any)? _____

FREQUENCY OF MOVES AND PLANS TO MOVE:

Have you or your ex-spouse moved in the last ten years? _____

If so, when and where (include moves in the same city)? _____

Do you or your spouse or ex-spouse plan to move in the near future? _____

If so, when and where? _____

Does the parent who is not moving oppose the move? _____

Why? _____

"SKELETONS IN THE CLOSET" AND SENSITIVE TOPICS:

IT IS IMPERATIVE THAT YOU BE OPEN AND HONEST IN ANSWERING THE FOLLOWING QUESTIONS. ANY DISCUSSION RELATING TO ANY OF THESE TOPICS BETWEEN YOU AND YOUR ATTORNEY WILL BE PROTECTED BY THE ATTORNEY/CLIENT PRIVILEGE. IF YOU FAIL TO BE HONEST WITH ME IN ANSWERING THESE QUESTIONS, IT COULD BE ABSOLUTELY DISASTROUS TO YOUR CASE. IF AN ANSWER TO ONE OF THE QUESTIONS BELOW IS "YES", PLEASE DESCRIBE THE SITUATION IN DETAIL.

Have you or your spouse or ex-spouse:

- _____ committed a felony?
- _____ been arrested?
- _____ been in jail or prison? _____ used illegal drugs?
- _____ abused prescription drugs?
- _____ abused alcohol?
- _____ been arrested for or convicted of drinking while under the influence of alcohol (drunk driving)?
- _____ engaged in gambling activities (legal or illegal)?
- _____ engaged in other illegal activities?
- _____ attempted suicide?
- _____ been hospitalized for an emotional or psychiatric disorder?
- _____ suffered from or received treatment for an emotional or psychiatric condition?
- _____ abused your spouse?
- _____ abused your child?
- _____ had a sexual relationship during the marriage with someone other than your spouse?
- _____ had a sexual relationship (during or not during the marriage) with someone other than your spouse of which the children were aware? If so, describe the children's feelings about the person(s) involved in the relationship.

- _____ had a homosexual relationship?
- _____ engaged in unusual sexual practices?
- _____ had a pregnancy outside of marriage?
- _____ had a venereal disease?
- _____ drunk socially? If so, what do you drink and with what frequency?

If you or your spouse or ex-spouse have a relationship with a person whom the children see frequently and that person would answer "yes" to one or more of the preceding "skeleton in the closet" questions, describe the situation:

Do you or your spouse suffer from any physical disability that would interfere with being able to care for the children?

CHILDREN'S PREFERENCES:

Have the children told you with whom they want to live? _____

If so, what is the basis for preference? _____

How strong is the preference? _____

How long has the preference been held? _____

Has the preference changed? _____

How would you feel about the children talking to the judge regarding their preference? _____

CHILDREN'S RELATIONSHIP WITH OTHER FAMILY MEMBERS:

How do the children get along with each other? _____

How do the children get along with step-parents? _____

Do the children have a particularly close relationship with either or both sets of grandparents? _____

Do the children have a strong relationship with anyone else that you believe is important? _____

GOALS:

What are your future goals with the children and the reason for your goals? _____

To what extent do you believe that you and your ex-spouse should have joint custody (sometimes referred to as shared parental responsibility") under which you both would share equally in making major decisions affecting the child and/or being with the child for substantial periods of time? _____

What are your spouse's future goals with the children and the reasons for those goals? _____

Have you and your ex-spouse attempted to work out a settlement of the case between yourselves? What progress have you made? What are your positions? _____

Who do you think would make good witnesses for you and what do you think the testimony would be? Possible witnesses include neighbors, the children's teachers, friends, doctors, baby-sitters, daycare workers, clergy and family members.

Name: _____

Address: _____

Home Telephone: _____ Business Telephone: _____

Name: _____

Address: _____

Home Telephone: _____ Business Telephone: _____

Name: _____

Who do you think will be a witness for your spouse or ex-spouse and what do you think will be the testimony of those persons?

Name: _____

Address: _____

Home Telephone: _____ Business Telephone: _____

Name: _____

Address: _____

Home Telephone: _____ Business Telephone: _____

Name: _____

Address: _____

Home Telephone: _____ Business Telephone: _____

Name: _____

Address: _____

Home Telephone: _____ Business Telephone: _____

Name: _____

Address: _____

Home Telephone: _____ Business Telephone: _____

PENDING PROCEEDINGS, OTHER ATTORNEYS, AND WHAT BROUGHT YOU TO THIS OFFICE:

Are there any court proceedings pending on this matter? _____

APPENDIX C

HOMEWORK ASSIGNMENTS (CUSTODY CASE)

1. List and describe all your good qualities as a parent.
2. List and describe all your bad qualities (shortcomings) as a parent.
3. List and describe all your spouse's good qualities as a parent.
4. List and describe all your spouse's bad qualities (shortcomings) as a parent.
5. Write a history of your relationship with your spouse up through the present date. Begin with your dating relationship. Emphasize any and all important events or episodes with particular reference to your child(ren). (If this is a modification, begin your history from the date of the last Final Order.)
6. Keep a daily journal. You should get a calendar which has complete blank pages for each date (the 5' x 7' or 8' x 10' calendars work well). Make a point to list significant events, discussions with your spouse, visitation exchanges, etc. on the date that it actually happens.
7. Secure photographs of you and your child(ren) participating in various activities. If the camera does not do it automatically, put the date and time on the backs of the photographs.
8. Detail, in your opinion, why it would be in the best interest of your child(ren) for you to have primary possession of your child(ren).
9. Detail, in your opinion, why it would NOT be in the best interest of your child(ren) for your spouse to have primary possession of your child(ren).
10. Prepare a complete list of witnesses, include their complete mailing addresses, phone numbers (home and work), whether they will need to be subpoenaed to testify, and most importantly, about what each witness will testify. Please take your time and be detailed.
11. If your case involves a change of custody (modification), list any and all material and substantial changes in conditions (since the date of the last order regarding custody) with reference to:
 - a) your situation;
 - b) your child(ren);
 - c) your ex-spouse; and
 - d) denial of periods of possession.
12. If your case involves an initial custody issue (i.e., divorce), provide a detailed written discussion of all the following areas regarding you and your spouse:
 - a) job stability;
 - b) residence stability;
 - c) marital stability;
 - d) psychological or emotional stability;
 - e) lifestyle and morality;
 - f) substance abuse;
 - g) child(ren)'s preference;
 - h) methods of discipline;
 - i) school programs;
 - j) lack of medical attention;
 - k) neglect; and
 - l) abuse.
13. If your case involves a divorce, and you and your spouse are separated, describe in detail the current visitation with regard to your child(ren) and any denial of periods of possession.
14. If your case involves a change of custody, list why your appointment as the new managing conservator would be a positive improvement from your child(ren).

APPENDIX D

WITNESS QUESTIONNAIRE (CUSTODY CASE)

IF YOUR ANSWERS REQUIRE MORE SPACE THAN ALLOCATED PLEASE ATTACH ADDITIONAL PAGES IF NECESSARY TO FULLY ANSWER THE QUESTION OR QUESTIONS.

1. NAME: _____
 RESIDENCE: _____
 TELEPHONE: _____
 OCCUPATION: _____
 BUSINESS TELEPHONE: _____

2. IF MARRIED, SPOUSE'S NAME: _____
 SPOUSE'S OCCUPATION: _____
 SPOUSE'S BUSINESS TELEPHONE: _____

3. HOW MANY YEARS HAVE YOU BEEN MARRIED? _____
 4. ARE YOU A PARENT? _____ HOW MANY CHILDREN? _____
 PLEASE LIST THE NAMES AND AGES OF YOUR CHILDREN: _____

5. HOW LONG HAVE YOU KNOWN MR. _____
 HOW FREQUENTLY DO YOU SEE MR. _____
 HOW MANY TIMES DURING THE LAST YEAR HAVE YOU SEEN MR. _____

6. HOW LONG HAVE YOU KNOWN MS. _____
 HOW FREQUENTLY DO YOU SEE MS. _____
 HOW MANY TIMES DURING THE LAST YEAR HAVE YOU SEEN MS. _____

7. HAVE YOUR CHILDREN PLAYED WITH _____'S CHILDREN? _____
 HOW OFTEN: _____

8. HAVE YOU BEEN IN MR. _____ HOME? _____ HOW MANY TIMES? _____

9. HAVE YOU HAD AN OPPORTUNITY TO OBSERVE MR. _____ AROUND THE CHILDREN? _____

10. HOW WOULD YOU DESCRIBE MR. _____'S ACTIONS AND TREATMENT OF HIS CHILDREN, AND THE CHILDREN'S ACTIONS AND AFFECTION FOR HIM? _____

11. HAVE YOU BEEN IN MS. _____'S HOME? _____ HOW MANY TIMES? _____

12. HAVE YOU HAD AN OPPORTUNITY TO OBSERVE MS. _____ AROUND THE CHILDREN? _____

13. HOW WOULD YOU DESCRIBE MS. _____'S ACTIONS AND TREATMENT OF HER CHILDREN, AND THE CHILDREN'S ACTIONS AND AFFECTION FOR HER? _____

14. HAVE YOU HAD AN OPPORTUNITY TO OBSERVE THE CHILDREN'S MANNERS AND DEMEANOR?

PLEASE DESCRIBE _____

15. HAVE YOU HAD AN OPPORTUNITY TO OBSERVE ANY CHILD OF THE PARTIES AT A TIME WHEN HIS/HER BEHAVIOR WAS WHAT YOU CONSIDERED LESS THAN APPROPRIATE BEHAVIOR FOR A CHILD OF HIS/HER AGE? IF SO, PLEASE DESCRIBE THOSE INSTANCES: _____

16. PLEASE DESCRIBE THE MANNER IN WHICH THE INAPPROPRIATE BEHAVIOR DESCRIBED IN NUMBER 15 WAS DEALT WITH AND BY WHICH PARENT? _____

17. ARE YOU AWARE OF WHETHER OR NOT THE BEHAVIOR OF THE CHILD(REN) DESCRIBED IN NUMBER 15 CAUSED BY MENTAL AND/OR EMOTIONAL PROBLEMS? _____

18. IN YOUR OPINION, ARE THE CHILDREN NEGLECTED BY MR. _____ IN ANY MANNER, EITHER EMOTIONALLY OR PHYSICALLY? IF SO, PLEASE DESCRIBE _____

19. IN YOUR OPINION, ARE THE CHILDREN NEGLECTED BY MS. _____ IN ANY MANNER, EITHER EMOTIONALLY OR PHYSICALLY? IF SO, PLEASE DESCRIBE _____

20. PLEASE LIST ANYTHING YOU FEEL IS RELEVANT REGARDING THE CHILD, THE CHILD'S BEHAVIOR, EITHER PARENT'S CARE OF THE CHILD, ETC.: _____

21. PLEASE LIST THE STRENGTHS OF MR. _____ AS A PARENT: _____

22. PLEASE LIST THE WEAKNESSES OF MR. _____ AS A PARENT: _____

23. PLEASE LIST THE STRENGTHS OF MS. _____ AS A PARENT: _____

24. PLEASE LIST THE WEAKNESSES OF MS. _____ AS A PARENT: _____

25. PLEASE LIST ANY FACTS WHICH YOU BELIEVE ARE DETRIMENTAL TO MR. _____ BEING AWARDED CUSTODY OF THE CHILDREN: _____

26. PLEASE LIST ANY FACTS WHICH YOU BELIEVE ARE DETRIMENTAL TO MS. _____ BEING AWARDED CUSTODY OF THE CHILDREN: _____

27. PLEASE LIST THE REASONS WHY YOU BELIEVE THE CHILDREN SHOULD LIVE WITH MR. _____:

28. PLEASE LIST THE REASONS WHY YOU BELIEVE THE CHILDREN SHOULD LIVE WITH MS. _____:

29. PLEASE LIST ANYTHING NOT ALREADY ADDRESSED ABOVE WHICH YOU FEEL IS RELEVANT TO THIS CASE: _____

30. PLEASE PROVIDE ANY INFORMATION ABOUT YOURSELF WHICH YOU FEEL MIGHT BE SIGNIFICANT IF YOU ARE CALLED AS A WITNESS IN THIS CASE: _____

APPENDIX E

TEMPORARY ORDERS PROPOSALS (SAMPLE #1)

Petitioner is JANE DOE (hereinafter referred to as “JANE”).

Respondent is JOHN DOE (hereinafter referred to as “JOHN”).

The children are JESSICA (7 years old) and JACK (4 years old).

_____ Conservatorship

Jane and John shall be appointed Joint Managing Conservators with the rights, duties and privileges as outlined in the attached chart labeled Exhibit A.

_____ Co-Parenting Classes

Both parties should attend Kids First and Kids in the Middle Classes on or before November 1, 2017 and file a certificate of completion with the Court.

_____ Psychological Evaluation

John shall submit to a psychological evaluation.

_____ Possession/Access

John should have the children for a Standard Possession Schedule as outlined in TFC §153.3101-153.317 specifically including the alternative beginning and ending times to begin and end at the time the child’s school is dismissed and resumes.

_____ Child Support

John shall pay guideline child support and a Wage Withholding Order for the payment of child support shall be entered.

_____ Health Insurance

Jane and the children are currently covered by health insurance available through Jane’s employment. Jane shall continue to pay for such coverage until further order of the Court. Jane shall pay for the uninsured medical expenses as outlined in her expense statement. John is covered through health insurance available through his employer.

_____ Mutual Injunction

The Mutual Injunction entered on August 15, 2017 shall continue in full force and effect until further order of this Court or until it expires by operation of law.

_____ Temporary Possession of Property

Jane should be awarded temporary use and possession of the following property:

1. The house located at 124 Main Street, Fort Worth, Texas including all the household goods within such property.
2. The personal property in her possession.
3. The 2015 Lexus motor vehicle in her possession.

John should be awarded temporary use and possession of the following property:

1. The 2015 Chevrolet Tahoe motor vehicle in his possession
2. The personal property in his possession.

Temporary Payment of Liabilities

Jane should pay for the following:

1. The expenses outlined on her Expense Statement.

John should pay for the following:

1. Rent
2. Cell phone
3. Student loan
4. Storage unit (\$110.00 per month) beginning October 1, 2017 (currently paid through September 30, 2017)
5. His living expenses and the expenses of the children when they are in his possession.

Inventory and Appraisalment

The parties should complete and exchange Inventory and Appraisements and supporting documentation on or before October 15, 2017.

Mediation

The parties should attend mediation on or before December 15, 2017.

APPENDIX F

TEMPORARY ORDERS PROPOSALS (SAMPLE #1)

I. Children

- A. MARY and JOHN shall be Joint Managing Conservators of the children, SON and DAUGHTER.
- B. MARY shall have the following exclusive rights:
 - (1) to designate the primary residence of the children;
 - (2) to consent to medical, surgical and dental treatment involving invasive procedures;
 - (3) to consent to psychiatric and psychological treatment of the children;
 - (4) to receive and give receipt for periodic payments for support for the children and to hold and disburse these for the benefit of the children;
 - (5) the right to represent the children in legal action and make decisions of substantive legal significance concerning the children;
 - (6) independent right to consent to marriage and enlistment in the armed forces;
 - (7) the exclusive right to make decisions concerning the children's education.
- All other rights, duties and responsibilities of parents as set forth in the Texas Family Code shall be equally shared between the parent-parties.
- C. JOHN shall have non-extended visitation with the children as set forth in the Texas Family Code Standard Possession Order.
- D. JOHN shall pay to MARY the sum of \$1,500.00 per month as and for temporary child support for the children beginning July 15, 2017.
- E. JOHN shall be responsible for maintaining and paying for health insurance, dental insurance and vision insurance coverage for the parties and children in a form consistent with the Texas Family Law Practice Manual.
- F. JOHN shall pay 100% of the health expenses not covered by insurance and incurred by the children.
- G. JOHN shall refrain from using steroids within 24 hours of any possession of the children.

II. Property and Parties

- A. JOHN shall pay to MARY the sum of \$7,500.00 per month as and for temporary spousal support beginning July 15, 2017.
- B. JOHN shall confirm all community property monies withdrawn by JOHN have been returned to the parties' accounts.
- C. The parties are enjoined from withdrawing, transferring, or spending any lottery monies they receive for 2016 (received in November of 2016).
- D. The temporary restraining order is made a temporary injunction as to both parties.
- E. Each party is awarded the personal property in his or her possession.

- F. JOHN is awarded his 2016 Land Rover along with the debt payments associated with it.
- G. MARY is awarded his 2016 Chevrolet Tahoe along with the debt payments associated with it.
- H. MARY shall be allowed access to the storage garage.
- I. Each party shall be responsible for his or her expenses incurred after separation.
- J. Bank of America Account and State Bank accounts shall be split by the parties.

Example 2

Temporary Injunction

- 1. Mutual Temporary Injunction as to persons and property per the standard injunction provisions of the temporary orders (form 4-3) of Texas Family Law Practice Manual.
- 2. Parties are enjoined from allowing the children to remain in a residence or enclosed automobile with persons who smoke—No smoking around or in the presence of the children.

Temporary Orders--Children

- 1. JANE is appointed temporary sole managing conservator of the children. JOHN is appointed temporary possessory conservator.
- 2. Possession schedule: Beginning March 2, 2017, and on every other weekend thereafter, JOHN shall have weekend possession and access with the children beginning Friday at 6:00 p.m. and ending at 6:00 p.m. on Sunday.
- 3. Child Support is paid by JOHN and set at \$900.00 per month beginning March 1, 2017 by wage withholding and through the SDU.
- 4. JOHN continues to provide health insurance for the children and 100% of all uninsured medical expenses and 50% of all uninsured dental expenses.
- 5. The parties share equally all expenses for the boys such as enrollment fees, school uniforms and expenses related to the boy's participation in sports in the future.

Temporary Orders—Property and Support

- 1. JANE is awarded the exclusive use and possession of the residence located at 101 Oak Lane, Arlington, Texas 76013, as well as the furniture, furnishings, and other personal property at that residence, while this case is pending.
- 2. JANE is awarded the exclusive use and possession of the 2016 Ford Expedition motor vehicle and the 2015 Saturn motor vehicle.
- 3. JOHN shall pay directly to JANE the sum of \$1,500.00 per month in temporary spousal support, beginning with the first payment being due on March 1, 2017.
- 4. JOHN shall pay retroactive support of \$1,500 directly to JANE on or before March 1, 2017.
- 5. Each party continues to pay their own living expenses.

Example 3

I. Child

- A. JANE SMITH (JANE) and JOHN SMITH (JOHN) are Temporary Joint Managing Conservators of the child, DOE SMITH (DOE).

- B. JOHN shall determine the child's residence and domicile; shall make decisions concerning invasive surgery; and day care issues.
- C. JANE shall have access and visitation with DOE as follows:
 - 1. Alternate two days with each parent, the alternate exchange to take place at a neutral location.
- D. JANE shall pay to JOHN child support in the amount of \$800.00 per month, commencing on March 1, 2017; and \$800.00 on the first day of each month thereafter until further order of the Court.
- E. JANE, as she has previously been doing, shall provide health insurance coverage for the child and she shall pay for the cost of said health insurance coverage.

II. Property

- A. JOHN is awarded the temporary use and possession of the residence and furnishings located at 100 Main Street, Haslet, Texas.
- B. JOHN is awarded temporary use and possession of the _____ Jeep Cherokee automobile.
- C. JANE is awarded temporary use and possession of the _____ Ford F-150 automobile.

III. Debts

- A. JOHN will pay the following bills, debts and obligations:
 - 1. Mortgage, utilities and upkeep on the residence at 101 Elm Street, Arlington, Texas, 76002.
 - 2. His cell phone.
 - 3. Auto insurance on his vehicle.
 - 4. Gym membership.
 - 5. Babysitting expense of \$75.00 per week.
 - 6. His living expenses.
 - 7. His health insurance coverage.
- B. JANE will pay the following bills, debts and obligations:
 - 1. The monthly payment of \$380.00 and the auto insurance on her vehicle.
 - 2. Her living expenses.
 - 3. Her health insurance coverage.

IV. Mediation

The parties shall attend mediation with _____ within one hundred twenty (120) days. Each party shall pay one-half of the mediation fee.

PROPOSED ALLOCATION OF PARENTAL RIGHTS AND DUTIES

| RIGHTS AND DUTIES §153.073 – Rights of Parent at All Times | Each has at all times | Independent - each has during their possession | Exclusive to Mother | Exclusive to Father | Joint – Subject to Agreement | Consultation Required |
|---|------------------------------|---|----------------------------|----------------------------|-------------------------------------|------------------------------|
| Right to receive information from any other conservator of the child concerning the health, education and welfare of the child. | √ | | | | | |
| Right to confer with other parent to the extent possible before making a decision concerning the health, education and welfare of the child. | √ | | | | | |
| Right of access to medical, dental, psychological, and educational records of the child. | √ | | | | | |
| Right to consult with a physician, dentist or psychologist of the child. | √ | | | | | |
| Right to consult with school officials concerning the child's welfare and educational status, including school activities. | √ | | | | | |
| Right to attend school activities. | √ | | | | | |
| Right to be designated on the child's records as a person to be notified in case of emergency. | √ | | | | | |
| Right to consent to medical, dental, and surgical treatment during an emergency involving immediate danger to the health and safety of the child | √ | | | | | |
| Right to manage the estate of the child to the extent the estate has been created by the parent or the parent's family. | √ | | | | | |
| RIGHTS AND DUTIES §153.076 – Duty to Provide Information | Each has at all times | Independent - each has during their possession | Exclusive to Mother | Exclusive to Father | Joint Subject to Agreement | Consultation Required |
| Duty to inform the other conservator of a child in a timely manner of significant information concerning the health, education, and welfare of the child. | √ | | | | | |
| | | | | | | |
| | | | | | | |
| Duty to inform the other conservator of a child if the conservator resides with for at least 30 days, marries, | √ | | | | | |

| | | | | | | |
|---|------------------------------|---|----------------------------|----------------------------|-----------------------------------|------------------------------|
| or intends to marry a person who the conservator knows is registered as a sex offender under Chapter 62 of the Code of Criminal Procedure or is currently charged with an offense for which on conviction the person would be required to register under that chapter. | | | | | | |
| Duty to inform the other conservator of a child if the conservator (1) establishes a residence with a person who the conservator knows is the subject of a final protective order sought by an individual other than the conservator that is in effect on the date the residence with the person is established, (2) resides with, or allows unsupervised access to a child by, a person who is the subject of a final protective order sought by the conservator after the expiration of the 60-day period following the date the final protective order is issued; or (3) is the subject of a final protective order issued after the date of the order establishing conservatorship. | √ | | | | | |
| RIGHTS AND DUTIES §153.074 – Rights and Duties During Period of Possession | Each has at all times | Independent - each has during their possession | Exclusive to Mother | Exclusive to Father | Joint Subject to Agreement | Consultation Required |
| Duty of care, control, protection, and reasonable discipline of the child. | | √ | | | | |
| Duty to support the child, including providing the child with clothing, food, shelter, and medical and dental care not involving an invasive procedure. | | √ | | | | |
| Right to consent for the child to medical and dental care not involving an invasive procedure. | | √ | | | | |
| Right to direct the moral and religious training of the child. | | √ | | | | |
| | | | | | | |
| | | | | | | |
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| | | | | | | |
| | | | | | | |
| RIGHTS AND DUTIES §153.132 – Rights and Duties of Parent Appointed Sole Managing Conservator | Each has at all times | Independent - each has during their | Exclusive to Mother | Exclusive to Father | Joint Subject to Agreement | Consultation Required |

| and §153.133 Parenting Plan for Joint Managing Conservatorship | | possession | | | | |
|---|--|-------------------|--|---|--|--|
| Right to designate the primary residence of the child within the following geographic restriction: | | | | | | |
| Right to consent to medical, dental, and surgical treatment involving invasive procedures. | | | | | | |
| Right to consent to psychiatric and psychological treatment. | | | | | | |
| Right to receive and give receipt for periodic payments for the support of the child and to hold or disburse these funds for the benefit of the child. | | | | | | |
| Right to represent the child in legal action and to make other decisions of substantial legal significance concerning the child. | | | | | | |
| Right to consent to marriage and enlistment in the armed services of the United States. | | | | | | |
| Right to make decisions concerning the child's education, | | | | | | |
| Right to services and earnings of the child. | | | | | | |
| Except when a guardian of the child's estate or a guardian or attorney ad litem has been appointed for the child, the right to act as an agent of the child in relation to the child's estate of the child's action is required by a state, the U.S. or a foreign government. | | | | √ | | |

APPENDIX H

TAX RETURN SUMMARY

SMITH SUMMARY OF TAX RETURNS

| DATE | WAGES | INTEREST | TAXABLE REFUNDS | BUSINESS INCOME/ LOSS | TOTAL INCOME | TOTAL TAX | REFUND OR PAYMENT |
|-------|------------|----------|--------------------|-----------------------------|-----------------|-----------|----------------------|
| 2015* | 240,006.00 | 0 | 1,694.00 | 28,104.00 | 269,827.00 | 47,890.00 | +3,478.00 |
| 2016* | 189,231.00 | 0 | 0 | 0 | 189,231.00 | 22,581.00 | +685.00** |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |

*Also filed a Nonresident and Part-Year Resident Income Tax Return for Illinois in 2015-2016.

**Notice received in July of 2015, indicates an additional \$10,480.00 owed. Shows a partial payment of \$1,000.00 has been made.

APPENDIX I

TEMPORARY ORDERS - FINANCIAL INFORMATION (INCOME) STATEMENT

CAUSE NO. _____

PRESENT DATE: _____

Petitioner: _____

Petitioner's Attorney: _____

Respondent: _____

Respondent's Attorney: _____

I CERTIFY THAT THE FOLLOWING ANSWERS TO THE QUESTIONS AS LISTED ARE TRUE AND CORRECT.

MONTHLY INCOME

Gross Income (Include Commissions, Tips and Bonuses)..... \$ _____
 Withholding/FICA
 Net Employee Income..... \$ _____
 401(k)
 Self-Employment Income
 Interest Income
 Dividend Income.....
 Royalty Income
 Net Rental Income
 Severance Pay
 Pensions
 Trust Income
 Annuities
 Capital Gains.....
 Social Security Benefits.....
 Unemployment Benefits
 Disability and Worker's Compensation Benefits
 Gifts and Prizes.....
 Other Income \$ _____.

NET RESOURCES: \$

**Estimated Expenses for
John Robert Stevens**

| Rental/Mtg/Household | | Medical/Dental (out of pocket) | |
|-------------------------------------|----------------|---------------------------------------|--------------------|
| Mortgage for 1234 Main Street | \$2,516.46 | Doctor, Dentist, Optomestrist | HSA funded |
| Insurance | \$303.00 | Covered Drugs/Prescriptions | HSA funded |
| Property Taxes | \$878.00 | Drugs/prescriptions | HSA funded |
| HOA Dues | \$41.66 | Medical Insurance Premium | \$0.00 |
| Repairs | \$100.00 | | |
| Electric Utility | \$332.52 | Laundry | |
| Water Utility | \$228.37 | Laundry | |
| Yard Maintenance | \$350.00 | Dry Cleaning | \$30.00 |
| Maid/Cleaning | \$200.00 | | |
| Cell Phone (Mary Lou and Emma) | \$300.00 | Insurance | |
| Satellite TV | \$235.64 | Auto | \$200.00 |
| Security Alarm | \$21.65 | Life | |
| Pest Control | \$40.00 | Disability | |
| | | | |
| Food/Groceries/Entertainment | | Incidentals | |
| At home, Eating Out/ alone & w kids | \$900.00 | Cosmetics/Aesthetics | \$300.00 |
| Entertainment | \$400.00 | Hair/Grooming | \$200.00 |
| | | Pets/Vet Charges | \$100.00 |
| Transportation | | Sundries | \$200.00 |
| Car payments | \$0.00 | | |
| Gas & Oil | \$400.00 | Clothes | |
| Repairs | \$50.00 | Clothes and Shoes | \$800.00 |
| | | | |
| Children | | Debt | |
| Private School (2016-2017 year) | \$2,000.00 | Mastercard #1234 | \$500.00 |
| Out-of-pocket school expenses | \$500.00 | American Express #83697 | \$1,000.00 |
| Allowance | \$200.00 | Costco #9876 | \$250.00 |
| School Lunches (2016-2017 year) | \$150.00 | | |
| Summer Camp | n/a until 2017 | | |
| Tutors (Emma) | \$1,500.00 | | |
| School Activities, dances, etc. | as needed | | |
| Therapy | \$500.00 | | |
| Contributrion to 529 accounts | \$300.00 | | |
| | | | |
| | | TOTAL | \$16,027.30 |

APPENDIX K

BANK ACCOUNT SUMMARY

BANK OF AMERICA
 #123456789
 (Regular/Money Market Savings)

| DATE | BEGINNING BALANCE | DEPOSITS & CREDITS & INTEREST | CHECKS & DEBITS | ENDING BALANCE | COMMENTS |
|----------|----------------------|-------------------------------------|--------------------|-------------------|--|
| | | | | | Do not know when this account was opened. |
| 09/07/15 | | | | 49,632.91 | |
| 10/06/15 | | | | 44,231.67 | |
| 11/04/15 | | | | 27,195.55 | |
| 12/06/15 | | | | 19,461.62 | |
| 12/15/15 | 49,415.66 | 66.44 | 30,000.00 | 19,482.10 | \$15,000.00 check on 09/27/15 \$15,000.00 check on 10/22/15 |
| 1/18/16 | 19,482.10 | 17.85 | 10,000.00 | 9,482.10 | \$10,000.00 check on 01/18/16 |
| 2/15/16 | 9,482.10 | 7.27 | | 9,507.22 | |
| 3/2/16 | 9507.22 | 3.90 | | 9,511.12 | |
| 3/15/16 | 9511.12 | 4.51 | | 9,515.63 | |
| 04/06/16 | | | | 9,514.46 | |
| 05/08/16 | | | | 9,523.43 | |
| 06/09/16 | | | | 3,968.93 | |
| 07/10/16 | | | | 228.23 | |
| 08/10/16 | | | | 216.56 | |
| 09/08/16 | | | | 204.98 | |
| 10/10/16 | | | | 193.09 | |
| 11/08/16 | | | | 181.39 | |
| 02/05/16 | | | | 121.94 | |
| | | | | | Account closed in January, 2017. |

APPENDIX L

EXHIBIT FOR INTERIM ATTORNEYS' FEES

| | |
|---|-------------|
| Miscellaneous office and telephone conferences with client throughout course of representation: | _____ hours |
| Communication/Correspondence: | _____ hours |
| Preparation for temporary hearing on additional temporary orders: | _____ hours |
| Court appearance for temporary orders: | _____ hours |
| Preparation of discovery: | _____ hours |
| Review of discovery responses from opposing party: | _____ hours |
| Conferences with expert witnesses: | _____ hours |
| Preparation for depositions of expert witnesses: | _____ hours |
| Depositions of expert witnesses: | _____ hours |
| Preparation for deposition of opposing party: | _____ hours |
| Deposition of opposing party: | _____ hours |
| Mediation preparation: | _____ hours |
| Mediation: | _____ hours |
| Trial preparation: | _____ hours |
| Trial on issues of property, conservatorship, support, and attorney's fees: | _____ hours |
| Final preparation of court documents: | _____ hours |

Legal Assistant:

| | |
|---|-------------|
| Review of discovery responses; organization of discovery responses: | _____ hours |
| Preparation of trial exhibits for temporary hearing: | _____ hours |
| Preparation of exhibits and inventories update for mediation: | _____ hours |
| Trial preparation; marking exhibits; trial notebook: | _____ hours |

Summary:

| | |
|--------------------------------|-----------------|
| Attorney (_____ hours): | \$ _____ |
| Legal Assistant (_____ hours): | \$ _____ |
| TOTAL: | \$ _____ |

