SETTING YOUR CLIENT UP FOR SUCCESS: FROM FILING THE CASE TO TEMPORARY ORDERS AND BEYOND

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TABLE OF CONENTS

TABLE OF AUTHORITIES

Cases

Statutes

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I. INTRODUCTION AND SCOPE

This presentation is designed to give Family Law practitioners a general guide to filing a family law case, obtaining Ex Parte Orders, if necessary, preparing and successfully completing Temporary Orders and the steps that lead up to trial. Often times the specific allegations and requests included in your petition can be overlooked and not given much thought when in reality the petition sets the tone for the entire case and can send a clear message to the responding party and their attorney about how the case is going to play out. Attorneys often under prepare for a Temporary Orders hearing or show up the day of the hearing hoping to wing it, all under the assumption that these orders are just temporary, so how much weight could it carry? In reality, favorable temporary orders are one of the most important things an attorney can accomplish to obtain the upper hand for their client in a case. At final trial, the court will often look to the orders and the arrangements the parties have been following temporarily. The trial court will consider questions such as who has been the primary parent or what visitation schedule have the children been following? If the current schedule appears to be working, would should the Judge change it? Also, if your client is ordered to pay an exorbitant amount of child support or temporary support, the payments could potentially be ordered to continue until final trial, which can take anywhere from one to four years depending on the court and complexity of the case.

II. THE PROCEDURAL PROCESS FOR FILING A FAMILY LAW CASE

This presentation will discuss the three most common types of filings used in family law: an Original Petition for Divorce, a Petition to Adjudicate, and a Suit Affecting the Parent-Child Relationship ("SAPCR").

A. Filing the Case

1. Divorce

There are two ways an individual can become legally married, either through informal or formal marriage. Discovering whether a client has ever been formally married is significant not only in the specific facts that will need to be plead for in the petition, but also in the time frame in which the divorce suit will need to be filed. If the parties have never been formally married but appear to have a marriage-like relationship, the parties can be found to have an informal or common law marriage. TEX. FAM. CODE §2.401(B). In order to prove that the parties had a common law marriage, there must be evidence presented that (1) there was an agreement to be married; (2) the parties lived together in this state as

husband and wife; and (3) they held each other out to the public in this state as husband and wife. *Texas Employers' Ins. Assn'n v. Borum*, 834 S.W.2d 395, 399 (Tex.App-San Antonio 1992, writ denied). The length of time a person waits to file for divorce from a common law marriage is key unlike in a formal marriage because if a proceeding to prove that a common law marriage existed is "not commenced before the 2nd anniversary of the date on which the parties separated and ceased living together, it is rebuttably presumed that the parties did not enter into an agreement to be married." TEX. FAM. CODE §2.401(B).

After it has been determined whether the parties were formally or informally married, the next step in filing an Original Petition for Divorce is to ascertain which county is proper to file the petition in, which can be complicated depending on the facts of a case. In order for a party to file an Original Petition for Divorce, they must meet the specific residency requirements of Texas and the specific requirements of the particular county. Texas Family Code §6.301 sets forth the requirements that the party must first be: (1) a domiciliary of this state for the preceding six-month period; AND (2) a resident of the county in which the suit is filed for the preceding 90-day period." TEX. FAM. CODE §6.301. If the Petitioner cannot meet the residency requirements but their spouse does, the Petitioner may still file a suit for divorce in the county where their spouse resides. TEX. FAM. CODE §6.302. Clients or spouses of those in the military can have complex jurisdictional issues related to where the proper place to file for divorce is and it is crucial to determine if the court where the suit is filed has jurisdiction over all the parties and their property, specifically any military retirement that might exist.

Generally, courts do not have personal jurisdiction over individuals residing outside the state unless they fall under certain exceptions. However, if the Petitioner is a resident of Texas at the time of the filing of the petition and the other spouse now resides outside the state of Texas, Texas courts may exercise personal jurisdiction over the non-resident spouse if Texas is the "state of the last marital residence of the parties and the suit is filed before the second anniversary of the date on which the marital residence ended in Texas." TEX. FAM. CODE §6.305. If a spouse is living in another state and has never lived in Texas, one spouse can move to Texas and once they have satisfied the jurisdictional requirements, file for divorce. However, where to file for divorce can have significant consequences on both the division of property and orders related to children. Even though a Texas court has no personal jurisdiction over a non-resident spouse, the court still holds the power to grant the divorce. *Hoffman v. Hoffman*, 821 S.W.2d 3,5 (Tex.App--Fort Worth 1992, no writ). Although, without personal jurisdiction over the spouse, the Texas court lacks the power to make orders regarding the conservatorship of the children, divide property outside the state of Texas and possibly also lack jurisdiction to divide the property within Texas as well. *Id.*

2. Petition to Adjudicate Parentage

If your client has never been declared the legal father of the child, either by qualifying as a presumed father of the child, been adjudicated as the father through a prior court proceeding or signed a Voluntary Acknowledgment of Paternity, then it is important to file the case as a Petition to Adjudicate Parentage. TEX. FAM. CODE §160.301. Through this proceeding genetic testing can be conducted and/or the father declared the legal father of the child for all legal purposes. TEX. FAM. CODE §160.502.

3. Suit Affecting the Parent-Child Relationship

If the parties have never been married and the father has been declared the legal father of the children, then it is proper to file a Suit Affecting the Parent-Child Relationship often referred to as a SAPCR. Under Texas Family Code §103.001, a SAPCR shall be filed in the county where the child resides barring other extenuating circumstances. TEX. FAM. CODE §103.001. It is imperative to determine if there have been any other cases filed or if any other court has continuing exclusive jurisdiction over the child. If a proceeding involving the child has ever take place, the court where the initial proceeding occurred is referred to as the court of continuing jurisdiction. TEX. FAM. CODE §155.001-.002. All subsequent modifications to this order and orders involving that child must take place in this court, unless transferred to another court. *Id.* Often clients are unaware that a court of continuing jurisdiction exists, especially if they have entered into Agreed Orders with the Office of the Attorney General because the parties never appeared in court and often times are unclear as to the legal ramification of their agreement.

B. Notice of the Lawsuit

Once it has been determined which type of case to file and where to file it, the next step is to determine the specific allegations you are going to allege and the tone of your petition. During the initial consultation it is vital to speak with your client about the dynamic and relationship between the parties. Is the other party aware that they are filing? Is this going to be a battle or have they discussed this issue at length and have already come to an agreement? Alleging adultery, cruelty and asking to be the primary conservator of the children when the client's main goal is an amicable divorce and a Standard Possession Schedule can cause the responding party to go on the defensive and turn an otherwise amicable case into an expensive and grueling court battle. It is important to ask the client about their specific goals and ultimate outcome of the case and especially how they anticipate the other party will react as this will guide the next step in the filing of the case.

If the client knows the location of the Respondent and the parties wish to proceed forward with the case amicably, the client may choose to present the

petition to the Respondent along with a Waiver of Service. *Deen v. Kirk*, 508 S.W.2d 70, 71 (Tex. 1974). The Respondent may waive being served by executing a Waiver of Service. *Id.* The waiver is to be executed after the petition has been filed, as otherwise executing the waiver before the filing the case can render the waiver void. *Id.* The signing of a waiver can avoid the cost of a process server and also the embarrassment for some of being served. If a party is concerned that either the Respondent will not sign the waiver or will need to setup some type of hearing, it is important to have the Respondent served by a process server, who will personally deliver the petition and notice of hearing to the Respondent and verify through an affidavit to the court that adequate notice has been provided to the Respondent. TEX. R. CIV. P. 106

If a party does not know the whereabouts of the Respondent or if it appears that Respondent is attempting to dodge service by a process server, a Motion for Service By Publication or a Motion for Substituted Service may be filed. TEX. R. CIV. P. 109-109(A). After a process server or constable as tried unsuccessfully to serve a Respondent, upon completion and filing of an affidavit detailing such, a Order for Substituted Service may be issued which allows valid service on the Respondent by "(1) leaving a true copy of the citation, with a copy of the petition attached, with anyone over sixteen years of age at the location specified in such affidavit, or (2) in any other manner that the affidavit or other evidence before the court shows will be reasonably effective to give the defendant notice of the suit." TEX. R. CIV. P.(b)(1-2). If a party is unaware of the Respondent's location and cannot successfully locate them with the help of friends or family, then a party may be able to serve the Respondent by Service by Publication, in which the responding party is served via notice in the court's newspaper publication. TEX. R. CIV. P. 109.

III. INITIAL ORDERS BEYOND THE PETITION

A. Standing Orders

Many counties have Standing Orders in place which operate as an Ex Parte Temporary Restraining Order that enjoins the parties from taking any action to disrupt their children and/or waste or liquidate their estates. Standings Orders can help protect both parties and save them the time and attorney's fees of having to obtain an Ex Parte Temporary Restraining Order on their own. If a petition is filed in a county which has a Standing Order in place, most counties require that the Standing Order be attached to the back of each petition. It is imperative that each client is given a copy of the Standing Order and understands the specific actions that they are enjoined from taking since must Standing Orders are mutual binding on both parties to the lawsuit. Each particular Standing Order has its own unique language, injunctions, and specific orders and rules related to service of the Standing Order on the Respondent. If a client is concerned about a spouse liquidating a retirement account or a bank account, having them served by a process server with a copy of the Petition and the Standing Order is the best

option to ensure that proper notice of the order can be proved later in a enforcement hearing, if necessary.

B. Ex Parte Orders

An Ex Parte Order is an order which is obtained without notice and hearing to all parties involved and there are generally two types of ex parte orders which are utilized in Family Law: an Ex Parte Protective Order and an Ex Parte Temporary Restraining Order. TEX. R. CIV. P. 680

1. Ex Parte Protective Order

If family violence has occurred in the past and a client is fearful that it may occur again in the future, filing an Application for an Ex Parte Protective Order can be filed to help protect the client and their family. Family violence is defined by the Texas Family Code §71.004 as "an act by a member of a family or household against another member of the family or household that is intended to result in physical harm, bodily injury, assault, or sexual assault OR that is a threat that reasonably places the member in fear of imminent physical harm, bodily injury, assault, or sexual assault, but does not include defensive measures to protect oneself." TEX. FAM. CODE §71.004 To qualify for a Protective Order a party must be able to show that family violence has occurred AND is likely to occur in the future TEX. FAM. CODE §81.001.

A member of a dating relationship, an adult member of a marriage or any adult on behalf of a child may apply for a protective order. TEX. FAM. CODE §82.002. If a divorce or SAPCR has already been filed or is being filed simultaneously, the application for a protective order must be filed in the same court as the petition. TEX. FAM. CODE §82.005. An Ex Parte Protective Order is an order signed by the court before opportunity for notice and hearing to the Respondent on which the order is binding. Texas Family Code §82.009 sets forth the specific requirements which must be contained in a Application for an Ex Parte Protective Order: "(1) contain a detailed description of the facts and circumstances concerning the alleged family violence and the need for the immediate protective order; and (2) be signed by each applicant under an oath that the facts and circumstances contained in the application are true to the best knowledge and belief of each applicant." TEX. FAM. CODE §82.009. Service of the protective order shall perfected under the same rules as a petition under the Texas Rules of Civil Procedure. TEX. FAM. CODE §82.043.

"A Temporary Ex Parte Protective Order is valid for a period specified in the order, not to exceed 20 days" unless otherwise extended or requested. TEX. FAM. CODE §83.002. If there are issues with having the Respondent served, upon the applicant's motion or a motion of the court, the order may be extended for an additional 20-day period. *Amir-Sharif v. Hawkins*, 246 S.W.3d 267,2 69 (Tex.App-Dallas 2007, pet. dism'd) After the application has been filed, and

signed by a Judge, a hearing will be set after notice to the Respondent to determine whether the Ex Parte Protective Order should be made a permanent order.

Protective Orders are the only ex parte order which operates as a "kick out order" or can exclude the other party from the residence. TEX. FAM. CODE §83.006. In order to have a party excluded from the residence, "the applicant must file a sworn affidavit that provides a detailed description of the facts and circumstances requiring the exclusion of the person from the residence and appears in person to testify at a temporary ex parte order hearing to justify the issuance of the order without notice." *Id.* For the court to grant the kick-out order, it must find that "(1) the applicant requesting the order either resides on the premises or has resided there within 30 days before the application was filed, (2) the person to be excluded has committed family violence against the member of the household, and (3) there is a clear and present danger that the person to be excluded is likely to commit family violence against a member of the household." *Id.*

Section 85.022 of the Texas Family Code lays forth the specific actions which the court may order a person to complete and also specifies the actions the court can prohibit a person from committing, such as ordering the Respondent to complete a Batter's Intervention Class or ordering the Respondent to remain a specific distance from the Applicant's home, business and/or school. TEX. FAM. CODE §85.022

2. Ex Parte Temporary Restraining Order

An Ex Parte Temporary Restraining Order (TRO) is similar procedurally in nature to an Ex Parte Protective Order, but it does have some distinct differences. An Ex Parte Temporary Restraining Order enjoins a party from certain conduct similar to a Protective Order however; the violation of an Ex Parte Protective Order is criminal in nature and can result in the immediate arrest of an individual, unlike the violation of an Ex Parte Temporary Restraining Order, which cannot. TEX. FAM. CODE §85.026. The violation of an Ex Parte Temporary Restraining Order is purely civil and a hearing must be held to determine if a violation of an Ex Parte Temporary Restraining Order has occurred. TEX. FAM. CODE §6.506 If the court has found that a violation of an Ex Parte Temporary Restraining Order has occurred, then the party can be held in contempt, for which the punishment can range up to 6 months in jail and monetary fines and attorney's fees can be ordered. *Id.*

Unlike an Ex Parte Protective Order, an Ex Parte Temporary Restraining Order cannot exclude another party from the residence. TEX. FAM. CODE §6.501. Most courts will sign without an affidavit by the requesting party what they refer to as "Standard Temporary Restraining Orders", similar to the Standing Orders, in order to protect the parties' status quo. TEX. FAM. CODE §6.503. An Ex Parte

Temporary Restraining Order is used to enjoin certain conduct which can be detrimental to the parties and/or their property while the case is pending. TEX. FAM. CODE §6.501. Procedurally similar to an Ex Parte Protective Order, a party on its own motion or on the court's motion may grant an Ex Parte Temporary Restraining Order without notice to the adverse party for the preservation of the property and protection of both parties. *Id.* An Ex Parte Temporary Restraining Order is only valid for 14 days, during which a hearing must be set to determine if the Ex Parte Temporary Restraining Order should be made into temporary injunctions. TEX. FAM. CODE §84.001. If a party wants to exclude the other from having contact or unsupervised visitation with the children or what the courts deems "extraordinary relief", an affidavit is required setting forth specific facts as to why this is necessary.

While an Ex Parte Temporary Restraining Order can enjoin a spouse or party to the suit from liquidating a financial account, the order is not binding upon third parties who operate the accounts, such as banks and financial providers unless they have been specifically brought into the lawsuit. Therefore, a financial institution is not in violation of any order which does not bind them specifically if the institution follows directions to liquidate an account if a party is a proper co-signer and has access to the account. It is imperative to make clients aware of this distinction and help them understand that the Ex Parte Temporary Restraining Order merely puts rules in place and gives clients a remedy (enforcement and contempt) if it were to happen, but the order itself cannot stop the action from happening.

C. Temporary Orders

While not all clients have pressing issues that necessitate a hearing within 14 days, often parties still have issues that they cannot agree on and will need a hearing before the Judge to decide things such as who will remain in the house, who will stay with the children, who will pay the bills, etc. during the pendency of the case. These issues often necessitate the filing and setting of a Temporary Orders hearing. With Temporary Orders it is important to differentiate between an emergency and a non-emergency. Often times attempting to obtain an Ex Parte Temporary Restraining Order and hearing within 14 days rather than merely setting a Temporary Orders hearing on the normal docket can put you in disfavor with the Judge, as this can clog their emergency docket and not let them hear cases within a reasonable time period which truly do necessitate an emergency. It is also helpful to know how long it will generally take to have a Temporary Orders hearing scheduled. If there is a semi-emergency, waiting sometimes a month or more to get on the docket for a Temporary Orders hearing can be detrimental to your clients.

After a temporary orders hearing, a court may make temporary orders awarding a spouse exclusive use of a residence, a business, requiring payment of attorney's fees and payments to the other spouse. TEX. FAM. CODE §6.502. The

court may also make orders related to the temporary conservatorship of the child, order temporary support of the child and order a person from removing a child beyond a geographic area. TEX. FAM. CODE §105.001. Before setting a case for Temporary Orders it is crucial to discuss the possibility of temporary spousal support with the client and considering whether or not setting a hearing would be beneficial or harmful to the client. On Temporary Orders, a trial court has broad discretion in order the payment of temporary spousal support and attorney's fees. *Herschberg v. Herschberg*, 994 S.W.d2d 273, 278 (Tex.App-Corpus Christi 1999, pet. denied). When determining the amount of spousal support to award a particular party, the court can consider the financial need of the party requesting support and the ability of the other spouse to financially provide for those needs. *Id.* Since there are no set parameters which limit the amount of temporary spousal support or attorney's fees a party can be ordered to pay, it is important to make a client aware of this and consider alternative potential agreements if it is in the best interest of the client.

D. Temporary Orders Preparation

Most temporary orders hearings are scheduled on a very tight frame ranging from one months notice to sometimes only a few days notice. In order to be as prepared as possible, it is important to talk with the client during the initial consultation and make notes of what specific information will need to be obtained for use at a hearing. If police reports, school records, and/or medical records are going to be the key to success at Temporary Orders, it might be considered to put off filing or setting a hearing until the documents can be obtained. School, medical and/or police records can be used at a temporary orders hearing and presented through the use of a Business Records Affidavit under Texas Rules of Evidence 902(10). TEX. R. EVID. 902(10). However, a business record affidavit must be on file for at least fourteen days prior to the hearing, which can be problematic for a short notice Temporary Orders hearing. *Id.*

Often times a client is concerned about the safety of their children and cannot wait to obtain records before scheduling a hearing. Records can be admitted without the use of a Business Records Affidavit, by subpoenaing the custodian of records to testify to the authenticity of the documents if necessary. Often times a certified copy of a public record can be obtained and can then qualify a document as self-authenticating. TEX. R. EVID. 902(4). Becoming familiar with the Rules of Evidence before a hearing is crucial to having the highest success rate possible for having evidence admitted.

There is no substitute for knowing the facts of the case and being well versed in the pitfalls of your case as well so you can prepare accordingly. Talk extensively with the client and let them know they must disclose all the skeletons in the closet and explain how the lack of information can lead an attorney to be blindsided, which can often times be more detrimental to the case rather than

admitting it from the beginning. Bad facts can be dealt with, often times surprise facts cannot.

Immediately after you have been retained in a case, let your client know what forms need to be completed and the specific information and documents that will be required to prepare for the hearing so they can begin gathering the information. Almost all courts require that each party prepare a Financial Information Statement which details out the parties' income and specific expenses. A Financial Information Statement can be crucial if you are either requesting temporary spousal support in a divorce or the other party is asking your client to pay expenses or temporary support. Each court generally has their own pre-printed forms for parties to use and fill out, but do not wait until the last minute. A client will not have the time to adequately think about and calculate their expenses the day of a hearing. Advise your client the importance of the Financial Information Statement and have them sit down with their bank statements and determine what their monthly expenses are and how much each expense costs. It is always best to use exact numbers rather than rounding so that the Judge will take your client's income and expenses seriously, rather than assuming that a large number was simply a gross exaggeration in an attempt to mislead the court.

Next, make a list of the client's requested relief which details out each specific ruling and orders the client wants to obtain. If the parties end up reaching an agreement the morning of the hearing, a Relief Requested can operate as a checklist for all the client's issues which need to be addressed in the agreement. If the case proceeds to a hearing, the Relief Requested can be presented to the Judge as a clear picture of what exactly your client is asking the Judge to grant and helps the Judge address all the needs and concerns of the parties as well.

On Temporary Orders, the use of witnesses is often overlooked. It is important to discuss any potential witnesses and their availability with your client. Often, there will not be enough time to call any witnesses beyond the parties, but it is important to be prepared in the off chance that the court's docket is clear and you are given ample time for the hearing. Corroborating witnesses, especially experts, can often times be the deciding factor a Judge needed to make a decision in your client's favor.

After all the evidence is obtained and financial documents are prepared, it is time to sit down with your client and explain the court process and the general flow of a temporary orders hearing. Some Judges are known to have bench conferences with all the parties to determine the issues, some Judges prefer to have an informal conference with the attorneys in chambers, while others are known to prefer formal hearings. It will put your client at ease if they understand the process of what could potentially happen. It is often helpful to prepare questions in advance to review with your client as well. Know your client's response and never ask a question you don't know the answer to. If your client

knows what types of questions you will be asking, it will put them at ease and it can help them think back to the events and remember dates and the kinds of things that will be important to recall for the Judge. When you are reviewing the courtroom procedures with your client, it is sometimes necessary to explain the basics of evidence as some client's only experience in the court room is watching Law and Order. It is important to understand the distinction between hearsay and non-hearsay and things such as admission by a party opponent.

Lastly, send your client notice of where the hearing will take place well in advance. Arrange to meet them there early before the hearing so you both can allow for traffic or unforeseen events. This allows you also extra time to sit and review before the hearing gets started and answer any list minute questions that your client may have. Be specific with your directions; tell the client where to park, if the parking garage only takes cash, what floor the courtroom is on and if they are going to an Associate Court or the District Court.

IV. THE HEARING IS DONE: NOW WHAT?

A. De Novo Appeal

After a hearing before the Associate Judge, one of the most important things to discuss with your client is their right to request a De Novo Hearing. "A party may request a de novo hearing before the referring court by filing with the clerk of the referring court a written request not later than the seventh working day after the date the party receives notice of the substance of the associate judge's report." TEX. FAM. CODE §201.015(a). The request must state the specific issues which you are appealing. *In re Em*, 54 S.W. 3d 849, 852 (Tex.App.-Corpus Christi 2001, no pet.) While a party is required to specifically state which issues they are appealing and that party can be restricted to bringing up those issues on appeal, the court is not restricted to making orders related only to those specific issues raised on appeal. *Chacon v. Chacon*, 222 S.W.3d 909, 913 (Tex. App-El Paso 2007, no pet.) Therefore, there is always a risk in appealing a decision in which any original rulings which were favorable to your client as they could be overturned. Therefore, filing a request for a de novo hearing is an important decision to speak at length with your client about. *Id.*

There is a deadline that the trial court shall hold a de novo hearing within 30 days after the date of the initial request. TEX. FAM. CODE §201.015(f). However, be aware that the court will not lose jurisdiction to hear the appeal after the thirty days has expired so often courts will hold a Pre-Trial conference before your actual appeal is set. *Fountain v. Knebel*, 45 S.W. 3d 736, 739 (Tex. App.-Dallas 2001, no pet.) When setting the appeal, specifically ask what it is set for so that you do not waste your client's and possible witnesses' time to come down to court for a Pretrial conference, rather than the actual hearing. The De Novo Hearing is a hearing anew and the referring court can review the record from the previous trial and/or new witnesses and evidence. TEX. FAM. CODE §201.015(c).

When making any agreements on Temporary Orders it is important to consider that agreements are generally not appealable under a Request for De Novo.

B. Drafting the Order

It is customary for the Movant on Temporary Orders to draft the ruling into a formal Temporary Order to be signed and entered with the court. However, the Judge can also order either attorney to draft the order as well. If your client urgently needs child support or is concerned about the opposing party violating the Judge's ruling, it might be advantageous to offer to draft the orders especially if you know that opposing counsel is known for taking longer than necessary to prepare an order.

It is essential that the Judge's ruling is drafted into a formal Temporary Orders as soon as possible because the filing of an enforcement on a violation of the order requires a final order. TEX. FAM. CODE §157.001(a). Different counties often utilize different mechanisms to push forward the entry of Temporary Orders such as a 10-day letter in which a letter is sent to opposing counsel and the Court to sign the proposed Order within 10 days if opposing counsel doesn't file an objection. If you are on the non-drafting side of Temporary Orders it is important to always file your objections with the court in conjunction with sending them to opposing counsel. If a county does not utilize 10-day letters and opposing counsel is non-responsive, set a Motion to Sign Temporary Orders hearing to have the Judge enter the order as soon as possible.

V. FROM TEMPORARY ORDERS TO FINAL TRIAL

A. Discovery

The next phase after Temporary Orders is the discovery period. It is during this time period that information is gathered to help prove your case and find out what evidence and information the other side has and plans to use to prove their case in the event of a final trial. Written discovery, which includes Request for Disclosure, Request for Production and Inspection, Written Interrogatories and Request for Admissions are all common types of discovery which can be propounded upon the opposing party depending on the issues surrounding the case. TEX. FAM. CODE §192.7(a).

In a divorce, a court can order the parties or the parties can agree to exchange an Inventory and Appraisement, which is a sworn list of all real and personal property owed or claimed by the parties. TEX. FAM. CODE §6.502(a)(1). An Inventory and Appraisement not only helps protect your client and ensure that all parties are aware of the extent of the community and separate estates claimed, but it can be a helpful tool in helping the client determine the extent of their property and gathering all the information in one concise document. Further, it is extremely helpful for the attorney in drafting a proposed Settlement Agreement or

the Final Decree of Divorce to have all the property including VIN numbers and financial account information in one document. If the client has limited funds for discovery, agreeing to exchange an Inventory and Appraisement with supporting documentation can be a resourceful alternative to full scale discovery, as it requires each party to submit documentation proving that the balances and accounts listed are accurate. However, if possible there is never a substitute for full discovery and it is important to discuss the importance of gathering evidence with your client through the use of written discovery, an Inventory and Appraisement and other vehicles for discovery such as depositions of the parties and other potential witnesses and experts.

B. Social Study

If the primary residence of the children or any other issue related to the children is at issue, the court may order that a Social Study be prepared to look into the circumstances of the case. TEX. FAM. CODE §107.051. Most Judges require that a Social Study be prepared if the exclusive right to determine the primary residence of the child is at issue. A social study can take several months, so it is important to get it setup and started as soon as possible.

C. Pretrial Conference

Most courts require a Pretrial Conference to set your case for trial. TEX. R. CIV. P. 166. A Pretrial Conference helps simplify the issues and set important deadlines for your case such as discovery, mediation and exhibits and witnesses list deadlines. *Id*. It is important as soon as you get back to your office to calendar all the Pretrial deadlines and set a reminder two weeks before so things do not sneak up on you.

D. Mediation

Either on written agreement between the parties or by order of the court, the court may refer a suit to mediation. TEX. FAM. CODE §6.602. Almost all courts require that the parties attend mediation before proceeding to trial. Mediation is an alternative dispute resolution process in which a mediator seeks to work together with the parties to come to an acceptable agreement binding on all parties involved. *Id*. In selecting a mediator, it is important to select an experienced mediator who not only is well versed in Family Law but knows the Judge in which the case is set and can give the parties some helpful advice as to their experience in that court. While there is no requirement to enter into an agreement at mediation, the parties need to be aware that if an agreement is reached and signed and reduced to writing pursuant to Texas Family Code §6.602, the Mediated Settlement Agreement is binding upon the parties and that neither party may void the agreement, absent fraud or other extenuating circumstances. *Loehr v. Loehr*, 2009 Tex. App. LEXIS 6863 (Tex. App. – Corpus Chrisiti 2009, no .pet) (mem. op.)

E. Preparing for Trial

Each Judge has their own requirements and preferences for specific documents to be used in trial, such as proposed property division worksheets or exhibit lists. Ask fellow colleagues if they have appeared before the Judge before or ask the Judge's Court Coordinator who can often provide a wealth of information as to their particular Judge and their preferences for trial.

VI. CONCLUSION

While Temporary Orders may seem daunting at first, with some basic statutory knowledge and adequate preparation they can provide your client with some necessary relief during the pendency of the case. It is important to continue the preparation and utilize both the resources of the court as well as the resources allowed under the Texas Family Code, which can set your client up for the best possible success going into final trial.