

TRIAL PREPARATION FROM A TO Z

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CONFERENCE WITH CLIENT

- Should you take the case?
- Assess compatibility with client
- Manage client expectations
- Prepare client for possible outcomes

OUTLINE CONTESTED ISSUES

- Property
 - Marital Residence
 - Vehicles
 - Bank accounts
 - Retirement accounts
 - Equalization payment
- Children
 - Legal and Physical Custody
 - Parenting Time
 - Child Support
 - Tax Exemption

DEVELOP THEORY OF THE CASE

- Simplify all moving pieces
- Identify most important themes
- Be strategic
- Diary every deadline for follow up

RESEARCH RELEVANT CASE LAW

- Keep up to date on new cases pertinent to your case
- Have case citations accessible for the court

GATHERING EVIDENCE

- Review file and notes from client meetings to determine what evidence is needed
- Real estate appraisals
- Pension valuations
- Depositions – Who needs to be deposed?
- Will the child/children have necessary information?
- Non-party requests/business record affidavits
- Experts/specialists

WITNESS PREPARATION

- Determine who has valuable information
- What value will the testimony bring to the Judge?

EXHIBIT PREPARATION

- Requests for Relief
- Marital Estate Balance Sheet
- Attorney Fee Affidavit

EXHIBIT PREPARATION CONT.

SUMMARY EXHIBITS

SUMMARY OF GALWAY TERRACE PROPERTY¹

Before 2017 Dismissal

- ("Husband") and ("Husband's Parents") were on the deed for the Galway Terrace property, but only Husband was on the mortgage.
- Husband "always paid the mortgage, taxes, and insurance on [the Galway Terrace] property." Husband's Depo. Pg. 96, Line 15.
- While the Galway Terrace property was being rented out, Husband received the rent income. Husband's Depo. Pg. 115, Line 4. The rent showed up in Husband's accounts, and Husband and ("Wife"), paid taxes on the rent.

After 2017 Dismissal

- Husband is transferring rent to Husband's Parents and Husband is thus no longer receiving rent from the Galway Terrace property. Husband's Depo. Pg. 118, Line 25.
- Husband transferred his interest in the Galway Terrace property to parents via Quitclaim Deed on January 16, 2018, explaining on the Deed that the "Transfer is a gift."
- Husband paid off \$300,000 mortgage-a mortgage solely in his name-on the Galway Terrace property.

¹At all times referenced herein, Galway Terrace property refers to the property located at 149 Galway Terrace, Fremont, CA 94536.

In Re:

Cause No.

FATHER'S INCOME SUMMARY OF EACH PARTY

Father income:

Father's gross income from January 1, 2011- May 1, 2011 = \$147,321.00

Father's necessary business expenses from same period= \$18,611.00 (see attached expense voucher and summary)

\$147,321.00 (\$18,611.00)

\$128,710.00

\$128,710.00 divided by 17 weeks= \$7,571.00 Father's adjusted gross weekly income= \$7,571.00

Father's effective tax rate (state & federal)= 38.81% Tax rate assumed in child support guidelines = 21.88%

Differential between Father's rate and assumed rate= 16.93%

Husband's adjusted gross weekly income when further adjusted for his effective tax rate = \$6,289.00

Mother's weekly income:

Amount imputed by the Court= \$615.38 Wife's part-time employment= \$280.00

Alimony payments= \$320.53

Mother's total weekly income = \$1,216.00

EXHIBIT PREPERATION CONT.

DEMONSTARIVE EXHIBITS

EXHIBIT PREPARATION CONT.

- What is your best evidence?
 - See written materials: Trial Outline and Order
- Simplify and streamline your presentation
- Know your judge, and tailor your presentation accordingly

Audio clip:



DRAFT TRIAL OUTLINE

- Visualize progression of trial
- Use outline as a tool, not a script
- Do you need a separation of witnesses?

When I asked you to describe your daughter -in your deposition you told me she had an incredible sense of humor

- She's independent
- She's fearless
- Loves her friends
- is very social
- has a deep love for anything musical

And when I asked you to describe her relationship with her father you said

"They have a great relationship - - is crazy about her father" p. 34 line 22

Who is pictured here on this posterboard

How old is-

Play Audio - So this little girl (posterboard) was called "a Retard"

Thank you for answering my question mam Was that so hard - it's demeaning for me to speak to you that way isn't it

So you tell your 8 year old daughter that if her father goes to New York "after school I will fucking murder you"

Then to emphasize your point you say "just wait Just wait

Mam this little girl went to school and had to wonder all day long if her mother was going to murder her after school

You psychologically abused your daughter didn't you

Now you claim you are in therapy and getting help right

But mam that recording we just played was in November of 2016 and you'd been in counseling for 6 months at that point, right

So 6 months of counseling and you still do something that horrible to your daughter

Let's talk about other horrible things you've said to your children:

You've told █████ that she is "not worth your time" p. 73 line 2

You've called █████ Stupid p. 73 line 6

Called her disgusting p 73 line 10

Called her a piece of shit p. 75 line 13

You didn't only tell █████ you would kill her, but you've said that to █████ pg. 77 line 17

You told █████ you'd kill him too didn't you p85 line 22 to next page

You've told [REDACTED] she's worthless haven't you

You've told [REDACTED] she was stupid

You've told [REDACTED] she's a piece of shit pg. 78 line 18

This little girl – (posterboard) was a piece of shit in your eyes mam

You told your husband you were going to drive off a bridge with [REDACTED] in the car

When I asked you in your deposition you weaknesses as a parent you said you can be too emotional and can react without thinking?

Based upon what you've testified here today that's probably the understatement of the century isn't it.

When I asked you about your husband's greatest strengths as a parent you said he is calm and patient with the kids, right?

And that's a very good thing for these kids to have a calming influence in their life

Mam would you agree with me that a good mother only allows people she knows will not harm her children to care for them when she is not able

Do you also agree that a good mother puts the safety of her children first

So a good mother only leaves her children in the care of someone they will be safe with.

Mam in your deposition we talked about all your travel over the past two years

You took 5 trips to New York – 2 weddings 2 drop offs for camp and 1 with [REDACTED]
correct

For all of those trips some of the children were left with your husband

You took a trip by yourself to both Israel and Las Vegas and left the kids with your husband correct

And you're a good mom, right

So you knew they would be well taken care of by your husband or else you'd never have left your children with him.

Excerpts from Provisional Order

6. Upon hearing an audio tape of Mother berating [REDACTED], cursing at her, calling her names and threatening to murder her because she couldn't choose the right headband before school to go with her outfit, both the principal and the teacher had horrified expressions and began to tear up. In response to questions from Mr. Zoeller, both acknowledged that they considered Mother's behavior to be verbally and mentally abusive and had they heard that exchange in person they would have been required to report it to CPS.

16. Mother's anger and frustration results from the family dynamic of Father as the breadwinner and Mother as the stay at home parent and caregiver as well as the underlying issues which resulted in the breakup of the marriage. In addition to the audio clip of mother berating [REDACTED], there was both audio and video evidence of Mother striking Father as well as verbally abusing him in the presence of the children. One audio clip had Mother hitting herself and screaming "Stop hurting me" over and over while she is at the top of the stairs and Father is at the bottom of the stairs and the children were present. She also egged Father's car in the presence of the children. Father testified that other than defending against Mother's physical attacks, he has never hit her. Father did not deny that he called Mother names, questioned her mental stability and said she needed help.

18. It is clear that the exceptional [REDACTED] children should not witness nor be victims of Mother's angry tirades and verbal abuse and threats. The behavior displayed on the audio tape and described by both parents in their testimony is abusive and inappropriate. The Court finds that the children are at risk of physical and emotional harm if left in the custody of Mother or if she is permitted unsupervised parenting time. Both parents testified that Father never yells at the children, calls them names or threatens them.

TRIAL PREPARATION WITH CLIENT

- Review line of questioning
- Prepare client on responding to cross-examination
- Put client at ease about the process

REVIEW OPPOSING COUNSEL'S EXHIBITS

- Prepare objections
- Review with client

PRE-TRIAL MOTIONS

- Equally divide time
 - See written materials: Motion to Shorten Time
- Pre-trial brief for significant issues

DAY OF TRIAL

- Arrive early
- Meet with client prior to court
- Come equipped with any necessary technology
- Bring hard copies of exhibits as courtesy for the court