

CHAPTER 7

FAMILY LAW

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Chapter 7

DOMESTIC RELATIONS

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LEARNING THE ROPES

DOMESTIC RELATIONS

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In preparing the materials for the course, I have chosen to emphasize the practical skills that I wish I had known early in practice as well as the ways in which Domestic Relations differs from other forms of civil litigation. At the end of the materials you will find a list of supplemental materials that are useful to draw on for the rules and regulations, forms, and substantive legal issues.

Domestic Relations is distinct in practice from other areas of Civil Litigation:

- Often you have a designated family court in which the matters are heard.
- Mandatory discovery statutes
- Mandatory mediation in custody matters
- Frequently used emergency and temporary remedies, including automatic statutory protections
- Less “winner take all” than other areas of law
- The cases are a “zero-sum game”- you are dividing what the parties already have- not adding to it, you are dividing time with children, which you cannot add to.
- More frequent client contact and troubleshooting often due to the frequent and ongoing contact between the parties
- Statutory priority of matters and expedited time frames in certain proceedings
- Opportunities to offer “unbundled services”
- Opportunity to help someone transition into a new stage in life
- Rewarding opportunities to have a positive impact on families and for children

PRACTICAL GUIDE TO DOMESTIC RELATIONS PRACTICE

I. SCREENING POTENTIAL CLIENTS

- A.** Who screens? Staff. Be wary of taking calls that may result in information being exchanged that creates a conflict you are not documenting in your conflicts system. There is no “quick question.” The best staff to field incoming calls will be firm, organized and kind.
- B.** Inquire as to: conflicts, practice area, venue/jurisdiction, time frame (deadline to respond, hearing dates and/or trial dates).
- C.** Disclose: consultation fee, procedure, and request they bring information/ documents.

- D.** Practical considerations: time investment, ethics, calendaring (name, phone number, email address, issue), reminders.
- E.** Look out for warning signs. If you are working with experienced staff, trust them in the screening process.

II. INITIAL CONSULTATION

- A.** Formalities: Intake sheet, payment, conflict check, third parties.
- B.** Read the room: A potential client making small talk needs to be eased into the conversation. Take the time to engage with the potential client briefly to make the client comfortable before broaching the subject of the meeting. If a potential client appears eager to discuss issues, by leading with questions or talking about looking forward to the appointment, be responsive by moving right to the issues.
- C.** Balance the story telling with the time at hand: It is important for the potential client to tell his story, to feel heard by you. Potential clients will have different areas of emphasis, different points of origin, different details that they will want you to know. You can always politely ask for them to clarify or elaborate, or you can politely redirect. Allow the potential client to speak in a narrative format (not question and answer) if that is more comfortable and conversational. Issue spot during the narrative and then ask your questions to get the details you will need to answer questions. After the narrative, ask if the potential client has specific questions. Often the potential client is looking for a general assessment, but will sometimes have specific areas or issues. However, be mindful of the time. You may need to redirect and move on to the specific questions.
- D.** Feel free to ask the potential client if he/she is looking to hire an attorney or if he/she is just looking for information. This is often apparent from the conversation, but it can help you shape the information you give. Do not be discouraged when people only want information. Even these consultations provide indispensable advice to people who really need it and helps grow your professional reputation.
- E.** SET EXPECTATIONS: You will never have a better chance to tell a client “no” than the initial consultation. Set reasonable expectations of the process, expenses, time, and outcome of the proceeding.
- F.** Don’t over extend yourself. If you do not know the answer to an issue, look it up. If you can’t reasonably look it up in the time available, then consult a colleague or look the issue up after the appointment. It is okay to not have a complete analysis of the matter during the consultation. However, regularly committing to additional work can be difficult to manage.
- G.** It’s okay to decline representation. It may take some time to develop a comfort level with the emotionally charged and sometimes uncomfortable nature of domestic relations matters. While I would urge you not to be too quick to judge a potential client, you should also trust your instincts. You are not doing the client a good service by taking on a case that makes you uncomfortable or taking on a client with whom you will not have a good working relationship.

- H. Discuss fees: present the client with a written fee agreement, set a retainer, be clear about the steps to retain you.
- I. Provide documents: keep copies of frequently used forms on hand: vital statistics forms, CIF forms, Uniform Support Declaration, Standard Parenting Plans.
- J. Send a non-engagement letter to everyone unless you were retained on the spot. Even a potential client who plans to come back should get a letter stating that you are not taking further action until the retainer (if any) is paid and the fee agreement is signed and returned.

III. STARTING THE CASE

- A. Retainer and fee agreement: Make sure you have a signed fee agreement, the retainer, and provide the client a copy of the fee agreement.
- B. Deadlines: Deadline to respond, hearings, trial, response to request for production should be calendared.
- C. Documents: Ask for copies of any documents served upon the client and also pull documents from court. (Don't overlook possible RFPs served with initial pleadings.)
- D. Calendar a deadline to draft initial documents, consider scheduling a signing to increase your accountability to your client; if responding send an ORCP 69 letter.
- E. Allot sufficient time for the client to review drafts before client signs. Remind the client to review for accuracy (not just rubber stamp).
- F. Advise the client prior to filing of any orders that will go into place at the time of filing, such as the mutual asset restraining order.
- G. Consider any temporary motions that may be appropriate: temporary protective order of restraint, motion for temporary support, motion for exclusive use, motion for suit money.
- H. Calendar out deadlines from the date of filing- even for those tasks that do not have a hard deadline. Service? Deadline for opposing party to respond? Send RFP? File USD?
- I. Send an introductory letter to the client. Advise the client of common issues, such as preferred communication, ways to reduce expenses, timeline, and what the client can expect. Remind the client of anything that is required of the client, such as coparenting education class and mediation.
- J. Review the SLRs for the county in which you are litigating. Many counties procedure on motion practice and deadlines varies significantly. Review SLR Chapter 5 for Civil Cases and Chapter 8 for Domestic Relations proceedings.

IV. DISCOVERY

- A. ORS 107.089 includes mandatory discovery provisions, but rarely are these relied upon. Typically parties represented by counsel will exchange requests for production with a fairly standard set of roughly 25 requests in dissolution cases.
- B. Consider creating a template of requests for standard cases including custody cases and modifications.

- C. Be mindful of ORCP 36 scope of discovery and ORCP 43 format when drafting requests and responding.
- D. Review any requests you receive for appropriate objections.
- E. Send the request for production you receive to your client with a detailed letter explaining how to produce documents to you. Most clients are open to doing the legwork if it reduces their legal fees. Encourage clients to produce documents to you with copies in lieu of originals if possible, and organized by response number. Require clients to indicate whether documents exist (whether provided or not), do not exist, and/ or who has the documents if the client does not. Be sure the client knows that if he can get the documents from the third party he is required to do so (bank statements, credit card statements, paystubs.) Advise the client NOT to write notes to you on the documents. Discovery, while routine to you, is not routine to the client and can feel burdensome, intrusive, and scary. A little explanation goes a long way. Set a deadline for the client to produce documents to you (sufficiently in advance of the deadline to respond).
- F. Provide discovery to others the way you would want it provided to you: organized. Consider utilizing electronic copies as both your means of delivery and means of storage.
- G. Review the documents most carefully for records that are privileged or otherwise not required to be produced. Look for handwritten notes. The notes may be standard (“paid on 5/25”) OR may be a note to you (“I paid her car payment”). Notes to you are privileged and should be redacted.
- H. Consider other means of discovery: request for admissions, subpoenas to third parties, depositions.

V. EXPERTS

- A. If experts may be needed in the case, discuss the possibility with your client early including the financial and time constraints.
- B. Common experts will include custody and parenting time evaluators, real estate appraisers, business appraisers, forensic accountants, and personal property appraisers. Familiarize yourself with the rates and services available so you can spot appropriate cases and provided needed estimates.
- C. If you want to retain an expert, communicate with the expert about fees, documents needed and time needed to complete the services.
- D. Seek a court order or stipulation as may be appropriate.
- E. Consider the issue of privilege when hiring experts.

VI. SETTLEMENT

- A. Most cases will settle without trial. Providing an honest assessment of strengths and weaknesses and potential outcomes throughout the case will aid in resolution.
- B. Your assessment of the financial issues will be advanced by securing a USD and other documentation from your client early in the case.

- C. Consider keeping a running asset spreadsheet as the case develops including a notation of the date and source of any figures used on your asset spreadsheet. It will allow you to assess the financial considerations as the case develops and consolidate information into an easy reference point.
- D. Be mindful of the level of communication your client needs. Most discussions of the terms of settlement should be made by phone, by video conference, or in person. They are huge decisions for the client and require a significant exchange of information.
- E. Encourage clients to be mindful of additional considerations including time, stress, conflict, and the opportunity for more creative solutions than if the case proceeds to trial.
- F. Remind clients that parties are more likely to comply with a court order that is stipulated than one determined by the court alone.
- G. Encourage clients to follow the 3-3-3 rule: how will you feel about this in 3 days? 3 months? 3 years?
- H. When drafting an offer, be thorough and be sure to include whether or not attorney fees will be included. Review the pleadings and communications to be sure you are not missing any issues.
- I. When drafting an offer, consider your audience (pro se, counsel, personality) and draft accordingly.
- J. If an agreement is reached just before trial (which often happens) put it on the record if a written stipulation cannot be prepared and signed before the trial date.

VII. TRIAL AND HEARINGS:

- A. Work with opposing counsel/ opposing party to narrow the issues and articulate those remaining issues and any stipulations clearly for the bench.
- B. Schedule a hearing prep appointment with the client sufficiently in advance that you can spot any holes in the documents you will present and in time to line up additional witnesses as necessary.
- C. Subpoena your witnesses even if they have agreed to appear voluntarily.
- D. Screen your witnesses carefully. Ask the questions you want to know as well as the ones you anticipate the other party will inquire. Sometimes a witness cuts both ways. Also assess whether the witness is capable of giving answers to difficult questions at trial. Often your witnesses will be, or at one time were, close to both parties. Make sure they are prepared to give the testimony even when confronted with the other party in court.
- E. Be mindful of deadline to submit trial documents and other required forms.
- F. Calendar important deadlines backwards from trial to allot yourself enough time.
- G. Organize and clearly mark your exhibits and review them with your client in advance.

VIII. PREPARING THE JUDGMENT

- A.** Promptly and carefully draft the judgment. Carefully review the terms of settlement or the court's decision to be sure that you have included all of the issues.
- B.** Allow sufficient time for your client to review the judgment for accuracy.
- C.** Be mindful to include the proper information on real property and vehicles if you intend for the judgment to be self-executing.
- D.** Draft in language that is clear and precise.
- E.** Double check that you have attached all exhibits and in the proper order.
- F.** Include all language required by statute (such as required child support language.)
- G.** Be open to request for revision when the revisions are for clarity and still consistent with the court's order or stipulation.

IX. CONCLUDING THE REPRESENTATION

- A.** Provide client with a copy of the entered judgment along with a letter of explanation of any additional steps the client needs to take such as hiring an attorney to complete a QDRO or establishing a collection with Division of Child Support.
- B.** Withdraw from the case.
- C.** Send a closing letter.

ADDITIONAL RESOURCES

PLF Practice Aids and Forms: <https://osbplf.org/practice-management/forms.html>

Oregon State Bar BarBooks Family Law (2021 ed.):
<https://www.osbar.org/secured/barbooksapp/#/book?bid=329>

Oregon Judicial Department Forms: <https://www.courts.oregon.gov/forms/Pages/default.aspx>

DOJ Division of Child Support Tools for Professionals (child support calculator, rules, etc.):
<https://www.doj.state.or.us/child-support/for-professionals/tools-for-professionals/>

Oregon Judicial Department UTCRs, SLRs, and forms:
<https://www.courts.oregon.gov/programs/utcr/Pages/default.aspx#:~:text=Supplementary%20Local%20Court%20Rules%20%28SLR%29%20The%20SLR%20are,Oregon%20Rules%20of%20Civil%20Procedure%2C%20and%20state%20law.>

Oregon Revised Statutes (see especially chapters 25, 33, 107, and 109):

https://www.oregonlegislature.gov/bills_laws/Pages/ORS.aspx

I strongly recommend the OSB CLE Course: Handling Domestic Relations Cases as a primer on Domestic Relations and an excellent resource of forms and how tos.

<https://ebiz.osbar.org/ebusiness/ProductCatalog/Product.aspx?ID=1702>