

Training Topics

aka "Things I Wish I Knew Before I Started in Family Law" or "Lessons learned the hard way" or "What I *didn't* know after 20 years of practicing law and putting a lot of people in prison" ☺

A. Track/Trial Call System

1. Keep to the track. ie keep pre-trials on pre-trial dates/ pro se's on pro se dates; motions on motion dates;
2. Presentments suggest you limit to no more than 10 on a presentment date; Don't allow parties to litigate issue on presentment date. Enter Order setting out briefing schedule, courtesy copies and hearing date. Don't allow parties to indoctrinate you to their theme of case.

B. Case Management (218) – What to Look For and Ask About

1. Is there service? -- if not continue for Status of service to next Case Management Date (about 2 mos. out) Don't enter a 218 Order without service of a summons
2. If service is there an appearance and answer "parties at issue" then have a Case Management form filled out. ALWAYS enter a 218 Order even if attorneys have a prove-up date or think they will settle, even a Pro Se gets a 218 Order.
3. Are there children of the marriage – if so a lot more stuff you need to check for and ask about.
 - check for parenting certificate; if none, put in 218 Order that parties to attend class within 28 days;
 - check if parenting plan agreed to, if none enter a mediation order OR continue for 30 days to allow additional time for parties to reach agreement, if none then mediation (New Rules?)
4. Have parties complied with 11.02
5. Have parties completed parenting class
6. Do parties have proposed parenting plans to submit to the court – if not....
 - a. Appoint a mediator if not impediment (ie order of protection)
 - b. Appoint a GAL if mediation has failed or parties have impediment
7. Have parties set dates on any temporary pre-decree motions set for hearing at that time.
8. Case management on F and D cases

C. Scheduling/Motions

1. Suggest you limit motion call to no more than 20-25 in the AM and no more than 35 cases on the call total in the AM. (20-25 Motions and 10 Presentments)
2. Always have a case management form listing a trial date on all D and F cases once parties are "at issue" (ie service and not in default).
3. Always use a SCM date if no further dates set other than trial and final trial conference.
4. DO NOT CONTINUE A CASE FOR PROVEUP PAST TRIAL DATE.
5. If case is set for prove up and does not prove up make sure the order reflects to return to courtroom of origin for setting of further dates or you will lose case.

6. Set temporary pre decree hearings generally on am call.
7. Contested Motions which will take more than 30 minutes should be set on your contested motion afternoon PM call. Suggest you not set more than 3 on contested PM call. Rule on these pre-trial motions, DO NOT continue more than once if possible. Post decree 513 and Modification or termination of Maintenance cases are generally set at 1:30- too lengthy for am hearing.
8. Schedule pretrials at 9, 10:30 and 1:30 on your pretrial date – generally allow 30 min per pretrial – require parties to be present per out local rule 11.06 and require pretrial memorandums 7 days in advance of pretrial.
9. Pro-se v Pro se cases can be set on your one day a month for pro-se cases at 9 and 1:30
10. Best practice is not to set case merely for “status” or “hearing on all pending pleadings” or you will get confused with what the case is up to resolve.

D. Trial Week:

1. Set all matters for 9 am first day of the trial week (usually Monday) suggest you not specially set until first day of the trial week b/c matters settle especially while waiting in the morning of the first day.
2. There is back-up available first thing Monday, so keep the pressure on the attorneys and the litigants. They can wait and talk even though you have started a trial.
3. Allow clerk to put presentments on trial week except the first day of trial call.
4. Trial call should only consist of pre-decree trials and post decrees hearings which will exceed 2 hours in time.
5. If case assigned to back-up judge, the back-up is to hear trial and not entertain a motion to continue such motions should be sent back to the call Judge to rule on.
6. Require parties to be ready to begin trial on first day of your trial call.

E. Service:

1. If service but no answer or appearance – leave to file motion for default and continue 30 days for hearing. Affidavit of notice to be filed on next date.
2. If no service – status of service and alias summons.
3. Service by Publication, check to make sure there is proper return of notice from newspaper.

F. Emergency motions

1. Look to Local Rule 11.10 and 2.05 for guidance.
2. Best practice is to strictly construe or they will immediately start to take advantage.

G. Motion Practice

1. Look to Rule 10.06 for guidance
2. Courtesy copies are your best friend and best practice is to require them 7 days prior to hearing on any matter.

H. TRO's

1. Review bench book and make specific findings if you are inclined to give it to them.

2. Bond/no Bond; Notice/ no notice; subsequent hearing set within 10 or 30 day time frame

I. Petitions for Indirect Civil Contempt

1. Rule can be issued without evidentiary hearing based on verified pleadings and with good notice.
2. Upon Rule issuing burden shifts to Respondent to show cause why they are not willfully in violation of contempt order.
3. Personal service on respondent for most of indirect remedies required.

J. Petitions for Indirect Criminal Contempt

1. Rare – check with someone first
2. Advisals and possibility of jury if major v minor.
3. SAO has to decline first.

K. Hearings on Financial Relief

1. "Prior to any hearing on financial relief parties are required to have exchanged updated 11.02 affidavits supported by W-2, etc.....
2. Under new law in 2016 temporary hearings are non-evidentiary based on 11.02

L. GAL appointments

1. From approved list
2. If pro-bono apt make sure they get credit with Pom
3. Set a status of acceptance of GAL appointment date so the GAL can come in prior to the hearing date and let you know if your hearing date is realistic and if the parties have been in compliance.
4. Allocate fee's – good practice is always "subject to reallocation"
5. Don't forget to discharge GAL when their portion of case is completed so they can file their final fee petition.
6. Do you require written report of GAL before Pre-Trial? (depends) Trial? (definitely)

M. Pretrials

1. Generally allow 30 min per pretrial ..
2. Review 11.07 for guidance.
3. Best practice require parties to be present at pretrial and require memos
4. Transparency? Advisals? Caselaw – recommendations not substantive ruling.
5. Take notes (good practice is pretrial note taking sheet) and always write down the recommendations you made during pretrial so you can be consistent. per our local rule 11.06 and require pretrial memorandums 7 days in advance of pretrial.

N. Support

1. Best practices require them to fill out a Uniform order of Support and Notice to Withhold even for Temporary Support
2. Always fill out net income

3. Do not do percentage based awards
4. Guideline – if deviate state reasons under 505(a)
5. If arrearage amount place on Support order or clerk's office will zero out arrearage.
6. Follow statute for guideline support on maintenance (hard percentage calculation)
7. If over 250K guidelines are no longer required under statute.

O. Attorney Fees

1. Complex
2. Ask
3. Different standards for contribution, interim, against former client etc under 508

P. Custody

Too much changing

Q. Things To Generally Avoid

1. avoid setting status dates when no motions are pending this will only clog up your call. ie. status of settlement. Obviously if you are monitoring compliance with discovery/ visitation or some other issue then set a date.
2. avoid trial continuances without a written motion and affidavit and use our standard continuance orders (green).
3. avoid not ruling on pre-trial motion (ie Temp Support/ Rules to Show Cause etc.) and setting same to be heard with the trial. Ruling/deciding is your opportunity to set the tone for the litigants and at the end of the day that's what we are there to do.
4. avoid placing matters other than Trials on your trial week. You need to be available to try a case and if you happen to settle everything and have time you can help with the other calls and/or catch up on reading or writing decisions. The last thing the division needs is the trial judge not being able to try a case on a trial week because motions have been set, doing this defeats the purpose of the trial call.
5. avoid continuing Plenary Hearings on OP.

CASE MANAGEMENT DEFAULT INSTRUCTIONS

A. You will need the following documents for this process:

1. Motion for Default [form 171-417] (the Judge should have given you this in Court).
2. Family Division Scheduling Order [form 171-359](the Judge should have given you this in Court).
3. Affidavit of Service [form 171-257] (you can obtain this from the Law Library).
4. Affidavit of Military Service [form 171-342] (you can obtain this from the Law Library).
5. Judgment Order [form 171-411 or 171-409](the Judge should have given you one of these in Court).

B. You must follow the following directions:

1. You must file a Motion for Default (that you received from the Judge) in the Clerk's office, within 7 days. The Motion for Default must be completely filled out with the information from the Court file.
2. You must mail a copy of the Motion for Default to the other party at his or her last known address. You must include a copy of the Family Division Scheduling Order that the Judge gave you, which schedules the next Court date for hearing on the Motion for Default. If the last known address of the other party is your address, you should mail these documents to your own address.
3. You must fill out the Affidavit of Service, stating under oath that you mailed the Motion for Default and the Family Division Scheduling Order to the other party, and the date that you did so. You will need to bring this back and file it with the Judge's Clerk on the next Court date.
4. You must also fill out the Affidavit of Military Service, stating under oath that the other party is not in the United States Military. You will need to bring this back and file it with the Judge's Clerk on the next Court date.
5. You must also fill out the proposed Judgment Order that the Judge gave to you. All sections of the Judgment Order that pertain to you must be filled out before the next Court date. Bring the completed copy of the Judgment Order back to Court with you on the date that the Judge filled in on the Family Division Scheduling Order.
6. On the next Court date, if the Motion for Default is granted, your case may proceed to prove-up immediately, or it may be scheduled for another future date. You must bring \$75 cash to the next Court date for Court Reporter fees, unless the Judge has already entered an order waiving fees for you.

DIVORCE TRIAL PROTOCOL

- A. Informal trial conference. Determine the remaining contested and finalize the following trial issues: 1) pretrial motions; 2) motions in limine; 3) stipulations (written); 4) exhibits; 5) length of trial; 6) Court/lawyers' schedule; 7) prenuptial agreement; 8) claim of dissipation ; 9) determine if the grounds are contested/If not, ask lawyers if they want the presentation of grounds first, and; 10) determine if there is a stipulation of contribution petition.
- B. Ask Court officer to call a court reporter (translator).
- C. Make a record (who is present, representation, and interpreter).
- D. Opening statements.
- E. Grounds portion of trial. Make a record as to grounds.
- F. Petitioner's case. At the end make a record as to, "petitioner "rests".
- G. Respondent's case. At the end make a record as to, "respondent "rests".
- H. Go over the exhibits (admitted/denied/stipulations).
- I. When proofs are done/confirm exhibits, on the record, ask then indicate the proofs are closed.
- J. Closings. Have the attorneys/parties present closings, OR, have the lawyer provide written closings (page limit) and set a date to rule. As to fees, ask the attorneys if there is a waiver of contribution of attorney's fees, if no, then give the attorneys/parties leave to file petition(s) within 30 days (courtesy copies) and set a hearing date on the ruling date
- K. End of case. Ask the attorneys if there is a waiver of contribution of attorney's fees. If NO, then,
 - a). Give the attorneys/parties leave to file petition(s) within 30 days (courtesy copies) and set a hearing date; b). Set a ruling date, and; c). Have the attorneys/parties draft proposed Judgments and submit (flash drive) them prior to the ruling date. If YES, then, a). Rule and require the attorneys to draft and submit a proposed Judgment and set a future date to enter said Judgment; OR, b). Take it under advisement, have the attorneys draft and submit a proposed Judgment and set a ruling date.

DIVORCE TRIAL FINDINGS AND RULING

This matter has come before the Court for trial on...(date)....the Court having heard and reviewed the evidence (in the form of testimony, GAL/child rep/604b, admitted exhibits and stipulation) on issues of grounds/custody/visitation/child support/maintenance/property/debt/attorney's fees and other matters, the Court also considering the argument of the respective counsel/part(y)(ies), finds as follows:

Findings:

1. Petitioner isyears old and resides at..... Petitioner has resided in the State of Illinois for a continuous period in excess of 90 days preceding the date of filing the Petition;
2. Respondent is...years old and resides....;
3. The Court finds it has both subject matter and personal jurisdiction over the parties (or in rem jurisdiction over the status of the marriage)(and when applicable, jurisdiction under the UCCJA);
4. The Court finds that there are no other actions for dissolution of marriage pending in any other county or state;
5. That the parties were married on.....(date).....in...(location)....and is registered in...(location/county);
6. The Court finds grounds have been shown in that.....;
7. The Court finds thatchildren were born of the marriage....namely.....The Petitioner/Respondent is not pregnant;
8. Petitioner is employed (unemployed) at....as a....earning.....(Petitioner has sufficient income and financial resources to support herself without maintenance from Respondent);
9. Respondent is employed (unemployed at....as a....earning....;.....(Respondent has sufficient income and financial resources to support herself without maintenance from Petitioner);
10. **Custody.** Look to 750 ILCS 5/602(a)to state the factors for the best interest of the children for findings (may want to reference the reports of GAL?604(b)); OR, the parties have entered into an agreement (or an agreement had previously been entered on...(date)...) as it relates to custody of the minor children and the Court finds that the parties/Petitioner/Respondent is a fit and proper person to have custody of the minor children and the parenting agreement is in the overall best interests of the minor children;
11. **Child Support.** 750 ILCS 5/505. Indicate what the appropriate % would be. If deviation, state the finding why, indicating that it is in the best interests of the child(ren), 750 ILCS 5/505(a)(2).

- 12. Maintenance.** Look to 750 ILCS 5/504(a) factors in support of your ruling on maintenance or, the Court finding the parties have waived their right to maintenance; Must make a finding of, what guideline support would be or length and the reasoning for the variance (750 ILCS 5/504(b-2)(2)).**Property.** See 750 ILCS 5/503. Classification of **marital and non-marital** property (750 ILCS 750 ILCS 5/503(b)(1)/(d); . **Dissipation**, 750 ILCS 5/503(d)(2). **Pension/retirement** (750 ILCS 5/503(b)(20); **Values of property**;
- 13. Debts;**

Ruling:

1. **Grounds.** The Petition for Dissolution of Marriage is granted, *"The bonds of matrimony between the parties are hereby dissolved, and the parties are awarded a Judgment for dissolution of Marriage."*;
2. **Custody.** 750 ILCS 5/602.
3. **Visitation.** 750 ILCS 5/607.
4. **Maintenance.** Look to 750 ILCS 5/504(a) factors in support of your ruling on maintenance or, the Court finding the parties have waived their right to maintenance; Must make a finding of, what guideline support would be or length and the reasoning for the variance (750 ILCS 5/504(b-2)(2)).
5. **Child support.** Set the support. Note: 750 ILCS 5/505. Indicate what the appropriate % would be. If deviation, state the finding why, indicating that it is in the best interests of the child(ren), 750 ILCS 5/505(a)(2).
6. **Property.** 750 ILCS 5/503. Allocate marital and non-marital (750 ILCS 5/503(d)).
7. **Pension/retirement.** 750 ILCS 5/503(b)(2).
8. **Stock options.** 750 ILCS 5/503(b)(3).
9. **Life Insurance.** 750 ILCS 5/503 (b-5).
10. **Debt.** 750 ILCS 5/503. Allocate.
11. **College.** 750 ILCS 5/513.
12. **Contribution to fees.** 750 ILCS 5/508. Allocate.