CHAPTER 1

Initial Client Interview

“Why are you here and what can I do for you?”

What is the client seeking? Why has the client come to see you? Is this a divorce case? A contested custody matter? Enforcement of a prior agreement? Before the interview can truly begin, these questions must be on the table. Oftentimes, there are only a few contested issues and, on occasion, none. It is important to unearth what the client is really seeking. Does this father really want custody of his child, or is he raising the issue to get a better financial settlement? (“Well, I’ll reluctantly concede custody to her if she leaves my business alone.”) Does this wife really want those prints on the living room wall, or will she settle for their monetary value? When clients understand the financial, emotional, and time commitment of fighting the fight, they will often settle for a compromise. There is nothing that settles a case better than seeing it laid out on the table, with all cards face up. But when clients are prepared to fight for what they want, and litigation is in their immediate future, the good preparation must begin.

Cases that involve complex issues to be litigated require careful preparation from the outset. But, it is not always easy to determine what the client wants to achieve. Sometimes clients do not know what they want and must be focused toward a reasonable resolution. That is part of the initial interview process. Once the client’s goals are established, counsel can then determine whether those goals are achievable without litigation. Many cases are easy to settle, particularly if the file is organized and the client knows exactly what is “in the pot” and what is not. In any event, preparing the case as if litigation is necessary is critical not only for good litigation but also for possible settlement on some or all of the issues. In short, litigation is possible, negotiation is possible, and mediation or arbitration is possible, but organization is critical to all.
A. Initial Information

Jurisdictional Information

All cases require certain information from the client for trial preparation. That information should always include the full name of the client and any last names previously used, including the maiden name of the women. The maiden name enables counsel to order the marriage license, where necessary. (If this is a second marriage, counsel should determine which name was used on the marriage license, as many women use their married name from the first marriage on the license application for the next marriage.) The other spouse’s name is also a requirement, not only for filing purposes but also for conflict checks, both present and future. The social security numbers of both clients are necessary, especially as discovery progresses. Courts may also require this information. Other obviously necessary information includes the date of marriage, the names and birth dates of children, and the home address of both parties. The addresses of both are necessary not only to serve the complaint but also to establish venue and jurisdiction. Where the parties live in different states, a conflict-of-laws analysis may help determine where to file. If different counties are involved, there may be venue questions as well; counsel must review the rules that differ from county to county before selecting the appropriate forum.

Tip Use a standard format for the file opening sheet so that any assistant who picks up the file will know where to look for all relevant data. The file opening sheet should include the basic jurisdictional information, an overview of the assets, and a brief case history.

Counsel’s next job is to determine the history leading up to the conflict. Why are the parties divorcing, and what evidence is there of grounds for divorce? Are they living separately and apart; if so, for how long? If necessary in the jurisdiction, are there fault grounds? Which parent has the stronger history of parenting? What is the educational background of the client, the work history, the income? What is the work history of the other party? Is there infidelity; if so, is the third party’s name known and is there any evidence to prove the infidelity? These questions and their answers will guide the discovery process.

Assets of the Case

The next part of the interview should be the creation of a preliminary list of assets and their values, as the client understands them. For the dependent spouse, this list may be just a rough understanding of the basics of the marital and nonmarital property. For example, is there a marital residence and is it owned by the parties? How is the property titled? Is there a mortgage?
Who holds it? What is the mortgage balance? Is there a second mortgage or a credit line against the home? Does the client have the most recent mortgage statement? Does the client have a copy of any appraisal of the house?

With each asset, attempt to determine values and find documentation supporting those values. Compile the most recent statements of brokerage and money market accounts, IRAs, pensions, stock portfolios, and other liquid assets. If the family owns whole life insurance policies, collect their recent statements of cash value. Where there are business ownerships or interests, information from the non-owner spouse may be limited to the name of the company and, perhaps, the names of any partners or co-owners of the entities. From the owner spouse, however, corporate or partnership tax returns, financial statements, buy-sell agreements, key man insurance policies, and any other evidence of value should be collected. Counsel should have a checklist of potential assets to jog the client’s memory. (See “Document Collection” for a sample list.)

It is helpful at the initial client interview to give your client a manual that not only covers the documents you will need in the particular case you are trying but also describes the process that the client will be going through. An informed client will adapt more easily to the ups and downs of litigation than one who is uninformed about the process. Each office should develop a client manual to cover this and many other issues that will come up during the case. A sample client manual is provided in Appendix 4.

Identification of Assets

One of the best starting points for the identification of assets is the personal tax return. The last three years of both federal and state tax returns is a treasure map to the assets, both marital and nonmarital. Because the first two pages of a federal return are only a compilation of the schedules, the client should be advised to produce the entire return, with all schedules attached. The state return is important because many pension contributions are not federally taxed; therefore the contributed amounts do not appear in federal reported income but will appear on the state return. Consequently, seeing different reported amounts on the federal and state returns is a flag for counsel to look for a pension contribution and, therefore, an existing pension.

The state return is also important in determining partnership interests. The K-1 form, which provides partnership information such as the percentage of ownership and the invested value, is usually attached to the state return.

A third necessary document is the wage earner’s W-2. This document not only reports all wages earned but will signal the existence of a pension, perhaps a company car, and other perks paid to the wage earner. Different amounts in each box for federal wages, state wages, and Medicare wages indicate that there is income not reported on the federal tax return. There may also be a notation on the W-2 as to the pension contribution. Often the W-2 or, in those cases where the taxpayer has changed jobs during the year,
Document Collection

In order to properly prepare for a case involving distribution of assets, both sides must identify all assets and ascertain their values. Providing the client with a checklist of potential assets to be discovered is a first step in determining assets for division. The client should be advised to provide the following:

- **Income tax returns**, including state and federal personal, corporate, partnership, joint venture or other income tax returns, with related W-2, 1099, and K-1 forms, from the start of the marriage
- **Income information**, including payroll stubs and all other evidence of income since the filing of the last income tax return
- **Personal property tax returns** filed in this state or anywhere else from the start of the marriage
- **Banking information** such as monthly bank statements, passbooks, check registers, deposit slips, canceled checks, and bank charge notices on personal and business accounts; certificates of deposit, money market accounts, and retirement accounts from banks, savings and loan institutions, credit unions or other institutions in which either spouse has an interest
- **Financial statements** submitted to banks, lending institutions, or any other persons or entities, prepared by either spouse during the last five years
- **Loan applications** made within the last five years
- **Brokerage statements** from all accounts of securities, commodities, or mutual funds held by either spouse during the marriage individually, jointly, or as a trustee or guardian
- **Certificates of stocks, bonds, and mutual funds accounts** owned by either spouse, during the marriage or pre-owned
- **Stock options records** pertaining to options held in any corporation or other entity, exercised or not exercised
- **Pension, profit sharing, deferred compensation agreement, and retirement plans records and statements** pertaining to any financial plan owned by either spouse, or by any corporation in which either spouse has been a participant during the marriage
- **Wills and trust agreements** executed by the client or in which the client has a present or contingent interest or in which the client is a beneficiary, trustee, executor or guardian and from which benefits have been received, are being received or will be received and which are or were in existence during the past five years, including inter vivos trusts; all records of declaration of trust and minute books for all trusts to which either spouse is a party, including any certificates showing such interest and all statements, receipts, disbursements, investments and other transactions
- **Life insurance or certificate of life insurance policies** now in existence insuring the life of either spouse, and statements of the cash value, if available
- **General insurance policies**, including annuities, health, accident, casualty, motor vehicles of any kind, property liability including contents, owned by either party during the past five years of the marriage

(continued)
■ **Outstanding-debt documents** reflecting all debts owed by either spouse, secured or unsecured, including personal loans, credit card statements, and lawsuits pending or previously filed in any court

■ **Records or ledgers**, both personal and business, together with all accounts and journals

■ **Deeds of real property** in which either spouse has an interest together with evidence of all contributions, in cash or otherwise, made by either spouse or on behalf of either spouse, toward the acquisition of such real estate during the marriage or thereafter

■ **Sale and option agreements** on any real estate owned by the client either individually, through another person or entity, jointly, or as trustee or guardian

■ **Personal property documents**, including invoices, contracts, insurance policies, and appraisals on all personal property, such as furniture, fixtures, furnishings, equipment, antiques, and any type of collections, owned by the client individually, jointly, as trustee or guardian or through any other person or entity during the term of the marriage

■ **Firearm registrations** issued or pending receipt of governmental registration documents, owned, possessed or controlled by the client during the last five years

■ **Motor vehicles financing agreements and titles**, including those related to airplanes, boats, and other types as well as automobiles, owned by the client, individually or jointly, at any time during the last five years

■ **Corporate interests records** showing any kind of personal interest in any corporation (foreign or domestic) or any other entities not evidenced by certificate or other instrument

■ **Partnership and joint venture agreements** to which either spouse has been a party during the marriage

■ **Employment records** showing evidence of wages, salaries, bonuses, commissions, raises, promotions, expense accounts, and other benefits or deductions of any kind; fringe benefits records showing any benefits available to either spouse from any business entity including, without limitation, auto, travel, entertainment, educational, and personal living expenses

■ **Employment contracts** under which either spouse has performed services during the past three years, including a description of any oral contracts

■ **Charge account statements** for the past three years

■ **Membership cards or documents** identifying participation rights in any country clubs, key clubs, private clubs, associations, or fraternal group organizations during the past three years of the marriage, together with all monthly statements

■ **Judgments and pleadings** in which either spouse has been a party, either as plaintiff or defendant, during the marriage

■ **Medical bills**, prescriptions, evaluation reports or diagnosis for psychiatric treatment received during the last five years

■ **Photographs or videotapes** of real estate and contents

■ **Appraisals of any asset** owned by the client for the past five years

■ **List of safe deposit box contents** as well as the names of the people authorized to enter
all W-2s are attached to the tax return. Where they are not attached, they should be requested.

The W-4 is another document that should be requested. The W-4 sets forth the number of dependents claimed by a wage earner and thus determines the amount of federal tax withheld from income. Because, often, an amount of support is set based on pay stubs when a tax return is not available, the W-4 will disclose whether an overwithholding of taxes might reduce what must be paid in support.

Often, a significant asset of the marriage is the cash value in a whole life insurance. It is necessary to review the insurance policy to see whether the policy is whole life or term; the policy’s face sheet will show the cash value of the policy and whether loans have been taken against the cash value. Pension, IRA, and 401(k) statements must be part of the document request, too. Often these deferred compensation plans are the largest asset of the marriage, and the case cannot go forward without statements of current value and the values as of all important dates under state law.

Brokerage statements, where there are stock accounts, are also part of the discovery process. The prior three years’ statements are helpful, to show not only the total account balance but also additions to or subtractions from the accounts. As the market rises and falls, current statements become critical to ensure that the accounts are valued appropriately.

As the interview unfolds, counsel will determine other documents either that the client can provide or that must be requested from the other side. The preparation of the case cannot go forward without this documentation.

Notes