

Preface

Today, people with matrimonial conflict frequently look to mediation and collaborative law to avoid the cost and anxiety of traditional litigation. While these alternative dispute resolution systems (ADR) benefit many families, many others still need help from the courts. Family law matters involve painful emotions, and certain litigants are unable to discuss the issues—much less settle them. We often see people with personality disorders and other disordered thinking. Some people have legitimate disagreements about their children’s best interests or thorny financial issues that need to be resolved by a judge. Not every case can be concluded at the conference table. Even in this era of ADR, complete family lawyers still need the skills to resolve their cases in court.

I conceptualized this book while serving on the faculty of the American Bar Association Family Law Trial Advocacy Institute. The institute instructs lawyer-students in the art and science of trial advocacy in a divorce case. While participating, I realized that there was no reference book or guide for the effective use of evidence in a divorce case. This book is an effort to fill that gap. While the rules of evidence are not applied differently in a divorce case, there are evidentiary issues that divorce lawyers regularly see, and this reference book provides a helpful resource for both novice and experienced family lawyers.

At the core of being a trial lawyer is a working knowledge of the rules of evidence—how to get evidence admitted or kept out in a contested trial or hearing. Procedures to authenticate exhibits are the building blocks of any case, and objections and their responses are the mortar. I have designed this book as a

commonsense guide to these fundamentals of family law trial practice and a trial companion for contested family law matters. While the rules of evidence are state specific, the goal of this guidebook is to point lawyers in the right direction; and to help them develop their cases for trial.

Judges identify lawyers who can try cases well and appreciate their skill. And good settlements come from superior trial skills. A lawyer who knows how to try a case can often secure a better settlement than the lawyer who is less comfortable in the courtroom. Lawyers who do not recognize their limitations will try cases unsuccessfully against opponents who know the rules and can apply them. It is axiomatic, but knowledge is power. This book is the starting point for lawyers pursuing excellence in family law trial advocacy.

A Note about Primary Sources

I have relied on a variety of sources in researching and writing this book. My primary resource was *McCormick on Evidence*, sixth edition, Practitioner Treatise series published by Thomson West. The answer to every question I had was ultimately found in this marvelous resource. I also leaned heavily on Edward J. Imwinkelried's text *Evidentiary Foundations*, seventh edition, published by LexisNexis Publishing. This was a great practical complement to the *McCormick* book. Additionally, I relied on *Trial Evidence*, fourth edition, by Thomas Mauet and Warren Wolfson, published by Wolters Kluwer. I am proud to say that Dean Wolfson was the former dean of the DePaul Law School, my alma mater. Finally, I drew substantially from *Modern Trial Advocacy*, fourth edition, by Professor Steven Lubet, published by the National Institute for Trial Advocacy. I relied to a lesser extent on a variety of other resources, which are referenced in the footnotes throughout the book.