

## Litigation Techniques

### **Witness Interviews**

- A. Identify witnesses and documents
  - 1. Identify your witnesses
  - 2. Identify their witnesses
  - 3. Re-examine your witness list
  - 4. Identify documents for witnesses
  
- B. Contact with witnesses
  - 1. Meet or talk to witnesses?
  - 2. *Ex parte* and SAMMS interviews
  - 3. Provide documents for review
  - 4. Identify additional witnesses and documents
  - 5. Observers?
  - 6. Establishment of expert fees
  - 7. Confidentiality
  - 8. Releases
  
- C. Then what?
  - 1. Consider affidavits
  - 2. Depositions?
  - 3. Determine availability for trial
  - 4. File motion for telephone testimony?
  - 5. Amend disclosures
  - 6. Tickle expert deadlines

### **Involving the children**

- A. As witnesses
  - 1. What will be psychological impact on child
  - 2. Is it necessary
  - 3. What will other side do
  - 4. How will expert/judge feel about it
  
- B. As decision makers
  - 1. Should the child determine parenting issues
  - 2. Will the child be pressured by either side or both
  - 3. Is the child informed and knowledgeable?

- C. Testimony in court
1. How old is child?
  2. What is Judge's policy?
  3. Is it necessary?
  4. How else can child be heard?
  5. Deposition to preserve record?
  6. Offer of proof
  7. In camera?
  8. Obtain separate counsel for child?

### **Taking useful depositions**

- A. Before the deposition
1. Why take it?
  2. Work backwards from trial outline
  3. Can it help to settle the case
  4. Can it aid discovery
  5. What documents are needed first
  6. What other depositions are needed first
  7. Discovery or in lieu of live testimony?
  8. Subpoena duces tecum?
  9. Organize your exhibits
  10. Review and highlight your copy of exhibits
  11. Copies for all
  12. Where is best place for depo?
- B. The deposition
1. Review documents subpoenaed
  2. Instruct witness that every answer will be believed and relied upon
  3. Go over file on the record
  4. Find out what is not there on the record
  5. Don't go off the record
  6. Have notes, but don't use them
  7. If client can afford it, use real time
  8. Have your client there
  9. Use the documents
  10. Don't dance around
  11. Listen to the witness
  12. Follow the witness, don't lead the witness
  13. Ask the difficult questions
  14. Find out the witnesses' limits
  15. Determine biases
  16. Go over notes at the end and fill in gaps
  17. Make sure reporter got the crucial testimony right

## **Discovery requests**

- A. Documents
  - 1. Why not send patterned requests
  - 2. What else do you really need
  - 3. Need court order?
  - 4. Will a subpoena be better?
  - 5. What releases do you need?
  - 6. What is a records deposition?
  - 7. What privileges are there?
  - 8. Production or inspection
  - 9. Timing
  
- B. Interrogatories
  - 1. What do you need?
  - 2. Are patterned sufficient?
  - 3. Is a deposition better?
  
- C. Admissions
  - 1. Wise to do?
  - 2. Is deposition better?

## **Enforcement of Discovery**

- A. Failure to comply
  - 1. Letters
  - 2. Motions to compel
  - 3. Motions for sanctions
  
- B. Failure to supplement
  - 1. Prejudice
  - 2. Remedies
  - 3. Pattern of conduct
  
- C. Follow-up
  - 1. Tickle matters
  - 2. Do it in writing
  - 3. Complain in time

## **Guardians Ad Litem**

- A. Authority and scope
  - 1. Pursuant to what?
  - 2. For whom?
  - 3. Qualifications needed

- B. Strategy
  - 1. For the child
  - 2. As an ally
  - 3. As a neutral

### **Preparing for trial**

- A. Strategy
  - 1. Start with your closing argument
  - 2. Identify and refine issues
  - 3. Identify witnesses and exhibits
  - 4. Identify procedural and evidentiary hurdles
  - 5. Know your judge
  - 6. Know your experts
  - 7. Literature search?
  - 8. Timing
  
- B. Follow through
  - 1. Organize your documents
  - 2. Copies for all
  - 3. Stipulate to documents
  - 4. Trial brief?
  - 5. Motions in limine?
  - 6. Motions for partial summary judgment?
  - 9. Schedule your witnesses carefully
  - 10. Subpoenas necessary?
  - 11. Get the client on board