

## **TRIAL TIPS FOR FAMILY LAW ATTORNEYS – A VIEW FROM THE BENCH**

Presented by: Stann Givens Family Law Inn of Court Group 2

Presenters: The Honorable Fred Pollack  
Amber Boles  
Jana Barnett  
Ingrid Hooglander  
Tamlyn Sbar  
Christian Givens  
Samantha Branda  
Martha Aristizabal  
Jennifer Meister

Objective of Presentation: To provide trial tips to family law attorneys, focusing on a view from the bench, to enable the attorneys to maintain professionalism, maintain ethics, remain current with technology, be aware and informed of judicial preferences, and excel in the practice area of Marital and Family Law. This presentation will educate family law attorneys of all experience levels from novice to advanced.

### Presentation Outline:

- I. Introduction: Amber Boles
- II. Thank the judiciary: Jana Barnett
- III. Preparedness: Jana Barnett (5 min)
- IV. Trial Tips regarding legal objections: Jennifer Meister (5 min)
- V. Trial Tips – Settlement / Communication with Opposing Counsel: Tami Sbar (3 min)
- VI. Trial Tips – Zoom Court/Courtroom Etiquette: Chris Givens (3 min)
- VII. Trial Tips – Objections: Jennifer Meister (3 min)
- VIII. Trial Tips – Use of Electronic Appearances: Samantha Branda (2 min)
- IX. Trial Tips – Professionalism: Stacey Hudon (3 min)
- X. Trial Tips – Emergencies: Martha Aristizabal (3 min)
- XI. Family Law Case Updates: Ingrid Hooglander (3 min)

### Objections

- Parties speaking over one another. It often happens in the form of “I object” but the supposed objection is lodged in the middle of argument to the court. Simply because you disagree with the other side’s position is not a proper objection. You object to evidence, not argument. You respond to arguments when it is your turn to speak next
  - Judge Smith
- When you make an objection, give the legal basis, not a speech or argument. Don’t cite the rule number alone, unless the Court indicates that is the preferred practice.
  - Judge Thomas Palermo

- In a hearing, I am often puzzled as to why an attorney may not be objecting. Sometimes an objection is raised and, though, overruled as to a particular question, that doesn't mean all the other hearsay and irrelevant information is appropriate. A judge is not supposed to interject and therefore won't tell an attorney to object. Further, maybe opposing counsel wants the information in for a particular reason. Sometimes, that comes out, but more often, it appears an attorney may have abandoned objections after one or two are sustained and that leaves me puzzled. When objections are made and it's overruled, don't stop objecting. The line of questioning might rise to the level of another objection. Don't stop objecting. Object when you feel you might be right, not just for the sake of objecting. The Judges appreciate it when you are preventing them from intervening. Attorney's often get intimidated because their initial objection was overruled but it doesn't mean every objection will be overruled.
  - Judge Frances Perrone

#### Settlement/Communication with Opposing Counsel

- Not communicating/conferring prior to hearing. When an issue can be resolved prior to a hearing but the parties simply fail to confer, it is a waste of time for all parties involved.
  - Judge Alissa Ellison
- Talk to opposing counsel before the hearing or trial. Resolve whatever can be resolved before the case is called.
  - Judge Thomas Palermo
- Offers to stipulate or requests to stipulate should always be made outside the presence of the jury or judge. If you are doing it on the fly, ask for a moment to privately confer with opposing counsel.
  - Judge Thomas Palermo
- Parties unable to work out their differences on proposed orders related to the trial (final judgments, etc.). We waste hours of our limited judicial resources attempting to resolve what are often minor differences between the parties on proposed orders to the court, when the vast majority of the time, parties should be able to work these differences out and provide a single proposed order. I find that quite often the problems arise from one or both parties attempting to insert superfluous language into the order that bolsters their case but is not something that came out of the judge's mouth during the hearing. Keep the orders to the bare bones of the court's ruling (with a focus on including language required by the or caselaw).
  - Judge Jared Smith
- it is much appreciated when there is counsel on both sides and the attorneys have taken the time to speak on the phone or in person. Often, email communications or discussions between assistants doesn't accomplish much. However, a phone call or meeting can convey a different tone and lead to, or at least towards, a resolution. As a judge, I am always happy to work, listen and do my job. However, especially, with family matters, when the parties can work towards a resolution which is best for their family moving forward, this provides at least some direction for the Court.
  - Judge Frances Perrone

- Agree whenever possible with opposing counsel to narrow the issues to be litigated and get written stipulation on agreed upon matters
  - Judge Michael Scinti
- Remember your duty of candor to opposing counsel and the Court. Don't be the lawyer that your colleagues won't talk to on the phone because they believe a conversation with you requires a paper trail. Your reputation precedes you - make it a good one!
  - Judge Wesley Tibbals
- Often times, I ask the attorneys at the beginning of the hearing if they have conferred with opposing counsel as to any of the issues being heard, and there are crickets. Picking up the phone (not just sending an email) and trying to work out any substantive issues, or just discussing structure of the hearing and exhibits, will go a long way. The attorneys may have a massive disagreement as to the issue at hand, but can easily discuss how to present the issue to the Judge in an effort to avoid wasting any hearing/trial time. With the current in-person restrictions, there isn't the luxury of speaking in the hallway or in the parking lot with opposing counsel. Take care of this in advance with a phone call.
  - Judge Darren Farfante

#### Zoom Court/Courtroom Etiquette

- **Please do not fight with opposing counsel as if he/she is your ex.** Quite often legal counsel scale the fence of a zealous advocate and enter the cage of a MMA fight. The Court should never have to ask two professional attorneys to stay in their seats, refrain from yelling over another attorney out of turn or to stop attacking the character of opposing counsel. Such behavior will never benefit your client.
  - Judge Lisa Allen
- Being overzealous and accusatory in your language during argument. Disparaging the other party/counsel or accusing them of engaging in inappropriate conduct (even if such allegations have merit) is not helpful to the Court.
  - Judge Alissa Ellison
- Avoid acrimony or ad hominem attacks. Advocate for your client without embracing any of a client's ill-feeling. Be an advocate and counselor, not a proxy.
  - Judge Thomas Palermo
- Don't address the other attorney or the client. Always address your remarks to the Court, not to counsel. Fighting, bickering, those things detract from your credibility.
  - Judge Thomas Palermo
- Don't fight just to fight or because you loathe opposing counsel. Always keep in mind the end game, the goal for the hearing, what success should look like at the end of the case.
  - Judge Thomas Palermo

- Don't fight with the judge. You can disagree without being disagreeable. You can build and protect your record. But attacking the judge is not a good way to persuade the judge (or the jury) that you are right.
  - Judge Thomas Palermo
- Be on time for a hearing or trial. If you have a legitimate reason for being late, notify the Court and opposing counsel as soon as possible.
  - Judge Thomas Palermo
- Please come to the correct courtroom, even if it is by Zoom. Know the last name of the judge and, if not, just say judge or your honor.
  - Judge Thomas Palermo
- Do not go beyond the amount of time you requested at any hearing or the amount of time budgeted for the trial.
  - Judge Thomas Palermo
- Do not waste time unnecessarily during a hearing or trial, as a courtesy to the Court, the clients, opposing counsel, and everyone's limited resources.
  - Judge Thomas Palermo
- Take whatever appropriate steps are necessary to maintain adequate client control during any hearing or trial. Bad client behavior isn't something usually blamed on the attorney but a good attorney can avoid a lot of it by their work with the client before the hearing.
  - Judge Thomas Palermo
- Act in a deposition the way you would in court. Bad conduct in a deposition can haunt you, including during a trial.
  - Judge Thomas Palermo
- Stand when Court is opened, recessed, or adjourned, or when you address or our being addressed by the Court. Be formal unless or until the Court invites you to be informal.
  - Judge Thomas Palermo
- Ask to approach the Court or the Clerk. Blundering around the courtroom is a mistake unless you've been given permission to do so.
  - Judge Thomas Palermo
- Serve your client's interests. Remember that it isn't about you. It is about your client. It is about the facts and the law. You may be on stage but you are not the star of the show.
  - Judge Thomas Palermo
- Theatrics aren't all bad; being a good storyteller is an art and, when you put on a case, you are telling your client's story, honestly and persuasively.
  - Judge Thomas Palermo

### Preparedness

- Counsel should provide all exhibits and case law to the Court, witnesses, and opposing counsel prior to hearing.
  - Judge Alissa Ellison
- Agree in advance of trial on exhibits, depositions, and witness lists and their order of appearance; stipulate to records custodians; get prior approval of demonstrative evidence

- Judge Michael Scionti
- Try to agree on as many evidentiary issues and exhibits in advance as possible; checking with the judicial assistants on delivery timing and method; and then get that information to the court as early as possible. Please remember that once you get binders and other exhibits to the courthouse, the judicial assistants and courthouse staff must still coordinate internally to get the items to the judges (many of us are still working remotely). Consider exchanging binders and flash drives of the exhibits (with an index) with opposing counsel. This makes it easier to screen share with witnesses and quickly exchange documents.
  - Judge Wesley Tibbals
- Most of the Judges require a hard copy of the exhibit binders to be delivered to 72 hours prior to the hearing/trial. The Clerk is unable to process electronic exhibits, so it would otherwise require the Judicial Assistants to print out the entire electronic exhibit binder. The JA's should not have to remind the attorneys to timely deliver their hearing binders. Prepare the exhibits books in advance and ensure their timely delivery to the Judge.
  - Judge Darren Farfante
- Have your exhibits tagged, organized, and ready before the hearing. Copies for opposing parties and the court.
  - Judge Thomas Palermo
- Talk to your client before the hearing or trial. Know the name of your client.
  - Judge Thomas Palermo
- Talk to your witnesses before you call them to testify. Ensure they are aware of any pertinent court orders, e.g., orders from any motions in limine.
  - Judge Thomas Palermo
- Know your case. The Court relies on you to be the expert on your case.
  - Judge Thomas Palermo
- Have legal authority, bring copies for opposing counsel, make sure it is good law. Cite statutes, where applicable. Cite, apply, and follow the rules and applicable administrative orders.
  - Judge Thomas Palermo
- Be ready to answer questions.
  - Judge Thomas Palermo
- Be open to learning. Doing things the same way—again and again—does not mean that it was right. Be willing to go back and re-read the statute, rule, latest case law.
  - Judge Thomas Palermo
- The presentation of the evidence ought to be efficient and clean. Pick a logical way to tell the story and then tell it. The magic of some of the best trial attorneys is to take a complex set of facts and make it easy to understand. Find the theme, the message, the key points, focus on what matters, not on the needlessly salacious or irrelevant. Don't be afraid to bluntly and directly address whatever the actual main issue is.
  - Judge Thomas Palermo

- Be mindful of your burden of proof and required factual showing when seeking relief, whether by motion or petition. We continue to see motions and petitions seeking certain relief (mental health exams, sole parental responsibility, modifications of final parenting plans, to name a few) where the factual allegations, all taken as true, do not meet the minimum threshold for granting relief. Tell your clients this information, and tell them “no” if you cannot meet the burden of proof.
  - Judge Welsey Tibbals
- Draft a one page summary of the issues and evidence to be presented during the hearing or trial. This will not only help you get organized and prepared for the hearing in advance, but it will serve as a demonstrative template to present to the Judge at the beginning of the hearing. Proffering is very helpful at the opening of the hearing so the Judge can get an overview of the issues to be presented.
  - Judge Darren Farfante

#### Use of Electronic Appearances

- When you are initially retained to represent a Petitioner/Respondent in a particular case, **please file a Notice of Appearance as soon as possible**. If you do not file a Notice of Appearance prior to the scheduled hearing, you will not receive any pleadings filed by the other party or any orders entered by the Court. Also, it will be difficult for the Court to match you with the right case when admitting parties from the Zoom waiting room. Prior to the COVID-19 crisis, the Court’s bailiff would check in the parties and ask the attorneys to fill out a Notice of Appearance form or provide their business card to the Clerk by hand. This obviously is not possible while “ZOOMing”.
  - Judge Lisa Allen (regarding DVI hearings, in particular)
- **Please file all written motions, notices of filing or similar written pleadings with the clerk of court at least 24 hours before your scheduled hearing.** Last minute pleadings will not appear on the Court’s docket or JAWS system, and therefore, the Court will not have the opportunity to view your pleadings either before or during your scheduled hearing time.
  - Judge Lisa Allen
- Ensure counsel, client and witnesses have sufficient internet connections for sound and video to continue uninterrupted during the trial. Countless times I have had trials delayed or hindered by bad internet connections.
  - Judge Jared Smith
- Test your technology before you get in the courtroom for the trial or hearing. If the trial or hearing is being conducted by remote video systems like Zoom, test it out before the hearing. Know how you will display your evidence, practice screen sharing, make sure that you are set up to appear clearly, professionally, and in a place with sufficient internet bandwidth to minimize lag time. Don’t try to conduct a trial or hearing from your iPhone in your car or while in bed.
  - Judge Thomas Palermo

- Please remember to add your FULL NAMES for Zoom hearings. Case names and case numbers are a bonus, especially for large dockets. Zoom recently added a security feature requiring either a password or a waiting room. For those of us using waiting rooms, having full names and case information for everyone (lawyers, parties, witnesses) allows us to quickly move each case into the Zoom hearing. Remind your clients and others in practice of this practice.
  - Judge Wesley Tibbals
- Test your system set up regularly and test it with clients. If you are doing something different for a particular hearing, make sure you have tested it. Use a wired connection if possible; lower the number of users on your wifi connection.
  - Judge Wesley Tibbals
- Please consider whether having your client in the same room or office is necessary. We understand it may feel more comfortable for the client and the lawyer, but more often than not it impedes the use of the technology. It also usually involves the use face coverings, making it harder to hear.
  - Judge Wesley Tibbals

### Professionalism

- The Judicial Assistant works for the judge. Be kind. Know that however you act with a JA or a Deputy Clerk of Court will either build your reputation...or destroy it.
  - Judge Thomas Palermo
- Keep communications with the Court professional. Email is not a substitute for a motion. Do not forward correspondence to the Court or copy the Court on communications between the parties. Avoid ex parte communications.
  - Judge Thomas Palermo
- Whether by Zoom or in-person, dress for success. A court proceeding is rarely a place to display sartorial splendor. Dress how you wish the Court, the client, and opposing counsel to perceive you.
  - Judge Thomas Palermo
- Remember: you are not in this for a case or trial but for a career. Cases come and go. Lawyers and judges remain. Don't do something that will haunt you trying to win...because it can easily haunt you forever.
  - Judge Thomas Palermo
- Whether you win or lose, shake hands. If you can, go to lunch with opposing counsel when a case is done. Learn as much as you can from your opponent. Don't hate when you can learn and grow.
  - Judge Thomas Palermo
- Professionalism goes such a long way. Even if nervous or a mistake is made, when conducting oneself professionally, mistakes are tolerable and absolutely understandable.
  - Judge Frances Perrone

- Some attorneys usually have repeated professionalism issues. The judges talk and they see it; first impressions are important.
  - Judge Frances Perrone
- Act professionally and with civility toward each other; work with opposing counsel to eliminate misunderstandings, friction and wasted time; follow the “golden rule” by treating others as you would like to be treated
  - Judge Michael Scionti

### Emergencies

- File emergency motions only if the matter constitutes a real emergency; do not abuse the process as it may deny someone else who is in a real emergency the opportunity for a hearing sooner (and that someone may be you).
  - Judge Michael Scionti
- Remember your obligation under Fla. Stat. 57.105 and Smith v. Crider, 932 So. 2d 393 (Fla. 2d DCA 2006) when considering an emergency motion. Ask yourself whether the situation truly rises to that of an emergency.
  - Judge Wesley Tibbals