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FAMILY LAW

The newsletter of the ISBA's Section on Family Law

Message from the Chair

By Gregory A. Scott

Let me first begin by apologizing for the lack of a message from the Chair in last month's issue. Unfortunately, the time got away from me and I was unable to prepare an article in time to meet the publishing deadline.

One of the areas I would like to address is mediation required in visitation and custody disputes between the parties. I must confess that when the Supreme Court rules were issued mandating mediation of issues concerning custody and visitation, I believed that it was going to be a colossal waste of time, money and energy for the attorneys, litigants and the Court system. In the past, mediation attempts had been limited in success and were not generally used throughout the central and southern parts of the State to my knowledge. I know that in the northern part of the State and in other counties, it has been a mandated process for some time and has developed into an effective tool for the Courts. When the mandated mediation was ordered by the Supreme Court I, like many attorneys in our area, took the necessary training to become a mediator and available to assist the Court in the mandatory mediation process.

IN THIS ISSUE

Much to my surprise and upon information I have received from Judges and practitioners in the central areas and southern part of the state, the mediation process is actually assisting the Courts with custody and visitation issues. Several judges have commented on the success of allowing the parties' input in making decisions with regard to the visitation with their children and the custodial decisions to be made with regard to their children.

Forcing the parties to talk seems to work. Even in situations where the parties have come to mediation with an attitude they were going to "put in their time" and go through the process, there have been some issues which have been able to be resolved. One of the techniques in the mediation training talked about getting the parties to communicate in areas they can agree on. Even though some mediations only result in the parties agreeing upon a holiday schedule or vacation schedule as well as an exchange of information with regard to the children and child-related topics, I believe it accomplishes part of the Court-ordered purpose of mediation. When parties can say they have attempted in good faith to settle their issues and have some input in their children's lives and decisions associated with their children's lives, they tend to approach the other party in a more favorable light. They will not necessarily like the other person, but they at least have some working relationship with them. I have had cases where the parties are so recalcitrant that the mediation has not assisted them in changing their position, but I have been surprised to find that those are the exception rather than the rule.

I do not convey the thought that mediation is a cure all for all the issues affecting the dissolution process, but it has been a helpful an effective tool to start communication between the parties.

I have also found that mediation, when it is beginning to be successful, has also been beneficial in opening the door to effectively resolving all issues between the parties. I believe that if mediation is properly approached, it can be used to resolve not only the custody and visitation issues, but also issues concerning property divisions, support and the like. It is very hard in a lot of situations to resolve the custody issues without addressing financial issues. Many people are asking for more custodial time with the belief that will result in less child support or support-related payments. Those matters frequently are brought up in mediation and must be addressed. I encourage lawyers whose clients are going through mediation to allow mediators to address some of these financial issues with the understanding that your client will be referring and conversing with you concerning support matters as well as the custodial and visitation matters they are mediating. Good mediators keep the attorneys for the parties informed and ask them to assist in the mediation process by meeting with their clients and addressing issues that arose in mediation. Overall I believe we as family law practitioners should encourage mediation, let our clients know the advantages of mediation and encourage them to participate in the mediation process with the hope of reaching accord on, if not all, a majority of the issues affecting their children and themselves.

On a totally unrelated subject, I have been asked by a number of people as

to the identity of the older attorney who assisted me when I was new to the practice of law as I wrote about in the September issue. The older attorney was J.H. "Jack" Weiner. Jack's real name was John Weiner and he did not have a middle name or middle initial. After Jack helped me in the Courtroom, as I related in the September issue, I thanked him for the way he handled the matter and the lesson he taught to me. His response was "that's all right kid, I owed you one anyway." When I asked him what he meant, he told me a story about when he was a young lawyer and first came to the Springfield area to practice law.

When he first began his practice, he sought the assistance of two established older lawyers by the name of Charles Scott and Leo Scott. Those two older lawyers happen to be my great-uncles who were practicing law in the Springfield area in the early 1900's. When John Weiner came to town, he met with them and they asked him what his name was. Upon being informed of his name, my great-uncles told him that no one would hire a John Weiner and that he needed to change his name. They first asked him what his middle name was. When Jack informed them he had no middle name, they told him they were going to make up one for him and that he did not necessarily need a name as much as he needed an initial. They also told him that he should drop the name John and be known as Jack. They told him that to market himself as a lawyer, he should introduce himself as J.H. "Jack" Weiner and then people would hire him as opposed to hiring John Weiner. According to Jack, the use of a fictitious middle initial and becoming J.H. "Jack" Weiner brought him in substantially more business than he was experiencing as John Weiner. He told me he would be forever grateful to my great-uncles for helping him and that he was glad to help their great-nephew in his practice of law.

It just goes to show you that it is a small world after all. Have a great month and a great holiday season.

Grandparent visitation — A practitioner's approach

By Raiford D. Palmer, Momkus McCluskey LLC, Downers Grove

Introduction

Grandparent visitation[1] is an issue of growing concern in Illinois and across the U.S. With the rise in single-parent homes (as well as double-income homes), increasingly grandparents and other relatives are called upon to care for grandchildren As a result, following divorce and in other situations such as the death of a parent, grandparents increasingly seek relief from the courts for visitation time with minor children. In Illinois, the Legislature attempted to address this issue several times via the Grandparent Visitation Statute ("GVS"), 750 ILCS 5/607(a-3), et seq. Because the Illinois Supreme Court held a prior version of the statute unconstitutional,[2] the Legislature amended the GVS again, and the current version became law on January 1, 2007.

Many excellent articles exist regarding the GVS and the common law regarding grandparent visitation ("GV") in Illinois. These articles cover everything from the problems with the current GVS;[3] a review of the 2007 amendments to the GVS;[4] and a concise survey of common law GV principles and the 2007 statute.[5] Instead of revisiting the information covered in those fine sources, this article focuses on how to plead and prove this type of case from a practical standpoint.

Non-Constitutional Issues are the Focus

Clearly, the constitutionality of the GVS is a key problem as well as an obvious line of attack for parties defending a GV claim. However, the Illinois Supreme Court is not likely to address the constitutionality of the current GVS soon. Recently, the Court avoided dealing with the constitutionality of the GVS.[6] Furthermore, practitioners are unlikely to have a client with the funds and desire to attack the issue on constitutional grounds and potentially appeal a trial court decision. Finally, even if the statute is declared unconstitutional, grandparents still may retain common law visitation rights in Illinois.[7] While a constitutional challenge may certainly be made by the party defending a GV action, this article concentrates on the non-constitutional issues.

Inherent Bias in Favor of Grandparent Visitation—Best Interest is not the Standard

One difficulty facing the attorney for the parent is the general bias among some jurists, attorneys, and possibly Child Representatives ("CRs") or Guardians Ad Litem ("GALs") that a grandparent should have visitation. These well-intentioned practitioners believe GV is in the best interest of the children and mistakenly apply that standard to GV analysis. However, this is not the correct standard. The legal standards for both the GVS and common law GV are set forth in detail below. The Illinois Supreme Court stated "The constitution prohibits the state from forcing fit parents to yield visitation rights to a child's grandparents when the parents do not wish to do so merely because a trial judge believes that such visitation would be appropriate."[8] The parent preventing visitation may have very good reasons for doing so. Even if the parent has no good reason to deny grandparent visitation, U.S. and Illinois law still require the grandparent to meet a fairly high burden to secure visitation of a grandchild, in order to respect every parent's superior right to raise a child the way that parent sees fit.[9]

The grandparent's counsel has the advantage of the emotional pull in favor of GV in general, but must be prepared to present a claim well grounded in fact and law in order to obtain a success-

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ful result. The practitioner defending against a GV petition must focus the Court on the key legal requirements of the GVS and common law and make sure the grandparent meets his or her burden of proof.

Grandparent Visitation Statutory Requirements

The requirements for pleading and proving a GV claim under the GVS are as follows:

1. Petitioner must be a grandparent, great-grandparent, or sibling of the child;
2. The child must be over one year old;
3. The Petition must be filed in the county where the child resides;
4. The Petitioner must show an **unreasonable denial of visitation** AND
   a. one parent must be deceased, missing for three months, incompetent, or jailed for three months; or
   b. in a divorce (and pending divorce), legal separation, or another proceeding involving custody or visitation of the child, one parent does not object to the petitioner having visitation – but that visitation time is subtracted from the time with that parent; or
   c. in the case of a child born out of wedlock, the parents are not living together.
5. Most importantly, the provision in 750 ILCS 5/607 (a-5)(3) states:

   > In making a determination under this subsection (a-5) ***there is a rebuttable presumption that a fit parent's actions*** and decisions regarding grandparent, great-grandparent, or sibling visitation ***are not harmful*** to the child's mental, physical, or emotional health. The ***burden is on the party filing a petition*** under this Section to prove that the parent's actions and decisions regarding visitation times *are harmful* to the child's mental, physical, or emotional health. (Emphasis added).

The Key Issue – Rebuttable Presumption in Favor of the Parent

The GVS then describes the factors the court shall consider when determining whether to grant visitation. Petitioner's counsel will have a tendency (and preference) to jump right to these issues, and ignore the threshold presumption. The respondent's counsel must redirect the debate to the presumption issues, and the petitioner must be ready to rebut the presumption with relevant evidence. The threshold presumption issues are:

1. Whether an *unreasonable* denial of visitation exists (750 ILCS 5/607 (a-5)(1));
2. Whether the parent is "fit" – because a fit parent gains the benefit of a strong presumption in favor of that parent's decision-making, and evidence of "unfitness" would avoid the (a-5)(3) presumption entirely (750 ILCS 5/607 (a-5)(3));
3. If the parent is fit, petitioner must show that the actions of the parent in denying visitation are *harmful to the child's health*. (Id.) In most cases, this issue will be the crux of the case. (Even in the case of an "unfit" parent, the stature still requires that petitioner show that the parent's actions and decisions regarding visitation are harmful to the child's health).

Importantly, there is an element of causation implied in the GVS language. The statute in (a-5)(3) clearly states that the actions in limiting visitation "are harmful to the child's health"—indicating that the limitation of visitation must be shown to *cause* harm. This means that the petitioner must be prepared to prove not only some adverse medical or mental condition suffered by the child, but that it was *caused* by the unreasonable denial of visitation. On the opposite side, the respondent may be able to show that the child suffered from a pre-existing medical or emotional condition, or that the condition had another cause unrelated to denial of visitation with the grandparents.

Illinois Common Law Grandparent Visitation

In the event the GVS is held unconstitutional, at present, depending on the jurisdiction, the practitioner may have to deal with the Illinois common law on GV. Alternatively, the court may hold that no common law right exists for GV depending on the applicable jurisdiction. GV common law is set forth in detail with an historical analysis by the Second District Appellate Court in *Felzak v. Hruby*.[10] That court held pursuant to the Illinois Supreme Court holding in *Chodzko*, that a grandparent could seek visitation of a child upon a showing of "special circumstances." The Appellate Court in *Felzak* went on to hold that *Wickham* narrowed the common law right to GV. Now, to assert common law GV rights, the grandparent must not only plead "special circumstances" (such as the death of a parent) but also must overcome the presumption that the actions of a fit parent in denying visitation are presumed to be in the best interest of the child.[11]

Basic Pleading Requirements Under the GVS and Illinois Common Law

As the petitioner, you must be prepared to plead in two counts for safety—one based on the GVS, and one under Illinois GV common law. Under the GVS count, the key items petitioner must plead beyond basic jurisdictional allegations are:

1. Unreasonable denial of visitation;
2. Unfitness of the parent denying visitation, and/or:
3. That the child suffered mental, physical, or emotional harm from the unreasonable denial of visitation.

The common-law count must contain allegations stating:

1. Denial of visitation;
2. "Special Circumstances"—i.e., death of parent, jailing of parent);
3. Unfitness of the parent denying visitation, and/or;
4. Denial or limitation of visitation is not in the child's best interests.

Evidence Gathering

Then, the petitioner must gather evidence to support this claim. This can be in the form of oral testimony from the parties, third-party lay witnesses, or better yet, expert witnesses. Without this evidence, the petitioner will not overcome the presumption in favor of the custodial parent. The respondent's counsel, conversely, must carefully review the evidence in the case, and be sure to handle depositions in the case with an eye toward limiting the testimony of the petitioner(s) regarding harm to the child or parental unfitness.

Evidence to gather at the outset will focus on the identities of anyone who has information about the physical, mental, or emotional health of the parent, child, and/or grandparent, depending on the situation. In addition, obtain-

ing the psychological/mental records, school records, medical history, and evidence of criminal convictions for the parent, child and grandparent will be important. The nature of any existing or prior relationship between grandparents and children is important, as well as evidence of and wrongdoing or conditions that might be harmful to the child related to the grandparents. Deposition questions of lay witnesses can concentrate on the direct observations and knowledge of the witness regarding unfitness of the parent, or more likely, any harm the children suffered. Proof of harm can be found in evidence of physical injury such as bruising, cuts, or illness. Emotional or psychological injuries, evidenced by diagnosed abnormal psychological conditions, dropping grades in school, et cetera can be sufficient proof of harm as well.

The parties may need to retain controlled experts to examine the children in order to determine whether they have suffered any physical or mental harm, and if so, the cause of that damage. Rule 215 examinations may be very useful to gather this kind of evidence. Naturally, this type of case, if properly handled, can get very expensive in terms of expert witness costs and attorney fees—this alone may present a barrier to entry for many grandparents, or a strong incentive to settle for respondents facing well-funded grandparents.

Conclusion

As pointed out by David Schaffer in his recent article, the GVS is in need of a substantial rewrite.[12] Unfortunately, without guidance regarding the current GVS from the Illinois Supreme Court and in the absence of a revised GVS that can pass constitutional muster, the careful practitioner must plead and prove a grandparent visitation case under both the statute and Illinois common law. As the GVS seems to be amended annually and case law continues to evolve, the practitioner might find the law changing during the pendency of a case. Therefore, keeping current on the law in this area is more important than ever. This article is no substitute for a complete review of current law, and the articles and cases cited in the endnotes will help provide the background you need to do a good job for your client in this ever-growing area of family practice. Keeping a tight focus on the key pleading and proof requirements under both the Illinois Grandparent Visitation Statute and Illinois common law will be important to obtain the optimum outcome for your client.

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1. This article also applies to other family members, such as aunts and uncles. The term "grandparent" is used throughout but is intended to include these other potential parties.

2. *Wickham v. Byrne*, 199 Ill.2d 309, 320 (Ill.2004).

3. "Child Custody Statutes Ready for A Complete Overhaul," David N. Schaffer, ISBA Family Law, Vol. 51, No. 1, July 2007.

4. "New Amendments to the Illinois Grandparent Visitation Statute," Michael K. Goldberg, 94 IBJ 660, December 2006.

5. "Grandparent Visitation," Nicole M. Onorato, ISBA Child Law, Vol. 19, No. 1, P. 7, September 2006.

6. *Felzak v. Hruby*, --- N.E.2d ---, 2007 WL 2729357 (Ill. 2007). The Illinois Supreme Court declined to address the constitutionality of the GVS, finding that since the child in question was now age 18, the issue of forcing grandparent visitation was moot.

7. Prior to enactment of the first GVS, Illinois recognized a common law right to visitation for family members (including grandparents) with a showing of "special circumstances." See *Chodzko v. Chodzko*, 66 Ill.2d 28 (1976), *Bush v. Squellati*, 122 Ill.2d 153, 156 (1988). In cases dealing with the GVS, the Second District held that if the GVS was unconstitutional, the parties reverted to common law visitation rights, *In re Marriage of Sullivan*, 355 Ill. App.3d 1162 (2nd Dist. 2003), and *Felzak v. Hruby*, 367 Ill.App.3d 695 (2nd Dist. 2006). But see *Buerksen v. Graff*, 351 Ill. App.3d 148 (1st Dist. 2004) where the First District held that no common law right to GV existed where the GVS was held unconstitutional; and *In re Marriage of Ross*, 355 Ill.App.3d 1162 (5th Dist. 2005) where the court held that a common law right to GV was as unconstitutional as the invalidated GVS because the "special circumstances" to be proven under the common law were similar to the problematic GVS provisions.

8. *Wickham v. Byrne*, 199 Ill.2d 309, 320 (Ill.2004).

9. *Troxel v. Granville*, 530 U.S. 57 (2000)

10. *Felzak v. Hruby*, 367 Ill.App.3d 695, 706 (2nd Dist. 2006).

11. *Felzak v. Hruby*, 367 Ill.App.3d 695, 707 (2nd Dist. 2006).

12. "Child Custody Statutes Ready for A Complete Overhaul," David N. Schaffer, ISBA Family Law, Vol. 51, No. 1, July 2007.

Cohabitation revisited

By Gary Schlesinger

Approximately 1996 or so, I spoke to the Lake County Bar Association Family Law Seminar on cohabitation. At that time, I had read and reviewed all the cases in Illinois since the IMDMA was passed in 1977 that dealt with cohabitation. The cases were all summarized in a chart with an accompanying article. The article and chart were published in the ISBA Family Law Section Council Newsletter. That is not available online through the ISBA but the material is in the articles section of my Web site.

Since that work was done, there have been several cases dealing with cohabitation as a means of terminating maintenance payments. These newer cases have significantly changed the law in this area so it is time to revisit the issue.

Thanks to my associate, Michael Strauss, for legal research and locating all the cases.

In almost chronological order, and some are in the prior materials, here are the cases:

***IRMO Harris*, 203 Ill. App. 3d 241 (1st Dist, 1990)** is not a cohabitation

case. In it, the wife remarried, her maintenance ended. The subsequent marriage was annulled, or as the statute calls it, declared invalid. She wanted to reinstate the maintenance. The trial and appellate courts both said that once the maintenance terminates by operation of law, the subsequent annulment does not reinstate the maintenance.

The same thing should apply for cohabitation. It does. The Second District held that pre judgment cohabitation prohibits the trial court from granting maintenance at the time of the judgment. *IRMO Toole*, 273 Ill.App.3d 607 (1995).

An interesting issue is when does the maintenance terminate. The answer appears to be different for cases of pure maintenance and cases in which the maintenance and child support are unallocated and paid in one payment all designated unallocated maintenance and child support. For the latter, since the cessation of the support upon cohabitation would also cease and/or modify child support, the ending date is the notice of the filing of the petition to modify or terminate. *IRMO Hawking*, 240 Ill. App. 3d 419 (1st Dist. 1992); *IRMO Elenewski*, 357 Ill. App. 3d 504 (2005) For the former, pure maintenance, the maintenance ends upon the start of the cohabitation, not the notice of the filing of the petition. *IRMO Gray*, 731 N.E. 2d 942 (2nd Dist. 2000).

In *IRMO Weisbruch*, 304 Ill. App. 3d 99 (2nd Dist. 1999) the court dealt with the issue of same sex cohabitation. The wife purchased a house with another woman. They shared the expenses, including the mortgage equally, they had a joint checking account into which they both deposited paychecks and the recipient deposited the maintenance payments. They had borrowed money from each other. They are the beneficiaries of each other's life insurance policies and retirement accounts. They took vacations together. They exchanged gifts. They sent out joint Christmas letters. They denied a sexual relationship. The trial court found cohabitation and terminated the maintenance. The wife appealed.

The appellate court affirmed. It found that there need not be a sexual relationship citing *IRMO Sappington*, 106 Ill. 2d 456 (1985). "The most important factor is whether the cohabitation affects the receiving spouse's need for support." The court noted the anomaly that even if the new partner did not meet all the financial needs of the recipient, the maintenance still ended due to the cohabitation, the same as remarriage, because the legislature said that those were terminating, not modifying, events.

The burden of proof, according to the *Weisbruch* court, is preponderance and the standard of review is the manifest weight of the evidence, not abuse of discretion. Thus if the findings and decision of the trial court are supported by the evidence, the trial court will be affirmed. The result is that each of these cases only gets one chance to prevail—the trial court. Seldom is the trial court reversed on appeal if there are no legal errors and if there is evidence to support the decision.

***IRMO Elenewski*, 357 Ill. App.3d 504 (4th Dist. 2005)** is not a cohabitation case. It is an unallocated maintenance and child support case in which the recipient wife remarried. The facts are important. In August 2003, husband filed a petition claiming wife was cohabiting since April 2002. Wife admitted that she and the paramour had been living together since May 2002 and that she married him on June 22, 2002. In November 2003, husband filed a second petition to terminate the unallocated payments as of the date of the marriage.

The trial court terminated the unallocated support as of the date of the filing of the first petition, August 2003 and set the monthly child support at $2181.97 from then forward. Husband appealed.

The Fourth District held that because unallocated support is partly child support, modification could only be retroactive to the date of filing. The recipient of child support is entitled to believe the ordered payments are definite until a court tells her otherwise. A recipient of unallocated child support should not have to take the risk that, upon allocation, a trial court will set child support for past periods at the low end of the range.

***IRMO Michaelson*, 834 N.E. 2d 539 (1st Dist 2005)** is a case in which the court had to determine if the maintenance was terminable on cohabitation and subsequent remarriage or was it maintenance in gross and thus not subject to termination or modification. The trial court held maintenance in gross and the appellate court affirmed.

Maintenance in gross is a non-modifiable sum certain to be paid and received regardless of any change in circumstances. The sum is in the nature of a property settlement. It is vested at the time of the judgment. Remarriage does not end it. Maintenance in gross by definition is not modifiable.

The husband had his termination petition dismissed, the wife's petition for rule for non payment was granted, the husband had to pay all of her attorney fees. The appellate court affirmed all of this.

The lesson is being careful how you draft your agreements. Say what you mean. Mean what you say. Make sure that all the parties and attorneys understand the same thing. Cover it in the prove up so that there are neither questions nor surprises later.

The next case is ***IRMO Susan*, a Second District opinion decided Oct. 6, 2006. 367 Ill. App. 3d 926.** The trial court found cohabitation. The Appellate court affirmed using the manifest weight of the evidence standard. The wife and her boyfriend, Donald Borski, live five miles apart. They have been dating for over three years. They each maintain their own dwelling. One to two evenings a week, she has dinner at his house. Two to three evenings a week she is at his house to watch television or do some other activity. They often sleep at each other's house. They have spent holidays together. They sent out Christmas cards signed, "Love, Mom and Don." They have gone on vacations together.

The trial court found that there was a de facto marriage even though there was no commingling of funds nor did either provide monetary support to the other.

At least in the Second District, if you are seeking to terminate maintenance, choose your theory. Either there is the financial intertwining or there is a de facto marriage. If you are fortunate, there are both.

The last case is ***IRMO Thornton*, 373 Ill.App.3d 200, 867 N.E.2d 102, 310 Ill.Dec. 789 (3rd Dist. 2007).** Parties get divorced. Wife had the husband's brother move in to her house out of the goodness of her heart because he did not have a place to stay and was

homeless. The husband stopped paying maintenance. The wife filed a petition for rule. The defense was cohabitation. The trial court found that it existed because she was using the maintenance to support the former brother-in-law. The appellate court initially affirmed the trial court, but vacated its ruling on the wife's request for rehearing.

The court stated that when the cohabitation factors, as defined by case law, are examined, there is no de facto husband and wife relationship

The cases pose significant problems for the recipient spouse who is attempting to get on with her life in another relationship or who takes in a roommate to help pay her expenses. In doing either, she seriously risks her continued receipt of maintenance. To prevent the payor from unilaterally terminating the payments as occurred in *Thornton* and *Michaelson*, have the payment made by a notice to withhold. That way the payments can only stop with a court order. Obviously, if you represent the payor, you want the reverse.

The cases appear to conclude that there is a policy toward terminating maintenance for cohabitation, which is getting easier to prove. The path from *Sappington* through to *Susan* and *Thornton* all seem to favor the payor. Close cases appear to be decided in favor of termination. The trial court is very seldom reversed.

So, what is cohabitation? The legislature has not changed the definition at all. The courts have. The answer is that cohabitation is whatever living and financial arrangement the trial court says it is. It now appears that almost any dating or social relationship of the recipient can be considered cohabitation and could result in a termination of the maintenance.

Lawyers' lives in balance: Developing your plan and tips for staying energized & productive

By John W. Olmstead, MBA Ph.D CMC, of Olmstead & Associates in St. Louis, Missouri.

I am often asked to help law firms design and implement strategic business plans. I also coach many solo and small firm attorneys in career as well as personal and professional life balance issues. In both situations—the starting point is the same—begin by taking inventory of your personal life goals. Only then can you effectively begin planning an effective career strategy or law practice. Unfortunately, may attorneys start with the law practice and take care of business first and fail to take care of their personal lives until it is too late. It is much easier to begin your life and career with balance that it is to try to bring your life back into balance later in life.

Everyone faces the issue of time management at one point or another. Attorneys work on client matters, firm projects, fight long commutes, manage households, attend school or other training, raise children, respond to increasing work and time pressures of the shrinking workplace, and often deal with aging parents. The days often seem to last long into the night and vacation and leisure time seem to be consumed with issues other than relaxation and personal fulfillment.

In fact, a recent study of more than 50,000 employees from a variety of manufacturing and service organizations found that two out of every five employees are dissatisfied with the balance between their work and their personal lives. The lack of balance "is due to long work hours, changing demographics, more time in the car, the

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deterioration of boundaries between work and home, and increased work pressure," says the study's author, Bruce Katcher, president of the Discovery Group, a management consulting firm.

Recent ABA surveys and studies demonstrate similar findings. Attorneys are becoming more and more frustrated by:

- Not enough time to enjoy family and life
- Working harder and making less
- Missing out on life and family
- No time to pursue and develop personal and professional interests
- Not spending quality time with spouse and children

Our clients are also telling us that personal and professional life balance is their greatest challenge. Time is becoming more important to people than money.

Attorneys are experiencing dependency and other problems such as alcoholism, drug addiction, depression, divorce, and suicide.

In most settings, the pace and competitiveness of legal practice have rapidly accelerated. Technological innovation has heightened demands for instant accessibility, and profit-related concerns have pushed billable hours to unprecedented levels. The result, as experts note, is a "culture clash" between personal and professional commitments. Lawyers remain perpetually on call—connected to the workplace through cell phones, e-mails, faxes, and beepers. According to ABA studies almost half of surveyed lawyers feel that they do not have enough time for themselves or their families. Almost three-quarters of lawyers with children report difficulty balancing professional and personal demands. The number of women who doubt the possibility of successfully combining work and family has almost tripled over the past two decades. Only a fifth of surveyed lawyers are very satisfied with the allocation of time between work and personal needs. A desire for more time to meet personal and family needs is one of the major reasons lawyers consider changing jobs, and it is a more important consideration for women than for men.

Ask yourself the following questions:

1. Do you find yourself spending more and more time on client and firm work-related projects?
2. Do you often feel that you don't have any time for yourself—or your family and friends?
3. Does it seem that every minute of every day is always scheduled for something?
4. Do you sometimes feel as though you've lost sight of who you are and why you chose law as a career?
5. Can you remember the last time you were able to find the time to take a day off to do something fun—something just for yourself?
6. Do you feel stressed out most of the time?
7. Can you remember the last time you used all your allotted vacation and personal days?
8. Does it sometimes feel as though you never even have a chance to catch you're breath before you have to move on to the next client project/crisis?
9. Can you remember the last time you read—and finished—a book that you were reading purely for pleasure?
10. Do you wish you had more time for some outside interests and hobbies, but simply don't?
11. Do you often feel exhausted—even early in the week?
12. Can you remember the last time you went to the movies or visited a museum or attended some other cultural event?
13. Do you do what you do because so many people (children, partners, parents) depend on you for support?
14. Have you missed many of your family's important events because of work-related time pressures and responsibilities?
15. Do you almost always bring work home with you?

If you answered with non-positive responses to more than five questions your life is out of balance and you need to take steps to correct the situation.

Create A Personal/Professional Life Plan

Establishing personal and professional priorities and making correct choices is crucial. You must begin by determining what's important in life—make a list of what's truly important in your life, establish boundaries and priorities, and formulate a plan. Typical elements that should be on your list include:

- Physical Health
- Spiritual
- Nutrition
- Stress Management
- Family
- Friends
- Financial
- Professional Relationships
- Efficiency at Work
- Professional Development
- Hobbies and Outside Interests
- Your Work Life

Once you have developed your list—you are ready to formulate your plan. Your plan should include your time investment that you plan on making in each of the above areas as well as specific activities (action items) and timelines. Once you have formulated your personal plan you are ready to develop the business plan for your practice.

A successful life and practice requires:

- Focus
- Balance
- Roadmap (Plans)

Keys To Happiness

- You must take responsibility for your personal happiness, set clear goals, develop skills, become sensitive to feedback, know how to concentrate, and get involved.
- You must have an overall context within which to live.

Tips For Staying Energized And Productive

1. Develop a Personal Life Plan and a Career/Practice Business Plan.
2. Use and work your plan.
3. Work smarter—not harder. Improve your time management skills.
4. Create your life balance expectations for you clients and your superiors in the firm. When interviewing for a new job or position let your future employer know your expectations—upfront.
5. Tend to your physical health. Insure that you address prevention and treatment of diseases, weight control, physical fitness and stress management. Schedule and keep annual physicals. Exercise daily.
6. Begin looking for ways to implement alternative billing. Look for alternatives to billable hours.
7. Take time for yourself and family. Take vacations.
8. Define what is important to you and define your personal-professional life balance boundaries.

9. Enjoy life and get involved in activities other than the practice of law. Pursue hobbies and other interests.
10. Know your personal and professional goals.
11. Learn to relax. Take time everyday for meditation, prayer, yoga or some other activity that is focused solely on relaxation.
12. Schedule time for relationship building and maintenance.
13. Never eat alone. Use mealtime to network with referral sources, potential clients, and other professionals.
14. Turn off e-mail notifications, pagers, and cell phones.
15. Develop a personal and business budget and follow it.
16. Network, Network, Network—both inside and outside of the firm.
17. Develop your conversational skills.
18. Eliminate clutter at home and at work. Develop a filing system for your personal papers and business files and documents. Open and review your mail immediately and discard anything that you do not intend to keep.
19. Use technology to streamline your work.
20. Delegate work.

Good luck on your journey.

John W. Olmstead, Jr., MBA, Ph.D., CMC, is a Certified Management Consultant and the president of Olmstead & Associates, Legal Management Consultants, based in St. Louis, Missouri. The firm provides practice management, marketing, and technology consulting services to law and other professional service firms to help change and reinvent their practices. The firm helps law firms implement client service improvement programs consisting of client satisfaction surveys, program development, and training and coaching programs. Their coaching program provides attorneys and staff with one-on-one coaching to help them get "unstuck" and move forward, reinventing both themselves and their law practices. Founded in 1984, Olmstead & Associates serves clients across the United States ranging in size from 100 professionals to firms with solo practitioners. Dr. Olmstead is the Editor-in-Chief of "The Lawyers Competitive Edge: The Journal of Law Office Economics and Management," published by West Group. He also serves as a member of the Legal Marketing Association (LMA) Research Committee. Dr. Olmstead may be contacted via e-mail at jolmstead@olmsteadassoc.com. Additional articles and information is available at the firm's Web site: www.olmsteadassoc.com

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