

PRACTICAL ADVICE

FROM THE FAMILY LAW PRACTICE



Fox Rothschild LLP
ATTORNEYS AT LAW

Preparing For Trial

When preparing for a case, many lawyers assume that clients know how trials work. Clients who have never participated in a trial tend to assume that they know more than they actually do, since their experience comes from television. Unfortunately, there is a crucial distinction. Shows like Judge Judy and Judge Joe are created to provide amusement. Real court is much more formal and is directed toward exploring the relevant facts in a question-and-answer format (Examination and Cross-Examination).

Real Court Proceedings

Matrimonial court can come in the form of proceedings before a “master” (in Pennsylvania) or before a judge. “Masters” are lawyers appointed by elected judges to take evidence and publish recommendations concerning support and property issues. Although they are not “real judges” because they have not been elected to their positions, masters’ viewpoints and rulings are well-respected by judges. A master’s ruling can be appealed to a judge, but judges rely heavily on what the masters have recommended.

Whether trial is before a judge or a master, the procedure is similar. The party who filed first (the plaintiff) puts on evidence first. Evidence usually comes in two forms: testimony and documents. The plaintiff has the right to choose which witnesses appear and in what order. This includes situations where the plaintiff selects to call the defendant as a witness in his or her case. It can be very unsettling to be told by your attorney that your spouse will proceed first only to find out that your spouse has elected to make you the first witness to testify.

The Plaintiff Begins

Plaintiff’s Testimony

Assume that you are the plaintiff. As such, you’re the first to present evidence and your testimony is conducted by your lawyer. It’s the lawyer’s job to cover with you every salient fact that needs to be placed into evidence. Once your examination is completed, you don’t necessarily get another chance to tell your side of the story to the court. Additionally, the court must receive any relevant documents to support your case when the witness testifies.

Defendant’s Attorney: The Cross-Examination

Once you finish telling your story under the direction of your lawyer, your spouse’s lawyer gets to ask questions in what is called “cross-examination.” During what lawyers simply call “cross,” the lawyer can ask you leading questions – “Isn’t it true that...” “You never told your spouse that you borrowed from your retirement account, did you?” Cross-examination allows the opposing side to test your credibility or to show documents or other evidence that may appear to contradict what you have said. It is often pointed and painful, and every witness must be prepared to have his or her story challenged.

Plaintiff’s Attorney: The Re-Direct

Once the other attorney has finished, your attorney gets a second chance to ask you questions. This comes with a major limitation. Your attorney must limit questions to subjects on which you were cross-examined. The “re-direct” examination is only for the purpose of clearing up misunderstandings or

ambiguities that were created by cross-examination. Take for example the question “Did you ever discuss taking money from the retirement account with your spouse?” You answered that you had not. The fact is that you had not discussed the subject, but you had left the retirement withdrawal form on the table for your spouse to sign, and she had signed it. This testimony clears up any confusion so the court has and understands all the facts.

Defendant’s Attorney: The Re-Cross

The other side can then “re-cross” you. Again, the re-cross is limited to what was discussed in the re-direct. With each stage, the scope of the questioning is limited to the prior set of questions. Once the witness has been thoroughly examined, it’s time for a new witness. The same rules apply for all future witnesses. Direct examination of a key witness can go on for hours or even days, which means you may have a long wait before your lawyer gets a chance to cross-examine your spouse and even longer until you are able to set the record straight with your own testimony. Further, the timing between testimony is often disjointed, and therefore, it can be a challenge to keep the complex facts involved in the case fresh in the judge’s mind.

The Defendant’s Turn

The rules are that the plaintiff gets to present his or her case by calling each witness. The defendant then gets a chance to cross-examine the plaintiff’s witnesses.

The process begins again. Now it is the defendant’s turn to present his or her case by calling each witness. The presentation

of the defendant's case is similar to the plaintiff's with direct examination of the witnesses followed by the plaintiff's attorney's cross-examination, the defendant's attorney's re-direct and the plaintiff's attorney's re-cross.

The Rebuttal

Is it over? Not quite. Suppose subjects come up in the defendant's case that the plaintiff never discussed? The plaintiff has the right to call witnesses again for the purpose of rebuttal. Again, this is not a chance to rehash testimony already given. Rebuttal is limited to subjects that have not been fully explored.

A Deeper Look into Preparing for Equitable Distribution Proceedings

Often the focus in a court case is on equitable distribution, which can be unwieldy because people own many assets (stock options, timeshares, nonqualified retirement plans, etc.), and this can be complicated. All too often clients don't understand these assets as well as they should, and that can make proceedings both long and frustrating. The key is to understand the assets and the income that are unique to your case. Experts may be necessary.

In these proceedings, both sides are supposed to share their exhibits with the other side in advance of the trial. It is usually productive to sit down with your attorney in the days before a complex hearing to review what you will have to tell the court and to try to anticipate how the other side will respond.

About Fox Rothschild's Family Law Practice

Fox Rothschild's Family Law Practice is one of the largest in the region. Our attorneys have experience with virtually every issue that may arise in a family law case. We understand that family law matters are personal, and that clients must live with the consequences of their decisions. We offer the advice and counsel of experienced attorneys who not only support clients through a difficult time, but also guide them to ensure sound thinking about their plans for the future.

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