



## ABA FAMILY LAW TRIAL ADVOCACY INSTITUTE



# Program Schedule: Course Descriptions

May 18 – 24, 2008

# American Bar Association's Family Law Trial Advocacy Institute May 18 – 24, 2008

This course has five parts. The exercises in each part are designed to help build a piece of your “trial lawyer” skill set. Each part also integrates techniques from the previous part or parts so that you are continually building the skill set. The parts of the course are:

- Part A: Your Case: Theme and Theory from Beginning to End
- Part B: Your Case: Evidence and What the Evidence Will Show
- Part C: Your Psychological Expert: What Those Tests Mean and How to Use Them in Your Case
- Part D: Your Business Valuation Expert: Valuation Methodology and Your Case
- Part E: Your Case: Putting It All Together

**NOTE: *Courtroom attire is required for all sessions.***

**NOTE:** Please read and become familiar with the case file in **Johnson v Johnson** in its entirety before arriving at the Institute. It is essential that you spend some pre-program time learning the issues. You must complete the attached Proof Chart for the session on case analysis in advance.

**NOTE:** Financial analysis is a critical component in many divorce cases. Johnson v Johnson is no exception. To increase performance skills, review the financial information and, if possible, discuss the valuation issues with your local financial consultant before leaving home.

**NOTE:** You will need to bring your own notepads, post-it notes, extra pens, and a useful practice guide to evidentiary foundations. Think in terms of what you might carry with you for a week-long trial. NITA's **Evidence with Objections** will be provided to participants.

**NOTE:** You have been designated to represent either Mrs. Johnson (A) or Mr. Johnson (B). Please prepare each assignment accordingly.

**NOTE:** You are encouraged to bring your laptop if you regularly use one. If you don't have a laptop, you will not be at a disadvantage during the course – having a laptop just may make your week a little easier.

**NOTE: All lecture/demonstrations will be done using the teaching case file of *Lewis v. Lewis*.**

**NOTE:** For each exercise where participants break into small groups, the meeting rooms and video review rooms for each group will be announced during the program. Generally, you'll be in the same room for each exercise and you'll go the same room each time to have your tape critiqued.

## Sunday, May 18

- 9:15 – 9:45**     **PARTICIPANT CHECK-IN**  
(First Floor Lobby at University of Denver Sturm College of Law)
- 10:00 – 11:00**   **INTRODUCTION TO PROGRAM (Room 165)**
- 11:00 – 12:15**   **Lecture: Oceans and Icebergs: The Essential Foundations for Effective Advocacy (Room 165)**  
How to use Neuro-linguistic-programming techniques to more effectively advocate for your client.
- 12:15 – 1:00**     **LUNCH (Forum, 1<sup>st</sup> Floor)**

Program: Part A

Your Case: Theme and Theory from Beginning to End

- 1:00 – 2:00**     **Lecture/Demo: Motion Practice: “Tell the Judge What You Want” (Room 165)**  
Advocating for your client before a judge is an important aspect of the trial process. This session presents both the viewpoint of the practitioner and of the judge. A short demonstration, followed by discussion, is given to assist the participants in understanding what strategies and techniques are most effective.
- 2:00 – 3:00**     **Lecture/Demo: Direct and Cross Examination of the Fact Witness (Room 165)**  
Presentation gives participants not only the foundation and theory behind direct and cross-examination, but also techniques for dealing with the most difficult issues faced in conducting both direct and cross examinations.
- 3:00 – 3:15**     **Break (Forum, 1<sup>st</sup> Floor)**
- 3:15 – 4:15**     **Lecture/Demo: Opening Statements and Closing Arguments (Room 165)**  
The “opening” and “closing” are the main aspects of the trial where the advocate gets to tell their client’s story. A short lecture on technique and theory is followed by a demonstration of an “opening” and a “closing”. The demonstrations are then discussed as a means of providing the participants guidance when doing their openings and closings.
- 4:15 – 5:45**     **CASE ANALYSIS**  
Participants meet with faculty members to discuss the theory of the case. Discussions are focused by the use of a proof chart that participants fill out before they come to the program. This session provides the participants the legal foundation they use to prepare and present for the rest of the program.
- 5:45 – 6:00**     **Review of Monday’s Assignments (Room 165)**  
All Participants

## Monday, May 19

- 8:00 – 8:15**    **Participants Meet with Faculty Member (Room 165)**
- 8:15 – 9:45**    **EXERCISE: Motion Practice - Temporary Motions/Orders**  
In this exercise, the participants are given the opportunity to argue a motion before a judge (role played by a faculty member). Participants are critiqued by the faculty and then they have their video tape of the exercise critiqued, also by a faculty member.
- 9:45 – 10:30**    **EXERCISE: Closing Arguments**  
Participants present a closing argument for their client, focusing on the issues of custody and business valuation and using the case themes developed in the case analysis session. The presentations are critiqued by a faculty member and participants also receive additional faculty critiques of their video taped presentation.
- 10:30 – 10:45**    **Break (Forum, 1<sup>st</sup> Floor)**
- 10:45 – 12:15**    **EXERCISE: Closing Arguments (Problem 4 in the case materials, page 42) - continued**
- 12:15 – 1:00**    **LUNCH (Forum, 1<sup>st</sup> Floor)**
- 1:00 – 3:00**    **EXERCISE: Direct and Cross of the Parties**  
Participants will direct, cross and play the witness role. Focus will be on asking effective and appropriate questions during direct (open ended) and cross (leading) examinations. This includes full preparation for direct and cross examinations. Faculty will determine the length of time each participant has for the exercise.
- 3:00 – 3:15**    **Break (Forum, 1<sup>st</sup> Floor)**

Program: Part B

Your Case: Evidence and What the Evidence Will Show

- 3:15 – 5:15**    **Evidence**  
**Evidentiary Foundations Including Impeachment, Refreshing Recollection and Foundations**  
Participants will meet in their small groups and will make an evidence chart for each piece of evidence that will be used in Tuesday's exercise. Additionally, groups will discuss past recollection recorded, refreshing recollection and impeachment.
- 5:15 – 5:30**    **Review of Tuesday's Assignments (Room 165)**  
All participants

Note: Review the Rules of Evidence regarding: Evidentiary Foundations, Impeachment, Past Recollection Recorded, Refreshing Recollection and Prior Inconsistent Statements.

## Tuesday, May 20

**8:00 – 8:15**    **Participants Meet with Faculty Member (Room 165)**

**8:15 – 10:30**    **EXERCISE: Advanced Direct And Cross Examination Of The Parties**  
This exercise is used to provide the participants training in offering exhibits and getting them into evidence. The course materials provide a variety of different types of evidence that attorneys will face when in trial. Faculty provides instruction and practical experience tips during the sessions.

**10:30 – 10:45**    **BREAK (Forum, 1<sup>st</sup> Floor)**

*(Reminder, Final Trial Pairings are due by 1:00 PM today.)*

**10:45 – 12:15**    **Continue Advanced Direct and Cross of the Parties** (Same room assignments.)

**12:15 – 1:00**    **LUNCH (Forum, 1<sup>st</sup> Floor)**

**1:00 – 3:00**    **Opening Statements**

Participants present an opening statement for their client, focusing on the issues of custody and business valuation and using the themes developed in the case analysis session. The presentations are critiqued by a faculty member and participants also receive additional faculty critiques of their video taped presentation

**3:00 – 3:15**    **BREAK (Forum, 1<sup>st</sup> Floor)**

Program: Part C

Your Psychological Expert: What Those Tests Mean and How to Use Them in Your Case

**3:15 – 4:15**    **Lecture - Use of Psychological Guidelines in Custody Cases (Room 165)**

Every family law attorney needs to understand the Psychological Guidelines used in their practice. This lecture gives the participants an in-depth look at the guidelines and how to best use them in trial.

**4:15 – 5:15**    **Demonstration: Qualifying/Direct And Cross Examination Of Mental Health Expert (Room 165)**

This demonstration is a follow-up to the preceding lecture. The moderator uses the exercise to highlight the information that was presented in the lecture. Participants also get valuable information to use during their direct and cross examination exercise the following day.

**5:15 – 5:30**    **Review Wednesday's Assignments (Room 165)**

All participants

## Wednesday, May 21

- 8:00 – 8:15**    **Participants Meet with Faculty Member (Room 165)**
- 8:15 – 9:45**    **Using the Consulting Expert to Prepare for Trial**  
In this small group exercise, the participants meet with a faculty member and a psychologist to discuss how to best use a psychological expert in preparing for a trial.
- 9:45 – 10:30**    **Exercise - Direct and Cross of Psychologist Experts: Qualifications**  
Part I: Participants conduct a direct and cross examination of a psychological expert, focusing on the theory and techniques that were presented in the previous day's exercises. Faculty members critique each participant, providing practical tips for improving the examination. This portion of the exercise is focused on getting your expert qualified and how to deal with qualification obstacles.
- 10:30 – 10:45**    **BREAK (Forum, 1<sup>st</sup> Floor)**
- 10:45 – 12:15**    **Exercise – Direct and Cross of the Psychologist Experts (continued)**
- 12:15 – 1:00**    **LUNCH (Forum, 1<sup>st</sup> Floor)**
- 1:00 – 3:00**    **Exercise: Direct and Cross of Psychological Expert (continued): Substantive Issues**  
Part II: This portion of the exercise is devoted to dealing with the psychological issues from the case Materials. Faculty members critique each participant, providing practical tips for improving the examination
- 3:00 – 3:15**    **BREAK (Forum, 1<sup>st</sup> Floor)**

Program: Part D

Your Business Valuation Expert: Valuation Methodology and Your Case

- 3:15 – 5:00**    **Financial Lecture: Understanding the Numbers (Room 165)**  
This presentation is the compliment to the overview from the previous day. Not only do the participants need to understand the foundational elements of business valuation, they need to be able to understand what the numbers mean.
- 5:00 – 5:30**    **Review Thursday's Assignments (Room 165)**  
All participants

## Thursday, May 22

- 8:00 – 8:15**     **Participants Meet with Faculty Member (Room 165)**
- 8:15 – 10:30**     **Business Valuation Advocacy (Room 165)**  
This lecture presentation is about the theory and practice of business valuation. Participants are given in-depth information about how business valuation fits into trial advocacy and how to use the different valuation approaches in a variety of situations.
- 10:30 – 10:45**     **BREAK (Forum, 1<sup>st</sup> Floor)**
- 10:45 – 12:15**     **Demonstration: Direct and Cross of a Financial Expert (Room 165)**  
This demonstration is a follow-up to the preceding lecture. The moderator uses the exercise to highlight the information that was presented in the lecture. Participants also get valuable information to use during their direct and cross examination exercise in the afternoon and the following day as well.
- 12:15 – 1:00**     **LUNCH (Forum, 1<sup>st</sup> Floor)**
- 1:00 – 3:00**     **Exercise: Direct and Cross of a Financial Expert**  
Part I: Participants conduct a direct and cross examination of a business valuation expert, focusing on the theory and techniques that were presented in the previous lectures. Faculty members play the role of the financial expert as a foundational exercise so the participants have the opportunity to work on their techniques in a lower pressure setting.
- 3:00 – 3:15**     **BREAK (Forum, 1<sup>st</sup> Floor)**
- 3:15 – 4:45**     **Lecture - Ethics in Matrimonial Cases (Room 165)**  
In a scenario-based format, the participants are guided through discussions about ethical behavior and how to apply the rules and standards set forth in the Model Rules.
- 4:45 – 5:00**     **Review Friday's Assignments (Room 165)**  
All participants

## Friday, May 23

**8:00 – 9:00 Q & A on Financial Information (Room 165)**

**8:15 – 8:45 ACCOUNTANTS MEETING (CPAs only)**

**9:00 – 10:30 Exercise: Using the Financial Expert to Prepare for Trial**

In this small group exercise, the participants meet with a faculty member and a business valuator to discuss how to best use a financial expert in preparing for a trial.

**10:30 – 10:45 BREAK (Forum, 1<sup>st</sup> Floor)**

**10:45 – 12:15 Direct and Cross of a Financial Expert**

Part II: Participants conduct a direct and cross examination of a business valuation expert, focusing on the theory and techniques that were presented in the previous day's lectures. Faculty members critique each participant, providing practical tips for improving the examination. Participants are asked to focus on both qualifying the expert and issues from the case materials.

**12:15 – 1:00 LUNCH (Forum, 1<sup>st</sup> Floor)**

**1:00 – 3:00 Exercise: Direct and Cross of a Financial Expert (continued)**

**3:00 – 3:15 BREAK (Forum, 1<sup>st</sup> Floor)**

**3:15 – 3:45 Pretrial Conferences (Rooms to be assigned)**

The remainder of the day may be devoted to trial preparation. It is hoped that many of the accountants will be available to work individually or in teams with you during the afternoon.

## 2008 ABA FAMILY LAW ADVOCACY

### FINAL TRIAL SCHEDULE

**Saturday, May 24**

Program: Part E  
Your Case: Putting It All Together

**NOTE:** This schedule should serve as a flexible guideline; however, the total time limits should be observed. Remember from each team, one opens; the other closes. One directs or crosses a party and directs or crosses the expert. Each lawyer must conduct one direct and one cross during the trial.

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| <b>7:00 - 7:30</b>   | Check-in for participants and witnesses.<br>Doughnuts and coffee will be available on the first floor. |
| <b>7:00 - 7:30</b>   | Faculty Meeting  |
| <b>7:30 - 8:00</b>   | OPENINGS (15 minutes each side.)   |
| <b>8:00 - 9:30</b>   | WIFE'S CASE IN CHIEF AND CROSS OF PLAINTIFF'S WITNESSES.   |
| <b>9:30 - 11:00</b>  | DEFENSE CASE IN CHIEF AND CROSS OF DEFENSE WITNESSES.  |
| <b>11:00 - 11:30</b> | CLOSING ARGUMENTS  |
| <b>11:30 - 12:00</b> | CRITIQUES  |
| <b>12:15 - 2:00</b>  | CLOSING LUNCHEON   |

**ARRANGE YOUR TRAVEL PLANS TO LEAVE DENVER AT OR AFTER 3:30 P.M. ON SATURDAY, May 24, 2008. THAT WILL GIVE YOU TIME TO REACH THE AIRPORT AFTER THE CLOSING LUNCHEON.**