



ABA FAMILY LAW SECTION'S TRIAL ADVOCACY INSTITUTE

presented in cooperation with
UNIVERSITY OF DENVER LAW SCHOOL



Course Schedule

(subject to change)

May 16 – 23, 2009

ABA Family Law Section's Trial Advocacy Institute May 16 – 23, 2009

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. (We recommend Imwinkelreid's book, which is available through Lexis and other online vendors.) 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 a separate teaching case file.

NOTE: For each exercise where participants meet in 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.

Saturday, May 16

5:00 – 5:30 PM

PARTICIPANT CHECK-IN
(Hotel: 2nd Floor)

5:30 - 6:30

INTRODUCTION TO PROGRAM
(Hotel: 2nd Floor)

Sunday, May 17

Program: Part A
Your Case: Theme and Theory from Beginning to End

- 8:00 – 8:15** **Participants Meet With Faculty Member (Room 165)**
- 8:15 – 9:30** **Lecture/Demo: The Story of the Case (Room 165)**
- 9:30 – 10:30** **Lecture/Demo: Motion Practice: “Tell the Judge What You Want” (Room 165)**
- 10:30 – 10:45** ***BREAK* (Forum, 1st Floor)**
- 10:45 – 12:15** **EXERCISE: Case Analysis – Themes and Theories**
(Participants meet in their assigned small groups)
Participants should be prepared to discuss their case theory and probable case theory for opposing side. **“Proof Charts” for 1) today’s motions (see *Motion Practice exercise in Johnson v. Johnson case materials*), 2) custody issues and 3) business valuation must be completed before this session.**
Analyze strengths and weaknesses of both sides. Participants will develop, and present to their group, the story of their case.
- 12:15 – 1:00** ***LUNCH* (Forum, 1st Floor)**
- 1:00 – 2:00** **EXERCISE: Case Analysis (continued)**
- 2:00 – 3:00** **Lecture/Demo: Direct and Cross: Questioning the Fact Witness (Room 165)**
- 3:00 – 3:15** ***BREAK* (Forum, 1st Floor)**
- 3:15 – 4:15** **Lecture/Demo: Opening Statements and Closing Arguments (Room 165)**
- 4:15 – 5:15** **Lecture: Ethics In Matrimonial Cases (Room 165)**
- 5:15 – 5:30** **Review of Monday’s assignments (Room 165)**
All Participants

Monday, May 18

- 8:00 – 8:15** **Participants Meet With Faculty Member (Room 165)**
- 8:15 – 9:45** **EXERCISE: Motion Practice - Temporary Motions/Orders**
(Problem 1, p. 28 & Problem 2, p. 39 in Johnson v. Johnson case materials)
Plaintiff's counsel moves for changed custody and Defendant's counsel opposes the motion. Each participant will have approximately 8 minutes for this exercise.
- 9:45 – 10:30** **EXERCISE: Closing Arguments**
(Problem 4 in the case materials, page 42)
Each participant should prepare a closing that covers both custody and business valuation. Each participant has 8 minutes. Divide the time evenly between both the custody and business valuation issues.
- 10:30 – 10:45** **BREAK (Forum, 1st Floor)**
- 10:45 – 12:15** **EXERCISE: Closing Arguments (continued)**
Problem 4 in the case materials, page 42
- 12:15 – 1:00** **LUNCH (Forum, 1st Floor)**
- 1:00 – 3:00** **EXERCISE: Questioning the Parties: Direct and Cross**
(Problems 5 & 6 in the case materials, pages 43-44)
Participants will direct, cross and play role of witnesses – and as the witness you must limit your testimony to the *facts found in the materials*. Focus will be on asking effective and appropriate questions during direct (open ended) and cross (leading) examinations. Prepare fully for direct and cross. Faculty will determine the length of time each participant has for the exercise.
- 3:00 – 3:15** **BREAK (Forum, 1st Floor)**

Program: Part B

Your Case: Evidence and What the Evidence Will Show

- 3:15 – 4:15** **Lecture: Evidence**
- 4:15 – 5:15** **EXERCISE: 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: In preparation for this exercise, review the Rules of Evidence regarding: Evidentiary Foundations, Impeachment, Past Recollection Recorded, Refreshing Recollection, Prior Inconsistent Statements.

Tuesday, May 19

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

8:15 – 10:30 **EXERCISE: Questioning the Parties – Advanced Direct And Cross Using Exhibits (Problems 7 - 12 in the case materials, pages 46 - 56)**

Be prepared to offer or object to exhibits with each witness; impeach with prior inconsistent statements during cross-examination, refresh recollection, and admit evidence using past recollection recorded.

Members of faculty will play role of witnesses.

A's Direct Mrs. Johnson; Cross Mr. Johnson B's Cross Mrs. Johnson; Direct Mr. Johnson

Prepare the entire examination, both direct and cross, since you may be directed by the faculty to focus on one or more specific topics.

10:30 – 10:45 **BREAK (Forum, 1st Floor)**

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

10:30 – 12:15 **EXERCISE: Questioning the Parties – Advanced Direct and Cross Using Exhibits (continued)**
(Same room assignments.)

12:15 – 1:00 **LUNCH (Forum, 1st Floor)**

1:00 – 3:00 **EXERCISE: Opening Statements (Problem 3 in the case materials, page 42)**

Prepare a 10-minute opening, covering issues of custody and business valuation. Divide your time evenly between both the custody and the business valuation issues.

3:00 – 3:15 **BREAK (Forum, 1st Floor)**

Program: Part C

Your Mental Health 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)**

4:15 – 5:15 **Demonstration: Qualifying the Mental Health Expert: Direct and Cross (Room 165)**

5:15 – 5:30 **Review Wednesday's assignments (Room 165)**
All participants

Wednesday, May 20

- 8:00 – 8:15** **Participants Meet With Faculty Member (Room 165)**
- 8:15 – 9:45** **EXERCISE: Using The Mental Health Expert To Prepare For Trial**
Restrict exercise to learning from Mental Health Expert how to effectively prepare for trial using the court expert's report. This exercise is conducted in a discussion format.
- 9:45 – 10:30** **EXERCISE: Questioning the Mental Health Expert: Direct And Cross on Qualifications (Problems 13 & 14 in the case materials, page 57)**
Both "A"s and "B"s will direct and cross-examine the court appointed expert. Prepare fully for direct and cross. Faculty will determine the length of time each participant has for the exercise.
- 10:30 – 10:45** **BREAK (Forum, 1st Floor)**
- 10:45 – 12:15** **EXERCISE: Questioning the Mental Health Expert: Direct And Cross on Qualifications (continued)**
- 12:15 – 1:00** **LUNCH (Forum, 1st Floor)**
- 1:00 – 3:00** **EXERCISE: Questioning the Mental Health Expert: Direct And Cross on Substantive Issues**
Focus examinations for this part of the exercise on substantive issues, not qualifications.
- 3:00 – 3:15** **BREAK (Forum, 1st Floor)**

Program: Part D

Your Business Valuation Expert: Valuation Methodology and Your Case

- 3:15 – 5:15** **Lecture: Understanding the Numbers (Room 165)**
- 5:15 – 5:30** **Review Thursday's assignments (Room 165)**
All participants

Thursday, May 21

- 8:00 – 8:15** **Participants Meet with Faculty Member (Room 165)**
- 8:15 – 10:30** **Lecture: Business Valuation Advocacy (Room 165)**
- 10:30 – 10:45** ***BREAK* (Forum, 1st Floor)**
- 10:45 – 12:15** **Demonstration: Questioning the Financial Expert: Direct and Cross (Room 165)**
- 12:15 – 1:00** ***LUNCH* (Forum, 1st Floor)**
- 1:00 – 3:00** **EXERCISE: Questioning the Financial Expert: Direct and Cross**
Prepare complete examinations, but be prepared to focus on a specific area as assigned by faculty.
- 3:00 – 3:15** **Review Friday's assignments (Room 165)**
All participants

Friday, May 22

- 8:00 – 8:15** **Participants Meet with Faculty Member (Room 165)**
- 8:15 – 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**
Restrict the exercise to learning from the financial expert how to effectively prepare for trial using an expert's report. This exercise is conducted in a discussion format.
- 10:30 – 10:45** **BREAK (Forum, 1st Floor)**
- 10:45 – 12:15** **EXERCISE: Questioning the Financial Expert: Direct And Cross**
Prepare complete examinations, but be prepared to focus on a specific area as assigned by faculty.
- 12:15 – 1:00** **LUNCH (Forum, 1st Floor)**
- 1:00 – 3:00** **EXERCISE: Questioning the Financial Expert: Direct And Cross (continued)**
- 3:00 – 3:15** **BREAK (Forum, 1st Floor)**
- 3:15 – 3:45** **Pretrial Conferences (Rooms to be assigned)**

The remainder of the day may be devoted to trial preparation. The Financial Experts will be available to work individually or in teams with you during the afternoon.

2009 ABA FAMILY LAW ADVOCACY

FINAL TRIAL SCHEDULE

Saturday, May 23

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.

- 7:00 - 7:30** Check-in for participants and witnesses.
- 7:00 - 7:30** Faculty Meeting
- 7:30 - 8:00** OPENINGS (15 minutes each side.)
- 8:00 - 9:30** PLAINTIFF'S CASE IN CHIEF AND CROSS OF PLAINTIFF'S WITNESSES.
- 9:30 - 11:00** DEFENSE CASE IN CHIEF AND CROSS OF DEFENSE WITNESSES.
- 11:00 - 11:30** CLOSING ARGUMENTS
- 11:30 - 12:00** CRITIQUES
- 12:30 - 2:00** CLOSING LUNCHEON

ARRANGE YOUR TRAVEL PLANS TO LEAVE DENVER AT OR AFTER 3:30 P.M. ON SATURDAY, May 23, 2009. THAT WILL GIVE YOU TIME TO REACH THE AIRPORT AFTER THE CLOSING LUNCHEON.