Trial

If you and your spouse have been unable to settle your case between yourselves and none of the settlement alternatives described in Section VII have been successful, it may be necessary to prepare and submit your case for trial before the Judge.

The trial of a case has been described by some as being analogous to an iceberg. The tip (or in this case, the trial itself) is a very, very small portion of the overall process. The remaining 90% is below the surface and is often not seen. In a trial that 90% involves tedious and time consuming preparation, the preparation of exhibits, marking of evidence and Subpoenaing of witnesses.

If your case is going to trial, be absolutely certain that you have reserved enough time from your personal and work schedule to meet with your attorney to prepare the case. Similarly, be certain that your attorney has scheduled adequate time to meet with you, prepare your testimony, be certain that you have all of the evidence and exhibits and that you have a full understanding of the trial process.

Any documents which are not current, must be updated. Any documents which are not official or certified copies must be replaced by official or certified documents which can be properly moved into evidence. Any witnesses who are going to be utilized must be interviewed and prepared. Any documents or evidence which they will rely upon in their testimony must be organized.

Very often, it is extremely important to develop charts or graphs showing the flow of funds into or out of accounts, fluctuations in income or even simply plotting the growth or loss in the value of various assets. There is no such thing as over preparing for trial. On the other hand, many trials are lost due to a lack of preparation.

Once the trial begins, there is an orderly, defined and rigid process which is followed. Each attorney will give their opening statements to the Court. In the opening statement, they will outline the case and outline for the Court what they intend to prove and how they intend to prove it. Each witness will then be called to the witness stand and subjected to a direct examination. Every point must be made by asking a question and getting a specific answer. It is a tedious and detailed process. No witness can simply give a long narrative to the Judge. That narrative must be broken down into specific questions with specific answers.

At the conclusion of direct examination, every witness will be subject to cross-examination by the opposing attorney. Cross-examination is designed to show conflicts in the testimony, to show a bias or lack of credibility in the witness and to generally undermine the witness's testimony or credibility. Cross-examination is not a pleasant process and you should be sure that your attorney has fully and adequately prepared you for a cross-examination by subjecting you to a mock cross-examination prior to the trial.

It is important to understand that, when submitting evidence to the Court, your attorney is bound by the Rules of Evidence. Things which are hearsay, which are not within the first hand knowledge of witness, or which otherwise do not comply with the Rules of Evidence, are of no value at the time of trial.

At the conclusion of the trial, your attorney will submit a lengthy and usually written closing argument and summation to the Court. This document will outline and summarize what has been presented into evidence, what conclusions we want the Court to draw from the evidence and citations to the law which support such conclusions.

Following the Judge's decision, either you or your spouse will have the right to appeal. However, the appeal of the case is not simply a "second bite of the apple." There are very limited and narrow grounds for an appeal.

Trials are difficult and expensive, and should be considered only when absolutely necessary. There are, however, cases in which the issues are so significant or complex that they can only be resolved by a trial. If that is your case: prepare, prepare, prepare and then prepare some more!