

# GEARING UP



# PLEADINGS

Judge Roy B. Ferguson  
394<sup>th</sup> Judicial District Court

2019 Marriage Dissolution 101 Conference

**Who Cares??**

**VOID**

# Fire the First Shot

Choose the battlefield.

- *You* establish venue.

Claim the high ground.

- Position your client as Petitioner/Movant.

Draw first blood.

- Obtain emergency relief.

# Pleadings Tip #1

## Don't overdo the detail.

- Include enough facts to identify the issues, or obtain extraordinary relief, but no more.

Tex.Fam.Code 6.402(a)

- Special exceptions are available to strip facts from opposing pleadings.

Tex.Fam.Code 6.402(c)

# Pleadings Tip #2

**Use Special Exceptions to send a message to the other party.**

# Stay on Target

- Only 27% of cases are resolved by trial.
- Mandatory mediation in most courts.
- Set *realistic goals*.

# Pleadings Tip #3

**BE NICE.**

A man with dark, wavy hair, wearing a dark turtleneck sweater, is shown from the chest up. He is looking off to the right with a serious, somewhat menacing expression. The background is a blurred industrial or construction site with metal beams and scaffolding.

**I WANT YOU TO BE NICE....**

**UNTIL IT'S TIME TO NOT BE NICE.**



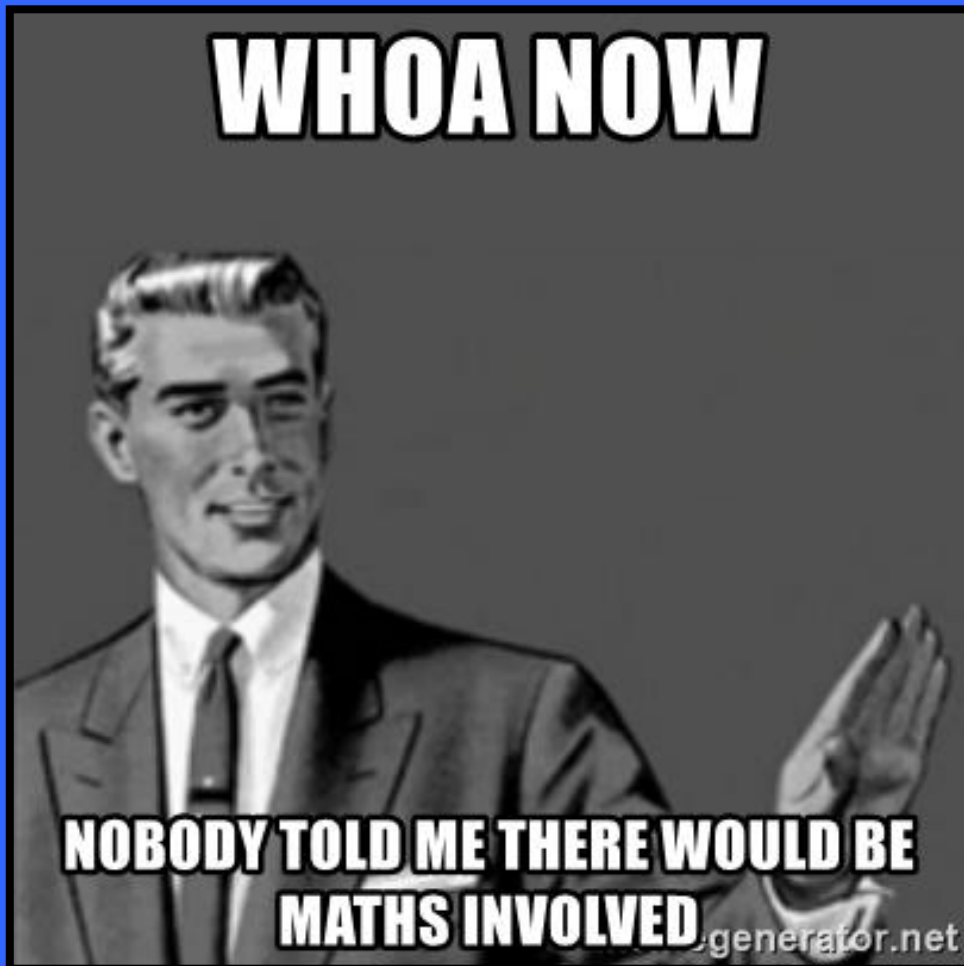
# Math Quiz

When does 100 equal 50?

**100% of nothing**

**=**

**50% of nothing**



# Pleadings Tip #4

**Timing is everything.**

- Plead cautiously at first.
- Advise opposing counsel of trial claims.
- Review pleadings before discovery closes.
- Amend 30 days before trial.

# Initial Pleadings

Watch for common mistakes:

- Paternity of children
- Prior Child Support Orders
- Office of the Attorney General
- Venue Transfers
- Verification and Affidavits

# Pleadings Tip #5

**Don't include discovery requests  
in your original pleading!**

# Practice Tip

**Applies to “DEFAULT” pleadings, too.**

Watch for common mistakes:

- Pleadings must match final judgment
- Amendments seeking “more onerous relief” must be served by 21A
- No trial amendments or trial by consent

# Bonus Tip

**There' no such thing as a family  
law "DEFAULT JUDGMENT."**

# Another Bonus Tip

**Read *Waivers of Citation* carefully.**

# Returning Fire

## Responsive Pleadings:

- Original Answer (general denial)
- Verified Denials and Affirmative Defenses
- Counter-Petition
- Other Motions



# Responsive Pleadings

Watch for common mistakes:

- Venue Transfers
- Special Appearance – personal jurisdiction
- Plea to the Jurisdiction / Standing
- Competing Temp Orders Request
- Special Exceptions

# Pleadings Tip #6

**Always file a counter-petition!**



# Contemporaneous Motions

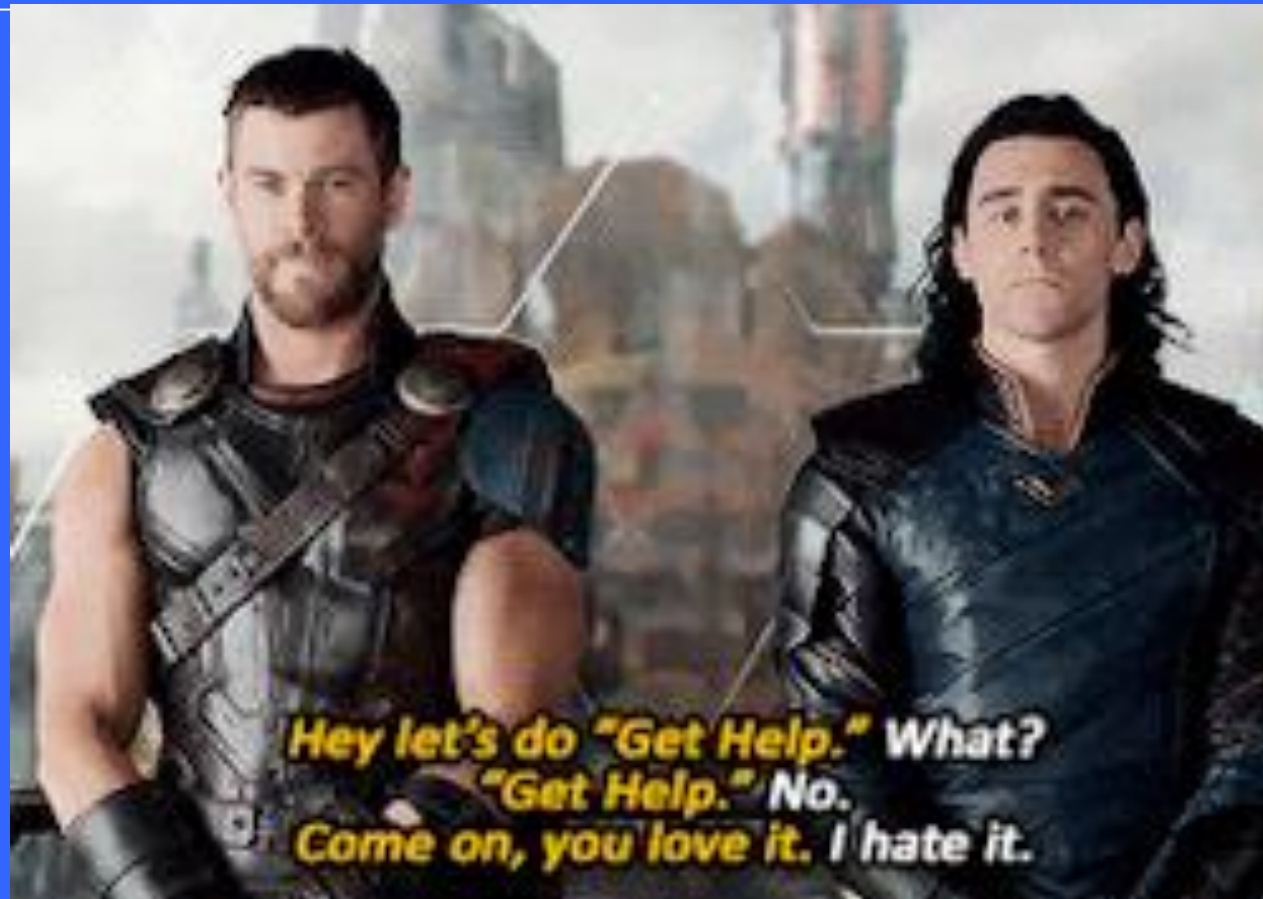
- Jurisdiction/Standing
- Venue
- Plea in Abatement
- Motion to Stay
- Special Exceptions
- Protective Orders
- Motion to Sever Domestic Torts

# Domestic Torts

- Not all bad conduct is actionable.  
“Reprehensible ≠ Compensable.”
- Anything that damages the community estate is part of a “just and right division.”
- Mandatory joinder may apply.

# Pleadings Tip #7

**GET HELP with Domestic Torts!**



# Pleadings Tip

**GET HELP with Domestic Torts!**



# Time to Reload

- Amended Pleadings
  - Add or withdraw claims or parties.
- Supplemental Pleadings
  - Responsive to *other* party's pleadings.
- Trial Amendments
  - Must be no prejudice.
  - May trigger a continuance.
  - Never in a default scenario.

# Pleadings Tip #8

**Amended Pleadings replace ALL prior pleadings, including supplements!**





# Pleadings Tip #9

## Objecting to Untimely Amendments

- Amended pleading is untimely if filed within seven days of trial.
- Burden is on objecting party to show surprise:
  1. Late pleading raises a **new matter**;
  2. that **could not have been anticipated**; and
  3. **detrimentally impacts** the respondent's preparation.
- If surprise not proven, amended pleading *will be* permitted.
- If the court grants leave to amend, you may **request a continuance** to prepare and respond.
- If continuance is granted, court may order payment of related **costs, expenses and fees**.

# Practice Tip

**Always come prepared to show surprise.**

- Review pleadings before trial.
- Note what claims are *not* specifically pleaded.
- Bring printed copies of opposing party's discovery responses and deposition transcripts.

# Pleadings Tip #10

**Don't let the judge  
"carry it forward to trial."**

# Ethical Tip

## TDRPC 3.01. Comment 1:

“The lawyer should assume responsibility for the means by which the client's objectives are best achieved. Thus, a lawyer has very broad discretion to determine technical and legal tactics, subject to the client's wishes regarding such matters as the expense to be incurred and concern for third persons who might be adversely affected.”

# General Rule

If you bear a burden of proof, or if what you want isn't presumed,  
**SPECIFICALLY PLEAD FOR IT.**

**If it's important to your client, plead it!**

# Specific Issues - Divorce

- Grounds for Divorce
- Informal Marriage
- Spousal Maintenance
- ~~Disproportionate division~~
- Injunctive Relief
- Indemnification
- Attorneys' Fees
- Reimbursement

# Bonus Tip

You must...



# Specific Issues - SAPCR

- Conservatorship
  - Designation as Primary
  - Possession and Access
  - Supervision or Modified SPO
  - Geographic Restriction
  - Child Support
- Retroactive Child Support
- No Overnight Visitors / No Alcohol



# Specific Issues - Modification

- Change in Circumstances
- Designation as Primary
- Child Support
- Possession and Access
- Supervision or Modified SPO
- Geographic Restriction
- Sole Managing Conservatorship

# Pleadings Tip #11

PLEAD FOR SOLE MANAGING  
CONSERVATORSHIP IN THE ALTERNATIVE!

In fact, plead for everything in the  
alternative.

# SIMPLEST SUMMARY

Divorce and property (non-SAPCR) issues must be specifically pleaded, or are waived.

Original SAPCR issues need not be specifically pleaded if child is properly before the court.

On SAPCR modification, issues *should* be specifically pleaded.

# SAPCR Exceptions to Exclusion

- “Liberal Construction”
- Best Interest of the Child
- Trial by Consent

# Remember the General Rule

If you bear a burden of proof, or  
if what you want isn't presumed,  
**SPECIFICALLY PLEAD FOR IT.**

**If it's important to your client, plead it!**

# Legal Community and Mental Health

ABA Commission on Lawyer Assistance Programs  
and the Hazelden Betty Ford Foundation

- Evaluated 13,000 judges and lawyers in the United States
- Respondents took the primary screening test employed by the W.H.O.

28% reported experiencing depression.

19% reported experiencing anxiety.

23% reported work related stress.

# Legal Community and Dependency

- 21% of judges and lawyers have a problem with alcohol abuse.
- 36% are “problem drinkers.”

**OVER ONE-THIRD OF JUDGES AND  
LAWYERS HAVE A DRINKING PROBLEM.**

# The American Psychological Association

- Lawyers are 3.6 times more likely to suffer from depression than non-lawyers.
- 40% of law students suffer from depression.
- 96% of law students suffer stress – significantly more than reported by medical students, and *double* that of all graduate students
- Stress leads to depression. Depression leads to substance abuse.
- Lawyers are the most frequently depressed occupational group.



# Comparison with General Population

## GENERAL POPULATION

6.8% Adult  
alcoholism rate

6.7% suffer  
depression per year

18.1% experience  
anxiety

## LEGAL COMMUNITY

**36%** Alcoholism  
Rate

**28%** suffer  
depression

**19%** experience  
anxiety

# Suicide

- 13.4 per 100,000 in general population commit suicide
- 15% of people with depression commit suicide, and lawyers are 3.6 times more likely to suffer depression than the general population.
- In a study in N.C., 37% of lawyers report suffering from depression, and 30% of those admit to suicidal ideations.

**11.5% of lawyers reported having suicidal thoughts during their legal career**