

**26TH ANNUAL  
NUTS & BOLTS OF FAMILY LAW**

**DECEMBER 4, 2018**

**INITIAL CLIENT INTERVIEW,  
RETAINER AGREEMENTS, CLIENT  
CONTROL, TRANSPARENT  
LAWYERING, ETHICS AND  
PROFESSIONALISM\***

**MAURICE JAY KUTNER, ESQUIRE  
RYAN McCARTHY, ESQUIRE  
KUTNER AND ASSOCIATES  
11TH FLOOR – COURTHOUSE TOWER  
44 WEST FLAGLER STREET  
MIAMI, FLORIDA 33130-1808**

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\* We thank Marisol Kutner for her contribution to the preparation and assembly of these materials.

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## CURRICULUM VITAE OF MAURICE JAY KUTNER

### PROFESSIONAL LEADERSHIP

Past Chair, Family Law Section, American Bar Association (1997-1999); Fellow and Past President, American Academy of Matrimonial Lawyers, Florida Chapter; Past Chair, Family Law Section, The Florida Bar (1987-1988); Fellow, International Academy of Matrimonial Lawyers; Past President and Master Benchers, First Family Law American Inns of Court (1994-1996); Member, Judges and Lawyers Publications Editorial Board (Shannon Pratt publication); Board Certified in Marital and Family Law (1985 to present); AAML Certified Arbitrator; Listed, *The Best Lawyers in America* (1987 to present); Best Law Firms US News and World Report, 2015, 2016 (Tier 1 for Family Law Ranking); Rated "AV" by Martindale Hubbell (1984 to present); Listed in the *Martindale Hubbell Bar Register of Preeminent Lawyers* (2004 to present); *Florida's Legal Elite* (2004 to present); Super Lawyers (2006 to present); Chair, AAML 30th Annual Institute; Board Certified Family Law Advocate; Member, National Association of Distinguished Counsel (Nation's Top One Percent of Attorneys, 2015); Lecturer, Dade County Bar Association "Nuts & Bolts of Family Law" (2007-2014). Lecturer and author of numerous articles on family law during fifty years of practice. Lecture on Transparent Lawyering, ABA Family Section, Nassau, Bahamas (May 2016); Lecturer, Marital & Family Law Review Course, The Family Law Section of the Florida Bar & The American Academy of Matrimonial Lawyers, Orlando, Florida (January 2017); Lecturer, AAML 39th Annual Institute, Orlando, Florida (May 2017).

### CAREER SUMMARY

***Private Practice of Law***, limited to family law matters (1970 to present).

***Assistant Public Defender***, handled criminal cases in trial and appellate courts (Miami, Florida, 1969-1970).

***Military Service***. Captain, United States Army, Judge Advocate General's Corp, Military District of Washington, Government Appellate Division, Government Counsel, Army Boards of Review and United States Court of Military Appeals (1965-1967). Chief Prosecutor, general court-martial cases, United States Army Infantry Training Center, Fort Benning, Georgia (1967-1968).

### EDUCATION

Juris Doctor, University of Miami (1965); Moot Court runner-up, freshman, junior, and senior years.

Bachelor of Business Administration, University of Miami (1962); political science major and minors in speech, economics, and history; University of Miami Debate Team (1962) (Debate Scholarship); Omicron Delta Kappa National Academic and Leadership Honorary Society (1961); Distinguished Military Graduate, Army ROTC (second in class) (1962).

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The Florida Bar  
**FAMILY LAW SECTION**  
Bounds of Advocacy



GOALS FOR FAMILY LAWYERS

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**CONTRACT FOR LEGAL SERVICES**

THIS IS A CONTRACT for legal services involving a family law matter, entered into between \_\_\_\_\_ ("You"), and KUTNER AND ASSOCIATES ("We").

1. This contract contains the entire understanding between us and may only be modified in writing and signed by the parties. If any term, provision, or condition of this contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall continue to be in full force and effect.

2. You acknowledge that we have made no guarantees in connection with the outcome of your case. All expressions which relate to the possible results in your case are based strictly on our opinions.

**RETAINER AND ATTORNEY TIME**

3. You agree to remit the sum of \$ \_\_\_\_\_ which is a non-refundable fee, on or before \_\_\_\_\_, 20\_\_\_\_.<sup>1</sup> That sum will be applied on account of legal fees, which will be credited to your bill. The retainer will be credited against hourly rates of \$750 for Maurice Jay Kutner and \$375 to \$550 for associates. Paralegal and law clerk rates will be charged at \$160 per hour. In the event of an increase of the hourly rates charged by any member of the firm, this contract will be governed by the new hourly rate. You will be charged for all attorney time expended in connection with your file, including telephone calls and travel time. The members of our firm frequently meet to discuss, evaluate, and decide how to approach various issues. When two or more of us meet, you will be billed for the time expended by the lawyers attending said meeting. Maurice Jay Kutner will spend, at least, a nominal billable time in reviewing work product prepared by associates

**COSTS AND SUIT MONIES**

4. You agree to remit a cost deposit in the sum of \$ \_\_\_\_\_, on or before \_\_\_\_\_, 20\_\_\_\_, and such additional cost deposits requested by us. Those sums will be deposited in our trust account, and disbursed on your behalf for out-of-pocket expenses related to your case, including, but not limited to, postage, photocopies, facsimiles, e-mails, long distance telephone charges, out-of-town travel expenses, deposition expenses, court costs, fees for accountants, appraisers, actuaries, physicians, or our firm. You agree that we may impose a charging lien to collect the unpaid fees and costs of these other professionals.

<sup>1</sup> The amount of \$10,000 will be held back and applied toward payment of the final statement in this matter. Accordingly, you will be required to remit additional monies to our firm when the sum of \$10,000 has been exhausted.

\_\_\_\_\_  
CLIENT

5. We shall have the authority to make advances (costs, suit monies, etc.) on your behalf, as enumerated in paragraph 4, in amounts we deem necessary for the preparation, trial, and proper handling of your case. You shall reimburse us on a current basis for all advances, none of which shall be deducted from the initial retainer. You are personally liable for payment to all experts hired on your behalf.

### **LEGAL FEES**

6. If a statement is not paid by you within 15 days from the date of the statement, we have the right to terminate work on your case and withdraw as your attorneys. We also retain the right to withdraw from your case if you have misrepresented or failed to disclose material facts to us, if you fail to timely and completely disclose your financial circumstances, if you fail to follow our advice, or if you fail to attend conferences, depositions, or hearings.

7. Simple interest,<sup>2</sup> at the rate of 1.5% per month, will be added to all accounts not paid within 15 days from the date of each statement (the "date of statement" is the date of postmark or e-mail). Accounts with a previous balance are not entitled to a grace period.

8. You agree to carefully read all billing statements and promptly notify us, in writing, within 15 days from the date of the statement, of any claimed objections, errors, or discrepancies. Failure to do so creates an irrebuttable presumption that you agree with the correctness, accuracy, and fairness of the billing statement, and constitutes a waiver of your right to contest it. To comply with this agreement, you must set forth the precise billing item to which you have an objection, including the language, and state specific reasons why you claim there is an error, discrepancy, or objection.

9. It is impossible to determine the nature and extent of the necessary legal services required in your case. Your cooperation in providing us information and working with us can considerably expedite matters and help reduce fees.<sup>3</sup> To minimize attorneys' fees and to preserve the relationship between you and the opposing party (and children), we will try to effect an amicable settlement. However, settlement efforts do not always succeed, and it may be necessary to litigate, in which event legal fees and costs will be greater.

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<sup>2</sup> We much prefer that you pay your bill on time and "borrow" elsewhere. We cannot and will not "finance" your case.

<sup>3</sup> Your cooperation is very important. You must inform us immediately of any change of address, phone number, employment, or financial circumstances. Full disclosure of all facts is essential to enable us to properly represent you. You must properly fill out and return all documents sent to you.

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CLIENT

10. Following entry of a final judgment in your case, whether it is settled or tried, you understand that an additional fee may be requested from you, based upon: a) the significance of, or amount involved in, the subject matter of your case and the attendant responsibility involved in our representation; b) the novelty, complexity, and difficulty of the issues; c) the time, labor, and skill required to properly perform the legal services; d) the experience, reputation, diligence, and ability of the firm; e) the likelihood that our acceptance of your case precludes other profitable employment for the firm; f) the time limitations imposed by you, or by the circumstances of your case, and any additional or special time demands or requests of us by you; and, g) the nature and length of the professional relationship. The amount of any additional fee will be determined at the conclusion of your case, and will only be paid if you agree. This means that the payment of any "additional" fee is strictly voluntary.

11. We may seek legal fees from the opposing party, which may be paid by agreement or court order.<sup>4</sup> Any agreement or award of fees shall not determine the amount owed by you or earned by us. You remain primarily liable for payment of all fees and costs. Amounts received on your behalf will be credited to your account.<sup>5</sup> The time and costs necessary to collect the sums from the opposing party will be charged to you. Interest will be charged until we are paid in full, whether it be by you or the opposing party.

12. At our election, all sums due us shall be paid from the proceeds of any recovery, protection, or preservation of assets, which are recovered, distributed, or retained by you, as a result of any settlement, compromise, or final judgment obtained in your case, as held by the Florida Supreme Court in *Sinclair v. Baucom*, 428 So.2d 1383 (Fla. 1983). This procedure is known as a charging lien. You authorize us to collect funds due to you and deduct and retain our fees and costs from our Trust Account prior to disbursing the balance to you. We shall hold a lien on all your documents, property, or money in our possession or the payment of all sums due us under the terms of this contract. We shall also have the right to collect our fees and costs from third parties who are holding or maintaining any funds for you.<sup>6</sup>

13. You agree to pay the attorneys' fees and costs (based on then current rates) for our involvement in any litigation or other matters, which take place subsequent to our representation, based on the terms of this agreement, including, but not limited to,

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<sup>4</sup> The provisions of this contract may be disclosed to the court in connection with any application to attorneys' fees and costs; and, we have the right to advise the court and/or opposing counsel or any amounts received from or owed by you.

<sup>5</sup> Payments received from you will be applied first to interest, if any, then to outstanding costs, if any, and then to legal fees.

<sup>6</sup> For example, in the event your spouse's attorney is holding any funds which belong to you, we shall have the right to collect our fees and costs from those funds.

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CLIENT

preparing for and testifying in court or deposition, attending meetings, responding to subpoenas and compliance with any discovery requests. If an employee of our firm is required to provide testimony, you shall compensate us for the employee's time, including costs.

#### **EXPERT TESTIMONY NOT REQUIRED**

14. In the event there are any hearings or litigation in any court, involving the collection of fees, suit monies, and costs owed by you to our firm, it is agreed that we will not be required to present expert testimony relating to the reasonableness of our fees. This agreement relating to expert witness testimony means that you are waiving a right that may exist according to Florida law.

15. Expert witness testimony means that another lawyer would present testimony to the court as to whether the fees billed to you are reasonable. You are waiving that right.

#### **LIEN ON REAL AND PERSONAL PROPERTY**

16. You specifically consent to the imposition of a lien on all real and personal property owned by you individually or jointly with others, to secure sums owed to our firm. This contract may be recorded with the Clerk of Court in the dissolution of marriage proceedings; and, may also be recorded with the clerk of any court, for the purpose of securing payment of legal fees, suit monies, interest, and costs. This provision shall not apply to homestead property.

17. You authorize Kutner and Associates to attach to this contract the legal description of any and all of your real property and/or a description of your personal property, and you understand that said description will become part of this lien.

#### **POST-JUDGMENT PROCEEDINGS**

18. Whether interlocutory or plenary, post-judgment proceedings, or enforcement action, any appeal subsequent to the final judgment in your case or on any other matter, may require a separate fee agreement. However, in the event we render services subsequent to the final hearing, the terms and conditions of this contract shall govern and control the rights and liabilities of the parties.

#### **ARBITRATION PROVISION**

19. **NOTICE:** This contract contains provisions requiring arbitration of fee disputes. Before you sign this contract you should consider consulting with another lawyer about the advisability of making an agreement with mandatory

\_\_\_\_\_  
CLIENT

**arbitration requirements. Arbitration proceedings are ways to resolve disputes without use of the court system. By entering into contract that require arbitration as the way to resolve fee disputes, you give up (waive) your right to go to court to resolve those disputes by a judge or jury. These are important rights that should not be given up without careful consideration. (Florida Bar Rule 4-1.5(i)).**

20. In the event of a timely objection, in accordance with paragraph 8, to any statement for services rendered, the resulting fee dispute, including costs, suit monies, and interest, shall be resolved through binding arbitration by a Miami-Dade County attorney, who is a board certified family lawyer or certified family law arbitrator, who will hear and rule on the dispute. In addition, any claims concerning the performance or breach of performance by Kutner and Associates, or their failure to comply with the prevailing standard of care, including, but not limited to, any claims for negligence, breach of fiduciary duty, or breach of contract, shall also be resolved by binding arbitration.

21. It is agreed that any litigation arising out of this Contract for Legal Services, or the enforcement of the arbitration provisions, shall be brought in Miami-Dade County, Florida, where both parties agree to submit to jurisdiction and venue.

22. In the event it becomes necessary to enforce the terms of this contract, through arbitration or litigation, you agree to pay attorneys' fees and costs to our firm, based upon the rates set forth in this contract, including any appeals. The arbitrator will adjudicate the amount of fees to be awarded to Kutner and Associates, resulting from enforcement and collection proceedings. You agree to pay the fees for the services of the arbitrator.

#### ***YOUR FILE***

23. Copies of all documents received and generated by our office will be provided to you and you should retain them. At the conclusion of the case, and following payment of all amounts due to our firm, you agree to provide us with an address where we can deliver the files at your expense. If you do not make arrangements to take delivery of the files after the case is concluded, you authorize us to destroy the files after representation has concluded.

#### ***PROFESSIONALISM***

24. Attorneys are officers of the court and are bound by the rules regulating The Florida Bar and Florida law. There are no warranties, representations, or guarantees regarding the outcome, result, or successful termination of the representation, and this contract is not "contingent" on "results." You agree to fully cooperate and to do nothing which would compromise our professional ethics or violate the Code of Professional Responsibility. If you misrepresent or fail to disclose any material fact, refuse to follow

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CLIENT

our advice, or fail to be available for preparation, conferences, depositions, hearings, or other court proceedings, or fail to comply with the terms of this Contract, we will withdraw from your case. Our law firm takes great pride in being forthcoming with the relevant facts of every case, and being "transparent."

**WARNING**

25. This is a legal binding contract. Before signing, please read it carefully, and be sure you understand its contents. If there is anything you do not understand, ask about it. You acknowledge that you have had the opportunity to take this agreement, unsigned, and returning it to our firm, after reflecting upon its terms and/or consulting with an attorney before signing it.

**(SPACE INTENTIONALLY LEFT BLANK)**

\_\_\_\_\_  
CLIENT

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

KUTNER AND ASSOCIATES

READ, UNDERSTOOD, AND AGREED

By: \_\_\_\_\_  
MAURICE JAY KUTNER

CLIENT \_\_\_\_\_

**VERIFICATION**

STATE OF FLORIDA            )  
  : SS:  
COUNTY OF MIAMI-DADE    )

BEFORE ME, the undersigned authority, personally appeared, \_\_\_\_\_, who is personally known to me, or has produced \_\_\_\_\_ as identification, and who, after first being duly sworn, deposes and states that she has read the foregoing document and fully understands that it creates a lien for security, similar to a mortgage, on all real and personal property owned by her, for the purpose of guaranteeing payment in full of all amounts owed to Kutner and Associates.

20\_\_\_\_. WITNESS my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_  
Notary Public, State of Florida

\_\_\_\_\_  
Print Notary Name

Commission Expires: \_\_\_\_\_

## SAMPLE INTAKE QUESTIONNAIRE

1. Referred by?
2. How long have you been married?
3. Do you have any minor children?
4. What are your occupations?
5. Is there a Prenuptial Agreement?
6. Have any papers been filed with the Court?
7. What would you say is the value of your marital assets?
8. What is the reason you are seeking a divorce?
9. Has your Spouse consulted with an Attorney?

***(If you sense hesitation, tell them the following):***

I apologize for asking so many personal questions, but we try to determine beforehand whether or not Mr. Kutner would be able to take your case. Mr. Kutner handles high-end family law cases. His billing rate is \$750 an hour. As a result, he has an ethical obligation to decline a case where his fees would end up exceeding the value of the assets, or amounts in controversy.

Also remind them that whatever they tell you, or any representation from this office, is confidential.

Consultation: \$ 750.00  
Retainer: \$20,000.00  
Deposit: \$ 2,000.00  
Paternity \$10,000.00



**NEW CLIENT TELEPHONE INTERVIEW**

Good morning/afternoon, my name is \_\_\_\_\_, how may I help you?

Would you please tell me who referred you to our firm or how you heard about us?

Mr. Kutner's initial consultation fee is \$\_\_\_\_\_ and it is payable at the conclusion of the initial interview. He does not accept credit cards for a number of reasons, which he will explain to you during the consultation. He will spend as much time with you as necessary, to evaluate the circumstances of your case and provide you with his opinions about your situation or circumstances. If you decide to retain our law firm, the minimum retainer is \$\_\_\_\_\_, which sum is all credited toward time spent on your case. There is also a \$\_\_\_\_\_ cost deposit, which is deposited into our trust account to pay for out-of-pocket expenses and court costs.

If you would like to schedule an appointment, let me know when you are available, and I will check with Mr. Kutner as to when he can meet with you. It would be helpful if you provided me with 2 or 3 dates.

**Note: APPOINTMENTS MUST BE CLEARED WITH MJK BEFORE BEING SET.**

Always schedule new client appointments for the earliest possible date and time. If MJK is unable to meet with new client immediately, schedule appointment before or after regular business hours.

**Date:**

**Time:**

**By:**

**Name of Caller:**

**Phone:**

**Statements of Caller:**

**By Whom Referred:**

**County Where Caller Resides:**

**Reaction to Consultation Fee:**

**Reaction to Retainer:**

**Opposing Party's Attorney:**

**Other Information:**

**Results of Telephone Interview:**

**NEW CLIENT INFORMATION SHEET**

Date: \_\_\_\_\_

**Name:** \_\_\_\_\_

**Home Address:** \_\_\_\_\_

\_\_\_\_\_

**Work Address:** \_\_\_\_\_

\_\_\_\_\_

**Mailing  
Address**

\_\_\_\_\_

\_\_\_\_\_

**Numbers: Home:** ( ) \_\_\_\_\_

May we leave a message at this number?  Yes  No

**Work:** ( ) \_\_\_\_\_

May we leave a message at this number?  Yes  No

**Fax:** ( ) \_\_\_\_\_

Should we call you prior to faxing?  Yes  No

**Cell:** ( ) \_\_\_\_\_

**Pager:** ( ) \_\_\_\_\_

**Other:** ( ) \_\_\_\_\_

**E-Mail:** \_\_\_\_\_

**Social Security #** \_\_\_\_\_

**Driver's License #:** \_\_\_\_\_

**Date of Birth:** \_\_\_\_\_

**Opposing Party's Name:** \_\_\_\_\_

**Address (if known):** \_\_\_\_\_

**Date of Marriage (if applicable):** \_\_\_\_\_

**Place of Marriage (City, County, State):** \_\_\_\_\_

**Date of Separation:** \_\_\_\_\_

**Date of Final Judgment of Dissolution of Marriage (if applicable):** \_\_\_\_\_

**Children:**

**Name:** \_\_\_\_\_ **Date of Birth:** \_\_\_\_\_

**Name:** \_\_\_\_\_ **Date of Birth:** \_\_\_\_\_

**Name:** \_\_\_\_\_ **Date of Birth:** \_\_\_\_\_

**Name:** \_\_\_\_\_ **Date of Birth:** \_\_\_\_\_

**Name:** \_\_\_\_\_ **Date of Birth:** \_\_\_\_\_

		FROM: TO:			<input type="checkbox"/> MJK <input type="checkbox"/> ASSOC. _____
DATE	CLIENT'S NAME		HRS	10TH	<input type="checkbox"/> PARALEGAL _____
					ENTRY# _____

PREPARATION FOR  ATTENDANCE AT  HEARING ON  CONTINUED HEARING ON  
 MOTION \_\_\_\_\_

FINAL HEARING  CONTINUED FINAL HEARING  CASE MANAGEMENT CONFERENCE  
 PRETRIAL CONFERENCE  JUDGE'S CALENDAR CALL  ORAL ARGUMENT (APPEAL)  
 DEPO OF  CONTINUED DEPO OF \_\_\_\_\_

OFFICE CONF. W/:  Client  MJK  Associate  Paralegal  Opposing Counsel  Co-Counsel  
 OTHER: \_\_\_\_\_

CONFERENCES:  MEDIATION  SETTLEMENT  CASE MANAGEMENT  PRETRIAL  STATUS

<b>DATE</b>	<b>CLIENT'S NAME</b>	<b>HRS</b>	<b>10TH</b>

MJK  ASSOC. \_\_\_\_\_  
 PARALEGAL \_\_\_\_\_

TELEPHONE CONFERENCE WITH  TELEPHONE CALL TO  CLIENT  OPPOSING COUNSEL  
 O/C'S ASST  CO-COUNSEL  CO-COUNSEL'S ASST  COURT REPORTER  JUDGE \_\_\_\_\_  
 JUDGE'S ASST  MEDIATOR  MEDIATOR'S ASST  ACCOUNTANT  ACCOUNTANT'S ASST  
 OPPOSING ACCOUNTANT  OPPOSING ACCT'S ASST  OTHER: \_\_\_\_\_  
 LEAVING COMPLETE MESSAGE  SUBSEQUENT TELEPHONE CONFERENCE RE: SAME  AND  
RE: (KEYWORDS ONLY): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\*\*\*\*\*  
**DETAILS:** \_\_\_\_\_  
\_\_\_\_\_

DATE	CLIENT'S NAME	HRS	10TH
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Copies: \_\_\_\_\_  MJK  
 Faxes: \_\_\_\_\_  Assoc. \_\_\_\_\_  
 Emails: \_\_\_\_\_  Paralegal \_\_\_\_\_  
 Entry# \_\_\_\_\_

- Dictation of  Preparation of  Review of
- Compilation of  Amended
- Petition for DOM  Answer to Petition
- Counter-Petition  Financial Affidavit
- Other: \_\_\_\_\_

In preparation for \_\_\_\_\_

- Motion \_\_\_\_\_
- Order \_\_\_\_\_
- Letter  to  from  Client  O.C.  Judge
- G.M.  Co-counsel  Other \_\_\_\_\_
- \_\_\_ E-mail(s) to \_\_\_\_\_
- \_\_\_ E-mail(s) from \_\_\_\_\_
- and preparation/review of response(s) to same

- Instructions to  Assist.  Prigl.  Bkpr.
- Re: \_\_\_\_\_
- to prepare R/D of \_\_\_\_\_
- Interrogatories  Answers to Interrogatories
- Request for Production  Response to Production
- Pretrial Catalog  Report of G.M.  MSA
- UCCJEA  Memo of Law  Final Judgment
- In compliance with mandatory disclosure
- DPB \_\_\_\_\_ Pgs: \_\_\_\_\_
- Re: \_\_\_\_\_
- Legal  Internet research conducted Pgs: \_\_\_\_\_
- Re: \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- Westlaw  Law books

		L/D CODE:		
DATE	CLIENT'S NAME	HRS	10TH	

TO: \_\_\_\_\_ FROM: \_\_\_\_\_ TIME: \_\_\_\_\_

CALLER: \_\_\_\_\_

NUMBERS: (\_\_\_\_) (WK) \_\_\_\_\_ EXT: \_\_\_\_\_

(CELL) \_\_\_\_\_ (HM) \_\_\_\_\_

(OTHER #) \_\_\_\_\_

RE: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

SUBSEQUENT TELEPHONE CONFERENCE ON \_\_\_\_ / \_\_\_\_ / \_\_\_\_ RE: \_\_\_\_\_

\_\_\_\_\_ (  CONTINUED )

ASSOCIATE  PARALEGAL  
INIT. \_\_\_\_\_ INIT. \_\_\_\_\_

- BILL MJK ALSO
- PLEASE CALL
- WILL CALL BACK
- RETURNED YOUR CALL
- FOR YOUR INFORMATION

Call Returned On \_\_\_\_ / \_\_\_\_ / \_\_\_\_

Time: \_\_\_\_\_ By: \_\_\_\_\_

Left Word  No Answer

INSTRUCTIONS TO:

Secretary  Paralegal (Over →)

**2017 Marital and Family Law Review Course  
The Lowes Royal Pacific Resort  
Orlando, Florida**

**How and Why Transparency Works for Family Law  
The Transparency Team Presents the Hands-On Approach**

**Friday, January 27, 2017**

**Speakers:**

Alison C. Weinger, Esquire  
Philip J. Shechter, CPA/ABV, CVA  
Maurice Jay Kutner, Esquire



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\* These materials are written as bullet point checklists for ease of reading and future use.

## **TRANSPARENT LAWYERING DEFINED**

In its simplest form, transparent lawyering means that there are almost no secrets from the other side. Specifically, it encompasses:

1. There is only one set of facts, which are openly and completely communicated to whoever is listening – **TRANSPARENCY – TRUST – CONFIDENCE.**
2. Maintain a proactive approach of transparency with opposing counsel.

For example:

2.1 Reveal ongoing facts and case developments as they occur – you are the first person to reveal breaking news and events.

2.2 Tell the other lawyer about pleadings to be filed before they are filed.

3. Provide documents as soon as they are received, without formal requests.

4. Make sure your client participates in all events. Use conference calling.

5. Never exclude a mediator from a conversation with your client. The mediator is there to learn everything and determine what is useful to get to settlement.

6. Copy the client on all outgoing and incoming communications, including e-mails.

**INITIAL CLIENT INTERVIEW – BASIC “MUSTS”**

7. New client telephone call
  - 7.1 Don't get on the phone
  - 7.2 Experienced assistant speaks to caller
  - 7.3 Use New Client Telephone Interview form (Appendix "1")
8. Initial client interview being the single most important event in attorney-client relationship
  - 8.1 Be prepared to say "No"
  - 8.2 Take control of interview
9. Learn **OPERATIVE** facts and explain probable range of results
  - 9.1 Apply law
  - 9.2 Client hearing same "story" at initial interview, mediation, and/or trial
10. Suggest **PROCESS** to get to mediation and/or trial
11. Assemble team
  - 11.1 Retain experts
  - 11.2 Define goals
12. **PROVIDE VOLUNTARY**, early, and frequent **"ROLLING" DISCOVERY**.  
Everyone knows what is required
13. Explain **TRANSPARENCY** - Outline benefits of transparency
14. Game plan to closure
15. Ethics, rules, and "by the book"
16. Cost-benefit analysis

- 16.1 Newly educated client
- 16.2 Internet almost replacing friends, beauticians, and barbers
- 17. Take action in client's presence
  - 17.1 Call other lawyer (use speakerphone – reveal at outset)
  - 17.2 Dictate letter to other party
- 18. Executed fee agreement (Appendix 2)
  - 18.1 Large percentage of bar grievances involving complaints related to legal fees in family law matters
  - 18.2 No work commenced until after execution of fee agreement and payment of retainer fee
- 19. Not filing a petition for dissolution of marriage, unless there is a reason to file – a judge being needed (urgency re: money or children)
  - 19.1 An act of war
  - 19.2 Potentially irreparable harm regarding finances, children, and dynamics

**DUTY OWED TO CHILDREN**

**20. Family law attorneys must take lead in protecting children**

**20.1 Vast majority of children who experience divorce process do not have any representation**

**20.2 Lawyers have an absolute duty to protect children**

**20.3 Protecting children and developing a game plan should be openly discussed between counsel and, when appropriate, with the Court**

**20.4 Determine the need for experts**

### **CLIENT CONTROL AND CASE MANAGEMENT**

21. The saying: "Plan the work and work the plan," is perfect for family law cases

22. Make sure client understands and totally agrees with the game plan

23. Copy client on all outgoing and incoming communications

24. Return all telephone calls and reply to e-mails within 24 hours

25. Schedule case management conferences to control process

26. Always discuss and take action, which will move case to closure

27. Schedule team conference calls as needed, assign responsibilities, and set deadlines

28. Go to [www.FreeConferenceCall.com](http://www.FreeConferenceCall.com) and secure your own free conference calling number

## **USEFUL CLAUSES FOR LATE NIGHT DRAFTING**

- 29. Waiver of Further Financial Disclosure (Appendix 3)**
- 30. The Kutner Klausens (Appendix 4)**
  - 30.1 Waive confidentiality of mediation process**
  - 30.2 The mediator arbitrates interpretation disputes**