

>>: Hello. Good afternoon. My name is Theresa Ramos, and we are at the MCLE. And today's program is Handling a Divorce, which is part of the Practical Skills Briefings for new solo and small firm lawyers. And today's briefing will really be somewhat of a high-level view of handling a divorce. And let's just get started. So again, my name is Theresa Ramos, and my practice is at Wellesley Hills. And I have been small firm since 2015. And when I was preparing for this, I was really thinking about what would I have wanted to know when I started practicing 20 years ago. I certainly didn't open up my own practice, but I did start working with a solo practitioner and then I - you know, my path is taking me to some petit firms and then another bigger firm. But now I'm back to just being a small firm solo practitioner. And so for those of you who are starting out, you know, you've done your marketing, you've been out there trying to build a practice and now you've been retained. And it is your first divorce case. So as we go through today's briefing, I want you to think about, OK, how do I handle this? And someone told me a long, long time ago, when you start this from soup to nuts, prepare your case as if you were actually going to try it. Prepare your case as if you're going to trial, because that is really the best way to make sure you are prepared, the best way to advocate zealously for your client and it will also just kind of keep you looking at the big picture and understanding what the issues are going to be and, you know, how you're going to handle. So the first part is - let me see here - the first part is the client intake. It's the initial interview now that you've been retained. The initial interview really is something that's not going to happen in the first hour or 2 hours because there's a lot of information that your client is going to want you to know. And so how I have been trained to start these - my interviews - is to start off with a client questionnaire. And that questionnaire is really the template and your go-to document when you want to know everything about your client. And what has really been helpful to me as a guiding post in getting information is going back to the statute, the 208 - chapter 208, section 34 factors. And those factors really set out, you know, a guideline for you to ask your questions of the client and get information. So it will be as easy as the factual information - such as the name of your client, your - if you're representing the wife, her maiden name, and the date of marriage, where they were married - all the information that you would want to know - their - everyone's date of birth, their address, their emails, phone numbers, how many phone numbers they have - cell work, home, landline. You certainly want to ask about their social media, their Twitter accounts, their LinkedIn accounts. And then you want to go on to get the really confidential stuff - the Social Security number, you - I have found in my practice that that number is some place that you should have it somewhere where you can always refer to it. And that's why I say you have a questionnaire or just a document that contains all this information. Here in my office, we have a document that really is kind of a fill in the blank form. So you can refer to it - so I can refer to it. And the information will then also have children - if there are any - when they were born, where they were born, where they go to school, if they have any certain needs at school, if they go to private school, how it's getting paid for. So everything you want to know is going to be in this document. And as you go through the section 34 factors in the marital history, the marital history is also going to include where each person works - if they work - how long they've been working, where they've been working, how the finances have been handled, the assets of the marriage, the liabilities of the marriage. And you really just want to understand what you have to work with. And that's why this process is not going to take an hour, 2 hours. And, you know, you really want to be as detailed and as fact finding as possible, if that makes sense. What's also important as you start the case is you'd like to know if the parties had signed a prenuptial agreement or even a postnuptial agreement, because that will certainly take precedent. And it will help understand, you know, how you move your case forward. And then, you

know, some of the other things that you start to think about as you go through a client intake - is, you know, are there factors here that you will need to impound the file once you file a complaint for divorce? Most - the reason being is, you know, is your client or is your client's spouse, you know, a public figure and you really want to protect the parties privacy - especially that - if there are children involved. You want to just protect this information. You - how are you going to handle the - your attorney's fees? And, you know, here I also put a conversation about social media, because these days, anything goes. Everything is out there. And people will find a way to get anything and everything about you. And so if you do have - if your client has Facebook, Twitter, Instagram, all that - I would highly, strongly recommend that they stop posting anything personal, anything that can be used against them - if this is a custody issue. And just keep it pretty plain vanilla and lock their settings to private if they must have social media. And another thing is, you know, sometimes I will recommend that a client start a new email account just so there is an added layer of reassurance that the emails between me and the client are private, are secure, and we can maintain the attorney-client privilege. So as you go through the client intake, there's going to be - it's very fact driven, but you want to get as much information as you can because then you will have - the next step will be filing a complaint for divorce. And for the purposes of this briefing and this MCLE, I wanted to just take - assume that this was a complaint for divorce filed under 1B - a no-fault divorce on the grounds of irretrievable breakdown of the marriage - just so that it would help us continue down and go through the life of the case under a complaint for divorce based on irretrievable breakdown of the marriage. And so once that complaint for divorce is filed, there are certain rules - or actually, let me step back. The Probate and Family Court website is pretty user friendly these days, in that you can just pull up a complaint for - the form. It's fillable, it's printable. I don't think you can save it, but that's OK because we have - we can scan these documents. And so everything that you need to file the complaint along with the necessary court documents - such as the rule 408 form, which is a form that goes to the Registry of Vital Statistics here in Massachusetts. And if there are minor children, you must file an affidavit of care and custody. And then the certificate of marriage is necessary. If you don't have it, you could also file a motion to file the certificate late while you order it and wait for it to come in. But once you get your complaint for divorce filed and you're waiting for your summons, there are certain probate court rules that are automatically triggered. And the person who's filing the complaint will automatically fall under these rules. And once the other party, the defendant, in the complaint for divorce has been served, then these rules will apply automatically because they've had service and notice that the complaint for divorce has been filed. Now, the first supplemental probate court rule that is probably the most important is rule 401. It's the financial statement. Again, you can find the financial statement on the Massachusetts Family Court website. All the forms that you need are there and, like I said, they are incredibly user friendly. And the financial statement is something that will be used over and over again and will require that your client to update and sign every time you go to court. Now, the - I highly recommend that you read the rule. It's very specific in that once you've been - the complaint for divorce has been filed and served, there's 45 days in which the financial statement needs to be prepared and exchanged with the other party. Now, the financial statement, it's really worth the time to fill it out properly the first time around, because the financial statement's filed under the pains and penalties of perjury. And this will again follow your client all the way through until the end of this case. And the financial statement will include weekly gross income, will include the deductions from gross income, the weekly expenses, assets, liabilities, and the - any real estate rental income that you will need. In conjunction with preparing a client to fill out the financial statement, in - I would, one,

create a template letter that goes to the client so that the client understands what it is that you need. And I include a copy of a blank financial statements. And just so you know, there are two kinds of financial statements. One is a short form and is used by parties who make less than \$75,000 a year. And then there is a long form for those parties who make more than \$75,000 a year. The information is the same, however, it is just much more detailed and an extended version - the long form is an extended version because there are - someone who makes an income will have - will need that the additional room to make sure that all the expenses and assets and liabilities are captured. So a - in starting off with the financial statement, I generally give that to the client very early on because there is no doubt it is overwhelming - overwhelming to the spouse who certainly didn't handle the finances during the marriage but also to someone who did because now you're really capturing everything - whether it be income, overtime income, part-time income, bonuses, interest, commissions. And, you know, it will take some time to gather that information and to get someone comfortable with gathering the information and reporting it and making sure that they are - they've captured everything. Now, the next rule is rule 410. It's a mandatory self-disclosure, which requires each party to provide the other certain documents. And rule 410 explains what documents those are. And they encompass the party's tax returns, the party's last four paystubs, the last three years of all bank statements and bank accounts that they have - savings, checking, retirement accounts. They also - the rule also requires proof of insurance to the other party and any loan applications that have been filed. The time in which these documents are looked at is three years. And again, I also prepare a letter to the client explaining what the rule 410 is and what documents that are required and must be produced to me. Now, I generally - and I - and it's good practice to send the financial statement and the mandatory disclosure to the client at the same time. The reason being is you can use those documents to help prepare a financial statement and then will also help verify the accounts - account numbers, the expenses of certain things, the values of certain accounts. And it will help facilitate putting the financial statement together. And certainly, take some of the stress and pressure off of your clients. And the next war that is also triggered when filing for divorce is the automatic restraining order. And that, again, is a separate letter that I send to the client so as not to overwhelm them with all these rules that come into play. But it's important for them to know that the automatic restraining order really prevents them from doing anything with assets - really spending them down, transferring them out, selling property. And the automatic restraining order is also pretty explicit about what they can do. The point of the automatic restraining order is to keep everything status quo. And when I say everything, it means keeping the health insurance policies in place, keeping the named beneficiaries of any policies in place, whether it be a life insurance policy, whether it be a retirement account. And that is the point of, you know, when I say status quo, now that you're in a divorce, no one can touch any assets or start doing anything different than what they did during the marriage. And the automatic restraining order will only allow you to pay your bills. And I'll just read it verbatim. You are to pay your reasonable expenses for living and any financial transactions that are in the ordinary and usual course of business and also in the usual course of investing. This rule was written by attorneys. So the automatic restraining order makes an exception for you to use marital assets to pay for your attorney's fees. And, you know, there is a way around this automatic restraining order, meaning you can agree with your spouse and your spouse's lawyer to access an asset. The most common example in doing that is if during the divorce somebody wants to use marital assets to purchase a new home, and because of the automatic restraining order, you're prevented from doing that. But if you would like to do that, you certainly can. And everyone will just need to sign a stipulation, enter it as a temporary order of the

court, to allow the party who wants to purchase a home to access the marital assets to put down a down payment or however they want to use the money to acquire an asset that - during the divorce and to get around the automatic restraining order. Before 2011 - strike that. Before September 1, 2021, there was a requirement where if there - after filing a complaint for divorce and there were minor children, the parties were required, mandated, to attend a parenting ed class. And it wasn't until September 2021 that this standing order of the probate court was suspended. The chief justice, John Casey, has put a memo out - you can find it on the probate and family court website - as to why this parent education program has been suspended. And as of right now, there is no requirement, but in the past, there used to be. But, you know, given the issues that, you know, your case might have, it might be worth at least trying to help the client understand what it means to be a co-parent - that's what this parenting ed class was - if there is conflict. But that's on an as-needed basis. And you can determine whether or not - what the custody issues may be when you're going through your client intake in gathering information of your case. So let's see here - check my notes just to make sure. That's - oh, actually, before I move on, just as a practice tip, now that we have this e-filing, it is nice to be able to file a complaint for divorce. Now, it would be helpful to know that there is actually a preferred way of scanning these documents into the e-filing system. And there is, again, another document on the probate and family court website that lists which documents should be e-filed and what order they should be e-filed. I have had cases that have been rejected by a probate court registry because they were not e-filed in the particular order. I will tell you, that only happened once. But it's important to know that there is a list out there. And in fact, there's a link to that list when you sign on to e-file a complaint for divorce. So we should move on. For a motion for temporary orders - this is really a very important part of the case because this is the first time the judge will hear you, see you, and you will really be making it your first go around with the other side. And so it's important to really understand why you need a motion for temporary orders and what it is that you're asking for. There are many issues here that are generally addressed. And it's a parenting plan, custody, child support, alimony. I have included in here attorney's fees pendente lite in the event that one spouse - and just for the sake of the presentation I am going to say that the husband who has always been the primary wage earner, substantial wage earner, and the one who's controlled all the finances - that you may need an attorney's fees pendente lite where you're asking the court to order him to release funds to your client so that your client can pay a retainer and essentially be an even playing field with your client's spouse, because it would be unfair for someone to have access to all the money and to be able to retain the best lawyer and not leave you with anything. But filing the - asking for attorney's fees pendente lite, you really should have information to verify and confirm that there is money there, there is - that the husband is in sole control, your client has no access to any money. And in addition to that, we have the residence. I think it's important to include in the motion for temporary orders who's going to remain in the home. And again, for the purposes of this presentation, let's assume it's the wife who is also going to be the primary custodian of children, of the children. And so you want to make sure that she has sole use and occupancy of the home, and - when you're asking for a motion for temporary orders. There are other issues that come up, such as domestic violence, abuse, there might be - you might need to go in on an emergency order - you might need to go in on an emergency basis for a motion for temporary orders. And you call that ex parte because you don't want to give the other side any notice of you going into court to get a motion to essentially perhaps get them to vacate the home immediately. One thing to remember about a motion for temporary orders is that the motion is in place until there is a final

judgment. And it is not unreasonable to think that if you are following and operating under a temporary order and your case goes on for a year that what happens is the practice of the temporary order, the routine of the temporary order, whatever it is that you had agreed to or whatever the court ordered is most likely going to be incorporated into a final judgment. And that's because that's what the, you know, the husband and wife have been following. But more importantly, that's really what the children are used to, that the routine lends a level of predictability and consistency for the children. And so I say that with a parenting plan, it doesn't make sense to - again, you're weighing what is in the best interest of the children. And if they're used to the routine, it doesn't make sense to change your parenting plans from one week on, one week off to then three days a week at one house and then the other three days a week at the other home. So these motion for temporary orders really are something that parties will follow once they're issued, unless there's a change in circumstance or something is changed that requires a modification of the temporary order. Now, as far as a practice tip in scheduling a motion for hearing, it's really up to the particular registry, the county. Some courts will allow you to email a certain person in the registry and they will assign you a date. You can e-file it, you can e-file your motion and then a notice for hearing will just be automatically sent to you. You can certainly call the registry and see if they will take it over the phone and give you a date, or you can go old school and mail it in and they'll file it that way. But it generally helps for you to get to know the court, give them a call, even walk in your motion if you have the time so you can get a feel for how the court works, who might be the person you'd want to ask for the next time if you're calling from your office. But scheduling a motion for a hearing, sometimes it depends on the court. So it's helpful just to at least give a call before you head down there. Or again, you could just e-file it. And in addition to the motion for temporary orders, it's also important that you attach to it the certificate of service, as well as a notice of hearing, which will signal to the court that you have given proper service to the other side, in that you have given them a copy of your motion and that you have also given them enough notice of when the hearing is scheduled. And when you're looking at the timing of notice and service, I'm going to refer you to Massachusetts Domestic Relations Rules Five and Six. And that will give you the timing of how much - of when these motions need to be served. So the next part of the life of a divorce case is the discovery piece. You have all this information that your client has given you. You have gone into court for a motion for temporary orders. You have a temporary order in which the clients and the party and the family is operating under. And as a general practice, at the time of the motion for temporary orders, the court will also issue a scheduling order for a pretrial conference. And if you refer to the Statute 1B, a pretrial conference is not going to be ordered or scheduled until six months after the date of filing a complaint for divorce. So the pretrial conference is generally actually in practice probably scheduled a little bit further out. But after the motion for temporary orders, you now have discovery, because you have been assigned a pretrial conference date. So now you have to prepare for your pretrial conference. And to do that, you - that's the time where you do discovery. Why do you do discovery? You do it to gather information, to prove the theory, theories, of your case. And you establish and design these theories of the case with the client by understanding what the client wants, what the client needs, what the relevant case law is for your client. And generally, in terms of going through the discovery and when we have issues of custody, we're going to have issues of assets and income and support. So I say that so it will help kind of - it will help me explain to you why we - what we would look for in a deposition, why we would do a request for production of documents, and what it is that we're looking for in terms of filing the - conducting the discovery. Now, Mass. - the Domestic Rules of Procedure Rule 26 is long. But it's also kind of the general

overview of discovery. It explains what you - what discovery can do and then how you can do it. But what the rules really don't tell you is how do you know what to do? Right? You can take a deposition, but do you want to take the deposition? Why do you need to take the deposition? And so when you embark on this road of discovery, you have to - you should have a path of what kind of information you want, what are your client's resources in gathering this information, and what is the most efficient way of gathering the information? Now, Rule 30 regarding depositions can be a deposition of a party, of a third party, of a witness. But it also can be a keeper of the records deposition where you can subpoena documents - you can obtain - ask for documents from a bank. Usually I like to use these for employer records - employment records. And you know, when you ask for the employment records, you're looking for verification of income. You're generally asking for an employment contract bonus structure and what other benefits the, let's say, the husband is entitled to. And so, you know, you want to know what to expect if there's - what to expect and what an earning capacity of this - of the husband is. You know, another reason to take a deposition is to have live testimony. And, you know, what are the benefits of having live testimony? We can certainly assess how this person is going to be at a trial. It will help you assess how your client is as a witness. And it also just gives some folks an understanding, a preview, of what a trial is going to be like. So, you know, it's been my experience that depositions are probably one of the most expensive tools of discovery, because you have to prepare. You have to, you know, gather exhibits, prepare your line of questioning, understand the strategy of your case and what kind of information you're looking for. And not only that, you're also having to pay for a stenographer. And once you take the deposition, you need to, you know, obtain a copy of the transcript. And, you know, depositions sometimes do not produce the information and evidence that you're looking for because you have a difficult client. So before you go and take the deposition, I think you - there are a lot of factors to consider and what the cost benefit is going to be for your client. A practice tip - sometimes attorneys will agree to postpone the deposition until after a pretrial conference, which I'll get to in a minute. But the purpose of that is to actually save the parties money. And, you know, and taking a deposition is usually, sometimes, something to do at the last resort. You can also take interrogatories. And as you know, interrogatories or statements under oath. And then requests for documents - a request for document production under Rule 34 is important because you can ask for documents that are not produced under Rule 410. And the documents that I tend to ask for - and not - are any copies of any wills, trusts, credit card statements, if, you know, high finances - a spouse being a spendthrift is at issue. You also can ask for daycare records if custody is an issue. Sometimes you can use the document requests to ask for proof of, you know, a loan from someone who you need to pay back. And let me use an example. It might be actually easier. Where, at the beginning of the marriage, let's say the wife's parents gave a \$30,000 down payment, and sometimes it gets characterized as a gift. Sometimes it gets characterized as a loan depending on, you know, who's side you're on. But - and if there's a dispute about it, you can just, you know, nip it in the bud and ask for a copy of the document if it's a loan, that you want proof that it's a loan and that needs to be paid back. That's, you know - the request for documents is a tool to get that information. Requests for admissions are not as common, but they can be used to just, you know - resolve any issues of fact. Recently, in preparing for this, I was trying to come up with examples, and I actually had someone send a request for admissions to me because they had tried to - before I came on board, the parties were - went to a neutral third party to try and resolve their divorce via mediation and had prepared joint petition documents. And so unbeknownst to me, my client had actually signed a separation agreement. Now, that's a whole other animal and issues assigned to

that. But, you know, the request for admissions was, you know, did you sign this agreement on, now, September 2021. And is that your signature? So, you know, there are times and places for - when a request for admissions is appropriate. And you're going to have to consider the circumstances in your case to determine whether or not you want to use that tool of discovery. So if - I put in here Rule 37 motions to compel because, as you know and as the rules dictate, there are deadlines in which responses are due for interrogatories and requests for production of documents. And if you don't meet that deadline, and it's usually 30 to 33 days, depending on how you received the request, and you can file a motion to compel. However, I want to point out that Rule 26(g) and 26(h) require a mandatory discovery conference before you file a motion to compel. So if you have been asking and asking for requests for documents and no response, the general practice is you write a letter to the other side, you follow or even just, you know, paraphrase or just pick up the language from Rule 26(g) and 26(h) and say, look, if I don't hear from you, you know, please consider this letter as my request for a discovery conference pursuant to Rule 26(g). And if I don't hear from you, I'm going to move forward with the motion to compel. And generally, that will prompt a response. But if not, you can - Rule 37 lays out the motion to compel and you can also ask for your attorney's fees. Because now you are having to go to court to get someone to comply with the rules when - and it's preventing you from moving your case forward. So the next here. You've done your discovery and now you're up to the pretrial conference. So as I said, the pretrial conference will be scheduled months in advance and generally a motion for temporary orders. And it is a pretty detailed order. And that order will include the date of when the hearing is, whether it's going to be in Zoom or in person, although I think some of these are starting to take place in person. And the time where it is - the scheduling order will issue when the discovery deadline is to - when all the discovery should be completed. The order also mandates a four-way meeting, which requires everyone to meet in person or by Zoom, depending on circumstances. But the purpose of that meeting is to identify what the issues are, identify where you might have an agreement, and see if you could actually make a good faith effort to try and, you know, reach a global settlement. But if you are able to at least move on some issues, that's great. You can report to the court that you - at the four-way meeting, you resolved a couple of issues. And, you know, we're - you can then also let the court know that you're stuck on a couple of issues and those issues will be brief in a pretrial memorandum. And, you know, the pretrial memorandum is a document. There are specific requirements on what that document is to include. And that - and those requirements are also included on the scheduling order. That's very important. And I kind of put some asterisks around it. It's very important to find out, to read the order and find out and know when your memo was due. Some judges want them do three days before. Some judges are OK with you filing them the day of the hearing right before the hearing. But it's really important that you know that. One, it will save you some embarrassment and chastisement from the court. But really, it's also the client management thing. And you don't want that to get in the way and take away from, you know, the real issues of the case. So. At the pretrial memo will, like I said, there are - it states what you need to put in there. And it's really the factual issues, the contested issues of law, you know, what the stipulated facts will be and your offer of proof under Section 34. And I'm going to tie that back to the client interview that you had in the beginning because if you have all of that information in your file, it's almost as if that part of your pretrial memo will write itself. And also, you don't necessarily need to bother the client asking for this information because that information was provided at the very beginning. And that is just common sense, but it's also somewhat of a client management. You know, common sense tip because, you know,

you've been working with this client for so long, they're going to expect you to know this stuff as if you don't have other cases that you're working on. So the memo is really your written position and then the pretrial conference is where you're actually going to present your memo, identify and explain to the court what your issues are, explain to the court what your client is willing to do. And even though settlement discussions and negotiations are inadmissible in court, I think there's a way to at least advise the judge as to what your client's position is and what your client's position was in settlement and what your client is willing to do that day at the pretrial conference. I find that probate and family court judges really are proactive for the most part in trying to help settle your case or at least provide some guidance as to how to get you unstuck in the positions that you're in. And if you're not able to resolve the case at the pretrial conference and - then you're going to be assigned trial dates. But before that, before that, it's been my experience, especially during COVID, that judges really are spending the time to try and resolve this case. And you know, spend some time with the parties in open court or on a Zoom as to helping brainstorm. You know, what are some ideas to get you unstuck? Why - and if you still can't get there, then, you know, the court - you could ask the court to schedule your case for a status conference to give you some time to, you know, understand what the proposal is to talk to your client. Now that some of these pretrial conferences are happening in person, you know, I'm hoping that attorneys and I myself am finding that it might be easier to keep the momentum going if the pretrial conferences are in person. Because you go into court, the judge gives you some feedback and then nobody just clicks off of the Zoom. You're able to go out into the hallway, talk to the client, talk to the lawyer, see if there's some movement to, again, keep the momentum going, to see if you can make more progress, if not resolve your case. But that's generally what to expect from a pretrial conference. What I think is important to know is if - the pretrial conference best-case scenario is you walk into court that day and you have a signed agreement. And you can use that pretrial conference as your uncontested divorce hearing. So I generally like to, you know, put that out there as kind of a big giant wish list. And sometimes that motivates clients to work hard, to find a way to resolve it or not. And it's certainly not a way to pressure resolution. But it's also, you know, when you see that they tend to get motivated in terms of, you know, being cooperative in preparing for the pretrial conference. And here I put here an updated financial statement. That's probably more important than your pretrial memo because the court relies heavily on these financial statements in terms of understanding assets, support. And if they're really - if they, the judge is really going to weigh in and provide some guidance, the financial statements are numbers that they need to be able to rely on in giving you feedback from the bench on the spot for that. So again, as I mentioned, if you're not able to resolve the case at pretrial conference, then the case is going to be scheduled for trial. And that brings me to trial prep. And I put that on there. It's another MCLE course because one, we don't have the time to do it here today. But trial is very involved. But if you have prepared your case as if you're going to take it to trial, then a lot of your work is done. And then it's just a function of organizing yourself, understanding what else is it that you need, and, you know, taking the court's feedback into and having it kind of help guide in your trial prep and theories of your case. Looks like I've run out of time. That really was a soup to nuts very high-level view of handling a divorce case for a new solo practitioner or a small firm lawyer. And I really thank you for your time. I've put up here my email. Please feel free to reach out if you have any questions, if you want to brainstorm. And I am happy to talk with you and answer any questions you may have. Thank you.