

Family Matters e-Newsletter



Amy Edwards

Family Law

313 West 2nd St. • Greenville NC

(252) 758-3430

www.AmyEdwardsFamilyLaw.com

News For November 2016

In This Issue:

Your Case & the Cutting Room Floor: Too Much of a Good Thing?

Ten Tips For Financial Mediation

Medical Records in Family Law Cases

See Past Issues From the Archives

Text to Join Our E-mail List

*Follow Us On Social Media
Online*

Visit Us





Your Case & the Cutting Room Floor: Too Much of a Good Thing?

By Amy A. Edwards

There are all kinds of family law cases, and each one is unique. Some are straightforward and others are complex. Attorneys highlight the favorable aspects of their clients, and de-emphasize the unfavorable. Trials take on lives of their own regardless of what clients, attorneys or even judges expect. There are a lot of moving parts, especially when cases are lengthy and complex. Especially with the best cases, editing is the hardest part. Too much of a good thing can backfire when the judge is knee-deep in "good" information. Clients and attorneys don't always agree on where to draw the line.

In the Court Room

In Pitt County family court, each side has a specific number of hours assigned to try their case. A two day trial might be distilled to 5 or 6 hours for each side, after taking into account lunch breaks and short breaks throughout the day. That might sound like a lot but it really isn't because that includes any opening remarks, questions to witnesses, cross examination and closing argument. The court has to keep cases moving through the system, which is already tremendously overburdened. Time is of the essence.

Trial Exhibits

Exhibits are usually documents each side admits as evidence for the judge review before deciding the outcome of the case. Depending on the type of dispute there is, exhibits might include photos of the children, copies of grade reports and medical records, text messages and e-mails between the parties, records of each party's wages and insurance, bank and credit card statements, or tax returns. A complex case might have 30 or 40 exhibits, each being multiple pages. The judge has to review two stacks of "basic" exhibits, one for each party. Frankly, they can be rather dry and boring.

Less is More?

Like anyone else, some judges have longer attention spans than others. If it is a custody case, they don't mind five or ten photos of the child at issue. They do mind thirty photos unless there is some specific reason. For a trial, a good attorney creates a cake, so to speak. The cake itself forms the foundation, the basics. The "goodies" are the decorations or icing on the cake. One example of goodies might be love letters written to a third party by a cheating spouse. It is usually more powerful to select four or five of the best "goodies" instead of diluting the value by heaping them on indiscriminately. These exhibits must be distinct to stand out from the rest. You might have fifty or sixty pages of e-mails where you should have ten. Your attorney has been in trials with a certain judge and knows his or her preferences. Take your attorney's advice and get the best bang for your buck, and keep the judge focused on the priorities that matter to you.

Amy A. Edwards is a family law attorney in Greenville, NC, certified by the NC State Bar Board of Legal Specialization as a Family Law Specialist, and is licensed only in NC. Laws change. This article is current as of November 2016.

www.AmyEdwardsFamilyLaw.com © 2016.



Ten Tips For Financial Mediation

By Amy A. Edwards

In NC family law, there is [child custody](#) mediation where parents try to reach an agreement after a lawsuit. There is also [family financial mediation](#) (FFM) by which parties attempt to reach an out-of-court settlement for the division of marital property, child support, and/or alimony. This article is about FFM. Mediators are neutral, and each party pays half his or her fees. They usually meet briefly with both clients and attorneys to introduce themselves and the process. Otherwise, you and your attorney will be in separate rooms of a law office during mediation.

1. Think about attorney's fees. When you can't decide on whether to take (or make) an offer, ask your attorney for an estimate of the cost to litigate your case. Is the dispute worth spending \$5,000 to \$10,000 to go to court? It might be, but if you are arguing over \$2,000.00 it won't be.

2. Stay open minded. There are always deal-breakers, but you'll probably have more options if you approach case without the automatic frustration and expectation that it is a waste of time because the other party is unreasonable.

3. Don't give them your "bottom line" too early. When you make an offer (or respond to the other side's offer), leave yourself some wiggle-room. Although it is theoretically possible, I don't ever see anyone accepting the first offer made, or even the first few.

4. Trust your mediator's suggestions. Mediation involves looking at things from a different perspective. A good mediator brings a fresh pair of eyes, making it easier to think outside the box. If the idea isn't a good one, your attorney will tell you so.

5. If you don't understand something, or if you aren't sure what you might be "agreeing" to, ask your attorney before and/or during the mediation. It is our job to answer questions but we don't necessarily know you need an explanation unless you tell us.

6. Make a list of questions/comments to bring with you. There is lots of down time because the mediator will shuttle back and forth between rooms, sometime for an hour at the time. Your attorney is on the clock, so you might as well make the most of it.

7. Don't be pressured. Whether to accept an offer is your decision, although your attorney will explain the process and give you advice. You'll be the one who lives with any agreement you reach. It is your right to have a trial, and let the judge decide what to do.

8. If you have reached an agreement on some issues but not all issues, is there any reason you shouldn't leave with a signed agreement on those matters? If you can walk away with a signed agreement for marital property but not for alimony, for example, consider it.

9. Don't get bogged down with what the other party is doing in the other room. Clients are sometimes concerned about what their ex is saying about them to the mediator. It doesn't matter and it divides your attention when you need to be focused on your goals. If your ex brings someone with him or her to the mediation, ignore it.

10. Don't work yourself into a panic. This isn't the courtroom. Being in a lawyer's office during mediation in separate rooms is way more comfortable than being in court. Unlike the courtroom, you don't have to look at your ex sitting in front of you. You can order lunch, take breaks, and have documents (or other information

you need ASAP) e-mailed and printed.

Amy A. Edwards is a family law attorney in Greenville, NC, certified by the NC State Bar Board of Legal Specialization as a Family Law Specialist, and is licensed only in NC. Laws change. This article is current as of November 2016. www.AmyEdwardsFamilyLaw.com © 2016.



Medical Records in Family Law Cases

By Amy Edwards

In family law cases, a party may seek medical records for several reasons, perhaps to show whether someone is able to work in child support and alimony cases. Another common reason for requesting them is during child custody case to show whether a parent is physically able to care for a child, or whether a parent is mentally stable.

What Are Medical Records?

Medical records (MRs) are described differently in federal and state laws. The critical starting point is determining what MRs are actually being requested, and for what time period. Examples of

MRs include pharmacy records, hospital records, therapy records, and patient files at the doctor's office. MRs can include other sensitive information about STDs, substance abuse, pregnancy and abortion, and mental health history showing a person was suicidal or involuntarily committed to a mental hospital.

Seeking the Records

MRs are confidential. As such, a patient must generally give consent before MRs are provided to anyone. Attorneys typically request MRs in the civil discovery process, usually by requests for documentation to be produced. An attorney may also issue a subpoena to be served on the other party or to a third party, such as the doctor or the pharmacy.

The Law

MRs are privileged, meaning they are generally protected from being disclosed unless the patient consents or there is a court order requiring disclosure. The patient, doctor or other medical provider may file a motion objecting to the release of the MRs. The party seeking access to MRs then has the burden of proof to show they are "necessary to a proper administration of justice." NC Gen. Stat. §8-53 *et seq.* There are federal laws such as HIPAA that hold the medical provider to certain standards, as well as state laws. There are special laws that protect mental health and substance abuse records.

What Can the Judge Do?

In Pitt County, the MRs are usually sealed and held by the clerk of court (or the judge) until the trial. Only if the judge finds the MRs are relevant to the issues in the trial, he or she then moves to the next step of deciding what to do with the MRs. A judge might review the records *in camera*, which means privately in his or her office. The attorneys do not have access to the records unless the judge makes a ruling on whether some or all of the MRs are admitted as evidence.

After reading the MRs, the judge can deny or grant the motion to admit them as evidence. Or, the judge might limit the scope of the MRs. For example, the only records given to the attorneys might be for the last six months instead of the three years of records the attorney subpoenaed. For any MRs given to the attorneys, the judge has the authority to require the attorneys shred the records after the case is finished. Judges sometimes order the MRs to remain exclusively with the attorneys, not to be reviewed or copied by the clients. Even if the judge doesn't require the attorneys to do anything specific with the records, attorneys are still bound by State Bar ethics rules to maintain confidentiality of records.

Amy A. Edwards is a family law attorney in Greenville, NC, certified by the NC State Bar Board of Legal Specialization as a Family Law Specialist, and is licensed only in NC. Laws change. This article is current as of November 2016. www.AmyEdwardsFamilyLaw.com © 2016.

It's easy to join our mailing list!

Just send your email address by text message:

Text

AMYEDWARDS

to **22828** to get started.



Message and data rates may apply.

Thank you for reading my newsletter.

Sincerely,
Amy A. Edwards

This e-newsletter is not meant to be legal advice. Amy A. Edwards is licensed to practice law only in the state of North Carolina. Laws change. These articles are current only as of the date originally written. No attorney-client relationship is formed by viewing this e-mail.
