

Crafting your client's family law story for hearings, expert witnesses, mediation and trial.



a CLS Presentation by Chicago Family Law Attorney Bryan V. Reed

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Conclusion

Welcome,
Storytellers

Graphics by Cali Greenwood

Welcome, Storytellers

- We think our jobs are fancy; we're actually just storytellers.
- Storytelling throughout the ages...
 - Content
 - Duration
 - Audience
- In each occasion, the storyteller has a point to make





Storytelling is a craft to master

- Too often, lawyers do not see themselves as storytellers
- Your goal is to be the best storyteller possible and tell your client's story within the context of the law. You will tell the story through the mouths of witnesses.

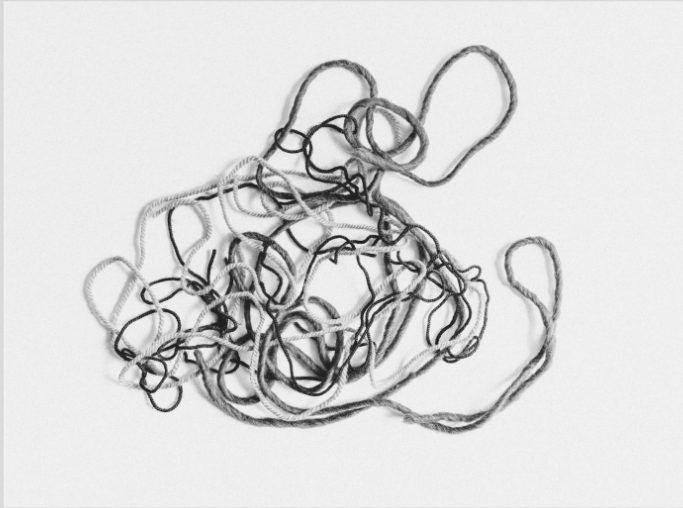


ACT 1



ACT 2

The state of the client's story



- Most clients' stories resemble a tangled ball of yarn.
- Untangle the yarn and re-present it.
- Remember your window of time.



The ball of yarn

- Lose the judge, lose your case.
- At trial tell the judge everything he or she needs to know.



- At an evidentiary hearing, tell less than at trial.
- At a status, tell the judge what is absolutely necessary and nothing more.
- The three keys to properly re-presenting your client are: Preparation, preparation, and preparation.

- President Wilson was once asked by a friend the following question: “How long does it take you to prepare for a speech?” He answered that if he could talk as long as he wanted, he was ready to go now. If he could only talk thirty minutes, it would take him a week to prepare. And if he could only talk for ten minutes, he needed a full two weeks to **prepare**. (*The Operative Miller, Volume 23, Number 4, (Short freestanding item), Quote Page 130, Column 1, Operative Miller Press, Chicago, Illinois.*)
- The great motivational speaker, Jim Rohn, said, “Preparation is like building an account from which to draw. When you get ready to talk, you want to make sure you have a verbal check to cash.”





How to Develop the Story

Your story needs a theme and a tag line.

Ways to
Develop

Other
Possible
Taglines

Emphasizing
your Theme

Audience Question

At what point should a family law attorney begin to develop the theme of his/her case?

(a) During the discovery process when proofs are taking shape;

(b) During the initial consultation;

(c) During the trial prep period when everything can be viewed as a whole; or

(d) When it becomes clear what the other side will say about your client?



**(b) During the initial
consultation**

Developing the Story

Sometimes you can get this from the initial consult and other times it needs to emerge, develop, and evolve. See “The Divorce Trial Manual” by Lynne Z. Gold-Bikin and Stephen Kolony.

Possible Taglines on Cases

1. "My way or the highway " for a controlling spouse
2. "The stay-at-home mom who was just a stay-at-home, not an actual mom"
3. "The narcissist spouse"
4. "The emperor is not wearing any clothes," etc.

Emphasize your theme every chance you get

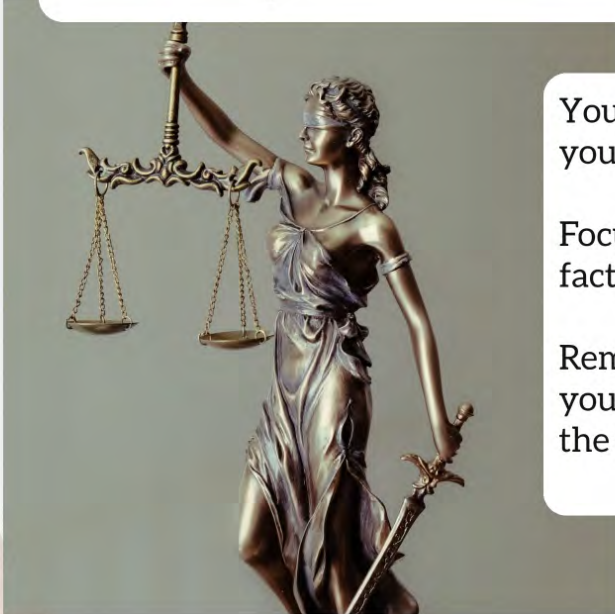


In the book “**Storytelling with Data**,” author Cole Nussbaumer Knaflic explains the power of repetition and how repetition bridges short term memory to long term memory. She says that your story needs a plot, a twist, and an ending.

- The plot lays out what content is essential for the audience
- The twist explains what is interesting about your data and what it tells
- The ending is a call to action. What is it you want your audience to do?

She says heaven is reached when you have an effective story and beautiful data to back it up.

Pleadings



Your pleadings lay out your plot.

Focus your pleadings on facts and law.

Remember you are telling your client's story within the context of the law.

Handout 3:
750 ILCS 5 -
609.2

Handout 4:
*Petition for
Relocation*

Overview

West's Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 750. Families
Act 5. Illinois Marriage and Dissolution of Marriage Act (Refs & Annos)
Part VI. Allocation of Parental Responsibilities (Refs & Annos)

750 ILCS 5/609.2

5/609.2. Parent's relocation

Effective: January 1, 2016

Current version

§ 609.2. Parent's relocation.

(a) A parent's relocation constitutes a substantial change in circumstances for purposes of Section 610.5.

(b) A parent who has been allocated a majority of parenting time or either parent who has been allocated equal parenting time may seek to relocate with a child.

(c) A parent intending a relocation, as that term is defined in paragraph (1), (2), or (3) of subsection (g) of Section 600 of this Act, must provide written notice of the relocation to the other parent under the parenting plan or allocation judgment. A copy of the notice required under this Section shall be filed with the clerk of the circuit court. The court may waive or seal some or all of the information required in the notice if there is a history of domestic violence.

(d) The notice must provide at least 60 days' written notice before the relocation unless such notice is impracticable (in which case written notice shall be given at the earliest date practicable) or unless otherwise ordered by the court. At a minimum, the notice must set forth the following:

(1) the intended date of the parent's relocation;

(2) the address of the parent's intended new residence, if known; and

(3) the length of time the relocation will last, if the relocation is not for an indefinite or permanent period.

The court may consider a parent's failure to comply with the notice requirements of this Section without good cause (i) as a

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Handout 3

factor in determining whether the parent's relocation is in good faith; and (ii) as a basis for awarding reasonable attorney's fees and costs resulting from the parent's failure to comply with these provisions.

(e) If the non-relocating parent signs the notice that was provided pursuant to subsection (c) and the relocating parent files the notice with the court, relocation shall be allowed without any further court action. The court shall modify the parenting plan or allocation judgment to accommodate a parent's relocation as agreed by the parents, as long as the agreed modification is in the child's best interests.

(f) If the non-relocating parent objects to the relocation, fails to sign the notice provided under subsection (c), or the parents cannot agree on modification of the parenting plan or allocation judgment, the parent seeking relocation must file a petition seeking permission to relocate.

(g) The court shall modify the parenting plan or allocation judgment in accordance with the child's best interests. The court shall consider the following factors:

(1) the circumstances and reasons for the intended relocation;

(2) the reasons, if any, why a parent is objecting to the intended relocation;

(3) the history and quality of each parent's relationship with the child and specifically whether a parent has substantially failed or refused to exercise the parental responsibilities allocated to him or her under the parenting plan or allocation judgment;

(4) the educational opportunities for the child at the existing location and at the proposed new location;

(5) the presence or absence of extended family at the existing location and at the proposed new location;

(6) the anticipated impact of the relocation on the child;

(7) whether the court will be able to fashion a reasonable allocation of parental responsibilities between all parents if the relocation occurs;

(8) the wishes of the child, taking into account the child's maturity and ability to express reasoned and independent preferences as to relocation;

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – DOMESTIC RELATIONS DIVISION

IN RE: THE MARRIAGE OF:)
)
WIFE,)
 Petitioner,)
)
and)
)
HUSBAND,)
 Respondent.)

Case Number
Calendar

PETITION FOR RELOCATION OF THE MINOR CHILD FROM ILLINOIS TO TEXAS

NOW COMES the Petitioner, (“WIFE”), by and through her attorneys, REED, CENTRACCHIO & ASSOCIATES, LLC, pursuant to 750 ILCS 5/603.5, 750 ILCS 5/602.7 and 750 ILCS 5/609.2, and in support of her *Petition for Relocation of the Minor Child from Illinois to Texas*, WIFE states as follows:

Background

1. WIFE and the Respondent, (“HUSBAND”), were married on April 3, 2000, in Texas.
2. Four children were born to the parties during their marriage, namely: Child 1, currently age twenty (20) and emancipated, Child 2, currently age nineteen (19) and emancipated, Child 3, currently age eighteen (18) and emancipated, and Child 4, currently age twelve (12), hereinafter referred to as “minor child”.
3. WIFE filed a Petition for Dissolution of Marriage on (specified date redacted), which remains pending and undetermined.
4. There have been no orders entered in this matter regarding the allocation of parental responsibilities.
5. WIFE desires to relocate to (redacted), Texas, a suburb of (redacted), Texas, with the

to Texas with the minor child on the sole basis that she will not agree with a blind financial settlement that he has proposed.

15. For the reasons stated herein, it is in the best interests of the minor child to relocate with WIFE to (redacted), Texas.

Petition for Relocation of Minor Child to (redacted), Texas

16. WIFE restates and realleges Paragraphs 1- 15 of Background as though fully set forth herein.

17. WIFE submitted her Notice of Intent to Relocate on May 3, 2022, to HUSBAND through his counsel. A copy of the Notice of Intent to Relocate is attached hereto as **Exhibit A**.

18. Upon information and belief, based upon HUSBAND’s recent representations, WIFE does not believe that HUSBAND will agree to the relocation of the minor child. Accordingly, WIFE has filed this instant Petition seeking that this Honorable Court allow her to relocate with the minor child to (redacted), Texas in June of 2023.

19. Pursuant to 750 ILCS 5/603.5, this Court may enter an order allowing the relocation of the minor child prior to the entry of a final allocation judgment based on the best interests of the child and in accordance with 750 ILCS 5/609.2.

20. The factors that the Court should consider as provided in 750 ILCS 5/609.2, when determining the issue of relocation, are as follows:

- i. *The circumstances and reasons for the intended relocation.* WIFE and the minor child’s relocation to (redacted), Texas will provide them with the opportunity to reside close to WIFE’s immediate and extended family. WIFE’s entire family resides in Texas, including her mother, four siblings and their spouses and children. WIFE also has numerous aunts and cousins in Texas. WIFE and the minor child are extremely close with WIFE’s immediate

**Petition
Part II**

family and moving to Texas will allow the minor child to regularly visit with her grandmother and maternal aunts, uncles and cousins. WIFE, HUSBAND, and the children spend almost every Christmas and New Year's Eve with WIFE's family in Texas.

Not only will the minor child benefit from regular visits with her grandmother, aunts, uncles and cousins, but WIFE's family will be able to provide additional support to WIFE as it relates to the minor child's transportation requirements. Currently, WIFE provides almost 100% of the minor child's transportation to and from school and all of her activities and social events.

The minor child is heavily involved in volleyball, and she participates in various leagues and competitions. Being close to WIFE's family in Texas will provide the minor child with assistance at those volleyball events as WIFE's family is eager to attend and support the minor child.

Moreover, the climate in Texas is better for the minor child's health and well-being as she will be able to be outdoors and active outdoors year-round. The more favorable weather in Texas would allow the minor child to lead a more active lifestyle outdoors, with nearly year-round sunshine.

ii. *The reasons, if any, why a parent is objecting to the intended relocation.* When the parties initially began discussing their separation two years ago, HUSBAND gave permission to WIFE to relocate to Texas with the minor child, after the parties' second youngest child graduated from high school, which is scheduled for June of 2022. After each of WIFE's trips to Texas during the parties' two-year separation, HUSBAND inquired whether WIFE located a house to purchase while she was in Texas. In fact, HUSBAND tried to facilitate WIFE's obtaining a mortgage for a property in Texas. HUSBAND proposed that WIFE be added to HUSBAND's company payroll, despite not being an employee, so WIFE could

excited to relocate to Texas not only because relocation presents a new adventure for her but also because she would be closer to her maternal grandmother and her aunts, uncles and cousins. Due to HUSBAND's unreasonable demands and the resulting failure to reach an agreement in mediation, WIFE was forced to tell the minor child that the plan to move to Texas was on hold indefinitely. The minor child was unhappy and became tearful as she had already been planning on the move as discussed over the last two years.

ix. *Possible arrangements for the exercise of parental responsibilities appropriate to the parents' resources and circumstances and the developmental level of the child.* After addressing HUSBAND's alcohol abuse and ensuring that the minor child is safe during any visits, the Court should be able to fashion a reasonable parenting time schedule given the age of the minor child and HUSBAND's financial resources. WIFE and the minor child travel to Texas to visit WIFE's family many times throughout the year. WIFE and the parties' children spend almost every holiday and school break in Texas and the minor child is very familiar and comfortable with traveling to and from Texas. There is no reason why the minor child could not travel to Chicago from Texas to exercise any parenting time that this Court deems reasonable.

x. *Minimization of the impairment to a parent-child relationship caused by a parent's relocation.* There would be minimal impairment to the parent-child relationship between the minor child and HUSBAND caused by WIFE's relocation to (redacted), Texas. WIFE has been solely responsible for the minor child's day-to-day upbringing since her birth, with minimal to no involvement by HUSBAND. Even though there has been no court ordered parenting time, WIFE continues to support a parent-child relationship with the minor child and HUSBAND. WIFE encourages the minor child to contact HUSBAND and share her schedules with him so he can choose to participate in her activities. However,

Don't fret over facts that don't exist

- The facts either exist or they don't.
- You have to play the hand dealt to you.

Is your case a slam dunk? No! But that's okay. The judge will make the final call. And whatever the judge decides I can sleep well, as long as I know:

1. I have uncovered all the relevant facts;
2. I have done my best in telling the story, putting my client in the best light; properly characterizing the other side; and
3. I have pointed the decision maker to all applicable law.

Uncovering the relevant facts to the story



Interrogatories

Document Requests

Witnesses

Depositions

Request to Admit

Interrogatories – they are a tool with a purpose.

- Interrogatories are a tool, not an exercise.
- Propound them and then read the responses.
- Periodically review your own responses to interrogatories.

Document Requests

Be careful what you ask for...

- Ask for everything you need
- Carefully examine what you receive

Witnesses

- Talk to witnesses. What is the story they would tell?
- Get clients to provide a list of witnesses. (See handout materials Form 4.9 from Building Trial Notebooks – by Leonard H. Bucklin)
- Get clients to provide the most favorable and worst points for each witness.
- (See handout materials Form 4.8 from Building Trial Notebooks – by Leonard H. Bucklin)
- Prepare for the worst. Front it to the judge, the mediator, expert witness, GAL, etc.

**Handout 5 -
Trial
Notebook
Forms**

§4.9 Form: What Other Possible Witnesses Are There?

(Give to client to think about and return.)

Accident Injuries Events before the accident Contracts
 Contract negotiations Managers Persons in charge of records
 Safety precautions Similar accidents Police Medical treatment
 Before and After Witnesses — that is, neighbors or friends or coworkers who knew you both before and after the accident and can tell that your injury did cause you problems. These people are very important to a jury at trial, and we must have as many names as possible from you, at least six, even though we may not use all the people you name on this list.

 List Name: Address: and Phone:

What is his job or occupation?

In a few words, how does he know you? (for example: aunt, neighbor, friend, coworker)

 List Name: Address: and Phone:

What is his job or occupation?

In a few words, how does he know you?

 List Name: Address: and Phone:

What is his job or occupation?

In a few words, how does he know you?

 List Name: Address: and Phone:

What is his job or occupation?

In a few words, how does he know you?

 List Name: Address: and Phone:

What is his job or occupation?

In a few words, how does he know you?

 List Name: Address: and Phone:

What is his job or occupation?

In a few words, how does he know you?

 List more on the other side, or use additional sheets to list more possible witnesses.

§4.8 Form: Witness Summary for _____

Trial Appearance Scheduled for Date: _____ Time _____

Phone: Home _____ Mobile _____ Work _____

Address _____

Subpoena issued? _____ Employer _____

Deposition to be read? _____ Job Title _____

Purpose of Testimony: Liability Damages Expert

Does witness answer questions directly? Yes () No () Average ()

Will witness make a good impression on a jury? Yes () No () Average ()

This witness is: Friendly () Hostile () Neutral () to our client.

Special Remarks about Witness _____

 THE TWO MOST FAVORABLE (TO US) POINTS THIS WITNESS CAN CONTRIBUTE

1. _____

2. _____

THE TWO WORST (TO US) POINTS

1. _____

2. _____

 Testimony Summary & Other Items Witness Can Prove

Depositions

- There are three reasons to depose someone:
 - To learn something;
 - To get a party or witness to commit to a position under oath; and
 - To evaluate the deponent as a witness.
- Remember that third party witnesses have their own stories to tell.
- Find out who can help you and who can hurt you. Know what you want to accomplish in your depositions. How will this impact your story? Get deponents to commit to your version of the story.

**Your
Client's
Deposition**

What about your own client? Often times, your client can be their own worst enemy.

- Don't let your client destroy their own story
 - It is important to prepare your client for the format and tactics of a deposition (See handout materials – sample letter to client).
 - It is important to spend time with your client and do mock depositions
 - It is critical to spot areas of weakness
 - Foreign language issues – when to use an interpreter (not translator) and how to use one.

Consider getting a coach....

- Good for arrogant, timid, or meandering and stream-of-consciousness clients.
- Great when you do not have the time or expertise to properly serve as coach, or perhaps you are worried that your being honest with your client about how they present might be detrimental to the attorney/client relationship.

Request to Admit

- Once you have enough facts together, consider sending the opposing counsel a Request to Admit.
- Dangerous weapon in your arsenal that can cement your theory of the case and put the other side in a bad position or set them up for a motion for summary judgment on a particular issue.

Telling your client's story to...

**Expert
Witnesses**

**The
Attorney
for the
Children**

**The Mediator
in Attorney
Assisted
Mediation**

The Judge

Telling your client's story to expert witnesses

- **What's their pressure point? Missing data or failing to properly analyze something that allows them to be later discredited.**
- Expert needs to understand the theme of the story before you send them on a scavenger hunt.
- Explain patterns of the other party's behavior.
- Let them know what they need to prove or disprove.
- Help them understand the dynamics at play.
- Their version of facts needs to comport with your theory of the case.
- They need to prepare beautiful data that backs up your story. That's the plot twist that we spoke of earlier.

Telling your client's story to the attorney for the children

- **What's their pressure point? Not protecting the children (their clients), and losing credibility with the judge who appointed them.**
- They can't lose credibility if they have all the relevant facts and act responsibly.
- So give them the facts! - Don't give them conclusions
 - Give them specific facts that demonstrate what you want them to conclude.
 - Conclusions are much more powerful when the person draws it for themselves.
 - Don't obviously run the parent down with your own labels. Show specific acts by your client that demonstrate that they put the children's best interests first.
 - Appear reasonable, and always frame things not from a party's perspective, but from a child's perspective. That is their client and all they care about.

Telling your client's story to the mediator in attorney assisted mediation

- What is the mediator's pressure point? They fear not getting a deal. They want to be the "get it done mediator," not the "I can't ever get parties to agree" mediator.
- Show the mediator that your client is not weak
- Know your facts - overpower the other side with control of the facts.
- Stay on a nicer version of events.
- Arm the mediator.

Telling your client's story to the judge

- Stand out with your theme.
- Practice your pitch.
- **What is the judge's pressure point? The judge doesn't want to be appealed. So they are focused on making a mistake of applying law to facts. So keep your story within the framework of the law.**
- Give the judge the easy way out; they will take it every time.
- Use pretrial conferences to develop your theme.

and if you
go to Trial...

Telling your client's story to the Judge at Trial

- Make sure that the theme of your trial is one that the judge has heard throughout your motion practice.
- Your opening at trial should make your theme clear by showing the judge what the evidence will show and how it will prove your theory.
- Your closing at trial should again hammer home your theme
- **If your version is not the easy way out, consider other ways to re-frame your story...or strongly consider settlement.**
- Know your **rules of evidence**.
- Distill your entire argument to one page.
- Control the entire process with the marital balance spreadsheet.
- Have your technology ducks in order.

**Handout 1
Evid. Rule 106**




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Reporter of Decisions
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Rule 106.

REMAINDER OF OR RELATED WRITINGS OR RECORDED STATEMENTS

When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it.

Adopted September 27, 2010, eff. January 1, 2011.



Organization

**General
Practice
Tips for
Storytelling**

- **Be organized**

- Use good case management software to catalog and organize notes, emails, etc.
- Documents tell the story, be able to locate what you need.
- Account for memory fading - We are overrun by minutia from years of clients. Don't trust your memory!

General practice tips for storytelling

- Don't multitask during or before important moments. Be present in the moment. There is no substitute.
- Stay focused. Practice meditation.
- Take care of yourself.
- Assume the judge is honest. They have ethical cannons.

In conclusion...

- Everyone has a story
- Your job is to tell your client's story within the framework of the law.
- You provide the plot; your experts and witnesses provide the twist; and your ending is for the judge – that call to action where you ask the judge to rule in your client's favor and grant the relief you have requested.
- **Get in. Make your point. Get out. Sit down.**