WALTERS GILBREATH PLLC

THE ULTIMATE GUIDE TO TEXAS FAMILY

JURY TRIALS

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Why Choose a Jury Trial?

While many attorneys explain the concept of jury trials to their clients, few explain why clients might favor a jury trial over a bench trial. We'll explore various situations in which parties should consider making a jury demand:

If a Judge Ruled Against You in Temporary Orders

In most jurisdictions (with the exception of Travis and Bexar Counties), cases are assigned to a single judge. For example, divorces filed in Williamson County's 425th District Court will remain there for every issue in those cases. As a result, an unfavorable ruling during temporary orders likely predicts a similar ruling during a final bench trial. However, parties that request jury trials receive an opportunity for a set of individuals with new perspectives to decide key issues like custody and characterization of assets.

If a Mental Health Professional Reacts Negatively Towards You

In contested cases, courts frequently appoint mental health professionals to assist in custody determinations. Judges heavily weigh these evaluations, and critical reports can spell defeat for affected parties. However, juries are often willing to evaluate evidence independently and rule contrary to a negative mental health assessment. Parties that believe they may be victims of mischaracterization by court-appointed professionals should consider asking their counsel about trying their cases to a jury.

If Relocation is an Issue in Your Case

Juries may decide what, if any, geographic restriction will be placed on a child's residence. Typically, these restrictions require a spouse to live in the county adjacent to the parent awarded the right to designate a child's primary residence. Judges tend to favor strict geographic restrictions, while juries are often willing to consider flexible alternatives.

If Separate Property is an Issue in Your Case

Unfortunately, experienced family law attorneys are familiar with the reality that judges may award assets on the basis of perceived fairness. While Texas law requires "clear and convincing evidence" of separate property, judges may deemphasize this burden when it conflicts with their preferred distribution. On the other hand, juries tend to follow the instructions provided to them prior to trial and may be more likely carefully evaluate the facts of a case.

If You are Represented by an Experienced Litigator

Jury trials are complex, demanding endeavors. As a result, there are few family law firms in Texas with the experience and capacity to try more than one or two every five years.

Anatomy of a Texas Jury Trial

Texas is unique in that, in a divorce or custody trial, either party can request that a jury decide issues of:

- Conservatorship (sole v. joint; which parent has the right to determine the primary residence)
- Geographic restriction
- Valuation of property
- Characterization of property (separate v. community)
- Reimbursement claims
- Fraud/Reconstitution claims
- Other torts

Lawyers often advise litigants to be wary before making a jury demand. Many attorneys feel that jury trials are difficult and excessively complicated. We do not find this to be the case. Yes, a jury trial does have a few more steps and involves trying the case to twelve people (six in county court) rather than a single judge. However, once you've done a few, there is nothing complicated about them.

Step 1: Pretrial

Most counties, like Travis County, require specific pre-jury-trial procedures. Others, like Fort Bend County, have no specific rules on pretrial procedures. And some, like Harris County, have similar pretrial procedures for both jury and bench trials.

Exchange of information

Before trial, the Court is most likely going to require that the parties exchange exhibit lists and witness lists. If witnesses are going to testify through deposition testimony, it is typical to require that lawyers identify what deposition testimony is going to be used and any objections to that testimony. Lawyers are also usually required to attempt to work out objections to any exhibits before the trial starts to avoid arguments about them in front of the jury.

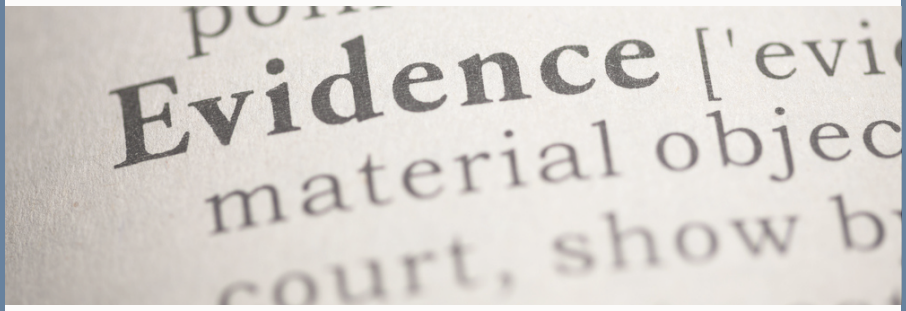
Motions in Limine

A motion in limine is a motion requesting that the Court order that certain information not be presented in front of the jury absent Court permission. For example, if the case is a modification suit, it would be typical for lawyers to argue that the Court should enter a limine order prohibiting evidence concerning anything that happened prior to the order at issue.

A limine order does not necessarily mean that the information will not come into evidence. It simply means that the lawyers must approach the bench to ask for permission to present the evidence outside the earshot of the jury. A strong limine order could affect opening statements and have an effect on the presentation of evidence. A good lawyer will really think about what he or she believes should be precluded before the trial starts, and craft a precise and persuasive motion in limine well before trial.

Proposed Jury Charges

Ultimately, a jury will be given a charge at the end of the case explaining to them their duties and posing the question they are to decide (e.g. which parent should have the right to determine the primary residence). How questions are posed to the juries can have significant impacts on their decisions, so good lawyers will pay attention to every detail in a charge.



A jury charge is not finalized until the official charge conference which takes place after both sides have rested, but before closing arguments. However, while the charge may change, most courts require lawyers to exchange their proposed jury charges before trial starts. That way, the court will be aware of issues that may come up in the trial and in the charge conference.

Daubert Challenges

If one party has designated an expert the other party believes to be unqualified, that party can file what is called a Daubert challenge. Some local rules require that challenges be filed before trial (although whether or not a party can be deemed to have waived a challenge is questionable).

Pretrial Hearing

Most judges conduct pretrial hearings the week before jury trials. Some courts, like Travis County, conduct pretrial hearings the morning of the trial. At pretrial hearings, the court

will hear motions in limine. The court may also begin to have an informal charge conference to discuss differences in the proposed jury charge. Finally, the court will typically hear any Daubert challenges.

Step 2: Jury Selection

Summons/Jury information

After pretrial, lawyers conduct jury selection. Prior to the trial, citizens of the county in which the trial is conducted will receive a jury summons requiring them to appear for jury selection. Prior to selection, potential jurors will fill out information about themselves such as age, sex, ethnicity, religion, marital status, etc.

Panel

Potential jurors compose what is called a jury panel. A typical panel is 45 potential jurors. A large panel can go up to 60 jurors. It is uncommon to have more than 60 jurors, but it is possible. Before the potential jurors show up, the lawyers will be given cards with information describing potential jurors. Typically, a judge will give lawyers 30 minutes to an hour to review jury cards. At this point, good lawyers will begin to analyze potential jurors and decide whether or not they want them on the jury.

Shuffle

The potential jurors will be given number assignments. As explained below, jurors with lower numbers are more likely to get on a jury. Lawyers have a right to do what is called a "shuffle." This means that lawyers can request that potential jurors be re-numbered. A lawyer may want to use a shuffle if he or she notices that the jurors with lower numbers appear to be unfavorable and/or the jurors with higher numbers appear to be more favorable. A shuffle can only be done once, and either side has a right to request it.

Voire Dire

Once the 45-60 potential jurors arrive, they will all be given cards with an assigned number and seated accordingly. At this point, voire dire begins. Voire dire is the process in which both lawyers are allowed to ask potential jurors questions about their backgrounds. The ultimate goal is for the lawyers to find out whether or not jurors have any biases.

At the end of voire dire, lawyers have an opportunity to use strikes for cause and peremptory strikes to influence the composition of the jury.

Strikes for Cause

A strike for cause is a request that a juror be excused from the panel because of a bias he or she exhibits. For example, in a custody case, if a potential juror says that he believes mothers should always get custody, he may be struck for cause because he has a bias. Or for example, if a potential juror feels that the court system favors women, he may be struck for cause because of a bias. There are lots of reasons why potential jurors can be struck for cause. There is no limit on the number of strikes for cause a lawyer can use.

Preemptory Strikes

A peremptory strike is one a lawyer can use for any reason at all (except racial bias) without citing a justification.

In district court, both sides get six preemptory strikes. In county court, both sides get three. During voire dire, lawyers look for biased jurors so they can use strikes for cause. Lawyers are also looking for background information that may indicate a favorable or unfavorable juror. Questions to jurors must be general; they cannot be what are called "commitment" questions. For example, if a trial is about a mother wanting to lift a geographic restriction so she can take a job out of state, the lawyer cannot ask "who here thinks it is a bad idea for a mother to move just for a job opportunity?" The lawyer could ask, though, "who here grew up with parents in two different states?" See the difference?

At the conclusion of voire dire, the court will hear arguments about strikes for cause and the judge may inquire further into the biases of potential jurors. Then, the judge will ask both sides for their peremptory strikes.

Typically, a judge will give the lawyers 5-10 minutes to come up with their peremptory strikes. Once the judge has ruled on all the strikes for cause and received the peremptory strikes, jury selection will be finalized. The judge will begin with juror number one and, excluding those jurors who have been struck, take the first twelve (or six in county courts), potential jurors.

Sometimes the judge will also choose an alternate, particularly if the trial is long. At that point, the judge will read out the numbers of those who made the jury panel, and excuse the rest. The judge will then swear in the jury and provide basic instructions.

Step 3: Trial

A jury trial proceeds in the same manner as a bench trial with few differences.

Opening Statements

Just like a trial to the bench, lawyers make opening statements to the jury. The petitioner (who filed first) gets to make the first opening statement. The respondent can either make an opening statement afterward or reserve. Most lawyers make an opening statement after the petitioner's opening statement.

Petitioner's Case in Chief

After opening statements, the petitioner gets to introduce his or her evidence. The respondent can question witnesses the petitioner calls and introduce exhibits through those witnesses. However, the petitioner decides which witnesses get called and in what order. At the conclusion of the petitioner's case in chief, the petitioner will rest.

Directed Verdict

If the petitioner has the burden of proof on issues, the respondent has the opportunity to move for a directed verdict at the end of the petitioner's case in chief. The respondent may

do this if he or she feels that the petitioner did not provide enough evidence that a reasonable jury could rule in the petitioner's favor. If granted, this would take the issue away from the jury as a matter of law and the judge would deny the relief granted before the jury gets the issue. Directed verdicts are rare, but an important tool to understand nonetheless.

Respondent's Case in Chief

Once the petitioner rests, it is the respondent's turn to make his or her case. The respondent can call his or her own witnesses and introduce additional exhibits. At the conclusion of the respondent's case in chief, the respondent will rest and the petitioner can move for directed verdict as well if appropriate.

Rebuttal/Rest and Close

After the respondent rests, the petitioner can put on rebuttal evidence. At the conclusion of rebuttal, the court will ask if both parties rest and close. If they do, the evidence will be closed and the jury will not hear any additional evidence.

Charge Conference

Once evidence is closed, outside the presence of the jury, the judge will conduct a charge conference. It is during this conference that the judge will decide what instructions to give the jury. If there are differences between the parties' proposed charges, the judge will rule on those differences. At the conclusion of the charge conference, the judge will circulate the final version of the charge to the lawyers.

Closing Arguments

Once the charge is ready, the jury will be brought back in. The judge will read the charge to the jury. Then, the lawyers will make closing arguments. The petitioner gets to go first. After

the petitioner finishes, the respondent will make a closing argument. Then, the petitioner will have one last opportunity to offer a rebuttal.

Deliberation

At the conclusion of closing arguments, the judge will excuse the jury to begin deliberation, the process of making their decision. The exhibits admitted into evidence will be taken back to the jury to review during deliberation. The jury will first select a foreperson before they begin deliberation. If the jury has questions for the judge, the foreperson will write the questions and submit them to the judge. The judge will then read the question to the lawyers and the lawyers and judge will decide how the question is to be decided. If there is a disagreement about how to answer the question, the judge will rule on the issue.

Verdict

To reach a verdict, 10 of the 12 jurors must agree on all issues. Once the jury has decided, the judge will be notified. The jury will then be brought back into the court and the judge will read the verdict to the parties. The jury's decision will be final, subject to a judgment notwithstanding the verdict (JNOV). A JNOV works just like a directed verdict – it should only be granted by the judge if there was no legal basis for a reasonable jury to rule as it had.

Step 4: Post Verdict Issues

After the jury verdict, the judge will either rule or receive additional information on issues that are to be decided by the judge. For example, a judge decides possession and access to the parties' children. Once a verdict is reached by the jury, the judge will then make other orders regarding the children. If it is a divorce trial, the judge will divide property using the jury's verdict on any property issues.

Conclusion

At the conclusion of the trial, the judge will often ask the jurors if they wish to stay and speak to the lawyers. We find that many jurors do this. We're always surprised by how much information the jurors are able to retain and process. We're also always surprised how thoughtful and engaged the jurors are. This is truly is a testament to our democracy and judicial system. Once the trial is over and the judge has ruled on non-jury issues, the lawyers will draft a final order. If there are disagreements about the form of the order, the judge will resolve the disagreements. Once the final order has been prepared, the judge will sign the order at which point it becomes final.

Texas Family Jury Trials: Top 5 Frequently Asked Questions

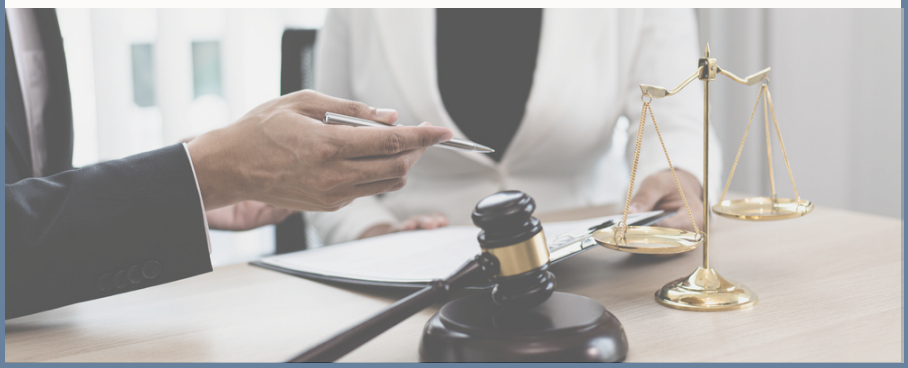
We get questions of all kinds about jury trials, but some of the common ones are:

- Can you bring your children with you to court?
- What should you wear?
- Will lawyers scream at witnesses like they do on TV?
- Will you get a chance to tell your side of the story?
- It is normal to have questions.

We will ease your mind by answering our five most frequently asked questions about Texas Family Jury Trials.

FAQ #1: "What Should I Wear on the Day of Trial?"

Answer: Since you will be in front of a jury, it is important that you dress in a way that gives you a fair shot at winning your case. Let's be honest, people are judgmental. Oftentimes, it isn't even intentional, but it happens. This is why you often



hear about how important first impressions are. If you visited a doctor for the first time for example, and he showed up wearing shorts and flip flops, you may wonder if he takes his profession seriously. On the day of trial, you should dress professionally. No shorts. No flip flops. Leave your hat in your car.

Dress like you are going to a job interview for a management or administrative position. If you would not feel comfortable wearing it to church or in front of your grandparents, it is likely inappropriate for court. If you have tattoos that can be covered, go ahead and cover them. If you have facial piercings, take them out for court. The small things matter.

FAQ #2: "Who Goes First?"

This is a question that we get a lot. When the trial starts, which party will get to speak first? Which party's witnesses will get to testify first?

Answer: The Petitioner goes first. The Petitioner is the party that filed the lawsuit first. That means that the Petitioner's attorney will give the first opening statement at the jury trial and get to call witnesses to the stand first. This also means that the petitioner's attorney will have the opportunity to introduce evidence before the other attorney.

FAQ #3: "Will I Get to Tell My Side of the Story?"

Many people wonder if giving testimony is anything like it is on TV. Will you get to go into a full narrative about the time that you caught your husband cheating on you? Will you have time to talk about the time that the ex threw an empty baby stroller at your vehicle when you tried to exercise visitation with your kid?

Answer: Yes and No. You'll get to tell your side of the story, but it won't be in a full-blown narrative. First, your attorney will ask you questions. This is really the time for you to get your testimony heard. You have to note though, you can only answer questions that are asked. If your attorney is strategic, he or she will know how to ask you the questions that will elicit the testimony that you want the court to hear.

FAQ #4: "Does the Jury Make All of the Decisions?"

Answer: No. Under the Texas Family Code, a jury cannot decide all of the issues of the case. The judge (not a jury), will decide:

- Visitation schedule for the child;
- Child support;
- Parental decision-making powers;
- How your community property will be divided;
- Spousal maintenance (alimony);
- Adoption;
- Paternity; and/or Enforcement of a prior order.

FAQ #5: "How Much Will a Family Jury Trial Cost Me?"

Answer: Prepare your pocketbooks because a jury trial won't be cheap. Jury trials are most complex type of hearing that you can have in civil court. If you want an experienced attorney to represent you, it will cost you. Additionally, due to the high cost associated with jury trials, if one party has access to substantially more liquid funds or assets than the other party, the requesting party can use the possibility of a jury trial as a weapon. What do I mean by using it as a weapon? Requesting a jury trial could be used as leverage against a party that cannot afford to have a jury trial.

If this tactic is being used against you, you need to hire a lawyer who has experience and who can try the case efficiently and with ease.

Retainer fees for a jury trial range from $25,000 to $75,000. Depending on how long the case will take and where you are at in the process, the case could easily cost more.

Five Decisions a Jury Can Make

You may need to decide whether or not a trial by judge or a jury trial would be in your best interests. Perhaps the court has just set your case for trial. By default, the type of trial you'll get is a bench trial (i.e., a trial where the judge makes all of the final decisions). Maybe instead of the court setting your case for trial, you or the other party has requested a trial date. Again, by default, the type of trial that you'll get is a bench trial.

If you want to have a jury trial, there are some specific steps that you must first take. Before you decide that a jury trial is better for you and your case, be sure that you are armed with the understanding of what a jury can determine and then assess the evidence you have against the other party's evidence. The Texas Family Code identifies several elements and issues of a divorce and custody case that can be tried before a jury; the verdict won't be overturned by the court, either.

There are five decisions that juries most commonly make in Texas. Texas is unique in that way. Here, we will discuss those five decisions, allowing you to make an informed decision of your own.

1. Are you Married?

Have a concern about an informal (commonly known as "common law") marriage? Texas acknowledges common law marriages, whether or not a person is actually married may not have a straight-forward answer. Juries can hear testimony regarding evidence concerning the existence or non-existence of a common law marriage. They can rule on whether one existed or not.

2. Who Gets Custody

If you are going through a divorce and have children or are involved in a child custody case, you know that this is perhaps the most crucial decision that the jury can make. Texas is the only state that allows juries to give verdicts that decide the custody of children.

According to the Texas Family Code, a Texas jury can determine whether a party will be appointed sole managing conservator and which parent will have the right to establish the child's primary residence (i.e., who has "custody" of the child.)

3. Where Will Your Children Live

After a family law case, it is quite common for there to be a geographic restriction on where the children can and cannot live. The jury can hear evidence from both parties and decide whether or not it is in the children's best interest to have a geographic restriction and, if so, to what area that restriction should apply.

4. Characterization of Marital Property

Have any separate property claims? You better be sure that your attorney is great at presenting expert evidence and testimony if necessary. A party must prove that property is their separate property with "clear and convincing evidence" or that property could be considered community property. Community property is divided between the spouses while separate property isn't. A jury can hear expert testimony and decide whether your property is deemed to be separate property or community property.

5. How Much Marital Property is Worth

Perhaps you and your spouse cannot agree on the value of your home. Let's imagine that the County's appraisal district has one value for your home, you have an even higher value based on work that you have put into the house, and your spouse has a much lower value that he/she got from a hired appraiser. A jury can review the evidence and then make a final determination as to the value of your assets and other personal items.

Other Causes of Action/Claims

In a divorce, spouses can sue each other for "torts" committed during the marriage. This could be fraud, breach of fiduciary duty, assault, and a wide variety of other claims, including claims under the Family Code, such as reimbursement claims. A jury can decide if a spouse is liable to the other spouse or if a marital estate is liable to the other estate.

Juries Can't Make Decisions Regarding:

- Adoption of a child
- Enforcement of a Prior Order
- Visitation
- Child support
- Property division

The judge will make these decisions.

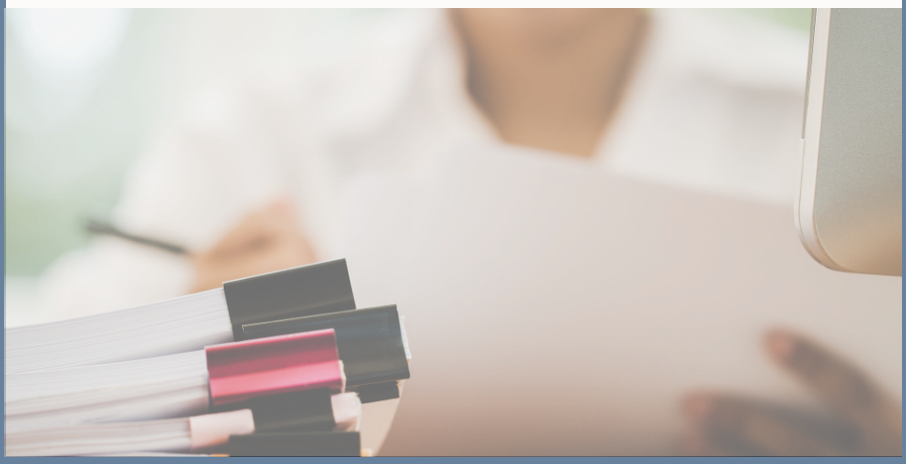
Discovery in Texas Family Jury Trials

Discovery is the organized system in the Texas Rules of Civil Procedure for parties to exchange information with each other before trial.

That way, each party and its lawyers have access to the same information, and there are no surprises at trial. In actuality, many cases settle in the discovery process when a party realizes that they just don't have enough evidence to win at trial. Perhaps the evidence against he/she is too damning to win at trial.

Discovery serves as a mechanism for both sides to prepare for trial. If proper discovery has been completed, documents, recordings, emails, and other evidence that have not been produced typically are not allowed to be introduced in a final hearing. Moreover, if the parties decide to settle their case, the parties would get a more fair settlement knowing the extent of each side's evidence. When involved in a Texas family jury trial, you have to keep in mind that the jury will likely observe all of the evidence presented.

Understandably, some people back down from the lawsuit once the case has been set for a jury trial following the discovery step, due to the type of evidence presented. Despite what you see on TV and in the movies, cases with good lawyers who have conducted adequate discovery rarely have any surprises once they get to the trial. There must be some extenuating circumstances such as one in which the evidence



had just come into that party's possession, and the party had no prior knowledge that such evidence existed before then. Even then, the judge will weigh the evidence's probative value against the prejudicial effect that it will have on the surprised party and decide whether or not such evidence can be used in court.

You should be sure to hire a lawyer that has plenty of experience with discovery. Your lawyer should be prepared to carefully review all of the discovery produced by the other side. If they have delivered it to you, there is a high likelihood that they intend to use that evidence at trial in front of the jury.

What are the Types of Discovery?

There are multiple ways that each party can request information from the other side. If discovery requests are ignored or inadequately responded to, the court could sanction the lawyer and the party (i.e., punished). The court could rule that you cannot use any of your evidence, have pleadings strike, or be "fined," have to pay for your non-compliance, etc.

Here is the type of discovery that you can expect to see:

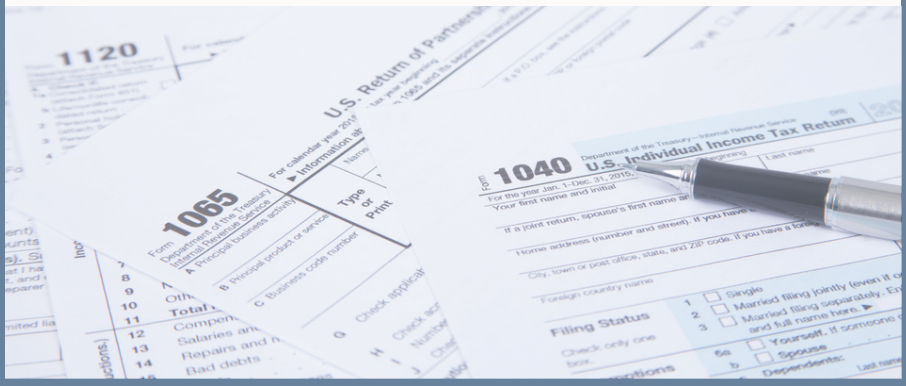
- **Request for Production -** Each party can request that the other party produce relevant documentation.
- **Request for Written Interrogatories -** This is where each party can ask the other specific relevant questions. The other party has a deadline to respond and must respond adequately and truthfully.
- **Request for Disclosure -** This is mostly used for the other party to request the other party's witnesses (expert & lay). If a witness wishes to testify at trial, they must timely be disclosed to the other side.

- **Request for Admissions -** This is a series of statements of which the requesting party has the other party answer each question with either "admit" or "deny."
- **Depositions (Subpoenas)** - This is when the party will be subpoenaed (or forced) to appear at a place typically outside of court to give sworn testimony regarding the case. You must be honest during any deposition because if you are caught being dishonest, that deposition transcript (which will be transcribed by a stenographer/court reporter and video) can be used to impeach you as a witness. If a lawyer can prove that you were dishonest, your credibility goes out of the window.

What Kind of Information Will You Have to Give?

Be prepared for a full and invasive exam of everything relevant in your life during your marriage or since the child's birth. If applicable, nearly anything can be disclosed. This includes, but of course, is not limited to, your text messages, phone records, bank statements, journals, credit card statements, social media profiles, and sometimes even your purchase receipts.

What is relevant will depend on the issues at hand and the accusations made by one, either, or both parties.



There is nothing off-limits, except maybe a few private medical details (and most of those are fair game). This is largely true even in a child custody matter. The other party may be entitled to more information and documentation regarding your:

- Finances (tax returns, debts, business records, credit reports, bank statements, etc.);
- Communication (emails, text messages, IM messages, phone records, social media accounts);
- Your Medical History (mental treatment & issues, substance abuse issues, anything that may impact custody of the child;
- Sexual Behavior (Unusual Practices, Affairs, Paramour);
- Parenting Skills (anyone's parenting skills that will be in physical possession or have access to the child; and,
- Relationships (your family, friends, co-workers, neighbors, employers, etc.).

When considering the discoverable information, the list goes on. It can be pretty horrible: your elderly mother could be deposed and asked some pretty embarrassing questions about your past. What if your doctor is subpoenaed to court to testify to your extreme depression? Could you and your neighbor's relationship survive if he or she testified against you in your custody case? Probably not, right?

People do get away with lying and hiding things in Court, even with discovery being conducted. But, a good lawyer with a proper budget can usually minimize this. Additionally, the consequences of lying or hiding evidence during discovery are severe.

Most people are better off just being open and taking their lumps as they are given. Be upfront with your lawyer, or you could risk losing your Texas family jury trial during the discovery step.

What to Expect in a Deposition

One of the most stressful and vital events in a family law case is deposition. A deposition is a common form of 'discovery.'

At the most basic level, a deposition is a one-sided question and answer session. The lawyer requesting the deposition gets to ask questions of the other parent/spouse (the 'deponent'). There are very few limitations on the questions that can be asked, and little a deponent can do to avoid answering them. Courtroom testimony is much more limited.

A typical deposition takes place in a lawyer's office, with both lawyers and clients present. There is usually a Court Reporter present, and sometimes a videographer.

Preparation for the deposition is vital, both for the questioning lawyer and the deponent. The lawyer must understand what the key issues are in the case and ask the right questions to get answers. Suppose the lawyer is trying to get certain key information. In that case, they need to know what specific questions to ask and be aware of the likely answers that are attempting to avoid giving up information.

The deponent should be giving as little information as possible. Most deponents think that they are in a deposition to convince the opposing lawyer that they are right, and so they give long answers with more information than is being requested. This is a mistake because it will often lead to valuable information being provided that can be used against the deponent.

What Can Be Asked?

Only a few categories of questions are off-limits in a deposition. This means that the deponent can be asked to answer seemingly intrusive questions about their finances, sexual behavior, relationships, and parenting. The list of uncomfortable topics is very long. **The list of off-limits topics is short:**

- Attorney-client privileged communications;
- Criminal behavior (if the deponent opts to take the 5th Amendment - which CAN and WILL be used against them in a trial);
- Anything completely irrelevant.

Most depositions are limited to six hours of questioning, although many end up taking less than that. In rare circumstances, depositions can last more than six hours.

Trial vs. Deposition

Depositions are broader because they are part of the discovery process, which aims to gather general information intended to be boiled down to the most critical parts. These limited bits of key information become evidence in a trial. Questions in a trial are limited and subject to a large number of objections.

Divorce Questions

This section is about the 'fault' and financial issues in a divorce.

Texas allows divorces to be granted on a 'fault' basis and for that fault to be considered when dividing property. The fault usually falls into two categories: adultery and cruel treatment. Adultery is precisely that - cheating on your spouse. Establishing whether that occurred used to be difficult before mobile phones.

Now it is easy, because relationships involve communication, typically on the phone. Depositions over adultery can get into very private and embarrassing territory, but it is allowed.

Cruel treatment can be physical or verbal or both. This often has 'he said / she said' components, but sometimes there is clear evidence one way or the other. It may also be a matter of perspective or occur in a situation where both spouses feel that they were the victim. Depositions can get into the details of these behaviors.

Divorce depositions also involve inquiries into the deponent's finances. This can go back to before the marriage and include full disclosure of current assets and debts. There will likely be questions about income and employment.

If the deponent has a business, that will probably be the subject of extensive questioning. The deponent may have to answer questions about spending suspected of being on a romantic partner, or transfers to friends/family members/romantic partners.

Custody Questions

Custody questions tend to fall into two categories:

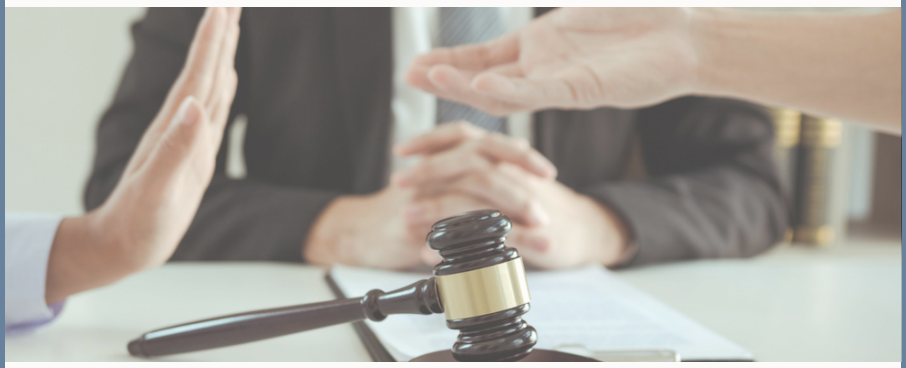
- Is someone an incompetent parent
- Who is the better and more involved parent

The first category revolves around the question of whether a parent has something so wrong with them that they cannot parent. Examples include addiction, mental illness, and anger management issues. If these issues have been raised, expect specific questioning about them.

Questions about addiction fall into two categories: legal and illegal substance abuse. Legal substance abuse is usually alcohol. There is also improper use of prescription medication. These are the most difficult substance abuse cases because the defense will always be that the substances are being used properly, the other parent knew and consented, etc.

Mental health questions focus on any diagnosis and then treatment. Problems for a deponent arise either when they deny a real mental illness or refuse proper treatment. Questioning usually attempts to establish either of these problems. Depression and anxiety are common but typically aren't debilitating, but can be.

Anger management usually involves law enforcement involvement, although not always. There is typically a component of ‘he said/she said’, so establishing basic facts are important.



Types of Witnesses in a Family Law Case

Lay Witness

The first type of witness is called a lay witness. Simply put, a lay witness is a witness who does not have any expertise in any area they wish to testify. This type of witness may have some personal knowledge or experience with you, on the other hand. Frequently, people have their neighbors, friends, family members, and even their employers testify regarding their knowledge concerning a party's parenting, handwriting, specific acts, you name it.

Expert Witness

The other type of witness is called an expert witness. Texas has requirements for a witness to be declared an expert.

According to the Texas Rules of Evidence Rule 702, "a witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue." As I am sure you can imagine, a jury will give more weight to an expert testimony over a lay witness's testimony concerning issues described above.

How Does a Lawyer Prepare a Lay Witness for a Jury Trial?

Suppose you have a friend, neighbor, or another family member that will testify on your behalf. In that case, your attorney should want to conduct at least a couple of interviews with your witnesses before your family jury trial. Your lawyer must know what your witness will testify during the trial. Your lawyer's job won't be to create a testimony that the witness can rehearse. Instead, the lawyer should work with the witness to ensure that they are relaying straightforward and easy-to-understand information. The lawyer will work with your witnesses regarding appropriate courtroom behavior (including non-verbal cues that people give). Your lawyer may even advise a witness to dress a particular manner to be a bit more relatable and even more believable to an impartial jury.

At our firm, some witnesses are interviewed more than once so that the lawyer can have more time to get to know the witness and their testimony. Here is a time that some lawyers use to practice a bit, running through questions with your witnesses that the lawyer will likely ask on the court. Your witnesses should come off as honest and trustworthy to the jurors.

Additionally, your lawyer will also want to be prepared for the opposing side's lay witnesses, especially if any witnesses will testify against you. Your lawyer should have the ability to think on his or her feet so that only the most appropriate and fitting questions are posed to each witness on your lawyer's cross-examination of them. Since the opposing party has already given you and your lawyer a list of the witnesses that they plan to call at trial, most of the time, both you and your lawyer can anticipate what testimony the witness will give.

How Does a Lawyer Prepare an Expert Witness for a Jury Trial?

In complex family law cases such as divorces with property division or complicated custody issues, it may be necessary to employ an expert. The most common experts used in family law cases are therapists, physicians, and CPA's. Since many jurors will lack the necessary experience or education regarding the division of assets, medical diagnosis, or suggested treatment for a child, having a knowledgeable expert witness could make or break a case.

Let's imagine that you have separate property that has been commingled. You'll likely need an expert CPA to trace the origin of assets. Since separate property won't be divided in a Texas divorce, it is important to have an expert that can not only assess the extent of the separate property claim(s) of either or both parties, but that can also relay the information in a straight-forward way to the jury. If your lawyer has a good working relationship with the experts hired, your lawyer can work with them to ensure that the testimony is up to par. If it is not, you can risk having a jury return an unfavorable verdict.

On the same note, perhaps you have hired a child psychologist, or maybe the court has appointed one to your case. This psychologist's testimony regarding his or her professional opinion will be given great weight in a custody case decided by a jury.

Finally, as the last step to prepare, your lawyer will likely want to gather all of the supporting documentation needed for trial. Typically, experts will supply the party or parties with written reports of their findings. Your lawyer's job is to mark all necessary supporting evidence as exhibits, after providing the opposing side with copies of each report during the discovery phase.

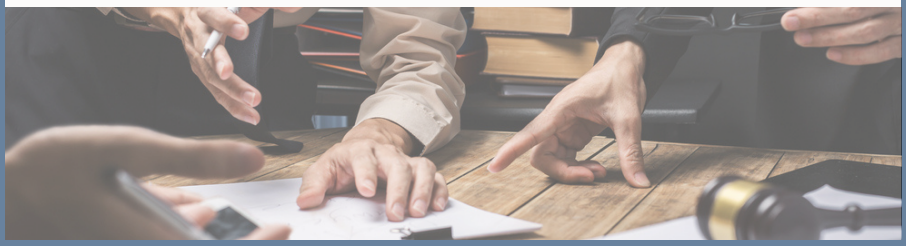
Top 5 Reasons Most Texas Lawyers Don't Like Jury Trials

Many times lawyers will attempt to discourage you from having a jury trial. Why is that? Perhaps he or she is looking out for your best interests because a jury trial would be detrimental to your case. However, what seems to be more common is that the lawyer in question is not comfortable trying a jury trial. **In fact, most lawyers in Texas have actually never tried a jury trial to a verdict.**

So, how are you supposed to know when your attorney is merely discouraging you from having a trial by jury due to their lack of experience? Well, you can start by asking! A simple question to your lawyer may do the trick: how many jury trials have you tried to a verdict in the last five years? You'll likely be surprised by the answer. This article will describe 5 reasons that lawyers do not like trying family jury trials.

Reason #1: The Lawyer Does Not Have the Time

Some lawyers have some ability when trying a trial by jury. However, those skills are useless to you if that lawyer does not have the time needed to prepare the case for court.



Let's face it: a trial by jury is arguably the most difficult and complex type of proceeding. That means that it will take an ample amount of time for you and your lawyer to prepare.

Your lawyer will need to conduct voire dire (i.e. jury selection), interview and prepare witnesses, review discovery, select exhibits for trial, prepare an opening and closing statement, the list goes on. The test is not how many clients your lawyer has. The real test is whether or not that lawyer has the adequate staff and time to dedicate to adequately preparing for your final hearing in which a jury of your peers will make some important decisions. If your lawyer won't have the time to truly prepare you and your case for the hearing, you should be sure to select an attorney with the time.

Reason #2: The Lawyer Lacks the Resources

Oftentimes, lawyers lack resources to accomplish proper preparation for court. Preparing for trial will take the use of some of the lawyer's resources.

For adequate trial preparation, your lawyer will also need to have staff that can help do tedious tasks such as reviewing discovery for deficiencies, identifying and/or subpoenaing witnesses, and even reaching out to you in case more information or documentation is needed from you.

Your lawyer should also have the right contacts. In complicated cases, it is quite common to work very closely with experts. There could be child psychologists or CPAs that your lawyer will need to have positive prior working relationships with. This will help out when it is time for that expert to provide testimony.

Reason #3: The Lawyer Lacks Experience

This seems to be the most common reason that Texas family lawyers do not like trying jury trials: they don't know what they are doing. Since a majority of all cases settle without ever making it to trial, it is understandable that a vast majority of attorneys have never tried a Texas family trial by jury. Many lawyers have never had to do voire dire (the process of selection, or more accurately, de-selecting a jury), give an opening and closing statement, work with experts, argue pre-trial motions, etc.

Our firm is the opposite. We have consulted on, given courses on, and tried cases with jury trials all over Texas. Just think, your family law case is perhaps one of the most important things in your life right now. You cannot afford mediocrity. Would you go to any doctor? Brain surgeon? I bet that you wouldn't. Instead, you'd likely make sure that your doctor had experience and specialty in those areas. Treat finding the best lawyer the same way.

Reason #4: The Lawyer Doesn't Think that You Can Win

Some attorneys will be pretty nervous about trying a family jury trial because of a lack of confidence in either you, themselves, or both. Perhaps your lawyer does not think that you would do well in front of a jury. If this is the case, it is their duty to prepare you. Perhaps your lawyer does not think that you can win because he or she is intimidated by the opposing lawyer. This is common for lawyers that lack experience, as discussed above. If the other lawyer has experience then it is likely to make your own lawyer very nervous about the outcome of your case.

Be sure to select an attorney with confidence in you, the merits of your case, as well as themselves. Otherwise, you risk either losing out on your opportunity for a jury to decide or you miss out on winning a case that should have gone your way. At Walters Gilbreath, PLLC, we are confident in our abilities because of our connections, compassion, dedication, and experience. We try to settle all cases without going to a judge or a jury, but when the time comes to try a case, nobody will be more prepared than us.

Reason #5: Your Lawyer is Not Comfortable Speaking in Front of a Room full of People

Can anyone say stage fright? Believe it or not, some lawyers are not great at public speaking. Some get nervous when speaking in front of a large number of people. Since jury trials will have many people attend the hearing and hear testimony, there will be a vast amount of people present. The jury will be there, the judge, the other lawyer, your ex-spouse or ex-paramour, witnesses, etc. so it is common for the courtroom to be quite full during a family trial by jury. Just because your lawyer went to law school does not mean that he or she is comfortable or confident when speaking in front of a large group of people. You need a lawyer that is poised, confident, and one that won't break a sweat when presenting to the Court.

Conclusion

After reviewing some of the most common reasons that lawyers dislike jury trials, you can start to narrow down your search for the right attorney to help you through your family law case. Choose wisely; your future is likely to depend on it

Choosing the Right Lawyer for Your Jury Trial

Maybe you knew at the beginning of the suit that you'd want to have a jury trial. But, the reality is that this is usually not the case. Oftentimes, it is not until later in the suit that a party will request a jury trial. Typically, parties at least get to the discovery stage of the suit before the need for a jury trial becomes evident. In other instances, parties may have had a bad experience in front of a judge on temporary orders and the decision is made that a jury will be more fair.

You've had to make some tough decisions so far. Maybe you were the one that made the tough decision to file for divorce or file a custody suit. Or maybe you have been sued unexpectedly for divorce or a child custody suit. But, regardless of what decisions you have already made, choosing the right lawyer to represent you in a jury trial in a divorce or custody case is arguably the most important decision you'll make. In this blog we'll go over what you should consider when choosing the right lawyer.

Question: Do I Need an Attorney to Represent Me in a Family Jury Trial?

Answer: Particularly if you are choosing the jury trial route, you should hire an experienced attorney.

Attorneys have studied the law and have been licensed to represent you in your case. If you choose wisely, your attorney will have specific experience with trying a Texas Jury Trial for a divorce or custody case to a verdict. If you do not choose wisely, you may end up with a lawyer who has little to no experience trying jury trials. A divorce or custody jury trial is a complicated proceeding that typically takes weeks to prepare and days to complete.

Remember: A jury trial is a complicated FINAL hearing in your case. Outside of appeal, this will be your final opportunity to prove and/or defend your case. It is vital to have a knowledgeable attorney.

Some Advantages of Hiring an Attorney:

- The attorney will conduct voire dire on Your Behalf (This is when the attorney gets to select, or actually de-select, the members of a Jury).
- The attorney will know when and in what manner to object to evidence both before (called Motions in Limine) and during trial. This is vital because this preserves those issues on appeal (should the case be appealed) and it controls what evidence the jury does and does not hear.
- The attorney will help prepare you (& your testimony) prior to trial.
- The attorney will prepare any exhibits/evidence that will be used in trial.
- The attorney will communicate any necessary information to courts, relevant 3rd parties, opposing parties (counsel), clerks, etc. on your behalf;The attorney will know what the jury charge (the questions to the jury) should look like and how to argue what should and should not be in the charge.
- You will receive one-on-one guidance from the attorney on possible outcomes of the case, issues that may arise, what to expect going forward.
- You will receive answers to any questions that you may have about your case (including questions concerning a pleading or order.

What Qualifications Should You Look for When Choosing an Attorney?

Choosing the right lawyer to represent you in your jury trial in a divorce or custody case is at the top of the list when it comes to important decisions. That means that if you already have a lawyer and he or she does not meet these qualifications, you should consider switching attorneys.

What type of things should you consider when choosing the right lawyer? **Here are some qualifications to look for:**

1. The lawyer has tried at least 5 Jury Trials in a Divorce or Custody Case in the last 2-3 years.
2. The lawyer should be Board Certified in family law.
3. The lawyer has positive feedback from other clients (Check the Attorney's Reviews).
4. The lawyer should communicate with clients and are responsive when you contact them.
5. The lawyer is open and honest with you about their practice, fees, and how the legal system works (both on the attorney's website and in person).
6. The lawyer provides you with all of the necessary information that you need.

Frequently Asked Questions About Court Etiquette

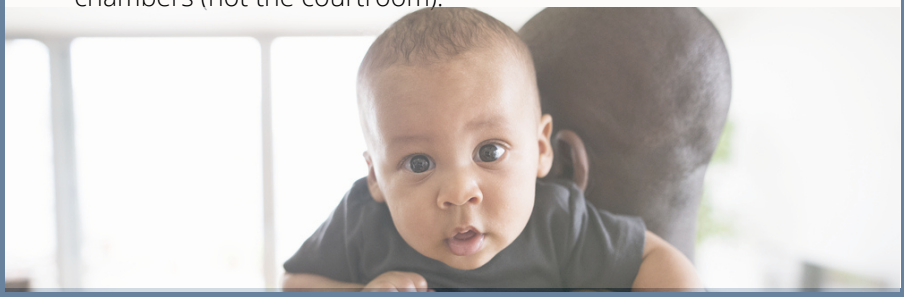
Going to court for any reason can be intimidating. With an experienced lawyer on your side, you should have the support you need, but we know that doesn't necessarily make it any easier.

Here are some frequently asked questions about Court Etiquette you should consider beforehand:

1. "Can I Bring My Children With Me to Court?"

Many divorces and all custody cases involve children so we can understand the frequency of this question. The short answer is typically, 'no'. Since there are no child care facilities in the courthouse, most Courts will not allow your children in the courtroom. With this in mind, it is important that your children are in child care or school at the time of your hearing.

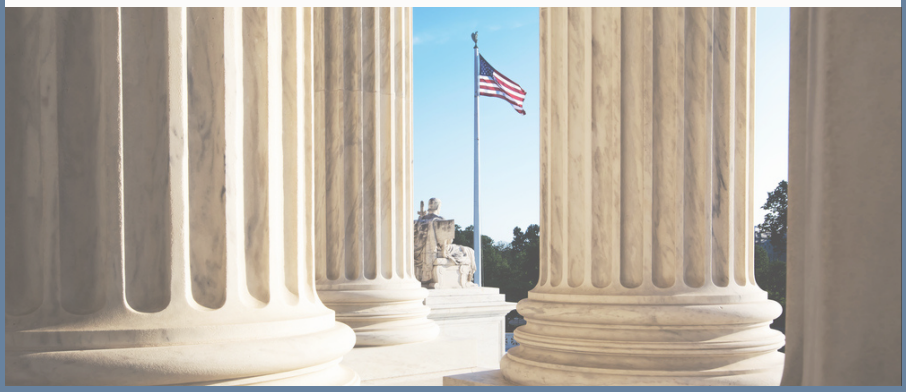
The only exception to this is when the Judge has specifically requested to speak with a child in his or her chambers. Then, that child will be allowed to speak with the Judge in the chambers (not the courtroom).



2. "What Should I Expect When I Get to the Courthouse?"

You should expect there to be long lines to go through security. Security checks will be the first step required before being allowed to attend your hearing. In some Texas Courts, you will be required to remove your shoes, place them in a bin and walk bare-footed through the security scanner. Think of going through airport security. It is a similar but milder procedure. With this in mind, we recommend that you wear socks and/or pantyhose if you are squeamish about your feet being on the county's floor.

Note: Before walking through the security scanner you should remove the following for x-ray screening unless specifically told not to: jackets, belts, watches, keys, loose change, laptops, and any other metal that may alarm the security scanner. With this in mind, you should arrive at the Courthouse at least 35 minutes prior to your hearing. However, you should speak with your attorney about what time he or she would prefer that you arrive; our firm makes it a habit to meet with our clients at the courthouse again prior to their hearing so we may ask that the client arrives an hour prior to their hearing instead, depending on the case.



3. "I Have Made it Through Security. Now What?"

Now you should expect long lines at the elevator. This is partly due to the fact that many of the cases at the courthouse in various courts are set to start at the same time. With that in mind, that is a bunch of people that need to be somewhere at the same time. Moreover, due to the frequency that these elevators are used, sometimes an elevator (or elevators) will be "down" (i.e. "out of order"). You'll want to stay diligent in getting on an elevator so that you are on time for your hearing.

5. "How Should I Behave Once I Am Inside of the Courtroom?"

In "real life" courtrooms are not as theatrical as it is portrayed on TV. Instead, the courtroom is a place of order and silence (mostly). When you arrive to the courtroom assigned to your case, you will notice that there are other people in the courtroom. There will likely be other parties for their own cases, attorneys, clerks, a court reporter, bailiffs, and of course the Judge. With that said, most Courts will require absolute silence in the courtroom unless you are in front of the Judge being heard for your case. Additionally, in most Texas courts, this includes speaking with your attorney. You'll be required to briefly step out of the courtroom to conduct this conversation most of the time. This is to maintain the order that we discussed above. Remember, it becomes difficult for the court reporter to adequately transcribe testimony if he or she cannot hear and it creates an equal problem if the Judge cannot hear testimony due to the courtroom chatter.

Next, you should know that you are strictly forbidden from taking pictures or video with your cellular and/or electronic device while in the courtroom. For this reason, we recommend that our clients keep their electronic devices out of view so that it does not even appear as if our client is attempting to violate this rule. Lastly, we'd argue that the most important and universal rule of all Texas courts is that your cell phone must be in silent mode or powered off while in the courtroom. We have witnessed bailiffs both remove people from the courtroom and confiscate the person's phone because the phone sounded while inside of the courtroom. To avoid this issue and embarrassment, we recommend that our clients power off their phones just to be safe. We wouldn't want to risk that reminder that you forgot that you set going off in the middle of someone else's testimony.

Additional Resources

Use the links below to check out more detailed resources on Family Law Jury Trials

- Texas Family Law Podcast Episode: Jury Trials in Family Law
- The Trial Process for Texas Family Law Cases
- Texas Family Law: Understanding Voire Dire
- Proving Community Property to a Jury in Texas

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