

Experiential Module 3:  
After filing the Petition for Divorce,  
Child Custody Hearing and Child Support Worksheet A

Course: Civil Law of Persons

Professor Monica Hof Wallace

November 4, 2014

2:00 to 3:15 p.m.

**Contents:** This “Experience 3” packet contains the following:

1. Memo from Senior Partner
2. Transcript of Deposition of Mr. Smith
3. Child Support Worksheet A

### **Your Task**

On November 4th, our class time will be dedicated to holding a child custody hearing on the Smith case. Assume that a Petition for Divorce was filed by Mrs. Zara Smith in the Civil District Court for the Parish of Orleans and it was assigned to Division “K,” case number 14-00001. Mrs. Smith requested joint custody to be named as the primary domiciliary parent with custodial time allocated to Mr. Smith. Mr. Smith reconvened and is requesting joint custody with him being named the primary domiciliary parent and reasonable custodial time given to Mrs. Smith. Mr. Smith’s mother, Louise, has intervened seeking visitation with the children.

No evidence will be taken at the hearing. The court will hear arguments from Mrs. Smith’s lawyers, Mr. Smith’s lawyers, lawyers that have been appointed for the children, and Louise’s lawyers. Each party will be limited to 10 minutes per issue. The court will ask questions. Please be prepared with all of the legal tests to be applied, the burdens of proof, and the factual arguments to be made. A total of eight student volunteers or students appointed by Professor Wallace will be giving the arguments.

On November 4, each student will be required to turn in a completed Worksheet A on behalf of your client, Zara Smith. If any comments need to be made about the Worksheet, please use an attached sheet. Please include your name on the “Prepared by” line at the end of the worksheet.

**Due Date: Tuesday, November 4**

### **Skill competencies developed during this experiential module**

- Begin argument with a persuasive premise statement requesting relief for client.
- Present relevant law to judge including favorable and unfavorable provisions or case law.
- Argument reflects thorough research and legal knowledge of issues.
- Effectively use facts to advocate for client.
- Interact with judges to answer questions and present cogent arguments.
- Show respect to the court and its process.
- End the argument asking for the relief requested.
- Evaluate data to prepare a worksheet for the court to evaluate.
- Prepare accompanying information for the court to understand data.
- Meet deadlines.

To: Associate

From: Paralegal

Re: Our Case No.: 14-5670 *Divorce of Zara Smith*

Date: October 31, 2014

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### **INTERVIEW WITH MRS. SMITH**

As requested, I followed-up with Mrs. Smith and asked her several questions you relayed to me to determine in preparation for the upcoming custody hearing. She said she would try to send as much documentation as possible in the near future. Below is a short synopsis of her answers to the questions concerning the topics you asked me to investigate.

#### **1. INCOME AND EXPENSES**

Mr. Smith is the sole bread winner in the family. Zara was able to find his W-2 and his reported gross income from 2013 was \$201,250. She said that he gets paid twice a month and he generally gets a bonus at the end of the year, which has varied. She thinks last year it was \$20,000. She said they have no other income than his salary. She did explain that her parents often send her checks so she can buy the kids and herself clothes. It also helps with her bi-weekly spa treatments. For the past three years, they gave her \$7,500 in May and again in August, but she only received \$7,500 this year and it was in June. She said her parents are very generous.

Mr. Smith is responsible for the financial management of the house.

#### ***House***

The largest expense is the mortgage for the house. The balance of the mortgage is \$345,000. Monthly mortgage payments including principle and interest equal \$2,216. The average rental value in that neighborhood is approximately \$3,000 for a three bedroom / two and half bath home.

#### ***Tuition***

Other expenses include the children's tuition. Alice is in the eighth grade at Sacred Heart and tuition is \$14,150 a year. Elijah is in first grade at Stuart Hall and tuition is \$10,000 a year with a \$1,240 student fee. Both of the kids wear uniforms.

#### ***Car***

The Smiths have two relatively new cars. Zara drives a 2013 Chevy Tahoe and Al drives a 2011 BMW – three series. The monthly payment for Zara's car is approximately \$570.00 a

month and roughly \$150 in gas expenses. Zara did not know the monthly payment for the BMW and thinks it is paid off.

### ***Health insurance***

The Smiths has health insurance through Al's firm. They are insured through Blue Cross and she thinks the firm pays a part of the premium for the health insurance and a part of the premium is deducted from his checks. According to her records, Al's portion of the annual premiums paid for health insurance for the whole family is \$2400. If possible, she would like the kids to stay on that health insurance.

### ***Other medical expenses***

Zara thinks Alice will need braces soon. They have already met with an orthodontist, who has given free consultations so far, but charges \$3600 for braces. The fee can be paid in monthly installments for up to one year, and she does not think insurance will cover that cost.

## **2. COMMUNITY PROPERTY**

Zara says that all of their property is community property. They did not have a lot when they got married and her parents helped them get started. I explained to her that we would work on the partition of community property after we finished with the issues surrounding the custody and support of children.

## **3. ASSETS AND LIABILITIES**

Other than the mortgage and car notes, the only liabilities include credit card debt.

### ***Master Card***

The card is a joint card in both names and currently has a balance of \$2,500.

### ***Home Depot Account***

The Smith's recently purchased stainless steel appliances from home depo which cost approximately \$7,000 and only \$300 of that bill is paid.

### ***Visa Card***

The Visa card is only in Zara's name and she does not believe Al knows about it. The balance is \$6,000.

## **4. CUSTODY/VISITATION**

Currently, Zara keeps the children during the week in the family home. Al visits about one day a week briefly after work for anywhere between 15 minutes to an hour and then

on the weekends, specifically Sunday he picks the children up for church and takes them all day. On Sundays, Zara knows Al takes them to church and then to his mother's house where they have brunch. Al's mother comes over to Zara's house every evening and cooks or delivers a home cooked meal for Zara and the children. She has been doing this ever since their first child was born. Zara also shared that she thinks Al's mom does this because she wants to check up on Zara to make sure she is taking care of the children. Zara knows that Al's mom does not like Zara or trust that Zara is a fit parent. However, Zara believes that Al recognizes that she is a good mother, and likewise, Zara believes that Al is a good dad.

Ideally, Zara would like to move back home to Texas and take the children with her. She knows Al would be devastated and will fight to keep the children here in New Orleans. She knows he loves his children and works very hard to provide for them.

Elijah just started in first grade at Stuart Hall and Alice started at Sacred Heart when she was in first grade. Zara has talked to Alice about where she would like to go to high school and she is considering staying at Sacred Heart or trying to test into Ben Franklin. Zara received a call recently from school about Alice, who is showing signs of anxiety and is unable to concentrate. This started after Al moved out. Elijah seems unaffected, but asks on some evenings to talk to his dad, so she calls him and allows Elijah to talk. Zara thinks, if asked, the kids would rather live with Al.

I was able to sit and talk with the kids, while Zara was nearby in the kitchen, and learned the following:

Both kids idolize their dad, but realize that mom takes care of them on a daily basis. They think that mom is stricter than dad. Dad lets them play video games or talk on the phone more, so they like the freedom. They love their grandmother deeply and can't imagine not seeing her every day. Elijah likes his school, says he has lots of friends, and was planning to play club soccer in the spring. Alice likes to read and talk on the phone with her friends. She also has been taking ballet classes three times a week for the past two years. Some of her friends are going to Ben Franklin, so she has told her mom she would look at that school, but is afraid of leaving the school she has grown up in. She admits she is very upset since her dad left and is worried that she did something wrong.

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In the Civil District Court

Parish of Orleans

Case No.:

Zara Lang Smith

v.

Alfred Matthew Smith

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Deposition of Alfred Matthew Smith

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The deposition of Alfred Matthew Smith was held on 10/8/14, commencing at 10 a.m., at the Law Offices of Alex Hoffman, 526 Pine Street, New Orleans, LA 70118, before Angie Alwart, Certified Court Reporter.

17 APPEARANCES:

18 ALEX HOFFMAN, ATTORNEY

19 On behalf of Plaintiff, Zara Lang Smith

20 BRETT BASCAL, ATTORNEY

21 On behalf of Defendant, Alfred Matthew Smith

22 Reported by Angie Alwart

23 STIPULATIONS

24 It is stipulated and agreed by and between counsel for the respective  
25 parties that the reading and signing of this deposition by the witness be and  
26 the same are hereby waived.

27 It is further stipulated and agreed that the filing of this deposition with  
28 the Clerk of Court be and the same is hereby waived.

29 Whereupon,

30 Alfred Matthew Smith

31 Called as a witness, having been first duly sworn to tell the truth, the whole  
32 truth and nothing but the truth was examined and testified as follows:

33

EXAMINATION BY ALEX HOFFMAN

34 Mr. Hoffman: Good morning Mr. Smith.

35 Mr. Smith: Good morning.

36 Mr. Hoffman: Mr. Smith, I am Alex Hoffman, an attorney representing  
37 your wife, Zara Smith. This is a deposition, in which I will ask you questions  
38 and you must answer them truthfully unless your attorney tells you clearly  
39 and directly not to answer. Although no judge is present, this is a formal legal  
40 proceeding just like testifying in court, and you are under the same legal  
41 obligation to tell the truth, the whole truth, and nothing but the truth. If you  
42 do not understand any of my questions, feel free to say so, and I will rephrase  
43 it. Before the deposition can be used in court, you will have the opportunity to  
44 read over it and correct any mistakes. Do you understand this?

45 Mr. Smith: Yes, I understand.

46 Mr. Hoffman: Good. Then I see no reason why we shouldn't begin. Now,  
47 I know you have a meeting that has just come up and you need to attend, so  
48 we are going to cut this deposition a little short and focus only on issues of  
49 custody and schedule another date soon to discuss support and property  
50 issues. Is that your understanding?



51 Mr. Smith: Yes, it is. And, thank you for your flexibility.

52 Mr. Hoffman: Okay. First of all, would you state your name and date of  
53 birth for the record?

54 Mr. Smith: My name is Alfred Matthew Smith and I was born on June 1,  
55 1974.

56 Mr. Hoffman: And where were you born Mr. Smith?

57 Mr. Smith: I was born and raised in New Orleans.

58 Mr. Hoffman: And do you currently reside in New Orleans?

59 Mr. Smith: Well, at this point, I guess reside more in Baton Rouge – that  
60 would be more specifically in Gonzales. I have been staying at the apartment  
61 at the Mansion at Ivy Lakes where my firm has a corporate apartment. I  
62 stayed there before the separation because of work. I have not moved  
63 everything out of our house in New Orleans, though.

64 Mr. Hoffman: If you would, please tell me about your education Mr.  
65 Smith.

66           Mr. Smith: I graduated from high school here in New Orleans, at which  
67 point I left to attend LSU in Baton Rouge. After I finished undergrad I attended  
68 law school at LSU as well.

69           Mr. Hoffman: And after you graduated from law school, did you begin  
70 working?

71           Mr. Smith: Yes, after law school I went to work for a big law firm  
72 downtown. About four years ago, a few of us broke off to form our own firm,  
73 so I am now with Cohen, Smith & Langdell.

74           Mr. Hoffman: Tell me a little bit about your family Mr. Smith.

75           Mr. Smith: Well I have been married for 15 years to my wife Zara and  
76 we have two kids, Alice is 13 and Elijah is 7 and they mean the world to me.

77           Mr. Hoffman: And does your wife Zara work?

78           Mr. Smith: No, I'm the sole money earner in the family.

79           Mr. Hoffman: And you are a partner at your law firm?

80           Mr. Smith: Yes, that is correct.

81           Mr. Hoffman: And your wife Zara, she cares for the children while you  
82 are working?

83           Mr. Smith: That is correct, yes.

84           Mr. Hoffman: And would you say that Zara does a good job taking care  
85 of your children?

86           Mr. Smith: Of course. Zara is a good mom. She always makes sure the  
87 kids get their homework done and get to school on time. She really loves her  
88 children.

89           Mr. Hoffman: So would you say that Zara does an adequate job caring  
90 for the children and the household?

91           Mr. Smith: I think she is a good mother, and loves her children. But  
92 there are some things she could improve upon.

93           Mr. Hoffman: Could you elaborate on that a bit?

94           Mr. Smith: Well, for example, typically when I get home from work the  
95 house is a mess. She doesn't seem motivated to keep the place clean. And if it  
96 weren't for my mother bringing food over every night I'm not sure the kids  
97 would ever have a home cooked meal. My mother is the real caretaker in the  
98 evenings, in my opinion.

99           Mr. Hoffman: So you are saying that Zara doesn't cook the children  
100 dinner, but your mother does?

101           Mr. Smith: Yes, she brings over a home cooked dinner for them almost  
102 every day. It creates tension in the house because Zara and my mother don't  
103 get along. My mother doesn't think Zara runs a good household, but would  
104 never say so in front of the kids. Zara, on the other hand, can't stand my mom,  
105 and she always talks bad about her in front of the kids.

106           Mr. Hoffman: Aside from what you just mentioned, is there anything  
107 else that concerns you about Zara in regards to caring for your children?

108           Mr. Smith: Well, lately she has seemed a little depressed. She doesn't  
109 seem motivated to clean the house or cook dinner, as I mentioned before. She  
110 just seems down all the time, which is why I think she has turned to drinking.  
111 From what I can tell she is usually drinking after she drops the kids off at  
112 school.

113           Mr. Hoffman: And what gives you the impression that she has been  
114 drinking?

115           Mr. Smith: Well typically after dinner I take out the garbage, and I've  
116 noticed recently there are usually one or two empty wine bottles in the trash  
117 can.

118           Mr. Hoffman: So in your opinion her drinking has become a problem?

119           Mr. Smith: I would say so, yes. I'm concerned she may be an alcoholic.  
120 I've asked her to go to counseling and seek treatment for her drinking as well.

121           Mr. Hoffman: Tell me about your work life Mr. Smith.

122           Mr. Smith: Well, as I said I recently started my own firm. It has been a  
123 lot of work. My specialty is governmental regulatory affairs.

124           Mr. Hoffman: And would you say you are a hard worker?

125           Mr. Smith: Of course. I work hard so I can provide a good life for my  
126 children, yes.

127           Mr. Hoffman: And would you say you work long hours?

128           Mr. Smith: Typically I would say I work a reasonable amount, but lately  
129 I have been preparing for a big trial in Baton Rouge which has been taking up  
130 more and more of my time.

131           Mr. Hoffman: So you commute to Baton Rouge on a regular basis then?

132           Mr. Smith: Well the trial preparation has required me to live in  
133 Gonzales for the last 6 months or so, and I've been commuting back and forth  
134 to New Orleans to spend time with my family.

135           Mr. Hoffman: So how often would you say you've seen your children  
136 over the past 6 months?

137           Mr. Smith: Well, before Zara and I separated, I would generally just see  
138 the kids on the weekends. Since January, I would say I see them once during  
139 the week in the evenings, for about an hour or so. But I always try to see them  
140 on Sundays for most of the day when I can, and I really value that time. I know  
141 my job has been overly demanding lately, but I've asked my mother to step in  
142 and spend time with the kids and make sure they are well fed.

143           Mr. Hoffman: And how is your relationship with your wife?

144           Mr. Smith: Honestly, I feel like we've reached a plateau. But every time  
145 I've tried to discuss our marital issues with her she has either been busy or  
146 asleep.

147           Mr. Hoffman: Has Zara offered to sit down with you and discuss your  
148 marital problems?

149           Mr. Smith: Well, actually she has, but I've been so busy lately we  
150 haven't had the time to sit down and discuss it.

151           Mr. Hoffman: Was there a specific moment when you realized your  
152 marriage might be in trouble?

153           Mr. Smith: Well there is one moment that comes to mind. Last month, I  
154 came home from work one day and had a bit of an outburst. I yelled out that I  
155 wanted to get a divorce.

156           Mr. Hoffman: And what caused this outburst?

157           Mr. Smith: Well, I came home from work and the house was a total mess.  
158 There were dirty dishes everywhere and I knew I was going to be the one to  
159 clean them even though Zara had been home all day while I was working. So I  
160 blew up and told her I wanted a divorce. The worst part is that Alice  
161 overheard us and was very upset. I've just been very stressed lately with this  
162 trial preparation so I think that may have something to do with why I was so  
163 angry, in addition to the fact that she is constantly accusing me of having an  
164 affair. I just couldn't take it anymore.

165           Mr. Hoffman: And when did she accuse you of having an affair?

166           Mr. Smith: She has been ever since I moved to Baton Rouge to work on  
167 this case.

168           Mr. Hoffman: Is there someone specific she has mentioned in her  
169 accusations?

170           Mr. Smith: One of young female paralegals. We've been working on this  
171 case together and Zara seems to be jealous of her for some reason.

172           Mr. Hoffman: Should Zara have any reason to be concerned?

173           Mr. Smith: Are you asking if I'm having an affair with my paralegal? I  
174 love my children and my wife. Your suggestion that I'm having an affair is  
175 offensive, could we please move on?

176           Mr. Hoffman: Mr. Smith, I am not trying to offend you, but I need to ask  
177 you whether you are having affair, and please remember that you are under  
178 oath.

179           Mr. Smith: No, I am not having an affair! I am a devout Catholic and  
180 going through a divorce is hard enough. I am not bringing someone else into  
181 this mess.

182           Mr. Hoffman: Very well, I'd like to discuss the issue of custody for a  
183 moment. What would be your idea of a fair custody agreement?

184           Mr. Smith: I know that Zara will want custody of the children and I do  
185 think she should be able to see the children, but I would like to be named  
186 domiciliary parent. I think it is better that the children live with me and I  
187 know my mother would be willing to help.



188           Mr. Hoffman: And why do you think you should be named domiciliary  
189 parent?

190           Mr. Smith: Honestly, I'm worried about Zara's drinking and her  
191 depression. I have a pre-teen daughter and a young son who needs his father.  
192 I'm also afraid that Zara will move the kids to Houston if she gets custody and  
193 then I won't see them. I would be willing to pay Zara support if it meant  
194 keeping my children in New Orleans.

195           Mr. Hoffman: And where would the kids stay when you have them?

196           Mr. Smith: I could stay with my mother while I'm in town for now, and  
197 eventually I plan on buying a house for them to stay with me. I guess we could  
198 alternate holidays as well.

199           Mr. Hoffman: And as far as the children's schooling is concerned, I'm  
200 assuming you would have no objection to them attending private school?

201           Mr. Smith: Honestly, I don't see the point. I'd rather them attend public  
202 school like I did. I turned out fine. I will probably have to pay Zara for some  
203 period of time, and I am not sure we are going to be able to afford to continue  
204 to send them to private school.

205           Mr. Hoffman:       Well Mr. Smith, I know that you have a meeting to get  
206 to, so we can continue this deposition at a later time. That's all the questions I  
207 have time for today. Thanks for your time.

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