

GENERAL INFORMATION

THE LAW OFFICES OF PAUL T. FANNING, P.C.

**400 Troup Highway
Tyler, Texas 75701-5501**

(903) 597-7878

Prepared Especially For

NAME

March 28, 2003

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The courtroom is not a place where truth and innocence inevitably triumph; it is only an arena where contending lawyers fight, not for justice, but to win.

Clarence Darrow

Introduction

In this booklet we will try to set out only basic information about selecting legal representation and about the practices of The Law Offices Of Paul T. Fanning, P.C. Remember, this is only a *basic* outline. None of its contents contains anything specific to your individual case. This booklet is not intended to take the place of consultation with the attorneys in this Firm. You should feel free to ask the attorneys any questions which this memorandum does not answer for you. At the same time, we suggest you refer to this booklet on the topics it covers throughout your case, particularly when questions arise. Doing so will possibly save you confusion and money in legal. As you read this, feel free to mark your questions on the margins or on the reverse sides.

How To Pick A Lawyer For Your Case

Laws change rapidly, and the law is quite different from state to state within the United States. It has been said that the law follows changes in society by about ten years.

It's simply not possible for the large majority of people facing a legal issue to go through it without competent legal counsel. But how does a person choose a lawyer? It isn't easy.

Having passed a state bar exam, lawyers are free to pick any area of law in which they want to practice, without further training in that area and without any experience in it. Despite this, some states recognize legal specialization; and some states do not.

Legal specialization, like medical specialization, is recognized in the State of Texas. The Texas Board of Legal Specialization certifies legal specialists in many fields of law. Certification, and re-certification, is based upon the following factors: 1) years of experience generally, 2) amount of experience in the particular field, 3) comments from peers and judges which the Board solicits anonymously, 4) certified hours of continuing legal education generally and in the

particular field, 5) the record of the attorney with the State Bar of Texas Grievance Committee (ethics complaints and enforcement), and 6) written examination.

Not long ago virtually all lawyers were general practitioners except in large cities. Recently more and more lawyers have restricted the number of areas in which they practice. The result is that fewer and fewer lawyers will handle any specific type of case. Lawyers generally fall into four (4) categories.

The New Lawyer

The **new lawyer** who has to take everything to make ends meet. Watch out for this fellow. He means well but has little experience and may be wrong in his tactics, strategies, and predictions. This could cost you dearly. If he works for an experienced attorney, he has someone to fall back on *if* that someone makes himself available. However, if you go to a well-known attorney who refers you to his associate, be careful. The associate is probably pretty much on his own. His boss is too busy to keep an eye on him and doesn't want to anyway. In the legal profession, the boss is sometimes referred to as a "lightning rod." He attracts new clients by reason of his reputation, and then funnels them to associates who are relatively inexperienced. The lightning rod's time is taken up attracting new business, and he does not keep up with your case as a regular matter of his routine. That is why lightning rods seldom give answers to you about your case without having to "call you back later" (after they have time to check with their associates to get brought up to date). You thus pay for two lawyers, one expensive and one less expensive, and generally get the benefit of only the less expensive.

The General Practitioner

The **general practitioner**. There are many left. Some are surprisingly good at handling a wide variety of cases. Most are not.

The Semi-Specialist

The **semi-specialist** is the lawyer who does only a few things, and whatever your case involves is one of them. This lawyer will likely be up-to-date and highly competent. He may not know quite as much as the true specialist, but the difference will be minimal in all but a few cases. He may also be less expensive than the true specialist.

The True Specialist

The **true specialist**. This group is growing all the time. True specialists tend to be found in most urban and suburban areas. In Texas they are generally "Board Certified - Texas Board of Legal Specialization." They also tend to be the most expensive.

What, then, are the qualities one should look for in an attorney?

Experience.

There simply is no substitute for experience. Litigation, negotiation, and counseling are all skills learned by experience, not out of a book. Oliver Wendell Holmes is quoted as once writing, "The life of the law is not logic, but rather *experience*." (Emphasis added.) Perhaps that is why the Texas Board of Legal Specialization will not even accept an application for certification in any specialty from an attorney with less than *five (5)* years experience.

Experience also breeds the right sort of reputation (*i.e.*, how the lawyer is seen by other lawyers). It's very important that opposing counsel respects your lawyer's *competence*, both in and out of the courtroom. It is not important that opposing counsel personally likes or dislikes the personality of your lawyer. If opposing counsel does not respect your lawyer's *competence*, your side of the case will not be negotiating with a full hand. Be wary of lawyers with big reputations among the public at large. That sort of reputation will generally cost you an arm and a leg and will probably not help you unless yours is among the very largest of cases. You will note the emphasis on respect for *competence* as opposed to popularity. It is not necessary that other lawyers think your lawyer is a nice guy. In fact, that might do your case harm. A very eminent plaintiff's personal injury lawyer in Dallas has been quoted as saying, "When I die, I don't want the insurance defense bar to come to my funeral and say, 'Poor old _____. He sure was a nice guy.' Instead, I want them to say, 'Thank God he's finally dead. Now maybe I can win a case once in a while.'"

If it comes right down to it, and you think the person you're asking may be emotionally involved in the answer s/he is giving you, ask a simple question: "Name all the lawyers you know who have beaten him?"

Actually, the so-called "barbarian" credited with ending the 1000 year supremacy of the Roman Empire perhaps said it best:

"Know that your most worthy efforts will be scorned by your peers, for it is they who suffer most when you excel. If your actions and ambitions do not threaten them, you are simply striving toward the insignificant."

Leadership Secrets of Attila the Hun
by Wes Roberts.

Winning and losing are not easily defined in the context of litigation. In fact those two extremes might be impossible. Generally speaking, however, if your attorney can obtain a result reasonably close to what you say you want, he will consider it a "win." So will you.

Efficiency.

Second, there is efficiency. The biggest source of malpractice in most fields of law is the inability of a lawyer to get his work done on time. Many lawyers have piles of work on their desks and may be even months behind. *Their* problem quickly becomes *your* problem. A good lawyer must have gained the ability to get a day's work done in a day.

A corollary to this is communication. The client should receive a copy of *every* letter or document on the case that passes through the lawyer's hands. It should be transmitted to the client generally within one (1) working day. The sooner, the better. It is now possible to send most documents to our clients via an on-line service such as America Online, CompuServe, or the Internet if the client has a secure personal computer with a modem, checks for e-mail at least daily, and is a subscriber to one of these services. Under such circumstances, the client and the attorney can communicate in writing in virtually real time. The client should also be informed,

probably in writing, of every telephone call or conversation in the hallway of the courtroom that relates to the case. Obviously, only an efficient lawyer can do this.

Commitment To Your Best Interest.

Third, the lawyer should be committed to finding the quickest, least-expensive, and most-fair resolution of your case, by negotiation if possible. So should you. Get rid of the idea that going to court will vindicate your sense of justice. It almost never does. The sooner a settlement can be reached, the sooner your own level of emotional trauma and uncertainty will be brought under control.

Confidentiality.

Fourth, the lawyer should be very careful about maintaining confidentiality regarding his clients. There is a simple way for you to find out about this. Simply pay close attention to his office and the things, if any, he says about his other clients. You should not be able to see the contents of papers pertaining to his other clients. There may be other papers on his desk, but you should not be able to see what they say. They should be covered or turned over. He should not mention the identities of his other clients and what they say to him. “War stories” are permissible, but not when accompanied by the *identities* of his clients. If he will talk about confidential information pertaining to other clients, he will surely talk about confidential information pertaining to you.

Lawyers are obligated by law to keep client’s confidences. This applies to people who just inquire about hiring the lawyer too. This is a professional obligation, enforced by the law and the Rules Of Professional Conduct. By the same token, however, the law specifies certain limitations upon this “attorney-client privilege.” A lawyer must *not* keep information confidential if withholding that information would lead to the perpetration or concealment of a crime or fraud or if the information is necessary to defend the lawyer against an accusation of professional wrongdoing or is relevant to the collection of a professional fee.

Also, frequently people are nervous about talking with an attorney. Sometimes they think they will feel more comfortable if they are accompanied by a trusted friend or relative to the law office. If you do this, nothing you tell your attorney in the presence of your friend or relative will be protected by the laws of confidentiality.¹ In effect, you will be waiving the protection of those laws.

¹ ***Ledisco Financial Serv., Inc. v. Viracola***, 533 S.W.2d 951, 959 (Tex. App.—Texarkana 1976, no writ) (no attorney-client privilege attaches to a communication to a lawyer in the presence of a third person who is not an agent or representative of the lawyer). An exception to this rule would occur if the friend or relative was covered by some other, additional privilege, *i.e.*, a subsequent spouse.

Objectivity.

Lastly, the lawyer you choose should be able to maintain his objectivity. Don't misinterpret this as a lack of compassion for you or as a lack of loyalty to your case. In the same way that a surgeon would be of no use to the patient if he burst into tears upon entering the operating room, so a lawyer is of no use to his client if he assumes the same sense of moral crusade that many clients have. A good lawyer must be able to cut through the whole dramatic circumstance to the small percentage that has any legal relevance. The lawyer is not your pastoral or psychological counselor. Some lawyers have excellent "bedside manner." Bedside manner does not win lawsuits any more than it cures sick people, and may be of doubtful assistance to the client in finding practical solutions to legal problems. Most clients have friends and relatives who will sympathize with them. In addition, friends and relatives usually do not charge for their time. Lawyers generally do charge for their time. Furthermore, most clients need one good attorney to help resolve legal problems more than they need one additional sympathetic shoulder on which to cry. Constructive resolution of legal disputes requires every client to look - squarely in the eye - at his *own* weaknesses, as well as his opponent's. Sympathizers generally only agree with you and point out the other person's faults. That is not what the client needs. "As iron sharpens iron, so one man sharpens another." *Proverbs 27:17*. Look for a lawyer who has your legal interests at heart and who has a good bedside manner, but who maintains his objectivity and will tell you the truth about you - *both the good and the bad*.

So how do you find such a person? People seek lawyers in many ways. Because Texas is among the states that certify specialists in different areas of the law, perhaps you should start in the Yellow Pages under "Certified Specialists." There you will find the true specialists who choose to advertise their specialty. Even if you don't need one of them, you can still call them with your questions about the *competence* of an attorney you may be interested in checking out. Nobody can better judge a lawyer than other lawyers who have tried cases against him and negotiated with him, or referred clients to him in the past and received good reports. If you call three lawyers who advertise in the Yellow Pages that they handle subjects involving your area of inquiry and ask each one who "the most *competent*" lawyers are in the locality for that area, you will probably notice you're hearing the same names repeatedly. Stick with "the most *competent*," do not pay attention to any comment on personalities. Then ask if there is any personal or past professional or business relationship between him and any of the persons he recommends. That could indicate cronyism. If the lawyer tells you that he himself is the best, he might be right!

Other ways of selecting a lawyer include State Bar or local bar association referral systems and referrals by professional organizations. The State Bar of Texas has a lawyer referral service.

Word-of-mouth referrals are generally not reliable. Word-of-mouth referrals may tell you a lot about an attorney's manner, pleasant or unpleasant personality, and apparent competence (as it appears to a lay person), but they probably will tell you very little about *true competence*. After all, the only way you know your doctor is a good physician is most likely because he hasn't killed you yet. The same is true of lawyers. If the lawyer has a pleasant personality and projects an image of really caring, statistical studies indicate his clients will be pleased with him even though they lost their cases. Above all, *don't* compare your case to somebody else's.

Inquire what the lawyer's views are toward mediation. Has he used it? How often? What does he think of it? When should it be done?

Points you should look for in his answer are: Mediation bears serious consideration and should be attempted in *any* case where there is a hot dispute over any issue. Most importantly, *it works*. Mediation only works fairly, however, when both parties are in possession of the relevant facts.

If the attorney you interview does not respond with these points in some form or fashion *without* you suggesting them or dropping any hints, you had better look further for legal counsel.

Whomever you select, it is absolutely *essential* that you trust the individual and feel comfortable with him. It's one thing to insist on explanations, it's another to be constantly suspicious. The lawyer who knows his client trusts him will usually work harder than the lawyer who feels his client doubts him.

Judges and opposing counsel usually view this the same way. For this and other reasons, it is frequently disastrous to change lawyers in the middle of litigation. The successor counsel has to familiarize himself with all the facts - re-plowing the same ground, effectively doubling your hourly rate up to that point. Then successor counsel has to "catch up" tactically and strategically with both the case (Yes, it has a life of it's own.) and his opposing counsel, as well as any active orders on file which the Court has signed. This is the reason that lawyers do not encourage clients to change lawyers. It has usually nothing to do with cronyism. By the same token, if you hear a lawyer say negative things about your lawyer, be suspicious of the possibility that he is just trying to steal your business rather than truly help you. The old adage given by Abraham Lincoln (himself a lawyer) is usually correct in the context of this subject: "If you don't trust a man, don't hire him. If you hire a man, trust him."

A word about fees. Rates do vary, and you should not be afraid to shop around. But you should remember that most often a lower hourly fee means a less-experienced, less-*competent* lawyer; and a flat fee from a clinic usually means a secretary will know your case better than the lawyer does. Your objective should be to pick the lawyer you think you need for your particular circumstances. Unfortunately, that may be easier said than done. A person who wins his litigation usually never knows if he has done too much. A person who loses his litigation usually believes that he has done too little.

There are two sayings in our culture that come to mind at this point. Even though they stand for almost directly opposite propositions, ironically both are popular. One is, "You don't get something for nothing." The other is, "You get what you pay for." In fact, neither is true. You can get a dread disease for nothing; and, if people always got what they paid for, there would be no need for a Texas Deceptive Trade Practices - Consumer Protection Act (and there is). What I believe is correct is, "You don't get something *you want* without cost to you, unless it comes from God."

The vast majority of lawyers are honest, reasonable individuals. However, there are also those who rarely try to really settle a case because they command the highest fees by projecting the image of a fighter. Too many people suffering the trauma of a divorce fall prey to the fighter

image. The client potentially needs an attorney who can fight very effectively, has proven that he can, and therefore has the reputation for that ability. However, the route of actually fighting is very expensive and in most cases unnecessary. The vast majority of cases - approximately 98% - are ultimately settled by mutual agreement.

Whoever you select should be able to provide you regularly (at least as often as monthly) with a detailed billing statement itemizing every action taken and the time and cost associated with it. The itemization should be in English (not computerese) and be explanatory. If all the itemization says is, "T/C .25 hrs.," that, in my view, is not an *explanatory* itemized statement. I might be able to figure out that "T/C" means "telephone conference"; but I won't know with whom it occurred or what was discussed. Find out if the attorney you are interviewing, and his Firm, give full and complete, *explanatory* itemized statements *in English* (not just symbols). It is wise to insist upon this and to review each statement carefully when it arrives. If you have questions about what a statement entry says, you should not be charged for inquiring about it. You may not understand *why* something was done because you're not a lawyer and don't need to become one; but you should be able to read the statement learn *what* was done without additional charge. If you want to know *why* and you inquire, it may be proper to charge you for advice and counsel.

The itemized statement should be so clear that it would be valuable to the opposing party if it should fall into his or her hands. Therefore, after careful review and if you are satisfied it is fair, the itemized statement should be destroyed or placed *absolutely* beyond even the imaginable grasp of your opponent.

Do not expect cheap legal representation, and be prepared to pay what it costs. Many people have to borrow the amount of the retainer. Good legal advice can be worth many times its cost. And what price can be put on non-economic factors? It's far, far wiser, indeed, to pay what good counsel is worth than it is to seek a bargain and later question whether you made a big mistake.

Remember, however, that whatever the parties resolve on their own, with or without mediation through a neutral party, will mean less time your lawyer has to spend on your case. This may or may not be a good thing, depending on variables that one side may not unilaterally be able to control. However, the deliberate escalation of hostilities will always bring with it more cost to all parties.

Remember also, however, sometimes the alternatives to litigation are unacceptable, no matter how much money can be saved. Be very sure you retain control over this decision on *your side* of the case.

Introduction To The Law Offices Of Paul T. Fanning, P.C.

The Law Offices Of Paul T. Fanning, P.C., is a professional, legal service corporation. The lawyers and staff operate as a team, each primarily doing those tasks which he or she can most efficiently and effectively perform. For example, our Legal Assistants and Legal Secretaries will handle much of the information gathering and status reports. A Legal Assistant will assist the attorney throughout the handling of your case, just as a nurse assists your doctor in handling important aspects of your medical care. Our Firm uses Legal Assistants for many tasks the way

most other firms use associates (young lawyers). It has been our experience that Legal Assistants stay with the Firm longer, are more detail-oriented, are more efficient, are more effective, and are more reliable for most tasks related to Family Law than are young lawyers. There is a famous lawyer from Dallas who pioneered the effective use of Legal Assistants in Family Law. He frequently tried cases against other famous lawyers who used young lawyer associates instead of Legal Assistants. He used to sometimes tell his opposing counsel before trial, "My dog can hunt better than your dog." Time and experience proved him right. He was Mr. Fanning's principal teacher and mentor in the area of Family Law. Legal Assistants are employed at The Law Offices Of Paul T. Fanning, P.C. because they are *efficient* and because they are *effective*. Legal Assistants always provide their professional services under the supervision of a licensed attorney, but their proper utilization almost always results in savings for the client. You will likely be dealing with more than one staff member during the course of our professional relationship, including perhaps more than one attorney.

Not only do the lawyers and staff operate as a team, whenever possible we attempt to incorporate our clients as part of the team too. A perfect example is what you are doing right now. As you read this, you are doing something very worthwhile and valuable. You are becoming educated. This will serve you well in dealing with what you are going through right now and will go through later. It is also valuable because it will assist us in carrying out our responsibility to assist you. In addition, you will shortly be filling out a questionnaire. That might seem mundane, but would you really prefer to pay a lawyer, or even a trained staff person, up to several hundred dollars to gather information about personal identification data, personal values and choices, and financial information while that lawyer or staff person sits across a desk or conference table from you, essentially doing the same mundane work of filling out a form? If it's got to be done and you can do it, why shouldn't you be allowed – and even expected – to be of assistance to your own case?

Mr. Fanning was born in Chicago, Illinois, on July 12, 1945. He was educated at Loras College, Dubuque, Iowa; Purdue University, West Lafayette, Indiana; and The University Of Texas At Austin, Austin, Texas. He earned a Bachelor of Arts Degree in 1968 from The University Of Texas At Austin, where he maintained double majors in Government (Political Science) and Economics. He earned the *Juris Doctor* Degree in 1972 from The University Of Texas School Of Law.

Mr. Fanning is double Board Certified, which is very rare. He is Board Certified in the specialized field of Family Law by the Texas Board of Legal Specialization. Mr. Fanning is also Board Certified in the specialized field of Civil Trial Law by the Texas Board of Legal Specialization and is rated "av" by Martindale-Hubbell. Martindale-Hubbell has been authoritatively rating attorneys in the United States and around the world for more than 125 years. Its ratings are based primarily upon comments and recommendations solicited from the attorneys and judges who know the person being rated. Almost every attorney in the United States is listed. The ratings are for Legal Ability - "a," "b," and "c" – and General Ethical Standards – "v" and "x." The meanings are:

**LEGAL ABILITY
RATING**

**GENERAL ETHICAL
STANDARDS RATING**

a - From Very High to Preeminent
b - From High to Very High
c - From Fair to High

v - Very High
x - Does Not Meet
Ethical Criteria

The “*av*” rating is the highest rating possible, and is earned by only about 8% of all attorneys. Less than two-tenths of one percent (<.2%) of all Texas attorneys are double Board Certified.

Mr. Fanning is also a trained, experienced, and certified Attorney-Mediator, who is qualified under the Texas Alternate Dispute Resolution statute to mediate both general civil disputes and Family Law disputes. Mr. Fanning received the following formal mediation training: Basic Certified, Attorney-Mediators Institute, Houston, Texas; Family Law Certified, Attorney-Mediators Institute, Houston, Texas; Basic Courses, Dallas Bar Association Settlement Week; and Texas Department Of Regulatory Services (TDPRS), Children’s Protective Services (CPS) and Children’s Justice Act (CJA) Certified, Dispute Resolution Center, Harris County, Texas, Houston, Texas. Mr. Fanning is also a Certified Advanced Practitioner in Neuro-Linguistic Programming (NLP).

Mr. Fanning has been a visiting guest lecturer at the Southern Methodist University School Of Law in 1994 and from 1976-1979 was an Instructor at the Southern Methodist University School of Continuing Education, where he taught courses on the Texas Rules of Civil Procedure. The Texas Rules of Civil Procedure regulate how litigation is conducted, and in some cases “fought,” in all state court civil cases, including divorce cases. During academic year 1999-2000 Mr. Fanning served as a High School Teacher at his high school *alma mater*, Marian Catholic High School, Chicago Heights, Illinois (one of the top 100 high schools in America, ***U.S. News & World Report***, as is the other high school Mr. Fanning attended, Quigley Preparatory Seminary) where he taught Juniors and Seniors Advanced Placement Economics.

Mr. Fanning was invited to, appointed to, and served for eight (8) years on the **Professional Efficiency and Economics Research (PEER)** Committee of the State Bar of Texas, from 1974 through 1982. During that time he served as a member of a pool of speakers, sponsored by the State Bar of Texas, which was available to and did give lectures to local bar associations throughout Texas. Mr. Fanning was a frequent speaker in Texas and throughout the United States on the subject of law office efficiency and economics. Mr. Fanning’s invited lectures to lawyers have been as far East as Long Island, N.Y.; as far West as San Francisco, California; as far North as Minneapolis, Minnesota; and as far South as Cancun, Quintana Roo, Mexico.

Mr. Fanning has authored and presented many professional papers. Among them are: “*The New Word Processors: Floppies, Bubbles & Beads – Free At Last! (?)*,” presented at the State Bar of Texas Tenth Annual Legal Secretaries Seminar, 1978; “*Salvation For The Solo Practitioner*,” an annual seminar for attorneys and their staffs sponsored by the State Bar of Texas from 1976 through 1981; “*Divorce: Division of Assets, Alimony, & Child Support*,” National Business Institute Domestic Law In Texas Seminar (for attorneys), 1991. “*Determining Marital Assets*,” National Business Institute Domestic Law In Texas Seminar (for attorneys), 1991. “*Retirement Plans: Valuation And Distribution Upon Divorce*,” National Business Institute Domestic Law In Texas Seminar (for attorneys), 1991. “*Avoiding Grievances And*

Malpractice In Family Law Litigation,” Smith County (Tyler), Texas, Bar Association, Tyler, Texas, January 13, 1992. “*Preparing For The Grievance Committee Before The Client Even Walks In The Door*,” Plano (Texas) Bar Association, December 2, 1994. “*Negotiation And Mediation In Disciplinary Proceedings After Determination Of Discipline By Grievance Committee*,” Seminar for Investigators and Prosecutors of the Grievance Committee for the Sixth Bar District of the State Bar of Texas, June 4, 1997. “*Newly Enacted Legislation Affecting Texas Family Law Practice And Avoidance Of Selected Ethical Problems*,” Smith County (Tyler), Texas Bar Association, June 13, 1997. “*Preparing For The Grievance Committee In Family Law Cases Before The Client Even Walks In The Door*,” Tyler Area Association Of Legal Professionals, Tyler, Texas, September 6, 2000. “*Preparing For The Grievance Committee In Family Law Cases Before The Client Even Walks In The Door*,” Brazos County Bar Association, Bryan/College Station, Texas, October 27, 2000.

Mr. Fanning is currently writing a book, presently in manuscript form, which he has tentatively titled ***Love Or Illusion***. This book consists of “**Thoughts Directed Primarily To Divorced Persons Who ‘Do Not Want To Make The Same Mistake Again.’**” If you are just beginning to go through a divorce right now, you’re probably not ready to read it.

Mr. Fanning is a member of the Texas, Illinois, and Smith County Bar Associations; and the Texas Academy of Family Law Specialists. Mr. Fanning is a former member of the Dallas, Plano, Collin Bar Associations; Texas Association of Matrimonial Lawyers; North Texas Association of Family Law Specialists; Texas Association of Civil Trial Law Specialists; Texas Trial Lawyers Association; American Trial Lawyers Association, and American Bar Association. Mr. Fanning was admitted to practice law by the Supreme Court of Texas in 1972; by the U.S. District Court, Northern District of Texas and U.S. Court of Appeals, Fifth Circuit, in 1973; by the United States Supreme Court in 1976, and by the Illinois Supreme Court in 2000. Mr. Fanning is a Member of the College of the State Bar of Texas. Approximately 8% of all attorneys in Texas are members of the College of the State Bar Of Texas. Mr. Fanning is a member of the Association of Attorney-Mediators and the Texas Association of Mediators. Mr. Fanning has completed the Basic Course of the Collaborative Law Institute of Texas.

Some of the reported cases in which Mr. Fanning has participated on the appellate court level are: ***Misium v. Misium***, 902 S.W.2d 195 (Tex. App.—Eastland 1995, writ denied); ***Young v. Young***, 854 S.W.2d 698 (Tex. App.—Dallas 1993, writ dismissed) (incorrectly listed as counsel for Appellee); ***Ex Parte Craig Hall***, 854 S.W.2d 656 (Tex. 1993) (orig. proceeding) (writ of *habeas corpus* granted); ***Naydan v. Naydan***, 800 S.W.2d 637 (Tex. App.—Dallas 1991, no writ); ***Heissner v. Koons***, 679 S.W.2d 112 (Tex. App.—Dallas 1984, orig. proceeding) (writ of mandamus conditionally granted); ***Ex Parte Jackman***, 663 S.W.2d 520 (Tex. App.—Dallas 1983, orig. proceeding); ***Volpe v Schlobohm***, 614 S.W.2d 615 (Tex. Civ. App.—Texarkana 1981, no writ); ***Cole v. Cole***, (unreported, but victorious) (Tex. Civ. App.—Eastland 1980, writ refused w.o.j.); ***Volpe v. Stephens***, 589 S.W.2d 809 (Tex. Civ. App.—Dallas 1979, orig. proceeding) (writ of mandamus granted); ***Cole v. Chapman***, 584 S.W.2d (Tex. Civ. App.—Dallas 1979 orig. proceeding); and ***O’Brien v. Cole***, 532 S.W.2d 151 (Tex. Civ. App.—Dallas 1975, no writ).

Mr. Fanning is himself divorced and was the parent sole Managing Conservator of his three (3) children: Kevin Paul Fanning, Timothy Paul Fanning, and Katherine Michelle Fanning. He is now the proud grandfather of Joseph Trinity Fanning, his only grandchild (so far).

Mr. Fanning is a life member of the Texas Exes (Alumni Association of The University Of Texas At Austin), the National Rifle Association, and the Army National Guard Association of Texas. Former member, Willowbend Church, Plano, Texas and Scofield Memorial Church, Dallas, Texas; founded and served as the Coordinator of Scofield Memorial Church's Divorce Recovery Support Group. Other affiliations and memberships, past and present, include the Dallas Museum of Art; the Dallas Opera Society; the Dallas Zoological Society; the Chicago Zoological Society; the Metrocrest Republican Club; the **H**arley **O**wners **G**roup (H.O.G. – Former Assistant Director [Board of Directors] Dallas Chapter; presently a member of the East Texas and Chicago Chapters. Formerly a member of North Texas, Dallas, and D/FW Texas USA Chapters); The Bros. Club; Tyler Kiwanis Club; Tyler Lions Club²; the National Geographic Society, and American **MENSA**. Mr. Fanning is a Keeton Fellow, The University Of Texas School Of Law Alumni Association; a Master Mason, St. John's Lodge #53, Tyler, Texas (A.F.&A.M.)³; a 32° Mason, Scottish Rite of Free Masonry⁴; a Knight Templar of Commandry #25, Knights Templar⁵; Member, East Texas York Rite College; Noble of Sharon Temple, Ancient Arabic Order Nobles of the Mystic Shrine for North America ("Shriners"), Tyler, Texas (member, Directors Staff; Co-Chairman, Membership Committee; Traveler, Membership Committee)⁶; Royal Order Of Jesters; and The Tyler Centurions.

Relationship Of Attorney And Client

Notice To Clients

The State Bar of Texas investigates and prosecutes professional misconduct committed by Texas attorneys. Although not every complaint against or dispute with a lawyer involves professional misconduct, the State Bar Office of General Counsel will provide any client with

² Tail Twister, 2002-2003; Publicity Committee Chairman, 2002-2003; Projects include Salvation Army bell ringer 2001; Parking lot volunteer East Texas State Fair 2001; and Texas Mission of Mercy 2001.

³ Master of Ceremonies, 2002-2003, St. Johns Lodge #53, Tyler, Texas; Projects include fundraising for the Masonic Home And School Of Texas, Fort Worth, Texas; Tyler YMCA Capital Campaign volunteer.

⁴ Projects include fundraising for Texas Scottish Rite Hospital For Children.

⁵ Projects include Salvation Army bell ringer 2001 and 2002; and Texas Mission of Mercy 2001.

⁶ Fundraising for Shriners Childrens Hospitals.

information about how to file a complaint. For more information, any client may call, toll-free, 1/800/932-1900.

The Grievance Committee of the State Bar of Texas is the arm of government which investigates complaints about professional misconduct involving attorneys. Its powers are limited to imposing a range of punishments upon attorneys which adversely affects their ability to support themselves in the practice law, from private reprimand to disbarment.

The Grievance Committee does *not* involve itself with obtaining refunds for clients of attorney's fees. Usually the client and the attorney can satisfactorily negotiate such matters between themselves. If they can't, however, either may resort to the Courts or arbitration. There is an arm of the Dallas Bar Association which provides arbitration services. It is called the Fee Disputes Committee of the Dallas Bar Association. Mr. Fanning served on the Fee Disputes Committee for several years.

We will give our complete loyalty to you and your case. No one else is our client; and we will do nothing for or on behalf of anyone else unless you tell us otherwise or we believe in the exercise of our independent professional judgment that it is to your advantage.

Don't, however, be misled or confused if you find us dealing with our opposing lawyer on a friendly basis. Professional and common courtesy (not to mention the tactics of settlement and manipulation) sometimes dictate we maintain good relations with other lawyers in our practice. You will find that good lawyers are perfectly capable of fighting most zealously in a courtroom or at a negotiating table, and then discussing on an amicable basis personal matters between themselves when the controversy between their respective clients is over. Be assured our loyalty to you comes first and your legal interests are always paramount, regardless of whether we are friendly with opposing counsel.

We will treat whatever you tell us in confidence. This is our professional obligation, enforced by the laws of Texas and the **Texas Rules Of Professional Conduct**. By the same token, be aware before you talk with any attorney that the law specifies a limitation upon this "attorney-client privilege" which requires a lawyer *not* to keep in confidence certain information obtained from a client if withholding that information would lead to the perpetration or concealment of a crime or fraud, or is necessary to defend the attorney against an allegation of professional misconduct, or is relevant to a dispute involving the collection of a professional fee.

We encourage you to be totally honest with us and the Court, and to give us full information on anything which you or we consider to be important in your case. If we have to go to trial on any part of your case, we will be in a poor position to help if we don't know *all* the relevant facts, including any facts which you may find embarrassing to disclose. Often a client will believe something in his or her background to be harmful, whereas, in fact, it is not. We can probably do something about facts which actually *are* harmful if we have sufficient advance knowledge about them. They may not be as harmful as you think. But if you leave us in the dark, you will usually end up worse off by having an attorney who is unprepared and subject to being taken by surprise by his opponent. This can also waste your investment in attorneys' fees.

Attorneys' Fees

“How can I ever thank you?” gushed a woman to Clarence Darrow, after he had solved her legal troubles. “My dear woman,” Darrow replied, “ever since the Phoenicians invented money there has been only one answer to that question.”

Quality professional services for legal work, just like quality professional services of any kind, are not cheap. Attorneys are not uniform in their billing practices. It is fair that before you make a decision to hire this Firm you know how we typically charge fees for cases.

Personal injury and workers compensation cases where we represent the plaintiff and the defendant has adequate insurance coverage are handled strictly on a contingent fee basis. This means that if we do not recover, you do not have to pay any attorneys’ fees. However, you would be responsible to pay for costs and expenses.

In consumer law case brought under the Texas Deceptive Trade Practices -- Consumer Protection Act, the Firm sometimes charges a retainer fee, costs, and a contingent fee like in personal injury cases. From any sum recovered by way of contingency, the client is reimbursed the retainer fee.

In all other cases the Firm charges a reasonable fee based upon minimum hourly charges. These vary from different types of cases and depending upon which person in our Firm works on the project.

Legal costs are generally proportionate to the difficulty of the case, the responsibility assumed by the attorney, and the results obtained.

We don’t suggest you invest more in legal expenses than the case is worth; however real life is not like Perry Mason; and

- a) we do not know at this juncture all that will be required to properly represent you;
- b) you are the person who decides when you are satisfied at the negotiation level, not us, and what you find satisfactory later may not be the same as what you find satisfactory now;
- c) what is required in cases is not unilaterally controlled by either you or your attorney (there are also the Court and the other side, and sometimes a court-appointed Guardian Ad Litem, as well as fortuitous circumstances);
- d) we are far less familiar with the facts (including personalities) of your case at this time than you are; therefore you have us at a distinct disadvantage;
- e) sometimes you (and we) get caught in a “career case” where even giving up is not possible; and
- f) what your case is worth is up to *you*, not us, because it depends upon *your* own subjective values and principles.

This Firm bills its clients monthly or more frequently at the Firm's option. The statements contain a *confidential narrative* of services rendered. The narrative is quite detailed and usually contains *confidential information* revealing and explaining *attorney-client communications* and *privileged attorney's work product*. Therefore, the Firm advises its clients, after they read and are satisfied with the statements, to very carefully dispose of or store each of them after payment.

Any amount due the Firm will be indicated on the statement as "summary total" and will be payable immediately unless other arrangements are made by the client with the Firm in advance. A negative (minus) figure after "summary total" on a statement does not indicate a credit is due the client; rather, it merely makes disclosure to the client so the client can better anticipate whether and when he or she should make provision for the payment of additional fees. If a client has a disagreement or question about the validity of any charge, the client must immediately call the Firm and give notice of the complaint or question.

Failure to raise a complaint or question by the 10th day from statement date shall conclusively be deemed an acceptance of the correctness of the billing.

If you wish this Firm to represent you, you should also know at the outset we require more than money from you. We also require your candor and your cooperation with us in representing you. The terms and conditions of our employment will be set forth in a written contract of employment which you will be required to read and have the opportunity to approve in every detail before our representation will commence. The contract means exactly what it says; and before you sign it you should read it very carefully. It is lengthy and contains a lot of explanations so that you should have no questions, and need no further explanations, concerning what it means. If you decide to hire the Firm, a personalized proposed contract will be prepared for and sent to you. You will have the opportunity to take the proposed contract to another attorney for advice and counsel. We do not want you to sign it until or unless you understand *all* of it and are completely satisfied with it.

This Firm requires the payment of a nonrefundable retainer fee in every litigation case except some personal injury and workers compensation. The retainer is fully earned when paid, will not be refunded under any circumstances, and is required to enlist the services of this Firm and to prohibit us from representing your spouse against you. It is your minimum total fee for legal services, exclusive of expense reimbursements, regardless of the time or labor involved. This is true even if you settle your case sooner than you expected.

In addition, this Firm requires that litigation clients maintain a minimum escrow deposit amount to secure the payment of additional fees for services and the payment of reimbursement for expenses advanced. The minimum balance in this escrow account must be maintained throughout the handling of your case. The Firm will draw from this fund (or any similar fund if the Firm for some reason is handling more than one case for you at a time) the amount of money necessary to pay for your legal services and expenses as reflected on periodic itemized statements sent. As periodic statements are sent to you, they are paid from the minimum escrow funds on deposit in this or a similar escrow account. During the handling of your case, you should expect to maintain a balance on deposit to secure our continued representation not less than the minimum escrow deposit.

At the conclusion of your case the Firm may request the payment of an additional sum to make your fee reasonable in light of the entirety of our representation, including the results which we obtained for you. If there is such an additional charge, however, its amount will be the product of our mutual agreement. It is not the usual event that such a request is made. However, if this Firm obtains a remarkable result for you, it is proper that we be paid more than minimum fees.

The factors properly taken into consideration in determining a reasonable fee are at least twelve (12) in number and are set out with approval in the **Texas Rules Of Professional Conduct, Rule 1.04** and the cases of *Martin v. Body*, 533 S.W.2d 461 (Tex. Civ. App.—Corpus Christi 1976, no writ); *Casterline v. Burden*, 560 S.W.2d 499 (Tex. Civ. App.—Dallas 1977, no writ); and *Gill Savings Association v. International Supply Company, Inc.*, 759 S.W.2d 697 (Tex. App.—Dallas 1988, writ denied). Some of the factors may (and probably will) not apply to your case. Others (“results obtained”) cannot possibly be known until the conclusion of the case. The twelve (12) factors are: (1) The time and labor required; (2) The novelty and difficulty of the question; (3) The skill requisite to perform the legal service properly; (4) The preclusion of other employment by the attorney due to acceptance of the case; (5) The customary fee in the locality; (6) Whether the fee is fixed or contingent; (7) Time limitations imposed by the client or the circumstances; (8) The amount involved and the results obtained; (9) The experience, reputation, and ability of the attorneys; (10) The “undesirability” of the case; (11) The nature and length of the professional relationship with the client; and (12) Awards in similar cases.

As stated, some of these factors, *i.e.*, “the results obtained,” cannot be known until the conclusion of a case. Therefore, the Firm bills monthly or less frequently, at its option, only for the time expended (based upon the minimum hourly rates applicable to a particular case) and reimbursable expenses incurred. Since *minimums* are in fact only what they say they are, *i.e.*, “*minimums*,” at the conclusion of each case the Firm reserves the right to request more than the minimum hourly rates and expense reimbursements specified in the contract, based upon the mutual assessment of *all* the factors made by the two of us at that time.

We will, under certain circumstances, require you to increase the amount of your minimum escrow account deposit to secure payments for additional services. In extraordinary situations, where the monthly statements cannot be paid on time (within 15 days of statement date), we will do our best to assist with a payment arrangement tailored to your financial situation; however, to some extent this will affect the sixth factor listed above.

In addition, as will be specified in the contract, you will also be required to pay for expenses.

The obligation to this Firm for your fees and costs is yours, and yours alone, even though the law may permit you to request your attorneys’ fees and costs be paid or contributed to by the other side. Whether or not attorneys’ fees are charged against your opponent depends upon several factors. We will discuss this with you and will advise whether you should seek to have your attorneys’ fees paid by your opponent.

You may be sure that any fees and costs actually collected from the opponent will be reimbursed to you or credited to your account, as the case may be, less the costs incurred, including additional attorneys' fees, in connection with actually collecting money on any such judgment. In this regard, you should know that judgments may not be paid automatically. Please keep in mind that your obligation for the fees and costs due this office must be borne by you, and you alone.

If it appears you are not financially able by yourself to afford this Firm's legal services, and if for one or more reasons the Firm is willing to nevertheless accept your case, it is our practice to require that payment of your fees be guaranteed in writing by one or more persons, usually family members. If this situation applies to your case, it may be wise to have a meeting at our offices early in the case with those who will furnish such guaranties.

You can rely upon us to be frank and candid with you when discussing finances and attorneys' fees. You are encouraged to do the same. This topic must be covered in your initial office conference. We will not be able to predict accurately the total amount of your fee. That will depend upon factors beyond our (and your) unilateral control. We cannot predict accurately the length of time it will take to complete your representation. That too will depend upon factors beyond our (and your) unilateral control. Nor can we pledge any particular result will be reached in your case.

Basic Information Questionnaire; Fee For Initial Consultation; Fee For Cancellation Without Notice.

It has been our intention in furnishing you this information to enlighten you about basic attorney-client issues in Texas. It has been uniformly our experience that the client who knows more about the legal process and the substantive law involved makes better choices and has a huge advantage over the client who is uninformed. It has also been our experience that the sooner this occurs the better things ultimately turn out for the client. That is why your assimilation of this information has been our first order of business. Hopefully it will work for your benefit.

At this point, if you think you may wish to hire The Law Offices Of Paul T. Fanning, P.C., to represent you in your legal matter, we ask you to fill out as much of the **Basic Information Questionnaire** as you can. This is the most economical way for you to give us the information we will need to begin our representation of you, including knowing what issues to explore in depth during your initial interview with your attorney. Please be accurate and as complete as time will allow prior to your appointment. When you finish, please bring your completed questionnaire to the Legal Assistant at your initial consultation.

Personal injury and workers compensation matters are handled on a contingency basis. All other matters are handled on a hourly basis. If you need legal assistance for a personal injury or workers compensation matter, the immediately following paragraph does not pertain to you, but the final paragraph does.

As a public service, our Firm does not charge for the first 30 minutes of your initial consultation. If you have a legal problem, we want you to visit us without fear. When that time is up, you will be notified. If you decide to continue, you will be charged at the Firm's normal

hourly rates (*currently \$300.00 per hour*) beyond the first 30 minutes. These charges are made in quarter hour increments, with each portion of a quarter hour charged as a full quarter hour.

If you make an appointment and later decide you do not wish to speak with an attorney, please notify the Firm as soon as possible so we will be able to re-allocate for someone or something else the time we have set aside to meet with you. This is simple courtesy. If you fail to appear at your initial appointment and have not given the Firm at least one hour's notice of your intention to break our appointment, you will be charged the sum of \$150.00 for the Firm's time.

Thank you very much.

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