MANDATORY SETTLEMENT CONFERENCE WORKSHOP

SAMPLE LEGAL ARGUMENTS

Property Division

1. Community property must be divided equally between the parties.
2. In a net negative estate, the Court may divide community property equitably.
3. Where one of the 2 parties resides in a community property home with minor children of the marriage, the Court may award exclusive use of the home to the custodial parent.
4. Each spouse retains ownership of their own separate property.

Characterization and Division of Assets

1. Earnings during the marriage are community property and anything purchased with those earnings is also community property.
2. Property held in joint title is presumed to be community property.
3. Property acquired prior to the date of marriage or after the date of separation is separate property.
4. Gifts and inheritance received by one spouse, even if during marriage, are the separate property of the receiving spouse.
5. Personal injury settlements and judgments for damages incurred during the marriage are considered community property.
6. Personal injury awards for pain and suffering, regardless of when incurred, are the sole and separate property of the injured spouse.
7. Personal injury awards for lost wages are characterized according to the dates to which the lost wages are assigned. If the award seeks to compensate for lost wages that would have been earned during marriage, then the award is community property. If the award seeks to compensate for lost wages that would have been earned after the date of separation, then the award is the separate property of the injured spouse.
8. Stock options are considered community property to the extent that they are given as a reward for employment during the marriage. If the stock options are given as an incentive for future employment, following the date of separation, they are considered to be separate property.

Characterization and Division of Debts

1. Debts acquired during the marriage are community property.
2. Debts acquired during the marriage that do not benefit the community, such as gambling debts, are the separate property of the borrowing spouse.
3. Debts acquired prior to the date of marriage or after the date of separation are the separate property of the borrowing spouse.
4. Student loans, even if acquired during marriage, are the separate property of the student borrower.
5. Liabilities for death or injury to third parties during marriage and incurred for a purpose that does not benefit the community must be satisfied from the separate property of the injuring spouse and then may be satisfied from the community.

Retirement/Pensions

1. Contributions made during marriage to retirement and/or pension plans are community property.