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## The Zen of Trial: Finding Peace During Litigation

By Jared R. Clemence

Learn how to start your case on the right foot. When you start your trial correctly, you will avoid financial and emotional stress during your trial.

### Changing Facts Signal Disaster

November 2021, my client sits across the table from me and my supervising attorney. She says to us, “I forgot to mention . . .” Immediately, my attorney and I know that we are in trouble because this is a common song for *this* client.

When we first heard her story, her case was strong: A loving daughter fights to overcome an evil stepmother who has stolen her father’s fortune in the final months of his life. Based on all information provided, step-mom sank her teeth into Dad a month before Mom died. Step-mom moved quickly and convinced or forced Dad to sign over all assets of the estate (nearly \$850,000) to her. Then, a month after Mom’s death, she convinces Dad to marry her in secret. In just over six months from the date of their secret marriage, Dad died under mysterious circumstances.

This is the kind of case that Stacy Bowman and I live for! Stacy and I are probate litigators, which means that we seek out the evil stepmothers and stepfathers of the world who steal the fortunes of the desperate, the lonely, and the dying. Grieving children seek us out when they feel that a loved parent has been taken advantage of or mistreated, and based on the facts presented, we believed in this daughter’s case. The problem was: **every time we met with our client, the story changed, and each new fact moved us farther from victory.**

The stress built with each passing week. Each new fact, which followed the “I forgot to tell you” mantra, carried with it emotional turmoil and stress. Soon, our client began to worry: “What am I going to do about the \$10,000 in legal fees that I’ve accrued? How am I going to afford the additional \$15,000 to \$25,000 that will be due by the end of the trial?”

We heard her distress. We saw it on her face. Stacy and I could do nothing to help because the real facts (the ones that were uncovered by the evidence) were indisputable and clear. Our client, the loving daughter, began losing sleep. She started calling frequently to see if the other side would settle for smaller and smaller amounts. She became angry at everyone else because the evidence didn’t support her ever-changing version of the story, and even where we didn’t have evidence yet, she would change her version of the story on her own accord. Her facts were weak

from the start, but she had convinced herself and her legal team that they were much more solid than they actually were.

## Strong Facts Win Cases

You only hurt yourself. A key to victory is a solid fact pattern. **Strong facts win cases.** Each time our client changed the facts, it signaled to step-mom that our case was based upon imagination rather than information. Did our client actively lie to us for us to take her case? Maybe. Did she fill in gaps with her imagination where she lacked information? Definitely.

With each change to the fact pattern, not only did our case move farther away from a picture of abuse and closer to one of a loving relationship based on shared commitment, but the settlement offer from the stepmother became smaller and smaller.

You can avoid our client's stress. Avoid shrinking returns by starting your case with solid facts. Start your case by admitting to yourself the information that you "know" versus the information you "suspect." And, if you feel the need to bend the truth to get an attorney's interest, you probably don't have a strong case, which means that you are going to be spending money with no chance of winning: This leads to both financial and emotional stress, which is best avoided by all.

## Before You Meet the Attorney

Avoid the stress by starting your case with realistic expectations. Segment your facts by strength, and you will never underestimate your chance of success. Use the following method to visualize your case and estimate the strength of your case.

## Identify the Facts of Your Case

First, think about the events that led to your situation. Write out the story. For a case of financial elder abuse or undue influence, try to answer the following questions:

1. How did they meet?
2. Where did they meet?
3. When did they meet?
4. What was their relationship early on?
5. Did they keep the relationship a secret?
6. Did the evil stepparent try to isolate mom or dad from the family?
7. Did mom or dad stop attending family events?
8. Did the new stepparent start controlling mom or dad's medical decisions and financial decisions?
9. Was there any reason to believe that the new stepparent had control over the decisions your parent made?
10. Who saw or experienced events that would support the above information?

11. Did your evil stepparent start spending mom or dad's money in ways that were frivolous or for purposes that were self-serving?
12. How did the relationship change from the start of the relationship until now?
13. If mom or dad died, what was the stepparent's behavior like immediately after their death?
14. Did the evil stepparent immediately contact a lawyer after your parent's death?
15. Did they tell the family that they get everything?
16. Did they become belligerent toward family members?

The answers to these questions are important, and they form the basic underlying framework of a case.

### **Separate Your Facts from Your Beliefs**

Once you have identified your facts, separate them into "facts" and "beliefs." This is a sliding scale. If you are not sure about a fact, take the safe route, and classify the fact as a belief.

On a piece of paper, write each fact. Next to each fact, write the physical evidence that supports the fact. Only list evidence you currently have or that you are 100% certain that you could get. List names of people who have personal experiences relating to the fact, and describe what that experience is.

On a separate sheet of paper, write the facts that are less solid and label them "beliefs." Next to each item, write why you believe the fact to be true. List information or evidence that you believe exists but don't yet have. List the names of possible witnesses who might have personal experiences supporting the fact, and write what you think they would say about that particular piece of information.

### **Bring These Pages to Your Attorney**

If you have done your homework and laid out your case as above, your attorney will be able to accurately set expectations about your chances of success. Disappointment (and stress) grows out of failed expectations. When you give your attorney a strong foundation, your expectations are more realistic, which means that you are more likely to enter your case with eyes wide open and fewer bad surprises.

That's the secret to keeping your sanity through a trial!

Jared works in our Bakersfield office, where he provides representation to clients in probate litigation, [estate planning](#), unlawful detainer, and [real estate](#) litigation. If you have any questions regarding this article, contact Jared Clemence, at (559) 248-4820 or [jclemence@ch-law.com](mailto:jclemence@ch-law.com).

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