

[Back to Fall 2020 issue](#)

A Modest Request

JUDGE JOSEPH LIPNER
Department 83

I have a straightforward and non-controversial request for family law attorneys: when you come to court, ask for specific relief.

This may seem obvious to you, and if it does, that's great. Most family law lawyers already carefully describe the relief they are seeking. They do this regularly and intuitively. Judges appreciate all the help that family law attorneys, with their experience and expertise, provide. And asking for something specific helps us a lot.

But I have been surprised how many litigants and even lawyers are not ready to answer the question, "What orders are you asking the Court to make today?" Some lawyers stall. Some never answer. Yet this is the most basic question presented by any hearing. The product of a court hearing is an order or a judgment. Not having an answer—pre-cleared with your client—about what you are asking for poses a big problem for the judge and a bigger problem for the client.

The order you are seeking should ideally be set forth with clarity in the written request for order or response. But it should certainly be ready by the time of the hearing. So should backup positions if the judge denies your maximum requests.

In a custody hearing, propose a clear schedule. It is not terribly helpful to say that the client wants "more time" or "fifty-fifty" without having a practical suggestion of how to achieve that. If your request for order includes a reasonable proposed schedule and the other side's pleading does not, you come into court with a built-in practical advantage. The question at the hearing may then focus on whether there are problems with the proposed schedule under the appropriate legal standard. If there are not, that schedule may end up being the court's order.

The same is true in a support hearing. Coming in with a Dissomaster asserting specific numbers in a child support matter aids the court which will ultimately have to adopt specific numbers. By contrast, arguing that your client should pay “more” or “less” is not so useful. Sometimes a party or even an attorney will not have thought through the baseline question: what do you assert is the correct amount of income that should be used in the court’s calculation?

Knowing exactly what order you want is an essential part of getting an order that will be favorable for your client. By contrast, lack of clarity on this basic question makes court hearings meander. It is not good to respond to questions about the correct order by deflection such as repeating how badly the other side has behaved. In family law courts, time is precious. Discursive hearings are a big problem for the judge.

To the majority of lawyers who make clear requests at every hearing I say, thank you. To those who do not yet do so, please start giving careful attention to the key question of what order you want out of the hearing. It’s a modest request. And doing so benefits everyone.