

DON'TS REGARDING CHILDREN AND DIVORCE IN ILLINOIS

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Executive Summary: This is a continuation of our List regarding Do's and Don'ts. This portion of the list focuses on what not to do regarding minor children and your Illinois divorce.

Don't use the antiquated terminology: There is a reason that Illinois law changed dramatically in 2016 regarding that word formerly called "custody." The law eliminated the phrase custody throughout the statute. Essentially, the only reference to custody in the current law provides, "Solely for the purposes of all State and federal statutes that require a designation or determination of custody or a custodian, a parenting plan shall designate the parent who is allocated the majority of parenting time. This designation shall not affect parents' rights and responsibilities under the parenting plan." Too many times there have been court battles over the terminology of a parenting plan rather than the substance of the plan.

We now separately consider the issues of allocation of parental responsibility and parenting time. Parental responsibility has four major areas:

- education,
- health care,
- religion and
- extracurricular activities.

Education includes the choice of schools and tutors. Health care includes all decisions relating to the medical, dental, and psychological needs of the child and to the treatments arising or resulting from those needs.

Don't day count to focus on 146 overnights with the children (for either parent). Instead, focus on what is in the children's best interest: Recently, Illinois adopted the income sharing amendments. With these amendments a new concept was introduced to child support—the presumption that child support is reduced when there are more than 146 overnights to the non-residential parent. It is critical that all involved within the system including lawyers and clients *not* focus on overnight counting but focus on what is best for the children. While this is a platitude, it should be recognized that the law is in a state of flux and could very well change in the near future from our current 146 overnight rule.

Don't Involve the Children with the Details of Parent/Parent Conversations: Children should be insulated as much as possible from the process of the divorce. Often parents will tell the children the details of what is going on in terms of settlement proposals, and the like. Avoid telling the children the details of what should be parent-to-parent communications and matters that involve what is going on within the legal system.

Don't Focus on 50/50 Parenting Time Allocation Unless the Parents can Commit to Living in the Same Community and There is no Domestic Violence: Following the 1990s, it was recognized that the "standard" alternate weekend parenting time schedule (plus one evening per week) did not allow the nonresidential parent to maintain an extended, ongoing relationship with the children. To try to avoid

battles in allocating parenting time, we are seeing a growing number of cases involving alternating joint physical parenting schedule such as a 2-2-3 schedule,¹ or even alternating weeks. In some circumstances this may work but in many others it clearly is not consistent with the children's best interests. Such a schedule may work well where both parents are working outside the home and where there is good parental cooperation and mutual self-sacrifice.

It is only when the parents communicate respectfully with each other, are flexible, and live within a very short distance of one another, however, a time-sharing schedule close to an equal time-sharing arrangement may work.

Don't move more often than is necessary: Although several moves may be necessary due to a divorce, for the sake of the stability of the children, it is important to move as few times as possible. Additionally, if there must be a move, it is preferable to keep to the same geographical area. For example, it is often necessary for a parent to move into a rental once the parties separate for the first time and then move into more permanent housing within a year or two of the divorce. However, when children must move more than three or four times within two years, this can have a detrimental effect on their psychological development. And understand the changes to Illinois regarding relocation discussed in The Gitlin Law Firm's website. If you are the parent with 50 percent of the parenting time or more and you are considering moving more than 25 miles (or in some cases 50 miles) it is critical for you to consult with a lawyer.

Don't allow children to foster feelings of guilt over the divorce process: When the author attended a seminar by the American Academy of Matrimonial Lawyers several years ago, in a panel of mental health professionals discussing the effects of divorce on children, one of the best tips shared was that children (especially young children) often feel guilty about a divorce even when a parent has done nothing to promote these feelings. It was then suggested that what children should be told is that the divorce is something between the mother and the father and that the children had nothing to do with it.

Don't allow the children (especially preadolescent children from age nine to twelve), to refuse parenting time with the former spouse or have too much decision-making power: This is consistent with Illinois law as to the input the children have in terms of where they live. Interestingly, in a national survey, the average age in which psychologists and judges believe that the children's wishes as to their placement should be a paramount concern is approximately age 15. However, according to Illinois law, the wishes of a child are only one factor to be considered. Section 602.5(c)(1), provides, "the wishes of the child, *taking into account the child's maturity and ability to express reasoned and independent preferences as to decision-making.*"

It is true that as children grow older their wishes should be considered more if they are consistent with their best interests. According to the Illinois law, in allocating parenting time the law provides, "It is presumed both parents are fit and the court shall not place any restrictions on parenting time ..., unless it finds by a preponderance of the evidence that a parent's exercise of parenting time would seriously endanger the child's physical, mental, moral, or emotional health." 602.7(b). The point is that the exercise of parenting time is not the child's decision but a matter between the parents. When pre-teenage children are allowed to have decision-making power about whether they exercise parenting time with the other parent, they might demand excessive and inappropriate power during their teenage years and, in rare

¹ •Schedule for parenting time alternating every two or three days over a repeating 2 week time period°
Week 1: Monday/Tuesday = Parent A, Wednesday/Thursday = Parent B, Friday/Saturday/Sunday = Parent A. Week 2: Monday/Tuesday = Parent B, Wednesday/Thursday = Parent A, Friday/Saturday/Sunday = Parent B.

cases, become somewhat uncontrollable. When allowed to decide something as important as whether they will visit with the other parent, children get the false impression that they have the power to make other equally important decisions. The parent should keep in mind that children of this age are not allowed to choose whether they attend school or receive medical treatment, so it is possible that a child who refuses parenting time at this age is often caught up in a loyalty issue with the primary residential parent. Older teenagers, however, may reasonably have some say in how much time they spend with the other parent and the timing of the placement.

When in front of the children, don't take sides or take issue with decisions or actions made by the other parent: When a child becomes involved in a dispute with one parent, it is important for the other parent to remain neutral if he or she was not part of the original problem or discussion. When one parent happens to disagree with what the other parent has done, the parents should discuss this disagreement privately. After the private discussion, then the children can be told of the resolution. If a resolution cannot be reached, the children may be told how the lack of a resolution affects them. This concept is part of "presenting a united front."

Don't allow the children to be in the middle of arranging or canceling periods of parenting time: Parenting time should be arranged with the other parent. Often in family law cases, a child, when being exchanged, will tell the other parent that he or she has certain activities to do and, therefore, would like to come home early. As the children become older, they should have some input in this regard. However, the children should not directly address their wishes in this regard to the other parent before the parents have had the opportunity to directly address the issue in private. Otherwise, if there is a disagreement, one parent will be forced to break that "united front" concept. The best response in this situation would be, "Your mother (or father) and I will discuss it."

Don't communicate with the other parent through the children: When parents are *not* communicating effectively, they often find that it is convenient to allow the children to relay messages to the other parent. This violates the rule discussed above about not putting the children in an awkward and inappropriate position.

Don't send the check with the children (even in a sealed envelope), and do not hand the check to the other parent in front of the children: The main problem with having a child deliver a check is that it can be lost and the child is put in the middle of a dispute. If a check is not paid through the State Disbursement Unit through a notice for income withholding, it should be put in the mail. Regarding handing the check to the other parent in front of the children, there are too many cases in which this has backfired as it provides opportunities for discussions in front of the children about child support payments—and the like—that should be handled privately.

Don't degrade or argue with the other parent in the presence of the children: The prohibition about arguing with the other parent in the presence of the children is an obvious one. The rule that a parent should not even subtly denigrate the other parent in the presence of the children is more difficult to put into practice. Children realize the "lay of the land" much more than parents think. When one parent harbors resentment for the breakup, the "wronged" parent might say such things as, "My children deserve to know the truth," or "I will not lie to my children."

Children do not need to know one parent's "truth" about the other parent: Children do not need to know "the truth" about something such as who was at fault for the marital breakup. Similarly, parents in divorce proceedings may state things like, "The children need to know what kind of man their father is."

More subtle than this is a parent who, when discussing the other parent, will inevitably become angry or upset. The children will often in these cases side with the primary residential parent. The problem with this equation is that the strategy in many parental allocation cases won by the disenfranchised parent is that they paint the children as alienated due to the actions by the residential parent.

Don't use the language "my children" or "my daughter" or "my son" over and over again when talking about your children. When working with mental health professionals, the judge or even the other spouse, using the term "my" children depersonalizes the children. It often reflects parents who are caught up in a power struggle rather than focusing on the unique family dynamics that have often lead to conflict.

If you are the non-primary residential parent, don't arrive late or not at all for your parenting time: An angry parent may arrive late for his or her parenting time in order to get back at the other parent. After all, it would certainly disrupt the other parent's schedule to be forced to wait around for the former spouse to arrive, especially if he or she has plans for the evening. However, it is the children who are hurt most by this behavior. Many stories have been told of children who sit around looking out the living room window waiting for a parent to arrive only to end up feeling rejected when the parent arrives late or fails to arrive at all.

Don't discuss any of the financial aspects of the divorce process—such as support or maintenance—with the children or in the presence of the children: This is perhaps the most difficult prohibition for parents to implement, especially when parents fail to pay support on a timely basis and especially if one parent is viewed to be at fault for the divorce. Perhaps one of the problems with Illinois' version of "no fault" divorce, in which fault cannot be generally considered as to property distribution (except for dissipation), parenting time and decision-making allocation (except for matters that directly relate to the children), and maintenance, is that the parties cannot vent their anger through the court system. Perhaps, as a result, one way for a parent's feelings to come out is through the children and by bringing up financial issues to the children.

The simple fact is that parties to a divorce cannot live as inexpensively apart as together. It can become very frustrating for parents to try to balance their newly limited budget. As part of this frustration, they may express to the children anger toward the other parent over financial issues. However, if these discussions are to take place, it is critical that they take place outside the presence of the children. Doing otherwise requires the children to deal with an adult problem for which they are not emotionally prepared to handle and embroils the children in the bad feelings between the parents. When dealing with older children and activities and purchases must be limited because of limited or late support payments, the parent should explain these matters only to the extent necessary in a non-derogatory, non-accusatory manner. For example, a parent should not say, "We won't be able to go to the movie tonight because your father is such a jerk and we cannot count on him to give us the money when he should." Instead, a parent might say, "It's frustrating to me and I'm sure it's frustrating to you that we don't have enough money to go to the movies, but we can't afford everything we want to do."

Don't believe everything the children say about the other parent. When one parent automatically believes everything a child says about the other parent, it is often the beginning of further battles in court or other problems. Even in intact families, the children may tell preposterous stories to the parents. If one parent hears something from the child about the other parent that sounds unreasonable, before posturing or preparing for battle, it is appropriate to try to verify the child's statement with the other parent. If the other parent cannot provide a reasonable explanation for what a child has said, it may become necessary

to pursue the issue in other ways. In a seminar, Dr. Stephen J. Ceci made the point that children (especially young children) are extremely prone to suggestions, even suggestions that are not intended. Because of this, parents should be careful about believing everything said by children.

Before the divorce, don't introduce the children to a person whom you are dating. And after the divorce, do so only with significant discretion: It is difficult enough for children of divorce to deal with the termination of the relationship between the parents, but their burden increases if, before the divorce, they are introduced to the person their parent is dating. Not only does this send the wrong message to the children, but it also is likely to breed resentment with the other parent. Before the divorce, some judges will restrict either parent from having a member of the opposite sex stay overnight with the other parent when the children are present. Most family lawyers advise their clients that this sort of "sleepover" arrangement is a mistake. The lawyer should consider advising clients not to date during a divorce. After the divorce, if a child is introduced to frequent non-marital companions of the opposite sex, it can result in false hopes and unrealistic expectations and lead to recurrent feelings of rejection. Following the divorce, once a relationship has progressed to the point of becoming meaningful, it is best to slowly introduce the children to the individual.

Don't ever allow children of any age to observe sexually intimate behavior: This should go without saying and applies to both married and unmarried parents even if the children are "screened off" from the adults' bed. Although it may appear natural to expose children to this sort of intimate behavior, they are not psychologically prepared to deal with these observations during childhood.

Except in very unusual circumstances, don't allow the children to sleep in the same bed with you: Some parents believe that allowing young children to sleep with them reduces the trauma on the children due to the divorce or separation. Allowing children to sleep with their parents under these circumstances can result in unrealistic expectations of the child. Additionally, allegations of sexual abuse can occur in divorce proceedings, which, even if unfounded, can be devastating to the relationship between the parents and to some extent the relationship between parent and child. Allowing children to sleep in the same bed, even when done for ostensibly good reasons, is a mistake.

Don't refer to your children on social media posts such as Facebook in any way that reflects poorly on the other parent. Social media platforms such as Facebook are not the place to engage in a public airing (at least among Facebook "friends" or the like) of potential areas of dispute with the other parent.

Don't ask the children to keep secrets from the spouse: There are common instances in which a parent may want a child to tell a lie. For example, if a parent is late in picking the child up from an event, it is disconcerting to the child for the parent to tell him or her, "Whatever you do, please don't tell your mother," or "Be sure not to let your father know." This behavior places the child in the middle of a conflict, encourages him or her to be deceptive, and engenders guilty feelings if he or she feels pressured to keep secrets from the other parent. Also, innocent secretive behavior can come back to haunt a parent if sexual abuse allegations are later made.

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