

DO'S REGARDING CHILDREN AND DIVORCE IN ILLINOIS

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Executive Summary:

The following list of “dos and don’ts” had been based on information from the book, [PSYCHOLOGICAL EXPERTS IN DIVORCE ACTIONS](#)¹. Its authors are psychologist “involved in 1000s of custody cases.” This list has been reworked to be more consistent with current language of Illinois law as it was comprehensively changed in 2016. That book states: “A client who is following most of the dos and few or none of the don’ts is in a favorable position to obtain an allocation of parenting time consistent with her or his goals; a client who is performing a few of the dos and most of the don’ts is in an uncertain or negative position to obtain a favorable award.”

The do’s and don’ts suggested in PSYCHOLOGICAL EXPERTS IN DIVORCE were written from a psychologist’s viewpoint. The list below is adapted to fit within the perspective of litigation, but, the goal is to avoid a full blow parental allocation litigation due to the emotional and financial cost. I agree with the position taken by the authors of the above treatise that a client who follows most or all of the directives—in contrast to a spouse who follows far fewer—is in a very good position to win a battle involving parenting time / responsibilities, if such a battle is necessary. Remind your clients that remaining above the fray and doing what is right relative to the children is difficult. But, uniformly, it tends to produce positive long-term results.

DO'S INVOLVING THE CHILDREN

Don’t just go through the motions in mediation: The research clearly indicates that successful mediation of the issue of parenting time allocation results in fewer adjustment problems for both children and parents, a shorter period required for resolution of problems, and less likelihood of re-litigation. Unless a case is deemed ineligible for mediation, all counties in Illinois require mediation before litigation regarding non-financial disputes involving the children. This includes parental responsibility (custody), parenting time (visitation), and relocation (removal). Under Illinois law what is stated in mediation is generally confidential.² As a result, both the client and the spouse can feel free to state concerns openly without the fear that the statements will be used in future litigation. [See the Gitlin Law Firm’s Q&A regarding mediation.](#)

Do go to counseling: Often, counseling does not need to be long-term or even regular and periodic. But in many cases it should be. At a minimum, the lawyer should recommend to clients who have minor children that they attend counseling for the simple reason that doing so will often improve their parenting skills as well as their communication skills to assist with the unique dynamics within every family. It is the rare divorce where each person comes to the conclusion that the marriage is irretrievably broken at the same time. And this factor alone tends to make the parenting dynamics more difficult in many divorces.

¹ Ackerman, Kane and Gould, Wolters Kluwer (7th Ed. 2018).

² See [Illinois Uniform Mediation Act](#) for the narrow exceptions.

Do understand that time spent with the children will lessen: All parties in divorce proceedings need to understand that two parents living apart will not see their children as often as two parents living together. Each parent must realize that the time his or her soon-to-be former spouse spends with the children is time that is no longer available to the other parent.

Do understand that the expenses of two people living apart will be greater than two people living together: Divorce is not a zero-sum game. Following the separation, the parents will have to spend funds for two residences, two sets of utility bills, and the like. There is rarely enough to cover all costs, and usually both parents will have to adjust their budgets.

Do tell the children in advance that the separation is going to take place and have the discussion with both parents present: Unfortunately, all too often, children come home from school to find that one of the parents has moved out of the house without prior explanation or an opportunity to discuss things. It is critical for the parents to prepare the children before the separation takes place. This discussion should take place with both parents present. This tells the children that even though their parents are getting divorced, they will still have the ability to work together in the children's best interests. At a minimum (except in cases of domestic violence), children under six should be given several days' notice, and children over six should be given at least a week's notice. [See a Today's Parent article that addressed the importance of providing developmentally appropriate information to the children before separation.](#)

Do understand that finances and parenting issues don't mix: It is critical for the client to realize that time spent with the children and financial support are two separate issues, neither of which has an effect on the other. For example, many family lawyers have been involved in cases in which a father will tell the mother to get a job — in front of the children. Most family lawyers have also been involved in cases in which one parent has used a child to deliver a child support check. Similarly, there are cases in which a parent has demanded that the non-residential parent pay support in front of the children. These sorts of issues should not be addressed in front of the children (or even within the possible earshot of the children).

If living in the immediate area, consider sharing certain holidays as opposed to alternating them: It is an overstatement to say that in the 21st Century the concept of alternating holidays is an archaic concept. It is better to say that if parents live in the same city, it is best for the children to have contact with both sets of families during the important holidays. For example, a parenting agreement might provide that the nonresidential parent will have a certain number of hours of time during each child's birthday. When the parents live in the same city or in the immediate vicinity, there is no reason that holidays such as Thanksgiving or Christmas cannot be shared so that the children have an opportunity to see both parents and their extended families. This does not necessarily mean that Christmas Day or Thanksgiving Day must be shared on the holiday itself, but there is nothing wrong with sharing these days if the parties live in close proximity to one another.

Do plan and consult with the other parent in advance of activities for the children: This factor applies to many facets in the overall development of children. When it comes to planning for lessons, athletic activities, recitals, counseling, or extended medical treatment, it is important for the parents to communicate with each other before implementing these plans. The acrimony between the parents may be increased if one parent makes plans without consulting with the other and then attempts to follow through with the plans without the other's input. Inevitably, one parent making unilateral decisions affecting the children is negative in the court's eyes, as well as the eyes of a neutral mental health professional. The lawyer should remember that one of the most significant factors in the Illinois Marriage and Dissolution

of Marriage Act is the willingness of each parent to facilitate a close and continuing relationship with the other.³ If one parent does not know about these activities, this parent has no opportunity to be involved in the decision-making or to participate in the children's lives.

Do observe time schedules regarding the children strictly, including the time schedules for exchanges of the children: The tardy parent should always phone, explaining the reason for being late and giving the estimated time of the arrival. One way to reduce the likelihood of tardiness is to agree that the receiving parent will transport the children. It is especially important to inform the other parent if a period of parenting time cannot be exercised in as much time in advance as is possible. As a general rule, parenting time should not be cancelled without at least 48 hours' notice, absent an emergency.

Do try to be flexible regarding parenting time for the other parent: The corollary to being on time for parenting time is that each parent should be flexible in implementing the parenting schedule. Lawyers will often tell their clients that they recommend a specific parenting schedule such as alternating weekends plus one overnight per week, two weeks in the summer, and alternating holidays (including alternating spring break and equally dividing winter break). Lawyers will also state that this parenting time schedule may be modified by agreement of the parents unless either parent feels taken advantage of, in which case either parent has the right to insist that the schedule be followed as closely as possible. No parenting time schedule can take into account all the possible exceptions that may occur. For this reason, flexibility is encouraged. It is important that neither parent should count the hours, days over overnights that may be lost or gained as a result of this flexibility. The assumption is that in the course of a child's lifetime, the time spent by each parent will balance out. This assumes, however, that each parent is dealing with the other in good faith.

Do whatever is necessary to resolve any angry feelings toward the former spouse: First, let me be clear. I am not trying to deny anyone his or her anger. If you cannot be angry as a result of a divorce, when can you be? Your goal is to develop effective business-like relationship with the other parent. This is easier said than done. Research clearly indicates that there is a significant amount of depression in children whose parents are fighting years after the divorce. Former spouses do not have to love or even like each other. They must, however, be able to deal with one another and be civil with each other in the presence of the children. Parental conflict impacts children following the break-up of the parent's marriage or relationship. This conflict can increase the risk of serious and long-term mental and physical health effects. Perhaps more important is the responsibility not to send subtle messages to the children that the parent does not like the other parent (even when the other parent is not present). The lawyer should encourage a divorcing parent to have conversations with the lawyer and others when the parent is certain the children cannot hear what is said. It is the client's responsibility to let his or her lawyer know immediately when a child is nearby – at the outset of any telephone conversation.

Do understand that parental conflict can lead to adverse childhood experiences: When kids are exposed to high levels of *chronic* stress or adversity — including abuse, neglect or household dysfunction — it can change the way their brains and bodies are wired. That can lead to changes in brain development, changes in the development of the immune system and changes to our hormonal systems. It can even effect people all the way down to how our DNA is read and transcribed. This can lead to this condition that's known as toxic stress — and puts folks at an increased risk of lifelong health problems. [To learn more about adverse childhood experiences click on this link to the CDS's Adverse Childhood Experiences collection of resources.](#)

³ 750 ILCS 5/602(a)(8).

The good news of parents facing a divorce is that today we know what to do to avoid serious health issues for their children: reduce the conflict and stress that is often incident to how the family system operates following a divorce. While we cannot control how our soon-to-be former spouse may behave, we can control how we behave as part of this system. [Click here to see Dr. Nadine Burke Harris's Ted Talk regarding how childhood trauma affects health across a lifetime.](#)

Do work with the other parent to present a united front when handling any problems relating to the children: Children should not be allowed to manipulate the parents by playing one off against the other. Even in intact families, children learn how to work one parent against the other to try to get their way. This problem is much more profound following a divorce. If a problem arises and the mother and father respond to it in different ways, it presents the child with a clear opportunity to manipulate the situation to the child's advantage. Discussion should take place between the parents and ground rules put in place for dealing with specific problems that can be anticipated.

Do take the children to a therapist if psychological adjustment appears problematic: There are any number of myths including that younger children should not receive any form of therapy. But with the knowledge of the impact of adverse childhood experiences on both children and adults, the current model includes child-parent psychotherapy as well as other resources. During sessions, the goal is to support and strengthen the relationship between a child and caregiver to help repair the child's sense of safety, attachment, and appropriate affect to ultimately improve the child's cognitive, behavioral, and social functioning. Sessions are adapted to fit the child's age and development level.

One does not necessarily need to run to a therapist whenever a child has an adverse reaction to a divorce. Yet adverse reactions that last for months rather than for weeks may become habitual rather than temporary. Also, it can be a difficult situation when one parent believes that counseling is necessary, but the other parent does not. In the author's experience, most people err on the side of not having children in counseling as often as would be helpful. And much like divorce lawyers, all counselors are not created equal. Some are more equal than others; so do your research before choosing a counselor or therapist. Counseling for children experiencing a divorce can never hurt. But ignoring a child's emotional response to a divorce can be extremely harmful. It is important to focus not only on the child but also on the entire family system that has impacted the child.

Do tell the children early and often that they are loved by both parents, that the divorce is not their fault, and that they are not getting a divorce from either parent: Too often, parents assume that their children understand these truths even if they are not frequently reminded. During the separation period and shortly thereafter, children need to be told that they are loved. The children's concern may be, "You stopped loving Mom. How do I know you won't stop loving me." One way to reassure children is to tell them that the love between spouses is different from the love between a parent and a child. Although the love between spouses can fade away, there is permanency to the love between a parent and a child, a love that began at the moment of the child's birth. By contrast, parents had to meet and fall in love, which therefore means they could also fall out of love. Besides reminding the children that they are loved, it is important that the children understand that the divorce is not their fault. Many times children harbor feelings that somehow they may be to blame for the divorce and should be reminded that this is not the case.

Do provide the children with an emotional environment that allows them to continue to love and spend time with the other parent: Children often realize that parents get divorced because they neither love nor like the other parent. They also recognize the acrimony between the parents. As a result, children can be fearful that there may be repercussions as to what might happen if they are friendly with the other

parent. Children should be made aware that it is *entirely* appropriate for them to show love and positive feelings toward the other spouse. It is the parents' responsibility to create a safe environment in which the children can express feelings of love toward both parents. Children should never feel that they must choose which parent they love more.

Except in unusual cases, do encourage a good relationship between the children and the other parent's extended family: For one parent to criticize the other parent's extended family only puts pressure on the child and increases problems between the parents. While Illinois law is restrictive regarding rights for grandparent visitation, parents should recognize that the children are not getting divorced from their grandparents.

Do encourage children to remember the other parent on special occasions: allowing and encouraging them to call on a reasonable basis and at special occasions: Very young children should not be expected to purchase birthday cards, Father's or Mother's Day cards, or cards for special occasions without help. The parents should encourage and aid the children to make certain these occasions are recognized. This should even be done even with older children.

Do use discretion regarding the time and frequency of calls to the children: Parents must recognize that when the children are with the other parent, the other parent will be involved in family time, quiet time, homework time, and other activities with the children. Frequent, unnecessary phone calls may serve to interrupt the child's routine with the other parent and upset the parent. Except in unusual circumstances (such as with very young children), daily phone calls are not necessary. As a general rule, phone calls two to three times a week should be sufficient. With younger children, it is often easier for the primary residential parent to make the phone calls when the child is not involved in other activities.

Do use electronic communication but understand its limits: Illinois law provides simply that a parenting plan should have 14-plus items including, "provisions for communications, including electronic communications, with the child during the other parent's parenting time." Do understand that virtual visitation is an oxymoron and that use of Facetime, Google Duo, and the like is not a substitute for actual parenting time.

Do recognize how your children feel as separate individuals. Children may be subject to any number of feelings including feeling powerless or helpless over decisions that may include where they will live, the school they will attend, etc. For example, they will often have are subject to their parents' decisions about where they will live, with whom they will live, and the school they will attend with little or no consultation. One might feel tempted to paint the divorce as a happy or better situation for everyone. While things may improve over the long-term, it's important to take the time to acknowledge to your child that divorce is sad, frustrating, and confusing at times. Don't sweep those emotions under the rug.

Do be aware that children may feel insecure and exhibit regressive behavior: Divorce is a stressful time both for children and adults. First, there is the breakup of the family unit. Next, the family usually will move because the marital residence is often not affordable to maintain. It is not at all unusual for children to show regressive behavior when under stress. This behavior could include bedwetting, whining, throwing tantrums, or other similar behaviors, which, if they continue for a short time, generally do not require counseling. Yet if this behavior continues for several months, therapy may be warranted.

Do be a role model for the children: Parents should remember that the children will model their behavior from what they observe. If the parents are angry, over-reactive, or significantly depressed, they are likely to have children who are the same.

Do put aside any differences with the other parent long enough to allow both parents to attend school conferences together: In disputes over parenting time or responsibilities, it is always negative if one parent does not provide sufficient information to allow the other parent to attend school conferences or related functions. Occasionally, the parent with majority of the parenting time will list a new spouse or significant other as the other contact with the school and fail to even mention the existence of the other parent. This situation provides may demonstrate the mindset that a parent may not be encouraging the involvement of the other parent in the activities of the children. If there is not sufficient cooperation so that conferences can be attended together, each parent should schedule separate times and attend parent teacher conferences whenever possible. And if only one parent can attend the conference, take notes. Even if you and your ex aren't on speaking terms, sending him or her notes about the conference and the teacher is in the best interest of your child. Both of you need to be on the same page regarding your child's education. And finally, if the teacher can't schedule two separate in-person meeting times with the parents due to a lack of time, as an alternative, ask for a phone conference time. Most teachers will comply with this request.

Do exercise with the other parent the right and responsibility to consult with school officials concerning the children's welfare and education: Under Illinois law,⁴ if a child is attending a public school, both parents have the right to access information about the child. More specifically Illinois law provides: "A parent who is not allocated parenting time is not entitled to access to the child's school or health care records unless a court finds that it is in the child's best interests to provide those records to the parent." While it is important for the parents to cooperate to schedule school conferences together, each parent should be able to obtain information directly from the school, including report cards, school notices, school calendars, and the like. The school, however, will not provide this information separately to each parent unless asked. Therefore, the parent should be certain to ask for this information, preferably in writing.

Do promptly inform and consult with the other parent about the emergency medical, surgical, dental, institutional, or mental health care of the children: An area of issue in many contested parental allocation cases is a parent's failure to promptly notify the other parent in advance of significant areas of potential concern. This includes issues such as emergency medical care, surgery, dental care, and counseling. A parent might contend that the other parent did not request this information in the past and that, therefore, there is no present need for this information. Failure to address these matters with the other parent goes toward each parent's ability and willingness to facilitate a close and continuing relationship with the other parent and the child, which is one of the critical factors in Illinois parenting time or decision-making disputes.⁵ When the above-named information is withheld, post-divorce litigation is more likely. It is noteworthy that Illinois law provides that at a minimum each parenting plan in Illinois should provide for: "each parent's right of access to medical, dental, and psychological records (subject to the Mental Health and Developmental Disabilities Confidentiality Act), child care records, and school and extracurricular records, reports, and schedules, unless expressly denied by a court order or denied ..."⁶

Do communicate with the other parent openly, honestly, and regularly to avoid misunderstandings harmful to the children: As with many of these directives, this is easier said than done. Nevertheless, most child-rearing difficulties between divorced parents are the result of poor communication between the parents. For example, assume a child tells Dad that Mom has criticized the child. It is important for the parents to be able to communicate to investigate the child's claim. If

⁴ 750 ILCS 5/602.7(d) and §5(a) of the Illinois School Student Records Act, 105 ILCS 10/1, *et seq.*,

⁵ 750 ILCS 602.5c (11).

⁶ [750 ILCS 5/602.10\(f\)\(4\)](#).

communication between the parents is so poor that this is not possible, the situation affords the child the opportunity to manipulate one parent against the other, which will in turn increase the acrimony between the parents. In the end, the child is taught poor communication techniques by both parents.

Do make plans directly with the other parent / Do not make plans directly through the children: Examples include a child coming to the other parent and asking to skip parenting time due to a party or extracurricular event. Any time that the children are in the middle of communication, it is burdensome for them. It can put the children in the middle of adult decision-making and can tend to rob the children of their role as a child.

Do live as close as possible and practicable to the other parent — especially if the children are young: Studies show that with young children, the frequency of contact is more important than the length of the contact. For this reason, especially with very young children, it is extraordinarily helpful for the parents to live in the same vicinity. The 2016 amendments to Illinois law create new definitions for what “relocation” means and how far a parent can move without authority from the court, etc. Relocation is defined as:

- (1) [Collar Counties] a change of residence from the child's current primary residence located in the county of Cook, DuPage, Kane, Lake, McHenry, or Will to a new residence within this State that is *more than 25 miles from the child's current residence*;
- (2) [Downstate] a change of residence from the child's current primary residence located in a county not listed in paragraph (1) to a new residence within this State that is more than 50 miles from the child's current primary residence; or
- (3) [Move to Out of State Residence within 25 Miles of Primary Residence.] a change of residence from the child's current primary residence to a residence outside the borders of this State that is more than 25 miles from the current primary residence.

[See the Gitlin Law Firm's Q&A regarding relocation and divorce.](#)

As a practical matter, relocation of children a significant distance may be acceptable for older children if there are sufficient financial resources. In any event, however, parents should be encouraged to live as close to each other as is practicable. In cases where there are exceptional circumstances and one spouse must relocate a significant distance, the parents should work together to facilitate as much contact as is practicable.

Do maintain similar sets of rules in both houses (to the extent possible): Although it may be acceptable for the children to learn that different rules may apply to different settings, when the basic routines are far different, it can increase children's anxiety. [Therefore, it is beneficial to keep homework, bedtime rules, etc., similar in the two households.](#) This is also consistent with the maxim of providing a “united front” to the children. At the same time, the parent should recognize that he or she cannot enforce rules or discipline while the children are in the other parent's home.

Do be careful in e-mailing or texting your soon-to-be ex or your former spouse: E-mails and texts may be used against one in litigation. I recommend that clients read Bill Eddy's website and book regarding [BIFF: Quick Responses to High Conflict People](#). He recommends an approach to E-mails as being [brief, informative, friendly, and firm](#). And the first question is whether one must even respond to a hostile E-mail. He provides one telling example:

Text from the Ex:

"I got a new lawyer today. Boy, are you in trouble. All the BS you say about me is going to get you hammered in court. You'll NEVER get any custody because you're such a sack of s**t and you're going to have to give me a ton of money. Lots more than that crappy amount you pay now. I hate you and now you'll be sorry you filed for divorce."

Your reply:

Nothing. Sometimes the hardest part of a BIFF Response is not doing it at all. Choose to ignore this and you'll avoid spending the next few hours battling it out.

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