

DO'S REGARDING CHILDREN AND DIVORCE IN ILLINOIS

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Executive Summary:

The following list of “dos and don’ts” is based generally on information from Marc J. Ackerman and Andrew W. Kane, PSYCHOLOGICAL EXPERTS IN DIVORCE ACTIONS (Ackerman and Kane), the authors of which are psychologists from Milwaukee and who state as paraphrased to be more consistent with the 2016 nomenclature in Illinois, “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 by Ackerman and Kane are not specific to Illinois case law. Additionally, they were written from a psychologist’s viewpoint. The list below is adapted to fit within the perspective of litigation, but, as noted above, in potential litigation, the goal is to avoid a dispute. The author agrees with the position taken by Ackerman and Kane 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 produces positive results.

DO'S INVOLVING THE CHILDREN

Do not just go through the motions in mediation: The research clearly indicates that the cases in which the issue of parenting time allocation is successfully mediated result 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, in all counties in Illinois mediation is required before litigation regarding non-financial disputes involving the children (parental responsibility (custody); parenting time (visitation); relocation (removal) and the like. In most Illinois counties, the rules provide that what is stated in mediation is generally confidential. 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.

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.

Do understand that time spent with the children will lessen: All parties to 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 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.

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.

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. A father may withhold payment of support because he wants more parenting time. A mother may withhold parenting time because the father is behind in his child support payments. Both actions are wrong. Perhaps even more wrong is bringing up one issue or the other in front of the children. 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.

Do consider sharing holidays as opposed to alternating holidays: It is an overstatement to say that in the new millennium 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, although 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. 750 ILCS 5/602(a)(8). 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.

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 evening per week, alternating holidays and two weeks in the summer, equally dividing winter break and alternating spring 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, and for this reason, flexibility is encouraged. It is important for both parents not to count up the minutes, hours, or days 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: 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. Angry feelings will be conveyed to the children and can cause them serious problems (in some cases, even clinical depression). 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 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 when the child is of sufficient age: Parents do not necessarily need to run to a therapist whenever a child has an adverse reaction to a divorce. However, 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. Counseling for children experiencing a divorce can never hurt. However, ignoring a child's emotional response to a divorce can be extremely harmful.

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, the children can be fearful that there may be repercussions as to what might happen if they are friendly with the other parent. Children must be made aware that it is entirely acceptable and 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.

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 the problems between the parents. While the provisions in Illinois law are fairly restrictive regarding rights for grandparent visitation, parents should recognize that the children are not getting divorced from their grandparents.

Do encourage the children to remember the other parent on special occasions, allowing and encouraging them to telephone on a reasonable basis and at special occasions: If children are too young to 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 them to make certain these occasions are recognized.

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 custodial parent to make the phone calls when the child is not involved in other activities.

Do recognize that children may feel powerless and helpless: Children 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. Further, if a judge is required to resolve disputes, some decisions will be made by a complete stranger. Therefore, the parents should recognize that children may feel both powerless and helpless about the outcome of their lives.

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 relatively short period of time, generally do not require counseling. However, 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, overreactive, 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 custodial parent will list a new spouse or significant other as the other contact with the school and fail to even mention the existence of the noncustodial parent. This situation provides an opportunity to demonstrate the mindset of one parent, in that he or she may not be encouraging the involvement of the other parent in the activities of the children.

Do exercise with the other parent the right and responsibility to consult with school officials concerning the children's welfare and education: Pursuant to 750 ILCS 5/602.7(d) and §5(a) of the Illinois School Student Records Act, 105 ILCS 10/1, *et seq.*, if a child is attending a public school, both parents have the right to access information about the child. More specifically Section 602.7(d) 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 custody cases is a parent's failure to promptly notify the other parent in advance (if possible) or as promptly as is possible thereafter of significant areas of potential concern, such as emergency medical care, surgery, dental care, counseling, and the like. Often a parent will state that the other parent did not request this information in the past and that, therefore, there is no present need for this information. This is simply not the case. 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 custody disputes. 750 ILCS 602.5c(11). When the above-named information is withheld, post-divorce litigation is often more likely. ." It is noteworthy that Illinois law provides that even where the parents cannot agree on a parenting plan, "(4) 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 ..."

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 him. It is important for the parents to be able to communicate to investigate the child's claim. If

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 in this regard 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.

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 Provision] 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) [Non-Collar Counties Provision] 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.

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. The parent should keep in mind, however, that while living nearby is a goal that both parents should try to accomplish, it is often not practical especially following the remarriage of one or both spouses or a spouse's job relocation, in which case the parents should work together to facilitate as much contact as is practicable.

Do maintain the same set 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 their anxiety. Therefore, it is beneficial to keep mealtime rules, bedtime rules, and homework rules as similar as is possible 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.

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