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 focuses on what *not* to do regarding your minor child and your Illinois divorce or parentage case.

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Don't use the antiquated words.

There's a reason that Illinois law changed dramatically in 2016 regarding that word formerly called "custody." We eliminated the phrase "custody" throughout our divorce law. Thus, the only reference to *custody* 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, we've had battles over the *terms* used in our parenting plans rather than the *substance* of the plan.

Illinois law separates issues of allocation of parental responsibility (decision-making) and parenting time. Decision-making involves 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 child (for either parent). Instead, focus on what's in the child's best interest.

In 2017, Illinois adopted the income-sharing amendments. These amendments introduced a new concept to Illinois' child support law—the presumption that we reduce child support when the non-residential parent has more than 145 overnights annually. It's critical for both lawyers and clients *not* to myopically focus on overnight counting. Instead, focus on what's best for the child or children. Focus on being an outstanding parent.

Don't involve the child in the details of parent/parent conversations.

Insulate your children, wherever possible, from the process of the divorce. Often parents will tell a child the details of what is going on in terms of settlement proposals and the like. Avoid sharing details of parent-to-parent communications or of what's happening within the legal system with the child.

Don't Focus on 50/50 parenting time unless the parents commit to living in the same community and there's no domestic violence.

We began to recognize, as far back as the 1990s, that the then "standard" alternate weekend parenting time schedule (plus one evening per week) did not allow sufficient time for the non-residential parent. When allocating parenting time, we are seeing more cases involving alternating joint physical parenting schedules, such as a 2-2-3 schedule,[1] or even alternating weeks. Realize that these schedules may work well where both parents are working outside the home and where there is good parental cooperation and

[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.

mutual self-sacrifice. It is only when the parents live within a short distance of one another, however, that 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 child's stability, try to move as few times as possible. Additionally, if you must move, try to remain in the same geographical area. For example, one parent often has to move into a rental when the parties separate for the first time. That parent then often must move again into more permanent housing within a year or two of the divorce. When your child must move more than three or four times within a few years, for example, this might have a detrimental effect on their psychological development. And understand current Illinois law regarding relocation—discussed in The Gitlin Law Firm's website. If you are the parent with 50 percent or more of the parenting time and are considering moving more than 25 miles (or, in non-"collar" counties, 50 miles), consult with a lawyer. And make sure that you follow the terms of your parenting plan and Illinois law.

Don't allow the child 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, a panel of mental health professionals discussed the effects of divorce on children. One expert pointed out that children (especially young children) often feel guilty about a divorce—even when a parent has done nothing to promote these feelings. The expert suggested that you emphasize that divorce is something between the mother and the father and that the child had nothing to do with it.

Don't allow the child (especially a preadolescent child 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 regarding the input the child has in terms of where they live. Interestingly, in a national survey, the average age in which psychologists and judges believe that the child's wishes as to their placement should be a paramount concern is approximately age 15. However, Illinois law considers the child's wishes only one factor among many. Section 602.5(c)(1) addresses "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, the courts provide more weight to the wishes of the child, if they are consistent with the child's best interests. In allocating parenting time, Illinois 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). So, realize that parenting time is not *the child's decision* but a matter between the parents. When pre-teenage children 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 cases, become more difficult to parent. When allowed to decide something as important as whether they would spend time with the other parent, a child might get the false impression that he or she has the power to make other equally important decisions. The parent should keep in mind that a child of this age is not allowed to choose whether he or she will attend school or receive medical treatment. So, a child who refuses parenting time at this age might be 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 child, try not to 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, *generally* the other parent should seek 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 child can be told of the resolution. If a resolution cannot be reached, the child may be told how the lack of a resolution affects them. This concept is part of "presenting a united front."

On the other hand, keep in mind that this advice applies only to situations where parents live together in the same house. We see a trend in high-conflict cases away from co-parenting and instead focusing on parallel parenting plans. In a parallel parenting plan, each parent recognizes that the other parent will have their own parenting time. Each parent will not dictate the rules on the other parent's parenting time—except where critically necessary. Here, the parents attempt to avoid what some refer to as counter-parenting. This is the situation where one parent actively undermines the other parent.

Don't allow the child to be in the middle of arranging or canceling periods of parenting time.

Arrange changes in parenting time directly with the other parent. Often in our divorce cases, during exchanges involving a child, it is tempting to try to address a potential change in scheduling. As children get older, they should have some input on this. However, the child should be coached to wait before directly addressing their wishes with the other parent until both parents have had the opportunity to address the issue in private. Otherwise, the parents are exposing potential areas of conflict in front of the child or the children. The best response in this situation might be, "Your mother (or father) and I will discuss it."

Don't communicate with the other parent through the child.

Similarly, when parents are *not* communicating effectively, they often find that it is convenient to allow a child to relay messages to the other parent. This violates the rule discussed above, which prohibits putting the child in an awkward or inappropriate position.

Don't send a check with the child (even in a sealed envelope), and don't hand the check to the other parent in front of the child.

Parents should not exchange support-related monies in person. The main problem is that it puts the child in the middle of a potential dispute. If funds are not paid through the State Disbursement Unit via a notice for income withholding, put the check in the mail. Or, better yet, pay via an electronic service like Venmo or Zelle. While delivering funds to the other parent is convenient when a child is present, there are too many cases where this has backfired. It provides opportunities for discussions in front of the child about child support payments—and the like. These should be handled privately, including via AppClose, text, etc.

Don't Use the Child as a Crutch.

Try not to rely on a child for emotional support during a divorce or after the divorce. You can draw strength from their love, but support should come from friends, family, and your counselor, if needed. This goes along with the next point about not complaining about your ex while a child might be within earshot.

Don't degrade or argue with the other parent in the presence of the child.

The prohibition against arguing with the other parent in the child's presence should be obvious. Don't even subtly denigrate the other parent in the presence of the child is more challenging to put into practice. Children realize the "lay of the land" much more than parents think. When one parent harbors resentment

over the breakup, the "wronged" parent might say things like, "*My* child deserves to know the truth," or "I will not lie to *my* child." Don't!

Don't Assume that Children Always Tell the Truth or that your Child "needs to know" one parent's "truth" about the other parent.

Children may not always tell the truth. Often, a child may play one parent off against the other. Good articles addressing this include:

- https://www.divorcesource.com/ds/california/lies-and-alibis-does-divorce-make-child-less-truthful--4227.shtml
- https://www.divorceny.com/custody/child-lying/
    - https://www.ted.com/talks/kang_lee_can_you_really_tell_if_a_kid_is_lying?utm_source=newsletter_weekly_2016-05-14&utm_campaign=newsletter_weekly&utm_medium=email&utm_content=talk_of_the_week_image

Similarly, children don't need to know "the truth" about something, such as who was at fault for the marital breakup. Parents in divorce proceedings might say things like: "My [son/daughter] needs to know what kind of man their father is." More subtly, a parent, when discussing the other parent, might invariably become upset. In these cases, the child might side with the primary residential parent. This pattern of communication can backfire because a strategy in many contested cases won by the disenfranchised parent is that they paint the child as alienated due to the actions of the primary residential parent.

Don't use the phrases "my child," "my daughter," or "my son" over and over again when talking about your child.

When talking to others, parents often refer to "my" son or "my" daughter over and over again. Using the term *my* depersonalizes the child. It reflects parents caught up in a power struggle. Parents who do this often avoid recognizing the unique family dynamics that underlie the conflict. Instead, use your child's name when talking with a third person, such as a lawyer. When communicating with the other parent in texts and Emails, don't use the term "my child." Always use the term "our" or refer to your child or children by name.

Don't discuss any of the financial aspects of the divorce process—such as support or maintenance—with the child or in the presence of the child:

This is a difficult prohibition for parents to implement, especially when one parent is viewed as being at fault for the divorce. A problem with Illinois' "no-fault" divorce is that the parties cannot vent their fault-finding anger through the court system. Perhaps, as a result, one way for a parent's feelings to come out is through the child—and by bringing up financial issues to the child.

The simple fact is that parties to a divorce cannot live as inexpensively apart as together. It can be frustrating for parents to balance their newly limited budget. As part of this frustration, they may express anger toward the other parent to the child over financial issues. If these discussions take place, they must occur outside the child's presence. Doing otherwise requires the child to deal with an adult problem for which they are not emotionally prepared to handle and embroils the child in the bad feelings between the parents. When dealing with older children and activities and purchases that must be limited due to late or limited financial support, 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 we can't 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 child may say about the other parent.

When one parent automatically believes everything that a child says about the other parent, we often see the beginning of further battles in court—or other problems. Even in intact families, children may tell stories to their parents. If a parent hears something from the child about the other parent that sounds unreasonable, before reacting or preparing for a confrontation, try to first 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 a young child) are prone to suggestions, even suggestions that are not intended. Because of this, parents should not believe *everything* their child says.[2]

Before the divorce, refrain from introducing the child to a person you are dating. And after the divorce, do so only with discretion:

It is difficult enough for a child of a 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 child, but it can breed resentment with the other parent. Historically, some judges before the divorce would 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 not to engage in this sort of "sleepover" arrangement. Divorce lawyers routinely advise their clients not to date during a divorce. We have found that introducing the child or children too early can result in what might be called self-alienation. Often, children are not emotionally prepared to meet a parent's romantic partner before the divorce.

After the divorce, if a child is introduced to frequent non-marital romantic companions, 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, introduce the child to the individual slowly and carefully.

Don't ever allow a child of any age to observe sexually intimate behavior.

This should go without saying. It 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 a child to this sort of intimate behavior, they are not psychologically prepared to deal with such observations during childhood.

Except in very unusual circumstances, don't allow the child to sleep in the same bed with you.

Some parents believe that allowing a young child to sleep with them reduces the trauma on the child due to the divorce or separation. After all, there are often unique stressors on children during the divorce process.

Yet, allowing a child to sleep with their parents under these circumstances can result in unrealistic expectations of the child. Also, sleeping in the same bed may be perceived as bad parenting since it could reflect an inability to set boundaries. Further, allegations of sexual abuse can occur in divorce proceedings. These allegations, even if unfounded, can be devastating to the relationship between the parents and, to some extent, the relationship between parent and child. Allowing a child to sleep in the same bed, even when done for ostensibly good reasons, is a mistake—except when the child is an infant and the mother is nursing.

Don't refer to your child on social media, such as Facebook, in any way that reflects poorly on the other parent.

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[2] "Child's suggestibility research: Things to know before interviewing a child." See: https://www.sciencedirect.com/science/article/pii/S1133074015000124

Social media platforms such as Facebook are not the place to publicly air potential areas of dispute with the other parent (at least among Facebook "friends" or the like). Don't use Facebook to air personal grievances—no matter how legitimate. And recall that even when one has their posts limited to "friends," one of those friends will often be a friend of the former spouse and will have access to those posts. See one commentator's post on social media Do's and Don'ts for co-parents.

Don't ask the child to keep secrets from the other parent.

There are common instances in which a parent may want a child to tell a lie. For example, if a parent is late when picking the child up from an event, the child shouldn't be instructed: "Whatever you do, please don't tell your mother," or "Be sure not to let your father know." This places the child in the middle of a conflict, encourages him or her to be deceptive. It also 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.]

Don't latch onto terms such as parental alienation syndrome. Instead, raise resilient children while avoiding a high-conflict divorce.

The concept of Parental Alienation Syndrome was a term coined by Dr. Richard Gardner in the 1980s.[3] Current studies and literature don't refer to parental alienation as a syndrome. Yet studies acknowledge that that there are cases where a child may be alienated. In a refuse/resist case, judges and mental health professionals focus on the *family systems* that are involved, including the contributions of the alienating parent, the circumstances of the child who has become alienated, and the contributions of the rejected parent. One author, Bill Eddy, put it this way in his book, *Don't Alienate the Kids: Raising Resilient Child While Avoiding High Conflict Divorce*: "There are many contributing factors to the "Wall of Alienation, " including three Cultures of Blame…" He urges the professionals involved to "Help your client(s) understand that there are several Cultures of Blame which may be contributing bricks to the child's Wall of Alienation rather than simply agreeing that it is one parent's fault."[4]

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[3] See, e.g., PSYCHOLOGICAL EXPERTS IN DIVORCE, Section 4.26.
[4] See also, Abigail M. Judge and Robin M. Deutsch, OVERCOMING PARENT-CHILD CONTACT PROBLEMS: Family-Based Interventions for Resistance, Rejection, and Alienation