

DO'S REGARDING CHILDREN AND DIVORCE IN ILLINOIS

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Executive Summary:

The following list of “dos and don’ts” was based on a list from [PSYCHOLOGICAL EXPERTS IN DIVORCE ACTIONS](#)¹. Its authors are psychologists “involved in 1000s of custody cases.” I have reworked this to ensure consistency with Illinois law. That book states: “A client who follows most of the *do*’s 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.”

Two psychologists wrote PSYCHOLOGICAL EXPERTS IN DIVORCE. This list helps a divorce lawyer advise his client when there are minor children and a potential dispute involving a parenting plan. Except in cases of abuse or neglect, your goal is to avoid a full-blown parental allocation battle due to the emotional and financial cost. I agree with the position taken by the authors of this treatise. A client who follows most or all of the directives—in contrast to a spouse who follows fewer—is in an excellent position to win a battle involving parenting time or parental responsibilities—if this battle is necessary. Remaining above the fray and doing what’s right regarding your child or children is difficult. Yet uniformly, it produces positive long-term results.

DO'S REGARDING CHILDREN AND DIVORCE IN ILLINOIS

Do treat mediation as more than just a hoop to jump through.

Do go to counseling.

Understand that the time spent with your child/children will lessen.

Understand that the expenses of two people living apart are greater than two people living together.

Tell the children in advance that the separation is going to take place and have the discussion with both parents present.

Understand that finances and parenting issues don’t mix.

If living in the immediate area, consider sharing certain holidays.

Plan and consult with the other parent in advance of activities for the children.

Observe time schedules regarding the children strictly, including the time schedules for exchanges of the children.

Try to be flexible regarding parenting time for the other parent.

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

Do whatever is necessary to resolve any angry feelings toward the former spouse.

Understand that parental conflict can lead to adverse childhood experiences.

Try to present a united front when handling problems involving children while in their presence.

Consider taking school-age children to a counselor if you see *any* signs this can be helpful.

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.

Provide the children with an emotional environment that allows them to continue to love and spend time with the other parent.

Except in the most unusual cases, encourage a good relationship between the children and the other parent's extended family.

Encourage children to remember the other parent on special occasions: allowing and encouraging them to call on a reasonable basis and at special occasions.

Use discretion regarding the time and frequency of calls to the children.

Use electronic communication but understand its limits.

Recognize how your children feel as separate individuals.

Be aware that children may feel insecure and exhibit regressive behavior.

Do be a role model for the children.

Do try to put aside any differences with the other parent to jointly attend certain functions.

Understand and avail yourself or your own rights to consult with school officials concerning the children's welfare and education.

Do *promptly* inform and consult with the other parent about the emergency medical, surgical, dental, institutional, or mental health care of the children.

Communicate with the other parent openly, honestly, and regularly to avoid misunderstandings harmful to the children.

Do make plans directly with the other parent / Don't make plans directly through the children.

Do live as close as possible and practicable to the other parent — especially if the children are young.

Do maintain similar sets of rules in both houses (to the extent possible).

Be careful in e-mailing or texting your soon-to-be ex or your former spouse.

Do treat mediation as more than just a hoop to jump through.

Research indicates that *successful mediation of parenting time allocation results in fewer adjustment problems for children and parents, a shorter time to resolve issues, and a lower likelihood of relitigation.* Except in cases deemed ineligible for mediation (such as those involving domestic violence), all counties in Illinois require mediation before litigation regarding non-financial disputes involving that word formerly called "custody." [[Illinois court rules require mediation in cases involving parental responsibility \(custody\), parenting time \(visitation\), and relocation \(removal\).](#)] Under Illinois law, communications in mediation are generally confidential.² As a result, both the client and the spouse can feel free to express concerns openly without fear that their statements will be used in future litigation. [See the Gitlin Law Firm's Q&A regarding mediation.](#)

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

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 that clients with minor children attend counseling. The simple reason is that doing so helps improve your parenting and communication skills, which in turn assist with the unique dynamics within every family. Rarely do both parents conclude that their marriage was irretrievably broken at the same time. This factor alone often makes parenting dynamics more difficult.

Further, even if you've decided on a divorce, consider limited counseling sessions between you and your soon-to-be former spouse. This allows the two of you to work through feelings of grief and transition to a co-parenting relationship—or at least to better come to terms with the breakup of the marriage. This allows the focus to be on appropriate communication during and after the divorce.

Understand that the time spent with your child/children will lessen.

It is axiomatic that two parents living apart will not see their children as often as two parents living together. So, realize that the time spent with the child(ren) is (by its nature) not available to the other parent.

Understand that the expenses of two people living apart are greater than two people living together.

Divorce is not a zero-sum game. Following the separation, the parents must spend funds on two residences, two sets of utility bills, and other expenses. There is rarely enough to cover all costs, and usually, both parents will have to adjust their budgets.

Tell the children in advance that the separation is going to take place and have the discussion with both parents present.

Unfortunately, children sometimes come home from school to find that one of the parents has moved out of the house without an earlier explanation or an opportunity to discuss things. Parents should prepare the children before the separation takes place. Ideally, this discussion takes place early on in the divorce process and with both parents present. This tells the children that even though their parents are going to get divorced, their parents still can 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.](#)

Understand that finances and parenting issues don't mix.

Realize that *time spent with the children* and *financial support* are separate issues, neither of which has an effect on the other. For example, family lawyers encounter cases where a father might tell the mother to get a job—in front of the children. Most family lawyers have also been involved in cases where one parent has used a child to convey information that belongs as a parent-to-parent communication. Similarly, there are cases where parents bring up issues relating to financial malfeasance in front of the child or children. Make certain not to discuss these sorts of issues within the potential earshot of a child.

If living in the immediate area, consider sharing certain holidays.

It's an overstatement to say that in the 21st Century the concept of alternating holidays is an archaic concept. Yet if the parents live in the same city, consider ensuring that the children 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 immediate area, holidays such as Thanksgiving or Christmas can 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 close to one another.

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, parents should 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, a parent making unilateral decisions affecting the children is negative in the court’s eyes. Illinois law considers [14-plus decision-making factors](#) and [16-plus parenting time factors](#). In both sets of factors one factor stands out: “the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child.”³ If one parent does not know about these activities, this parent has no opportunity to be involved in the decision-making.

Observe time schedules regarding the children strictly, including the time schedules for exchanges of the children.

The tardy parent should always text or phone, explaining the reason for being late and giving an estimated arrival time. One way to reduce the likelihood of tardiness is to agree that the receiving parent will transport the children. Inform the other parent if a period of parenting time cannot be exercised as much time in advance as is possible. This ties in with a [potential right of first refusal](#). As a general rule, parenting time should not be cancelled without at least 48-hours’ notice, absent an emergency.

Try to be flexible regarding parenting time for the other parent.

Consider the corollary to being on time for parenting time. Be flexible in implementing the parenting schedule. Lawyers might tell their clients they recommend parenting schedule such as alternating extended weekends (which might be Thursday to Sunday or Friday with a Monday morning drop-off to school) plus one overnight per week, two or three weeks in the summer, and alternating holidays (including alternating spring break and equally dividing winter break). Lawyers will also state that this day-to-day parenting time schedule may be modified by agreement of the parents. The exception, of course, is in the situation where either parent feels that the other is taking advantage. In such cases, 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. Parents should avoid [focusing on the 146-overnight rule](#) 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’m 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 working 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 don’t have to love *or even like* each other. They should, however, learn how 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 increases the risk of serious and long-term mental and physical health effects.

³ 750 ILCS 5/602.7(b)(13). We also have 602.5(c)(4) that emphasizes “the ability of the parents to cooperate to make decisions, or the level of conflict between the parties that may affect their ability to share decision-making.”

Further, parents should try to avoid sending subtle—or occasionally not subtle—messages to the children that the parent does not like the other parent (even when the other parent is not present). The lawyer or coach should ensure that their divorcing clients only have conversations with the lawyer or coach when the parent knows that any minor child (other than an infant) cannot possibly hear what's being 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.

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 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.](#)

We have good news of parents facing a divorce today. We know how to avoid serious health issues for their children: reduce the conflict and stress often incident with how the family system operates during and after a divorce. We can't control how our soon-to-be former spouse may behave. But 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.](#)

Try to present a united front when handling problems involving children while in their presence.

Children should not be allowed to manipulate their parents by playing one off against the other. Even in intact families, children learn how to work one parent against the other to get their way. This problem is more profound following a divorce. If the mother and father respond in vastly different ways, it provides the child with an 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.

That being said, we see a trend toward [parallel parenting plans](#) in high-conflict cases. With a parallel parenting plan, each parent focuses on their own time with the children, without trying to dictate rules that the other parent must follow. The general admonition: avoid child involvement in parental conflict. Sometimes, trying to force “co-parenting rules” backfires. Sometimes, it's best to stay in your lane and simply be a great parent on your own parenting time. Your children will benefit from the example!

Consider taking school-age children to a counselor if you see *any* signs that this can be helpful.

There are several 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, our current model encourages parents to consider therapy sessions for their child to work through feelings of anger and fear and gain support for this change in their family dynamic. In more difficult this might include child-parent psychotherapy and other resources. During sessions, the goal is to support and strengthen the relationship between a child and their caregiver, helping to repair the child's sense of safety, attachment, and appropriate emotional responses. Counseling can ultimately improve the child's cognitive, behavioral, and social functioning. Sessions are adapted to fit the child's age and development level.

It's true that one does not necessarily need to run to a therapist whenever a child has a short-term adverse reaction to a divorce. Yet, adverse reactions that last for months rather than for weeks may become

habitual rather than temporary. Also, it's difficult 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 their children in counseling. But much like divorce lawyers, counselors are not all created equal. Some are more equal than others. So do your research before choosing a counselor or therapist and be willing to get on a waiting list for a good one. Counseling for children experiencing a divorce can never hurt. But ignoring a child's emotional response to a divorce can be harmful. It's important to focus not only on the child but also on the entire family system that impacts the child.

Helpful articles in this regard include:

- <https://www.maplesfamilylaw.com/divorce/should-your-kids-see-a-therapist-during-your-divorce/>
- <https://family-strategy.com/child-divorce-counseling/>

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 aren't 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 explain that the love between spouses is distinct from the love between a parent and a child. Although the love between spouses can fade away, there's permanency to the love between a parent and a child—a love that begins 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, convey to your children that the divorce is not their fault. Many times, children harbor feelings that *they might be to blame for their parents' divorce*. Remind them that this is not the case.

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 their parents get divorced because they either do not love or like the other parent. They also recognize the acrimony between the parents. As a result, children can fear that there may be repercussions if they are friendly with the other parent. Children should understand that it is *entirely* appropriate for them to show love and positive feelings toward both parents. It is the parents' responsibility to create a safe environment where 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 the most unusual cases, 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 puts pressure on the child and increases problems between the parents. While Illinois law is restrictive regarding grandparent visitation rights, parents should recognize that the children are not being divorced from their grandparents.

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 help the children to make certain these occasions are recognized. This should even be done with older children.

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 might serve to interrupt the child's routine with the other parent. With very young children, daily phone calls may be the norm. Yet as children get older, we are seeing more cases where the parents should be taken out of the equation. Recognize that the children should have access to a cell phone so they will be able to independently call the other parent. Make certain to try to leave the children alone when they have calls with the other parent, where this is practical.

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 the use of FaceTime, Zoom, Google Meet, Teams, and the like, is no substitute for parenting time.

Recognize how your children feel as separate individuals.

Children may be subject to any number of feelings, including being powerless over decisions that may include where they will live, the school they will attend, etc. They are often subject to their parents' decisions about these decisions—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, acknowledge to your child that divorce is sad, frustrating, and confusing at times. Don't subtly encourage a child to sweep emotions under the rug. Your child's feelings should be valued and validated—not dismissed.

Be aware that children may feel insecure and exhibit regressive behavior.

The breakup of a family is a stressful time for both children and adults. At least one parent will move. It's 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. If such behaviors persist only for a short time, children of a certain age may not require counseling. Yet if this behavior continues, consider counseling and consult with the other parent regarding your concerns and the name of a potential counselor.

Do be a role model for the children.

Parents should remember that children 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. So, work on [being the parent your children deserve](#).

Do try to put aside any differences with the other parent to jointly attend certain functions.

In disputes over parenting time or responsibilities, it's a negative if one parent does not provide enough information to allow the other parent to attend school conferences or related functions. Occasionally, the parent with majority of the parenting time might list a new spouse / significant other as the other contact with the school—or worse yet, fail to even mention the existence of the other parent. This demonstrates the mindset that a parent who is not 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 attend parent-teacher conferences at separate times—whether virtually or in person. Even if the other parent cannot attend virtually or in person, consider sending the non-attending parent notes about the conference. Both of you need to be on the same page regarding your child's education.

Understand and avail yourself or your own rights 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. 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 parents should cooperate in scheduling school conferences, parents should be able to obtain information *directly* from the school via online portals and the like. This includes report cards, school notices, and school calendars. The school, however, might not provide this information separately to each parent unless asked. Therefore, for such information that is not made available through the school's portal, the parent may 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.

A dispute in many contested parental allocation cases involves the parents' failure to promptly notify the other parent in advance of significant areas of potential concern. This includes issues such as emergency medical care, surgery, non-routine dental care, counseling, and extracurricular activities. A parent might contend that the other parent didn't request this information in the past—and so there's no need to provide this information. Failure to address these issues 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 (a critical factor in Illinois parenting time or decision-making disputes).⁵ When this information is withheld, post-divorce litigation is more likely.

And note 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

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, many child-related difficulties between divorced parents stem from poor communication between the parents. For example, assume a child tells Dad that Mom has criticized the child. The parents should be able to communicate to investigate the child's claim. If communication between the parents is so poor that this isn't possible, the child has the opportunity to manipulate one parent against the other. This, in turn, can increase the hurt feelings and 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 / Don't make plans directly through the children.

Examples include a child coming to the other parent and asking to skip parenting time because of a party or extracurricular event. Any time that the children are in the middle of what should be parent-to-parent communications, it places a burden on them. It puts the child or children in the middle of adult decision-making and tends to rob the children of their role as a child.

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\(f\)\(4\)](#).

Do live as close as possible and practicable to the other parent — especially if the children are young.

Studies show that with young children, *frequency* of contact is more important than the length of the contact. For this reason, especially with very young children, the parents should live in the same area. The 2016 amendments to Illinois law defined what “relocation” means and how far a parent can move without authority from the court. Illinois law defines relocation 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 an 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 might be acceptable for older children if there are sufficient financial resources. Yet try 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 children can learn that different rules apply to various settings, when the basic routines are vastly different, it can be challenging for them. [Therefore, try to keep homework, bedtime rules, etc., similar in the two households.](#) At the same time, recognize that you cannot enforce rules or discipline while the children are in the other parent's home—absent a finding appropriate to restrict parenting time.

Be careful in e-mailing or texting your soon-to-be ex or your former spouse.

E-mails, texts, and social media posts may be used against one in litigation. I recommend that clients read Bill Eddy's website and book: [BIFF for Co-Parent Communication: Your Guide to Difficult Texts, Emails, and Social Media Posts](#). He recommends an approach to texts and e-mails as being [brief, informative, friendly, and firm](#). And consider your first question: whether to even respond to a hostile e-mail. He provides a 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.

He also urges parents to avoid the 3 A's with high-conflict spouses or former spouses: [Admonishments, Advice, and Apologies](#). Consider working with your lawyer or a coach in developing your habit of responding to a higher-conflict spouse or former spouse. [Click on this summary that provides guidelines for how to work with your lawyer or coach when crafting responses or communications](#).

The Gitlin Law Firm, P.C., provides this information as a service to other lawyers or as a general resource for folks going through a divorce. A person's accessing the information contained in this website should not be considered as providing legal advice—as all legal advice must be specific to your individual circumstances.

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