

## **LIST OF 'DON'T's' REGARDING DIVORCE AND PARENTING**

**1. Don't Agree to Any Type of Alternating, 50/50 Arrangements of Time Sharing with the Child(ren):** In the 1990's it was recognized that the "standard" alternate weekend visitation schedule did not allow the non-residential parent to maintain an extended, ongoing relationship with their children. In part to avoid custody battles and in part because they were not aware of the pitfalls of **alternating** joint physical custody, I have seen many cases in which other lawyers incorporated into a joint parenting agreement some form of alternating joint physical custody. For example, I have seen schedules providing for alternating every weeks; alternating biweekly periods, etc. I do not generally recommend alternating split custody arrangements (e.g., one week on, one week off). Often there are schedules which begin to approximate equal parenting time which are not strictly alternating custody schedules.

Illinois case law frowns on alternating periods of parenting time. On the other hand, often in removal proceedings there is often what is close to an alternating schedule. In cases where the mother seeks removal, the father of younger children might be awarded virtually the entire summer while the mother. When parents communicate effectively with each other, are flexible and live within a very short distance of one another, a time sharing schedule close to an equal time sharing arrangement may work out. However, the nature of divorce is often that expecting such communication, commitment and flexibility may be impractical.

**2. Do Not Move More Often Than is Necessary:** Although several moves may be necessary due to a divorce, for the sake of the stability of the children, it is important to move as few times as is possible. For example, it is often necessary for a parent to move into a rental once the parties separate for the first time and into a more permanent housing within a year or two of the divorce. However, when children must move more than three or four times within two years, this can have a detrimental effect on their psychological development. Additionally, if there must be a move it is preferable to keep to the same geographical area.

**3. Do Not Allow Children to Foster Feelings of Guilt Over the Divorce Process:** I recall that when I attended a seminar by the AAML several years ago with a panel of mental health professionals about the effect of divorce on children, one of the best tips was that children (especially young children) often feel guilty about a divorce — even when a parent has done nothing to the children to promote such feelings. It was suggested that children should be told that the divorce is something between the mother and the father and that the children had nothing to do with it.

**4. Do Not Allow Child(ren) (especially ages pre-adolescent children from ages 9 to 12) Refuse Visitation with the Former Spouse or Have Too Much Decision Making Power:** This is consistent with Illinois law as to the input the children have in terms of where they live. Interestingly in a national survey, the average age in which psychologists and judges believe that the children's wishes as to their placement should be a paramount concern was approximately age 15. However, according to Illinois law the wishes of a child are only one factor to be considered. It is true that as children grow older that their wishes should be considered more and more strongly if those wishes are consistent with the child's best interest. The recommendation not to allow children to refuse to visit or to have too much decision making power does not mean that children always have to visit with the other parent. According to Illinois law if it can be shown that a parent may seriously endanger the child, then visitation may be restricted (e.g., not allowed or supervised). The point is that this is not the child's decision but a matter between the parents. When children of this age are allowed to have much decision making power, they might demand excessive and inappropriate power during their teenage years and in rare cases become somewhat uncontrollable. When allowed to decide something as important as whether they will visit with the other parent, children get the false impression that they have the power to make other equally important decisions. Keep in mind that children of this age are not allowed to choose whether they attend school or receive medical treatment, etc. It is possible that a child who refuses visits at this age is often caught up in a loyalty issue with the primary residential parent. Older teenagers, however may reasonably have some say in how much time they spend with the other parent and the timing of the placement. The point, however, is that even with older children, e.g., a child who is 16 years of age, communication should first still be made through the adults.

**5. Do Not Take Sides or Take Issue with Decisions or Actions Made by the Other Parent When in Front of the Children:** This is perhaps the most difficult of the suggestions made. When a child becomes involved in a dispute with one parent, it is important for the other parent to remain neutral if he or she was not part of the original problem or discussion. When one parent happens to disagree with what the other parent has done, discuss this disagreement privately. After the private discussion, then the children can be told of the resolution. If a resolution cannot be reached the children may be told how the lack of a resolution affects them. This concept is part of the "presenting a united front," position. One father that I knew who had a generous parenting schedule, put it this way. When in front of the children he said he would always "bit my tongue." He stated that this new wife did not always understand why he did not take issue with his "ex" in front of the children but he told me that he always was able to maintain a close relationship with his children and work on a cooperative basis with his ex-spouse. Disagreements were voiced away from the children.

**6. Do Not Allow the Children to be in the Middle of Arranging (or Canceling Visitation):** Visitations should be arranged with the other parent. Often, I have had cases in which a child when the child is being exchanged for visitation will tell the other parent that he or she has certain activities, sleep-overs, etc., and therefore would like to come home early, etc. As the children become older, they should have some input in this regard. However, the children should not directly address their wishes in this regard to the other parent before the parents have had the opportunity to directly address the issue in private. Otherwise if there is a disagreement, one parent will be forced to break that “united front concept.” The best response for the father in this situation would be, “your mother and I will discuss it.”

**7. Do Not Allow Your Client to Communicate with the Other Parent through the Children / Do Not Allow Children to be a "Spy":** Parents find that it is convenient to allow the children to relay messages to the other parent because they are not communicating effectively. This violates the rule discussed above about not putting the children in an awkward and inappropriate position. Additionally, do not allow or encourage your children to be a "spy" on the behavior of the other parent.

**8. Do Not Send the Check with the Children — Even in a Sealed Envelope and Do Not Hand the Check to the Other Parent in Front of the Children:** The problem with doing so is that the check can be lost and once again the child is in the middle of a dispute. If a check is not paid through the State Disbursement Unit through a notice for income withholding, put the check in the mail. As to handing the check to the other parent in front of the children, I know of too many cases where this becomes problematic. It provides too many opportunities for discussions in front of the children about child support payments and the like — which should be handled privately.

**9. Do Not Degrade or Argue with the Other Parent in the Presence of the Children:** The prohibition about arguing with the other parent in the presence of the children is an obvious one. The rule that you should not even subtly denigrate the other parent in the presence of the children is much more subtle. Children realize the “lay of the land” much more than parents give them credit. When one parent harbors resentment for the break-up, I have heard the “wronged” parent say things such as, “My children deserve to tell the truth,” and “I will not lie to my children.” Children do not always need to know “the truth” about such things as who was at fault for the marital break-up. More subtle than this is a parent who, when discussing the other parent, will inevitably become angry, etc. The children will often in such cases side with the primary residential parent. The problem with this equation is that the strategy in many custody cases in which father's win is that they paint the children as alienated due to the actions by the primary residential parent.

**10.If You are the Non-Primary Residential Parent, Do Not Arrive Late or Not at All for Visitation:** An angry parent may arrive late for visitation in order to get back at the other parent. After all, it would certainly disrupt the other parent's schedule to be forced to wait around for the ex-spouse to arrive — especially if she has plans for the evening, etc. However, it is the children who are hurt most by this. Many stories have been told of children who sit around looking out the living room window waiting for a parent to arrive only to end up feeling rejected when the parent arrives late or fails to arrive at all. Unfortunately, in Illinois there is little that can be done to the parent who fails to exercise visitation other than punish that parent by withholding more visitation. The support guidelines in many states are based in part on the time sharing arrangement between the parents. This is not the law in Illinois. As unfair as it is, a parent who never sees the children must pay the same amount as a parent who sees the children 45% of the time (except in the unusual case of a deviation from the guidelines).

**11.Do Not Discuss Any of the Financial Aspects of the Divorce Process (Support, Maintenance, Arrearages, etc.) with the Children or in the Presence of the Children:** I believe this is perhaps the most difficult prohibition for parents to implement — especially when parents fail to pay support on a timely basis and especially when the other parent is at fault for the divorce. Perhaps one of the problems with Illinois' version of “no fault” divorce in which fault cannot be generally considered as to property distribution (except for dissipation), custody (except for matters which directly relate to the children and maintenance) is that the parties cannot vent their anger through the court system. Perhaps as a result, one way to a parent's feelings often come out is through the children and by bringing up financial issues to the children. I have heard parents state things like, “the children need to know what kind of man their father is,” when they tell the children that their father broke promises to them that things would be the same financially after the divorce as it was before. The simple fact of life is that parties cannot live as inexpensively apart as together. It can become very frustrating for parents to try to balance their newly more limited budget. As part of this frustration, they may express anger toward the other parent over financial issues. However, if such discussions are to take place it is critical that they take place when not in the presence of the children. Doing so requires the children to deal with an adult problem that they are not emotionally prepared to handle. Further, it embroils the children in the bad feelings between the parents. When activities and purchases must be limited because of limited or late support or maintenance payments when dealing with older children, the parent should explain such matters only to the limited extent necessary, in a nonderogatory, nonaccusatory manner. For example, a parent should not say, “We won't be able to go to the movie tonight because your father is such a jerk and we cannot count on him to give us the money when he should.” Instead, a parent might say, “It's frustrating to me and I'm sure it's frustrating to you that we don't have enough money to go to the movies, but we can't afford everything we want to do.”

**12. Don't Believe Everything the Children Say about the Other Parent:**

When one parent automatically believes everything a child says about the other parent, it is often the beginning of further battles in court or other problems. Even in intact families, the children may tell preposterous stories to the parents. If one parent hears something from the child about the other parent that sounds unreasonable, before posturing or preparing for battle it is appropriate to try to verify the child's statement with the other parent. If one parent cannot provide a reasonable explanation for what a child has said, it may become necessary to pursue the issue in other ways. I can recall one case I was involved in which the father was basing a petition to change custody and to and to restrict access to the children (via an order of protection) by what a child had said. My client came to my office with a letter written only months before this in which the children had said things about the father and the father had acknowledged that the child often says outlandish things about both parents and therefore should not be believed. There was nothing further to back up (corroborate) the child's statements. Not only was the petition dismissed but the father had to pay attorney's fees for bringing the action. A few years ago I went to a seminar by Dr. [Stephen J. Ceci, Ph.D.](#), in which the point was that children and especially young children are extremely prone to suggestions — even suggestions that are not necessarily intended. Because suggestiveness can be subtle and unintended, it is one more reason to be careful about believing everything said by children — especially young children.

**13. Do Not Agree to Split Custody Unless Absolutely Necessary:** Except in very unusual circumstances, it is generally a bad idea to separate the children. This is consistent with Illinois law in which there is a presumption that split custody is not within the best interest of the children. The exception to this rule is that when there is a very large family, for example, a family of six. In certain of these cases I have found that an arrangement for split custody may make much greater sense than in families of more normal size (two, three or four). However, even when children live separately there should be as many periods of placement in common as is possible.

**14. Before the Divorce Do Not Introduce the Children to a Person with Whom You are Dating — After the Divorce Do So Only with Great Discretion:**

It is difficult enough for children of divorce to deal with the termination of their relationship between the parents. Their burden increases if before the divorce they are introduced to the person their parent is dating. Not only does this send the wrong message to the children but it also is likely to breed resentment with the other parent. Some judges will restrict either parent from having a member of the opposite sex reside on an overnight basis with the other parent when the children are present — before the divorce. My experience is that most family lawyers will advise their clients that this sort of sleep over arrangement is a mistake. I go further. [As discussed in my Q&A regarding dating during divorce cases](#), I advise a client not to even let the other spouse believe that they are dating. After the divorce, if a child is introduced to frequent

non-marital companions of the opposite sex, it can result in false hopes and unrealistic expectations and lead to recurrent feelings of rejection. Once, following a divorce, that a relationship has progressed to the point of becoming a meaningful one, it is best to slowly introduce the children to that individual.

**15. Never Allow the Children (No Matter What Age) to Observe Sexually Intimate Behavior:** This should go without saying. This applies to both married and unmarried parents and applies even if the children are “screened off” from the adults bed. Although it may appear nature to expose children to this sort of intimate behavior, children are not psychologically prepared to deal with such observations during childhood.

**16. Do Not Allow the Children to Sleep in the Same Bed, Except in Very Unusual Circumstances:** Some parents believe that allowing young children to sleep with them reduces the trauma on the children due to the divorce or separation. Allowing children to sleep with their parents under these circumstances can result in unrealistic expectations of the child. Additionally, allegations of sexual abuse occur in divorce proceedings. Such allegations (even when unfounded) are devastating to relationship between the parents. Allowing children to sleep in the same bed — even when done for ostensibly good reasons — is a mistake.

**17. Do Not Ask the Child(ren) to Keep Secrets from the (ex-)Spouse:** There are common instances where a parent may want a child to tell a lie. An example, if a parent is late in picking the child up from an event. It is very disconcerting to a child for a parent to tell him or her, “Whatever you do, please don't tell your mother,” or “Be sure not to let your father know.” This places the child in the middle of a conflict and encourages the child to be deceptive, and engenders guilty feelings by the child if the child feels pressured to keep secrets from the other parent. Even innocent “keeping secrets” type behavior has come back to haunt parents when sexual abuse allegations have been made.