

## **LIST OF 'DO'S' FOR DIVORCE AND PARENTING**

**1. Engage in Mediation or Collaboration Before Litigation:** The research clearly indicates that cases in which the issue of custody is successfully mediated, result in greater compliance with agreements, a shorter period required for resolution of problems, less likelihood of re-litigation, and greater satisfaction with the parties' experiences. While there are those who disagree, I believe the same applies to collaborative practice. There are Supreme Court Rules which provide an "18 month" rule for custody cases. While at the outset of traditional adversarial proceedings, 18 months seems like a long time, if a case is to be tried and the necessary steps are taken to prepare a case for trial this is actually a relatively short time given the backlog in the divorce courts in which I practice (McHenry County, Kane County and Lake County, Illinois. Because of this many more clients and determining whether they can resolve their cases via collaborative practice -- before filing a divorce case. In both mediation as well as in a collaborative divorce, there are provisions ensuring that what is stated is generally confidential. As a result, you and your spouse can feel free to state concerns openly without fearing the statements will be used in future litigation. In the Fall of 2004, a new book was published titled, "[The Truth about Children and Divorce: Dealing with the Emotions so You and Your Children can Thrive.](#)" The author, Robert E. Emery, Ph.D., a professor at the University of Virginia performed research demonstrating the benefits of mediation with a long-term study of the effect of divorce upon children. It was released in August of 2004. There has not yet been similar studies as applied to collaborative divorce. However, most collaborative lawyers have been trained in mediation and it is believed that the same benefits would likely apply to collaborative divorce cases.

**2. Do Go to Counseling:** Counseling does not need to be long term or even regular and periodic. Instead, I recommend to my clients who have minor children that they attend counseling for the simple reason that I believe doing so will inevitably improve their parenting skills in terms of learning how to deal with the other parent constructively. It is not "natural" to have a decent working relationship with one's ex-spouse. Instead, what is more natural is following the break-up of a significant relationship is to terminate one's relationship with the other person. In divorce cases with children, the challenge is to be able to love the children more than they hate or dislike their soon to be ex-spouse. The goal is to be able to develop a "business relationship" with one's ex-spouse. In a collaborative case, the role of the divorce coach may replace the role of the counselor (although a client is free to continue to go to his or her individual counseling). Often the parties to a divorce will agree to go to one counselor with the goal of improving their communication and focusing upon such items as how to tell the children about the future divorce.

**3. Understand that Your Time Spent with the Children Will Lessen:** All parties to divorce proceedings need to understand that two parents living apart will not see their child(ren) as often as two parents living together. Each parent must realize that the time

their ex-spouse spends with the children is time that is no longer available to the other parent.

**4. 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.

**5. 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 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 interest. It has been suggested that 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. Parents need to tell the children that even though they stopped loving the other parent, they have not stopped loving them. It's a different kind of love that a parent has for a child. Children also need to know that they should love both parents and that they never need to take sides. Even when one spouse is to "blame" for the divorce, the children should generally be isolated from learning about who is to "blame" for the break-up of the marriage.

**6. Understand that Finances and Parenting Issues Don't Mix:** It is critical for you 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 visitation. A mother may withhold visitation because the father is behind in his child support payments. Both actions are wrong. Even more wrong is bringing up one issue or the other in front of the children. For example, I have been involved in cases where a father will tell the mother to get a job — while in front of the children. Similarly, there are cases in which the mother has demanded of the father what he pay support in front of the children. These sort of issues should not be addressed in front of the children. Similarly, be careful not to have conversations with others (including your lawyer) while in the presence of the children. I request my clients to tell me in advance during any telephone call if the children are present so as to ensure that there will not be substantive conversations when children over a certain age can hear what is being discussed.

**7. Consider Joint Custody Rather than Sole Custody:** The thesis of an article by my father and former partner about joint custody in Illinois was that joint custody was an experiment that largely failed but that it proved useful in avoiding custody disputes in many cases. I agree with the position that joint custody is often useful in avoiding custody litigation but I disagree that joint custody is “an experiment” which has largely failed. I believe that both joint custody and sole custody present problems. Generally, I define joint custody as being an arrangement in which the major decisions regarding the

children are shared in some manner. (Keep in mind that in Illinois this is not necessary what joint custody means — however because this is a common misunderstanding it is a useful starting place.) *Psychological Experts in Divorce* states, “Parents who are granted sole custody often portray a feeling of ‘ownership’ of the children which tends to lead summarily to the exclusion of the other parent. Even though two parents may not communicate effectively after the divorce, joint custody should be considered the optimal choice. Joint custody implies that the parents will be able to cooperate well enough to make joint decisions about such issues as the child(ren)’s education, religious upbringing, and medical treatment. In most cases, by the time the divorce has taken place, most of these decisions have already been made.” I agree with this statement. Generally, when representing the custodial parent, I ask that parent whether they have ever had a disagreement as to such issues as education, religious upbringing, elective surgery or the like. In the majority of the cases, the parties have cooperated well in the past in this regard. I will tell clients it is often said that the best indication of the future is the past. *Psychological Experts in Divorce* then suggests, “Sole custody should only be considered when one parent is clearly harmful to the children, is an active substance abuser, is chronically mentally ill, or has some other severe problem.” I believe that this is an over-statement, but the point is worthwhile. I recall studies which have shown that parents who have joint custody tend to spend more time with their children and tend to be more current in their child support obligations.

**8. Consider Sharing Holidays as Opposed to Alternating Holidays:** It is an overstatement to say that in the new millennium the concept of alternating holidays may be an archaic concept. It is better to say that if parents live in the same city, it may be best for the children to have contact with both sets of families during the important holidays. For example, one of my standard clauses provides that the non-residential 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 for the holidays. This does not necessarily mean that Christmas Day or Thanksgiving Day must be shared — although there is nothing wrong with sharing such days if the parties live in close proximity to one another.

**9. Plan and Consult with the Other Parent in Advance of Activities for the Child(ren):** This consideration applies to many factors in the overall development of children. When it comes to planning for lessons, athletic activities, recitals, counseling, extended medical treatment, etc., it is important for the parents to communicate with each other before implementing these plans. It serves to increase the acrimony between the parents if one parent makes plans without consulting with the other and then attempts to follow through with the plans without the other parent’s input. Inevitably, I have found that when one parent makes unilateral decisions affecting the children, this is a negative in the court’s eyes as well as the custody evaluator’s eyes. Remember, one of the most significant factors in custody cases is the willingness of each parent to facilitate a close a continuing relationship with the other parent the child(ren). Surely, if

the other parent does not even know about activities, that parent has no opportunity to be involved in the decision making.

**10. Observe Time Schedules Regarding the Children Strictly [Including the Time Schedules for Exchanges of the Child(ren)]:** The tardy parent should 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. Thus, I will often recommend that the visiting parent picks up the children and that the custodial parent pick up the children at the end of visitation — if the driving responsibility is shared. It is especially important to inform the other parent if a period of visitation cannot be exercised in as much time in advance as is possible. As a general rule, visitation should not be cancelled without at least 48 hours notice.

**11. Try to be Flexible Regarding Visitation (Parenting) Times for the Other Parent:** The corollary to being on time for visitation is that each parent should be flexible in implementing their parenting schedule. Lawyers will often tell their clients that they recommend a specific visitation schedule. Lawyers will also state that often the visitation schedule may be somewhat ignored to some degree unless either parent feels taken advantage of. In that event, then either parent has the right to insist that the schedule be followed as closely as is possible. No placement schedule can take into account all the possible exceptions that may occur. 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.”

**12. Do What Ever is Necessary to Resolve Any Angry Feelings Toward Your Ex-Spouse:** This is easier said than done. Generally in divorce cases, one parent has come to the conclusion that she or he wishes a divorce for a significant period of time before seeing an adversarial divorce or collaborative divorce lawyer. Often, the parent who chooses to go forward with the divorce has come to this decision over the course of one to two years. The other parent, however, often does not understand the reasons of the necessity for the break-up of the marriage. There is a grief process for any party going through a divorce. The stages of grief have been oversimplified as Denial, Anger, Bargaining, Depression, and Acceptance. It is especially prevalent for the party who does not want a divorce often has significant anger -- often throughout the divorce cases and occasionally for years following the divorce. Research clearly indicates that there is a significant amount of depression in children whose parents are fighting years after the divorce. Ex-spouses do not have to love or even like each other. They must, however, be able to “deal with one another” and be able to be civil with each other in the presence of the children. I refer to this as developing a business relationship. You will be in the business of raising children together. Angry feelings will be conveyed to the children and can cause serious problems — in some cases, even clinical depression. Perhaps more important, is your responsibility not to send subtle messages to the children that you do not like the other parent — even when the other parent is not present. As discussed above, I have had many occasions when a client will unload about

the other parents deficits. I try to encourage all of my clients to have conversations with me when they are certain the children cannot hear what is said.

**13. 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 a different way, it presents the child with a clear opportunity to manipulate the situation to the child's advantage. Discussion should take place and ground rules in place for dealing with specific problems which can be anticipated.

**14. Take the Children to a Therapist if Psychological Adjustment Appears Problematic:** Parents should not be running into 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. There is a difficult situation when one parent believes that counseling is necessary and the other parent does not. My impression is that most people err on the side of not having children (of a certain age) in counseling as often as would be helpful.

**15. Tell the Children Early and Often that They are Loved by Both Parents, that the Divorce is Not Their Fault and They are Not Getting a Divorce from Either Parent:** Too often parents assume that their children understand this truth even if they are not frequently reminded. During the separation period and shortly thereafter, children need to be told that they are loved. 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, fall in love and therefore 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. Children should be reminded that this is not the case.

**16. Provide the Children With an Emotional Environment that Allows the Children to Continue to Love the Other Parent and Spent Time with That 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.

**17. Encourage a Good Relationship between the Children and the Other Parent's Extended Family:** The thinking expressed in paragraph 15 also apply to children's

feelings about uncles, and aunts, grandparents and other members of either 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 there may be questions about the constitutionality of the 2007 [grandparent visitation legislation](#), parents should recognize that the children should not be getting divorced from their grandparents.

**18. Encourage the Child(ren) 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.

**19. Use Discretion Regarding The Time and Frequency of Calls to the Child(ren):**

Parents must recognize that when the children are with the other parent, they will be involved in family time, quiet time, homework time, etc. Frequent, unnecessary phone calls may serve to interrupt the child's routine with the other parent and upset that 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, often it is easier for the custodial parent to make the phone calls when the child is not involved in other activities.

**20. Recognize that Children May Feel Powerless and Helpless:** Children are subject to decisions about where they will live, with whom they will live, the school they will attend, etc., with little or no consultation. Further, if a judge is required to resolve disputes, some decisions will be made by a complete stranger. Therefore, recognize that children may feel both powerless and helpless about the outcome of their lives.

**21. Be Aware that Children May Feel Insecure and Exhibit Regressive Behavior:**

Divorce is a stressful time both for children and for adults. First, there is the break-up 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 bed wetting, whining, tantrums or other similar behaviors. If these continue for a relatively short time counseling is generally unnecessary. However, if such behavior continues beyond several months, therapy may be warranted.

**22. Be a Role Model for the Child(ren):** Parents should remember that the children will model their behavior from what they observe. If the parents are angry, over-reactive, significantly depressed, they are likely to have children who are angry, over-reactive or unduly depressed.

**23. Put Aside Your Differences With the Other Parent Long Enough to Allow Both Parents to Attend School Conferences Together:**

In custody disputes it is always a negative if one parent does not provide sufficient information, etc., so that the other parent can attend school conferences, etc. I have been involved in several cases where

the custodial parent will list his new spouse or significant other as the other contact with the school and fail to even mention the existence of the other spouse. This provides an excellent opportunity for cross-examination because it goes toward a mind-set of one parent in which she or he is not encouraging the involvement of the other parent in the activities of the child(ren).

**24. Both Parents Should Exercise Their Right and Their Responsibility to Consult with School Officials Concerning the Child's Welfare and Education:** [Under Illinois law, if a child is attending a public school, both parents have the right to access information about the child.](#) See 105 ILCS 10/5 which provides, "A parent's ... request to inspect and copy records, or to allow a specifically designated representative to inspect and copy records, must be granted within a reasonable time, and in no case later than 15 school days after the date of receipt of such request by the official records custodian." While I believe 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, make certain to ask for this information — preferably in writing.

**25. Promptly Inform (and Consult with) the Other Parent of Emergency Medical, Surgical, Dental, Institutional or Mental Health Care of the Child(ren):** An area of inquiry in many custody cases is a parents 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 (often the husband), 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 such matters with the other parent goes toward each parents ability and willingness to facilitate a close and continuing relationship with the other parent and the child. This is one of the critical factors in Illinois custody disputes. When the above information is withheld, post-divorce litigation is often more likely.

**26. Communicate with the Other Parent Openly, Honestly and Regularly to Avoid Misunderstandings Harmful to the Child(ren):** 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, etc. It is important for the parents to be able to communicate to “check it out.” If communication between the parents is so poor that this is not possible, this allows the child to try to manipulate one parent against the other, which will in turn increase the acrimony between the parents. In the end, the child is being taught poor communication techniques both parents.

**27. 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 that the child skip visitation due to a party, extracurricular event, etc. Any time the children are in the middle of communication, it is burdensome for them.

**28. Live as Close as is Possible and Practicable to the Other Parent — Especially if the Child(ren) 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 vicinity. Illinois law is restrictive about allowing removal. I have found as a practical matter, removal of the children from the state may be acceptable for older children if there is sufficient financial resources. In any event, however, parents should be encouraged to live as close to each other as is practical. Keep in mind, however, that living nearby is a goal that both parents should try to accomplish. However, living in the immediate vicinity is often not practical — especially following the remarriage of one or both spouses or a spouse's job relocation.

**29. Maintain the Same Set of Rules in Both Houses (to the extent possible):** Although it may be acceptable for the child(ren) to learn that different rules may apply to different settings, when the basic routines are far different, it can increase the child(ren)'s anxiety. Therefore, it is beneficial to keep mealtime rules, bedtime rules, homework rules, etc., 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, recognize that you cannot enforce rules or discipline while the children are in the other parent's home.

**30. Do consider Handling a Divorce Case Collaboratively:** If there is not recent domestic violence, do consider handling a divorce case collaboratively. A collaborative law setting is much more geared toward focusing both parents and what is best for a children. It brings tools to the table to help both parents do so that are lacking in a traditional adversarial divorce.