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Divorce Tips & Traps

During divorce proceedings, emotions run high. You may feel angry or betrayed. You may want to take immediate action. However, there are a number of pitfalls that you must avoid and tips to help you prepare your case.

Recorded Statements.

In a contested divorce always assume that any statement you make is recorded. This includes telephone calls and answering machine messages. *Do not say or do* anything that you would not want a court to know about. In most states it is legal to record any conversation that you are involved in. Such recordings are admissible in Court. However, it is a felony to record a conversation in which you are not involved. An example would be placing a recording device on a telephone to capture conversations between your spouse and another individual.

In some states, any recording may be illegal if the other party is not informed that the recording is occurring.

Most courts disapprove of recordings of conversations with the children since it involves them in an adult dispute. ALWAYS consult with a lawyer in your state before making any recordings.

Speaking with Opposing Counsel.

Once you are represented by an attorney, opposing attorneys may not speak with you regarding the case. If they call you refer them to your attorney. Do not call them even if your lawyer is unavailable and you consider it an emergency.

Speaking with Judges.

Parties may not speak with or provide letters to a Judge unless it is part of a scheduled hearing. Contact without the other party present is called ex-parte contact and is prohibited. You may object to any correspondence from the other party to the Court if there is no motion pending before the court.

Parenting Notebooks.

In a custody proceeding it is important to maintain a notebook including dates that events occur relating to the care of your child(ren). What is the daily routine? Who takes them to the doctor? Who takes them to school activities? List any concerns

regarding the other party's parenting including the method of discipline, drug use, alcohol use, disabilities or neglect. It is preferred that such records are hand written since it provides a contemporary record. By contrast, typed notes may always be modified after the fact. Once these documents are created, they may be discoverable by the other party if you intend to use them in Court and are not simply providing records to your lawyer.

Independent Documentation.

In a custody proceeding courts are often faced with conflicting "he said" and "she said" testimony. It is very important to *find independent documentation to verify any statements*. For example, if you contend that you are the primary caretaker, reports from doctors, daycare provider or teachers may document your attendance at parent-teacher conferences, signing off on homework or taking the child to the doctor. It is very important that you acquire this documentation when possible. If domestic abuse is an issue, you may wish to document incidents with police calls to the homestead, police reports or orders related to domestic abuse. If drug or alcohol use is an issue, a driving record showing DWI arrests or drug charges may prove invaluable. This may also apply to any individuals that have frequent contact with the children. If they are a danger to the children, it is relevant.

Involvement with Children.

Avoid involving minor children in the proceeding. It is not appropriate to show your child court documents. This may harm the child emotionally and damage your case. Also, you should avoid blaming or vilifying the other parent in the child's presence. Remind the child that the divorce is not their fault and is a parental dispute. Tell your child (no matter how you truly feel) that both parents love them.

Photograph Property.

To prepare for divorce, in addition to acquiring necessary documentation, you may wish to photograph or videotape your furnishings, personal property and real estate. By photographing the contents of your home, you will create a comprehensive log of your possessions and the condition of your home. It may be difficult at a later date to recall all items or necessary repairs.

Don't Lose Your Temper.

One of the most abused processes is the *ORDER FOR PROTECTION* alleging domestic abuse. Do not get caught in this trap. It makes any custody battle very difficult since there is a presumption under many state laws that an abuser should not have custody. Do not yell, grab, hit, or throw anything in the presence of your spouse or, even more significantly, in the child(ren)'s presence. If your spouse tries to incite you, walk away. Something as simple as blocking someone's egress from a room may be considered abusive.

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