

FAMILY MATTERS "Q & A" NEWSLETTER
HOW CAN A CUSTODY CASE BE LOST IN 7 EASY STEPS?

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Greetings to Mental Health Professionals:

We appreciate your involvement in our annual Legal Workshops for Mental Health Professionals conducted at the Port Washington Yacht Club. It has been our desire to provide an exchange of legal and mental health issues in the area of family and matrimonial law to help create a better understanding of the Court process, and to help MHP's assist your patients who are experiencing marital problems, or who are contemplating or going through litigation. At our workshops, we have been asking attendees what additional information you would like to learn about in the areas of family law that would be helpful to you and your patients. In response to your requests, we have established the following Family Matters "Q & A" Newsletter. We hope this information will be useful for your needs.

We are certainly open to receiving questions from you that we can answer in future newsletters.

As a family law attorney who regularly represents mothers and fathers in contested divorce trials, Jacqueline Harounian has very some straightforward advice for parents going through divorce, and who are contemplating a custody action.

From the outset, it is important for mothers and fathers to recognize that married parents of minor children start out with *joint custody* rights. This means that both parents have *equal* rights to their children, and the same right to pursue custody of their children in their divorce case. In a world where many households contain two working parents, and many fathers play an active role in raising their children, the presumption that mothers will automatically get custody *no longer exists*. In fact, statistics show that fathers who seek custody of their children, are awarded custody 50% of the time. Custody laws are gender neutral, and this means that when the facts of a given case are applied to the governing law, a court may determine that it is in the best interests of the child to live primarily with the father, not the mother.

Here is a list of the seven most common pitfalls of parties going through custody actions. If you want to lose your custody case, here is the way to do it. If you want to win custody, steer clear of the following:



Not being the primary caretaker:

In most households, one parent is most responsible for caring for the children's basic needs -- the so called primary caretaker. The parent who is the most involved in the children's daily lives usually has the edge in a custody case. Therefore, if you are not putting in the time to do homework with your child, feeding, bathing, reading, taking him or her to the bus stop, you are at a disadvantage in a custody case. There is no better way to lose custody than to demonstrate to a judge that you are simply not engaged in raising your child.

Not being involved in your child's schedule and activities:

Do you know the names of your child's teachers? Have you ever supervised your child on a playdate or taken your child to the doctor? Do you regularly attend school conferences and school events? If the answer to these is "no", then it is an indication that someone else (i.e. the other parent) is the primary caretaker, not you.

Alcohol, drugs, or other "parental fitness" issues:

A parent who even casually partakes in abuse of alcohol and/or drugs will have a problem in winning custody. Most judges will take allegations of substance abuse seriously, and these allegations will be investigated thoroughly via random testing, psychological evaluations, and interviews. If you have an issue with substance abuse, then seek

treatment for it immediately. If you are the perpetrator of domestic violence or abuse (which often goes hand in hand with alcohol use), this also pretty much guarantees that you will lose custody.

Leaving a paper trail that will hang you in Court:

Thanks to new technology, virtually every custody trial features the submission of evidence that can be used to portray the other parent in a very damaging light. Sometimes the evidence can make or break the custody case. The evidence can include text messages, photos and negative emails. Also potentially harmful are video and voice mail recordings (a la Alec Baldwin). If you are prone to sending impulsive emails and texts, ranting and raving at the other parent, third parties, or your own child, you are at risk of losing custody.

Disparaging the other parent:

Judges tend to look favorably upon a parent who demonstrates that he/she supports the child's relationship with the other parent. A parent who is constantly denigrating the other parent, "leaking" anger, and negatively influencing the child's relationship with the noncustodial parent will be reprimanded. In extreme cases, there will be allegations of parental alienation and interference with parenting time. Many judges will consider a change of custody if this type of interference is shown. Bottom line: if you want to show the Judge that you will promote the best interests of your child, then you need to show that you recognize the value of the child's relationship with your ex, and will take the steps to encourage that relationship. Of course, when you are going through an adversarial proceeding with someone you don't like very much, it can be very hard to put those feelings aside for the sake of your child. But that is exactly what you need to do if you want to prevail in your case.

Showing lack of control:

It is critical to consistently act with good judgment and self control if you want to win custody. A parent who regularly loses control, and who cannot manage his/her anger will be at a disadvantage. I have handled many cases where a litigant will lose control right in the courtroom, in front of the Judge. An angry outburst in court will be remembered. Similarly, parents who "act out" in front of the child's attorney, social workers, teachers, neighbors, etc. will find themselves confronted with a lot of negative testimony and evidence at trial. This is where the voice mails and emails also come into play. If you are serious about winning custody, then you must exhibit self control and put your child's needs first. Going through a divorce is a difficult, emotional process. A custody case raises the stakes considerably. If necessary, seek counseling to get your anger under control. At the very least, taking this step will likely lead to improved relationships with your ex, other third parties, family members, and your child.

Failing to follow your attorney's advice:

Going through a divorce and/or custody proceeding is one of the most stressful experiences there is. Whether you are

seeking primary custody of your children, joint decision making, or a customized parenting plan, your goal should be to survive the process while protecting your rights to your most valuable asset -- your children. It is critical that you seek out the advice of an experienced family law attorney, who has handled contested custody trials (not the attorney who did the closing on your house, or the lawyer who charges the lowest retainer to do an uncontested divorce.) With an experienced advocate by your side, you can avoid making the mistakes outlined above, and you can be successful in your custody case.

The above “Q&A” Newsletter questions were answered by Jacqueline Harounian, law partner at Wisselman, Harounian & Associates, P.C. You can reach Jackie Harounian directly at Jackie@lawjaw.com if you have any questions or would like additional information.

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