

Family Law Survival Guide

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Foreword

Heidi Kuffel, Esq.

Attorney Jenet G. Pequeno's Family Law Survival Guide contains an abundance of practical tips to help you through a dissolution of marriage or other family court proceeding. Reading this guide will give you insight into how to work as seamlessly as possible with your lawyer and help bring you into the legal world. Jenet's insights will help to simplify your understanding of the court process and your role in it, so that you can formulate your own Expectations about courtroom procedure and portray your true self.

In this practical guide, Jenet asks you to focus on what matters most to you, which in turn creates a roadmap for you to get through what could quite possibly be one of the hardest times of your life. Family law can be overwhelming, but this read will certainly alleviate some of the stress you are Experiencing and provide answers you are looking to find.

-Heidi Kuffel, Esq.

1 How to Choose a Lawyer

Most people would rather not deal with a lawyer, especially when it comes to their private lives. Sure, there are times when hiring a lawyer comes about through a positive situation, such as the purchase of a new home or the joy of finalizing an adoption. When it comes to family law, the focus is on the most personal aspects of your life. There might be a great deal at stake, such as your significant other, possibly a child or children, and your personal financial well-being. These are not small issues, and not every attorney is built to handle cases that involve all of these aspects. In this modern age, the internet supplies an abundance of options, the Yellow Pages are not as utilized as they once were, and, of course, there is word of mouth.

Once you have the name of an attorney or two, what should your next steps be? First, you need to set up a consultation as soon as possible. There are many time-sensitive issues that need to be addressed, for Example, the sale of real estate or the off-chance that your Ex could leave the state with your children. Even if you do not believe there is an emergency, you still need to talk to an attorney.

Prior to your consultation, I recommend that you make a list of all of the questions you want answered. There is nothing worse than making the effort to visit an attorney, going through the consultation, and then forgetting to ask a basic question. While I always make myself available after consultations to answer follow-up questions, not all lawyers follow this same process.

Like any other relationship in life, your relationship with your attorney can only be built on trust. Can you trust the attorney to handle your case? How did the attorney treat you during the first meeting? Some attorneys have superiority complex and treat their clients as if they are beneath them. In the more than 11 years that I have been practicing law, I have seen plenty of lawyers talk down to their own clients when it was completely unnecessary. As a client, you should always be treated with respect and courtesy.

A good lawyer should also be willing to read the documents that you bring to a consultation. Some attorneys will not read pertinent documents until a contractual relationship is in place, but a good lawyer should be willing to read the general orders, divorce decree, or pending motions at a minimum. In particular, reading the divorce decree is Extremely important if there are post-decree issues since that document is the road map to the type of legal strategy that should be followed. The best strategy that a lawyer can come up with should focus on your goal as a client and match up with the relevant motions that need to be filed to get you where you want to go in the courtroom.

You can and should ask the attorney to suggest the strategy that would best optimize your position. Then ask yourself if you feel comfortable with that strategy.

You also need to know what type of attorney you want to handle your case. Do you want someone who will make an argument just for argument's sake, even if you do not necessarily want to? Some attorney's fight and oppose basic motions in family court to bill more hours and thus charge more fees. You do not want an attorney who is afraid of trial, but do you need an attorney who is never agreeable? If you pay close attention during your first meeting, you will probably be able to tell the personality type of the attorney.

Family law cases are never quite winner-take-all situations. There will usually be some give and take by both sides for a successful negotiation. In my Experience, some judges have commented that in highly successful negotiations, nobody is fully happy. There will not be a situation where both parties are equally involved in the process and then only one of them gets 100% of everything. There are settlements in family court and there are trials. The sooner you and your ex can agree on getting out of family court, the more money you and your ex will stop shoveling to the lawyers. If you are being reasonable and your Ex is not, they can needlessly rack up legal fees for both of you that can be better suited to your family, your new life apart from your ex, and costs or savings for your children, if you have any.

The best lawyer for you is one who will get you across the finish line and help secure assets for yourself at the conclusion of the divorce. After all, what good is fighting over custody or money issues if you cannot afford a decent home when all the fighting stops. You have to feel good about the attorney you select and how they actually work for you. You should never feel like your lawyer does not have enough time for you or is not Explaining items to you. I cannot tell you how many times I have read someone's decree, which was written by another lawyer, and then Explained it to them only to learn that their prior lawyer did not Explain that item to them. It happens more often than not and you do not want to be the person who gets in too deep with a lawyer like that.

2 Family Court Procedures

There are three goals of a family court judge:

1. Enter a Judgment through agreement of the Parties or by default.
2. Enter a Judgment after a Trial.
3. Dismiss the action because the parties reconciled or simply stopped coming to court.

But how does all this start? What is your role as a Party to the case, and what is your attorney's role?

To begin a divorce or parentage action in family court, a Petition is required. The Petition basically outlines your family history, including date of marriage and children born to the marriage. The Petition needs to be served with a Summons by a process server. Many people try to accomplish this themselves, and when they get to court, the Judge asks them how they served the other side. They look at the judge and answer, "I gave the papers to my Ex myself." This does not work because to serve papers, you cannot have an interest in the case.

In Illinois, sheriff departments serve or special process servers serve the documents. Once the other side is served, the person who gives your Ex the papers will create an Affidavit of Service. Once an Affidavit of Service has been created, you file it with the Court with a Notice of Filing. Are you starting to see how this goes? As a lawyer, I can ramble on this very easily as I have done this for quite a while now, but people who have no Experience in this area have real trouble. Some people simply cannot afford an attorney; but if your Ex has one, it is probably most prudent to also have one. Some lawyers only care about their client's interest and will put that ahead of your child if you have any.

In family law, the court needs to know about the financial situation of both Parties, and there will be lengthy disclosures to itemize your Expenses and sources of income, and show a tally of all of your assets and debts, and the amount of income you have available per month.

If people cannot (or will not) trust the disclosure provided by the other side, there will be a process called discovery. What is discovery? As they taught us in law school, discovery can be equated with mounds of paper. It is the right that both Parties have to request specific documentation from each other that can go back several years. Ex-Documentation might include credit card statements, bank statements, retirement account statements, casino reward member status, airline mile statements, expenses, wills, and so on. Once all of these documents have been exchanged, both sides can begin to assess the strengths of their respective arguments. Did your spouse really spend all of that money, or did they hide it somewhere? Did they spend it in a way that was abnormal during the marriage?

Once this is completed, the attorneys can begin negotiations. If there is no chance of negotiating, then Exit is probably best to set a trial date once all of the documents have been

Exchanged. There is nothing that continuance after continuance can do to change the mind of someone who does not want to settle. Just to let you know though, only about 5% of divorces that are filed ever go to trial. Judges might also set a pre-trial conference on cases to avoid trial.

What is a pre-trial conference? It is something that is usually best done after discovery is complete so both attorneys can determine the strengths and weaknesses of their cases with full knowledge of what the documents say. The attorneys then condense this information for the judge and tell the judge if the Parties to this divorce do in fact agree on certain items, and then argue their points on the items that are not agreed upon. It really is a judge's way to get the cheat sheet to the items in dispute without having to go through the rigors of a trial, which can be time consuming on the court and very Expensive to the parties. The Judge will give his recommendation and the Parties are then free to accept the recommendations or else go to trial. A pre-trial conference will normally settle the remaining disputes among people. I know I am giving brief overviews of the process, but the items in this chapter can occur up to one year after the divorce is filed.

3 Social Media Dos and Don'ts

Do you have Facebook, Twitter, Snapchat, or any other social media accounts? If you do, you are certainly not alone. Especially if you have children, have you been careful about what you are posting on social media? I cannot tell you how many times I have used photos that were posted to Facebook as evidence in my cases. Have you posted photos of yourself with an alcoholic drink in your hand? Sure, you may have been out during a weekend when you did not have your child in your care, but how does that look? Like the old Cannon commercials with the tennis star Andre Agassi would say, "Image is Everything." Do not put yourself at risk. I am not saying that if you are in divorce court, you have to go back to prohibition. My advice is to use your best judgement.

Also, if you find photos online of your Ex, are you thinking clearly about what is depicted? Are you assuming that your child was left at home while your Ex was out partying? Look at the dates on the pictures or the dates when they were posted. Are you clear-headed about the pictures? Do you drink too, but do not have the lack of sense to post them online?

Care needs to be taken regarding what is alleged in court. For Example, if you allege your Ex is out partying, drinking, or doing drugs, the court can order drug tests to be done. If your Ex comes back clean, then you are the one who looks like you lied in court to retaliate against your Ex. It may make you look like a lover scorned. If you are going to allege something in court, you must have a strong basis. The use of a few photos in court is not going to make the difference.

To be honest, I have never seen a situation where social media helps in a custody case. More often it is just there, but not really rendering any assistance to a case. My caution to you is to bear in mind it can certainly hurt your case if you are careless about your behaviors or the company you keep.

4 What Do I Need to Focus On Prior To The Divorce Process?

I believe it is important to distinguish between children and financial matters when it comes to the divorce process. First, for your children, consider how to talk to them about the process. Divorce is never a child's fault, but many children do internalize the blame for their parents not staying together. Divorce can have a debilitating effect on children that can cause emotional repercussions into adulthood. A study published in 2014 by the Tulane University School of Medicine showed that children who witness domestic violence have shorter telomeres than their counterparts who do not have that type of Experience. Research shows shorter telomeres have been associated with poorer health and shorter life spans. Domestic violence can hurt children down to their DNA essentially.

This is why I advocate that both parents need to do their best to contain and control their emotions. Look for positive ways to Express negative thoughts. Go to the gym to relieve some stress. Pick up a new hobby. Do something that will distract you from the anger that you feel toward the other person. Your children can sense this. They know when the room is filled with tension. They can read non-verbal cues. The less anger that you display, the better the decisions you will be able to make. The judges in family court do not share the anger at your spouse that you may feel. You may be rightfully angry at your Ex, but it will get you nowhere fast in court. Instead, what it can get you is a very large bill from your attorney when that money could have been used for new furniture, a down payment for housing, or even savings for your child's college Expenses.

Focus on minimizing the impact of your divorce on your children. Look to your future budget and living Expenses and know what type of housing you will be able to afford on your own. Consider the schools in the area where you will be living. Can you afford to live in the district where the children attended school before the divorce process began? Continuity is important in helping children cope after divorce hits. The more things that can remain the same, the better off they will be.

With regard to finances, know that there is a presumption that all income made and property obtained after the divorce is considered marital property in Illinois. Illinois family courts are based on equity, which means that the courts will be seeking to divide up the estate fairly and not necessarily evenly. Of course, there are areas where you will be able to keep what was yours prior to the marriage as your separate property. For Example, if you had money in a 401K prior to getting married, that money could be taken off the top before figuring out how to divide the money that accumulated in the account afterwards.

Be wary if your spouse has begun to hide money or change their email passwords. Keep an eye on the accounts. Is money disappearing inexplicably? Is your spouse working later than ever before? Never rule out the necessity of a good private investigator either. They can sometimes find assets that the other spouse had concealed. If your spouse is cheating on you, know that

Illinois is a no-fault divorce state. So sadly, if you do not have a pre-nuptial agreement that penalizes that kind of activity, you have no legal means to take your vengeance out on them.

Does this mean there is never any way of getting back at this person? By no means. If you can prove that your spouse bought their paramour lavish gifts of value and worth, then you can potentially be reimbursed half the purchase price of the item. When one party buys items for their lover with money that rightfully belongs to the marriage, this legal concept is called dissipation of assets. It is actionable in court and you should be compensated. You should not be unduly burdened with paying for your spouse's lavish gifts. Clearly a gift for a secret lover is not an asset of the marriage but rather a drain on the marriage. You just need to let the court know about it in a proper and timely manner.

The court is interested in division when it comes to the children, assets, and debts. What you need to be concerned with is what source the assets and debts came from. You need to know their initial and present values. The court will then go about the business of moving items to each side of the aisle—some for you and some for your Ex. If you can remember this is a business decision, you will be better off in the long run. I know it is hard to eliminate the emotion in these situations; but for your own benefit, set goals and consider yourself the CEO of this divorce.

5 Common Pitfalls

Anger. Period. Point blank. If you are governed by anger in this process, you really risk clouding your judgment in ways that can result in bad decisions. Lawyers can only counsel you. We cannot force you to do anything. We make recommendations based on the facts. If you are angry, you can make small arguments large, and quickly Expand the legal fees you will be paying. Anger can also cause large arguments to go to trial. I am not saying trial is wrong, because sometimes you have no choice. You might have a perfectly valid claim and yet your spouse and their attorney are a toxic pairing of unreasonableness. I have seen this combination before. This type of attorney preys on the anger of their client to justify making arguments at every turn, even if they are unnecessary. Is this permissible? Well, frankly, yes. Attorneys are allowed to advocate for their client's positions. They can file motions, judges can hear them, and they can lose. It is a part of Due Process. The question you have to ask yourself is this: Do I want to be one of those people whose anger fills the pockets of my lawyer?

I have been on the side where my client was super reasonable and the future Ex was not emotionally stable. I have even seen the wife of a client raise complaints about me to the Bar, only to have such claims thrown out right away. Some people are just toxic. They are the only victim and everyone in the world is out to get them. This type of person may never want to settle; but the point is this: do not let anger cloud your judgment.

One other item I have yet to address is substance abuse. A bottle of alcohol may help you forget the problems at hand, but they will not eliminate them and can sometimes be like pouring gasoline on a fire. I am not saying do not have any alcohol. I enjoy a nice glass of wine on occasion with dinner, and by nice, I mean \$7.00 bottle. I also have an affinity for craft beer. But do not overdue it. I am telling you, your spouse can bring pictures of this into court and characterize you as one big lush. That is never a great reputation to have in court. You do not want that reputation.

If you are paying child support or providing any cash to your future Ex before a Judge has told you to, be sure to do so only using payment methods that allow you to have proof. That means no cash payments. You need to document everything.

Did you have a juicy conversation with your Ex and they admitted to everything you ever suspected them of doing? Good. Did you get their permission to record their confession? Did you happen to get it in writing? If not, then if you ever say and repeat those items in court without proof, then you simply come off as an angry Ex. Sadly, with our system of laws and regulations, in some situations it is not about what is true, but rather what you can prove under the rules of evidence. Trying to do things alone is also a common pitfall. If you can get a lawyer, I highly recommend you use one. Going through this process alone may be hazardous to your health.

6

Let's Talk About Your Expectations

Do you want to take your Ex to proverbial cleaners? Do you want to show your Ex the error of their ways? Is it a situation where, "How do I loathe thee, let me count the ways?" That will get you nowhere fast. Illinois is a no-fault divorce state. That means unless you have a pre-nuptial agreement that spells out bad actions with real, specific consequences, then you will not punish the Ex for anything bad they have done. I want to dispel that thought, because I have seen firsthand how damaging that can be to a party in divorce.

A former client of mine was filled with venomous hatred for his Ex because she cheated on him and started a new business with one of his employees. She also tried to steal customers from my client's business. That venture failed for my client's Ex, and my client was a very successful business man. He was earning over six times what his wife was earning, and the business he was operating was formed during the marriage. His anger prevented him from seeing or understanding that the business was a marital asset. He was mad (rightfully so I might add) but this does not eliminate a legal right of his then-spouse to some sort of buyout of that business asset.

This is how the court looks at everything: is it a debt, or is it an asset? The system is not perfect, but it is all we have. Divorce cannot happen using brute strength. My client did not want to offer his future Ex one dime. Not even one dollar. He was overly angry and really did not let his business acumen come through. The upper limits of his business evaluation would put the corporation at hundreds of thousands of dollars, and yet he would not offer her anything. In his mind, the only "reasonable" solution was that his Ex get zero dollars. Zero is hardly ever the answer in court, and after a nine-day trial, he ended up paying her \$70,000 for the business. I got a fantastic result for this client at trial, but he should have settled. Her lawyer would have taken \$60,000 and \$7,000 in attorney's fees prior to trial, but he did not accept that. It was a lot of pressure and this particular client was still not happy he had to pay her \$70,000 for the business. In my opinion, though, it was a win because he could have paid up to \$140,000. We essentially won, but why gamble with so much? Why be so unreasonable? No judge would award the wife nothing in this situation. So why did he do it? In one word, ANGER.

Do not let your Expectations be governed by ANGER. Always be alert and aware of how you are feeling. Do not let your decisions come in the heat of the moment. Also, if you have to testify in court, do not let your anger lash out at the other attorney or the judge. Second to lying, I believe the next worst behavior in court to be anger.

Obviously, I need not mention how bad it is to lie in court. It could be subject to perjury, and it can greatly decrease that person's credibility. If there is an issue that could go either way, the judge may rule against that individual just because they did not treat the court with all the respect that it is due.

I know that one of the base desires in a divorce is for self-preservation. That is understand-

able. Nobody is faulting you for that. But if you simply start with the position of understanding that Illinois is an Equitable Distribution State, then you will begin to comprehend how the judge is looking at this. The judge is not there to give one of you a raw deal. They are there to determine if the settlement and parenting agreements set before them are clearly written and enforceable. That is their main duty. In the rare occasion when a judge does not feel the agreement is fair, then the judge can reject the agreements and send both parties back to the drawing board.

Now consider this: since your wedding day, everything you have accumulated is now considered marital. There is the occasional Exception, such as an inheritance or some other factor in the law. In most families, however, people do not get married with a list of what is mine and what is yours just in case we get divorced. Every dollar you put into a retirement account, that is marital. Each property you purchased after the marriage with a down payment that you and your Ex saved for, that is marital. Your lottery winnings the week before your divorce is final, that is marital. Do you see the pattern? There are arguments to chip away at the 50/50 split. Those arguments are left to the sophisticated attorney to create for you and argue in court. Of course, your desires and goals in the divorce are the priority. Sometimes, you just have to think outside the box to get to those desired outcomes.

No two cases are ever the same in all aspects. There are similarities, but there are no cookie cutter human beings. That is why it is of the utmost importance that you hire an attorney who will advocate for you in a specialized and focused manner with a hand-tailored litigation strategy taking all factors you deem important into consideration.

