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## Family Matters E-Newsletter April 2018

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## The Top 3 Mistakes That Parents Make in Custody Cases

By Amy A. Edwards

*Like King Solomon, judges cannot split the baby, so they are forced to make a plan B decision in every single custody case.*



Almost every judge will tell you the same pet peeves in custody cases, and they are shown below. Although parents are pitted against each other in an adversarial way in court, judges view relationships in a different way when children are involved. Their assumptions are based on your child's viewpoint, not on which parent is better or which one "deserves" the children. Like King Solomon, judges cannot split the baby, so they are forced to make a plan B decision in every single case.

### **Mistake #1: Withholding Visitation**

If a child resides primarily with you, be reasonable about visitation, especially when there is no order or separation agreement. Don't consider the other parent's bad behavior as a way for you to punish him or her by discouraging visitation. Don't let your kids dictate when they will or won't visit the other parent, especially if there is a court order requiring a certain schedule. You are the parent. Strongly encourage them to visit so they don't grow up resenting the fact that they missed out on a relationship with the other parent. Even if the other parent is not a great parent, he or she is still a parent.

### **Mistake #2: Not Paying Child Support**

If you pay child support, don't stop paying it because you aren't getting to visit with your child. Custody and child support are completely separate claims, and you cannot legally fail to pay because you don't get time with a child. Do your best to consider your child, not whether you are right or wrong. Your child is an innocent third party in your divorce or custody battle. You do him or her no favors when you possibly keep your child from doing things the other kids do, such as participating in extracurricular activities. It's not the job of grandparents to support your child. Leaving your child at the mercy of other people makes him or her feel like a burden.

### **Mistake #3: Putting Kids in the Middle**

Don't grill your children about the other parent's cashflow, friends or significant other. They aren't miniature private investigators. Let them be kids. A child should never feel guilty for loving the other parent. It is unkind for one parent to talk badly about the other parent and the other family in the presence of your child or discuss them in an unflattering way. Remember, your child is part of that family too. Give kids the opportunity to have as many loved ones in their lives as they can.

You should never "unload" on your children, and don't discuss child support with your child, or whether you get to spend time with him or her. Remember, your child is not your attorney, therapist or advocate. A counselor can be a valuable resource by helping you unload the baggage of your dispute with the other parent. It can also give your child an opportunity to share concerns with a neutral adult. Judges favor counseling. Judges can't "fix" families but they can send them to someone who is trained to assist mending family relationships.

Amy A. Edwards is a family law attorney in Greenville, NC, certified by the NC State Bar Board of Legal Specialization as a Family Law Specialist, and is licensed only in NC. Laws change. This article is current as of April 2018. [www.AmyEdwardsFamilyLaw.com](http://www.AmyEdwardsFamilyLaw.com)© 2018.

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## Why Are They Doing This? Motives in Family Law Disputes

By Amy A. Edwards

When they are trying to settle their cases, clients ask why the other parent or spouse is doing certain things. As attorneys, we can't know exactly what anyone is thinking or tell you the reasons why people do things. But based on our experience, we see some routine reasons people do things when they are dealing with family issues such as a divorce or child custody matter. Unfortunately for many families, the legal system is an adversarial one.

When a spouse or parent gets along fairly well with the other, each might intend to reach an agreement without the time and expense of court. They may already have attorneys and the negotiations may be underway but when one decides to take action against the other (often by filing a lawsuit), it can be shocking and very offensive. People have many rights they can exercise, even doing so isn't necessarily useful or "fair." It goes against common sense, but the law doesn't always require reasons for doing things. It is a system, played out on under the fluorescent lights of the courtroom.

The most common time for wondering why the other side does something is when one party decides to file a lawsuit out of the blue. The only way to force someone to do something is to take it to court. Instead of letters going back and forth, a lawsuit means there is immediately a list of deadlines and a trial date. It can mean someone calls a bluff. The other person must then decide if he or she really wants to litigate their case or not.

Another common question is why the other side is lying about something in court documents. First, lying is frequently open to interpretation. Second, people do genuinely misunderstand and/or miscommunicate about their dispute, which probably contributed to

their separation or dispute in the first place. By the time you add two attorneys with second-hand information arguing about something, you have four interpretations of the same event or fact. Others are in denial about what really happened. Third, people do lie.

The relationship between the attorney and client offers another piece to the puzzle of figuring out why people do things that don't seem to be practical when dealing with a dispute. Like any relationship, there are numerous types of the attorney-client relationship. Some clients actively manage their cases or even argue about the way their case will be handled. Other clients are passive and do everything they are advised to do with no questions asked.

The relationship can mean the other attorney is in complete control, and perhaps aggressive and prone to "scorched earth." When a client has plans about how the attorney will assist him or her, the case will reflect more of his or her values. Emotions run high in these cases, and it is easy to get wrapped up in the relationship itself and hurt feelings. Unfortunately, another reason a case takes a turn for the worse is finances. This means the person who has the money might turn up the pressure, a tactic to "starve out" the other person financially.

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## Digital Privacy: Does Your Separation Agreement Have it?

By Amy A. Edwards

*People don't always think about their digital property and privacy but they should.*

People think of dividing assets like the cars and the house when they separate but they don't always think about their digital property and privacy. There probably aren't lots of "boiler plate" paragraphs in separation agreements but you should ask your attorney to address it.

### **What is Digital Privacy?**

My definition of digital privacy in divorce cases includes your ability to exercise sole exclusive use and ownership of your personal data, be it by key keypad, smart phone or computer. While there are legitimate and lawful purposes for using each other's personal data, such as applying for social security benefits or filing tax returns, there are many other uses your ex might want to make of your data, even if it is just being nosey.

### **Protected Information**

A good separation agreement should define what type of information should be protected. Your ex should be required to maintain the confidentiality of your personal data, such as financial records, legal affairs, medical records (including any substance abuse or mental health records), employment, records, and military or school records. Social security numbers, taxpayer identification numbers, passport numbers, date of birth, mother's maiden name, or any other similar identifying information should be held in confidence. Require other identifying information like your online account numbers and passwords, ATM transactions, your credit report, personal identification numbers (PINs), and info for online shopping web sites such as Pay Pal or Amazon to remain confidential. Posting or other sharing embarrassing and/or sexually explicit or sexually suggestive material should likewise be prohibited.

### **Access and Security of Digital Data**

By the time you've shared a child or a marriage, you can probably guess each other's passwords or PIN numbers. Your first plan of attack is to change your passwords and other barriers to access. Get a copy of your credit report and close accounts you no longer use. In the agreement, list examples of what is considered a violation. The most common examples are accessing the other party's Facebook or other social media account, accessing his or her phone, text or voice mail messages, and e-mail messages.

### **Public Embarrassment and Humiliation**

The law related to social media and what can or cannot be used or posted is constantly evolving, as is the technology we use. It can be difficult to determine

what is, or is not, acceptable because these issues implicate Constitutional freedom of speech and the definition of what is a crime. There are thousands of situations that could arise. Still, that doesn't mean you should not at least try to include types of protections in your separation agreement. An agreement can't cover every instance of mean-spirited posts on social media. Draw the line at posts about sexual activities and images exposing intimate body parts. Include electronic or written communication, photographs, video, texting, tapes, audio and other recordings.

## **Use of Personal Data**

Understanding that the terms of an agreement might not always be enforceable in light of a balance between freedom of expression and bad or criminal acts, it is still wise to make the intent of your agreement clear. Specify that neither spouse can use (or enable a third-party to use) the other person's data to commit fraud or a criminal act or to disparage, harm, negatively affect the other party's public image, reputation, or business, school, or career prospects, coerce, harass, intimidate, demean, humiliate, or cause financial loss to, the other party.

## **Remedies**

If your ex violates the agreement, he or she should be required to indemnify you. This means that if you are financially harmed, your ex must reimburse you. One example of financial harm you might encounter (and which should be included in your agreement) is payment of a reasonable amount for hiring a professional third party to correct the circumstances and testify as an expert. These rights are in addition to any civil or criminal remedies available to enforce the agreement, such as an injunction, which is an emergency order that can immediately require someone to do something or stop doing something until there is a trial.

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