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# Amy Edwards

FAMILY LAW

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# Family Matters

e-Newsletter

March  
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## Amy Edwards

FAMILY LAW

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**Designated as a Board Certified Specialist in Family Law  
by the North Carolina State Bar Board of Legal Specialization**

Welcome to another issue of Family Matters e-Newsletter. This monthly divorce e-Newsletter is brought to you by Amy Edwards Family Law and Divorce Magazine. We hope you will find the information and articles useful. If you wish to be removed from our mailing list, please use the unsubscribe feature at the end of this e-mail. Visit us online at [www.GreenvilleLaw.us](http://www.GreenvilleLaw.us) and take a moment to see our archives for [past issues](#).

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### Legal Term of the Month

#### Venue

In state cases, venue is the county where the case should be heard. Divorces should be filed in the county where either the plaintiff or defendant resides.

### Web Site of the Month

Looking for a *notary public*?

Take a look at the NC Secretary of State web site for a [directory](#)

### Tip of the Month

Stop all that junk mail.

## Sex and Slander: Defamation in NC



By Amy A. Edwards

When people call it quits, they might cut off their noses to spite their faces. Although it is tempting to tell the world about all the rotten things your ex has done, remember you might be held liable for money damages. Don't be an angry e-mailer and be careful using Facebook. Clients are often surprised to find their messages get forwarded and forwarded, eventually reaching their exes.

### What is Defamation?

Defamation is a broad category of false and wrongful communications. It refers to "defaming" someone, saying things that harm someone's reputation. There are two types of defamation. Slander is a spoken communication, and libel is printed communication. Using an oversimplified definition, defamation of private citizens occurs when someone makes a false defamatory statement about a person to a third party, ridiculing him or her, or creating contempt against him or her. Additionally, the statements must create some sort of injury to the person's reputation or cause some sort of damage. *Griffin v. Holden*, 180 NC App. 129 (2006). Depending on what the communication is, and what the circumstances are, defamation might turn into a criminal communication but this article is about civil defamation and refers to matters involving sexual relationships.

### Morality, Crimes, and Family Law

Communication about sexual relationships has always been a staple of defamation cases, especially when people break up or divorce. Defamation may be a false accusation that someone committed a crime,

### Did You Know?

NC Gen. Stat. §103-3 makes it lawful for sheriffs to serve people with lawsuits on Sundays.

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defined as violations of criminal laws enacted based on public morality or decency. But, defamation may also be offensive communication accusing someone of a non-criminal act. Now largely discarded, there were numerous old NC cases concerning a woman's chastity, legally known as "incontinence" based on an 1808 Act. Pregnancy of an unmarried woman, or having a child out of wedlock were essentially crimes in this state until fairly recently. Although the crimes of fornication, adultery and crimes against nature laws are still on the books, they have been essentially overruled, along with the crime of falsely registering as husband and wife in a hotel to occupy "the same bedroom for immoral purposes."

### **Today's Defamation**

Examples of defamation by falsely accusing someone of a criminal act include false comments about incest, bigamy, indecent liberties with a child, and secret peeping into an occupied room. Another common category of defamation is falsely saying someone has a "loathsome disease," referring to sexually transmitted disease or other infectious disease. In one odd case, *Kroh v. Kroh*, 152 N.C. App. 347 (2002), the court held that an estranged wife slandered her husband by saying he had sex with the family dog to both his co-worker and his long term friend. When people sue the person with whom their spouse has had an affair for alienation of affections (luring them to separate from the spouse) or criminal conversation (the act of intercourse), there is often a defamation counterclaim. Naturally, this turn of events makes it tempting to vent on Facebook or other social media but think before you post.

### **Defenses**

If you prove the comment was true, it is a defense to a claim defamation. There are a number of other defenses to a defamation claim. Court documents and testimony during court proceedings are protected from claims as long as the communications are generally made in good faith. Reporting an act of suspected neglect or abuse of a child to the state is also protected from defamation claims if the report is made in good faith, regardless of whether any neglect or abuse is discovered. Comments between married people are also generally protected, as are debates by legislators.

Amy A. Edwards is a family law attorney in Greenville, North Carolina, certified as a Family Law Specialist by the North Carolina State Bar Board of Legal Specialization, and is only licensed in North Carolina. Laws change; this article is current through March of 2015. [www.GreenvilleLaw.us](http://www.GreenvilleLaw.us) © 2015

**Show and Tell: Do You Really Have to Disclose  
*Everything* to Your Attorney?**

By Amy A. Edwards

We understand. Nobody wants to sit down with a total stranger and admit all the things that are quite personal to you, especially when you are facing a family crisis.

But remember your conversation with your attorney is privileged. That means you can't be forced to testify about what you said or the advice your attorney gave you.



For better or worse, North Carolina still uses marital fault in certain cases. This may include adultery, substance abuse, domestic violence or other things that might happen when you "hit rock bottom." There are also secrets that could jeopardize your case, not to mention your credibility as a witness if you end up in court.

We need to know *everything* for several reasons. One is that we can try to mitigate the damage (*i.e.*, reduce the bad consequences) by advising you how to begin correcting the problem or at least building a better track record. Another reason is that the other parent or your ex will already know way more about the unflattering information than you may think.

This means your ex will tell his or her attorney. If that happens, everyone knows about the compromising position you may find yourself in except the only person who is able to help you maneuver it, your attorney. When the other attorney walks up to you in court and asks you to explain that certain photo, text or other evidence, be ready.

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**How You Feel About Separation, Divorce,  
Negotiation or Litigation?**



## Also Known As: Is Your Attorney Listening?

By Amy A. Edwards

The trail of emotional destruction that follows the breakup can be immense and long-lasting.

Being distressed and angry is completely normal. In fact, as I tell people who end up at my office during a consult, you wouldn't be normal if you weren't! Family disputes are painful. Depression is common when people suffer a breakup, especially when the relationship lasted for a long time or when there are children.

### **Does the Attorney Get It?**

When you begin working with your attorney, it may seem he or she isn't very sympathetic to what feels like the end of your entire life as you know it. Although we want the same goal as you, we have to take a very different approach to arrive there.

As an attorney, I'm constantly thinking of how a judge would analyze the case if and when we go to court. The judge is a stranger, a third party neutral who comes to court with certain expectations about how things are done. The judge first sees each party as a clean slate and doesn't necessarily think the opposing party has done anything "bad" although you see it differently. Your attorney has to first analyze your case objectively the way the judge will perceive it in order to properly advise you and prepare for court. We're zealous advocates but we are wise to focus on the substance of your case, and not just the drama your ex created, that may come out in the closing argument. We have to pace ourselves to let the judge see the facts before we make the closing argument because the judge must rule based on the facts. We bide our time, so don't be surprised if we don't seem to "get it" until we reach the courtroom. It is against this background that your attorney is working.

### **Our Job as Attorneys**

Every client needs moral support, especially from friends and family. Clients also need to vent, which can be a good thing. However, good attorneys try to guard against using a client's resources and money by spending substantial time addressing the need to vent or have moral support. We have feelings too, sometimes the very same outrage about your ex or the attorney that you have. But as attorneys, we can't let ourselves focus on that (or on our egos). We need to keep boundaries in place to properly do our job. An emotional attorney makes things personal, creating hurdles and obstacles, fanning the flames that are

already there. This makes it harder to resolve a case outside of court, and more expensive. Believe me, your attorney probably knows what a jerk your ex can be once the process is underway. But he or she must analyze your legal situation, which may have very little to do with how you feel at all. Unless you are in the midst of a custody case, your case may be purely about dollars and cents, like a business transaction.

### **What Do You Need to Do?**

We are sympathetic to your personal life, but we have to help you recognize you may benefit from talking with a trained professional to help you move past intense anger, loneliness and sadness. Judges consider it a positive thing when a person seeks help, especially when there are children in the family. We aren't trained to properly assist clients with addressing those feelings. Plus, your attorney's shoulder is too expensive to cry on, especially because your insurance won't cover it. The best thing attorneys can do when these issues arise is to refer a client to a counselor or other trained professional to assist with working through these feelings. Even people who lack insurance can seek help, sometimes on a sliding fee scale, such as the [East Carolina University Family Therapy Clinic](#). A client should always talk to his or her attorney when there is a concern about these matters.

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### **Family First: Four Caregiver Tips - Hospital Stays**



Tips For Extended or Frequent Hospital Visits

By Amy A. Edwards

If your spouse, family member or other loved one has frequent trips to

the hospital or other medical facility, planning ahead can make all the difference. Know your [rights under the FMLA](#) (Family and Medical Leave Act), including special military rules.

### **Tip #1 Start With The Basics.**

To save time and stress, keep a tote bag packed and within easy reach if there is an emergency. Add travel sized toothpaste and toothbrush, shampoo, lotion, deodorant, tissues, nail clippers, and shaving/grooming supplies. A small note pad and pen is also helpful when you need to change hospital rooms and phone numbers, or when the doctor gives you homework. While you have time and aren't in a rush, add comfortable slippers, pajamas, underwear and other basics you know will be necessary so you won't have to figure out what the patient meant when he or she told you what to bring from the house.

### **Tip #2 Convenience Helps.**

Especially if your loved one has chronic illness and periodic visits to the emergency room, add change for vending machines to the tote bag, along with a bottle of water and a few granola bars for you and/or the patient (if allowed). This is helpful if you are stuck in a temporary room at the emergency department and don't have time or energy to look for food or water for a few hours. If the hospital or facility is large, such as [Vidant Medical Center](#), take a few minutes to review the web site to find out about parking arrangements, a map of the buildings on campus, visiting hours and policies, and what types of restaurants are available (and their hours of operation).

### **Tip #3 The List -- Medical Information.**

Trying to recall medical conditions, prescriptions, doctors and allergies is not always easy in non-emergency situations, let alone in an emergency. Keep a list of your loved one's medical conditions, history of surgeries/procedures, and contact information for the pharmacy, doctors, and any other providers. At the top of the document, add the person's name and the date the list was last updated, such as "Current as of March 15, 2015." If you keep this info in a computer document, you can update it regularly. Consider taking a picture of the document with your phone so you will always have access to it, but do NOT include a date of birth, social security number, driver's license or any information that could be used to steal his or her identity. Be sure to add your phone number to the patient's phone entered as ICE, which means *in case of emergency*.

### **Tip #4 Keep Legal Documents With The List.**

Legal documents should be prepared in advance, and placed in the tote bag, along with "the list." Everyone who is competent to execute legal documents should have a Healthcare Power of Attorney (HCPOA). It is a document that allows the patient to name an "agent" who can communicate his or her wishes related to medical treatment when the patient is unable to do so. HCPOAs can be provided to a hospital or facility in advance, to be placed in the patient's file if needed in the future. Service members have [special options](#) created by federal

law. There are several other types of important legal documents related to medical care. A patient should consult with an attorney for advice based on his or her specific circumstances.

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Thank you for reading our newsletter.

**Sincerely,**

**Amy A. Edwards**

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