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### News For March 2017

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## Mudslinging in North Carolina Child Custody Cases

By Amy A. Edwards

According to [www.dictionary.com](http://www.dictionary.com), mudslinging is "an attempt to discredit one's competitor, opponent, etc., by malicious scandalous attacks." In North Carolina, a no-fault divorce means that the only reason you need for a divorce is a one year separation. Division of marital property is generally an equal division, and the only type of fault the court will entertain is financial fault related to assets and debts. While marital fault isn't required for alimony, it is specifically listed in our state laws as a defense and in some cases the sole reason alimony is or isn't awarded. While the law does not call it fault or marital fault, the behavior of parents becomes front and center in a child custody case. There are [rules of evidence](#), [rules of procedure](#), and [local rules](#) for each court, and the law itself. However, a judge has the authority in his or her discretion to hear almost anything if it is relevant to a child's welfare. A parent's judgment and fitness can be demonstrated by a wide range of events.

**Is Mud Slinging Inevitable?**

Probably, unless you choose alternative dispute resolution. See more about in the last paragraph of this article. Based on my experience, I don't think the majority of people truly want to sling mud at the beginning of a case, although they are often hurt and angry. They usually just want to get a custody agreement as quickly as possible at a reasonable cost and move on with their lives. But as litigation takes its course, the allegations of bad behavior operate like the threat of nuclear weapons. When one side starts to pile them up and test them, the other side takes offense and acquires his or her own stockpile and begins to test them. Many cases settle through negotiation and mediation but when they don't, the slinging accelerates rapidly thereafter. By the time a child custody case reaches the courtroom, mudslinging seems inevitable regardless of whether a parent is trying to avoid mudslinging or be the one slinging. Some end up doing so if only because they feel a response to the other party's allegations is necessary.

### **The Down Side of Mudslinging**

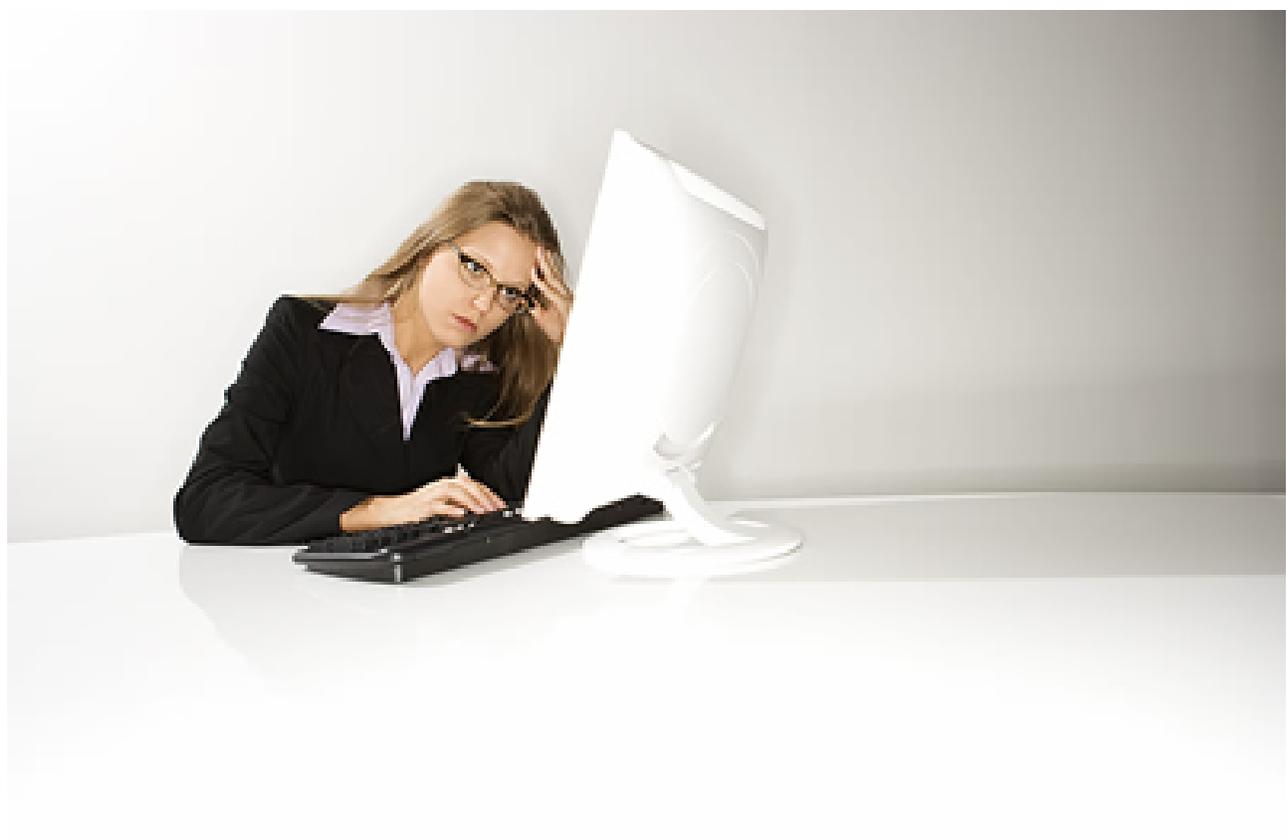
No parent who testifies is without sin. By definition, the very nature of your past relationship is intimate. When you begin dredging up things from the other person's past, there will always be a response which will usually include your deepest darkest secrets as well. Fault-based alimony trials can be intense but the worst case scenario is a long and vicious custody battle. In the worst of the worst case scenario, an outsider looking in might wonder if the judge should award custody to either parent. Meanwhile, the family, friends and loved ones sit in the audience for the feature presentation. Once the allegations have been made, they can never be undone. Even when the children don't testify in the case, they are usually the main casualties of the slinging. Children grow up. Anyone has the right to access a recording of a trial or a copy of the file that includes the documents each parent files at the courthouse. Once a lawsuit is filed, it becomes public record, meaning anyone can search the records and see all the "dirty laundry."

### **How Can You Minimize the Damage?**

First, if you're in a custody case, try to step back and look at the case from your child's perspective. What you say about his or her mom or dad matters. Is it possible to compromise and reach an agreement that is adequate to meet your most important goals and avoids a trial? Second, observe the Golden Rule as applied to parenting, to "do unto others as you would have them do unto you." This is difficult, especially when the other parent is talking about you but the checks and balances become apparent when cross examination of the other party rolls around. As the other parent has to explain why he or she said something about you, you'll be in a much better place and there will be less mud to sling.

### **Can You Avoid Mudslinging Altogether?**

Yes, mudslinging can be avoided if you both parties consent to use the alternative dispute resolution (ADR) process before filing a lawsuit. But you can still choose to use ADR after a lawsuit is filed. ADR can be used for any type of family law matter, not just those pertaining to children, and it is private because it takes place in an office of one of the attorneys. [Mediation](#) is the process of negotiation outside of court with a neutral third party called a mediator. The mediator doesn't make any decision. He or she helps the parties find common ground (each side in separate rooms) with the goal of signing an agreement, that day in some cases. [Arbitration](#) is a process by which the parties select a neutral third party called a certified arbitrator to make a decision for them. The arbitrator makes a ruling on their case just like a judge does. [Collaborative family law](#) (CFL) is the most unique type of ADR because it is non-adversarial. All four people, the parties and their attorneys, are at some point together in a room in a "four-way meeting" together. Instead of arguing about fault and past incidents, those using the CFL process work together to create solutions for their problems. If they are successful, a written agreement is signed and the case is finished.



## Ten Things Your Lawyer Wishes You Knew

By Amy A. Edwards

#1. **WARN US** If you have assaulted your spouse, been arrested or highly intoxicated in the presence of the kids, had compromising photos taken of yourself, or struggled with substance abuse, we need to know! People are naturally reluctant to tell us the negative or embarrassing things they have done. If you are embarrassed to discuss something, tell us by e-mail or in a letter. Truly, we've seen it all. Your ex knows about it which means the other attorney knows. The only person who can help you wade through it is your lawyer, who can't help you if he or she is the only one in the room who is clueless about what happened. In that event, we are left to watch as you crash and burn during cross examination. With advance notice, we can try to minimize it or at least take out the sting. We might be able to ask you questions about it in court first, allowing you to explain it in your own terms, robbing the other attorney of the chance to frame it the way he or she chooses.

#2. **YOU ARE AN OPEN BOOK** In divorce court, there is no such thing as privacy. Bank statements, credit card statements, e-mails and any

number of other things will be analyzed. In a custody case, is it noticeable that you eat fast food every day for dinner? Do you use your credit card at the liquor store twice a week? Did you buy flowers for your girlfriend with whom you are cheating? Will your bank account statement indicate payment for a membership for an online dating account or pornography? Believe it or not, this happens all the time.

**#3. PICK YOUR BATTLES** A good (or at least a better) outcome might mean cutting your losses. Unlike personal injury cases, where the insurance companies are essentially paying the tab, divorce and family law cases are paid out of pocket by individuals who are going through what is probably the most emotionally and financially stressful time of their lives. Even if finances are not a problem, don't waste your money paying the hourly rate of several hundred dollars to argue over a five year old lawn mower or a coffee maker. I actually had a client who added gravy mix to her list of property. In custody cases, consider whether it is worth it to have a trial on whether you get three weeks of time in the summer or four weeks. Are you paying your attorney \$2,500.00 to argue over a \$25.00 per month difference in child support (\$300 per year)? Think about the original goals of your case.

**#4. WATCH YOUR SOCIAL MEDIA** Anything you post on social media is fair game. If you have a photo of yourself at a barbecue drinking a beer, don't be surprised if it drifts back to you during cross examination as an 8 x 10 glossy to maximize the effect of the picture in the custody case or other case involving marital fault. It doesn't look innocent in the cold glare of the fluorescent light of the courtroom sitting two feet away from the judge. Will your kids see it? Remember that cursing, acting flirty, staying out at night, going to bars, or wearing a t-shirt with an inappropriate picture or vulgar language can also create mischief. Perhaps most importantly, monitor what your kids are posting.

**#5. PAY US.** Talk with your attorney about his or her fees when you see the first sign of financial strain, not after there is a problem. When you ignore the situation, it doesn't just go away. It makes the situation worse. If the attorney isn't getting paid, he or she is not

going to make your case a priority. Find out whether a payment plan is available before the money runs out. Otherwise, the attorney will usually stop working and if there is a pending lawsuit, make a motion to be relieved as counsel in your case. Sometimes, an attorney can help you figure out an express lane version of your case if there is one. Maybe it is time to look at the big picture instead of arguing about details or sticking to a bottom line. But we can't help you if you don't tell us in advance, while you still have options.

**#6. WE CAN'T CHANGE THE LAW OR YOUR EX**he spouse with the great income and assets in his or her name is often rudely awakened by the fact that he or she will lose half of the assets even though the other spouse was irresponsible, lazy, mean or wasteful. We can't help that. The rude awakening doesn't always stop there, especially with the reality of alimony or bankruptcy. A former client of mine was angry and very insistent, insisting "But I do NOT want to give him any of my retirement." Yes, we know. No one does. The other parent might get a D if you were grading him or her as a parent, and the in-laws might all be graded with an F, but the other parent is going to get visitation even if your child doesn't like it.

**#7. TIME IS MONEY** Clients sometimes forget we are on the clock whenever work on their cases. Think about this when you begin the attorney client relationship. You can call your attorney every few days if you choose to do so but your bill will reflect it. Talking with office staff might be the quickest and least expensive way to address your question. Better yet, a twenty minute phone call might be a five minute e-mail. When we need documents, we need them in a usable way, not crumpled up in a ball upside down in a shoe box out of order. If you don't know the billing procedures, just ask. Most attorneys sign a contract with their clients at the beginning of the case. Read it for further information.

**#8. SHARE YOUR GOALS** Tell your attorney what your goals are, both short term and long term. This might seem obvious, but people don't always take an active role in their cases. Are you hoping to move to another state to be near your family? Is a long term co-parenting relationship a priority for you at the expense of getting every single thing you want in the visitation plan? Maybe you want a visitation

schedule that is flexible enough to accommodate you as you take night classes so you can advance in your career? Is it important to try mediation and avoid the courtroom? We need to know what your goals are so we can make them ours.

**#9. CONSIDER COUNSELING** Put your hard-earned dollars to the best use, especially when you are at the end of your rope. Consider visiting a counselor or therapist to help you deal with the emotional trauma that accompanies the separation or custody battle. Your attorney is not qualified to help you with the sadness, anger, or grieving process. You don't want to pay your attorney the hourly rate to listen to what a jerk your ex is. But believe me, we see it too.

**#10. SOMETIMES THE OPTIONS ARE BAD** In family law cases, sometimes you have to make a decision between two bad options. Many couples have huge disputes about finances. "The last straw" can be triggered by a major purchase one spouse discovers debts hidden by the other, or an adulterous relationship. Relationships and finances change, as do the family members. Finances aren't enhanced by divorce. On top of that, when one household becomes one of two, the same limited incomes must support two households instead of one. You might have to sell your home or lose half of your 401(k). Other times, a divorce leads to bankruptcy. When your attorney advises you about different ways to approach your case, remember your choices won't always be easy ones.

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 March 2017. [www.AmyEdwardsFamilyLaw.com](http://www.AmyEdwardsFamilyLaw.com) © 2017.

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## **Collaborative Family Law - Are You Both on the Same Page?**

By Amy A. Edwards

In the traditional setting of court, the parties are adversarial. This means they are on opposing sides of an issue, each competing for a ruling from the judge. Court tends to be a win/lose scenario. Instead of being adversarial and working against each other, the objective for both parties in Collaborative Family Law is to find a win/win solution to their dilemmas. The parties collaborate in an effort to create the best settlement they can. All four people, both parties and both attorneys, brainstorm in a series of what are called four-way meetings. Because the parties aren't adversarial, the attorneys and parties discuss things among themselves in a civil manner during the four-way meetings. There is no cross examination. Instead of the courtroom, they usually meet in an office of one of the attorneys.

### **How Does Collaborative Family Law Work?**

Collaborative Family Law (CFL) is an alternative dispute resolution authorized by the NC General Statutes. It is used only by the agreement of both parties and can be used for almost any type of family law dispute, including child custody and support, alimony, and equitable distribution of marital assets and debts. The attorneys and their clients sign a CFL pledge. In traditional family law cases, the spouse with more money to spend sometimes drags out the process forcing the other spouse to settle because they can't afford to go to court. The CFL pledge includes a commitment not to "starve out" the other party. If either party decides to litigate (*i.e.*, go to court), the CFL process ends and both parties have to hire

new attorneys. This is a built in deterrent for starving out the other party. However, the parties can include in their pledge an agreement to use mediation or arbitration if they can't reach an agreement. By doing that, their attorneys can represent them throughout all three processes, CFL, mediation and arbitration, if necessary, never going to court.

### **Am I Protected by My CFL Attorney?**

Yes. Attorneys facilitate the agreement meaning the parties take an active role in the case. If someone suggests a course of action that is not feasible or fair, the attorney advises him or her against it. Both attorneys meet with both clients in four-way meetings. But each attorney also meets with his or her client privately at his or her office. In fact, CFL relies on an attorney's good screening process in the first place. Common issues to navigate in all types of family law cases include tax consequences of settlements, the division of retirement accounts, cash-flow and support, and how to create an effective visitation schedule.

### **Is CFL Appropriate For Your Case?**

A North Carolina attorney is required to consider whether CFL is appropriate for a client before advising a client to participate in CFL. If there is domestic violence, an emergency that calls for a court order, a client isn't prepared to be (or doesn't want to be) self-directed in what he or she wants to do, or there is a serious power imbalance, the case is not appropriate for CFL. Using an attorney experienced in both CFL and trial work (*i.e.*, litigation) means the attorney can meaningfully advise the client of the benefits and drawbacks of each process. After all, CFL is an *alternative* to court.

For the cases that are appropriate, trust is an important part of the CFL process. The signed CFL pledge requires both parties to be honest, negotiate in good faith, and treat each other with respect during the process. CFL doesn't dwell on fault or looking at what the parties did in the past. It looks to the future and what the parties will need to do in the future. For example, the parties will set the stage for how they will treat each other as co-parents. However, there are times when an attorney might advise a client to preserve his or her right to litigate based on serious marital fault instead of using CFL. This is another example of the attorney's trial experience in advising the client to use CFL.

### **What is the Result of a Successful CFL Case?**

At the end of the CFL process, successful parties usually sign a separation agreement that settles all pending matters. Although CFL is an out-of-court settlement process, there are a few instances that require court orders but those are uncontested in nature. One example of this is the divorce decree, which

requires a lawsuit to be filed although neither is required to be in court. Another example is court orders that are required for dividing pensions, which is usually requires only the signatures of the parties.

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 March 2017. [www.AmyEdwardsFamilyLaw.com](http://www.AmyEdwardsFamilyLaw.com) © 2017.



## What Exactly is an Estate Plan?

By Jennifer Jackson Bell \*

Stated in the simplest terms, estate planning is the practice of preparing for a person's eventual demise. As morbid as it may seem to think about your death, planning for the end or rather what will happen to your belongings or loved ones afterwards is an important yet most-often complicated task. This is why hiring an Estate Planning attorney is paramount and also, very beneficial. An attorney will be knowledgeable of the current tax law governing gifts, estates and transfers. With the help of an attorney you can minimize the taxes your loved ones will face after your death.

A more inclusive definition of Estate Planning is the process of anticipating and arranging, during a person's life, for the management and disposal of that person's estate during their life and at and after their death. An estate is the

worth of a person. In essence it is the sum of a person's assets minus any liabilities. Assets can include: real estate, jewelry, cash, vehicles, equipment, antiques, life insurance policies, etc. Basically an asset is anything of value. Liabilities can include: credit card debts, mortgages, tax debt, child support, etc. Liabilities are things for which you are responsible, principally financial obligations. Leaving your loved ones with items from your estate is more complex than it may seem, especially when it comes to the applicable tax law.

You may be thinking, but I don't need an estate plan, I'm not rich! Don't make the mistake of overlooking your assets because you don't think you have much or any for that matter. An estate plan is an important financial document for everyone to have. With only a few exceptions, everyone has an estate. If you own something of value and you would like to leave it to someone or some place after your death, you have an estate. And whether you know it or not, you also have an estate plan, but one you had no control over or decisions about. North Carolina has made one for you; actually they have one for every person that does not put an estate plan into place of their own. When a person dies without an estate plan, probate governs how their estate will be dispersed. Probate is a court-supervised process that gathers a person's assets and distributes them to creditors first then inheritors in a precise manner based upon specific legal statutes. Basically, if your estate goes to probate without an estate plan in place, there are specific rules that cannot be avoided on how your valuables will be handed out. This is why having an estate plan is extremely important. You should have a say in how your affairs are handled, even after your death.

A basic estate plan includes a will and/or trust. A will is a personal declaration of your intentions about the disposition of your valuables after your death. Trusts involve the transfer of your, the grantor, valuables to an individual, the trustee, who manages these assets for the benefit of one or more others, the beneficiaries. Wills and Trusts can be particularly convoluted, which is why it is always important to consult an attorney before beginning to prepare either.

\* Ms. Bell is a third-year law student at the Norman Adrian Wiggins School of Law at Campbell University. She is originally from Eastern North Carolina and intends to practice law in the area of wills and estates upon completion of her third year in law school and the State Bar exam in North Carolina. © 2017.

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