



13 DIRTY TRICKS TO WATCH OUT FOR IN YOUR TEXAS DIVORCE

AND HOW TO COUNTER THEM

Bryan Fagan, Esq

TABLE OF CONTENTS

13 Dirty Tricks To Watch Out For In Your Texas Divorce and How To Counter Them

| | |
|----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 6 | INTRODUCTION |
| 8 | CHAPTER ONE: THE DIRTY TRICK OF THE AMICABLE DIVORCE WAIVER OF SERVICE- MEANS YOU DO NOT HAVE TO BE SERVED BEWARE OF STANDARD FORMS KNOW WHAT FORMS TO USE AND THE CORRECT COURTROOM PROCEDURE |
| 14 | CHAPTER TWO: THE DIRTY TRICK OF EMBARRASSING YOUR SPOUSE |
| 22 | CHAPTER THREE: THE DIRTY TRICK OF HIDING ASSETS |
| 29 | CHAPTER FOUR: WASTING MARITAL ASSETS OR GOING ON A SPENDING SPREE |
| 34 | CHAPTER FIVE: THE DIRTY TRICK OF DAMAGING, DESTROYING, OR SELLING MARITAL ASSETS |

TABLE OF CONTENTS

13 Dirty Tricks to Watch Out for in your Texas Divorce and Ideas on how to counter them

| | |
|----|----------------------------------------------------------------------------------|
| 39 | CHAPTER SIX: CONFLICTING OUT ATTORNEYS |
| 45 | CHAPTER SEVEN: QUITTING YOUR JOB TO AVOID PAYING CHILD SUPPORT |
| 47 | CHAPTER EIGHT: DIRTY DIVORCE TRICK- TURNING INTO A TEMPORARY "HELICOPTER" PARENT |
| 49 | CHAPTER NINE: ENGAGING IN SPOUSAL STARVING TACTICS |
| 52 | CHAPTER TEN: SHOULD I HIDE MONEY FROM MY SPOUSE TO GET READY FOR MY DIVORCE? |
| 57 | CHAPTER ELEVEN: USING CHILDREN AS WEAPONS |
| 64 | CHAPTER TWELVE: USING DELAY TACTICS |
| 73 | CHAPTER THIRTEEN: THE DIRTY TRICK OF MOVING OUT OF STATE WITH THE KIDS |

13 Dirty Tricks to Watch Out For in your Texas Divorce and Ideas on How to Counter Them

"A journey of a thousand miles begins with a single step." ~Lao-Tzu

This 13 Dirty Tricks to Watch Out for in Your Texas Divorce is your guide to help you spot tricks sometimes played in divorce and potentially counter them. Use it accordingly—mark it up, fold down the pages, highlight important topics, make notes in the margins, and pass it along to a friend in need. Use it as it was intended to be used – as a guide to those in search of answers.

Do NOT, however, allow this book to take the place of consulting an actual Texas divorce lawyer and sharing the specific facts and circumstances of your situation. Nothing can take the place of a live consultation with a knowledgeable attorney.

Therefore, I'm offering a free consultation with an attorney at my law firm, a \$350 value, to encourage you to find the answers you need to navigate toward a successful future.

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(281) 717-6711

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13 Dirty Tricks to Watch Out For in your Texas Divorce and Ideas on How to Counter Them

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Legal Disclaimer

This Book is Not Legal Advice

While this book provides a good amount of legal information, the intent is that it is to be used strictly for review and educational purposes only. This information is in no way intended to be interpreted as legal advice about any particular situation. You should seek the advice of an attorney before acting on any of the information provided. There is no substitute for legal advice from a qualified, licensed attorney.

Introduction

When one spouse starts playing these games there is often a domino effect. Where a spouse will do one thing such as cutting off the utilities and the other spouse responds by cleaning out the checking account. The next thing you know, you no longer have an uncontested divorce, and your divorce proceedings are an all-out war.

This book will illustrate the top 13 dirty divorce tricks we have come across in our office. Hopefully, these stories help prepare you for the tricks some spouses can engage in during a divorce. Knowing about these possible tricks is half the battle. Once identified preventive or corrective action can be taken.

Introduction

Divorce and Family Law is an incredibly humbling business. I like to say that I get to meet people at the worst times in their life and help them. When we give job interviews we ask our potential new hires how then handle stress.

We tell them that when they answer the phone they may be talking with someone who thinks they are a hero and the next call maybe yelling at them because their spouse just turned off the utilities. My consults sometimes ask about our win and loss ratio. However, unlike other areas of the law divorce and family law is not as clear cut as that.

A divorce by its very nature generally involves a couple whose resources are no longer pooled, a where costs are doubled. Where once potential two incomes covered a mortgage now there may be a mortgage and apartment to pay for as well as, two electric bills, and two grocery bills.

In families with children, a divorce couple now means additional transportation costs as the children are transported back and forth between homes. Parents must also now furnish two different rooms for the children. The cost of living can easily may have doubled.

What I do believe is striving to provide excellent customer service to my clients. I believe that journey begins in educating my clients. In my first book I tried to provide a broad overview of the divorce process.

In this book, I will delve a little deeper and explore 13 dirty tricks that sometimes come up in a divorce. Unfortunately getting divorce is not always straight-forward for every couple. In fact, my observation has been that for most couples, it is not straight-forward. I generally try and put things into perspective for my potential clients by telling them "I can get you divorced as fast as the slowest person in the relationship."

That is not to say that a divorce cannot involve a couple who is upfront and honest with each other. I have handled divorces that went smoothly and where the couple handled everything amicably. However, couples will not be as fortunate.

My observation is that because some spouses fear getting some unfavorable outcome such as, losing custody, paying more support, etc. they behave badly in an effort to win their case. People who are fearful can be dangerous.

If not protected, you could face many problems with your divorce case. Unfortunately, some spouse approach divorce with a winner take all attitude. These spouses may do this out of anger, fear, guilty, possibly sadness. Whatever, the reason the result is the same bank accounts get cleaned out, children without, assets hidden, or some other sort of bad behavior. Do not allow this to happen to you during your divorce.

Chapter One: The Dirty Trick of the Amicable Divorce

Many people are scared to use a lawyer in [adivorce](#) because they think their situation is too simple or easy to justify paying for [adivorce lawyer](#) to provide help and guidance.



The same people think that in order to keep things “amicable” or as long as things are “amicable,” they should avoid getting an attorney.

What many potential clients do not realize is that they are being penny wise and pound foolish. Some of the most expensive and costly mistakes I see are when someone is not represented by a lawyer.

This is an update of an article I wrote in September of 2017. I felt compelled to do so based on a recent consult.

Each consult that I discuss in this article has their own unique story and outcome that demonstrates the high cost and consequences for simple mistakes that could have been easily avoided had the people I met been represented by a lawyer.

Chapter One: The Dirty Trick of the Amicable Divorce

IF YOU DO NOT BRING IT UP YOU MIGHT NOT BE ABLE TO LATER

The lady I consulted with that inspired this update had a very sad story involving domestic violence. She wanted to be able to move away from her abuser.

However, in her divorce decree, there is geographical restriction that forces her to live near her abuser because of the children they have together. When I learned that her husband went to court to finalize the case, I was hopeful because there might be time to undo what had happened.

However, when I looked up the case and saw when the judge had signed the order, I saw she had missed the deadline to file a motion to reopen the case.

I then had to spend an hour explaining she was stuck living near her abuser, even though her ex-husband:

- 1.Had choked her
- 2.Had a family violence case pending against him
- 3.Had hit her on multiple occasions
- 4.Was not exercising his visitation

Res Judicata

The legal reason for this is because of “res judicata.” This means a matter has been adjudicated by a competent court and may not be

Chapter One: The Dirty Trick of the Amicable Divorce

pursued further by the same parties.

All the facts that could have helped her before the judge signed the order in most circumstances can not be brought up to change the order that was signed. The court only cares about new facts that occurred after the judge signed the order.

The Danger of Playing Too Nice

Unfortunately, in her case she was not represented by an attorney. She did not want to anger her husband by getting an attorney. She thought if she played it nice, she could get the divorce and move away after.

Another problem in her case was that she signed and cooperated with everything including:

1. Signing a waiver
2. Signing the final decree
3. Going to court

She did not leave herself any wiggle room for undoing the divorce decree.

There is Still Hope

I did let her know that should some more bad facts occur, she could ask the court to modify the current order in regard to the children. I also let her know another possible reason to modify is if her ex-husband continued not to exercise his visitation.

Unfortunately, the lady I met with did not find much comfort in what I told her because it did not provide any immediate help to her and instead serves more as a cautionary tale to others.

WAIVER OF SERVICE – MEANS YOU DO NOT HAVE TO BE SERVED

Personal service is not the only way to bring a party to a case under the power of the court so that the court can make orders regarding those individuals.

Alternatively, a person can waive their right to be personally served with a copy of the lawsuit by signing a waiver of service. The waiver of service must be signed in the presence of a notary, notarized, and then filed with the court.

Chapter One: The Dirty Trick of the Amicable Divorce

It basically says you do not want to be served by a process server or constable/sheriff or by certified mail sent by the District Clerk.

Recently, I met with a father and his new girlfriend who were confused about why his paycheck was being garnished for child support. He told me he barely made minimum wage and the amount the income withholding said he was supposed to pay was more than he made at his job.

The other sad thing was that it had only been a few months since the order was signed and he was already in the hole several thousand dollars because what he earned was not covering what he was supposed to pay in child support.

I was told by the father that he had never been served. My first thought was that maybe he had been served by some alternative means, which meant the case could more than likely be reopened.

The father had obtained a copy of the order against him and so I was able to take a look at it. What I observed was:

1. No one involved in the case had used a lawyer
2. The paperwork said that the father had signed a waiver
3. The paperwork said that the father had agreed and signed the order

I asked the father to excuse me so I could go look up the case online. I went back to my office and looked up the case. Sure enough, the record showed that there was a waiver on file. I then looked the order again and flipped to the signature page and it looked like the father had signed the order.

I then went back and explained what I had looked up and showed him a printout showing the waiver of service and his signature on the order.

I explained that he did not need to be served because the court record showed he had waived service and agreed to the order. However, if that was not the case, we could file paperwork and subpoena the notary regarding his signature.

His girlfriend then turned to him and asked if he signed the paperwork. His response was he didn't know. In my book, that is the wrong answer to that sort of question. I explained his options for fixing the order.

Chapter One: The Dirty Trick of the Amicable Divorce

As I saw it, either:

1. He had signed the order and did not bother reading what he signed
2. The mother filled in the blanks after he had signed the order or
3. The mother somehow convinced a notary to sign the documents saying the father had signed the waiver

In every option I gave him, it was going to cost him several thousand dollars—a lot more than it would have cost to hire a lawyer to get it done the first time correctly.

BEWARE OF STANDARD FORMS

That same day, I met with another unfortunate individual who should have hired an attorney. In her situation, she and her husband had been able to resolve the case amicably outside of court through mediation. In the agreement, she and her husband were supposed to split his retirement account 50/50 using QDRO. The purpose of her consult was to find out how much my office would charge for drafting that document.

She had brought all the paperwork with her so I could review it. Once I saw the paperwork, I grew immediately concerned. She had:

1. A [Mediate Settlement Agreement\(MSA\)](#) and
2. A [Final Divorce Decree](#)

My concern was the divorce decree. It was not anything drafted by a lawyer. It was a standard form put out by a popular website. One of the warnings on the form is NOT to use it to divide a retirement account and to instead hire an attorney to draft the decree when you are trying to divide a retirement account. When I reviewed the Final Divorce Decree, my suspicions were confirmed. The Final Divorce Decree did not divide the husband's retirement account but instead gave him 100% of the account. When I explained this to the wife, she was understandably upset. She thought she was hiring my office to help her with a closing document to divide up the retirement account only to find out the divorce decree that was supposed to reflect the Mediated Settlement Agreement said something quite different.

This was another instance where having a [divorce attorney](#) would have protected an individual. The divorce lawyer would have made sure that the Final Divorce Decree that was signed reflected the agreement and that her ex did not accidentally or intentionally do anything sneaky.

Chapter One: The Dirty Trick of the Amicable Divorce

KNOW WHAT FORMS TO USE AND THE CORRECT COURTROOM PROCEDURE

One husband I met with recently had managed to divorce his wife on his own without the help of an attorney. He accomplished this divorce by default. [A default divorce](#) means he divorced his wife:

1. First by giving her notice and
2. After he gave her notice, she ignored it

Once this happened, his wife was able to reopen the case by:

1. Hiring an attorney
2. Stating the husband did not use the correct forms
3. Stating the husband did not use the correct procedure in the [divorce](#)

One of the things the husband had failed to do was file an inventory and appraisement with the court and explain to the correct party why his division of the property was a just and right division. Had the husband followed the correct procedure, his ex may not have been able to reopen the divorce.

Chapter Two: The Dirty Trick of Embarrassing Your Spouse

This chapter is inspired by some cases and consults I have had where a spouse has gone out of their way to try and embarrass their spouse.

This is done for a variety of reasons:

1. Anger
2. To teach their ex a lesson
3. To try and achieve a strategic advantage

In order to prepare our readers for what they might expect during the divorce process, we will explore the various ways some spouses have tried to embarrass their soon-to-be ex. We will also discuss some things you should consider before you go down the path.

Serving Your Spouse in an Embarrassing Place

Serving divorce papers at work is perhaps the most commonly employed way that some spouses embarrass their ex. This one may be done either intentionally or out of necessity.

One reason this may be done (other than malice) is that serving them at work or some other embarrassing place may be the only way to get a spouse served because the spouse is trying to avoid service or will not let anyone know where they are currently living.

However, some of my clients have sworn that it was done intentionally only to embarrass them. Often in these cases they were still living in the same home, so there was no reason why it could not have been done at the house rather than while they were at work.

Chapter Two: The Dirty Trick of Embarrassing Your Spouse

Recently one of my co-workers was telling me of how her husband's brother had been served. I thought under the circumstances it was in very bad taste. The brother had been in a car accident and was in the hospital. The process server showed up and laid the paperwork on him while he was lying in bed and told him he had been served.

Something to keep in mind is that although there may be satisfaction in such gestures, at some point in the future you may find that your spouse will retaliate and find a way to embarrass you. This can lead to your divorce turning into a very expensive, long, and embarrassing divorce.

Revealing Personal Information to Friends and Family

In one of our divorce cases, we represented a wife who was accused of adultery. In that case, the only evidence the husband had of the adultery were some very graphic emails and online chat sessions.

Our readers will know that Texas upholds the literal definition of adultery, thus graphic emails and chats might be considered cheating, but those alone would not meet the legal definition of adultery. Depending on the content, they might be evidence that adultery has taken place.

For revenge, the husband in that case let family members and friends know about the emails and chats.

Perhaps a more famous example of this would be when Tiger Woods' wife released a bunch of his text messages showing that her husband had been having affairs. Unlike in Tiger Woods' case, your text messages, chats, or emails are unlikely to land you on late night talk shows or celebrity gossip sites.

However, you should keep in mind that just like in these two cases, your communications may eventually become part of a divorce or

Chapter Two: The Dirty Trick of Embarrassing Your Spouse

family law case, or perhaps may be revealed to friends or family in an act of spite by your ex.

Confronting the Paramore

Two of our law firm's most popular blog topics are "Can I sue the mistress?" and "Is adultery against the law?" It should not be surprising that I often get asked about confronting the mistress.

This confrontation takes various forms:

1. Calling
2. Showing up the residence of the mistress
3. Subpoena the mistress to appear in court as a witness
4. Deposing the mistress

The motivations for doing any of the above vary. If there is a lot of property at stake, proving adultery would be a reason to ask for a disproportionate share of the property.

When there is not a lot property at stake, then the motive is more likely revenge by embarrassing the mistress or the spouse. You may not be able to undo the fact that your spouse has cheated on you, but you can force them and the mistress to:

- 1 .Appear in court and answer embarrassing questions or

Chapter Two: The Dirty Trick of Embarrassing Your Spouse

2.Sit in a room with your attorney and answer embarrassing questions

Revenge Porn

Revenge porn is another way a divorcing spouse can embarrass their ex. Revenge porn occurs when:

- 1.Someone obtains intimate pictures or videos of a person during the course of a personal relationship, and
- 2.Posts the pictures online after the relationship ends.

Many victims of revenge porn reported being threatened, harassed, stalked, fired from jobs, or being forced to change schools.

In its earliest stages, there was not a great legal remedy for these victims. In response to the problem in 2015, the Texas Legislature passed new statutes relating to revenge porn.

To my knowledge, none of my clients have been threatened with revenge porn. However, revenge porn was an issue in at least one of my cases. Our office represented a husband and father against the wife and mother. In this case, she had filmed her encounters with her boyfriend who also happened to be married. Things must not have worked out between the two because she threatened to not only send the film to his wife but also to the school where he worked if he did not pay her off. Her boyfriend ended up paying the money and she sent the film anyway.

She then discovered that what she had done violated several Texas laws, two of which are discussed below. When she was charged, the case made the news. She also ended up losing custody in court.

Under Texas Penal Code section 21.16.

Chapter Two: The Dirty Trick of Embarrassing Your Spouse

A person commits the offense of “unlawful disclosure or promotion of intimate visual material” by disclosing, threatening to disclose, or promoting what is commonly referred to as “revenge porn.”

A person commits an offense by disclosing revenge porn if:

- (1) Without the effective consent of the depicted person, the person intentionally discloses visual material depicting another person with the person's intimate parts exposed or engaged in sexual conduct;
- (2) The visual material was obtained by the person or created under circumstances in which the depicted person had a reasonable expectation that the visual material would remain private;
- (3) The disclosure of the visual material causes harm to the depicted person; and
- (4) The disclosure of the visual material reveals the identity of the depicted person in any manner. A person commits an offense by threatening to disclose revenge porn if the person intentionally threatens to disclose, without the consent of the depicted person, visual material depicting another person with the person's intimate parts exposed or engaged in sexual conduct and the actor makes the threat to obtain a benefit:
 - (1) in return for not making the disclosure; or
 - (2) in connection with the threatened disclosure.

A person can also commit an offense by promoting revenge porn if, knowing the character and content of the visual material, the person promotes the visual material on an Internet website or other forum for publication that is owned or operated by the person.

Chapter Two: The Dirty Trick of Embarrassing Your Spouse

Civil Cause of Action – CPRC Ch. 98B

Not only did the legislature make revenge porn punishable as a crime, it also created a civil cause of action. In 2015, the Texas Legislature also created a cause of action for victims of revenge porn.

This means the person who posted the video:

- 1.Can be sued for financial damages by the victim; and
- 2.Can be held criminally responsible for their behavior

A defendant is liable to a person depicted in intimate visual material for damages arising from the disclosure of the material if:

- (1)The defendant discloses the intimate visual material without the effective consent of the depicted person;
- (2)The intimate visual material was obtained by the defendant or created under circumstances in which the depicted person had a reasonable expectation that the material would remain private;
- (1)The disclosure of the intimate visual material causes harm to the depicted person; and
- (2)The disclosure of the intimate visual material reveals the identity of the depicted person in any manner.

A defendant is liable to a person depicted in intimate visual material for damages arising from the promotion of the material if knowing the character and content of the material, the defendant promotes intimate visual material...on an Internet website or other forum for publication that is owned or operated by the defendant.

Chapter Two: The Dirty Trick of Embarrassing Your Spouse

A plaintiff can sue for actual damages, mental anguish damages, attorney's fees, and exemplary damages. A court can also grant injunctions against the disclosure or promotion, and the code provides for statutory damages of \$500-\$1,000.

Online Impersonation

Understandably, people going through a divorce are not always at their best. People going through a divorce will often say or do things that are hurtful because of the roaring emotions at play. Another way people can get themselves in trouble is online impersonation.

One instance where this may have taken place made the news on June 25, 2015 when ex Galveston Judge Chris Dupuy was arrested for creating fake escort ads that purported to be posted by his former girlfriend.

The ads featured the women's photos, and made clear that at least one of them was "VERY FETISH FRIENDLY." These ads were traced back to Chris Dupuy, who was charged with two counts of online impersonation.

He then spent 11 months in a Galveston County jail awaiting trial, after which a Galveston County District Court judge tossed the charges, calling the statute used overbroad.

Texas Penal Code 33.07 was a relatively new statute passed by the legislature in 2009. This statute is often known as the cyberstalking statute.

Under Texas Penal Code 33.07.ONLINE IMPERSONATION

(a)A person commits an offense if the person, without obtaining the other person's consent and with the intent to harm, defraud,

Chapter Two: The Dirty Trick of Embarrassing Your Spouse

(1) any person.

(c) An offense under Subsection (a) is a felony of the third degree. An offense under Subsection (b) is a Class A misdemeanor, except that the offense is a felony of the third degree if the actor commits the offense with the intent to solicit a response by emergency personnel.

Chapter Three: The Dirty Tricks of Hiding Assets In Your Texas Divorce

This chapter is inspired by several consults I had over the last two days where the topic of asset hiding came up in the context of a divorce. Asset hiding is one of the most popular dirty tricks during a divorce.

The phrase *asset hiding* probably conjures up imagery from the movies in which spouses hide money in offshore accounts. While I am sure that happens, there are some more mundane yet effective tactics you should be on the lookout for.

Red Flags that Your Spouse May be Hiding Assets

Clients are often concerned that their spouse may be hiding assets. Some red flags to look for include:

1. Refusing to share financial information.
2. Diverting mail
3. Decrease in income
4. Controlling behavior

Refusing to Share Financial Information

If your spouse does not share financial information with you such as how much money is in an investment or bank account, this could indicate they are hiding assets.

Diverting Mail

If your spouse starts sending mail to another location, this is another good indicator they are trying to hide something. This could include a secret bank account they do not want you to find out about.

Decrease in Income

If there is a sudden decrease in your spouse's income, this is another good indicator they are diverting money elsewhere. It is really easy these days to set up direct deposit into multiple accounts. So, if your spouse's is depositing less money into a joint account, this may mean there is other money going elsewhere.

If you notice any of the above signs or any other signs that set off alarm bells, you should consult with a Texas divorce lawyer. An experienced divorce lawyer will help you determine what your rights are and steps you can take to protect yourself.

Chapter Three: The Dirty Tricks of Hiding Assets In Your Texas Divorce

Hiding Assets

Hiding assets can take many forms including:

1. Hiding income
2. Moving money to a family member or friend's account
3. Hiding money in offshore accounts
4. Overpaying taxes
5. Hiding money in sneaky investments
6. Undervaluing business interests

Hiding Income

In one consult, the individual had a second job where they were compensated largely in cash. They were bragging in the consult how their spouse had very little knowledge of how much money they made from this job and so it would be easy to hide that money from them.

I cautioned this individual that if it were discovered they were trying to hide assets, a judge could severely punish them during the divorce in various ways including awarding their spouse a disproportionate share of the marital property along with other sanctions.

One of the things a Texas divorce lawyer will be on the lookout for is a spouse trying to hide income. Our office has caught more than one spouse trying to understate their income. The last time this came up, they were self-employed and tried to say they only made a certain amount a month. However, when we got ahold of their bank statements, we saw they were depositing 10 times the amount they had said each month.

Moving Money to a Family Member or Friend's Account

In another consult, a husband asked me a couple questions regarding hiding assets that are worth addressing for our readers. The questions were:

1. As an attorney, can you help me hide assets from my wife?

Chapter Three: The Dirty Tricks of Hiding Assets In Your Texas Divorce

2. Can I move money into a family member or friend's account to hide money from my wife?

Can an Attorney Help Their Client Hide Money from Their Spouse?

Per the Texas Disciplinary Rules of Professional Conduct Texas attorneys have an ethical duty to not “engage in conduct involving dishonesty, fraud, deceit, misrepresentation”

A spouse has a similar duty to their ex. It is highly likely at some point each spouse will have to swear an oath as to all the assets and debts they are aware of. If a spouse hides assets and their attorney finds out, their attorney may be obligated to withdraw from representing them in further proceedings.

Hiding the Money from Their Spouse in Another Person's Account?

As my answer to the question above implies, hiding money in another person's account is not permissible during a divorce. Prior to a divorce, there are no court orders that would prevent a spouse from engaging in that activity.

However, I also explained that one of the first things his wife's attorney will probably do during the divorce is ask for two years' worth of bank statements to look for large sums of money being moved around.

If it is discovered that money has been moved, his wife could ask to be awarded 100% of the money that he tried to hide based on his fraud on the marital estate. This would also paint him in a very unfavorable light with the court and call into question the truth of everything he said or presented to the court.

Hiding Money in Offshore Accounts

Hiding money in a foreign country seems like something you might see in the movies or read about in a newspaper or magazine about some rich celebrity. However, this is a dirty trick you should still be aware of. One of the biggest problems associated with this dirty trick is that even if discovered, it can be very difficult to recover the money.

Foreign Accounts Easy to Open

In today's world of the internet and ease of travel, it is incredibly easy to set up foreign bank accounts. The foreign banks also often make accessing this money incredibly easy with ATM and debit cards. Often times a spouse does not even consider that their spouse may be doing such a thing during a divorce as was the case an ex-wife I met with not too long ago.

Chapter Three: The Dirty Tricks of Hiding Assets In Your Texas Divorce

Within the last month, an ex-wife contacted our office regarding her suspicions that her former husband had hidden money in another country. Her husband had run into problems with the IRS and convinced her in order to protect her they should divorce. He also told her that he was giving her everything.

He later moved to a foreign country. A few years later after the divorce she found out that her ex-husband was back in the United States and had a very lavish lifestyle and was living in manner that lead her to believe that her ex-husband had lied to her about the money they had during the marriage and probably had some hidden accounts.

What Can be Done?

This ex-wife wanted to know what could be done. I explained post-divorce discovery and the legal remedies that were available should we discover hidden assets. If fraud is discovered in a reasonable time, you can file a motion to set aside the Final Divorce Decree. Alternatively, if the time period for filing such a motion has expired, a separate post-divorce lawsuit can be filed to divide up any undisclosed assets.

Something to keep in mind is that although a court may make an order that off-shore assets be divided between the spouses, it can be very difficult, time consuming, and expensive to try and convince the foreign jurisdiction to obey a United States order.

Although foreign accounts can be easy to open, they are becoming more difficult to hide. Due to concerns regarding terrorism, the United States and several foreign countries cooperate regarding reporting certain information to each other.

Many foreign banks will send the IRS information regarding United States citizens. This makes reviewing tax returns an important tool for trying to detect foreign bank accounts.

Be Careful

Another thing to consider when deciding if your spouse may have hidden money overseas is the financial resources of the marriage. If you and your spouse are living paycheck to paycheck and you have a good handle on where the money is going, then this probably not a dirty trick your spouse is engaging in.

Unfortunately for the husband in one of my cases, his wife became convinced that her husband was hiding money offshore. In this particular case, the husband was just scraping by as a music teacher. Nothing in the case would have indicated that he had engaged in this underhanded trick. The couple was severely underwater with credit card and other debts. Despite this, she and her attorney

Chapter Three: The Dirty Tricks of Hiding Assets In Your Texas Divorce

went on a witch hunt with legal discovery to find the hidden assets and turned what should have been maybe a \$3,500-\$7,000 divorce in a \$40,000 divorce.

Overpaying Taxes

In one case where I represented the wife, the husband had tried to hide marital money by overpaying the federal income taxes. He had set it up with his employer where more money than necessary was being taken out from his paycheck for taxes.

During settlement negotiations in mediation, we had settled all issues except the spouses filing taxes together and splitting any tax refund. When we suggested doing just that, the husband hit the roof and said no. We pressed the issue and said that we were either willing to walk away from the agreement and proceed with going forward to trial.

After hearing that this case may be going to trial, the other side relented and parties agreed to split any tax refund. We later found out what the husband had done and that the refund was \$25,000.

Hiding Money in Sneaky Investments

Another tactic for trying to hide money is to place it in an investment vehicle the spouse may not suspect; one such investment vehicle is a children's 529 plan.

A 529 plan is supposed to be used to help families save money for their children's college education. These plans offer certain tax benefits as incentives to encourage parents to save.

A 529 plan is set up so that:

- 1.The parent is the account owner and
- 2.The child is named as beneficiary

However, 529 plan funds can be withdrawn at any time by the owner, usually with tax penalties. This freedom to withdraw makes them possible vehicles to hide money during a divorce.

One example of this would be to put money that normally would be divided during a divorce in a 529 and pretend that it was for the child only to withdraw it later after the divorce. This would be much like the tactic described above of overpaying taxes so you do not have to divide it with your spouse. You then later get that money back after the divorce.

Chapter Three: The Dirty Tricks of Hiding Assets In Your Texas Divorce

There was a concern in at least one of my cases that this tactic was being used. We solved the problem during our mediation by dividing up two similarly funded 529's between the two spouses. They were then made constructive trustees of the funds that were only to be used for the benefit of the child's education.

Under-Valuing Business Interests

For purposes of calculating child support, it is relatively easy to calculate when a person is an employee. However, as discussed above regarding hiding income, it can be more difficult when that individual is self-employed or an entrepreneur. This is because an entrepreneur can more easily manipulate things within a business to show less income.

During a Texas divorce involving a business, the value of the business is often a major focus of the division of property. There are several different approaches to valuing a business. One dirty trick is to try and undervalue the business so there is less to provide. If your spouse is in control of the business, they are in the best position to know what it is actually worth.

If you are not the spouse in control of the business, rather than rely on your spouse as to the value of the business, you may want to hire an independent business appraiser who is accredited in business valuation to help you evaluate what the business is worth.

How Can I Find Out if my Spouse is Hiding Assets?

One way to help detect if your spouse is hiding assets is to conduct discovery. Discovery usually involves one or more of the following documents:

- 1.Request for Disclosure
- 2.Request for Production
- 3.Written Interrogatories
- 4.Requests for Admission
- 5.Sworn Inventory and Appraisement
- 6.Depositions

One of the unique and important forms of discovery in a Texas divorce is to require spouses to prepare and file a sworn inventory

Chapter Three: The Dirty Tricks of Hiding Assets In Your Texas Divorce

and appraisal of all marital assets and debts. This inventory and appraisal will itemize all financial accounts of the marriage.

Another helpful form of discovery is a request for production. This request forces the spouse to produce statements for financial accounts including bank statements and other written documentation.

It is often helpful to compare these statements to the inventory and appraisal. If this comparison raises questions or needs clarification, additional discovery can be conducted including a request for interrogatories that asks questions or to conduct a deposition of the spouse.

If more expertise is needed, an attorney can employ a forensic accountant to review the financial records in a divorce to try and detect anomalies, irregularities, or hidden assets.

Chapter Four: Wasting Marital Assets or going on a Spending Spree

When a divorce is on the horizon, sometimes otherwise honest spouses start to act out of character. This can often take the form of going on a spending spree. This spending spree often leaves both spouses with more debt than they can usually afford by the time the divorce is over. This chapter will discuss how to recognize when a spouse is wasting assets and what can be done about it during your Texas divorce.

What is Wasting Assets in a Texas Divorce?

Wasting of assets can happen during a marriage or during a divorce. A spouse who wastes assets is one who squanders a couple's savings or racks up credit card debt either during marriage or during the divorce process.

A good faith use of money or an investment that does not work out does not constitute wasting assets. However, misuse of community property resulting in losses may give rise to a claim of wasted assets. Some examples of wasteful spending may include:

1. Gambling debts
2. Expensive gifts to family members or friends
3. Money spent on an extramarital affair or lover
4. Extreme spending from a couple's joint account or credit cards
5. A new loan taken out without the other spouse's knowledge or approval
6. New car purchase
7. Major business losses
8. Significant stock investments.
9. Getting elective surgeries
10. Getting teeth fixed
11. Fixing up and making significant improvements to separate property
12. Using joint account money to pay down credit cards or other loans

Chapter Four: Wasting Marital Assets or going on a Spending Spree

1. Buying household items that will be needed to set up a new residence post-divorce with joint credit cards or joint bank accounts

Fraud on the Community—Division and Disposition of Reconstituted Estate

Constructive fraud, waste, and breach of fiduciary duty all mean basically the same thing in the context of a divorce.

These claims can be asserted under family code during the divorce.

Does a spouse owe another spouse a fiduciary duty in Texas?

A fiduciary duty would mean they have a legal obligation to act in the best interest of another (the other spouse).

The Texas Supreme Court found that there is unquestionably a fiduciary relationship owed by the spouses to each other and to the management of the community estate. (Schlueter v. Schlueter, 975 S.W.2d 584 [Tex. 1998])



Chapter Four: Wasting Marital Assets or going on a Spending Spree

Actual Fraud

To prove actual fraud, a spouse must show the other spouse transferred community property for the primary purpose of depriving the claimant of the property with dishonesty or an intent to deceive, which resulted in harm to the community estate.

The spouse alleging actual fraud has the burden of proof, which can be more difficult than constructive fraud because they have to prove their spouse acted dishonestly or with the intent to deceive

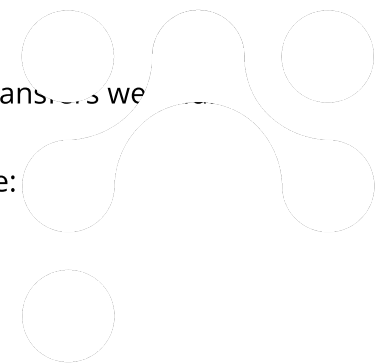
Constructive Fraud

The argument for constructive fraud is generally that a spouse has breached their fiduciary duty to their spouse in some way. Thus, if a spouse is misappropriating marital funds or assets from the community estate, they are not acting in the best interest of the other spouse.

Constructive fraud transfers the burden of proof to the spouse who made the transfers to show the transfers were

Factors a Texas divorce court will consider in determining whether there has been constructive include:

- 1.The relationship between the spouse and the recipient;
- 2.The size of the gift or transfer in relation to the total size of the community estate;
- 3.The adequacy of the estate remaining to support the other spouse in spite of the gift or the transfer; and
- 4.Any special justifying factors for the gift or transfer.



Chapter Four: Wasting Marital Assets or going on a Spending Spree

Section Texas Family Code Section 7.009 states that:

(a) In this section, "reconstituted estate" means the total value of the community estate that would exist if an actual or constructive fraud on the community had not occurred.

(b) If the trier of fact determines that a spouse has committed actual or constructive fraud on the community, the court shall:

(1) calculate the value by which the community estate was depleted as a result of the fraud on the community and calculate the amount of the reconstituted estate; and

(2) divide the value of the reconstituted estate between the parties in a manner the court deems just and right.

(c) In making a just and right division of the reconstituted estate under Section 7.001, the court may grant any legal or equitable relief necessary to accomplish a just and right division, including:

(1) awarding to the wronged spouse an appropriate share of the community estate remaining after the actual or constructive fraud on the community;

(2) awarding a money judgment in favor of the wronged spouse against the spouse who committed the actual or constructive fraud on the community; or

(3) awarding to the wronged spouse both a money judgment and an appropriate share of the community estate.

This basically means if waste is determined, the innocent spouse may have a claim for reimbursement.

Chapter Four: Wasting Marital Assets or going on a Spending Spree

What Happens if a Judge Determines My Spouse Wasted Assets?

If wasting of assets can be proven, a judge can consider that when deciding how to divide marital property, to ensure the innocent spouse is reimbursed. A judge has few options including:

1. Awarding the wronged spouse an appropriate amount of the community property
2. Awarding a money judgment in favor of wrong spouse against the spouse who committed the wrong or
3. both

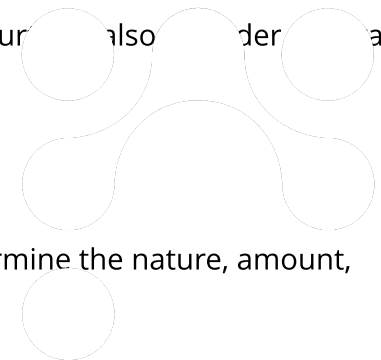
Spousal Maintenance or Alimony

If a court determines that a spouse is entitled to post-divorce spousal maintenance or alimony, the court also considers fraud as a factor when determining an amount of spousal maintenance.

Texas Family Code Sec. 8.052 states:

A court that determines that a spouse is eligible to receive maintenance under this chapter shall determine the nature, amount, duration, and manner of periodic payments by considering all relevant factors, including:

(6) acts by either spouse resulting in excessive or abnormal expenditures or destruction, concealment, or fraudulent disposition of community property, joint tenancy, or other property held in common;





Chapter Five: The Dirty Trick of Damaging, Destroying, or Selling Marital Assets

This section is inspired by one of the questions I hear frequently regarding damaging, destroying, or selling marital assets. The question takes on some of the following variations:

- 1.Can I sell X property?
- 2.Can my spouse sell X property?
- 3.My spouse destroyed X; what can I do about it?
- 4.My spouse damaged X property; what can I do about it?

Unfortunately, the answer, as in many legal questions, is that it depends.This chapter will explore how timing and different circumstances can affect the outcome.

Can I or my Spouse Sell our Property?

This is a question I get a lot when divorce is on the horizon. If nothing has been filed with the court, there are no court orders to prevent either you or your spouse from doing anything they want with marital property.

The beginning stages of a divorce are often one of the scariest times because of the lack of court orders because there is a lot of uncertainty of your rights and your spouse's rights.

After Paperwork is Filed

Once the divorce paperwork has been filed, some counties in Texas have standing orders that go into effect and place rules on how

Chapter Five: The Dirty Trick of Damaging, Destroying, or Selling Marital Assets

money can be spent and on selling, damaging, or destroying property.

If the county does not have a standing order, you can ask the court for a temporary restraining order. This is very similar to a standing order, but has to be asked for and is routinely granted by family law judges.

A temporary restraining order in Texas is not a protective order; this is a common misconception. Generally, a Texas temporary restraining order has more to do with maintaining the status quo (much like a standing order) and is generally not intended to keep a particular individual from being around another individual or location.

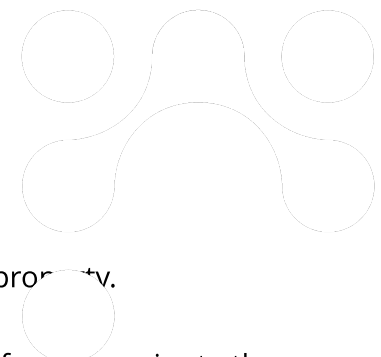
The big difference between a temporary restraining order and a standing order is that temporary restraining orders are only good for 14 days. If requested, temporary restraining orders can be renewed for an additional 14 days. The idea behind a temporary restraining order is that they will provide some temporary protection until there can be a hearing before a judge can make more permanent orders for the duration of the divorce.

How is Property Divided in Texas?

In general, Texas Community Property is property acquired by either spouse during the marriage.

There is a rebuttable presumption that all property owned during the time of marriage is community property.

One of the things I tell clients and potential clients regarding property division during a divorce is that from the minute they are married until the minute they are divorced, any property, debts, or income earned are potentially on the table for division during the divorce.



Chapter Five:

The exception to this is any property that can be proven to be separate property.

To rebut this presumption, spouses must provide clear and convincing evidence that an asset is separate property in Texas.

Separate Property in Texas is

1. Property acquired before marriage,
2. Property acquired during marriage by gift, devise, or descent,
3. Property acquired during marriage, but purchased with separate property funds.

Family Heirlooms

Family heirlooms can probably be shown to be separate property. However, something to consider is that if they were gifted, such as Grandma's wedding ring to your bride, then it may no longer be your separate property; it may now be the separate property of your ex. Wedding rings are a good example of being the separate property of the person they were given to and not the original owner's. division in a divorce. However, there is some case law that might provide a little wiggle room in regards to family heirlooms.

Other Ways to Prevent a Spouse from Destroying, Selling, or Damaging Marital Property?

The best remedy is prevention. One of my suggestions to clients and potential clients is to move any property they are concerned about to a safe location. Some of these items may include:

1. Inherited items
2. Photos

Chapter Five: The Dirty Trick of Damaging, Destroying, or Selling Marital Assets

3.Things of sentimental value

4.Valuables in safe

5.Financial documents

6.Things that cannot easily be replaced

I tell my clients and potential clients these items will ultimately need to be disclosed in the inventory during the divorce. However, by moving them to a safe location, they can insure they do not end up in the trash, a garage sale, or pawn shop. Unfortunately, not everyone behaves in a civil manner during a divorce and a bit of caution is often prudent.

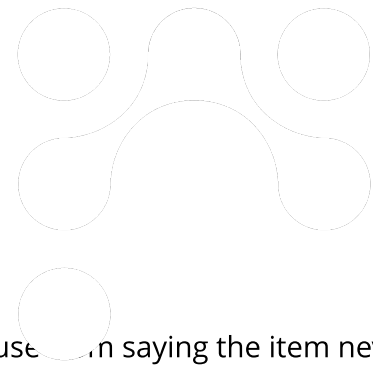
If you do not remove or cannot remove the items to a safe location, you can at least:

1.Inventory your valuables and create a list,

2.Photograph the property and date the photographs,

3.Locate any proof you may have of what was given to you, inherited, or owned prior to the marriage.

At least in this way you have documented the condition of the property and you can prevent your spouse from saying the item never existed.



Chapter Five: The Dirty Trick of Damaging, Destroying, or Selling Marital Assets

What if my Spouse has Already Destroyed, Damaged, or Sold Marital Property?

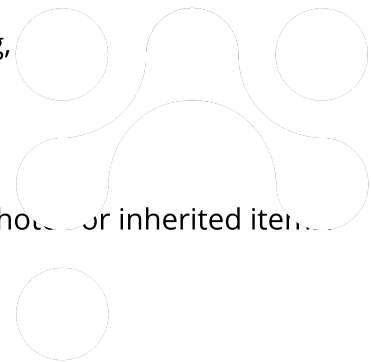
One remedy is to plead for marital waste. As we discussed previously, the Texas Supreme Court found that there is unquestionably a fiduciary relationship owed by the spouses to each other and to the management of the community estate. (Schlueter v. Schlueter, 975 S.W.2d 584 [Tex. 1998])

If it can be shown that waste took place, the innocent spouse may have a claim for reimbursement.

If wasting of assets can be proven, a judge can consider that when deciding how to divide marital property, to ensure the innocent spouse is reimbursed. A judge has few options including:

- 1.Awarding the wronged spouse an appropriate amount of the community property,
- 2.Awarding a money judgment in favor of wrong spouse against the spouse who committed the wrong,
- 3.Both of these options.

The downside of this remedy is that it will not help to replace things that cannot be replaced such as photos or inherited items.



Chapter Six: Conflicting Out Attorneys



Fans of the “The Sopranos” or other legal TV shows may already be familiar with how conflicting out an attorney can take place. In one particular episode of The Sopranos a neighbor of Tony’s, who happened to be a lawyer suggested he make appointments with all the top divorce lawyers in North Jersey so Carmela his wife would not be able to find legal representation. Later in that episode the audience learns that this dirty trick has worked, when a lawyer tells Carmela that she cannot hire him because all the divorce lawyers she tries to meet with are conflicted out.

Obviously, The Sopranos is a TV show and the setting was in New Jersey in today’s blog post we will examine how such a scenario would play out in Texas and what steps a spouse can take to prevent this dirty trick.

Can Spouses Use the Same Divorce Lawyer in Texas?

So far in my career I have only run into one incidence that I am aware of where a spouse may have been trying to deliberately trying to conflict me out from representing their spouse. I will discuss that later in this article.

What I have run into more frequently is where a spouse will ask about whether I can represent them and their soon to be ex. What I let the potential clients know is that it is unethical and against the rules of Texas Professional Conduct for an attorney to represent both spouses in a divorce. There is a conflict of interest in that what may be good for one spouse is not necessarily good for

Chapter Six: Conflicting Out Attorneys

the other spouse.

Conflicted Out

The Texas rules regarding a single attorney representing a spouse or the one discussed in The Soprano situation or found in Texas Disciplinary Rules of Professional Conduct as follows:

1. Rule 1.05 Confidentiality of Information;
2. Rule 1.06(b) Conflict of Interest: General Rule; and
3. Rule 1.09 Conflict of Interest: Former Client.

Rule 1.06(b)

Rule 1.06(b) tells Texas lawyers that they are to forego the dual representation in the followings situations:

1. Where the representation of one client is “directly adverse” to the representation of another client if the lawyer's independent judgment on behalf of a client or the lawyer's ability or willingness to consider, recommend or carry out a course of action will be or is reasonably likely to be adversely affected by the lawyer's representation of, or responsibilities to, the other client.
2. The dual representation also is directly adverse if the lawyer reasonably appears to be called upon to espouse adverse positions in the same matter or a related matter.

Rule 1.05

Chapter Six: Conflicting Out Attorneys

Rule 1.05 states:

(a) "Confidential information" includes both "privileged information" and "unprivileged information." "Privileged information" refers to the information of a client protected by the lawyer-client privilege of Rule 503 of the Texas Rules of Evidence or of Rule 503 of the Texas Rules of Criminal Evidence or by the principles of attorney-client privilege governed by Rule 501 of the Federal Rules of Evidence for United States Courts and Magistrates. "Unprivileged client information" means all information relating to a client or furnished by the client, other than privileged information, acquired by the lawyer during the course of or by reason of the representation of the client.

Rule 1.09 which says:

a) Without prior consent, a lawyer who personally has formerly represented a client in a matter shall not thereafter represent another person in a matter adverse to the former client:

- (1) in which such other person questions the validity of the lawyer's services or work product for the former client;
- (2) if the representation in reasonable probability will involve a violation of Rule 1.05; or
- (3) if it is the same or a substantially related matter.

This rule has been construed by some courts to include protect potential clients who consult with attorneys regarding representation. This means that a Texas divorce lawyer may possibly be conflicted out representing a wife if her husband consults with them even if they are not hired by the husband just like in *The Sopranos*.

Chapter Six: Conflicting Out Attorneys

Ethics Opinions 294 & 494

One ethics opinion I researched regarding the situation examined those rules in relationship to divorce consult and came down on the side of if an attorney meets with a spouse they cannot then represent the other spouse.

In a similar opinion, (Opinion 294, *TBJ*, September 1964) the committee found that an attorney who represented the wife in a prior divorce action, which was dismissed upon reconciliation, could not ethically represent her husband in a subsequent divorce suit filed against her by her husband. The committee reasoned that an attorney's duty to preserve a client's confidence outlasts his or her employment, and employment which involves the disclosure or use of these confidences to the disadvantage of the client.

Procedure

A party who seeks to disqualify opposing counsel must file a motion to disqualify. The person bringing this motion, to disqualify an opposing counsel bears the burden of proving that disqualification is proper.

Your spouse will need more than:

1. mere allegations of unethical conduct or
2. evidence showing a remote possibility of a violation of the disciplinary rules to disqualify an opposing counsel.

To disqualify opposing counsel on the basis of prior representation, a party must prove three elements:

Chapter Six: Conflicting Out Attorneys

- 1.that opposing counsel previously had an attorney client relationship with the party;
- 2.that the pending litigation is the same as or is substantially similar to the prior representation; and
- 3.that the facts in the pending litigation create a genuine threat that the opposing counsel will reveal confidences.

Waiving the Conflict

One way to waive the conflict is if a party does not file a motion to disqualify opposing counsel in a timely manner than they have waived the complaint. The untimely urging of a disqualification motion lends support to any suspicion that the motion is being used as a tactical weapon.

Alternatively, parties can also choose to waive the conflict of interest of an attorney having met with both parties.

Is this a Good Strategy to Utilize During a Texas Divorce?In my opinion I do not think that it's generally a good approach for people to take. Taking this approach is likely to escalate the conflict between spouses and make for a more expensive divorce. Generally, I believe it is better for both spouses to have excellent divorce lawyers. This facilitates reaching a prompt and fair settlement.

When you eliminate the good divorce lawyers from the equation this means the divorce case is likely going to take longer and be more expensive. This has been my experience both when a spouse is trying to represent themselves and when an attorney who does not normally practice divorce accepts a case. In both scenarios, someone is trying to learn divorce law and does not know, what is reasonable, or what a divorce court would likely do.

Although, this dirty trick may be tempting I would advise a spouse to refrain. This is more likely to have some success in towns with

Chapter Six: Conflicting Out Attorneys

fewer attorneys. However, it may still have some degree of success in the city as well.

How can you prevent this from happening to you?

One way to prevent yourself from falling victim to this tactic is at the first sign a divorce may be on the table, is for you meet with a divorce lawyer. That will in most circumstances mean that Texas divorce lawyer will be unable to meet with your ex, and you will have, in effect, have at least one option as far as securing the services of a lawyer for your divorce.

If you are concerned about whether your spouse might do this, it would be a good idea to talk with a divorce lawyer as soon as you can. You may not be sure that you want a divorce or that you are going to get divorced. However, a divorce lawyer can discuss your options with you, make you aware of your rights, and give you some more information regarding the process. We have met with many potential clients who were feeling great distressed and afterwards they said I am so glad I met with you I feel so much better.

Chapter Seven: Quitting Your Job To Avoid Paying Child Support

Unfortunately, some spouses do not feel an obligation to support their children after a divorce. I have heard all kinds of excuses from “I shouldn’t have to pay because I have a car note” to “I already behind on my child support on another child.”

These deadbeat parents often come up with creative plans on avoiding child support. I sometimes hear if you try and get child support then “I am going to go for full custody” or “I am going to fight for 50/50 time so I don’t have to pay child support.” All of the above are flawed ideas on how Texas family law works that I have addressed in other articles.

In today’s blog article I am going to discuss a strategy that sometimes employed. Quitting a job or changing your job to reduce child support obligations. This can be an effective dirty trick during a divorce or child support case. A trick a Texas divorce lawyer can help you avoid.

A Low Paying Job or No Job Does Not Automatically Mean Less Child Support

The premise behind a parent intentionally under employing their self or quitting their job is that because Texas calculates child support based on income if they are making less then they will pay less in child support. After child support is set then they can get a better job making more money.

I believe in most cases parents do not lose their jobs on purpose. However, I have had cases where a parent consciously chose to intentionally be unemployed because they were likely to be ordered to pay child support.

Quitting a job can be an incredibly bad move by a paying parent if there is a child support order in place. A parent’s child support obligation continues as long as an order is in place requiring the parent to pay child support.

Chapter Seven: Quitting Your Job To Avoid Paying Child Support

A parent may seek to modify a child support order based upon the loss of a job and the court may order the cessation of child support retroactive to the date the petition seeking to modify child support was filed by the obligor.

However, a child support modification is not something that happens automatically. The attorney general can be incredibly slow to move on a case like this. I have had potential clients meet with me who had been trying to get the attorney general to do something for 5 years. A family law attorney is a quicker option but once you have quit your job they are more difficult to pay.

Intentional Underemployment

In most cases a Texas family law court will use a parent's actual income in order to calculate child support. However, the Texas Family Code 154.066 covers Intentional Unemployment Or Underemployment.

(a) If the actual income of the obligor is significantly less than what the obligor could earn because of intentional unemployment or underemployment, the court may apply the support guidelines to the earning potential of the obligor.

Iliff v. Iliff, No. 09-753 (Tex. April 15, 2011)

Prior to this case there was a split among the courts of appeal on how much proof was required before applying 154.066.

The Texas Supreme Court Determined that:

- 1.The language of Texas Family Code section 154.066 does not require such proof
- 2.That intent to avoid child support need not be proven for the trial court to apply the child support guidelines to earning potential instead of actual earnings
- 3.However, a trial court may properly consider an obligor's intent to avoid child support as a factor, along with other relevant facts, in an intentional unemployment or underemployment analysis.

The Texas Supreme Court's interpretation of the statute allows a determining court the option to respond if a parent tries to employ a dirty trick to lower their child support. The court reminded the courts to keep "the best interest of the child" in mind when making its determination.

If you believe your ex is trying to manipulating their income intentionally, be sure to contact an attorney.

Chapter Eight: Turning Into a Temporary Helicopter Parent

Recently we had a case where I was able to observe a husband become a “helicopter” parent. He used his new-found involvement with the children to strongly negotiate for additional time with the children and reduced child support. At the time those involved with the case did not suspect that this behavior of his was a trick.

However, after the divorce his behavior led mother to believe he had just been putting on a show and had negotiated in bad faith. In this blog we will discuss what happened so that our readers can learn by example in case they are faced one day with a similar scenario.

The Suddenly Newly Involved Parent

The wife in our story filed for divorce and then observed her once arguably absentee father become very involved with the children.

Where before she filed he did not attend the children’s events such sports or other school activities he was now very involved. He was also now volunteering to take the kids to school, helping to prepare meals for the children, and taking them to their doctors’ appointments.

It seems like a miracle that now after wife filed for divorce her husband had turned into a very hands-on parent.

A Dream Come True

In our case wife was exited she thought it was great her husband was now showing an interest in the children. She was not suspicious or think that he was playing games or trying trick her. In this case the husband and wife came up with their own visitation schedule. It involved 50/50 time with the children. In their order husband was still going to pay wife child support and wife was still going to be the “primary parent.” However, because of the more equalized time husband was going to pay below guideline child support.

However, after the divorce she became convinced that he never had any intention of exercising his hard fought for time with the children. Instead, she now believes he only did it to maximize his time with the children to argue for below guideline child support.

What convinced her was that soon after divorce husband took a new job in a new state and moved away. There was no way he was going to be able exercise 50/50 time. This meant that she was going to be doing practically everything for the children without his help. To top it off she was also going to be receiving less than guideline child support.

How to Prevent This Trick from Happening to You

Chapter Eight: Turning Into a Temporary Helicopter Parent

Knowing if some attempting to pull this trick can be difficult. I have definitely observed situations when a parent truly does want to spend more time with the children.

Our office has also seen people in case that were inspired to either work on their marriage or their family once they realized that things had suddenly become very real. So, the fact that a parent may be inspired to make changes and strive to be a better parent is not unrealistic.

However, it is also common for one parent to try and become very involved to try and avoid or minimize child support. In this case, the wife needed talk to her lawyer to develop a plan on how to handle husband's actions.

What I like to tell my client's is that I like for them to be in control of the situation.

For example, there is no reason the order could not have involved standard visitation and guideline child support. If the parent's wanted to deviate from that visitation schedule they still can have even though there is an order as long as they agree. It is only when parents agree that the order matters.

The same goes for guideline child support. If wife decides to give him back some of his child support obligations that is her right.

What Happened in the Case Scenario Above

Ultimately mother decided to file a motion for new trial based on her husband's deception. The judge ruled against mother. He was not very sympathetic she had been represented by an attorney and had agreed to the order.

That is not to say mother did not have a remedy she was just going to have to do it through a new case and not through a divorce. She would need to file to modify the order based on a substantial change in circumstance.

Chapter Nine: Engaging In Spousal Starving Tactics

One of the most frequent questions I get asked is “can I get my spouse to pay for the divorce.” We have even written an article on that topic that I will include a link to at the bottom of this post. In that article, we discussed that depending on the facts it may be possible to get your spouse to pay for your legal fees. However, generally it will cost you money up front to get to that point in the case. On top of that, the hearing where a judge may make orders regarding temporary spousal support could be 30-60 days away from the time the divorce is filed.

In order to aid our readers regarding the above problem, we have written a couple articles:

1. that provide ideas and suggestions on how to pay for a Texas divorce and
2. tips on preparing for the divorce

I mention those prior articles because the readers of today's blog topic “spousal starving” can also benefit from reading those prior articles.

What is Spousal Starving?

I often caution my divorce consults to prepare for a frequently employed dirty trick used by vindictive and controlling exes, “spousal starving.” This tactic can be used by wealthy couples or couples with modest incomes. “Spousal Starving” refers to when one spouse cuts off financial access to the other spouse.

This can include:

1. emptying the joint bank account
2. removing the other spouse from a joint credit card, or
3. refusing to pay bills or buy groceries, knowing the other spouse has no access to cash
4. Cancelling vital services or utilities

A spouse can use this to put their ex at a disadvantage during a divorce. The goal is to get the other spouse in financial position where they out desperation will accept an unfair settlement. This is more likely to happen if the starved spouse has no source of income or family member who can help them. When I encounter spouses in this type of relationship they want to know how they will pay for:

1. bills
2. food

Chapter Nine: Engaging In Spousal Starving Tactics

3. take care of their children
4. let alone hire our services

The other awful part of spousal starving is that while you have no or little access to financial resources. Often your ex has plenty of funds to retain a Texas divorce lawyer at their disposal.

What Can I do if My Ex is Engaging in Spousal Starving?

Unfortunately, once spousal starving has begun, in the short term there is not a lot that can be done. I often feel for these individuals and let them know that their spouse's tactics will not be looked upon favorably once we are in front of a judge. Once you are in front a judge it will be possible to request spousal support and child support. However, getting there takes money and time. This future help is often hard for someone to appreciate when they are worried about getting through today.

One of the best solutions is if you are able to borrow money from:

1. parents or other family members; alternatively
2. you may be able take out loans or start charging things on a credit card

What Proactive Steps Can I take Now Prior to a Divorce?

One of the first things I encourage clients and potential clients do include:

1. Having a separate account which your spouse cannot empty
2. If you believe a divorce is coming to put half of any joint account money into that separate bank account.
3. Have or open credit cards that your spouse does not have access to
4. If you cannot afford a Texas divorce lawyer and you have children, you can get help through the attorney general to get child support going. Unfortunately, this process can take a long time and ultimately when you get a divorce that divorce may cost more because of the prior order.
5. Have copies ready of all financial paperwork. This will help your attorney to get you support once you are in front of a judge.
6. Make a list of all known assets, liabilities, bank accounts, real estate, business interest, and retirement accounts.
7. Monitor your credit regularly

Chapter Nine: Engaging In Spousal Starving Tactics

8. Get a secure mailing address which your spouse does not have access to
9. Change passwords immediately to all your personal accounts (do not leave your spouse without access to funds) Law Office of Bryan Fagan | Spring, Texas Divorce Lawyers.

Chapter Ten:

Many of the people I meet with ask about how they can pay for a divorce and whether they can put money aside for a divorce fund?

There are many reasons why you may want to hide money away not necessarily for divorce even if you are in a happy marriage. For some having a stash of cash:

1. Gives you peace of mind that you have a cushion in case of an emergency. Maybe for a divorce maybe for some other reason like a tree falls on the roof.
2. Maybe you want a fund so that you can make a purchase for a gift so you can surprise your spouse for their birthday.

My mother was married to my father for over 40 years before he passed away and she had a “secret fund.” It was a fund where some amount of her paycheck would be deposited into just in case.

The just in case could be anything from upgrading the house, to paying some bill off, or money to live on because my dad was in-between jobs.

The “secret fund” was not super-secret my dad would occasionally complain that my mom had her “secret fund” and all his paycheck was going into their joint account.

Although now that I am looking back my dad sort of did the same thing by putting so much of his paycheck towards a 401k and my mom would occasionally complain about that.

I have known more than one woman and read more than one article encouraging every woman to have a “just in case fund.”

The articles I read were more focused on women who were married and were dependent on their husbands as “breadwinners.” However, does this advice still hold true in today’s world where more women are working and not as dependent on their husbands.

Generally, I recommend keeping a “secret cash fund” to the people I meet with. I believe it is appropriate and even necessary for many of the people I meet.

Sometimes my clients or potential client’s express concerns that it may cause more problems than it is worth with their spouses. These people are often not sure if their marriage is over. I recommend you consider the consequences before you start hiding away any money.

Another thing you can consider is how you frame what you are doing with your spouse. In my example above both my mother and father had a separate quasi secret account. My mom did not call it her divorce stash.

Chapter Ten: Hiding Money From Your Spouse

It was her “just in case” fund. Many finance books when they are teaching their readers how save money encourage opening just such a bank account and having a small percentage of each pay check put away for “just in case” which is hopefully their retirement.

Take an Active Role in the Finances

Before we get into why you may want to consider start hiding away money, one thing you should do to protect yourself immediately is to learn and participate in your families’ finances. Often in families there is division of labor where one spouse oversees all the “money related decisions” such as:

1. balancing the checkbook,
2. paying bills, and
3. investing money

Quite frequently we represent a spouse who has no idea about any of the finances. This generally means we are going to have to do a lot of discovery to figure out the finances for their marriage. Something you can do to help yourself if you are a spouse who is not actively involved in the finances would be to start learning about them now and to get more involved.

If share a joint account with your spouse, you should:

1. be aware of how it is being used
2. Make sure you have access to statements either online or paper

Try and find out what other accounts are out there such as:

1. Bank accounts
2. Investment accounts
3. Retirement accounts

You should learn how much your spouse earns including:

1. commissions
2. bonuses
3. tips
4. stock options and
5. other perks

Chapter Ten: Hiding Money From Your Spouse

These steps will help you have a better idea if you are getting your fair share if you end up having to divide assets due to a divorce. If you do not take steps to protect yourself, you can find that:

1. you are at a disadvantage during a divorce and
2. your divorce is more expensive because of the research your lawyer must do for you to find out about your marital finances

Spousal Starving During a Texas Divorce

One of the best reasons you should consider having a separate/secret account would be if you have no source of income outside of your spouse.

I have represented women with children in abusive relationships where their husbands control all the finances. They want to leave their husbands but they lack any support system. In cases such as these often the solutions are limited and sometimes involve:

1. Moving into a shelter with their children and
2. Struggling financially and hopefully getting orders in place for child support or spousal support

If something happens and you need to leave the marriage, or your spouse leaves you, would you have access to financial resources to allow you survive?

Possible options could include:

1. Taking money out a joint account
2. Borrowing the money from a friend or relative

What if your spouse cuts off your access to a joint account or your relative or friends cannot lend you the money? If that happens then you will be good think that you were prepared and had an account set aside for an emergency.

It is not uncommon during a Texas divorce or separation for a spouse to clean out a bank account or empty a safe with money or valuables in it. This practice is sometimes referred to as spousal starving.

More than once I have had someone tell me “my spouse would never do that to me,” I have had more than one spouse call me after meeting with me and tell me my spouse did just what you told me might happen.

Can't I get Alimony?

Chapter Ten: Hiding Money From Your Spouse

If you are spouse who does not have any income, then there is a good chance a Judge qualify may give you some temporary spouse support during the divorce. Often, I am asked “if I can get support, from my spouse why do I need a separate account?”

The biggest reason is the divorce process can be slow and take time. I may meet with someone 3-9 months before they pull the trigger or their spouses pull the trigger on a divorce. Many times, when I am meeting with them again they feel their situation is an emergency and that we should go into court on an emergency hearing to get them immediate relief.

Unfortunately, what a court considers an emergency is not necessarily that your spouse cleaned out bank account. You should be prepared that it may take 45-60 days to get in front of a judge for a hearing.

Keeping all this in mind while you may be entitled to alimony from your spouse, you will still need money to live on until support is put in place.

Keep Financial Records

There is nothing legally wrong with having a “secret account” while you are married. Married couples are not legally required:

1. to have joint accounts or
2. to disclose to any existing accounts to their spouse

However, that changes during a divorce in Texas. It is a good idea to make sure you have copies of bank statements so if those are requested during a divorce you will be able to provide them for your account. For example, if your relative gave or loaned you money that you put in the account you would then be able to show where the money came from. If the money in the account was earned during the marriage, then Texas community property rules will still apply and it will be community property. However, if the money was a gift or inheritance you will want to be able to document it to show that it is separate property.

What should you do?

After reading my blog article you will see that my general recommendation is that you have such an account to protect yourself. However, you will need to make that decision for yourself on what is necessary to protect you and your children.

There are some advantages to having such an account including:

1. it is secret
2. you can control what you do with it, and you will have a safety net for emergencies

Chapter Ten: Hiding Money From Your Spouse

Some cons could include:

1. being discovered by your spouse
2. some people feel like they are being sneaky etc.

You will have decided if it is good idea for your situation. However, if you could be placed in a situation where you have no income by your spouse it is in your best interest to establish protection against such an event.

Your safety net could be a:

1. Bank Account
2. Credit Card or Some other financial contingency

Chapter Eleven: Using Children as Weapons

One of the saddest things I have observed during divorce proceedings is when parents start to use their children as weapons. This can take several different forms:

1. Withholding the children altogether from the other parent
2. Making visitation contingent on paying support or some other factor
3. Running away with the children to another city or state
4. Engaging in parental alienation
5. Crying Regarding Family Violence
6. Coaching the children to lie

In today's blog we will discuss some of these dirty tricks as well as the steps that can be taken should your ex start to do some of these things.

Withholding your Children

Unfortunately, during Texas divorce proceedings, parents can let their feelings toward their ex cloud their judgement. Sometimes these feelings cause them to play games to punish their ex out of anger or fear. The thing I observe most frequently is parents withholding the children from the other parent and failing to consider what is in the best interest of their children.

The excuse I hear for this is generally they do not want to let the other parent have the children because they are afraid that the other parent will not give them back. They engage in the very same activity they fear from the other parent.

You React to Spousal Starving

Maybe you decide to react to your spouse's bad behavior of cleaning out the joint bank account and leaving you broke. As you result, you decide to get back at them by not allowing them time with the children.

First, if a court order that addresses custody and visitation rights is in place and a spouse does not comply with the order, he or she can be held in contempt and even end up in jail.

Withholding children by either parent is not a good idea:

Chapter Eleven: Using Children as Weapons

1. The court does not like when parents withhold children from each other
2. It violates standing orders in counties that have them
3. If there is an existing temporary order, this would be a violation of that order

When there is no order or agreement in place things become more complicated. This is usually the problem at the beginning of cases. If a parent engages in using the children as pawns prior to an order being in place, a judge will take that into account and there very well may be consequences.

Extreme Circumstances

Withholding children should be avoided unless there are extreme circumstances. These circumstances could include family violence or other concerns regarding a parent endangering children.

Other activities may rise to the level where withholding the children may be permissible. It would be a good idea to discuss any concerns with a Texas divorce lawyer.

Visitation Contingent on Paying Support

In many people's minds, time with children is somehow contingent on the payment of child support. Prior to a court order, there is nothing telling parents what they can and cannot do.

As we discussed above, courts do not like when parents decide to withhold the children from the other parent. Lack of support is not a good excuse. Withholding children may well get a parent in trouble. Lack of support is something a court will look at once the parties are in front of the judge for a hearing. However, a judge will not accept that as an excuse for withholding the children.

Once there are orders in place, the lack of connection between support and visitation becomes much clearer.

Texas Family Code Section 105.006 requests every Parenting Order to include the following language in capitalized bold type:

FAILURE OF A PARTY TO PAY CHILD SUPPORT DOES NOT JUSTIFY DENYING THAT PARTY COURT-ORDERED POSSESSION OF OR ACCESS TO A CHILD. REFUSAL BY A PARTY TO ALLOW POSSESSION OF OR ACCESS TO A CHILD DOES NOT JUSTIFY FAILURE TO PAY COURT-ORDERED CHILD SUPPORT TO THAT PARTY.

In fact, judges are not even permitted to order support but disallow any physical access to the child when they deem it to be in the "best interest of the child." This usually happens in severe cases such as abuse or some sort of child endangerment.

Chapter Eleven: Using Children as Weapons

Running Away with the Children

This is one of the more frustrating situations that can have significant legal consequences if ignored. There are two different scenarios that our office encounters regarding parents who abscond with the children:

1. Before divorce paperwork is filed and
2. After divorce paperwork is filed.

Before Paperwork Filed with the Court

Prior to a divorce, unless there are court orders regarding the children, parents are free to do what they want with the children, including run away with them. This causes a great deal of problems with the parent whose children were just taken away.

Usually the parents are extremely upset when we meet them and want to know what they can do about it. We explain the next step involves filing paperwork and getting some orders in place, letting them know what their rights are, and when it's their time to have the children.

If the parent did not ignore the bad behavior of the ex and files in time, we can usually force that parent to move back to the area. However, if they waited too long, they may have to go fight the custody battle where their ex moved to which could include travelling to a new state or country.

After Paperwork is Filed with the Court

If you're in the middle of a divorce or a child custody dispute, it is a very bad idea to run away with the children because:

1. If there are court orders, you may no longer have the right to relocate with the child.
2. If you ignore a pending case, the other parent may be able to get orders appointing themselves as the primary parent. These orders may also severely limit your access to the child.

Engaging in Parental Alienation

Another tactic some unscrupulous parents will engage in during a divorce is intentionally trying to alienate the children from the other spouse to hurt the other spouse or to decrease time the other parent has with the children.

Chapter Eleven: Using Children as Weapons

Parental alienation can take many different forms including:

- 1.Preventing contact between the other parent or preventing the ex to see the children more than a couple of hours a week supervised
- 2.Intercepting phone calls and mail from the other parent
- 3.Continuously and repeatedly talking badly to the children about the other parent
- 4.Creating fear in the child regarding the other parent
- 5.Acting hurt or betrayed when the other child wants to see the other parent or shows affection for the other parent.

These can be serious cases when parental alienation is involved. Generally, one of the first maneuvers is to get experts involved such as:

- 1.Psychologists who are trained in spotting and dealing with alienation
- 2.Amicus attorney to represent the child

Crying Wolf

Sadly, domestic violence can be an all too real thing for men people going through divorce in Texas. In many cases, domestic violence is the reason for the separation and divorce proceedings. In other cases, the violence actually starts as a result of the divorce proceedings.

Texas Takes Domestic Violence Seriously

Texas takes domestic violence issues very seriously and our laws allow for victims to seek relief from a judge very quickly. A victim of domestic violence can be granted relief by:

- 1.Being awarded possession of the marital home
- 2.Obtaining a protective order against the aggressor
- 3.The aggressor not being allowed with in so many feet of the marital home or the victim's place of employment
- 4.The aggressor losing the right to possess a firearm

Chapter Eleven: Using Children as Weapons

5. Temporary custody of the children

6. The aggressor losing the presumption that joint custody of the children is in their best interest

Texas Domestic Violence Law as a Weapon

Unfortunately, the same law that is used to protect victims can be used as a weapon against an innocent party. This perhaps can be one of most serious and potentially damaging tactics in a divorce case.

A victim in Texas of domestic violence can:

1. Have an ex-parte meeting with a judge (without the other spouse present), and if the judge believes the victim's story, the victim can be granted emergency custody of the children.
2. Later there will be a hearing in court within 10 days of the ex-parte order where evidence can be presented.
3. However, the ex parte emergency custody order stays in place until that hearing.

Our office has not seen this manipulation of the Texas domestic violence laws often; however it is a dirty trick you should aware of.

It is something I bring up and caution clients about. Generally, I tell them if there is any question in their mind that their ex might make something up about them to:

1. Remove themselves from the situation and do not be alone with their ex without witnesses.
2. Record their interactions with their ex

One of the few things worse than going through a divorce proceeding is to be going through a divorce proceeding and having to defend against criminal charges.

File a False Accusation of Child Abuse

I suspect that few people knowingly file false reports of abuse, but it is very prevalent for people caught in the heat of the moment of divorce to stretch normal occurrences to suit their benefit.

Be very careful when pointing fingers If child abuse has occurred and can be proven this can be a sword that can help your case.

Chapter Eleven: Using Children as Weapons

However, if you do not have a good reason for making accusations this sword can be used against you very effectively to limit your access to your children.

Coaching the Children to Lie

Another tactic parents sometimes try is to coach their children to lie. This has come up in a few of my cases and, when discovered, it goes badly for the parent who is discovered. A couple of the ways I have observed parents being caught are when:

1. There is an amicus involved or
2. A judge has been asked to interview the child

In the case with the amicus, the amicus caught the mother coaching the children and placing recording devices on the children. The amicus in that case recommended the father not only be the primary parent for the children but also have sole managing conservatorship.

In the case with the judge, apparently one of the first questions the judge asked the children is what have your parents told you to tell me. Divorce can be extremely hard on the children. They often do not understand the reasons for the divorce, feel caught in the middle, and many times wish the parents would get back together. When parents are focused on “winning,” they often lose sight of what is in the best interest of the children.

Unfortunately, coaching or prepping children is not a rare occurrence. The good news is that it is frequently discovered as in the above examples. If child testimony seems rehearsed and the children appear coached generally very little weight will be placed on their testimony.

Chapter Eleven: Using Children as Weapons

Two of the most frequently asked questions I get during my Houston divorce consults are:

- 1)“How much is my divorce going to cost?” and
- 2)“How long is my divorce going to take?”

It is understandable that anyone about to undergo a divorce would like know the answers to these questions. We all would like some certainty in our lives. Unfortunately, in the Texas divorce process there is a lot of uncertainty. In this chapter, we will discuss the dirty trick of delaying the divorce, reasons why it is sometimes used, and methods of combatting this dirty divorce trick.

What are Some Reasons a Spouse May Want to Delay the Divorce?

Some of the reasons I have observed for why spouses want to delay a divorce include:

- 1.To punish their ex
- 2.Having a scorched-earth mentality
- 3.To obtain a financial benefit

Punish Spouse

I have witnessed this happen on more than one occasion. I was early in my career and working as an associate for another attorney. In that case, our client was a music teacher and from what I recall, he made approximately \$40,000 a year. His ex ran up the litigation costs and turned what should have been a \$5,000 divorce into a \$40,000 divorce. She did this by:

- 1.Conducting unnecessary requests for production, asking for bank account documents from 10 years ago
- 2.Depositions regarding bank accounts and other financial accounts
- 3.Motions to compel and other needless hearings

Her excuse was that she was trying to find out if her husband the music teacher was hiding assets in offshore bank accounts. I believe the real reason was she was trying to punish her husband. That case did involve adultery. However, in the process of punishing her husband, she also managed to punish herself. They were in a large financial hole after the divorce.

Chapter Twelve: Using Delay Tactics

Scorched Earth

This is one way I have seen tactical and stalling measures used. Others have a “win at all costs” or “scorched earth” mentality. Another attorney I know had a consult where a husband wanted to figure out how to dispose of all the marital property so that the wife did not get anything. He would rather they both walk away with nothing rather than her walk away with anything.

Unfortunately, someone with this sort of attitude can easily and deliberately drive up the costs for the other spouse. This is sometimes done to try and financially squeeze the spouse, or wear them down so they are too frustrated to continue the litigation.

Financially Beneficial

Another reason why your ex may want to delay the divorce is that they are receiving temporary spousal support (alimony). If they are not eligible for post-divorce spousal support, then they have a vested interest in trying to extend the pendency of a divorce case for a long period of time.

Some Methods Used to Delay the Texas Divorce Process

The Texas divorce process can be costly at the best of times. However, some vindictive divorcing spouses can manage to double, triple, or even quadruple their divorce litigation costs. Through their actions, they also intentionally inflict similar inflated costs on their future exes. This is done by:

- 1.Avoiding service
- 2.Changing lawyers frequently
- 3.Failing to respond to discovery
- 4.Not signing documents
- 5.Not returning phone calls, emails, or other forms of communication
- 6.Bringing needless motionsGenerally dragging out the process

Avoiding Service of ProcessOne of the most common delaying tactics is by avoiding service. The next step after filing for divorce is to bring your spouse under the power of the court. This is done by serving them with a copy of the divorce paperwork. However, if your ex avoids service, this will delay the divorce process.

Chapter Twelve: Using Delay Tactics

If your spouse avoids normal service, your divorce lawyer can ask the court for substituted service. This is an order from the court allowing service in an alternative manner such as:

- 1.Publication in a newspaper
- 2.Posting a copy of the divorce paperwork on the door where your spouse is staying
- 3.Serving anyone over the age of 16 at the residence where your spouse is staying

The most common forms of substitute service granted by courts are:

- 1.Service on any person over sixteen years of age in the house or
- 2.Attaching the process to the front door of the confirmed residence of the spouse

If the residence is unknown, then it is common to serve the party by publication. The downsides to substituted service are:

- 1.Generally, this method costs more
- 2.Takes longer
- 3.If a judgment is reached by default, then your spouse has the opportunity to ask for a new trial up to two years later. This could mean more legal fees and more delays.

Firing Your Lawyer Just Before Trial

This divorce trick can sometimes be used effectively to delay a divorce by firing their Texas divorce lawyer a few weeks prior to trial.

The fact that a spouse is generally free to change lawyers mid-case does not necessarily mean it is good idea to do so. Yes, it may delay the trial. However, the tradeoff is:

- 1.The new attorney will be scrambling to get caught up regarding the facts of case that may have been going on for a year or more.
- 2.You are paying your new lawyer for the time they are spending to learn facts that your old attorney will already have known.
- 3>Your new attorney will probably require a large retainer
- 4.If you owe your old attorney any money, they may intervene in your divorce case to collect that money. This can add additional costs to what is probably already an expensive divorce.

Chapter Twelve: Using Delay Tactics

How does this work?

In general, a client has a right to be represented by the lawyer of their choosing. That means in most circumstances they can change attorneys mid-case.

Judges are not generally inclined to force clients to stay in contractual relationships against their will. However, at times divorcing spouses can try and use their ability to fire and hire new counsel to their advantage.

At its most simple level firing your lawyer is reason to ask for a continuance from the court in order to:

1. Find a new lawyer
2. For your new lawyer to get up to speed on the case

Unless this trick has been used more than once. A court is often inclined to grant this motion for continuance.

How to Combat Your Spouse's Delaying Tactics

Depending on the case, there are different things that can be done to combat delaying tactics. Unfortunately, most of the time the remedy is not immediate. However, ultimately it is possible to push a case along.

Not Complying with Discovery

Usually in the divorce cases I have handled, everyone understands that they are entitled to comply with the discovery rules of a case. Unfortunately, there are times when this does not happen or the discovery could not have been completed in a timely manner.

Most of the time when there is an attorney on the other side of the case, we can reach an agreement on when they will get us the needed discovery. However, there have been times when there is a non-attorney or a difficult attorney on the other side of the case.

When this happens, the remedy is to file a motion to compel discovery and set it for a hearing. If after the hearing a judge finds that your ex is in violation of the discovery rules, a judge can:

1. Disallow further discovery by the violating party
2. Order the costs of discovery be paid by the violator
3. Order that the violating party cannot raise defenses or claims

Chapter Twelve: Using Delay Tactics

4. Strike all or parts of the violator's pleadings

5. Find the violator in contempt

Generally, a judge must start with something mild before working up to the harsher discovery remedies. However, if your ex continues to be difficult the penalties can become very harsh.

Not Signing an Agreed Order

If the agreement was reached in mediation, then an added benefit of mediation is we can get the court to sign an order based on that agreement. The easiest way to proceed of course is if everyone complies with signing the order to begin with.

However, sometimes people change their minds, get cold feet, or want to tweak the agreement. In these cases, we will set a hearing to prove up the mediated settlement agreement. The judge will give our office a certain amount of time to draft and circulate an order based on that agreement.

If the other side continues to refuse to sign, we will show up on the day of entry (the date the judge gave us to come back if the order was not signed by all parties). As long as the Final Divorce Decree or other order is drafted based on the mediated agreement a judge will still sign the Order even if your ex or the opposing counsel refuses.

Order Based on a Court Hearing

The above method of getting an order signed applies to any order based on a hearing in front of a judge. The only difference is there is not the added step of proving up the agreement first. That is because there is already been a hearing and the order is based on the ruling by the judge.

Asking for Extensions, Missing Depositions, or Missing Mediation Dates

A divorce case can become very frustrating if your ex refuses to respond, does so slowly, or does whatever they can to drag their feet. Examples include:

1. Requesting extensions
2. Cancelling depositions
3. Being too busy to schedule a mediation or missing mediation dates

Chapter Twelve: Using Delay Tactics

The remedy when these types of tactics start to happen is much like others we have already discussed—filing a motion and going to court. This can be very frustrating for clients because the remedy seems like a delay in itself.

Unfortunately, in order to push the case forward it sometimes requires the help of the court. If your ex is dragging their feet regarding mediation or complying with depositions. A judge can order:

- 1.The costs of attorney's fees and any costs associated with cooperating regarding those things to be reimbursed
- 2.Dates when mediation and depositions must be completed
- 3.Other sanctions if your ex fails to comply with the judge's orders

Chapter Twelve: Using Delay Tactics

The Dirty Trick of Filing for Divorce in Another City

Many of my potential clients are concerned with filing first in their divorce case. Many of them have the impression that if they are not the first to file, they will be at a disadvantage in their case. In many cases this is generally not the case when both spouses are represented by divorce lawyers.

However, there are some exceptions to this rule. One of those is when the spouses are in different cities. In such a case filing first can provide a real strategic advantage.

In today's blog topic, we will focus on how choosing the battle ground of where to file for divorce can impact divorce proceedings when spouses live in different counties.

Choosing Which County to File In

In most divorce cases, there is not an option on where to file a divorce. This is because Texas Family Code Section 6.301 sets out the residency requirements for filing for divorce. Those requirements are that at least one spouse must have been:

- (1) a domiciliary of this state for the preceding six-month period; and
- (2) a resident of the county in which the suit is filed for the preceding 90-day period.

What this section basically says is that if both spouses live in the same county in Texas then there is only one option on where the spouses can file. However, if spouses live in different counties then there is possibly a choice.

Why should I care if the divorce is in one county or another?



Chapter Twelve: Using Delay Tactics

There are a number of reasons why choosing one county over another can make a difference. One of the biggest reasons is when the counties are several hours apart such as Bexar County versus Harris County. In such a case this would mean:

Convenience

One spouse would have a much more convenient forum for their divorce. While their spouse would have to make a trip that takes hours back and forth whenever there is a court hearing.

Additional costs

The distance can also create additional costs such as time off work, fuel costs, or having to rent a hotel whenever they are required to travel.

Local Attorney or Attorney in City where Case is Filed

Another decision the spouse who must travel will need to make is whether to hire an attorney near them who will have to travel or an attorney in the county where the divorce is filed. Either choice will have pluses and minuses.

If they hire an attorney then it will be more convenient to meet to discuss and prepare the case. However, whenever there is a hearing they will be paying that attorney to travel which can be costly. This attorney may also not be as familiar with the local rules for the divorce court in that county.

If they hire an attorney in the county where the divorce is filed meeting that attorney to prepare will be more inconvenient. However, they will not be paying that attorney as much for travel and that attorney is more likely to be familiar with the local rules for the divorce court in that county.

The Race to the Courthouse

If both spouses are aware that the divorce is coming and that they are living in separate counties, then it may be obvious that they need to race to the courthouse so they can control where the divorce proceedings will take place.

The Dirty Trick in Action

One example of this trick in action is in a case where we represented the husband. His wife left him and moved to San Antonio where here parents were immediately filed for divorce and got him served.

Chapter Twelve: Using Delay Tactics

The husband then contacted and hired our firm. We then immediately filed for divorce and got her served.

What happens when there are two divorce cases pending in Texas?

The issue is whether or not:

- 1.the Husband, is entitled to seek a divorce in one Texas county when
- 2.the wife filed first in a different Texas county.

Dominant Jurisdiction

As a general rule, when suit would be proper in more than one county, the court in which suit is first filed acquires dominant jurisdiction to the exclusion of other courts. See *Wyatt v. Shaw Plumbing Co.*, 760 S.W.2d 245, 248 (Tex.1988).

Any subsequent suit involving the same parties and the same controversy must be dismissed if a party to that suit calls the second court's attention to the pendency of the prior suit by a plea in abatement.

Exceptions to the Rule

There are three exceptions to the rule:

- (1)Conduct by a party that estops him from asserting prior active jurisdiction;
- (2)lack of persons to be joined if feasible, or the power to bring them before the court; and
- (3)lack of intent to prosecute the first lawsuit

See *Wyatt v. Shaw Plumbing Co.*, 760 S.W.2d 245, 248 (Tex.1988).

Estoppel Example

In *Clawson v. Millard*, 934 S.W.2d 899, 901 (Tex. App. 1996) Husband asserted in the second court (Galveston) that even though Wife filed for divorce in Houston first, the Galveston court had dominant jurisdiction because exceptions to the general rule of dominant jurisdiction applied.

Husband claimed that Wife was estopped from relying on the fact that she filed first in Harris County because she waited four and one-half months to have Husband served with citation in the Houston suit, and that by the time Husband was served, he had

Chapter Twelve: Using Delay Tactics

already filed for divorce in Galveston and had previously served Wife with citation.

The Galveston court agreed and ruled in favor of Husband.

Combatting the Dirty Trick

Seek Legal Advice Immediately

If your spouse is threatening to move out of state or has already moved out of state, you will want to seek legal advice immediately to go over your legal rights. This not a situation you want to take lightly. The consequences of delay are severe. You do not want to be fighting your case in another state or in two states.

Chapter Thirteen: The Dirty Trick of Moving Out of State With The Kids

I have seen spouses use the trick of moving out of the state with the children very effectively to the detriment of the other spouse during a divorce. However, in some cases, this move can backfire and a judge will grant custody of the children to the other spouse because of what the court believes to be wrongful conduct.

We will now touch on a topic of parents moving out of state with their children and how this can impact divorce proceedings.

Is it Illegal for a Parent to Move out of State without the Permission of the Other Parent?

If it happens before there is an order of the court in place regarding custody, then no. Both parents have equal rights to possession and access of the child.

Either parent can make decisions regarding the child without consulting with or notifying the other parent prior to making that decision.

The solution to this problem is to get a court order identifying what each parent's rights and duties are to the children.

Can I Keep the Other Parent from Leaving the State with my Children if there is an Order?

In most cases, no. When it is your time to have the children, it is your time. When it is the other parent's time to have the children, it is their time. This means either of you can leave the state when it is your time.

However, sometimes through negotiations, travel restrictions can be put in place. Alternatively, if there are some extenuating circumstances, a court will decide on a case-by-case basis if additional restrictions are needed.

What State Has the Right to Make Orders Regarding the Child?

Under Texas Family Code 152.201, a new case can be established regarding a child if:

1. The state is the "Home State" of a child on the date the commencement of the proceeding.
2. A court of another state does not have jurisdiction or has declined jurisdiction

Under the Texas Family Code Section 152.102, Texas has defined "Home State" to mean "the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding. In the case of a child less than six months of age, the term means the state in which the child lived from birth with a parent or a person acting as a parent."

Chapter Thirteen: The Dirty Trick of Moving out of State With The Kids

Home State and Divorce Proceedings

What the above statute basically means is that the only state that can make orders regarding a child is the state in which the child has lived for the last six months.

Why am I Paying for Child Support for Children I do not Get to See?

As I mentioned in the introduction, moving to another state can be an effective dirty trick. One reason for this is if you wait for six months to file for divorce, Texas will lose jurisdiction over the children. This means:

1. Texas cannot make visitation orders
2. Texas cannot give you any decision-making rights
3. Texas cannot force your ex to move back to Texas with the children

However, Texas can force you to pay child support for your children under Texas Family Code 159.401:

1. A parent can ask for the establish of child support in Texas even though the child does not reside in Texas
2. As long as the parent on whom child support is to be established is in Texas

Can I make the Other Parent Move Back to Texas?

One of the questions I frequently get asked when a parent has moved to another state with the children is “can I make the other parent move back to Texas?”

If Texas is still the home state of the children, an approach I have seen Family Courts use is to give a parent the choice of:

1. Either moving back to Texas with the children or
2. Staying where they are and turning over the children to their ex

This means if you would like to ask the court for this relief, it is important that you file for divorce prior to your ex living in the new state for six months.

What if Texas is no Longer the Home State of the Children?

If Texas is no longer the Home State:

Chapter Thirteen: The Dirty Trick of Moving out of State With The Kids

1. In most circumstances, Texas cannot make any orders regarding the child other than child support.
2. However, if you still want to get a divorce in Texas you are still able to do so.

I have had cases where:

1. A parent was not interested in receiving any sort of visitation and just wanted to be divorced.
2. I have also had cases in which they did want visitation but wanted to get the divorce part over with.

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