

ALL IN THE FAMILY

Legal blog on all aspects of Family Law and Divorce in Massachusetts and Rhode Island

What NOT to Do During Your Divorce

BY CATHERINE E. SPANU • JANUARY 30, 2025

This blog frequently provides guidance regarding what divorcing spouses can do to protect their families, assets and income, and themselves during a divorce. Another important topic to consider is what ***not*** to do during a divorce – and there are pitfalls! Divorce litigants make a variety of mistakes that can hurt them and their case (or their children), many of which are totally avoidable.

DO NOT AIR YOUR DIVORCE ONLINE OR ON SOCIAL MEDIA.

If you've been hurt by your spouse during your marriage, you may be angry and upset – harsh words, painful incidents, and hurtful acts like infidelity can cause lasting wounds. You may feel inclined to air your grievances online – whether on social media or in a blog, on YouTube or TikTok, so that your story is heard and understood by your friends and community. This not advisable when you're in the middle of divorce litigation – especially if you have children. If your spouse learns about your online activities, they may be inclined to raise it with the judge, and it does not typically reflect well on the person airing grievances. This is especially true where it could be seen as something you are doing that will prevent you from effectively coparenting and, in extreme cases, could have an effect on what the judge orders in terms of custody. Getting it "off your chest" is not worth it. Instead, talk to a trusted friend or family member, or better yet an experienced therapist, or if you feel the need to write it down, use a private journal.

BE CAREFUL WHAT YOU PUT IN WRITING (AND THIS INCLUDES TEXT MESSAGES, EMAILS, SNAPCHAT PMS, ETC.).

Anything you put in writing can be used as evidence in front of a judge if you end up in court to have any issues decided by the judge. This can be particularly problematic if child custody issues are contested. Don't put anything nasty about your ex in writing, and be polite, calm and businesslike in your written communications with your spouse. If you find yourself getting heated, wait at least a few hours, or better yet, overnight, and see if it still seems like a good idea to send that message once you've calmed down and have been able to put your anger on the shelf. For any communications with third parties (friends, family, etc.) about your divorce or your ex, have a conversation and don't put it in writing!

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HIRE COMPETENT DIVORCE COUNSEL.

Some parts of your divorce agreement or judgment may be permanent and not modifiable in the future. Property and liability division (think loans and credit card debt) in particular are usually permanent. For modifiable issues such as custody, a parenting plan, and child support, a judge will likely consider what you agreed to previously (even if you agreed to it without the advice of counsel). It's worth the time and money to hire competent divorce counsel to represent you in your divorce – there may not be a "do over" if you agreed to something that you shouldn't have, or if you later learn that the agreement you signed didn't fully protect your interests.

DO NOT TRANSFER, GIFT, OR SELL PROPERTY (OR OTHERWISE VIOLATE RULE 411).

Once a party files for divorce or is served with a Complaint for Divorce, Supplemental Probate and Family Court Rule 411 goes into effect and provides that neither party "shall sell, transfer, encumber, conceal, assign, remove or in any way dispose of any property, real or personal belonging to or acquired by either party." My colleague Robin Lynch Nardone wrote an excellent, detailed post about Rule 411, but the primary issue with Rule 411 is that you should not take any steps to dispose of assets, to take on debts that would burden your spouse's credit, to make changes to beneficiaries of life insurance or retirement accounts, or to remove a spouse or a child from any insurance policies while the divorce proceedings are ongoing.

DON'T DISPARAGE YOUR SPOUSE TO YOUR CHILDREN.

No matter what your spouse has done, do not disparage your spouse to your children. This can play very badly before a judge. But even if you're lucky enough to avoid having a judge weigh in on substantive issues in your case and don't need to worry about what a judge will think about what you said to your children, you shouldn't disparage your spouse to your children because it's contrary to your children's best interests. Children do not need to be involved in grown-up issues and do not need to be burdened with an adult's concerns and emotions regarding their other parent.

PUT YOUR CHILDREN FIRST.

If you are divorcing and have children, especially minor children, find a way to "go high" and put them first and their interests before your own. Involving them in the specifics on your divorce, telling them about what's going on in court, or otherwise involving them in grown-up issues like your divorce can result in long-term negative psychological and emotional effects. Someday, your children will be adults who have the capacity to understand these issues – it's not worth the psychological harm that can result from exposing them to these issues as children because you're upset or because you think they should know "the truth." "Truth" is a relative term and children do not need to be told about adult matters, especially if they're young. Speak with a trusted friend or family member if you need someone to talk to, or better yet, a skilled therapist. And always seek out the advice of a competent family law attorney.

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