

Act Responsibly

How divorce clients hurt their cases.

BY JUDITH E. BRYANT

Fear and anger can cloud a divorce client's judgment, sometimes leading to negative repercussions. Here are the most common, yet avoidable, mistakes we see during the process.

Too Much Too Early. What you are willing to do that first week of a pending divorce may be very different from what you are willing to do when you have more facts or when you have had a chance to calm down and be more reflective about your marriage. Telling your spouse what you think is fair early on becomes the *starting* point for negotiations, not the end result. Do more listening than talking, and promise nothing.

Waiving the Privilege. It is common for clients to share attorney-client communications with others, but doing so waives the privileged nature of the lawyer's advice. This sharing often occurs when one party sends the other party an email with a comment like, "See, even my lawyer thinks you're a jerk." Some clients repeat everything they hear from their lawyer to their best friend or a family member. Forwarding such information can also hurt the ability to settle a case. To protect the attorney-client privilege, talk to your lawyer about the case, and do not share details with others.

Tracking and Hacking. It is a crime in Texas to place a tracking device on a car without the driver's consent. Nev-

ertheless, many people who suspect their spouse of misbehavior make this mistake. Not only can the tracking spouse be prosecuted and fined but also whatever is learned from the device is inadmissible in court. It is legal to hire a private investigator to follow and track a person's whereabouts, so don't play detective on your own. Even snooping through phone records or emails can be illegal, rendering the fruits of that crime inadmissible in court. Such communications are fair game to be obtained through normal discovery channels, so let your lawyer subpoena that information.

Foolish Social Media Postings. You lose control of photos and comments when you put them on the Internet. Contrary to your misguided instincts, it does not help to post negative comments about your spouse, and it rarely helps in the war of public opinion either. Most people cringe when they see posts that say something like, "It's so sad to see children abandoned by a father so he can be with his girlfriend," or "What kind of mother would leave her child with a babysitter every night while she parties?" You will later regret inviting everyone to share in the sordid details of your divorce, and such public disclosures will destroy any cooperation you might have received from your spouse.



Likewise, it is never good to have compromising photos of yourself posted on social media. This is especially true if child custody is in dispute. If your spouse thinks you have a drinking problem, don't get your picture taken in bars and at parties. Likewise, pictures of you on a date can only lead to trouble—even if your spouse knows you are dating. "Checking in" at a restaurant when you've told your lawyer or the court that you are unavailable for a hearing because of a business trip can come back to haunt you as well. A good rule of thumb: assume that every comment and photo is going to be shown to the judge. If that would be uncomfortable for you, don't post it.

Divorce is usually a difficult process, no matter how amicable and reasonable the parties set out to be. The process is guaranteed to be worse, however, if clients don't steer clear of these common mistakes. **TBJ**



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