



Attorneys At Law

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Families for Justice

www.familiesforjustice.com

“A Survival Guide for the Family Court”

1. The Family Court is Not Your Friend: It's A Field of Battle

Family Court is not your friend but a field of battle. Unfortunately, justice plays very little role in determining the outcome of the litigation. Money and knowledge of the process rule the day in Family Court. You are fighting for your life and the lives and future of your children. Most litigants only go through Family Court once and learn the hard way through their failure to prepare to their detriment and that of their child or children. As you will likely only get one shot, be prepared and make the most of it. You should educate yourself prior to commencing the war, not by learning during the process and through losing the battles and the ultimate war.

- Know what your getting into.

- The Family Court is broken and dysfunctional.
- Understand what is meant by “The Best Interests of the Child” and understand the Court doesn't unfortunately protect those rights.
- Do not expect qualified Law Guardians or supposed Forensic Experts.
- Many Judges are overworked.
- Some Judges are not qualified.
- Many people bankrupt themselves fighting in the Family Court. Remember this and always be reasonable.

- Be prepared to do battle.

- Taping Phone Calls
- Video Tape Abusive Behavior
- Save voice messages and emails that support your case.
- Always have a witness to support your position.
- If child support or alimony is at issue, make sure your know where the bank accounts and assets are located.

- Your child or children and their future is at stake.

- Your Ex will use your child as a weapon to manipulate you even if it hurts your child (Although we utilize Ex, meaning Ex-Spouse, it applies to the other biological or adoptive parents).
- Although it may not be in your nature to be combative, do it for your children.
- Make sure your lawyer is qualified and ask for copies of all documents and court filings.
- Many times you must put your protective and natural tendency as a parent aside and facilitate the relationship between your child and Ex during the Family Court process so you will not be accused of parental alienation. This is true even if your Ex is abusive to the child.
- Parental Alienation is a finding that you are not fostering the relationship of your child with your Ex and a basis to remove custody.

2. Children Being Used As A Weapon

The entire process of Family Court is intended to protect the “Best Interests of the Children”. Unfortunately, the children and their best interests are often ignored by an Ex who has an axe to grind against you and who is unwilling or incapable of putting the children and their needs first.

- Many parents unfortunately disregard the “Best Interests of the Child” out of personal animosity and spite during the Family Court proceedings.
- Be aware that many Ex’s use the children as a weapon to gain litigation advantage in Court. Example: Kids coming home and saying things that the Ex wants you to complain about it to the Court, then the Ex denies it and claims you are alienating the child from the Ex. Don’t fall into this trap.
- As painful as it is, do not deny visitation to a biological parent or risk losing custody.
- Carefully document and be able to substantiate any allegations of abuse or neglect or risk losing custody for making “false allegations”.
- Have credible witnesses before raising allegations of child abuse or neglect.
- Be careful of all discussions of or with your Ex in front of the child which could be interpreted as negative and used against you in Court to claim you are alienating the child from your Ex.
- Never “bad mouth” your Ex in front of your child. Never criticize your Ex to your child.

3. Hire a Competent and Qualified Lawyer.

Your lawyer is your advocate and your representative to the Court. You cannot speak for yourself in Family Court when you have a lawyer so your point of view and ultimately credibility will be based largely on the interaction of your lawyer with the Court and its functionaries. As such, the importance of who you hire cannot be underestimated. You neglect the following due diligence at your own peril and risk. Even if you do not have a lawyer which means you are proceeding pro se, the advice in this pamphlet should be useful and you should also be aware that every interaction with the Court is used to make credibility determinations on who is the “fit” custodial parent. When hiring a lawyer:

- Make sure your lawyer specializes in Family Law.
- Make sure your lawyer knows the rules of the Court and practices there regularly.
- Ask if he has appeared before your Judge and his or her relationship with the Judge.
- Ask for past client references.
- Ask how many visitation cases has he or she handled
- Ask how many custody cases has he or she handled.
- Ask if the person you are hiring will work on your case personally or if it will be delegated to a paralegal or associate. Then you want to know their qualifications and meet with them.
- Ask how many trials they have conducted.
- Ask the outcomes of their past trials.
- Check for any complaints against the lawyer with the Bar Association.
- Make sure you understand their billing procedures and hourly rates. Family Court is an expensive proposition.

4. The Cast of Characters in Family Court.

Initially, remember that the Court and its functionaries were not around prior to the litigation. They didn't observe you care for the kids, change their diaper, wipe away their tears or tuck them in a night. All that matters to them and what they care about is your conduct after the litigation starts. So guide yourself with caution. Also, some of the Court appointed characters will spend an hour or two with you or your children and make decisions that will impact the rest of your lives. As such, you must maximize that minimal contact to make the best impression possible.

- The Judge

- Find out information on the Judge, how long they have been in Family Court, their reputation and demeanor, speak to advocacy or parents rights groups.
- Check the message board at www.familiesforjustice.com

-The Law Guardian

- Supposed to represent and protect the best interests of child by acting as their attorney.
- The Law Guardian will have a huge say in who gets custody and/or visitation.
- Do not consent to their appointment until you know who it is going to be and their experience.
- Law Guardians will likely conduct a "home study" to determine the appropriateness of your residence for purposes of custody and visitation. Make sure your residence is at times ready for inspection as you may or may not have notice.
- Many times Judges just appoint a Law Guardian, do not let that happen. Object unless you have the opportunity to review their credentials and meet with them.
- Many Law Guardians are overworked and underpaid. You will be one of possibly hundreds of clients and cases they are involved with.
- Make sure your comfortable before consenting to the Law Guardian appointed in your case.

-“Forensic” Experts

- These are usually Doctors or child Psychiatrists appointed by the Court to determine the “better” or “more fit” custodial parent.
- As these individuals are appointed by the Court, they are supposedly “neutral” and their decisions carry great weight.
- Do not consent to the appointment of the Forensic until you meet with the individual and determine their qualifications.
- Do not consent to the appointment of the Forensic without knowing how many other similar cases they have worked on and the outcomes.
- Understand that the Expert will issue a report to the Court recommending custody to one parent and the extend of visitation to the other.
- Understand that you will have to share the expense of the Expert so find out what they charge on an hourly basis, etc.

-Court Appointed Supervisors

- These are individuals appointed to monitor visitation should allegations of abuse or neglect be made.
- As these individuals are court appointed, the Court will give their testimony at trial great weight.
- Supervisors will testify in Court on their observations and sometimes on custody so be conscious of your conduct around them and interaction with them.
- Even if you don’t like the Supervisor, be courteous.
- Supervisors are usually social workers.
- You may be forced to pay for the supervision which can cost thousands of dollars.

-Retaining Your Own Experts

- You may need to retain your own expert for various reasons especially if the Court appointed Forensic issues a report detrimental to you.
- Experts are expensive but may be needed.
- Go to www.familiesforjustice.com for a list of recommended experts or search on the internet or by speaking to friends and families. Your lawyer may recommend an expert.
- Do not hire the expert until you meet with the individual and determine their qualifications.
- Do not hire the expert without knowing how many other similar cases they have worked on and the outcomes.
- Ask for references from former clients and examine their resume.

5. Family Court Dysfunction: "Hearsay" Rules!

- Hearsay is defined as: "An Out of Court Statement Used to Prove the Truth of the Matter Asserted".
- In most Courts, hearsay is not permitted but in Family Court, it is the rule!
- Be aware that Family Court Judges allow hearsay which is against New York State Civil Procedure Rules and law.
- Always object on the record when the Court relies on hearsay.
- As out of Court hearsay statements are permitted by many Judges in Family Court, always be mindful of out of Court conduct by you and any one associated with you who has access to the children.
- Even if your not under Court order to do so, always attend Court proceeding.
- Always dress appropriately and understand your every move is being observed and will play a role in the ultimate decision of the Court.
- Do not trust the court appointed neutrals and confide in them anything you do not want to come to the Court's attention. They are not your friends and will use it against you.

6. Conclusion

You can win the Family Court battles and the war for your future and that of your children if you understand the battlefield and make the necessary preparations. This is the fight of your life and is being fought for your children's future. Justice and the "Best Interests of the Child" are probably and unfortunately the least important factors in the Family Court process unless you insist they remain so. To accomplish that goal, educate yourself, network with other advocates and be actively involved in holding your Ex, your lawyer and the Family Court accountable every step of the way.