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Legal Matters[®]

“Can I start dating again before my divorce has become final?”

It's normal for people who are getting divorced to want to start dating other people as soon as possible. After all, it may have been a long time since they were in a good relationship. They want to experience the hope and excitement of something fresh and new.

But if you're still going through divorce proceedings, there's a lot you should think about before you start playing the field. That's because – depending on the circumstances – dating can be very detrimental to the divorce process.

Here's a look at some of the problems that dating during divorce has the potential to create:

A bitter ex-spouse. If one spouse is actively dating, it can cause very negative emotions in the other spouse. The other spouse may become angry or hurt, and may also suspect that you were dating before the split, and thus that you were responsible for the break-up.



As a result, a divorce that was moving along smoothly may turn into a war. The other spouse may dig in, refuse to negotiate, and seek revenge. This can make the whole process much more frustrating and expensive.

A dating partner dragged over the coals. It's not unheard of for a person who is dating a divorcing spouse to get dragged into the court case. The person may be required to provide testimony under oath about whether

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Divorced parents often fight over children's last names

Couples who are separating sometimes fight over what their children's last names should be. As a general rule, the answer is whatever is in the children's best



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interests. But deciding what those interests are isn't always easy.

For instance, when New Jersey dad Paul Emma looked through his children's school records, he was surprised to discover that his ex-wife, Jessica Evans – who had primary custody – had changed their last name from

“Emma” to “Evans-Emma.”

He took the case to court, trying to undo the name change. Evans retaliated by asking a judge to change the children's last name again, this time to simply “Evans.”

The judge ruled that since Jessica had primary custody, it should be assumed that whatever name she chose was in the children's best interests.

But Emma appealed, and the New Jersey Supreme Court said, in effect, “not so fast.”

The Supreme Court said that it shouldn't just be assumed that a parent with custody can change the children's names. Rather, if Jessica wants a name change, she will have to prove that a new name is actually better for the children.

In deciding whether a new name is a good idea, a judge will have to consider how long the children had their previous last name, how strongly the children identify with the mother's and father's families, the emotional impact of having a last name that's different from that of the custodial parent, and the children's own preference.

Meanwhile, a Virginia case involved a girl who was born out of wedlock. The girl's first name was Addison, and she was given her mother's last name, “White.” The couple then split up and the mother married someone else, at which time she took her husband's last name, “Wirick.” This meant that the girl no longer shared a last name with either parent.

The father, Stacy McMahon, went to court to try to change the child's last name to his own, but the mother objected.

Stacy argued that the fact that Addison had a different last name from him caused a lot of confusion. For instance, it made it difficult for him to communicate with Addison's preschool and with her health insurance company. He also said he was embarrassed because he was frequently referred to as “Mr. White” at his daughter's school.

But the Virginia Supreme Court sided with the mother. It said the issue is what is in the best interests of the child – and while Stacy had demonstrated that having a different last name from his daughter had caused inconvenience and embarrassment *to him*, he hadn't shown that it had caused any problems for Addison.

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Alimony must be based on an ex-spouse's ability to pay

Even though an ex-husband was earning far more money than his wife and the wife needed more money to get by, a divorce judge couldn't order alimony if the ex-husband couldn't reasonably afford it.

That's the word from the Florida Court of Appeals.

In this case, Matthew Mills and his wife Tracey – who had one child – ran up significant debt during their marriage. When they decided to divorce, they were each in difficult financial straits and had debts greater than their incomes.



In addition to determining custody of the child, the divorce judge ordered Matthew to pay alimony, based on the fact that he had a much higher income than Tracey and that she had a need for it.

But Matthew appealed, arguing that due to his debts and his child support obligations, he had no ability to pay alimony.

The Court of Appeals agreed with Matthew. It said that a divorce judge isn't required to make a couple's financial situations equal, and that putting the husband into an even deeper financial hole than he was already in would do little to help the wife.

“Can I start dating again before my divorce is final?”

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the couple are having sex and how long they have been involved, how much the divorcing spouse has spent in connection with the relationship, whether the spouse gave the partner any gifts from marital funds, and whether the spouse shared any “secrets” that could be relevant to the divorce proceedings.

This can be embarrassing and hurtful to your case, and is obviously not a great way to start off a new relationship.

Unhappy children. Divorce is often very difficult for children. It’s common for them to feel abandoned, hurt, and even angry, and to experience emotional turbulence and instability.

As a result, it can be very difficult for them to be with a new person in your life. Even if the new person is wonderful, children often aren’t ready to accept them, and may respond by being rebellious or developing a preference for the other spouse.

Not only is this hard on the children, but it can make it much more difficult to win custody in court.

More custody issues. Children aren’t the only ones who may react negatively to your dating before your divorce is final. Remember, until you’re actually divorced, any sexual relationship you engage in is technically adultery. Judges, psychologists, and other experts who are involved in a custody determination may be turned off by the fact that you’re already dating someone, and may question your ability to be a role model.

In addition, if your dating partner has anything questionable in his or her background, this could factor into a custody decision. This could include an arrest

record or allegations of violence or sexual misconduct – even if they were never proven.

And if you’re not seriously involved with anyone and are simply going on casual dates with a variety of people, an angry ex could try to portray this as promiscuity.

Property division and alimony problems. If you’re living with a dating partner, or otherwise sharing expenses or receiving financial support from him or her, this could make it harder to get a fair financial settlement.

That’s because a judge might decide that you’re able to pay more in alimony and child support, or that you don’t need as much alimony and child support. A judge might also consider your new partner’s support when dividing assets such as a house or investment accounts.

Your ‘profile’ under scrutiny. Many divorced people who start dating again use websites such as Match.com, eHarmony or OkCupid. And they not infrequently exaggerate personal information or leave out important details in their profiles.

For example, they may represent themselves as “single” or “divorced” when they’re still technically married. They may also go on to fudge information about children, job status, income, interests and experiences, etc. This information – and any lies or exaggerations – could be used against the person in the divorce case.

In the end, whether to date during a divorce, and how discreet you are about it, are highly personal decisions. But it’s a good idea to talk to your lawyer before you start dating, so that you’ll fully understand any risks you might be taking.

If you’re still going through a divorce, there’s a lot you should think about before you start playing the field. Depending on the circumstances, dating can be very detrimental to the divorce process.

‘Legal’ marijuana could still hurt your custody case

Colorado, Washington and a few other states have now legalized the recreational use of marijuana, and many others have decriminalized it or approved it for medical purposes.

But just because someone is possessing, smoking or growing pot in a place where it won’t cause them to go to jail doesn’t mean there aren’t other legal consequences. Marijuana use can still be a big issue in a child custody case.

Regardless of whether marijuana smoking is a crime, judges still consider what’s in the best interests of a child when deciding on custody and visitation.

For instance, a court in Colorado stripped a father

of custody after he started using marijuana for medical purposes, finding that exposure to pot smoking at home would not be in the children’s best interests.

And in Michigan, child-welfare agents took a girl from the home of her mother and stepfather after the mother’s ex-husband reported that the couple were growing pot in their house. Even though they were doing so legally for medical use, the state was concerned enough to remove the child.





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States crack down on ‘re-homing’ of adopted children



A number of states are now cracking down on the practice whereby parents who have adopted children and then are unable to take care of them place them privately with another family.

No one knows how common this is, because there are no statistics. But it's been known to happen, especially in cases where the child is from a difficult background in another country or has been mistreated by birth parents or at an orphanage. Such children may develop attachment issues and may act out, become violent, or have serious health or emotional problems. In desperation, parents sometimes try to find the child a different home.

The problem is that such private “re-homing” is unregulated, and the new parents are not subject to background checks or other safeguards. People who accept re-homed children may be pedophiles or may be unsuitable in other ways.

Last year, Wisconsin became the first state to specifically outlaw advertising a child for private re-homing; people who transfer custody of an adopted child without a judge's prior permission could face nine months in jail and a \$10,000 fine.

Louisiana quickly passed a similar law, and legislation is now being considered in Colorado, Florida and Ohio.

But keep in mind that in many cases, privately re-homing a child could be considered child endangerment or child abandonment – and both of these are illegal in every state.