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# Legal Matters®

Family Law  
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## Should kids testify in custody cases?

In the classic 1979 film "Kramer vs. Kramer," mother Joanna Kramer (played by Meryl Streep) abruptly left her husband Ted (played by Dustin Hoffman), forcing him to care for their young son on his own. She returned more than a year later and demanded sole custody. A judge granted her request, based on a now-outdated presumption that it is in a child's best interest to be with their mother. Ted opted not to appeal because, according to his lawyer, that would require putting Billy on the witness stand.

The legal accuracy of that final point is questionable, and each state has its own policies about children testifying in custody proceedings. But Ted's feeling that he shouldn't subject his child to such a situation is still relevant today.

As Hoffman's character determined, having a child testify should be avoided unless absolutely necessary because doing so only adds to the stress and emotional trauma the child is already likely feeling from the divorce itself.

Still, there are times when testifying may be necessary. For example, a child's testimony may be needed if there is domestic violence in the home. In those cases, the court may need to hear how violence between parents impacts the child. The child would be testifying as a witness to a specific event rather than testifying as to which parent they prefer to be with.

Similarly, many states want children to testify when they are being abused by one of their parents in a separated household. This is for the child's own safety, since without the testimony, the abusive parent can more effectively



level false accusations that the other parent is lying or engaging in parental alienation putting the child at greater risk of being placed or left in a dangerous situation.

Children may also be called upon to testify when a parent is abusing drugs, acting out due to a mental illness, attempting suicide or failing to feed the child or get the child to school. Again, the child is testifying as a witness to facts and the child's testimony may be critical for his or her own safety and protection.

Beyond these scenarios, may a child testify as to their preference regarding who they would like to live with? The answer is yes, although as with all family law issues it depends on where you are.

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## What should you do if you're being denied time with your grandkids?



“Grandparent estrangement” refers to grandparents being prevented from seeing and maintaining a relationship with their grandchildren. It can happen after a divorce, when the custodial parent blocks their former in-laws from access to the children. It can also happen when the grandparents’ own children don’t want the grandparents in their kids’ lives.

If you’re in this painful situation, it could be worth talking to a family lawyer to discuss what legal options you might have.

For one thing, every state has a “grandparent visitation” law under which grandparents can seek a court order that they be able to maintain a relationship with their grandchildren.

Different states vary regarding the grandparents’ rights in this context. Some only allow grandparents to seek visitation rights if the parents are getting divorced or if one or both parents are deceased. In some of these states, if the divorced parents agree

they don’t want their children to see their grandparents, they have the right to keep them away.

Other states allow grandparents to seek visitation even if the parents are married and have denied the grandparents access to their children. In these instances, courts will grant visitation if it’s determined to be in the best interest of the child. Considerations include the emotional well-being of the children, the wishes of the parents, the bond between the children and the grandparents and the preferences of the children, among other things.

Regardless of a state’s individual laws, however, seeking grandparent visitation can be a challenge, since the U.S. Supreme Court ruled more than a decade ago that courts must assume parents are acting in their child’s best interest when they refuse grandparents’ requests for visitation. Grandparents must overcome this presumption with evidence.

It’s a good idea to try and work out differences with your grandkids’ parents and see if you can agree on a visitation arrangement without going to court. But if this doesn’t go anywhere, call a family law attorney and see what your next steps should be.

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## Court applies ‘mature child’ test in international custody dispute

A federal judge has decided that a 13-year-old boy who didn’t want to return to his mother in Germany could stay with his father in Rhode Island until the parents’ custody dispute was resolved.

The couple was married in the U.S. in 2007 and their son, “E.C.,” was born two years later. The parents divorced in Rhode Island when he was eight, agreeing to joint legal custody but physical custody with the mother in Germany.

In the ensuing years, E.C. would visit his father during the summer and school vacations. In August 2022, after a visit with his father, the boy “broke down” in the airport and refused to board his flight back to Germany.

The father kept his son in the U.S. and apparently enrolled him in school. Meanwhile, his ex-wife petitioned the federal court in Rhode Island to order E.C.’s return to Germany under the Hague Convention, an international agreement the U.S. is part of that prohibits someone from taking a child across an international border or child or keeping them away from their habitual residence.

But the court denied the mother’s petition, pointing to evidence that overcame the “strong presumption” that a child be returned to his country of habitual residence. Specifically, the judge applied the “mature child” exception, which enables a court to refuse to order a child’s return if the child objects to being returned and is old and mature enough to have his or her views taken into account.

Here, evidence from a court-appointed guardian representing the boy’s interests described the deliberativeness of the boy’s decision-making process and his concerns that his school in Germany would not give him credit for schoolwork he completed in Rhode Island. The judge also took into account the boy’s concerns about his living arrangements in Germany.

The outcome of any case depends on its own facts and circumstances. But if you want to learn more about what might happen in an international custody dispute, call a local family law attorney to discuss your situation.

## Real estate purchased with personal assets deemed community property

Property acquired during a marriage is generally considered “community” or “marital” property that gets divided during a divorce. Meanwhile, property a spouse brings into the marriage or receives as a personal gift or inheritance from a family member generally stays with that spouse as “separate” property.

A recent Texas case, however, provides some insight into how a court might treat property acquired during marriage with one spouse’s personal assets. It also demonstrates how easily what may initially have been separate property can transform into marital property.

In that case, a divorce court awarded three pieces of real estate to the wife in a divorce even though the husband claimed they were his separate property. The couple acquired the three properties during the marriage, but the husband argued they should be treated as his own because they were bought with funds from a personal asset trust that vested in him before the marriage began.

In awarding the properties to the wife, the trial judge emphasized that any property acquired during the marriage is presumed to be marital property unless a spouse provides convincing evidence to rebut that presumption. In this case, the judge said the husband failed to make that showing.

The Texas Court of Appeals upheld the decision. As the court pointed out, the husband admitted



during the divorce trial that he deposited marital funds into that same trust, resulting in the “commingling” of personal and marital funds. He also didn’t corroborate his testimony that the properties were purchased entirely with his own funds through expert testimony or documentary evidence.

One lesson to take from this case is that if you bring separate property into your marriage, you need to keep it absolutely separate and not commingle it with marital property or you risk it becoming marital property divisible during a divorce. In addition, if you make major purchases during your marriage, you can expect them to be treated as marital property unless you can trace the funds to a court’s satisfaction.

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## *Should kids testify in custody cases?*

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For example, courts in Maryland must consider a child’s preference if the child is old and mature enough to make a rational, intelligent choice. In California, kids 14 or older are specifically permitted to express an opinion in a custody proceeding. For kids under 14, the judge may allow such testimony unless he or she decides it’s not in the child’s best interest. In Florida, a child may not testify in court at all unless the judge determines that it’s both necessary and relevant to the issues.

But there are other ways to enable a judge to consider a child’s wishes. In most states, for example, the court can appoint a custody evaluator to interview all parties

separately and report back to the judge about the child’s feelings and concerns. The court may also appoint a “guardian ad litem” to represent the wishes and interests of the child during the proceeding. A judge may even interview the child in private.

Interested in learning more? Call a family law attorney where you live.

About other mistakes you could be making, call a local family law attorney today.





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## Can I travel outside the state with my child during divorce proceedings?

If you're going through a divorce and want to travel out of state with your child, call a family lawyer, because there may be restrictions on your ability to take your child out of state.



The first thing you and your lawyer would do is review the parenting plan that was probably established at the time of your separation. The plan likely addresses the issue of traveling with your child. Many such agreements require a parent to get the other parent's consent in writing before leaving the state with the child by getting a letter of consent for travel.

Even if your agreement doesn't address this, it's probably still a good idea to get such a letter. That will protect you if your ex accuses you of parental kidnap-

ping or violating your parenting plan in some other manner. The letter should detail where you plan to go, when you plan to return, where you will be staying while you're away and the names of anyone else you are traveling with. You should also expect to have to negotiate with the other parent on certain things, like having your kids call them each day or text at certain intervals.

Another option is to try and get your parenting agreement modified to address out-of-state travel so you do not have to go through this negotiation each time you wish to go away with your child while your divorce is still pending.

It's also important to remember that the rules on this may vary depending on where you live. Call a local family lawyer if you want to learn more.