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### **10 PRACTICAL WAYS TO PROTECT YOURSELF AND KEEP YOUR SANITY IN A FAMILY LAW CASE**

By Gregory W. Herring

When entering and proceeding through a family law case, it is important to plan for the dissolution process and post-dissolution life. The stress and other difficulties, particularly when children are involved, can overwhelm a person's ability to think and reason. The explanations and discussions below are basic and non-comprehensive. Because each different case is uniquely complex and nuanced, this should not be relied-upon in relation to any particular issue or proceeding.

1. **Take Care of Yourself:** Even the most civil family law case can be an emotional marathon, with ups and downs, "victories and losses" and life changes. Less amicable ones can suck the parties into quagmires. You cannot get through the process in one piece or properly care for those counting on you without first taking care of yourself. Talk to your counselor, friends and family to help develop and begin working toward a vision of your post-litigation life.
2. **Marshal Your Financial Information:** Child support orders and, initially, spousal support orders are based on mathematical formulae that take into account each party's respective income and tax status, among other financial factors. Critical to those calculations and many other issues is each party's income and tax information. Thus, the sooner you can marshal this, the sooner and more accurately you can begin intelligently positioning. Common sources include personal and business tax returns, annual income reports (forms W-2, 1099, K-1 and etc.), credit card and financial account statements and financial data programs (QuickBooks, etc.). Be careful, though, to avoid potentially misappropriating a business' data or documents; this can be a tricky area, so talk to me first if a business is involved.

Many do not know all the credit and other financial accounts under their names. A quick and easy first step is to get your own individual credit report. Also, simply keeping your eyes and ears open can be productive -- one of my clients unearthed his spouse's undisclosed safe deposit box by merely chatting with the bank's employees!



3. **Consider Immediately Closing, Freezing or Dividing Joint Accounts:** You may wish to consider doing these things to prevent the other party from cleaning-out accounts. On the other hand, this is also a good way to "fuel the flames," so it must be well-considered. Another possibility is to consider immediately dividing the assets and transferring them to separate accounts under each party's respective name, so each spouse has access to some secure amount. Because the Automatic Temporary Restraining Orders ("ATROs") imposed at the case's beginning affects a party's rights to do these things, please **do not** take these steps without first fully discussing them with me.
4. **Consider Canceling Joint Credit Cards:** In the eyes of a credit card company, each party is responsible for all charges made on joint credit cards, regardless of which party actually made a particular charge. If possible, it might be a good idea to have new ones reissued in each party's name. Since the ATROs could be involved here, too, **do not** take these steps without first talking to me.
5. **Consider Filing Separate Tax Returns:** To the tax authorities, each spouse is responsible for all obligations associated with a joint tax return. Even with the liberalized "innocent spouse" rule (which may or may not actually be available to an arguably "innocent" spouse in any given case), you do not want to be caught in an audit with a questionable joint tax return. Thus, if you have any doubts about whether your spouse is providing accurate tax information, you might consider filing separately even if you might lose certain benefits of a joint return.

Before taking any potential steps, you should first discuss this with your own personal tax accountant (not the tax accountant who has jointly handled the parties work in the past) and me.

6. **Refrain from Eavesdropping or Recording Private Communications.** Generally speaking, eavesdropping and recording private communications by another person is illegal. Additionally, such evidence would be inadmissible under the Family Code. These principles are reasonably extended to the reading of private email messages and copying of electronic data. California law now extends the definition of "domestic violence" to include the unauthorized downloading and distribution of contents from cell phones and the unauthorized hacking of social media accounts.
7. **Beware of Social Media.** "Facebook" and other social networking services are more popular than ever. I advise my clients to immediately cease all activity related to posting on social media outlets, as it is understood that anything posted could be used against them in court. Postings should not be **eliminated or modified, however**, without first consulting with me. Adverse legal consequences could follow in relation to such changes, if a court might find that they would in any way relate to your case –erasing or modifying prior postings could be considered spoliation ("tampering") of evidence, which is a serious offense.



8. **Preserve Electronically Stored Information.** Recent changes in the law require that parties now protect from change and destruction all electronically stored information (ESI) during their case. This means that, until their case is over, they must not delete or modify any email, text messages, voicemails or even social networking postings (see above). If you are using QuickBooks, Microsoft Money or other accounting software at home, you cannot delete those files. Frankly, “if in doubt, keep it.
9. **Keep the Kids Out of it and Consider Professional Custody Input.** Child custody and timeshare issues are nearly always emotional and difficult. This is complicated if one or both parties immerses the child in the lawsuit. I typically recommend that my clients consult with a child development/parenting professional when children are involved, and I have my “stable” of preferred professionals in different counties. Sometimes both parties can be convinced to work together with the same professional, which is usually (but not always) a good idea.

The State recognizes that parents often need help trying to resolve custody and parenting issues out of court, and that parents who can mutually agree to custody and timeshare arrangements are more likely to abide by them. Thus, prior to any potential custody hearing parents are required to attend a “mediation” where a trained professional attempts to persuade, but cannot force, the parties to reach an agreement (“mediation” is in quotes because in some counties, including Ventura County, these proceedings are not always confidential, whereas true mediation always is). Public mediators, located in the courthouse, are available at no cost. Parties with financial means ought to consider retaining a private specialist, who can typically spend more time with the family and thus provide more nuanced input.

10. **Consider Alternate Forms of Dispute Resolution:** Where appropriate, I encourage clients to consider Alternative Dispute Resolution (“ADR”). Forms of ADR include mediation, arbitration or private trials.

Sometimes the court system presents the best or only reasonable path in a case, but sometimes ADR might present better options. I do not agree with some, who routinely demonize the court process as opposed to some type of ADR (often the particular type that they provide!). Rather, the benefits of the courts include Constitutional consideration of Due Process, firm legal procedures and a timetable that does not have to rely on the other side’s cooperation (or lack thereof). **Ultimately, each case is different and presents its own opportunities for resolution.**

For most people who have been through a family law case, the experience was a defining period. To get through the process in the best manner possible, you need to protect yourself while proceeding in a thoughtful and deliberate manner. You can start accomplishing this by considering the above 10 steps.