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ASK THE EXPERT

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DIVORCE

Kelly McClure
McClure Law Group

I don't want our friends and neighbors knowing how our divorce settled. Is it public information?

Your divorce file can be sealed or set aside from public access or viewing while it is pending, or in some counties, we can file your divorce with your initials rather than your names. Oddly enough, there are people who "hang around" courthouses to see who is filing for divorce. High-profile individuals and CEOs often prefer to keep their personal lives private, particularly when the case involves medical issues, complex financial issues, or matters of a sensitive nature and to avoid becoming the target of fraud.

Is it true that my wife will be awarded custody of our child, simply because she is the mother?

No. Section 153.003 of the Texas Family Code provides that the court cannot discriminate based on the sex of a parent, but only look to his or her qualifications as a parent. I've represented a number of fathers who were awarded custody based on their individual circumstances. There is no longer an automatic presumption that mom is the better parent.

How much does my behavior during the divorce play a role in how the judge might award assets?

Giving into addictions, questionable behavior in public, and what you post online are all admissible pieces of evidence in court that may be used to prove some degree of fault. Sometimes, a lawyer can admit evidence of "bad acts" that potentially contributed to the divorce and could ultimately cause a reduction of the value of the estate. Even though Texas is a no-fault state, bad behavior is a factor in how a judge will divide assets. It also can play a role in custody and possession. Texas Family Code Section 7.001 (just and right) Texas Family Code 153.002 (best interest).

Will spying on my ex-spouse negatively impact my divorce case?

Wire-tapping is a state and federal crime. There are devices you can put in a car or on a cell phone to trace people. If caught, you could serve two to 20 years in prison for a felony plus receive hefty fines. For example, nanny cams put in bedrooms to catch

your spouse cheating won't hold up as evidence in court unless your spouse has no expectation of privacy based on prior use of those types of devices. Texas is a state where only one party needs to consent to the interception. Further, conversations held in public places between third parties may be admissible since there is no expectation of privacy. It's important to know what is and isn't admissible for your own protection.

Is there a cap on the amount of child support that can be ordered by the court?

No. The Texas Family Code 154.121 provides for child support guidelines in order to determine child support. In most circumstances, the court will follow the guidelines, but in some circumstances, it may award support above the guidelines. Texas Family Code 154.123 explains the guidelines provide a starting point which can be increased or reduced based on statutory factors, such as special needs of the children, the ability of the parents to contribute support, any financial resources available for the support of the child, and the amount of possession and access to a child. If there is a deviation from the statutory guidelines, the court order must contain a written explanation justifying the deviation.

Alcohol and other addictions have played a role in our divorce. How can I make sure my ex-spouse is sober whenever I drop our children off with him?

There is a new technology called Soberlink (soberlink.net), a portable alcohol monitoring system. The portable Breathalyzer collects a deep-lung breath sample to measure breath alcohol concentration, while simultaneously taking a photo of the individual to confirm their identity. The device wirelessly submits the test results to a cloud-based monitoring website where instant alerts can be set up to notify contacts if there are signs of a relapse. Features include automated tamper detection, text reminders, reports, and real-time alerts and customizable testing schedules. It's a great tool for court-mandated alcohol monitoring in family law and child custody monitoring cases.

Armed with more than 25 years of experience as a family law attorney, Kelly McClure is family law board certified with the Texas Board of Legal Specialization. She works passionately for meaningful outcomes in complex divorces, custody matters, division of assets, pre- and post-marital agreements, and other family law matters. A leader in the collaborative law movement, McClure offers clients the option of a collaborative approach to protect privacy and reduce the financial and emotional burdens that can come with litigation. However, if litigation is necessary, McClure's tough, no-nonsense demeanor and dynamic presence make her a powerhouse in the courtroom.

McClure began her career practicing tax law. This experience complements her ability to delve into the tax implications of a divorce and easily handle complex property cases. McClure combines financial acumen in tax law, state-of-the-art research tools, and extensive trial experience to design resolutions that protect her clients' fortune and family.

McClure has been named among the Best Lawyers in Dallas in *D Magazine* multiple times and a Texas Super Lawyer by *Law & Politics*. Additional recognition includes Top 50 Female Super Lawyer by *Law & Politics Media*, The Most Dynamic Women in Dallas by *Modern Luxury* magazine, and The Best Women Lawyers in Dallas by *D Magazine*.

A professional portrait of Kelly McClure, a woman with shoulder-length brown hair and bangs, smiling. She is wearing a red long-sleeved dress, a pearl necklace, a gold watch, and a ring. Her right hand is on her hip. The background is a colorful abstract painting with shades of purple, yellow, and blue.

KELLY McCLURE

CEO and Managing Partner of McClure Law Group

*Family Law Board Certified
by the Texas Board of Legal Specialization*