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PRACTICE FOCUS / FAMILY LAW

## Plan Ahead for Holiday Time With Children in Divorce

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The holiday season is officially upon us.

For many people there are parties to plan, festive meals to prepare, traditions to enjoy and time to spend with family and friends.

However, if you are going through a divorce, the holiday season may be fraught with stress, anxiety and uncertainty.

Many times friends line up behind one spouse to the exclusion of the other spouse. In-laws who were once very close to you are now keeping their distance and have not invited you to an annual holiday party you attended for years.

To make matters worse, your soon-to-be ex-spouse wants your children to spend the holidays with him/her and his/her family, leaving you completely alone because you have no family in town.

Your first instinct is to tell your spouse that the children are spending all of the holidays with you because he/she needs to be punished for filing for divorce.

You also plan to let your children know that if they spend the holidays with your spouse, you will be very sad and alone.

Hopefully, you will completely ignore these misplaced instincts. Any decision you make regarding holiday time-share should be based on the best interests of your children.

Not only do your children end up happier and healthier if decisions are based on what is best for them, but also that is the standard a court will use when determining a time-sharing solution between the parents. The following tips will help ensure that the whole family has a nice holiday season.

1. Always consider the best interests of your children.

It is important to make sure your children have a stress-free and happy holiday season. It is also in the best interest of your children

to spend time with both parents and their respective families. One of the factors the court considers when determining a final time-share schedule is the demonstrated capacity and disposition of each parent to determine, consider and act on the needs of the child as opposed to the needs or desires of the parent. Therefore, even if you will be lonely if your children spend Christmas Day or the first night of Hanukkah with your spouse's family, you

should not only offer to split the holidays, but also let your children know that you are happy they will be spending time with your spouse and your spouse's family. They will have a good time and you will be fine.

2. Be reasonable and flexible.

If you are in the middle of a divorce proceeding, make sure a temporary time-share schedule for the holidays is addressed. For example, do not take the position that because your schedule provides you with time-share on Wednesdays and Thursdays,

that you have both Christmas Eve and Christmas Day since the holidays fall on those days this year. If your spouse wants to take the children on a vacation for part of the holiday, do not use the temporary time-share schedule as a roadblock to a reasonable request. The court will consider the ability of a parent to be reasonable when changes are required when determining a final time-share schedule. It will also consider the ability of each parent to facilitate and encourage a close and continuing parent-child relationship.

3. Plan ahead and make holiday time-share requests as soon as possible.

If you know you will have out-of-town family traveling to South Florida and you want to make sure your children spend time with them or you would like to take your children out of town for part of the winter school break, let your spouse know the dates you want time-share as soon as possible. If your spouse ignores or denies

your request, ask your attorney to contact your spouse's attorney in an effort to work the holiday time-share issues out without court intervention. However, if it is impossible to resolve and court intervention is necessary, leave yourself enough time to get the motion filed and heard by the court. The family court judges work very hard with hearings and trials scheduled every day throughout the day. They then have to find time to accommodate real emergencies. Your lack of planning does not equate to an emergency situation and is unrealistic to think that the court can provide hearing time on short notice. Don't risk this—plan in advance.

If you follow these tips, your children, you and your soon-to-be ex-spouse are more likely to enjoy the holiday season.

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