

Common Mistakes People Make When Representing Themselves in Court

By Scott David Stewart

In propria persona, pro se = Latin; in one's own person, on one's own behalf.

There is rarely a “quickie divorce” these days, especially when children are involved. Numerous assets or a marriage of long duration can also complicate matters. Divorces can take up to a year to complete, making the hiring of an attorney an expensive proposition. There are many reasons why people choose to represent themselves in Arizona’s Family Law Court, opting not to hire any attorney at all. Whatever your reasons, if you’re contemplating going forward in your divorce without an attorney, then this article is for you. We’ll discuss some common pitfalls for parties flying solo, pro se.

Reasons why parties represent themselves in Family Law Court.

- 1) They distrust attorneys.
- 2) They want to save money.
- 3) They don’t want any legal gamesmanship benefiting the lawyers’ bank accounts.
- 4) They want to fast forward to a settlement and final decree, without outside interference.
- 5) They want total control over their family law case.

Reasons why parties regret representing themselves pro se in Family Law Court.

- 1) They now realize how much they don’t know about the law.
- 2) They are immediately overwhelmed and overburdened because of the time it takes to prepare for every procedure in the case.
- 3) They have lost themselves in the Court rules, the procedures, the schedules, the deadlines, the evidence, and the substantive laws.
- 4) They lose on issues to the opposing party, who has an attorney with the attending legal knowledge to get an edge in seemingly every proceeding.
- 5) They give in and hire counsel late, after the divorce is well underway.

The mistakes resulting from pro se inexperience may cost even more money in damage control and do-overs.

Mistake #1. Emotional aspects unique to divorce and child custody make pro se representation challenging.

Representing yourself in a simple divorce without children, assuming there are no complex property issues involved, could be manageable for you. But going pro se in a divorce with children is much more complicated. You need to understand and appreciate how your emotional involvement -- *your intangible personal stake in the matter* -- will affect your ability to efficiently and persuasively present your case.

Deciding to end the marriage is difficult in and of itself, but going through a divorce can take a substantial emotional and financial toll if you are not very prepared. Keep your expectations realistic and focus on doing what you can to present your best case. You must separate logic

from emotion, as difficult as that may be when the issues involve your children, your spouse's infidelity, and other heart-wrenching circumstances.

Mistake #2. No special treatment for pro se litigants from the Court.

A fairly common mistake relates to the Judge's treatment of pro se litigants. Pro se means you're not represented by legal counsel. It does not mean "here's a free pass" for not following the procedural rules, rules of evidence, and local rules of Court. The Judge holds pro se litigants to the same standard of knowledge as attorneys licensed to practice law. Furthermore, Family Law Court is focused on following the law, not in assessing fault and dispensing punishment. So don't expect to use the Judge as a tool to punish the other party. If children are involved, the Court will do what is in the *best interests of the children* -- which usually means taking every measure to ensure both spouses remain involved in their children's lives.

Mistake #3. Common procedural mistakes made by pro se litigants.

Here's a quick list of common procedural mistakes made with Court documents and filings. The pro se litigant:

- Did not sign the Court documents before filing them.
- Did not verify a document under oath when required.
- Did not include the required attachments, or exhibits, when filing.
- Did not know that everything filed in Court must also be served on the opposing party.
- Did not provide any instructions to the sheriff or process server to locate the other party for service of Court papers.
- Did not provide the correct filing fee.
- Did not explain any details in the allegations, or statements.
- Did not understand the meaning of each allegation.
- Did not fill-in all the blanks in the Court-approved self-service forms.
- Did not indicate other related or pending cases (a problem in family Court with multiple support, visitation, *child custody*, and divorce issues).
- Did not submit a proposed order for the Judge to sign.

Mistake #4: Failing to fully comprehend what they are signing.

One common mistake pro se litigants make is signing off on documents a little too eagerly. When the parties sign an agreement in a divorce, it is binding and they are responsible for having full knowledge of its content. If a provision is not detailed in the written agreement, it probably isn't binding. That the pro se litigant has a full and complete understanding of any document to be signed is crucial in a divorce.

Signing documents you do not fully comprehend is never a good idea, under any circumstances, yet people do it all the time. You take the offered pen, you sign your name, and then you ask "*Does this mean I still get the kids on holidays?*" This is not the time to be shy or intimidated about asking questions regarding any aspect of your divorce or child custody. Also, take care to read everything that opposing counsel prepares to ensure accuracy. No one is infallible, and once errors are entered into the record, they can be a real hassle to get changed or corrected.

Mistake #5. Failing to properly request in Court documents what is wanted.

The pro se litigant needs to know the procedural rules that all parties are required to follow in Court. The Arizona Rules of Family Law Procedure are very clear about proper pleading -- how to

properly bring an issue to the Judge. Failure to properly “motion” the Court on an issue can cause unnecessary delays and may even mean losing on that issue. The rules of Court are there, in part, to provide a fair and even playing field. In the interests of justice, and fairness to both parties, pro se litigants have to present their requests in proper form just like everybody else.

Requests in the form of Motions.

In the petition for dissolution, the requested relief is for the Court to dissolve the marriage. There is a lot of territory to cover between the petition and the dissolution, during which motions are filed by both parties. Motions are really fairly simple conceptually, they are formal written requests made by a party, or movant, and filed with the Court. In general, all motions must be properly served on the other party so they can respond with a reply. (Ex parte motions are the exception, not the rule.)

Every motion has a clear purpose and a specific desired result. For example, there is the Motion for Temporary Orders, the Motion for Custody Evaluation, the Motion for Parenting Conference, and the *Motion for Mediation*. Just because a party asks for the relief, doesn’t mean they’re going to get it. But the party definitely won’t get what is not properly asked for. No matter what is being requested, assume there already exists a proper form of motion tailored for that precise matter, and use that form.

Mistake #6. Mandatory Parenting Plans in Arizona.

Arizona parents sharing joint legal custody must have a written parenting plan. These plans assume a co-parenting model that addresses, specifically, matters of legal custody, shared rights and privileges, and scheduled parenting time. Creating a parenting plan takes time and thoughtfulness. There are many issues to consider, only one of which is child development.

Failing to have a clear and specific parenting plan.

We’ve seen more than our fair share of internet “one size fits all” parenting plans, found on a myriad of promotional websites. While EZ-parenting plans may look proper, they rarely pass muster and are painfully vague and ambiguous. Remember, we’re talking about addressing the needs of children -- vague and ambiguous parenting is not an option. For example, these run-of-the-mill parenting plans often state “parenting time is as agreed upon.” Well, if it hasn’t been written down yet, then there isn’t a parenting plan. These internet plans are usually silent on issues involving the children’s extracurricular activities, too. Exactly how will summer vacations be scheduled? How will out-of-state travel be managed? The pro se litigant should think of the parenting plan in this way: *“I’m planning now, how each day in my children’s lives will be handled -- one child at a time.”*

Tasks you must be able to handle competently when representing yourself in Court.

Here’s what you should be able to handle if you go ahead with your case pro se:

- 1) You understand what you are required to do and you follow directions precisely.
- 2) You stay very well-organized.
- 3) You perform sufficient research to understand the substantive and procedural laws applicable to your case.
- 4) You practice your public speaking skills so you can present your case successfully and with authority.
- 5) You keep a cool head, staying calm and rational under pressure.