

# Soon-to-Be Ex Etiquette

## What You Should and Should Not Do Now

### When can I date?

It depends. In some states, once parties are separated, you are free to date and it has no effect on the divorce. In other states, your conduct up until the date of the divorce can be considered. You should consult with your attorney to make sure that dating won't have an effect on the divorce or support matters. In addition, if you have children, you should be sensitive to introducing a third party into your children's lives, and you may want to consider consulting with a mental health professional on how best to do that.

### Can I have a "significant other" sleep over?

If you allow a boyfriend or girlfriend to sleep over, and such sleep-overs occur regularly and are not intermittent, your spouse may try to argue that you are cohabiting and, as a result, any support or alimony you may be receiving should be terminated or reduced. Also, if you have children, allowing a "significant other" to sleep over may be used by your ex as a weapon in any custody action to show that you have poor judgment.

### Can I have my spouse tested for sexually transmitted diseases?

No, you cannot force your spouse to be tested for a sexually transmitted disease. If you believe you may have been infected, you should get tested. If you test positive, you may want to consult with a personal injury attorney to explore the possibility of a civil lawsuit against your spouse separate and apart from the divorce case. You should also make sure that any settlement of the divorce matter does not include a waiver of any such lawsuits.

### My spouse has been abusive. Does that matter in the divorce?

Evidence of abuse can be considered a basis to establish a fault-based divorce in some jurisdictions (although in most states, divorces are granted on no-fault grounds). Also, evidence of abuse may be relevant to a custody determination depending on the state you live in. For example, in Pennsylvania, a court considers a number of factors in rendering a custody award, including past history of abuse. Also, some states will not award interim support if the recipient abused the person who would owe support.



### Can my therapy sessions, counseling, or antidepressants be used against me?

Generally, your individual therapy, counseling sessions, and medications are confidential and not subject to dissemination to the other side. However, if you put your health at issue by stating that you can't work due to a psychological or mental health issue, that information will be available to the other side. Moreover, in a custody matter, if you or your family participate in a custody evaluation (or if it is court ordered), the custody evaluator will ask for you to sign releases so that he or she can speak with your individual therapist, family therapist, or marriage counselor and obtain records for the evaluation. Any joint therapy that you engaged in with your spouse or children, however, may not be confidential.

### Can my parents or friends move in during the divorce?

If you live in a property in your name alone, you can have a friend or family member move in with you. However, if you live in a property that is jointly titled with your spouse, it can



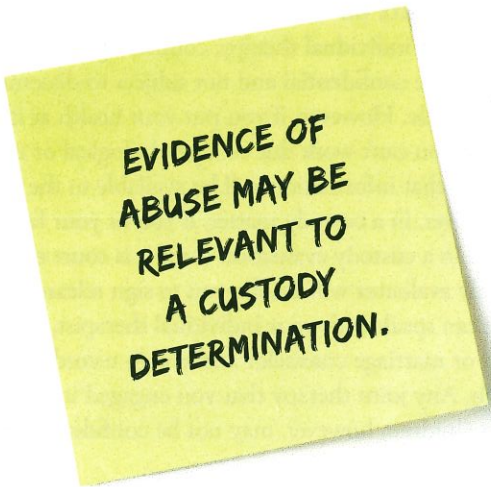
be considered a “marital asset,” and you should not invite others to live there, since the “out” spouse has an ownership interest in the property and a say about who is living there. Even if you have “exclusive possession” of the property (meaning that only you have the right to live there pending the divorce), it may not be such a great idea to have others live with you, especially if you have children. In addition, if you are seeking alimony from your spouse, you should consult with your attorney before allowing a new significant other to move in with you, as it may affect your claim.

### **Does it matter if I drink?**

Occasional or moderate drinking will likely have no effect on your divorce case. However, your drinking can matter if it affects your relationship with your children or your ability to support yourself. If you have minor children, you really should not drink in their presence. Engaging in too much partying can have a negative impact on you, your children, and your custody case. It goes without saying that drinking to excess is not healthy for you.

### **Can friends testify?**

You should ask yourself why a particular friend’s testimony would be needed. Is it relevant to one of the issues in your case? If you are bringing the friend in just to say you are a good guy, then no, that friend’s testimony is not helpful. However, if that friend has particular, first-hand knowledge about an issue in your divorce or custody matter, his or her testimony may be relevant and helpful. However, keep in mind that a friend may be considered a biased witness, and that could affect how the court weighs the testimony.



**EVIDENCE OF  
ABUSE MAY BE  
RELEVANT TO  
A CUSTODY  
DETERMINATION.**

### **Can our marriage counselor/minister/priest testify?**

Generally, communications with marriage counselors and religious clergy are confidential communications, and therefore the counselor or the clergy may not testify. However, if you waive that privilege or consent to the disclosure (and your spouse does so with respect to marriage counselors), they can testify. There also needs to be a relevant reason for your marriage counselor or clergy member to testify.

### **Can I have my spouse tested for drugs?**

If you suspect that your spouse is using drugs and he or she is seeking custodial time with your children, then yes, you can request that a court order drug testing. To be fair, and if the other side accuses you of using drugs, the court may order that you be tested, too.

### **Does sexual preference/orientation matter?**

No. Sexual preference or sexual orientation has absolutely nothing to do with a divorce, custody, or support matter.

### **Can the other side access my medical records?**

Medical records are generally off-limits—unless your health becomes a relevant issue in your case. For example, if you take the position that you are unable to work due to a disability or medical reason, your medical records are relevant. Also, if your health is an issue that impacts your ability to have custody of your children, your medical records are relevant.

### **I don’t want my spouse to have my last name anymore. Can I make her change her name?**

No, you cannot make your spouse change his or her name. It is entirely up to your former spouse to elect to retake a maiden name. In most states, retaking a maiden name simply requires filing a notice with the court to retake the name in the divorce action.

### **Can I force my spouse to undergo counseling to save our marriage?**

You should check with an attorney in your particular state, but generally most states require that the parties be notified of the right to counseling and allow one spouse to demand that the other spouse participate in marriage counseling for a short duration. However, before you demand counseling, carefully consider how effective it will be if the other spouse is not a willing participant. **FA**