

Q&A By John T. Syrtash, Associate, Garfin Zeidenberg LLP
Answers to pressing questions on Family Law.

Status of familial monetary gifts prior to divorce; right to child's information

Question: I am contemplating divorce after separation from my wife for over two years, without any written agreement. If I have to send some money to support my parents in paying doctors' fees, will that be considered wrongful alienation of my assets or improper transferring property to a third party?

Answer: No. Had you transferred assets or money to your parents just prior to your separation, a judge may have viewed such a transfer with suspicion as an attempt to divert assets that should properly have been split 50:50 with her. However, two years after separation is perfectly within your rights to do as you wish with your own assets, so long as you report your income accurately when calculating it for child/spousal support. Also report the state of your assets and liabilities accurately as they existed on the date of separation and the date of marriage to calculate what, if any, "equalization payment" or property split you owe each other. But the calculation is based upon the value of your respective net worth positions as of the date of separation, not now. Moreover, if you had legitimate reasons for transferring money to your parents to support them even just before the date of separation, and you could prove that you were not doing so to divert assets away from your wife's right to an equal split of property, then a court would likely excuse your actions in any event.

Question: I pay child support for my 18-year-old and suspect he is no longer living with his mother and I should therefore not have to pay her child support anymore. Do I have the right to know which school he is attending, how many hours a week he is attending school and where he is living? If he is not living with his mother, but can prove he is attending full time school, would the support payments go directly to my son?

Answer: Under the Children's Law Reform Act you have every right to this information from the child, his mother and directly from the school if you have some access to the child. If you don't have any access then you only have that right if you get a court order directing either the child or the mother to release the information to you. Moreover, the Family Responsibility Office will not stop enforcing the Child Support Order or agreement without a court directing them to do so, on your request, after a court application. If he is living alone, you may have to pay him directly.

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