



Authority Magazine

Feb 10, 2022

Attorney Martha Cohen Stine Explores Why A “Nesting” Situation During A Divorce Could Backfire for Both Sides

An interview with Ilyssa Panitz



Attorney Martha Cohen Stine says, once people learn the realities of what “nesting” is, they begin to realize the importance of not being in the same place together anymore.

One of the biggest mistakes couples who are going through a divorce make is holding onto the marital residence. Instead of looking at the situation practically, weighing the financial responsibility of what carrying a house entails and being under the same roof as your soon-to-be “ex,” many people let their emotions get in the way by saying, “we don’t want the kids to leave their home especially if that means switching schools and saying good-bye to their friends.” So, when parents, who are in the midst of severing ties, hear about a “nesting” option a light bulb shines bright and they think it is a win/win for everyone. “WRONG,” according to Attorney [Martha Cohen Stine of Cohen Stine Kapoor LLP](#). She says, nesting is usually a recipe for disaster and if you want to survive and thrive in your new chapter, say good-bye to the “old” and get excited to welcome in the “new.”

Ilyssa Panitz: For couples who are in the middle of a divorce, what are your thoughts if they want to enter into a “nesting” situation?

Martha Cohen Stine: I discourage clients from entering nesting arrangements. I believe that each spouse needs privacy and his and her own space while going through a divorce. It’s not only children who need a safe and secure home environment, parents need that too. Nesting also sends the wrong message to the children and gives them the false sense that the family is still together. While many articles extol its virtues, in

my view, nesting generally causes conflict and increases rather than decreases stress during a difficult period.

Ilyssa Panitz: If a couple wants to “nest,” should they have their lawyers draw up a legal document with a list of rules everyone has to abide by?

Martha Cohen Stine: Yes. If a client insists on a nesting arrangement, I will draft an agreement where it’s a temporary arrangement. Perhaps the arrangement will end in three to six months unless both parties agree to extend it. The agreement would be tailored to the family’s unique needs and would contain rules of the house, a code of conduct and a list of dos and don’ts.

Ilyssa Panitz: What are some examples of what those guidelines might be?

Martha Cohen Stine: The agreement would set forth the schedule for each parent’s parenting time and occupancy of the home and call for joint decision making. There would be a protocol for resolving disputes and impasses if the parents are unable to agree about an important decision. The agreement would clearly spell out how bills are to be paid, where important documents regarding the children will be kept, responsibilities in the home such as maintenance and repairs, and the requirement that the home be left in a clean and organized condition when the on-duty parent leaves. The agreement would spell out a code of conduct for privacy, with provisions prohibiting each parent from

rifling through the other parent's papers and personal belongings in the home. There would be rules about the family computer. There would be rules about significant others. Also, the agreement would prohibit either party from placing nanny cams or video or audio recording devices in the home.

Ilyssa Panitz: Does a Judge have to sign this document both parties put their signatures to?

Martha Cohen Stine: No. A judge does not have to so order a nesting agreement which is essentially a custody and parenting time agreement. The agreement would typically be enforceable if its terms are reasonable and in the best interests of the children and if the agreement is properly executed by the parents. Parenting time agreements are upheld absent a substantial change of circumstances warranting a modification in the best interests of the children.

Ilyssa Panitz: It is common for those in a “nesting” situation, to run into complications and if so, what are some examples of some problems people have faced?

Martha Cohen Stine: There are many complications because of the lack of privacy and the continued entanglement with the ex or soon to be ex-spouse. The list is endless. Some examples: regardless of agreement terms, one spouse may not be able to help himself or herself from rifling through the other spouse's clothing pockets and personal papers. One parent may install nanny cams or hidden audio listening

devices. Housekeeping issues are common, for example, where one parent leaves the house filthy, laundry piled up and no food in the refrigerator. When one or both parents are jealous, resentful, or competitive, continued exposure to the other spouse can create new conflicts while old conflicts continue to simmer. Schedules may not be honored; life happens and the parent who is supposed to rotate out won't leave. New significant others in the house cause problems and conflicts. Nesting requires an additional place for each parent to stay while off duty. This can be challenging financially and logistically.

Ilyssa Panitz: What happens when one party doesn't stick to the agreement? What do they do, who do they call and what can be done?

Martha Cohen Stine: Repeated violations of a nesting agreement might call for court intervention and a change of the custodial arrangements. The first step would be to call the matrimonial lawyer. The matrimonial lawyer will then decide the best strategy, whether to negotiate a new agreement with the ex-spouse or his or her attorney, tweak the existing one, or go to court.

Ilyssa Panitz: Actor Rob Riggle is suing his estranged wife, Tiffany. The couple who are in the middle of a divorce after 21-years of marriage are currently facing a big hurdle. Rob is claiming, in court papers, he has proof Tiffany allegedly put a spy camera in a smoke detector above his desk in his office to keep an eye on him. Tiffany is living in the couple's main

residence and Rob, in the smaller one they own. If these allegations are proven to be true, could Tiffany be in trouble?

Martha Cohen Stine: Yes, Tiffany could be in trouble. I read that Rob has commenced a lawsuit against her for money damages and injunctive relief and she may also face the wrath of the matrimonial judge if the parties are litigating their divorce in court.

Ilyssa Panitz: Is it against the law to install a “secret camera” especially if a couple is in the middle of a divorce and one side is using it to snoop on the other?

Martha Cohen Stine: Nationwide, it is legal to install a hidden camera in your home for visual surveillance without the consent of the nanny or your spouse or others who reside in the home, but cameras are never allowed in places where there is an expectation of privacy, like a bathroom, changing room or bedroom. Audio surveillance is a different story, however. The laws are much stricter about audio recording than they are for visual recording. It is generally legal in most states to audio record a conversation without the other party’s consent if you are personally a part of the conversation. But eavesdropping is not legal. If you are not personally a party to the conversation, you may not record it. Serious problems also arise when a spouse installs spyware on a computer or cell phone, as this is also illegal.

Ilyssa Panitz: Are there also legal ramifications for the person who installed it?

Martha Cohen Stine: There are penal laws regarding unlawful surveillance, but spouses are generally not criminally prosecuted in these cases. It's the judge who is presiding over the matrimonial action who punishes the spying spouse typically either by reducing his or her share of marital assets or finding that the spouse's misconduct bears on his or her fitness as a parent. In one recent New York case, where a husband had installed spyware on his wife's cell phone which allowed him to read her private emails and spy on meetings with her lawyer and therapist, the judge found that the husband's conduct shocked the consciousness of the Court and offended all semblance of judicial integrity. Harsh financial penalties were imposed on the husband. The judge remarked that this husband probably never contemplated that his investment of \$50.00 in spyware would have such dire consequences for his financial future.

Ilyssa Panitz: Rob is also alleging, \$28k of cash went missing from his from his lock-box and he is claiming in court papers he has images of Tiffany sitting on the floor of his home office counting cash. If this is proven to be true, could she be in trouble for allegedly taking the money?

Martha Cohen Stine: It would depend on the circumstances surrounding the acquisition of the cash. The wife will likely claim the cash was acquired during the marriage, that it's marital money and that she had the right to take it. The husband will likely claim that the cash is his separate premarital property and that she did not have the right to take it. In many divorce cases where one spouse grabs cash stored in the

marital home and the cash is deemed to be marital, that cash is considered an advance against that spouse's share of the marital assets.

Ilyssa Panitz: You just lead into my next question. If someone stores funds in what is viewed as “a marital” house, is that money considered to be fair game to both parties?

Martha Cohen Stine: Again, it depends on the facts and circumstances surrounding the acquisition of the cash. Just because cash is in the marital home would not automatically make it marital. It may be marital, or it may be the husband's separate premarital property. If it's marital, in a community property state and the absence of a prenup, each spouse would be entitled to half.

Ilyssa Panitz: Another claim Rob is making, Tiffany hacked into his private emails. What are the rules when it comes to one side getting into their estranged spouse's messages?

Martha Cohen Stine: If Rob had given Tiffany his password and never changed it, Tiffany would argue she had permission to read his emails. If she hacked into them, that's a violation of State and Federal penal laws. However, in my experience, the spying spouse is not usually prosecuted criminally. It is the matrimonial judge who usually inflicts the punishment by reducing the spying spouse's share of marital assets and imposing other sanctions such as ordering the spying spouse to pay the other side's counsel and expert fees.

Ilyssa Panitz: For people who are “nesting” what can they do to protect themselves and avoid unfortunate incidents from happening?

Martha Cohen Stine: To make nesting work, parents need to be on the best of terms. One need only look at the nesting disaster playing out between Rob Riggle and his wife Tiffany to get a sense of what can go wrong. Only agree to nesting for a short-term transition period, and only if you and your ex-spouse have an excellent relationship where you still trust each other, get along, and consider each other a close friend and/or family member. Otherwise, the lack of boundaries, continued entanglement and lack of privacy leads to ongoing tension and the arrangement is unrealistic and not workable. To make spying more difficult, change your passwords and monitor your privacy settings. Make your social media accounts private. Cancel your credit cards and open new accounts. Consult a forensic computer expert if you think there are hidden cameras or audio devices in your home, he or she can do a sweep, for a fee. Have a professional check your computer and cell phone if you suspect spyware. Retain a matrimonial lawyer before you enter a nesting arrangement to explore practical problems and issues that may not be readily apparent. Be wary of a simplistic proposal that looks too good to be true. It probably is.

- **To learn more about “NESTING” tune into “[The Divorce Hour with Ilyssa Panitz](#),” Saturday, February 12th on CRN Digital Talk Radio, when**

the show welcomes Lawyer Katherine Miller who will continue discussing this very important topic.

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