

HOW TO PREPARE FOR YOUR CUSTODY CASE

Hi. This is Natalie Hoffman of FlyingFreeNow.com, and you're listening to the Flying Free Podcast, a support resource for women of faith looking for hope and healing from hidden emotional and spiritual abuse.

NATALIE: Welcome to Episode 84 of the Flying Free Podcast! Today I am excited to introduce you to Wendy Hernandez. She is a Phoenix family law attorney. She is a divorce coach, founder of the Hernandez Family Law Firm, and creator of this amazing YouTube channel that I hope all of you will go check out. It's called "Command the Courtroom." She's got bazillions of videos there on every subject you could imagine when you are going to file for divorce and you are hoping to get as much custody of your kids as you want.

Plus, she has online programs that we are going to talk about at the end after you've heard all the great things that she has to share in this podcast episode. Wendy is coming at this with a lot of experience. She has tried over a thousand cases during her twenty-four years as a litigator tackling every type of family law matter from divorce to child custody and everything in between. I love how she not only helps her clients but also helps women who are representing themselves to feel competent, confident, and comfortable in the courtroom. So welcome, Wendy.

WENDY: Thank you, Natalie. That was a wonderful introduction. I'm happy to be here.

NATALIE: I'm so happy to have you. I found you a few years ago when I was in the middle of my own custody case, and your videos helped to calm my fears. From the standpoint of someone who doesn't know anything about court, my only experience was what I had seen on TV and in the movies. It just felt so scary. Plus, divorce feels scary.

Let me tell you this. Our audience is women of faith who are in emotionally and spiritually abusive relationships. A lot of these women have been kind of beaten down for many years, and they don't feel good about themselves. The thought of having to haul themselves up, go to court, and face all the things that they have been facing the past years but do it in front of a judge, in front of two attorneys, and also have their soon-to-be-ex sitting there while they are fighting for the most important thing in their life, which is their children... That's when it gets really scary. I just wanted to let you know that because the kind of questions I will be asking you are from women coming from that type of perspective.

WENDY: I hope I can help. I'm sure I'll be able to.

NATALIE: Yeah, I think so too. Another of their concerns is that it's not that they don't want their children to have a relationship with their father, it's just that because of the dad's propensity to be emotionally abusive, they don't want to leave their children alone with him. So they are scared about sharing custody because they are afraid of what their children will go through if they are not present as a buffer.

Then there is this added layer for my audience because many of these women are also being threatened by their friends, family, and church support system (because these are women of faith) that they aren't going to support them if they file for divorce, because divorce is not allowed for a lot of these women. I've even known women who have had friends and family get up in court and testify on behalf of the abusive husband, which makes the mother seem crazy and selfish (and she's already been told that she is for so many years). It's just this huge trigger, and some of them feel pretty hysterical thinking, "This is never going to work! I'm never going to get my kids!" Some people also have this irrational belief that they are going to lose their kids and not be able to see them at all. In your experience, how common is that?

WENDY: In my experience, it really takes a lot for a person to lose their children. My experience is that judges really want both parents involved to the fullest extent possible. It takes severe drug abuse, severe mental health issues that are not being treated, severe domestic violence on either side of the parties, maybe incarceration. These are the types of things a court is going to want to see before a judge literally disallows contact between one parent and the children.

I've had cases where all those things were present (not the incarceration), but the mental health issues, the domestic violence, and the substance abuse issues. Even in that case the judge said, "I think the children need both parents, and these factors are present, but I'm going to do everything that I can to make it possible."

So I'm thinking for your audience, Natalie, they are women of faith. I don't know how often all these issues are present or that they are the ones who are suffering from the drug abuse, and it could be possible. But even with those things present, if you are taking steps to make it better, if you are seeking rehab or something like that... Especially with mental health issues, because these are present in a lot of cases, especially if you are a victim of abuse. But if you are taking care of the business and getting treatment and following your doctor's recommendations, then I think it's difficult for a judge to rip custody away 100%.

Hopefully that alleviates some fears on the part of your viewers. The fears are real, and I understand where they are coming from because you are so used to being victimized by your ex or soon-to-be-ex. Gaslighting has probably happened and they've led you to believe that you are this person that you really are not. So I understand where the fear is coming from, but I also want to say that you must re-center, examine, and look within and say, "Who am I really?" Once you are firm, which may take some time after months or years of abuse, then you have to proceed knowing who you are, knowing your truth, and knowing that if you show this truth to the court that it will probably be okay.

NATALIE: Right. That's good. What do you see is the biggest mistake that women in this position make when they are facing a custody battle? And how can they avoid that mistake?

WENDY: I think one of the biggest mistakes that I see being made is allowing the bullying to continue and feeling afraid that if you are standing up for yourself that you are not being a good person. Just because you are making a stand, finally, for the first time in forever, doesn't mean that you are a bad person. It means that you are fighting for your life first and fighting for your children second. Just because you are being strong doesn't mean that you are bad or that you are going to go to hell. It doesn't mean that. It means that you are standing up for your rights as a human.

I see women really living into their fear instead of living into who they really are. That's the problem. So, walking into divorce is terrifying. It's terrifying for me and I've never been through a divorce, but I go through a divorce every time I help a client go through a divorce, and it's scary for me. So I understand that when you come from this place of fear how it is a big step to go to this place of strength.

But it doesn't happen all at once. It starts with little steps every day, or every time you talk to your attorney, or every time you go to prepare your case. With each little step you progressively become this person that you already are and that you have the potential to be. But you must live into that instead of living from the past or living in the past, which is fear. I think being strong, not allowing yourself to be bullied, having firm boundaries with the ex, setting those boundaries, communicating those boundaries in a constructive way, rising above the unhealthy communication that will happen (and that does happen), and communicating as to the issues. To get back to your question... I'm sorry, that was a long-winded answer.

NATALIE: No, this is great.

WENDY: I think the mistake is living in fear instead of stepping into strength and

allowing that abuse to continue to happen.

NATALIE: Here is the opposite idea that I have seen: Sometimes what happens is they become empowered enough to get out of the relationship and to file for divorce, and there is a lot of pent up anger over what has happened to them as they look back. Now they feel like they are in a cat fight. Now they are saying their truth, they are speaking their truth, but sometimes it can feel like they are vomiting.

I'm wondering, as far as demeanor in court or even working with your attorney, how can they temper those feelings so that they don't come across as hysterical or defensive or cutthroat? Like, "Now I've got to get my kids back and my husband can't have them at all. He's going to ruin their lives." I know that can kind of backfire on them as well. Can you talk about that a bit?

WENDY: Yes. First, when someone is going through a divorce or any huge traumatic experience, they need to process those feelings. There are stages of grief, and the place to process them is not on the stand in the courtroom at your custody trial.

NATALIE: Right!

WENDY: It's not. A lot of what I do is counseling with my clients, but I'm not a therapist. I always tell my ladies, "If you can get a therapist, that would be helpful. If you can get a counselor, that would be helpful. If you're not able to do that, maybe someone from the church, a clergy member. Someone who can counsel you and help you process those feelings." A lot of what happened during the relationship is probably going to be relevant during the divorce and custody trial. The judge must look at the best interest of the children. If there was abuse happening, whether it was financial, emotional, or physical, the judge is going to want to hear about that. It's a fine line between vomiting in front of the judge but also sharing with the judge the information that the judge absolutely needs to know.

I think emotion is important because there is a disconnect when women go on the stand and they seem like there is no emotion, yet they are saying this abuse happened. It doesn't add up to the judge. So some level of emotion is appropriate, but falling apart on the stand probably is not helpful. So, they must balance that.

I think the counseling prior to court happening and maybe working with someone like a divorce coach or something like that would be helpful. But when you are on the stand, talk about the facts and refer to the documentation if there is any. Text messages and emails are powerful documentation. I've heard judges say that a person with the most

documentation wins. That's not always the case, but documentation is great. As much as possible remove the raw emotion from it. When you get out of a divorce, you are raw and hurt. Maybe the further away that leaving the relationship gets, the emotion is there, but it is less raw. Does that help at all?

NATALIE: Yes. It does. Speaking of documentation, the women who are in this audience, some have also dealt with physical abuse, but most of them have dealt with mainly emotional and spiritual abuse, where the Bible is kind of weaponized against them to control them. There's a lot of lying, gaslighting. They are told things didn't happen that did or did happen that didn't. They are a little bit sideways as far as what's real and what isn't. A lot of them ask me, "What documentation do I have? I wish my husband would hit me so that I would have something to show. But he would never hit me. He's never hit the kids. He just criticizes us." I won't go into all of it. But what kind of documentation can those women put together to show or prove emotional abuse in court?

WENDY: It's difficult. In that situation, the best documentation that they are going to get is their own documentation that they create as this is happening. Or if they are out and it's no longer happening, sitting down and writing about it so if they end up in court, at that time, they have a good memory about what happened, because it's hard for me to remember what happened last week or what my husband said to me last week. You know? So if they can write it all down it helps keep it fresh. That is something that they can refer to.

Also, I think the writing is good at helping them process things and with the grieving process. I don't want anybody to think if you don't have any documentation that you are totally dead in the water. That's not what I'm saying at all. If you have documentation that is good. But if you don't, that's okay because documentation is not the only evidence that a judge considers at trial.

Other types of evidence are witness testimony. When evaluating a witness, a judge is going to determine how credible that person is. For example, one of the things a judge will look at in deciding credibility is a witness's ability to remember important details. So this is what I'm saying with the journaling. That will help. I personally think when a witness can get on the stand and they remember the shirt that their ex was wearing, where they were standing in the kitchen when this happened, or where their children were, these little details, to me that shows that a person is more credible as opposed to just kind of glossing over things.

NATALIE: Okay. Along those lines, one of the things I did was that for two years before I

filed, I started documenting all the things that he would say and do. It helped me to see patterns. A lot of Christian women, there is this verse in the Bible that says "Don't keep a record of wrongs. Love doesn't keep a record of wrongs." So, a lot of those women will say, "I can't keep a record of wrongs." They won't write things down and their brain will go into shut down mode and they won't remember a lot of stuff. So I tell them to write stuff down, every little detail they can, for as long as they can before they file for divorce.

But I did this, and what I found is that there are patterns of behavior. So, I put together... I never ended up going to court. We ended up solving it in mediation. But my document had the five or six main patterns of behavior along with a few examples. That's what I brought to mediation, and that was helpful.

The other thing I was thinking that I can show is lack of response to emails or lack of response to everything. So that's what I've been saving. I'm just giving this for those of you who are listening as an idea. You can also document things that are not happening that should be happening, like he didn't show up for something that he was supposed to, he didn't keep a commitment, or those kind of negligent kinds of things. He's not communicating with you when you are talking back and forth on "Our Family Wizard" about who's going to pick up the kids. But I feel like it is more of a stretch for those of us who are dealing with more emotional abuse to find those substantial, obvious, glaring examples of issues.

WENDY: I agree, and I love what you did, Natalie. I've had clients do something similar to that, creating charts for me with examples. I think that's helpful and it would be helpful to the court. Talking about the failure to respond by the husband or the ex, that is big. I will tell you that many years ago I represented the husband in a case like this that we're talking about. He didn't respond. That is exactly what the mother used against him, and that is exactly what won her sole custody of her children because the court said joint custody requires co-parenting, and the father has shown a failure to co-parent by his inability or unwillingness to participate, so therefore he's not getting joint custody.

That is powerful to show the lack of what is happening, the rude responses that are happening, or not showing up. Someone who is saying, "I want all this parenting time. I want equal time," yet when they get it or they get it during temporary orders, they're not exercising it or making those phone calls when they are scheduled or the Skype calls. So those are good points that you brought up, Natalie.

NATALIE: Alright. So it sounds like there is hope, then. That was one of my questions. Is

there hope for women who are just dealing with emotional abuse that they can get as much time as possible with their kids? Should they just resign themselves to just getting 50/50, or is there hope that they can get more than that? What are you seeing across the board?

WENDY: I don't think that anybody should resign themselves to 50/50 if they don't think that it is in the best interest of their children. By the same token (and you've already mentioned this), I think it comes across as very unreasonable if someone were to go into court and say, "I want dad to have zero time," because they judge would then think you are crazy. Maybe that is what you think, but unless there is something crazy happening that is probably not going to happen. You must balance what you want against what the law says, because in these cases people don't usually get 100% of what they want. That is part of the reason divorce is difficult.

So should people give up hope? I don't think they should. Each case is different. You must look at the facts of your case and decide what is best for your children in view of the circumstances. If you have a husband who is married to his work and working all the time and abusive on top of that, that may be a good reason to ask for every other weekend. It's not one size fits all on these cases, and you must look at the facts. There is always a way. You can be creative enough to make a good faith argument to the judge about what you think is best for your children. If someone is telling you that you can't, then I don't think they are thinking outside the box or being creative enough. That's my thought on that.

NATALIE: Okay. A little bit ago you mentioned that you have your clients fill out forms that will help them to document things. I notice that you have a course... I think you have more than one course that is available. Plus, you do individual divorce coaching?

WENDY: I do, yes.

NATALIE: I was going to talk about this at the end, but I decided to talk about it right now. That would have been helpful for me to have been able to have someone guide me through. I had to make this up as I went along. My personality is more like "I can do this," and I'm constantly thinking about it. But a lot of the women I work with are like, dead in the water. They are so exhausted and wiped out. They don't have the emotional or brain bandwidth to do this stuff on their own. They need that kind of extra guidance. So tell us more about what you would offer to a coaching client versus what you offer in your courses?

WENDY: I have several courses. The one that's been popular is the 21-Day Child

Custody Challenge. What I do is that I lead my client or the people taking the courses on the same journey that I go through when I get a case and the steps that I take to resolve the case. The 21-Day Challenge only covers through a certain point. But each day there is a little video that I share with them and a prompt. The amount of time to consume each day's content is less than ten minutes. But the real work is for the person who has the custody case or the divorce. Really, it will require work. But I am guiding them and telling them, "Step one, this is what you do. Step two, this is what you do. Step three, this is what you do." So with the 21-Day Challenge, we do that for 21 days.

NATALIE: That sounds like it would save you money even if you were working with your own attorney because you would already have a lot of your ducks in a row.

WENDY: Yes. There have been a lot of people who have attorneys who have taken these courses, and they tell me their attorneys were like, "Bless you," because they have all their, like you said, ducks in a row. They are gathering the information. They are organizing the information. Then they put it together and give it to the attorney. This saves a lot of money because there is nothing that costs more money than me getting a backpack full of crap that I must go through and figure out what it is.

NATALIE: Yep.

WENDY: So, I have the 21-Day Challenge, and I also have...The other course I really like to promote is the Trial Prep Bootcamp. In that I teach people what to expect in the courtroom at trial: the order of things, who testifies first, what is going to happen, cross-examination, direct examination. Nobody is going to be a lawyer after they take these classes, but they are going to know what to expect, which is one step ahead of where most people are when they get into this process, especially when they are alone.

NATALIE: Yes.

WENDY: As far as the divorce coaching, really, I am doing the same thing but I am doing it on a one-on-one basis with people. We are diving into the specifics of their case. With the courses, they are very general. But I learn more about them, their situation, and the facts of their case. We brainstorm on what the best things are to focus on because I am a very touchy-feely person. So there is some emotional support with the divorce coaching that you wouldn't get with an online course.

NATALIE: I love that! I'm so excited about this because I get that question a lot: "Oh my gosh, I have my first trial hearing and I don't even know what to expect. What can I

expect?" I'm like, "I don't know. I never got that far." I had millions of them scheduled that were all canceled by my ex, but I never actually went to one. Here's another question: How can a woman prepare her children for a child-focused mediation?

WENDY: Let me clarify that with you a little bit because that is foreign to me. When you say "child-focused mediation," are you saying that the children are involved in the mediation? Because we don't have those here.

NATALIE: I'm in Minnesota. What we can do here is that you can have a mediation set up between you and your ex and the mediator and your attorneys, but to have the children and their issues represented you get a neutral... It's someone who has experience in psychiatry or a mental health professional who also maybe has court experience as well. Then he interviews the children and does a whole work up. Then he comes to the mediation as a representative of his findings.

WENDY: Okay. We have some permutation of that in a collaborative divorce, which I have also done in the past, in custody evaluations where the children may or may not be represented. There are different types of attorneys who can speak for the children or speak on their best interest. But if you have an attorney who is speaking for the children, as far as preparing the children, I think it is important not to try to sway the children or try to sway them to say what you want them to say or what you think they want to say. It's important to let them know that "Mommy and daddy both love you so much and we want to spend as much time as we can with you, and we're just trying to work it out. Somebody from the court is going to talk to you, and it's important that you just tell them the truth. You don't have to be afraid that anything is going to happen to you."

I don't know, Natalie, if during the child-focused mediations whether there is an admonition given that neither party is to reprimand the children about what they might say, or if the children's voice is kept confidential or not. I know for a lot of kids there is the fear that one parent is going to find out and punish them. But you must tell them, "Tell the truth. We love you. You've done nothing wrong. We're trying to do what is best for you." Just reassure them that it is going to be okay. But by no means tell them "Write a letter about what you want." I would never do that. I had a client who did it once and she got punished big time.

NATALIE: So make sure that you are not coaching your kids on what to say in any kind of situation where they have any kind of a voice.

WENDY: That's right. It's a different thing if you have a twelve year old who likes to write

in her journal and then she gives you her journal or shares a letter with you. That is different than saying, "Okay Joanie, write a letter to daddy about what you want." Those are two different things.

NATALIE: Right. So what if she loses? What if the mother, not loses custody, but let's say that they end up getting 50/50? That would probably be what she would consider a loss. What are her options after that? Does she just need to accept it? Let's say things continue to go downhill for her kids. Is there hope for her to go back and figure out a new way of dealing with things? Can she present new evidence? How does that work?

WENDY: There is hope. The good thing about child custody proceedings is that a decision is not necessarily forever, and you can modify a court's decision. You can't modify it next month, and maybe not even next year, but possibly next year. It depends. What a judge is going to be looking at is a substantial and continuing change in circumstances and whether that has happened from the time the decision was entered and whenever you are trying to make the change.

A lot of times with these guys, they want power and control, and once they have it then they move on with their lives and they aren't exercising their time. That doesn't always happen, but sometimes it does. So say you get an ex who wants his power, he gets his 50/50 time, but then he is canceling, not calling, not involved with the school, and different things are happening. These are things that you can use because you are going to be documenting them now. You can use them in the future to ask the court to modify parenting time because dad is not exercising it.

I will say, when people go back to modify time, it is usually best if you have more than just one reason for asking the court to modify. It is rare that there is just one smoking gun. If you have two or three things that have changed, that is more helpful. So, Dad not doing what he is supposed to combined with starting a new family or the child having new step-siblings, or the child isn't doing well in school. There are a lot of changes that can happen. A physical move, a residential move, could be a change in circumstances. But I would recommend people looking for more than just one thing. If you go to court with just one thing, I don't know that a judge is going to find a substantial and continuing change.

NATALIE: Okay. I think my last question would be that a lot of the women that I work with have attorneys, and some of them don't like their attorney. But again, they kind of feel like they are the little girl and everyone is their mom and dad. The attorney kind of represents that authority figure in their life, so they feel like they are in charge and must know what they are doing. But inside they don't feel comfortable with what their

attorney is doing. Maybe their attorney isn't really doing much of anything. The attorney isn't really guiding them, in which case they can go take your courses and figure it out on their own, right?

WENDY: Right, for sure.

NATALIE: So what should she be expecting? What is the minimum she should be expecting from her attorney, and when would you advise her to let that attorney go? What would that process look like to let your attorney go?

WENDY: She should, at the very minimum from day one minute one, be expecting and demanding of respect. I've had so many clients who come to me and say, "I want to hire you." Then they start telling me their attorney used to berate them, yell at them, and tell them they were stupid. I don't understand that. First, you are paying this person. Second, they are supposed to be helping you.

NATALIE: Right.

WENDY: So if anybody ever does that to you, they are not the right person because they are not treating you with the respect that you deserve. It's just more abuse. I would say if even once you are mistreated in that way, say bye-bye. There's a difference between that and tough love, though. I will say that. Sometimes I must give my clients tough love, but I'm never disrespectful about it, and I never name call. In terms of timing as to when to get rid of them, if somebody yells at you or calls you stupid or is just disrespectful, then get rid of them then.

NATALIE: Can I interrupt here just a second? When you say get rid of, do you get your retainer money back that hasn't been spent yet? How does that work?

WENDY: It depends on the contract and what your fee agreement says. But if you are being billed hourly and they haven't used some money, yes. Then you are entitled to some money back. I would want an accounting of everything that has been done today and how much is left in the trust account. I would want that back. They are required to give you your file. If you owe them money, they can't withhold your file from you. They must give the file back to you. There are ethical rules that state that.

I would say though that sometimes bills are subject to dispute, of course. That's a whole other issue with attorneys. You must look at the bill and see in good faith if they "earned" the money. If you feel they earned money, then if you can, pay them. You are entitled to the money. You are entitled to your file.

But in terms of timing, I've had friends and I've had clients or people who have other attorneys tell me, "I'm just not getting a good feeling. I don't feel like my attorney listens to me. I tell my attorney one thing, then we go into court and the attorney says the exact opposite from what I told them." I have a friend who is going through a divorce right now and that is happening to her constantly. I keep telling her, "Get rid of your attorney." So you must trust your instinct. You must listen to your gut. Your gut delivers valuable information. That's called your intuition. The sooner the better, because the longer you go the more difficult it is going to be to get out.

It's like the gambler's dilemma. A gambler goes to Vegas. They are losing money at a table. They keep throwing money at it thinking, "It's going to turn around." Then soon they are \$10,000 or \$20,000 in and they think, "I can't get out because I have invested this much." It's the same thing with an attorney. If your intuition is saying, "Something is not right," or "I don't like this," then get out and find a new attorney early on. There's a lot of attorneys out there. You must find somebody who resonates with you and who's in alignment with who you are and what you want.

NATALIE: Is there a place where people can go to find a good attorney? If someone is completely starting out, they've only been thinking about divorce and now they are thinking, "Yeah, I want to go find an attorney," what would their first step be?

WENDY: There's a website called avvo.com. It's a ratings website for attorneys. Not all attorneys claim their profile, so I guess if an attorney hasn't claimed a profile, unless that attorney was referred to me by somebody I really trust, I probably wouldn't use that attorney. But you can look at avvo.com and see what people's experiences are with a certain attorney.

I would also look at Google. Google Reviews are a good source of information, that social proof. Really look at what other people are saying. Those are two places to start. I always think referrals are great. If you have a friend or a friend of a friend that you trust, see if they can recommend anybody. If you know an attorney, any kind of attorney, not just a family law attorney. If you know a real estate attorney or a landlord/tenant attorney, I bet that attorney knows someone that they trust. So it's not settling for the first person or the cheapest person but the person who you think is going to do a good job and that resonates with you.

NATALIE: Right. We talked a little bit about what you do and what you have to offer. I want to encourage anyone listening to check out her Command the Courtroom YouTube Channel for sure to get more of a taste. This is a podcast, so your people might be seeing this, but my people are just hearing you. Then you can see her and get

a feel for who she is and what she has to offer you. Then you can also go to her website and get on her mailing list. She gives you lots of value on her mailing list as well. What is your website URL again?

WENDY: It's commandthecourtroom.com.

NATALIE: Oh, so easy. So go to that and get on her mailing list and check out her website, because that's where you can see the products or help that she has to offer for you. I think, ultimately, this is going to save you a ton of money because it is going to set you up with the knowledge and the skills and all the stuff you need to do ahead of time. Like she said, you can bring all this stuff to your attorney, and then your attorney doesn't have to wade through everything because everything that your attorney and their paralegal do for you is billable. So why spend money on that? Why not just do it yourself, present your case to your attorney, and then make it easy for them? Plus, they will really love you for it, right?

WENDY: That's right. Totally.

NATALIE: You'll get off on a good foot with your attorney.

WENDY: For sure.

NATALIE: That's great. Is there anything else that you wanted to share with this audience before we close?

WENDY: Natalie, I'll just say where kids are concerned the judge is always going to be thinking about the best interest of the kids. So above all, I know the ladies out there that are your followers are thinking about their kids first. Keep that in mind, but there are specific legal factors that the judge is going to look at. So when they go to commandthecourtroom.com, I have a best interest checklist where I went through and outlined the best interest factors from every single state. So there is a comprehensive list of every factor. They aren't organized by state. They are just in one big list. But your ladies can know what factors the court is going to look at and which factors apply to their case. That is free at commandthecourtroom.com. I just wanted to share that. I also wanted to thank you for being such an awesome host and inviting me to be on the show.

NATALIE: Thank you so much for giving us your time and sharing your time with us.

WENDY: You're welcome.

NATALIE: For the rest of you, thanks for listening. Until next time, fly free.