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PUBLIC RELATIONS | MARKETING

#1900E23

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Public Relations Activities

October 20, 2023 – November 20, 2023.

We rescheduled the following:

- Above the Law editor Kathryn Rubino,  
"The Jabot Podcast"  
"Decision Fatigue/Secondary Trauma in Lawyers"  
**Nov. 21 @ 1PM**

We researched, drafted and edited Susan's article for *Texas Lawyer's Family Law* issue: "No, you may not track your spouse or your ex," published online on November 13. It will also run in the December/January print edition, which will be the final printed publication of the magazine. *Texas Lawyer* will continue to publish online only going forward. We shared the media link with the firm's Scorpion marketing contacts.

We researched additional information and drafted an outline on the topic of Decision Fatigue for the Holly Draper Family Insider podcast that was rescheduled for October 26. The interview broadcast on November 15. We provided the link and social media image to Scorpion marketing staff.

Susan's pre-interview conversation for the Valuation Podcast was scheduled for October 31 and the subject for the December 7 podcast interview was finalized. We are gathering information on pre and postnuptial agreements, statistics of later in life marriages, second marriages, and second marriages of very mature folks.

We provided additional background, research, and tools to deal with Decision Fatigue for the November 21 Jabot Podcast interview.

## No, You May Not Track Your Spouse or Your Ex

The implications of this new Texas rule will only be revealed over time and through case law as it develops. “I want to be the test case,” said no one ever.

Family Law

By Susan Myres | November 13, 2023



Susan Myres is a Houston-based, board-certified family lawyer with more than 35 years of experience.

Not so long ago, I had a client involved in a divorce who discovered an Apple tag in her purse. She didn't want to be tracked so she tossed it into the bed of a truck at a Buc-ee's. Her former spouse is probably still wondering what she was doing in Wichita Falls or San Angelo, or wherever the truck ended up!

Once upon a time the bread-and-butter assignments for private investigators were to follow a spouse suspected of cheating. The gumshoe was to take photographs of a possibly unfaithful spouse coming and going from The No-Tell Motel or that person's house. The “money shot” was to catch the spouse kissing his or her secret love goodbye in the driveway. Twice an errant spouse in one of my cases was photographed walking down the street holding hands with the suspected lover.

We've all become much more sophisticated in the age of electronic gadgetry. You have a “Find My Phone” app on your phone and so does your spouse. In certain cases, you can even find an iPhone 24 hours after it's turned off. You can add your iPad, Mac, AirTags and AirPods to the “Find My...” feature. An Apple Watch can be paired with an iPhone. There are family plans designed to keep all the people in the family safe with their whereabouts known. And, of course, there are a variety of GPS trackers available to attach to cars. Often the trackers were originally attached to impede theft, not to try to stalk a spouse.

Parents also have a bewildering array of options they can use to keep track of the whereabouts of their children. There are AirTags and phones, of course, but also watches and wristbands. Some sneakers even have integrated GPS chips in the tongue of the shoe.

When a marriage is intact, it makes perfect sense for everyone to stay connected with data and devices. Often these tools were put in place with no evil intent long before a divorce was contemplated. When a divorce is filed, that tracking comes to an abrupt halt because if a parent tracks a child while the child is visiting the other parent, the other parent is generally being automatically tracked at the same time.

The 2023 Texas Legislature created a new law as part of the Texas Family Code that bans all tracking and monitoring of the cars and personal property belonging to spouses and ex-spouses in divorce and custody cases without that person's “effective consent.” The law also prohibits physically following someone or causing another person to follow someone. (It is unknown at this point whether this will affect private

investigators hired for a limited purpose in a divorce or custody case.) How will some respondents be served if we do not track them?

The implications of this new rule will only be revealed over time and through case law as it develops. "I want to be the test case," said no one ever.

It is hard to imagine that all efforts at tracking or monitoring will end immediately. But is it worth the risk to try to track or monitor? It may satisfy a party's curiosity to know something he or she isn't supposed to know, but any information gathered cannot be introduced into legal proceedings. It would also be dangerous for one party in a divorce case to even threaten the other party with knowledge obtained through tracking or to reveal this knowledge spontaneously in the course of an argument. If the fact that knowledge was gained illegally is reported to the court, the party doing the tracking could be in trouble.

Will it be a defense to claim that the party doing the tracking forgot the device was even there and did not track or monitor intentionally? At this point, we simply don't know.

There are situations in divorce and custody cases in which a parent may feel it is dangerous not to track children when they are with the other parent. Custody orders in shared custody may require that each parent notify the other parent where the child will be during visitation times, but more often they do not allow micromanagement of the other party. However, an agreement may even specify how parents will contact each other and how (and how often) a parent may contact a child while the child is with the other parent.

But what if one parent has reason not to trust the other parent to tell the truth? The most extreme situations may already require supervised visitation, but there will be other circumstances that fall into a gray area. What if a parent tries to drag the child into a bar? What if there is a danger that a parent might try to take the child to a location on the other side of the country? What if a parent may even try to leave the country with the child? How will those situations be handled? Without court approval, a parent who attempts to remove children to another location or country is on thin ice. But, if tracking isn't allowed, how will the other parent even know the child is being taken away?

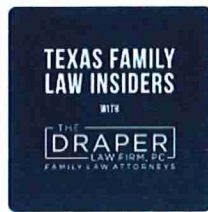
Preventing tracking may require a child to turn off his/her watch or cell phone while visiting a parent, which may make a child reluctant to visit that parent. In situations in which both parents share custody and the children visit back and forth, must their phones then be turned off all the time? Perhaps they can continue to use their devices if they can turn off any locator services. Of course, a reasonable option is for the parents to discuss a mutual way for both of them to know where the children and their devices are.

The bottom line in this entire debate is that the new law has created a tangle of overlapping confusions as to what is legal and what is illegal—and these confusions will not be resolved overnight. In the meantime, all parties in a divorce suit must err on the side of caution.

Just as most family lawyers advise clients not to air their grievances on social media while going through a divorce, they must also advise their clients not to track or monitor their spouse or ex-spouse during a divorce, even if it means they may not track their children when they are with the other parent. Complaining about a spouse on social media may result in embarrassment and even an angry judge who is not inclined to sympathize with your client. But tracking or monitoring a spouse or ex-spouse in a divorce case is now against the law, and the consequences could be far more dire.

**Susan Myres** is a Houston-based, board-certified family lawyer with more than 35 years of experience. She is also a recent past president of the American Academy of Matrimonial Lawyers.

# Texas Family Law Insiders



TEXAS FAMILY LAW INSIDERS · EPISODE 94

## Susan Myres | Managing Decision Fatigue



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NOVEMBER 15, 2023

by Holly Draper



Is decision fatigue impacting your performance?

Day after day, attorneys are called on to make hundreds of decisions... Without the proper rest and recovery, your brain can become overwhelmed.

In this episode, Susan Myres unpacks what decision fatigue is and shares how attorneys can manage and overcome decision fatigue so we can show up as our best selves.

Susan is the managing partner of Myres & Associates PLLC and has been litigating for over forty years.

She'll cover:

- Signs of decision fatigue
- How decision fatigue can lead to malpractice
- Strategies for managing decisions
- Giving your brain a break
- And more

### WHAT IS TEXAS FAMILY LAW INSIDERS?

The Texas Family Law Insiders podcast brings together top divorce and family law attorneys and other professionals to discuss issues related to divorce, family law, child custody, child support, paternity, parental rights, grandparents' rights, adoptions, and family law appeals in Texas.



“In family law, there are serious consequences for our actions and inactions. We have to make sure that if we're in decision fatigue and we are not making good decisions, we don't make them.”

GUEST:  
**SUSAN MYRES**



THE  
**DRAPER**  
LAW FIRM, PC  
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**Episode 94**