Five Things Criminal Defense Attorneys Should Keep In Mind About Family Issues

Kristine Zajac & Ryan J. Briese

Defending a client on criminal charges carries enough pitfalls and issues to remember to address on its own. Even so, many criminal convictions can bring results that carry over into the defendant's family life resulting in unintended or unanticipated consequences. These five family law matters should be kept in mind throughout defending your client in criminal proceedings.

Termination of Parental Rights for Predatory Offenders

Beware if your client is facing a conviction that requires registration as a predatory offender under section Minn. Stat. section 243.166 and is a parent or ever hopes to be a parent. The recent provision under Minn. Stat. section 260C.503 requires that social services must ask the county attorney to immediately file a termination of parental rights petition when a parent has committed an offense that requires registration as a predatory offender. Under the statute the county attorney is given very little latitude to deviate from this requirement for filing the termination petition. While anecdotally few county attorney offices appear to be enforcing this provision, if your client ends up in a custody fight this provision could effectively end their chance at custody and potentially all parental rights.

Convictions Shifting the Burden of Proof in Custody

Minn. Stat. section 518.179 triggers a shifting in the burden of proof for clients seeking child custody or parenting time when they have been convicted of one of any number of crimes ranging from murder to prostitution of a minor, depriving another of parental rights to even terroristic threats. After such a conviction the person seeking custody or parenting time has the burden to prove that custody or parenting time by that person is in the best interests of the child. The court may not grant custody or parenting time to the person unless it finds that the custody or parenting time is in the best interests of the child. Further, if the victim of such crime was a family or household member, the standard of proof is clear and convincing evidence. A guardian ad litem must be appointed in any case where this section applies. This added burden of proof in an adversarial custody proceeding poses a seemingly insurmountable obstacle to your client obtaining custody.

Extension of OFP's After Violations

Although some criminal defense attorneys may not be involved in the actual defense of the Orders for Protection, they may find themselves defending a client accused of criminally violating an Order for Protection. A violation itself of an Order for Protection carries potential charges from misdemeanor through felony based on the alleged conduct of violation. However, the conviction and even admissions regarding the alleged violation of an Order for Protection still carry long-term consequences for the defendant even beyond the charges. If the client is convicted of a violation of the Order for Protection, or even if he admits on the record to a violation of the Order for

Protection without actual conviction, these facts may be subsequently used by the OFP Petitioner to extend the Order for Protection against your client for a time period of up to 50 years. These extensions of the Order for Protection have been upheld even where the underlying Order for Protection was entered without findings. See Rew v. Bergstrom, 845 N.W.2d 764 (Minn. 2014).

Clawing Back Property Settlements

If your client is being charged with fraud, theft, or the like, beware that transfers made to the defendant's spouse through dissolution may be clawed back pursuant to MUFTA, the Minnesota Uniform Fraudulent Transfers Act. The recent string of Ponzi-schemes has been accompanied by equally complex marriage dissolutions. However, the spouse looking to get out, whether innocent or not, may find escaping with his or her cut from the marriage difficult. The Courts have recently held that the MFUTA may be used to claw back property settlements and awards determined in dissolution proceedings for the innocent spouse. See Citizens State Bank N.Y.A. v. Gordon Brown, et al., A12-1257 (Minn. 2014) . Such actions appear more likely when the divorce appears to be one of convenience. Even so, the innocent spouse should be wary before spending that divorce settlement.

Innocent Spouse Tax Relief

Speaking of innocent spouses, an innocent spouse caught in tax fraud being committed by his or her spouse may be able to escape the usual joint and several liability from joint tax return filings. However, in the case of innocent spouse tax relief, the innocent spouse must actually prove their innocence, showing that they did not or should not have known of the fraudulent acts being committed by the spouse. This issue may pose particular problems for your clients as the traditional joint and several liability of joint tax returns gives the innocent spouse incentive to turn against the accused spouse. Such innocent spouse should be advised of the extended periods for claiming the innocent spouse relief to avoid such claims being filed during the pendency of charges against your client.

Ms. Kristine J. Zajac, Attorney
Ryan J. Briese
Zajac Law Firm
475 Grain Exchange Building North
301 Fourth Avenue South
Minneapolis, MN 55415
(612) 789-2300, (612) 341-0989 Fax
www.zajaclawfirm.com