DIVORCE & CUSTODY SURVIVAL GUIDE

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CHAPTER 1: DIVORCE

What is divorce?

Divorce is the legal dissolution of a marriage. In order to be able to obtain a divorce, you must meet all of the prerequisites in terms of residency before you can even file for divorce. However, just meeting the requirements to file for divorce is not enough. In order to successfully obtain a divorce in Michigan, you must convince a judge in a family court that your marital relationship has broken down beyond repair and that there is no chance of reconciling. Some judges will be satisfied with a simple yes or no answer to this question from the parties involved. Others, however, will expect specific facts and evidence. It is important to consult a lawyer to help you prepare to meet this burden.

How can I tell if my marriage is unsalvageable enough?

There is no surefire objective way to tell. However, there are often signs one can look at, such as refusing to live together, persistent fighting and resentment, etc. You should also recall that marriage is a joint enterprise involving you and your spouse. If there is any problem, it will have to be tackled together. If you believe that either of you would be unwilling or unable to do so, then perhaps a divorce is inevitable?

What are the residency requirements for divorce in Michigan?

In order to file for divorce in Michigan you must be a resident of the state for at least 180 days (six months)

and a resident of the county where you file for divorce for at least 10 days.

Do I need to tell my spouse about the divorce? Do they have to be involved at all?

An important thing to note is that both spouses do not need to participate in the divorce proceedings. While the person filing for divorce has to provide notice to the other spouse, the other party does not have to respond in any way unless they wish to contest some issue of the divorce. The other spouse's permission is not required, and they cannot simply forbid it. In order for the other spouse to prevent the divorce, they must make their own demonstration to the judge that an irreconcilable breakdown in the marriage has not occurred.

If my spouse has served me with divorce papers, how should I respond?

Technically you don't have to respond at all. Given that Michigan is a no fault divorce state, your spouse can see through their divorce from you without any input from you unless you either challenge the divorce or have children. If you wish to challenge the divorce, then you must file an answer which challenges the assertion that the marital relationship has irrevocably broken down.

The complaint from your spouse also contains your spouse's initial claims in terms of custody, spousal support, and child support. If you agree with their idea to get divorced, but disagree with these claims, then you must file a counterclaim. If you fail to respond, you run the significant risk that the judge will grant all of your spouse's requests. However, filing a counterclaim may create complications if you decide not to get divorced later (see the following section for more details).

What if I change my mind and no longer want to go through with the divorce?

That depends on the circumstances. If you were the spouse who originally filed for divorce, then you can end the process on your own unless your spouse filed a counterclaim or the process has continued for too long. Otherwise, all you need to do is head to the clerk of the family court and ask for the form to end the divorce process.

If you have allowed the divorce process to continue to such an extent that you and your spouse are subject to a motion granted by the court, or if your spouse has filed a counterclaim, then you need the written consent of your spouse to discontinue the divorce process; Otherwise, you risk your spouse getting awarded everything they asked for in their counterclaim because you stopped arguing your side of the case and handed them a victory be default.

What is No Fault Divorce? Does it help me if my spouse cheated on me prior to us getting divorced?

Michigan is a no-fault divorce state. That means that you do not have to show any wrongdoing on the part of your soon-to-be former spouse. Just the basic requirement is all that you need. However, fault may become relevant if any aspect of the divorce is contested. If there is fault with one of the parties, and the judge decides to consider that fault in the divorce judgement, that party may get a less favorable outcome in terms

of division of assets, alimony, or child custody. If the divorce is uncontested (see the section below), you will most likely be unable to use that person's fault against them.

What does "Fault" Mean?

"Fault" is a legal term that means any form of wrongdoing that would have been necessary in order to get a divorce in the era before the advent of "no-fault" divorce. This generally meant adultery, domestic violence, or things of that nature. The major takeaway is that while these factors might play into your decision to get a divorce, they are no longer necessary conditions in order for you to get your divorce finalized by a Michigan family court.

It should be noted that, unlike many no fault states, Michigan doesn't even offer fault divorce, nor does it have an official list of recognized fault grounds. This might make it more difficult to leverage "fault grounds" to obtain a more favorable divorce judgement.

Can you give some more examples of fault grounds?

Some examples of fault grounds are:

- Adultery: marriage typically involves marital fidelity, so cheating can cause huge problems to a marriage.
- Cruelty: A spouse is expected to love, cherish, and protect the other. In eras past, the law might have required one spouse to show that the other was behaving in a very cruel and unspouselike manner in order to get a divorce from said spouse. Nowadays such abusive behavior tends to become ammunition in the disputes over custody, support, and property.
- Abandonment: similar to Cruelty in that it implicates the duty one spouse has towards the other. In this case, it means that one spouse is not upholding their duty to provide comfort, company, and companionship to their spouse.
- Mental illness/insanity: You do not have to spend the rest of your life with a crazy person. In the modern era, it is largely pointless in divorce proceedings because society now prefers to avoid discriminating against the mentally ill or disabled. The vast majority of family courts will refuse to give the "sane" spouse more favorable treatment on account of their former spouse's unfortunate condition.
- Criminal conviction: This is particularly relevant if the spouse has been incarcerated for a very lengthy period of time.
- Religious differences: largely irrelevant due to changing attitudes and a trend against discriminating against different religions.

What specifically are the "fault grounds"? How might these "fault grounds" be specifically used by the judge?

The judge will never actually refer to them as "fault grounds". Furthermore, they won't use many of the grounds that would have netted you a divorce in eras past, such as infertility/impotence. After all, the law and government no longer view child bearing as such a central and indispensable aspect of marriage. The court will only really look at infidelity, abuse, neglect/abandonment, or drug/alcohol abuse. These are factors that truly affect the interpersonal relationship between spouses and are typically the result of a willful decision by the at fault spouse.

An example of the judge using these factors might be the judge giving the wife a more generous property settlement because the divorce was brought on by her husband's cheating. Abuse, neglect, or addiction might be used to show that one of the spouses is an unfit parent, which would play into a custody determination. Abuse that causes physical injuries might become grounds for making the abusive ex-spouse pay for some of that person's medical expenses.

Criminal convictions can be relevant in multiple ways. If a criminal record/imprisonment was the root cause of the divorce, then the judge may attach moral weight to that when deciding on the distribution of property. Given the imprisoned spouse's incarceration, it is unlikely that the court would assign greater spousal support. That being said, a criminal conviction is highly relevant when it comes to child custody. A conviction of any kind, especially one that involves incarceration, virtually guarantees that the other parent will receive physical custody and is likely to result in a rather strict parenting time arrangement. In fact, for certain crimes involving sexual abuse or violence towards children; the crime could even result in the outright termination of the defendant's parental rights.

Not every judge will be open to these kinds of arguments, but this is the only part of the divorce process where those factors are permitted to be considered at all in Michigan family court.

Is denial of intimacy/ neglect by one spouse relevant to a divorce?

Not directly. There is no general right by one spouse to enjoy sexual relations or any other such intimacy with their spouse. What is relevant is that categorical and ongoing refusal by one spouse to engage in such activities could be used as evidence of an irreparably broken marriage. It is also possible, but somewhat unlikely, that evidence of spousal neglect could be used to leverage for more generous spousal support.

Why did Michigan (and other states) become no fault divorce states, rather than the way things used to be before?

Well for one thing, the old system was pretty archaic and draconian. We no longer live in a society that blind accepts the religious (mostly Christian notion) that married couples are obligated to remain married except under very special circumstances. Society also recognizes that it is not healthy to force a couple with an irreconcilable marriage to remain together. That sort of dysfunction tends to cause problems.

Furthermore, we have ample historical evidence that the old rule of fault divorce was constantly exploited and abused by married couples. Spouses would often perpetuate elaborate false scenarios of one spouse discovering the other spouse cheating in order to get a divorce. After so many dozens of cases of "spouse x came in with a series of photographs depicting spouse y in a window alongside another man and the last picture is spouse Y closing the blinds on the window" the courts decided that the fault rule was pointless.

We want to avoid a highly contentious divorce, and we agree on all the major issues, is there any way to make the process faster and easier?

A divorce is uncontested when both spouses agree to the divorce, and there is no dispute about alimony, custody, division of property, etc. This results in an agreement being settled between them that will usually become the final divorce judgement. While this can save a lot of time and money, it will not shorten the minimum duration of six months if there are children involved. Furthermore, there will still be at least one hearing where the question of marital breakdown will be considered. Furthermore, a family court may ignore or reject such an agreement between spouses regarding child support or custody if it believes that the agreement is not in the child's best interest.

A contested divorce is simply a case where one or both spouses disagree about some aspect of the divorce. This requires the court to settle the dispute when deciding the terms of the divorce. This often extends the duration of the divorce process and increases the stress and financial burden for both parties.

Should I be careful about what I post on social media during the divorce process?

Yes, you should. While it is not necessary (or reasonable) to swear off social media during this trying time in your life, you should be very careful about what you post. This caution should begin the moment you think a divorce might lie in your future, and persist until the process is complete. Reckless social media posts will likely be used against in family court. Furthermore, angry, aggressive, and disrespectful statements are likely to make the whole situation worse, and the relative anonymity of social media tends to exacerbate reckless social behavior

It is also important to exercise such caution for the sake of your children. Excessive or reckless posting about the family situation or your children could very easily undermine their privacy.

Will other states recognize our divorce, or will other states still treat us as married?

The full faith and credit clause applies to divorces the same way it applies to marriage. A divorce that is valid in one state will be valid and recognized by the other 49 states, even if you wouldn't have been able to get a divorce under the laws of those states.

What about foreign countries? Is the divorce recognized by them as well?

Most likely yes. The countries of the world tend to offer each other something called "comity". It works the same way as full faith and credit and covers some of the same things. The United States also typically

recognizes divorce and marriage decrees from foreign countries.

My spouse and I are in the middle of the divorce process and I don't trust them not to empty our bank accounts or to do any number of bad things, is there anything I can do to stop them?

Yes, there is. You can get something called a "Temporary Restraining Order", which restricts certain activities of the spouses while the divorce is ongoing. You can include such an order with the original divorce papers you serve on your spouse, or you can get one from the court later. You can use TRO's to accomplish any of the following:

- Prevent either party from transferring or otherwise interfering with any marital asset (such as bank accounts) without the other spouse's written permission or the permission of the court. The law order will allow an exception for ordinary business expenditures, but any extraordinary spending must be accompanied by notice and might require consent.
- A TRO can be used to prevent the spouses from harassing each other.
- Preventing either spouse from removing any children from the state without the other party's written consent or a court order.
- Preventing the spouses from making changes to each other's health insurance coverage or the coverage of their children without the other's written permission or an order from the court. This order allows for exceptions for changes which increase benefits, adds no situations which are covered, or any changes otherwise required by the insurer.

Can I restore my maiden name after a divorce? Am I allowed to keep my Husband's name?

The answer to both questions is yes. Your husband cannot prevent you from keeping his last name. In fact, the court will usually keep the name the same automatically unless you petition to have it changed.

If you would like to get your surname changed, you can have it done as part of the divorce process without any additional expense. However, if you wait until after the divorce, not only will you have to pay fees for a whole new legal process, but the court will subject you to background checks and other time consuming requirements (to ensure that aren't using the name change to dodge your criminal record). Therefore, it is best to have your name changed during the divorce proceeding.

If you change it after the divorce I concluded you will have to file a petition (along with all of the other requirements) with the family court in your county. Make sure to get new identification documents issued (via the Michigan secretary of state and the local social security office) to reflect your changed name. It is also suggested that you make frequent use of the new name in order to reduce the chances of getting wrapped up in a fraud investigation.

Where are can I find the record of my divorce?

In the same location as your marriage record. These records can be found at the State of Michigan Vital

Records Office at 333 S. Grand Avenue (first floor). This is also the location of your birth certificate.

In order to get as much of what I want out of my divorce, what are some useful tips?

1. Make sure you understand what your spouse wants out of your divorce
2. The law is more or less set in stone, and it is not always fair
3. Make sure your expectations of your attorney are reasonable and realistic
4. That being said, don't be afraid to assess their performance, we have chapters in this guide that will help you do just that
5. Make sure your email and social media are secure
6. If you are concerned about custody or spousal support, make sure you know the consequences of moving out of the marital home. Consult your attorney before making any significant decisions
7. Private agreements with your spouse are likely to be more accommodating to your wants and needs than anything handed down by the court.

CHAPTER 2: ALTERNATIVES TO DIVORCE

What If I don't want a divorce, but no longer want to stay with my spouse?

In the state of Michigan, divorce is not the only method for ending/dissolving a marriage. There are two other methods that are both very different. It is important to understand these differences so that you can make an informed decision about which path is right for you and your family.

Some families have a religious objection to divorce. For this and other reasons, a couple might pursue a separate maintenance (i.e. a legal separation) in lieu of a divorce. These are extremely rare occurrences. The only difference between an action for separate maintenance and a divorce is that the parties will be prevented from remarrying. However, if one of the parties files for divorce, the family court will default to the divorce and toss out the action for separate maintenance.

What is an annulment?

This is another option for those who do not want a divorce. An annulment invalidates a marriage based on the judge finding that the marriage was void from its inception (i.e. was never valid) or is voidable (was later determined to be invalid) for some reason. Couples who receive an annulment must not continue to cohabitate.

What is a void marriage?

A marriage is void when the couple is too closely related (parent/child, aunt/uncle, siblings, nephews, etc.) or where one of the spouses is still in a previous marriage (aka Bigamy). A void marriage cannot continue to be valid and will be nullified even without a court order.

A good rule of thumb for distinguishing a void marriage from a voidable one is that the spouses are categorically incapable (by law) of being validly marriage no matter how willing they are.

What is a voidable marriage?

A marriage is voidable if one of the parties is found to be sterile, was below the age of consent when married, or was otherwise unable to consent (i.e. mental issues, duress, or fraud). A marriage found to be voidable can still be continued by the spouses and is valid until a court order nullifies it.

Voidable marriages are distinguishable from void ones because a voidable marriage could be validly married but for whatever factor or circumstances made it voidable.

But wait, I thought a marriage was void if it could not be made valid by consent, then how come underage marriages are voidable and not outright void? Doesn't that create problems?

The reason marriages involving an underage spouse are voidable rather than simply void is because that underage spouse will likely come of age during the marriage, at which point he or she will be fully capable of consenting to remain

What is a legal separation/separate maintenance?

Separate maintenance is the technical legal term for what is commonly referred to as a legal separation. It is another way for a couple to "end" their marriage without getting a divorce. It should be noted that that a legal separation does not actually dissolve the marriage. This is the reason why people who are legally separated cannot remarry other people, because they are still technically married at law. If you wish to truly dissolve your marriage you must get a divorce.

Much like divorce you and your spouse can sign a "separation agreement" which enshrines your wishes for the terms of your separate maintenance that the judge is likely to adopt as the final order of the separation.

Separate maintenance is also the name of the final document codifying the separation. However, it is not the only document you can use for a legal separation. You can also use something called a "Postnuptial agreement

What are the grounds/requirements for getting a legal separation?

The grounds and requirements for a legal separation are the same as they are for divorce. To be specific, you may only get legally separated if the marital relationship has suffered an irreconcilable breakdown. You must

also meet the same residency requirements as a divorce.

Can you use a legal separation as something other than an alternative to a divorce? Can you use it to fix your marriage?

Yes, you can. That's one of the main reasons why legal separations do not dissolve the marriage? It's because spouses often use these periods of separation as therapy for an ailing marriage rather than an alternative to a divorce.

Sometimes it is important to take the time to resolve personal issues in solitude so that you can then focus on fixing the things that are wrong with your marriage. There is nothing wrong with taking legal steps to facilitate this.

A big takeaway from all of this is that it might not be a good idea to rush into a rash decision like permanently dissolving a marriage. Sometimes it is wiser to take preliminary steps to try to make sure there is nothing that can be done to fix it. Sometimes the swiftness of the decisions to sever the marriage is what makes it irreparable in the first place. Conversely, being open to trying to make it work or try to figure out what is wrong is an essential step to healing and getting stronger as a couple.

If we get an annulment or a legal separation, how does that effect division of property, spousal support, and child support/custody?

Please consult the relevant chapters on Property division, spousal support, child support, and child custody? It will be the last subsection in each of those chapters.

CHAPTER 3: TEN THINGS TO CONSIDER BEFORE DIVORCING WITH CHILDREN

Is it a good idea to get a divorce when I have children?

If you share children with your spouse, then you must be absolutely certain that you want a divorce. The presence of children adds a number of complicating factors that might cause you to reconsider if you were aware of them beforehand. Here are ten factors you should be aware of before pursuing a divorce with children

1. If your former spouse gets a job out of state, they will most likely be able to take the children with them if they have physical custody. Given that they are moving for work, you will have little or no ability to prevent the move. This will greatly restrict your contact with your children.

2. If you pursue a new relationship after the divorce, your former spouse can restrict your new partner's contact with the children. This is especially true if the two of you are unmarried, family courts have historically been open to arguments that exposure to an unmarried, cohabiting couple is “immorality” which children must be protected from. If you are the non-custodial parent, this can greatly complicate your personal life and relationships.

3. If the custodial parent develops alcoholism or any other sort of dangerous behavioral problem, then

you (the non-custodial parent) will be very limited in your ability to intervene and protect your children.

4. Even if there are no other harmful factors, any divorce can be traumatizing to your children. It is common for children who experience their parent's divorce to develop behavioral and psychological problems as a result. As a parent, it is up to you to take your child's interest into account before making such a life-altering decision. Please consider whether or not you might be willing to wait until after your children are living on their own before getting a divorce.

5. A divorce involving children is likely to be even more contentious. Nothing else involved in the divorce will cause quite so much flared tempers and bad blood as custody and child support disputes. Such conflicts run the risk of causing unnecessary damage to your relationships with your former spouse, children, and extended family.

6. A divorce with minor children runs the risk of interfering with the relationships between that minor and their grandparents and extended family. Custodial parents reserve the right to restrict the contact between such relative and the children in their custody. It is not unheard of for grandparents and uncles to become proxies in disputes between former spouses. Once your children become adults, those relationships will become self-sustaining. Furthermore, living in one household creates more opportunities to interact with extended families, especially during the holidays.

7. Divorcing with children is expensive. You will lose all of the savings you would enjoy from sharing expenses with your spouse, not to mention the loss of tax and other benefits. In addition to this loss, you might end up paying child support. In theory, child support is meant to be equivalent to the support your child would have received if you had stayed married. In practice, if you are the non-custodial parent, then your "in-person" support as a parent is being replaced by money payments. You will likely end up paying more for your child than you did while married.

8. A divorce with children will take at least three times as long as a childless divorce. This is required by Michigan law in order to ensure the wellbeing of the children. The whole divorce process is never pleasant, but waiting until the children move out can make it go a lot faster.

9. This lengthening of the process the whole divorce process more expensive. You will end up paying way more in court and attorney's fees if the divorce involves child custody and support. Furthermore, the involvement of children means that the court will continue to be involved even after finalizing the divorce.

10. There are often alternatives to divorce. There may also be some means by which you can temporarily or permanently mend the relationship between you and your spouse. When there are no children involved, these alternatives may not seem worthwhile. But all of the inconvenience of a divorced life when there are children shared by the former spouses can make these alternatives more attractive. It would be wise to consider these options before subjecting you and your family to split holidays, disrupted lives, emotional trauma, and the financial burden that would accompany a divorce. At the

very least, consider whether it might be worth keeping it together until your children are grown up and out of the house.

CHAPTER 4: DIVORCE PROCEDURE

When can I initiate the divorce?

You must have resided in Michigan for 180 days. You must be a resident of the county where you filed for divorce for at least ten days. Without meeting these requirements, the court will have no authority to hear your divorce case.

How do I initiate the divorce?

To get the ball rolling, you need to file a complaint for divorce with the clerk at the family court. The complaint alleges basic facts about your divorce. It will also contain your initial proposal for the conditions of the divorce such as property division, custody, support, etc. This document should include the grounds for your divorce.

How do I give my former spouse notice of the divorce?

You must “serve” them a copy of the initial divorce papers. The initial divorce papers will include a copy of the complaint. You must serve the defendant within 90 days (three months) of filing your complaint or your divorce case will be thrown out.

If you have any minor children, you are also required to sign a verified statement containing information such

as name/addresses of employers, and the healthcare information of the children.

So I can just mail or hand deliver the papers to them?

No, you cannot. You are not permitted to serve the papers yourself. You need to find someone else who is at least 18 years old to help you. That server must either hand deliver the papers or mail them through certified mail. After doing so, they must find a notary public, sign the proof of service, and file that with the court clerk. They must also request a return receipt and a safe address to send it to. Service is complete when the other spouse accepts the delivery.

My spouse refused to accept the delivery, what happens now?

If you have multiple unsuccessful attempts to serve the divorce papers, or if you don't know your spouse's current address, then you can consult the judge about alternative methods of service.

What happens after the papers are served?

After the papers are served, the defendant has 21 days to file his or her answer to the complaint. If they do not the court will issue a default judgement. They will lose standing to contest any of the issues except for property division.

However, the court will not automatically give the plaintiff everything that they asked for. The court will still seek the fairest solution and will still wait for the prescribed waiting period. The waiting period is 60 days (two months) from the time papers are served if there are no children, 180 days (six months) if there are children.

What should I put in my answer?

For best results, your answer should be a line by line rebuttal of all the claims made in the complaint. If you fail to address one of the points, the judge might decide that you are admitting to that point. Although admitting to facts that both parties agree about is also an excellent way to prevent unnecessary delay in the process.

What is the friend of the court?

The Friend of the Court is an arm of the court which is used to help the parties in a divorce come to an equitable agreement. They help to make choices regarding spousal support, child support, and parenting time. At the same time, they help distribute these payments once a divorce settlement is reached. If needed, the Friend of the Court will use their office to enforce court orders relating to a divorce (such as alimony, child support, etc.). They can also help facilitate things after the divorce such as managing custody arrangements and addressing parenting time disputes.

The Friend of the Court will usually hold a "conciliation conference" in which the parties will discuss the issues pertaining to any children (distinct from "mediation" which addresses everything else). Either the

parties will reach an agreement during the conference or the Friend of the Court will give its recommendation to the court. These will serve as the basis for the temporary "ex-parte" orders the court will make soon after.

Can the Court force us to engage in conciliation and/or mediation?

No, the court cannot make mediation or a conciliation conference mandatory. No matter how strongly any court official insists on having it and no matter how bad the judge perceives the disagreement to be, these are strictly voluntary processes offered by the court for the benefit of the parties to a divorce.

We are going to live separately, but we have kids, what's going to happen? (Temporary Ex-parte orders)

The court will generally issue "ex-parte" orders which will temporarily decide things like custody, who gets to live in the family home, etc. These temporary orders are meant to maintain the status quo. These orders will be issued at brief court hearings where the spouse(s) will usually only be allowed to submit affidavits. These orders will take effect within 14 days unless the other party objects. Because these hearings and orders can be made before service even happens and with only one party present, copies of ex parte orders must be served along with the complaint.

We don't have any kids, what is the process going to look like for us?

A two month minimum waiting period kicks in the moment the divorce starts. If you and your spouse disagree over any of the issues, it could take even longer. This is why the court will appoint a mediator to help couples resolve these issues. The goal of mediation is to reach a settlement. In some counties, mediation is mandatory before the first trial date.

During the mediation conference, the attorneys for both parties will compile the information they have gathered thus far and take the time to articulate each party's respective positions. Then they each will submit a summary of the history of the marriage, the spouses, as well as their assets. These summaries will be used at a subsequent informal hearing to facilitate a possible settlement.

However, mediation is not recommended if there is any history of domestic violence or if you are otherwise afraid of your spouse.

This waiting period where all of these issues are resolved is called "pendency". It is also the period of time when "discovery" takes place.

What happens in discovery?

Discovery is the process where the court and the parties work to gather all of the evidence that will be used if and when the trial takes place. In order to assess each spouse's net worth, the value of their assets, and many other things, a variety of procedural tools will be used. These tools include

- Interrogatories: Written questions submitted to the other party. These must be answered truthfully

under oath. The receiving spouse must answer it within 30 days.

- Deposition: An in-person questioning done by an attorney in front of a court reporter (who records the answers). This is also done under oath and the reporter will prepare a transcript.
- Subpoena: a legally binding request for disclosure. Parties typically serve these on non-party witnesses such as banks and employers in order to get certain documents.
- Request for production: Similar to an interrogatory except you are asking the other spouse to "produce" a copy of a certain document. It must be responded to in 30 days.
- Request for admission: a request made to admit to or deny certain facts. If no answer is given within 30 days, then the court will consider the fact as being admitted to.

It is important to be aware that parties to a divorce are required to disclose all of their assets during discovery. If a party fails to disclose an asset, the court can award the entire asset to the other party. This can even happen after the final divorce decree has been made.

How does having children affect the process?

For one thing, it extends the minimum timeframe to 180 days (six months). The six month waiting period can sometimes be waived under special circumstances, but this is very rare.

Also, the presence of children changes the role of the Friend of the Court slightly. There will now be a mandatory Early Intervention conference (EIC) 56 days after the complaint is filed. There the parties will discuss ways to minimize the negative impact of the divorce on the children.

We have decided that we don't want to get divorced anymore, what should we do?

If your spouse has not filed an answer, motion, or counterclaim, then you can file for dismissal automatically. However, if any of those things have been filed, then you need the signature of both spouses.

How does the divorce process end?

At the end of the divorce proceedings, the court will hand down one of four types of judgements. It might be a default judgment from a non-responsive defendant. It could be a negotiated judgement from the spouses. It could be a settlement that came from mediation. And of course, it could also be a judgement from a full blown trial.

That judgement will become the final divorce decree which will govern the conditions of the divorce unless some of them are modified later.

CHAPTER 5: SAME-SEX DIVORCE

The U.S. Supreme Court's recent *Obergefell* decision legalize same-sex marriage and Michigan and the other 50 states. As a consequence, it has also opened the door to same-sex divorce. While there might not be laws that directly distinguish between gay and straight couples, there are still some factors which a same-sex couple should be aware of if they intend to get a divorce.

Is everything about a divorce different for a same-couple?

Not at all, many things are exactly the same. For example issues of protection orders and domestic violence are the same for both gay and straight couples.

What if there are no children involved?

Just like a straight couple's divorce, a same-sex divorce is greatly simplified if there are no minor children involved. Issues like spousal support/alimony should be the same as if you were a straight couple. Feel free to consult the chapter on spousal support/alimony for more information. You should also consult the other chapters dealing with divorce to understand how children affect the overall process.

However, the issues of division of property, child custody, and child support have a few wrinkles when it comes to same-sex couples.

How is the division of property different for same-sex couples?

Same-sex marriage has only been legalized relatively recently. If you are getting divorced now, it is likely that you lived with your spouse in an intimate partnership with your spouse for a long time before you got married. Normally when a married couple gets a divorce, the court will distinguish between property that is separately owned and that which is "marital" or shared. Typically, only property that was acquired after the couple got married is considered marital property and divided accordingly. This rule is not always fair for a gay couple who has been living together intimately for years waiting for the right to get married. If the two of you have shared a house together, but it is only in one spouse's name, who should it belong too? It is important for your lawyer(s) to raise issues like this with the family court judge.

How do children effect a same-sex divorce?

A same-sex couple with a child potentially faces many pitfalls and issues that straight spouses do not. This difference is not due to any bigotry or discrimination but is an artifact of certain aspects of Michigan law.

The major issue which causes these complications is the fact that same-sex couples often don't have biological children. Even when they do, it is usually only related to one of the spouses. Such situations are only further complicated by the fact that there is a good chance that the child was either born (via surrogacy) or adopted before the couple was legally allowed to get married.

When deciding custody, Michigan law puts a strong emphasis on married spouses and biological parents, which can sometimes disadvantage same-sex couples.

If the two partners jointly adopted the child after the marriage, then there is no issue. They are both the legal parents of that child and child custody will follow the same procedure as any other married couple seeking a divorce.

If your partner adopted the child before the marriage, and you want any sort of custody rights, it is highly recommended that you obtain a stepparent adoption for that child. Without such an adoption, you have no legal rights to that child unless you and your former spouse reach an agreement through mediation.

What if the child is biologically related to one of us? What if it's a surrogate child unrelated to either of us?

If one of the spouses in a same-sex couple (two women) conceives a child through a sperm-donor, that woman is the child's biological parent. She would have parental rights even if the child was born before she married her partner. If the child is born during the marriage, then both spouses are legal parents. The other spouse can further secure their parental rights by formally adopting the child, but this is not strictly necessary. This is known as a "confirmatory adoption."

If the child is born before the marriage, then the other spouse must adopt the child in order to have any parental rights. Furthermore, it is important that you make sure that the sperm donor terminated their parental rights or they may also have a legal claim on the child. This can be resolved through a sperm donor

agreement, which are still legal in Michigan.

If a gay male couple used a surrogate mother to have a child, then the biological parent automatically has parental rights. The other spouse must adopt the child in order to obtain similar rights. It is also important to make sure that the surrogate mother formally terminates their parental rights, especially since binding surrogacy agreements are illegal and unenforceable in Michigan.

A non-biological parent can also acquire parental rights through the “equitable parent doctrine”. Under this doctrine, a non-biological, non-adoptive parent might still be able to gain parental/visitation rights so long as the following requirements are met:

The equitable parent and the child must acknowledge each other as parent and child

The equitable parent desires to have parental rights.

The equitable parent is willing to accept the obligation to pay child support, the same way any other parent would.

There is no guarantee that an equitable parent will be made to pay child support. That depends on the income of both spouses and how much parenting time they both spend with the child.

CHAPTER 6: DIVISION OF PROPERTY

Why is property divided in a divorce?

Married couples usually share their house and other property. They also acquire property during the course of the marriage. For this reason, the court must determine what property belongs to whom, and how shared property should be divided. Like Spousal support, one of the objectives of property division is to return the other spouse to the position they were in before or during the marriage. The court will also try to give each spouse all of the property they have "equitable title" to.

How does the court decide how to divide property?

There are many approaches to property division utilized by various states. In Michigan, the preferred approach is known as "equitable division of marital property". Under this approach, any property which was owned by either spouse before the marriage is their own "separate property". Any property which was acquired during the marriage is divided up in a fair and generally equal matter. That being said, what is fair will not always be "equal", and the family court will seek fairness above all else. However, under certain circumstances, the court may dip into one party's separate property to give to the other in order to achieve "fairness and equity". They are also likely to treat what would otherwise be separate property as marital property if the other spouse was somehow instrumental in acquiring or developing that property.

Can the division of property be modified later?

No. It is very important to note that once the court reaches a final decision on the division of property, it can never be modified. This is because the property distribution is not affected by changes in circumstances. Furthermore, allowing the parties to endlessly relitigate property distribution would be costly, inefficient, and quite unfair if one spouse does not have sufficient resources. So make sure the arrangement is satisfactory.

What is considered separate property?

While this usually consists of any real estate, personal items, cars, or cash you owned before you were married; it is important to be aware of other things which are considered separate property. For example, if you receive a personal gift from someone during your marriage, that would still be considered separate property. If you receive court awarded damages for pain and suffering, this is also considered separate property. Inheritance and personal gifts to one of the spouses are separate property, even if they are received during the marriage.

So my ex-spouse won't get any of my separate property?

Most of the time, but not always. The court might still take your separate property and give it to your former spouse for a couple of reasons. This might happen if the court determines that, after dividing the marital property, the other spouse is still in need of more. Another reason that might occur is if your spouse helped in the acquisition or development of an asset. For example, if you attended college or grad school while married and your spouse helped pay for your tuition.

In any case, where the effort of one spouse or marital funds are used to improve the value of the other spouse's property, the court will generally either reimburse the other spouse for the value added or add that amount to the "pot" of marital property.

What is marital Property?

In general, marital property is any property that was acquired during the marriage. There are, however, certain types of assets that the court deals with in a very specific manner. It is important to know about these in advance of a divorce case.

- *Pensions:* Only the part of a pension that was earned while married is marital property.
- *Professional Licenses and Degrees:* These are also considered marital property if acquired during the marriage. However, the court will not actually take a degree/license and give it to the other spouse. Instead, the court will add the equivalent value of the certification to the "pot" of marital property and then divide it accordingly.
- *Stock Options:* If they are earned during the marriage they are marital property, even if they can't be exercised until after the divorce.
- *Employment Bonus:* If it is earned during the marriage, it is marital property. However, if the bonus

depends on a condition that does not occur until after the marriage, it is not considered "earned" during the marriage.

- *Workers' Compensation Benefits:* Only benefits for wages lost during the marriage. Also, if the injury occurred before the marriage, and the benefit for the lost wages is received during the marriage, then that benefit is also marital property.

Aside from these specific examples, all other property will be treated according to the basic protocol. Not only will property acquired during the marriage be considered marital property, but if the value of a piece of separate property increased during the marriage, then the court will presume that the increase was caused by the marriage to the other spouse, and will therefore consider the added value to be divisible marital property. This typically manifests itself as one spouse being able to claim a greater amount or value of the shared marital assets.

Is social security a divisible asset?

No, it is not. According to federal law, Social Security benefits may not be divided or distributed in divorce proceedings. However, certain pensions that might serve as a substitute to Social Security might be divisible. Furthermore, a court might still take Social Security into account when determining the needs of both spouses.

What is a Domestic Relations Order (DRO)? What is a Qualified Domestic Relations Order (QDRO)?

A Domestic Relations Order is a court order filed with a state retirement system to make changes to how a pension is handled as a marital asset. They are utilized in the event of a divorce or the death of a spouse or a former spouse. In Michigan, these orders are handled by the Office of Retirement Services (ORS).

Many private and public pensions allow the recipient to select a "Survivor Option", which sets aside some of the pension funds for you widow and widower in the event of your death. If you do not select this option, your spouse may not receive anything from your pension if you die. In the event of a divorce, you can use a DRO to void the survivor option. This will increase your pension payments to the level they would have been if you had never selected the option in the first place. However, some of your pension might now be divided as marital property and given to your former spouse.

If you have no survivor option, a DRO is also used to designate part of a pension to be paid to a former spouse. DRO's are also used for child and spousal support.

A DRO is "Qualified" if it is used in the context of a private, employer sponsored pension plan that is subject to the Employee Retirement Income Security Act. According to federal law, you cannot divide such a pension as marital property without a QDRO.

What is mixed Property?

Aside from the material needs of the other spouse and said spouse's assistance in acquiring a piece of

property, there are at least two other ways that property that would otherwise be separate can become marital property. One way this can happen is if the property is "mixed" with either marital property or with the former spouse's separate property to such a degree that it cannot be separated.

The other way is if both spouses explicitly act as if the once separate property is now shared property. An example of this is placing the property in the name of both spouses.

What about the marital/family home? Who gets it? Will we lose it?

That depends on the circumstances. If there are no minor children involved in the divorce, then the marital home will be divided on the same basis as all the other marital property. That being said, the court will show some preference for keeping the entire house in the possession of at least one of the spouses if it is possible to do so fairly.

Typically if there are few other assets other than the house, then the house will likely be sold and the proceeds will be divided accordingly between the spouses. The other option is if the spouse who does get the house has enough personal wealth, or if there is sufficient other property, then the recipient spouse will have to "buy out" the non-recipients share of the total value of the house.

If one spouse is the primary caregiver and has been given possession of the house, then that spouse is more likely to receive the marital home to ensure the continuity of the environment for their children and minimize the psychological harm that divorces often cause.

Since I am receiving something of value when property is divided, do I have to pay an income tax?

Division of property in a divorce is not a taxable event. Even though you are receiving money and property, this does not count as income for tax purposes. Similarly, anything you pay to your former spouse is not tax deductible.

I don't trust my spouse to honestly disclose their assets, what can I do?

Both spouses are required to be completely transparent with their assets. If you suspect that your spouse is not going to live up to that obligation, then it is imperative that you take steps to prepare. If you are able to demonstrate in court that your spouse hid any of their assets, then the court is likely to award the entire asset to you as punishment for your spouse's misconduct.

Hiding assets can be done in a variety of ways. Sometimes financial documents are literally hidden away. A spouse might convert cash into property like art or jewelry. There have also been cases where a divorcing spouse has used marital funds to pay off fake debts. Funneling cash into individually owned businesses is another common tactic.

In order to detect asset concealment, you should obtain copies of all of your spouse's income tax returns and all of their financial records.

Is there a statute of limitations for reporting the concealment of assets?

Yes, there is. If you want to modify the original divorce decree based on concealed assets, then you must do it within one year. After that, you will have to file an entirely separate cause of action, like fraud.

My Spouse and I are in complete agreement about which assets are marital and what our separate property consists of, is there anything we can do to save time and money on discovery?

Yes, there is. It would be highly advisable for both you and your spouse to compile a detailed inventory of all of your property and assets. If both of you sign this document and submit it to the family court, then the court is much less likely to demand a greater investigation or ask for more evidence from either of you. This is a great way to speed up the process. As an added bonus, you won't have to pay your attorneys as much to help gather or demand evidence of assets.

Who will be responsible for the marital debts following the divorce?

Marital debt is distributed along with property, albeit using different standards and procedures. The court will generally strive for fairness in the distribution. This typically means that the marital debt is divided roughly equally. However, the judge might opt for a more lopsided distribution if they felt it would be fairer to do so. Unequal distribution might be justified in the following scenarios:

- One spouse was more at fault for the marriage ending (see sections dealing with fault grounds)
- One spouse has a significantly greater ability to pay
- One spouse is responsible for accruing an outsized amount of debt without the other spouse's consent, for purposes unrelated to the benefit of the household (such as gambling debts or other personal recreation).

How can I make sure that I get the property I deserve when property is divided?

The first and most important thing you can do going into a divorce in order to have a more favorable property distribution is to have either a premarital agreement that memorializes the desired arrangement of you and your spouse or a separate document signed by the both of you which declares the particular designation of marital and separate property which is most likely to result in the desired distribution. Here a few other things you can do to boost your odds of a favorable outcome.

- Be aware of how property becomes separate or marital. If your marriage is approaching and there is a particular piece of property that you want to be separate, do not wait until after you are married to buy it.
- Consider keeping your own separate bank account that you use for personal purchases. This makes it slightly more likely that those purchases will be considered separate property, especially if they are designated as such in an agreement with your spouse.

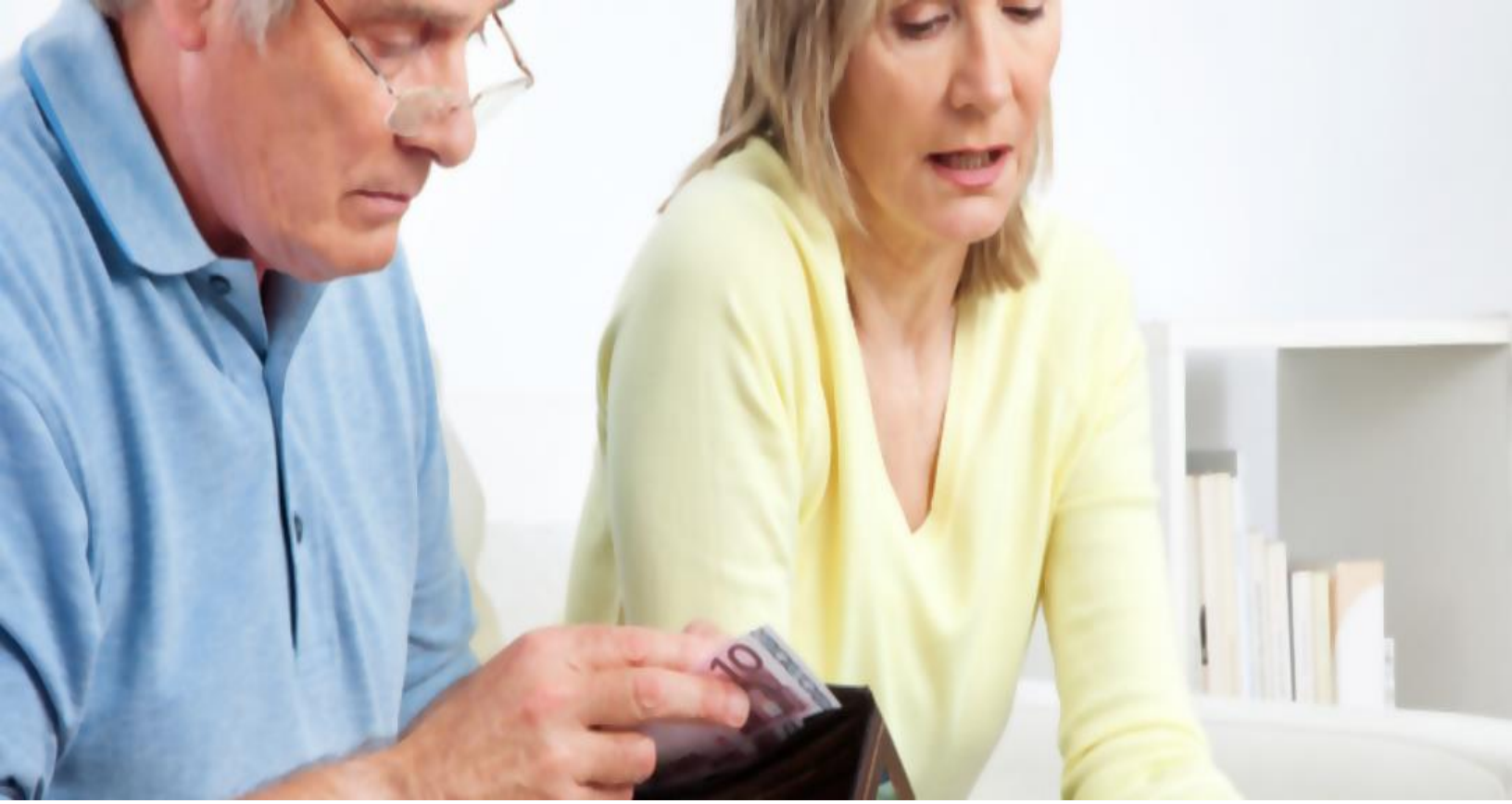
- Make financial prudence a core value of your household. If you allow your spouse to accrue an excessive amount of debt, it is possible that you will be made responsible for an unfair portion of that debt.
- Be careful about allowing your spouse to help pay for an item you would like to be considered separate property as any contribution is likely to convert it into marital property
- Be careful about allowing something that was separate property to be mingled with anything that is marital property

CHAPTER 7: HOW ANNULMENT/LEGAL SEPARATION AFFECT PROPERTY DISTRIBUTION

If we get an annulment or a legal separation instead of a divorce, will property division be handled differently?

It depends on which process you use. If you use legal separation, then property division is handled exactly the same as it is in a divorce. The court will still attempt to make sure each spouse receives an equitable share and that they are able to maintain the lifestyle to which they have become accustomed.

However, if you get an annulment, the approach is slightly different. Because the law considers the marriage non-existent, it does not consider the spouses to owe each other any kind of obligation that actual spouses would. Rather than trying to meet the spouses' needs or trying to achieve equity/fairness, the court instead seeks to return each party to the position they were in prior to the legally non-existent marriage.



CHAPTER 8: ALIMONY/SPOUSAL SUPPORT

Will I have to pay my former spouse alimony? Will he/she have to pay it to me?

There are two kinds of payments you might pay/ be paid. It is called alimony when a payment is made while the marriage still exists. When the payment occurs during the divorce process or is a part of the final divorce agreement, it is known as spousal support. If either spouse is made to pay, it will likely be the less wealthy spouse.

How much will I have to pay in alimony/spousal support?

The amount is generally left up to the court's discretion. The Michigan family court will consider the following factors when determining the amount.

- The relationship and conduct of the former spouses
- The length of the marriage (a longer marriage might mean one of the spouses has less independent earning power)
- The ability of either spouse to work
- The type and amount of property that was awarded when the marital property was divided (a generous award might mean less generous support payments)
- The paying spouse's ability to pay. (Family courts typically try to avoid bankrupting people.)

- The needs/health/situation of either spouse
- The prior standard of living of either spouse. (The rule of thumb is that the court will try to give the spouse being paid the "standard of living to which he/she has become accustomed)
- The contributions each spouse made to the marital estate
- Any fault by either party (abuse, adultery, etc.)
- How living together affected each spouse's financial situation (cohabiting is a great way to save costs)
- General principles of fairness

What kinds of Alimony/support are there?

In Michigan family court you are likely to see one of three types of payments: permanent (periodic or lump sum), rehabilitative, and reimbursement. Which type you encounter depends on a number of circumstances such as the relative incomes of the spouses as well as the role both played in the household leading up to the divorce.

What is "permanent" support? Can it be terminated?

Permanent Support is a payment given to one spouse because they lack the means to support themselves. This will either take the form of regular payments made to the other spouse for the remainder of their lifetime or one "lump sum" payment. This payment will automatically terminate if the receiving spouse dies or remarries.

By definition, the "lump sum" cannot be modified or terminated. The only exceptions are the retirement of the receiving spouse or proof of fraud. At that point the spouses may end up sharing retirement income or a pension, in which case the support payments will be canceled.

Permanent spousal support is more likely to be awarded in long term marriages, especially if one of the spouses is at or near retirement age and has little in the way of job skills/experience

What is "Rehabilitative" support? Can it be terminated?

This is a "periodic" payment made for a limited time so that the other spouse can gain the skills to become self-supporting.

Due to its temporary nature, rehabilitative periodic spousal support is relatively easy to terminate. All the paying spouse has to do is persuade the judge that their former spouse is rehabilitated and can take care of themselves. This type of support terminates automatically when the receiving spouse gets remarried or if either spouse dies. This makes sense given that this support is meant to give that spouse help that the now estranged husband was giving them. Once the receiving spouse gets remarried it is assumed that their husband is now giving that support.

What is "Reimbursement" support? Can it be terminated?

A reimbursement support payment is sometimes ordered by the court when there is a situation where one spouse supported the other while they earned a degree or a professional license. The amount is based on how much help the supporting spouse gave, not the value of the degree license.

Due to the fact that it is a one-time payment, this type of support may never be terminated and can be inherited by someone else upon the receiving spouse's death. It will also be paid even in the event of the paying spouse's death.

How will paying support/alimony affect my taxes? Are the payments deductible?

If your divorce was finalized on or before December 31, 2018, then spousal support payments count as income for the receiving spouse for the receiving spouse. By the same token, the payments that the paying spouse makes are tax deductible. If it happened after that date, then they are neither taxable nor deductible.

I can't afford the costs of a divorce case/ my ex dragged out the proceedings for a long time, can I make them pay some of my costs?

If one party can demonstrate that they are unable to pay their expenses, the court might order the payment of reasonable attorney's fees and/or litigation costs.

If we get an annulment or a legal separation instead of a divorce, will spousal support be handled differently?

That depends on which process you use. In a legal separation, spousal support will be handled the same way as it is in a divorce.

However spousal support is rarely if ever given in an annulment. This is because an annulment typically means that the marriage never existed in the first place and therefore the spouses had no such obligation to support one another.

How can I make sure that I get the spousal support benefits that I deserve or only pay an amount that is fair?

The most reliable way is to write up a premarital agreement that discusses spousal support. It goes without saying that you should make sure that the type and amount of support is what you want and deserve. If you believe spousal support will be decided in court, then things will get a bit more complicated.

In any case, you should keep relatively detailed records of your, and your spouse's income before and after getting married. The last thing you want is to give your spouse and opportunity to push arbitrary and made up numbers for their own benefit. Furthermore, having documentary proof will make your own arguments more persuasive. Be aware, that if your spouse draws down their own career in order to spend more time at home, that will likely mean that they will receive support from you if the two of you divorce. Obviously the reverse is true if your spouse ends up playing the role of breadwinner.

You should also be aware of the extent to which your spouse assists you in pursuing education, acquiring property, etc. These can result in an order of support even if your spouse has greater income and even if you suffered a loss of income as a result of getting married.

Keeping all of this in mind going into a marriage, you can then determine to what extent it is appropriate for you and your spouse the arrange your new life as a married family in order to effect the outcome of a hypothetical property division in a divorce. Although it is entirely possible that you and your spouse won't actually care that much and will (hopefully) just come to an agreement amicably if it ever comes to that.

CHAPTER 9: MODIFYING SPOUSAL SUPPORT

Can “permanent” spousal support be modified?

The periodic payments can be modified if you can demonstrate a change in circumstances that occurs after the final divorce decree.

Can “rehabilitative” support be modified?

The conditions for modification are the same as permanent support. Proof that the other spouse has gained the necessary skills would obviously count as a “substantial change in circumstances”.

Can “reimbursement” support be modified?

Once ordered, this payment can never be modified or terminated. This is because it is a one-time payment reimbursing your spouse and is not based on changed circumstances.

What are the rules for modifying spousal support? What does “changed circumstances mean”?

Either party (paying or receiving) may ask for a modification if modification is permitted for that type of support. The “changed circumstances” must occur after the divorce order is finalized. The burden of proof is on the party seeking modification. Neither ex-spouse may order an entirely new type of support payment that

was not part of the original divorce decree.

I want a guarantee that my ex will not modify his/her payments, and I am willing to accept slightly smaller payments in exchange? Is this possible?

Yes, parties to a divorce can modify that support in order to waive their right to modify that support in the future. However, there are certain requirements and limitations on such a waiver. First, the waiver must be contained in the final divorce agreement, or it is not valid. The waiver must be clear and obvious, so that there can be no doubt to anyone reading it that the parties are giving up their rights to modify. The language in the divorce decree must also contain language saying that the spousal support agreement is "final, binding, unchangeable, etc." Be advised that if the support agreement was the result of a full blown divorce trial on the merits, then the parties cannot waive their modification rights.

What can I do to make sure I get the modification that I want, or to make sure my spouse doesn't get a modification they don't deserve?

No matter which side of the modification process you end up on, the advice is largely the same. The most important step is to keep adequate financial records for both yourself and your former spouse (if possible). Your (the paying spouse's) own records are more important as a modification will typically stem from your own income either increasing or decreasing. Sometimes you might need documents from a third party. For example if the receiving spouse is asking for modification because they lost a job, it might be helpful to obtain a document from their former employer stating that they were fired for cause. You might be able to use this to argue that you shouldn't have to pay more in spousal support because their diminished income was their own fault.

CHAPTER 10: HOW CHILD SUPPORT AFFECTS SPOUSAL SUPPORT (AND VICE VERSA)

My spouse receives generous spousal support/alimony, does that mean I can pay less in child support.

That depends (find conclusive answer), some states allow support obligations to be treated as part of net income. The increase of the recipient's income and the accompanying expense to the other spouse often results in a decrease in the amount of the other type of support. However, this only applies once. For the sake of fairness, one form of support will be decided based on the income of both spouses (sans support payments) and the other form of support will typically take the payments from the first into account.

That being said, spousal support payments will never be a direct substitute for child support obligations. All child support payments are presumed to be used on the child, while the spousal support is so your ex can meet her own needs.

CHAPTER 11: MILITARY DIVORCE

Due to the nature of military service, the domestic legal issues of military personnel are subject to different laws than a strictly local case. Servicemen and women are often in tours in foreign countries, which makes it difficult to ensure them a fair process in family court if their spouse is still on Michigan soil.

How do I serve my military spouse their divorce papers?

The same standards for serving a civilian defendant apply to military personnel. However, the fact that a U.S. soldier can be stationed at a foreign military base and posted either on or off the base can make this complicated. A number of federal regulations govern this scenario.

Off-post in the United States: The same procedure as a civilian. The same goes for an off-duty national guardsman.

On-post in the United States: Since most military bases are under federal jurisdiction, the assistance of military officials is often necessary to serve divorce papers.

If you are using service by mail, there are very few complications. However, the serviceman may refuse to accept the served document. Military postal authorities will note the refusal and the court will presume that the papers were received.

If you try to serve in person things get a bit more complicated. For starters, a commanding officer/supervisor will have to determine whether or not the soldier is voluntarily accepting service. Federal regulations require that the serviceman be provided with legal counsel. If he refuses voluntary service, that's the end of it.

For bases under joint state and federal control, the rules are a bit different. If the soldier refuses service, then the server will be allowed to provide service by any method acceptable under that states law, subject to reasonable regulation of that base's commanding officer.

The Navy and Marines require the commanding officer's consent. They also require the use of a process server from the court of the state that is hosting the base. The commanding officer must also be present when the papers are served.

Outside of the U.S.: If voluntary acceptance is denied, the process server must use a service method that complies with the laws of that nation. This may be further restricted by any status of forces agreement between that nation and the U.S. This can cause delays as documents have to be translated and work their way through the foreign bureaucracy.

I am a serviceman expecting a divorce. Should I be worried about a default judgement?

There is no need to panic; the federal government has already addressed this issue. They realized that being away from home, state, and country can put a service member at an elevated risk of default judgement. Therefore they passed the Service member's Relief Act, which protects you from default judgements in certain situations.

The general rule is that a default judgement is voidable (may be set aside with a motion) if two requirements are met:

- The service members ability to respond was "materially" effected by their service in the armed forces
- The service member had a valid legal defense to the allegations of the complaint.

The court giving the judgement may ask for proof of military service from the Department of defense.

If the case is in civil court and the military defendant does not appear, the plaintiff must file an affidavit with the court. The affidavit must either state that the plaintiff knew the defendant was in military service or was unable to determine if that was the case. If the plaintiff was unsure, then they may have to post bond in order to get a default judgement. That bond will be used to protect the defendant from the judgement if they turn out to be in the military. If military service is later confirmed, then the court must appoint an attorney to represent the defendant.

The court may also grant a stay (a delay) on the case for 90 days if there is either

1. A defense which cannot be made effectively if the defendant isn't there in person, or
2. Plaintiff tried and failed to get into contact with the defendant to see if such a defense existed.

These stays do not apply if the service member was on notice of the case. If that is the case than the service member must move for a stay on their own.

How and why does the court set aside default judgements?

If they are on duty or within 60 days (two months) of the end of military service the court may set aside the judgement and reopen the case if it finds that:

1. Military services effected their ability to present a defense
2. They had a legally valid defense
3. They applied to reopen the case within 90 days (three months) of the end of military service

What if I was on notice, and/or was a plaintiff in the case?

The SCRA provides for that as well. Furthermore, The Michigan Military Act (MMA) requires that any case occurring while the party is in military service must be put on hold until that service has ended. This applies to any civil case (including child custody) where the party:

1. Was a serviceman or has only terminated military service in the last 90 days, and
2. Has received notice of the case

If both the serviceman and a commanding officer submit a letter explaining how military service prevented them from responding to the case, then the court must grant a stay. A request for a stay is not an “appearance” and will not waive any defenses. They may request additional stays for as long as the “material” obstacle to responding continues.

CHAPTER 12: PROPERTY DIVISION IN A MILITARY DIVORCE

Is my husband's military pension divisible marital property?

Yes, it is, but there are some conditions. The divisibility of military pensions is regulated by Uniformed Services Former Spouses Protection Act. This act allows states to divide the pension as a marital asset and allows the states to determine how that division takes place.

Michigan requires that the spouse seeking the division must have been legally married when the divorce decree was handed down by the judge. If the marriage was ten years old, and the military service lasted ten years, then the spouse can receive direct payments from the Department of Finance and accounting. If these conditions are not met, they may only receive up to 50% of the total retirement pay in direct payments. This raises to 65% if there is child support and/or wage garnishment involved.

The value of the pension is determined by the length of service. The procedure for dividing the pension is too complicated to be covered in detail here so you should seek an attorney who is knowledgeable in these matters.

Another thing to note is that veteran's retirement benefits are usually not divisible property. However, if the service member takes those benefits instead of a pension, then Michigan courts may divide the retirement benefit.

CHAPTER 13: DOMESTIC VIOLENCE

Someone close to me is attacking/threatening me, what should I do?

This is likely to be a case of domestic violence, so you might consider getting a Personal Protection Order (PPO) against that person.

What makes it "domestic" violence?

It is committed by someone with whom you share a domestic relationship. A domestic relationship can be any one of the following:

- A spouse or other family member
- The unmarried parent of your child
- Someone you are living with or have lived with previously
- Anyone you have ever been romantically involved with

How do I get a PPO?

You must file a petition with a judge. This petition will contain all of the necessary information that the judge needs to determine if you qualify for a PPO. Try your best to give a detailed description of what happened

and who did it to you? Try to remember dates and times as specifically as possible. If you have any copies of police reports, you should include them with your petition.

In addition to showing a domestic relationship, you must also demonstrate to the judge that you are afraid that the target of your order is likely to stalk, harass, threaten, or assault you.

What does a PPO do for me?

A PPO is a restraining order. It legally bars the person subjected to it from certain actions and behaviors. More specifically, it bans them from:

- Entering your home or any other place that you occupy
- Assaulting, attacking, or harassing another person
- Threatening to injure or kill you or another person
- Removing any child that you have legal custody over
- Buying or possessing a firearm
- Preventing you from removing your children or personal possessions from any place owned or leased by the abuser
- Interfering with you at your school or job; or otherwise harming your career, education, or environment
- Having access to your home or work address or any telephone number associated with a child you both share
- Stalking you
- Causing mental harm or otherwise coercing you by threatening to harm or take away an animal that you own
- Any other action that interferes with your personal freedom or causes a reasonable fear of violence

Violation of a protection order is a crime. If you call the police, the violator is subject to immediate arrest. Following a violation, you can petition the court for a motion to show cause for the violation of the protection order. This will likely result in the judge punishing your abuser.

It is extremely important that you report any violation of your order. Do not allow your abuser to convince you that “things will be different”. Your order has a finite duration, allow that duration to run its course.

What happens if my abuser learns about the order before it takes effect?

This is an extremely important issue. You can and should ask for an ex-parte order. This temporary emergency order will protect without the need to have a hearing or inform your abuser. If you don’t get an ex-parte order, not only will you have to serve notice on your abuser, but a hearing will be scheduled. In that

hearing, your abuser will be allowed to testify and to contest your protection order. If the judge denies your request for an ex-parte order, you can schedule a hearing within 21 days for a standard protection order.

Either way, the order becomes effective the moment the judge signs it. The order itself will state that it is effective immediately and enforceable anywhere in Michigan or the United States. It will list the prohibited actions and the consequences of violating the order. It will also contain the expiration date of the order as well as the law enforcement agency that will be enforcing it.

CHAPTER 14: MILITARY DOMESTIC VIOLENCE

Protection orders targeting military personnel are affected by similar regulations as other domestic issues in a military context. In that military context, PPO's are called civilian protection orders (CPO). There are also MPOs which protect military personal from someone else.

What happens if my domestic abuser is in the military?

He will enjoy certain procedural protections to prevent unfairness against a person who might be posted out of state or overseas. This is especially crucial for a service member because a PPO might bar them from owning or carrying firearms. It may also result in lost pay, the inability to re-enlist, or even a discharge from the military.

These due process regulations allow the service member to request a 90 day (three month) stay on the hearing if military duty prevents him from attending it. It also allows them to request that the court reopen a case with a default judgement if certain requirements are met (see section on military divorce). A CPO is just as effective on a military base as it is anywhere else.

CHAPTER 15: CHILD CUSTODY

Whether you married the other parent or not, the vast majority of parents love their children very much. As such, you most likely have a deep and abiding desire to care for your child and have them in your lives in one way or another. This chapter and others like it are intended to give you a thorough understanding of all the legal issues regarding the way Michigan family courts determine who has custody over a child.

How does the court decide which parent(s) get custody of the children?

There are actually two types of custody that a parent has under the law. The first is legal custody, which is the right of every parent to make major decisions in their child's life and to be able to visit and have contact with them. Both parents generally retain legal custody even after the divorce is concluded. Usually, the only way you lose it is if you lose your parental rights or the courts make a rare decision to grant sole legal custody to the other parent.

The other form of custody is physical custody. Physical custody is where you actually keep the child in your home, under your roof. The child lives with you. When you change houses, so does the child. This form of custody is usually only given to one of the parents but can sometimes be shared between both. This is the form of custody that ex-spouses sometimes dispute over during a divorce case.

The core rule the court uses when determining custody is the best interest of the child. The interests of the parents themselves are strictly secondary. The court will consider any factor which affects the child's

wellbeing. There are twelve factors in total:

- Maintaining the relationships of love and affection shared between parent and child. (Courts assume such relationships are highly beneficial to children)
- The capability of the parents to provide that love and affection
- The ability of the parent to provide necessities such as food, clothing, shelter, and medical care (obvious factor in a child's well-being)
- Maintaining and continuing the stable environment the child has grown up with (including living with siblings)(family courts firmly believe that children need consistency and stability)
- The court will try its best to keep the child in their current home. This why the court almost always gives the family residence to the custodial parent
- The moral fitness of either parent (including criminal records or the child knowing that one of the parents had an extramarital affair) (parents set a moral example for their children to follow)
- The mental and physical wellbeing of the parents (without discriminating against certain disabilities)
- The child's school, home, and community records
- Child's reasonable preference: if the child is old enough, then the court will conduct an in-person interview, and any reasonable preference will be taken into consideration
- The willingness of either parent to facilitate the child's relationship with the other parent (Actions taken to shield a child from domestic violence or sexual assault may not be counted against this factor)
- Any history of domestic violence

Please note that custody can be given to someone who is not a biological parent. This is rare, but the court will also apply these factors in reference to an aunt, uncle, grandparent, or even a non-relative.

Will the court automatically give custody to the mother?

Technically no. The court will avoid any explicit gender preference. However, as a rule, the court prefers to give custody to the parent who was the primary caregiver. In practice, this usually results in the mother getting physical custody because most families still follow the model of male breadwinner/ female caretaker. However, with an increasing number of households with two working parents, the courts may tend to give joint custody.

How does the court decide which parent is a primary caregiver?

The family court will typically look at which parent spends more time with the children. It will also look at how many of the care childcare responsibilities such as:

- Bathing/grooming/dressing

- Buying clothes
- Buying groceries and preparing meals
- Ensuring proper healthcare
- Facilitating social activities and participation in extracurricular activities
- Teaching and helping with homework
- Attending parent-teacher meetings and other activities involving the child's education
- Playing with the child and other leisure activities

Based on these standards it is still possible to be considered the primary caregiver despite spending relatively fewer hours and minutes with the children if you undertake the lion's share of the caregiving responsibilities.

How will my criminal record affect the determination of child custody?

Prior criminal activity is highly relevant to a person's suitability as a parent and has huge implications for a child's wellbeing. Criminal history falls squarely under the "moral fitness" factor utilized by the court. That being said, having a criminal record will not automatically disqualify you from getting physical custody. A violent or drug-related crime might cause a court to presume that you are a less suitable or unsuitable parent. Failing a drug test during the divorce proceedings can pretty much preclude you from getting physical custody. A sufficiently heinous crime can even result in you having all of your parental rights terminated.

What if one parent killed the other, could they still get custody of the children?

While a conviction for the death of the other parent is not an automatic disqualifier for receiving physical custody, it would be utterly inconceivable for that parent to ever receive physical custody of the children. For starters, a long term of imprisonment would completely prevent that parent from having custody. Even if that parent somehow avoided having their parental rights terminated completely, the presumption against their moral fitness would be nearly impossible to rebut.

How can I get joint custody?

Any family law attorney will tell you that this is a tricky question with no simple answer. Joint custody often involves moving the child/children between residences constantly. This can be disruptive and unstable for a child, so courts can sometimes be reluctant to grant it. They will, however, give it due consideration by evaluating factors such as:

- The fitness of either parent
- The parent's agreement to joint custody
- The ability of the ex-spouses to work together and communicate for the sake of the child's wellbeing
- The child's reasonable preference (see above)

- The involvement of either parent with the child's life
- How closely the two parents live to each other
- The similarities and differences between the two homes
- The effect of any decision on the child's psychological development
- The physical ability of the parents to carry out the joint custody arrangement

It should be noted that certain state courts take a novel approach to joint custody known as "Bird's nest" custody. Under this arrangement, they have the child/children remain in one home while the parents take turns living there with the children. This approach is highly advantageous towards the factors listed above and makes the court far more likely to award joint custody. The court generally will not grant this arrangement unless the parents specifically ask for it. However, if you think that both of you can handle maintaining a shared home and separate individual homes, then you should definitely consider "bird's nesting".

Is there a presumption of joint custody in Michigan?

A presumption of joint custody is a rule which states that the court should favor such an arrangement unless it is proven that it would not be in the child's best interest. There is no such presumption in Michigan family courts. In the last couple of years, the Michigan legislature attempted to pass a bill (HB 4691, the Shared Parenting Act) that would have required the courts to grant joint custody unless there was a very compelling reason (such as domestic violence) to not do so. It also would have required approximately equal parenting time for both parents. If passed, it would probably have been the strongest joint custody presumption in the country.

Under joint custody, who gets to make the day to day decisions?

Whether you are switching between houses or bird's nesting, the parent who is currently living in the same house as the children can make normal everyday decisions without having to consult their spouse. Both parents must be involved in major decisions such as medical procedures, education, extracurricular activities, operating motor vehicles, etc.

Does the non-custodial parent still have access to the child's records (medical, school, etc.)?

Yes, they do. Under both Michigan and federal law, any parent (custodial or otherwise) who still retains their parental rights has access to such record unless there is a court order saying otherwise.

What can I do to make sure that I get the child custody arrangement that I want? Can I include it in a premarital agreement?

That depends on what you want in terms of a custody arrangement and what you are willing to give up in exchange. Primary physical custody typically goes to the primary caregiver, so a serious compromise of your family/career balance would be required to set the stage for you to be relatively certain to be granted primary

physical custody. Otherwise, the relative balance of a joint custody arrangement will largely depend on your relative involvement in caring for your children. Think long and hard about what balance you are willing to strike and commit to it for the duration of your marriage.

The short and simple answer regarding custody in premarital agreements is “no”. A family court will never deviate from the “best interest of the child standard” even if an accord is reached in a premarital agreement between the parents.

How does the court determine the custody of an out of wedlock child?

The court will automatically recognize the one who gave birth to the child as the mother. After that any man who meets one of the requirements/conditions for the recognition of parenthood/paternity shall be given parental rights equal to the mother. Physical custody will still be based on the best interest of the child.

Does the court appoint someone to represent the child/children when custody is being argued in court?

Often yes. If the court comes to believe that the child’s interest is not being adequately represented, the court will appoint a “guardian ad litem”. This person will visit the parents and their homes and will thoroughly investigate the child’s life. They will take these investigations and give recommendations to the court about what kind of arrangement will be best for the child/children. The court may charge the parents fees for this service if they are found to be able to pay.

Will the court split up siblings when determining custody?

Siblings will only be split up under extreme or unusual circumstances. Family courts generally prefer to keep siblings together for the sake of stability and maintaining that healthy familial relationship.

How does the court enforce custody orders?

The family court takes the violation of custody orders very seriously. Divorce is hard enough for a child without their parents breaking the rules, arguing in front of them, or even outright kidnapping them. When custody orders are violated, the court may bring contempt proceedings or habeas corpus proceedings.

Contempt proceedings are the most common enforcement tool. It typically involves the custodial parent bringing a contempt case against the other spouse. If they succeed, they could be awarded full custody, reduce the other parent's visitation rights, impose supervision on future parenting time, or even expose the other parent to criminal charges (criminal contempt).

A Habeas Corpus proceeding is only used to restore immediate custody to the custodial parent or guardian in the event of a wrongful taking or detention by another person. It cannot be used to impose any of the other consequences associated with civil or criminal contempt. Furthermore, under Michigan law, the court is not required to grant a writ of habeas corpus if the one who took the child was also a legal parent or guardian. When you file a motion for habeas corpus, explain who you are, who your child is, and your grounds for

concluding that the child was wrongfully taken.

If your former spouse does anything which violates the custody order handed down by the family court, do not hesitate to call the police.

What if my spouse violates the custody arrangement and goes to another state?

The Parental Kidnapping Prevention Act (PKPA) ensures full faith and credit for all custody and visitation orders in all fifty states. In the past, it was not uncommon for one of the parents to go to another state and have the court there issue a custody order that was more favorable to them. This is probably the most common form of "parental kidnapping" other than simply moving states and hoping nobody bothers to do anything against you. With the passage of the PKPA, state courts will now know which custody orders are legitimate, when they are permitted to issue custody orders or changes of their own, and when to enforce the custody orders of another state.

A court should not enforce orders from states which lack the proper jurisdiction. They should enforce orders originating from the state that has proper jurisdiction.

How do I know which state court to bring my case in?

The jurisdiction of interstate custody cases is governed by the Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA). The Michigan Court will have jurisdiction in the following scenarios:

- It is or was the child's home state within the last six months, and a parent or guardian still lives in Michigan
- There is no valid home state, or the home state has declined to hear the case. Also, there must either be personal connections between the child and the state or evidence relevant to the custody case
- Both of the above declined and stated that this state is the best one to hear the case
- None of the above took the case

Also note that the Michigan courts can assume temporary emergency jurisdiction of the case if the child is present in Michigan and is abandoned or in danger.

Can Child Custody be modified?

Yes, it can. The parent petitioning for the modification must prove a "change in circumstances". Even if both parents agree to the modification, the petition must still be brought before a judge who will make a determination based on that standard.

The change in circumstances standard is used in order to minimize disruptions and create as much stability in the child's life as possible when living with divorced parents. This is aimed at preventing parents, whether genuine or petty, from making constant frivolous attempts to gain a better custody arrangement.

What can I do to make sure that the modification process yields a favorable outcome?

Whether you are the party seeking modification, or the other spouse seeking to block or mitigate the modification, the steps you must take are the same. Since you won't be able to protect or bolster your case with a premarital or postmarital agreement, you will have to understand the rules and standards that are used to make modification decisions. Once you understand that modification depends on a change in circumstances which causes such a modification to be in the best interest of the child, you can then figure out what you can do to make your case more compelling. An important step to take is to document relevant aspects of your domestic situation. If your former spouse is making assertions about the situation involving your children that you know to be false, then you can use documentary evidence to disprove those lies.

Having solid proof of your family situation is also very helpful if you are asking for a very generous custody order (such as sole custody) that the judge might not be willing to grant if they had to just take your word for it.

In theory it is also possible to intentionally alter your own circumstances in order to trigger a change in the custody arrangement, but the same issue arise that you face in the initial custody determination and then some. Not only do you have to carefully consider the costs and benefits of altering the balance between your career and your relationship with your children, but you also have to take into consideration the cost in time and money of going through a whole new custody determination.

Is there a difference between "best interest" and "change in circumstances"? Is "best interest" considered at all when deciding to modify child custody?

Do not allow the varied terminology to trick you into thinking that the best interest standard is abandoned when seeking modification of the child custody arrangement. Unlike the modification of spousal support, the court uses more specific rules and standards when dealing with child custody. Any change of circumstance being used to justify a change in custody must be directly related to the child's best interest and well-being. Examples of such a change might be drug abuse, violence, or neglect by the current custodial parent. Furthermore, the court will explicitly reject the use of certain changes in circumstances such as:

- The current custodial parent's financial situation, if the problem could be rectified by increasing the non-custodial parent's child support payments
- The normal changes in needs and desires associated with a child growing up and maturing
- The child's expressed desire (relevant to initial custody, but is not considered relevant when it changes)

If I petition to modify child custody, will I get the same judge?

Most likely yes. Child custody orders are typically modified by the judge who originally made the order. This cuts down on inconsistent results and judge shopping by opportunistic parents. It also helps that the judge from the prior case is aware of the facts and circumstances surrounding the original custody order and is

therefore in a better position to determine whether or not a change in circumstances justifies a modification of a custody arrangement.

What is the difference between custody and parenting time?

These terms are thrown around quite a bit in the family law context so it is important to distinguish between them. Physical custody refers to the legal right to have that child in their lives and for that child to live with them. Parenting time is a specific privilege of a parent to spend time with the child at a designated time and place. When only one parent has physical custody, any visitation is parenting time. In a joint custody arrangement, each parent share an allotment of parenting time.

How do courts decide parenting time?

If one parent is given sole physical custody, then the other parent has the right to reasonable visitation or "parenting time". This right cannot be denied because of unpaid child support. The court considers the following factors when deciding how long, how often, and under what circumstances the parenting time will take place:

- The special needs and circumstances of the child/children (the first priority of the custody issue)
- Whether the child is an infant (less than 1) and or nursing (makes the mother a more suitable custodial parent).
- The probability of abuse or neglect during the visit (weighs against the abusive parent)
- The likelihood of abuse or neglect as a result of the visit (same as above)
- How traveling will impact the wellbeing of the child (if both parents live very far apart, the court might disfavor a joint custody arrangement)
- Whether or not the visiting parent is reasonably likely to be able to exercise parenting time in compliance with the court order (The court will not set up an arrangement if it does not think it will succeed. The last thing the court wants to do is create ongoing examples of rule breaking by their parents
- How frequently (if at all) the parent has missed parenting time (Makes a more favorable arrangement less likely for the deficient parent)
- The danger of one parent concealing or hiding the child from the other parent (the court will not abet kidnapping)
- Any other factor relevant to the child's wellbeing

Parenting time can involve the visiting parent visiting their spouse's house or at some neutral location. However, it is much more common for the custodial spouse to drop the child off at the other spouse's house. This often involves the child staying overnight.

How can I modify the parenting time arrangement?

The court will only modify parenting time if the person seeking the modification can prove with "clear and convincing" evidence that the change is in the best interest of the child. Your attorney should be able to explain to you what that standard entails. The parent seeking modification must also show a "change in circumstances". The court insists on a change in circumstances before changing the custody arrangement because it considers consistency and stability to be among the core elements of a child's best interest.

My ex-spouse behaves badly during parenting time, can I restrict or deny their visitation?

The court might limit visitation by ordering that all visits be supervised. However, outright denial of parenting time is extremely rare. That being said, the court might also decide to reduce the amount of parenting time depending on the circumstances and if doing so is deemed to be in the best interest of the child.

My ex-spouse has physical custody and wants to leave the state and take the children far away, is there anything I can do to stop him/her?

If the parent with physical custody wants to relocate out of state or more than 100 miles from their other parent, they need to get court approval first. While you (the non-custodial parent) cannot outright stop them from moving, the Michigan family courts will do their best to make sure that the move is actually in the children's best interest. The court uses a five-prong test to make this determination:

- Whether the move will improve the quality of life for both the moving parent and the child
- Whether the move was explicitly intended to interfere with the other parent's access to the children (in which case permission will likely be denied)
- Whether the court will be able to modify the parenting time arrangement in order to preserve the relationship with the other parent, as well as the likelihood of both parents complying with the new arrangement (not necessarily a deal breaker).
- Whether the other parent (i.e. you) is trying to oppose the move for the sole purpose of gaining an advantage regarding child support payments
- Any history of domestic violence seen by or directed against the children

Please note that this test will not be applied at all if you (the non-custodial parent) do not have legal custody of the children (i.e. not joint custody).

It should be noted that where there is no joint custody, there is no need to give the non-custodial parent notice, ask permission, nor will the court consider the above factors in order to decide whether or not to allow the move.

My ex-spouse is denying me parenting time? What can I do?

The main remedy for violating parenting time orders is contempt. A pattern of parenting time denial can result in a change in custody. Recall that preserving the relationship with both parents was one of the factors the court uses to decide physical custody. If your ex can't be trusted to act in good faith, then perhaps physical custody ought to go to you? However, merely denying parenting time probably won't be enough unless the court was already close to giving you custody at the original hearing. The key is that the factors previously considered in addition to the other parent's misbehavior now tips the "best interest" scale in your favor.

How to responsibly co-parent during and after the divorce:

1. Minimize the exposure of your children to fighting between you and your former spouse
2. Resolve any conflicts without actively involving your children or using them as bargaining chips
3. Do not disparage or insult your former spouse (the other parent) in front of your children
4. Try to keep activities and discipline consistent in your household regardless of the upheaval being experienced by the whole family
5. Don't try to micromanage your kids' activities with their other parent.
6. Try to be civil and willing to communicate with the other parent

I am a grandparent who wants to see their grandchildren, but my son's/daughter's ex-spouse never lets me see them. What can I do?

Unfortunately, the United States Supreme has given the parents a great deal of authority to do just that. The current rule is that a parent's decision about grandparent access must be given great weight by the court. A judge can't override that just because it seems more fair or kind. Even if allowing access is in the child's best interest, the custodial parent's decision can still prevail. However, Michigan has passed a law allowing for a grandparenting time order if one or more of the following circumstances are met:

- The parents are divorced, legally separated, or annulled
- Your child (one of the parents) is deceased
- The parents were never married, do not live together, paternity has been confirmed, and the father provides regular support/care
- Someone other than the biological parents has legal custody of the child
- The grandparent has provided a home-like environment for the child even if they do not have court ordered custody

The court presumes that the biological parents are suitable parents and that their decision to deny grandparental access is not harmful. You must prove, with evidence in court that their decision risks mental, physical, or emotional harm to the child.

However, even if you can prove with evidence that biological parent(s) are not acting in the child's best

interest, the court must still decide if ordering grandparenting time is in the best interest of the child. The court will rely on the following factors:

- The love and emotional relationship between grandparent(s) and grandchild
- The length and depth of the pre-existing relationship between grandparent and grandchild, the role of the grandparent, and existing emotional ties
- The moral character of the grandparent(s)
- The mental and physical condition of the grandparent(s)
- The reasonable preferences of a sufficiently old child
- The detrimental effect on the child of any hostility between the parent(s) and the grandparent(s)
- Barring the willingness of the grandparent(s) to have a close relationship with their grandchild
- Any history of emotional, sexual, or physical abuse or neglect of any child by the grandparent(s)
- Whether the parent was denying access to grandparents for the child's wellbeing or was for another reason
- Any other factor pertaining to the child's wellbeing

Please be advised that if both parents sign an affidavit saying that they don't want the grandparents to have contact with the children, the court will automatically deny any motion or order for grandparenting time. They won't even consider any of the above factors.

I don't trust my child's former spouse, can I get custody of my grandchildren?

Only if you can show that both living biological parents are unfit to raise the child.

CHAPTER 16: CHILD CUSTODY PROCEDURE

What is the Custody process during a divorce?

When a couple with children gets divorce, the subject of divorce might be mentioned in the initial complaints and answers. Aside from that, the court will approach that issue for the first time during the Early Intervention Conference (EIC) that is held 56 days after the initial complaint is filed. This is where the parents will get an overview of the friend of the court, the process of determining custody, and is also intended to resolve any temporary issues regarding any of the children that are younger than 18.

Following the EIC, there may be additional hearings dealing with custody during the 180 day (minimum) divorce process. In the end, the judge will either render his own divorce judgement or adopt the one agreed to by the spouses, and this agreement will contain the final order regarding custody unless it is altered in a later proceeding. It is difficult to tell how many or what kind of hearings you might encounter because each divorce is different. Make sure that you insist that your attorney keeps you informed about how the process is being set up by the court.

What will happen after the divorce?

Again, this varies with each divorce. That being said, additional hearings are usually reserved for situations where the court feels the need to periodically assess the welfare of the children or where the former spouses seek to modify the custody or parenting time arrangement.

What if we want a custody order without a divorce? What if we were never married to begin with?

Yes, you can seek a custody case with the family court without getting a divorce. If the parents of the child are not married, then they must establish paternity. A good way to accomplish this is for both parents to sign and file an affidavit of parentage. If you sign this affidavit, you waive your right to a paternity test later.

Following the filing of the affidavit, the family court will typically give initial custody to the mother until a custody proceeding is initiated and final custody is decided.

If neither parent agrees to sign the affidavit, then the court may order a paternity test. Depending on the result, either parent (or child) may initiate a paternity case to determine child support, parenting time, etc.

CHAPTER 17: THE EFFECT OF DIVORCE ON CHILD CUSTODY

Will I lose custody of my children if I get a divorce?

That depends on the circumstances, although it is extremely unlikely that you will lose all custody. Michigan family courts typically prefer joint custody arrangements. Under such an arrangement, the two parents would share physical custody as much as possible. However, if such an arrangement is not feasible, then custody will go to the spouse who is the primary caretaker. If your family is a traditional breadwinner-caretaker household, you will likely lose physical custody and will have to rely on parenting time.

There is also the possibility of a joint custody arrangement, especially if both you and your former spouse work full time. This is a great way to have both a career and a relationship with your children.

Is it okay that my former spouse hires a babysitter for half of the time that they have the kids?

Absolutely. If they are a custodial parent with physical custody, then they can do anything that they could have done while they were still married to you, with the exception of major decisions that might require your input as the other parent. Hiring a babysitter is absolutely within their discretion during whatever period of custody that they have. You can do the same if you so choose.

The only limitation is if the use of the babysitter raises concerns with the court about the child's best interest, in which case the decision might be used as the basis to modify the custody arrangement. This is highly unlikely to occur because it is perfectly reasonable for a parent to also have a career.

What if I am the non-custodial parent, could I hire a babysitter for part or all of my parenting time?

Absolutely not, even if it's overnight in your home. Parenting time is time set aside specifically so that the non-custodial parent can maintain their relationship with the child. If it's just the child being looked after by someone else, they can do that with their custodial parent. If the non-custodial parent cannot be physically present at a certain time, then parenting time must be scheduled at another time when they are available. This is why parenting time is typically scheduled for times when that parent is not working or otherwise engaged.

CHAPTER 18: THE EFFECT OF CHILD CUSTODY ON PROPERTY DISTRIBUTION

Is the spouse that receives primary physical custody likely to receive more, less, or the same amount of property when the marital property is distributed?

The same amount, but the answer to that question is a bit complicated. The only reason why the custodial spouse would be given more property than they would have otherwise would be to compensate for the increased expense of caring for the children. However, that is what child support is for, so there is absolutely no reason to involve that issue in the property division process.

The only exception (if you can call it that) is the family home. If the house is marital property, then it is highly likely that physical ownership and possession of that house will go to the primary custodial parent, so that the children can continue to live in that home. The other spouse will typically be compensated for their share of the house's value. In that sense, the non-custodial parent will end up with more cash and personal property, while the other parent will have more real estate. However, the overall relative distribution of that property will still be the same as if the two spouses didn't have children.

CHAPTER 19: HOW ANNULMENTS AND LEGAL SEPARATIONS HANDLE CHILD CUSTODY

Is child custody handled differently in a legal separation or annulment then it would be in a divorce?

When it comes to child custody, legal separation is identical to divorce. This makes sense given that separations are either a preliminary step before a divorce or an identical alternative to one. The only difference being that the parties are technically still legally married, which has no bearing on child custody issues.

As for annulment, the answer is mostly the same with a few minor complications. Annulment does not change the fact that child custody is not affected by the relationship status of the parents, so there is nothing that says that the rules are different for an annulment. The only wrinkle is that the court has certain practices when it comes to the paternity status of the alleged father of a child.

Family courts presume that the husband of the mother is the father of the child. However, annulment means that the marriage never existed so the male partner is not actually her husband. This is a very easy issue to resolve because the courts will also accept the father acknowledging himself as the legal father, to say nothing of DNA tests. Once a valid form of fatherhood is established, then both legal parents possess the same rights as any other mother and father, married or otherwise.

Does annulment make a difference when it comes to grandparental rights?

Surprisingly yes. Both marriage and divorce give comparatively little deference to grandparents when it comes to visitation or custody. This is because family courts give strong deference and priority to married parents. However, when annulment renders the marriage nonexistent, this opens the door to grandparents being granted visitation or even custody if it is deemed to be in the best interest of the child.

CHAPTER 20: CHILD CUSTODY BETWEEN STATES

Will state family courts always acknowledge and respect custody orders from other states?

Yes, assuming the state in question had the proper jurisdiction to decide the custody issue. Please see the section discussing the UCCJEA and PKA for more details.

CHAPTER 21: CHILD SUPPORT

While married, the parents of a child share the physical and financial burden of caring for that child. Once separated, however, the parent who has physical custody no longer has the resources of the other parent to help them. Child support is a payment ordered by the court to help remedy that situation and ensure that the non-custodial parent is living up to their responsibility to support their child.

Is the father always the one responsible for paying child support?

Not necessarily. While they are married, both spouses share the responsibility of providing for and supporting their children. Once they are divorced, that support is no longer certain. The objective of a child support order is to ensure that the children of the marriage receive roughly the same level of support that they enjoyed while their parents were still married. The court assumes that the custodial parent is still providing this support. They then order the non-custodial parent to make regular payments to make up for no longer having the children under their roof.

How does the court determine how much the non-custodial parent must pay?

Michigan courts will use certain statutory guidelines to determine how much to order in child support payments. These guidelines direct the court to use the following factors.

- Financial resources of the parents

- The size of the family
- The ages of the children
- The cost of childcare and education
- The cost of healthcare and dental care
- Other factors such as other support payments being made by that parent or other family obligations.

Michigan family courts utilize the Michigan Child Support Formula. This formula is publicly available and is relatively complex. The most important factor in the formula is the parent's net income. Net income is calculated by taking the gross income (the money in wages, profits, etc.) minus a number of deductions permitted by the court. Income taxes are deducted from net income, as is child support for children from a different relationship. Pensions, subsidies, and tips are all included in income. Nonmonetary benefits and perks are also included. If you cover certain expenses such as health insurance premiums, that will be deducted from your support amount.

The gross income (which is then deducted from to get the net income) also consists of (but is not limited to) the following items:

- Overtime pay, commissions, and bonuses
- Earnings generated from a business, self-employment, or rental
- Profits from profit sharing, pensions, insurance contract, trust fund, Social security, and certain other social welfare programs
- Losses from a business might not be counted if they are deemed to be a tax strategy rather than a legitimate loss
- Tips, gratuities, and royalties
- Interest payments and dividends
- Casino and lottery winnings will be counted if they represent regular income or are used to generate regular income via investment
- Capital gains will be counted if they occur in recurring transactions, result from a single identifiable event, or when the parent has insufficient cash
- A portion of the adoption subsidy
- The market value of some perks provided to employees such as housing, food stipends, and personal use of a company vehicle. This does not e=include benefits such as tuition reimbursements or health savings accounts
- Income that has been reduced or deferred unnecessarily (to prevent that parent from hiding their income).
- Certain tax deductions might be added back to the parent's income for child support purposes

- Income from spousal support from someone other than the other parent
- The potential income of a voluntarily unemployed or underemployed parent
- Does not usually include inheritance or other one-time gifts

Net income will be calculated by deducting certain items (such as those listed below) from the parent's gross income:

- Alimony/spousal support paid to someone other than the other parent
- Income and Medicare taxes
- Any mandatory payment that is a condition of employment (such as union dues)
- Premiums for any life insurance of which the shared child/children are a beneficiary
- The costs of any care or services associated with a case service or permanency plan associated with a CPS or juvenile delinquency case
- The cost of the parent's mandatory healthcare expenses

Your child support amount will be slightly decreased depending on how much parenting time you have. The rationale behind this is that if the child is living under your roof, then you are supporting them yourself during that time. Please note that this only includes the number of nights where the child stayed overnight.

Unlike some states, Michigan will still take the wages from a second job into consideration when determining ability to pay.

Will the court always stick to these factors?

Quite often, but not always. A court might deviate from these factors if it is necessary to avoid a decision that would be unjust, unfair, or fail to provide the children with their previous level of support. The court will still stick to the formula as closely as possible and will only deviate from the specific parts of the formula which create the unfairness.

What can I do to get the best possible child support arrangement?

Whether you are the paying parent or the receiving parent, it is completely natural to want to get the most advantageous support arrangement for both you and your children. Just be sure to remember that, unlike spousal support, these payments are not meant for the benefit of the receiving spouse.

It is also important to remember that premarital and post-marital agreements are generally not effective methods of determining what the child support and custody arrangements will be given the court's commitment to the best interest of the child.

It is always a good idea to keep detailed and adequate documentation of all factors relevant to a child support determination such as: income, finances, other payments which are deductible from your gross income, child

care expenses, and evidence regarding your role in raising the children as well as what the parenting time arrangement will be when the divorce is concluded.

It I also important to think about how you would like to prioritize the various factors of a child support/custody arrangement. Keep in mind, that you can reduce your child support obligation by simply taking more parenting time. However, it might very well be the case that by taking more time to work, you would end up making more money than you would pay in additional child support. At that point, it comes down to how you would weigh the monetary benefit against having more time with your children. Make sure that you discuss this thoroughly with your attorney in preparation for any hearings and mediation regarding child support and custody.

What if my former spouse moves far away? Can travel costs be included in my child support?

Yes, such an item can be included in a child support order, but is not included automatically. The court's decision will likely depend on the reasons for the move and how far the distance is.

How is child support collected and paid out?

In the old days, you would have to mail a check to the FOC, who would then mail their own check to the recipient parent. Electronic banking has changed all that. Now Michigan uses the Michigan State Disbursement unit (MiSDU). Under this system, the amount of the paying parent's child support is automatically withheld from their paychecks and will be deposited in the other parent's bank account within 24 hours.

If the recipient parent does not have a bank account, then MiSDU will provide them with a debit card. If the paying parent does not receive their income in the form of paychecks, then they will have to mail checks to MiSDU.

Do we have to utilize FOC and MiSDU to handle our child support?

No, you and your former spouse may opt out of those services at any time. However, in doing so you waive the use of any of those services and must now make and receive child support payments directly. Furthermore, you may not call upon the court to settle any further disputes regarding support, custody, or parenting time (you'll have to settle those out of court). If you still want the court to settle those disputes for you, you must opt back in to FOC services. It is an all or nothing deal.

Please be advised that some courts are so strict that they will refuse to hear or settle any dispute that arises during an "opt out" period, so you should think very carefully before opting out.

Even if these services are voluntary, it is highly recommended that you use them rather than simply making the payments directly, because doing so pretty much eliminates the risk of the receiving parent wrongfully accusing you of failing to pay child support.

My ex is delinquent on their child support payments, can I deny them parenting time for that?

Absolutely not, parenting is completely independent of the child support obligation. Every parent has a right to pursue and maintain a loving relationship with their child. That right can never be abridged for the failure to pay child support. Parenting time might be withheld for other reasons such as mistreatment or a failure to show up for scheduled parenting time sessions.

My Former spouse hasn't gotten a job in order to avoid paying child support, what can I do?

If the court determines that the paying spouse is voluntarily remaining unemployed or underemployed, they will most likely use his earning potential rather than his actual income to determine his monthly support obligation. The technical term for this is "imputing" income.

This is actually a very poor strategy on the part of the delinquent former spouse, because they will never lose all of their paycheck to child support payments, and will always make some money from working.

Am I responsible for the child support of my step-child? Does remarrying affect child support obligations?

No to the first question, yes to the second. Michigan does not use step-parent child support. However, it will "impute" the step-parent's income to the new spouse. In other words, if the non-paying spouse marries somebody, then the paying spouse will be asked to pay less because the other parent now has the help of the new spouse. On the other hand, if the paying spouse remarries, they might be asked to pay more based on the additional income of their new spouse. This is also meant to compensate for the fact that remarrying will often cause spousal support to be discontinued.

When can I stop paying child support?

The child support obligation typically ends when the child dies, gets married, turns 18, or is otherwise emancipated. This also occurs if your rights as a parent are terminated (parental rights and child support go hand in hand). The obligation also ends when you (the supporting parent) dies. The government will not extract child support from your estate.

However, if a child is severely disabled, the child support obligation might continue for the rest of that child's life. Also, if your child fails to graduate high school at age 18, this will continue until that child reaches the age of 19 and a half, but only if that child remains a full time high-school student

If we get an annulment or a legal separation instead of a divorce, will child support be handled differently?

No, it will not. Whether it is a separation, annulment or a divorce, child support will be handled in the same way.

This is true even if the court found it to be a void marriage that was invalid from the beginning. The children

of a void marriage are still considered “legitimate” children and are still owed care and support by their parents.

CHAPTER 22: MODIFYING CHILD SUPPORT

What is child support modification?

Modification is when one or both parents petition the court to change the terms of a child support order that has already been made.

Can I modify my child support payments?

Child support orders can only be modified when there is a "substantial" change in circumstances (more significant than for modifying spousal support). This change must effect the needs of the child or the ability of the paying parent to provide for these needs (i.e. ability to pay). A number of factors will be considered when determining whether or not to grant modification. These are just a few examples:

- The paying parent changes jobs
- The child growing older
- Inflation
- Change in paying parent's income
- Paying parent retires
- Paying parent becomes permanently injured or sick

What is the procedure for modifying child support?

In Michigan, there are two methods for securing a modification of child support. You can either make a request to the FOC (Friend of the Court) office to review the support order, or you can file a motion directly with the family court.

You are limited to one modification request to the FOC every 36 months (3 years) for any reason. You can request modification sooner if you can persuade the FOC that there has been a sufficient change in circumstances. If they agree that the change in circumstances is significant enough, then they will file a motion with the family court. The FOC and the family court usually define "significant change" as 10% or greater change in income (either reduction or increase), or something analogous to that. From the moment the modification request is made, the whole process generally takes about 180 days (six months). Filing directly with the court will generally only take 90 days (three months) but is significantly more expensive (going through the FOC is free).

If you experience a change in financial circumstances such as the loss of a job, you are required to report that to the FOC in writing before you can get your support payments modified. If you fail to request modification immediately you will incur substantial and unnecessary arrears (see relevant section of this guide).

What can steps can I take to ensure the best outcome from a child support modification hearing?

The most important thing for you to do is to understand and remember what the legal basis for a support modification is. The court will only grant a modification if there has been a substantial change in circumstances which would cause such a modification to be in the best interest of the child or otherwise affects the ability of the paying parent to pay their child support obligation. With that in mind, you need to figure out how to prove this on court. Documents which show income and expenses are a great way to do this. Having documents make any claims and assertions you make or rebut more persuasive, especially if such assertions are particularly convenient and beneficial to you. Furthermore, it gives you a countermeasure if the other spouse tries to make a claim that is either exaggerated or untrue.

Please keep in mind that you will not be able to resolve this issue using premarital agreements for a couple of reasons. First, the courts will never enforce any contractual clause which deals with issues of child custody or support. They will only ever use the best interest of the child to determine that. Furthermore, enshrining it in a written agreement would do nothing at all to invalidate the issue of changed circumstances, even if the court were receptive to such an agreement.

Speaking of agreements, it is absolutely vital that you avoid relying on any "handshake deals" with the other parent. Unless a court order has officially modified your support obligation, the only thing such an ad hoc agreement will net you is contempt of court and unnecessary arrears.

If I become incarcerated and lose my job as a result, how can I get my payments modified?

You must inform the FOC as soon as possible. If you do, the FOC is required to review the support order within 14 days. Otherwise, there is nothing they can do to help, and your payments will remain the same.

My ex has moved out of state, should I worry about his child support payments?

There is no need to worry unless he/she already had a habit of not paying. Congress passed a law called the Full Faith and Credit for Child Support Order Act, which applies the full faith and credit clause to all child support orders. Without giving you a lecture on the constitution, this just means that every court in all fifty states will enforce a child support order from any other state.

Does Child Support modification apply retroactively?

No, the modification only applies to all payments due after the modification is granted. Please see the following section to learn how this works in conjunction with overdue payments.

I just got the child support order modified, and my ex has some overdue payments, are those now modified as well?

Yes, those modifications apply retroactively, but only for payments that became due after the petition to modify was filed. The reason for this is that any change of circumstances would (presumably) only have taken place at that time.

My ex still has a lot of overdue child and spousal support payments, is there anything I can do about it? Can the court help?

Failure to pay child support is a felony punishable by at least four years in prison and/or fines of up to $2000. Beyond that, the court may also hold the delinquent ex-spouse in contempt of court. Contempt can also be a crime, but is usually civil. The court may also impose one or more of the following sanctions.

- A court judgement for overdue payments
- Garnishing wages of the delinquent parent
- Seizure of real estate
- Awarding attorney's fees to the receiving parent
- Suspension of state issued occupational or driver's licenses
- Automatically withholding wages on tax returns (child support only)

My ex is out of state, and has not paid child or spousal support, what can I do?

Congress has you covered. They passed the Uniform Interstate Family Support act (UIFSA) to address

problems like this. This law provides guidelines for other states to follow when enforcing the support order from your state. The order can be mailed to either the paying spouse's employer or to the support enforcement agency of their state. The employer will automatically withhold wages unless there is an objection from the paying spouse. You can also request that the court of your state send the order to the state where your ex-spouse resides. That state will treat the order the same as if it had been ordered in that state's court.

This statute also empowers states to modify out of state. However, this only works if both parties no longer live in the state where the order was first made, or both parties consent to giving the paying spouse's state jurisdiction to modify the order.

CHAPTER 23: DEFINITIONS AND EXPLANATIONS OF THE DIFFERENT MODELS OF CHILD SUPPORT

This chapter is meant to help you understand Michigan's child support laws via direct definition as well as a helpful comparison to other such models.

What is an income shares model?

Under such a model, the intent is that the child should receive the same portion of the parental income that they would have received if the two parents had stayed married. This figure is arrived at by pooling the income of both parents and then assessing what portion of that would have been spent on the child. It is presumed that the custodial parent will spend their portion of that amount by themselves, so the non-custodial parent (paying) parent will only have to pay their portion.

What is a percentage of income model?

This model defines the support obligation as a set percentage of the paying parent's income. The income of the non-paying custodial parent is never taken into account. There are two variants of this: flat percentage and varying percentage. A flat percentage assesses the same percentage regardless of how high the paying parent income is. A varying percentage model will assume that as income grows, that proportionally less of their income will be spent on child care expenses while married. As such the percentage of income that is assessed

for child care payments will reduce as income grows.

What is the Melson formula?

The Melson formula is a slightly more complex version of the income shares model. It takes into account several policy judgements in order to ensure that a child's basic needs are met. To start with, the paying parent is allowed to retain enough of their income to meet their own basic needs. After that, the paying parent is not permitted to keep any more of their income for themselves until the needs of all of their children are met. Even after the material needs of all dependents are met, those same dependents are still entitled to a percentage of any additional income so that they may benefit from the non-custodial parent's higher standard of living.

What do all of these models have in common?

Aside from having the same overall goal to ensure children receive the same amount of support they would have received had their parents remained married, most (if not all) child support models have a few things in common. For starters, most models have a "self-support reserve" that ensures that the paying parent will always be able to provide for their own basic needs. All models take imputed income into account. Imputed income is money saved because the person in question doesn't have to pay for a service that they are providing themselves. All models also take healthcare expenses into

CHAPTER 24: HOW CHILD CUSTODY EFFECTS CHILD AND SPOUSAL SUPPORT

If my ex gets generous spousal support, does that mean I can ask to pay less in Child Support?

That depends (find conclusive answer), some states allow support obligations to be treated as part of net income. The increase of the recipient's income and the accompanying expense to the other spouse often results in a decrease in the amount of the other type of support. However, this only applies once. For the sake of fairness, one form of support will be decided based on the income of both spouses (sans support payments) and the other form of support will typically take the payments from the first into account.

That being said, spousal support payments will never be a direct substitute for child support obligations. All child support payments are presumed to be used on the child, while the spousal support is meant to ensure that your ex can meet their own needs.

CHAPTER 25: CHILD SUPPORT ARREARS

Like with many other financial obligations, sometimes child support payments are missed or insufficient. Family courts have processes for dealing with these missed or overdue payments in order to ensure that the obligation is met to the greatest extent possible.

What does arrears mean?

Arrears or arrearage is the technical term for past due child support. Basically it is a debt you owe to either your former spouse or to the government.

Wait, how could I owe child support debt to the government?

This might occur if you received public assistance from the government while you had child support obligations. It can also happen if your child's household receives public assistance. The rationale behind it is that you should be covering those expenses as the parent paying support, not the state government.

What could happen if I don't pay my arrears?

Unpaid arrears can result in a number of unpleasant consequences such as:

- Withholding money from your paycheck

- Liens on personal possessions and real estate
- Garnishing your tax returns
- Suspension of state issued drivers, occupational, and recreational (hunting/fishing) licenses
- Revocation or denial of your passport
- Getting charged with contempt resulting in imprisonment and further fines

What if I can't afford to pay my arrears?

Then you have two options. You can ask for forgiveness (discharge) of your debt, or you can ask for a payment plan. There is no method for completing erasing the overdue child support that you owe the other parent.

What does discharge entail?

You may only seek a discharge debts owed to the state. If you are granted a discharge, it will erase your arrearage debt completely. You must file your request with the Friend of the Court (FOC) of the county that granted the support order in the first place. In your request you must explain why you had a good reason to not pay or how you are unable to pay. If you owe back child support in multiple counties, you will have to file separate requests in each of those FOC offices. The FOC office(s) will decide whether or not to discharge the debts.

If you also owe money to your spouse, then you must get a payment plan

What does the payment plan entail?

Under a payment plan, the court will allow you to pay back a certain amount per month for a number of months. In the end, you will pay less than the full amount owed and the rest will be discharged.

If you owe debt to a spouse, you must obtain their voluntary consent in order to engage in a payment plan.

CHAPTER 26: DO-IT-YOURSELF DIVORCE

While a lawyer can certainly be extremely helpful to anyone seeking a divorce, there are times when someone might just want to do things on their own. If you're thinking about pursuing a divorce without hiring an attorney, then here is a handy abridged guide to the divorce process to help you along your way. It touches upon all of the major facets of divorce.

Step 1: Marriage:

Is your marriage valid under Michigan law? If not then you cannot get a divorce because divorce is a dissolution of a legal marriage. If your marriage was not legally valid, then you may need to look into getting an annulment.

A valid marriage requires a valid marriage license and a solemnization by someone legally authorized to perform it (such as a priest or a judge). Both parties must consent to the marriage and must be physically and mentally capable of giving that consent (they must be 18 years old unless they have parental permission). Also, the would-be spouses cannot be blood relatives.

When you apply for your marriage license, you should bring a photo ID, proof of age, and the $20 application fee. Once you apply for the license, there is a 72 hour (3 day) minimum waiting period. Once you receive the license you must have the ceremony within 33 days.

Step 2: Premarital/prenuptial/ post-marital agreement

If you and your new spouse already agree about what should happen in the event of a divorce, it would be a good idea to write up a document to this effect as soon as possible. You can also do this just before the divorce. Such an agreement is sometimes called a post-marital agreement and will save both of you a lot of time and stress by avoiding a drawn out and contentious divorce process.

Be aware, that such agreements can never be used to determine child custody or child support.

Step 3: Qualifying for divorce:

Michigan is a no-fault divorce state. What that means is that you don't have to prove that either spouse did anything wrong in order to get a divorce. All you do have to show is that the marriage has become broken beyond any hope of repair. Once your spouse is informed of your intention to initiate the divorce, there is no need for them to be involved in the process unless there is some disagreement regarding one of the core aspects of divorce.

In order to file for divorce, you must be a resident of Michigan for 180 days (6 months) and a resident of the county where you are filing for divorce for at least 10 days.

Step 4: Initiating the divorce/ responding with an answer:

To get the process started, one of the spouses must file a complaint for divorce with the family court. This complaint should include that spouse' proposal for how the various issues (alimony, marital property, child custody, child support) should be resolved.

You must also serve a copy of this complaint to your spouse within 90 days (3 months) of filing it with the court (or your complaint will be dismissed. You are not allowed to serve papers in person, so you will have to find a designated server. This person will have to be at least 18 years old. They can either hand deliver or mail the papers to your spouse.

If you are the spouse being served with papers, you have 21 days to respond with an answer if you have any objections to the proposals made by your spouse. If you do file an answer, it must be a point by point response/rebuttal to the original complaint. Not filing an answer will cause the divorce to enter default. In such cases, the judge may or may not grant the complaining spouse any or all of their requests. Having a premarital/post-marital/divorce agreement between the two of you has the same effect.

Even if the divorce does go into default, there is still a mandatory 60 day waiting period. This period is extended to 180 days (6 months) if there are any children involved.

Step 5: Temporary orders:

Between the time the divorce papers are filed and the final divorce order is issued by the judge, chances are you and your spouse aren't living together. In any case, the various issues regarding the divorce (such as

child custody and the marital household) will probably need to be addressed temporarily until a final determination is reached. For this purpose, the court will sometimes issue temporary (ex-parte) orders intended to maintain the status quo until the divorce is finalized. These orders can be requested even before the divorce papers are filed and can be requested by one spouse without the knowledge or input of the other spouse.

Step 6: Contact the Friend of the Court (FOC)

The friend of the court can help the both of you reach a resolution on the various aspects of your divorce. They will host mediations and conferences in order to help settle agreements. Based on the outcome of these meetings, the FOC will submit recommendations to the court that may become the basis for ex parte orders. Once the divorce is finalized, the FOC can also collect and distribute any spousal and child support payments and help mediate any disputes that arise down the line.

Step 7: Distribution of property:

Now that you and your spouse are getting divorced, you will have to figure out what to do with the property that you share. The first thing the court will do is try to distinguish between property that was separately owned before and during the marriage, and marital property that was shared between you during the marriage. The marital property will be divided by the court in a fair (but not necessarily equal) manner. Be sure that you are accurate, thorough, and honest in your disclosures about your property. Also, you and your spouse should strongly consider having an agreement written up which contains a proposal for distributing property, in order to save time, money, and headache.

You should also be aware that marital debts will be divided in the same manner, but in a way to ensure that one spouse is not unfairly burdened by the other spouse's financial indiscretion. The same advice about thorough and honest documentation and reporting applies here as well.

Step 8: Spousal support/alimony:

Now that the two of you are no longer living together and sharing incomes, arrangements will have to be made about the new financial situation. Quite often (but not always), one spouse plays the role of primary income earner. As such, the other spouse would be left in rather dire straits unless the breadwinner is required to provide some monetary support.

The nature, purpose, and duration of this support varies depending on the circumstances. Support could last for the rest of the spouse's life, until the spouse is able to support themselves, or until the spouse remarries. Support might also be ordered if the spouse helped or supported the other spouse in some way that justified reimbursement.

Whichever form it takes, spousal support/alimony payments can be paid by mailing checks to the family court.

Step 9: Child custody and Child Support:

Easily the most important and stressful part of the whole process. Divorce will never change the fact that you love your children. If there is any tension or resentment between spouses, it can be all too easy to turn this process into a battle with your children and child support payments as the prize. The best advice I can give you is to take a deep breath and do your best to remember that the most important thing is the wellbeing of your children.

Coincidentally (and most appropriately), the best interest of the children is precisely the standard the court will be employing in order to decide the custody and support arrangement. Make the effort to cooperate with the FOC and your former spouse to come to the best arrangement and be honest when disclosing information about your lifestyle and finances. If you are truly concerned about your prospects of getting the arrangement you want in an impending divorce, feel free to consult the relevant section in the divorce chapter.

Also note that while negotiation with your spouse is really important at this stage, the judge will not simply accept any formal agreement about the custody and support arrangement. They will always default to the best interest of the child. The willingness of the parent's to cooperate civilly will be a factor in their final decision.

Child Support payments can be made via the MiSDU system. This is preferable and more recommended than simply making payments directly to the other parent.

Step 10: Final judgement and Post-Divorce

Once all of the issues have been adequately resolved, the judge will issue an order containing the final decision on all of them. This will remain the final agreement on the divorce unless something is changed later.

In the case of child custody, there will continue to be hearings and meetings with court officials to make sure the new arrangement is working out.

With the exception of property division, any of the other factors of divorce can be modified with a motion and a hearing. Modification in spousal support requires you to show a change in circumstances involving your ability to pay, or the recipient's need. Modifying child custody requires a change of circumstances affecting the best interest of the child. Child support requires changed circumstances involving either the best interest, the ability to pay, or both.

It should be noted that child support modification can be made via a request to the FOC or a direct motion in the family court. However, you limited to one FOC modification request every 36 months (3 years) unless you can convince the FOC that it is urgent. A change in income less than ten percent (increase or decrease) is not usually considered significant to merit a modification.

CHAPTER 27: THE RIGHTS OF MOTHERS AND FATHERS

While some of this information is also covered in other chapters dealing with child custody, would still be helpful to aggregate and summarize it here. This section is for readers specifically concerned about their rights in terms of children when getting a divorce.

What are my rights as a mother?

As a biological mother of your child, you are automatically granted parental rights over your children. Even if you are unmarried, you will never have to prove maternity. Otherwise, you have no particularly special rights that are different from any man or father. The only real advantage you might possess is if you adhere to the traditional family model wherein you are the housewife and primary caretaker of the children. Primary caretakers are usually given sole physical custody unless the spouses share joint custody. If you both you and your husband work, then your rights as a parent are identical to his. In which case, you should consult the section below discussing father's rights.

What are my rights as a father?

As a biological or adoptive father, your rights are in no way distinctive from a mother's. The only distinction is that if you are not married to the mother, then you will have to prove paternity (see the chapter on paternity

and non-marital children). However, as the father, you are statistically more likely to be the non-custodial parent (i.e. the ex-wife has physical custody). Therefore, this section serves more as a summary of the rights of a non-custodial parent.

While the custodial parent is largely responsible for making the day to day decisions regarding the children, you (the non-custodial parent) still have the legal right to have a say in any major life decisions affecting your child including their education and medical care.

All parents also have the right to see and interact with their children even if they do not have physical custody. Unless your parental rights have been terminated for some reason, you have a legal right to visitation or "parenting time" with your children. Parenting time will often be one of the issues addressed in the final divorce decree. Any parent may take more parenting time than is mandated in the final agreement. However, the legal rights of a parent prevent their former spouse from permitting less than the agreed upon parenting time. They are likewise prohibited from intentionally sabotaging the relationship between you and your child. If you suspect that your former spouse is doing either of these things then you may be facing a case of "parental alienation". If the situation is dire enough, it may be prudent to call the police. A parent who violates the parenting time agreement may be charged with contempt of court

What is parental alienation? At what point should I involve the police?

Parental alienation is any intentional act by one parent designed to undermine the relationship that the other parent shares with their child. Sometimes this is a means of taking petty revenge. Often, it is intended to convince the child and, by extension, the court that the alienated parent should have reduced or no contact with the child. Alienation can be anything from lying to the child to poison their mind against the former spouse, or even wrongfully denying that spouse the parenting time they are legally entitled to. If you are the victim of a campaign of parental alienation, it is strongly advised that you keep fighting and try to keep a cool head. Any loss of emotional control will only make you look less stable and will further the alienating parent's agenda. A provable campaign of alienation is proof that you are the more mentally sound parent. By definition, it is contrary to the best interest of the child and can be grounds for physical custody to be transferred to you.

If the non-custodial parent refuses to return the child after the allotted parenting time, or if the custodial parent takes the children far way in violation of Michigan law, then the alienation has devolved into a case of parental kidnapping. In which case, you (the other parent) should call the police.

CHAPTER 28: PARENTS, CHILDREN, AND THE GOVERNMENT

My dumb underage kid bought a car that he won't be able to pay for, is there any way for him to get out of it.

Yes, there is. Minors are allowed to own and convey property as well as bind themselves to a contract. However, in recognition of their immaturity, the law generally allows a minor to "disaffirm" that contract until (and even shortly after) they turn 18. Before this point, that minor can freely enforce that contract against the other party. However, once it is disaffirmed, the contract is void.

Minors can be pretty dumb in general, is there anything else I should be worried about?

Possibly. While minors are not allowed to consent to medical procedures. However, an exception is made for abortions, birth control, and treating STD's. This is just another reason why it is important to teach your children about safe sex. It should also be noted that even if you deny consent to a medical procedure, a court might override that in order to prevent irreparable harm.

Minors can't make valid wills, so you won't have to worry about any greedy and predatory relatives.

Children can still be sued for torts, but courts tend to be more lenient towards them. They may also assess

liability to the parents instead. Children who commit crimes are usually prosecuted in juvenile court.

I hate my parents, how can I get emancipated?

You are automatically emancipated when you turn 18, get married, or join the military. If you don't feel inclined to get hitched or fight for your country you can also file for emancipation with the family court. You will also be temporarily emancipate if you are receiving medical treatment or are in police custody and your parents can't be located.

If you are going to file for emancipation, there are some things you should know. First of all, you will need to file certain materials. In addition to the $175 fee and a copy of your birth certificate, you must also file an affidavit from a certified official (Doctor, teacher, priest, etc.) stating that emancipation is in your best interest. Your parents may try to block the emancipation, but their objections only matter if they are supporting you financially. Either way, you will have to prove to the judge that you understand and are ready to accept adult responsibilities. You will now have to support yourself and live on your own. You are not allowed to use government benefits as proof of your ability to care for yourself. The government will not permit an emancipation if it means the youth becomes a ward of the state. All documents that serve as evidence of both personal maturity and self-sufficiency should be filed with the request and other emancipation documents.

If your parents withhold consent to the emancipation, you will also have to prove that you are currently supporting yourself and that your parents are not. Otherwise, the emancipation will be denied.

Am I legally required to take care of my children? Will they have to look after me when I am old?

Yes and yes. Parents have a duty to support children which is reciprocated when they reach old age.

My child doesn't want to go to school, and I don't really care either way, is that a problem?

Yes, it is. Michigan law requires all children to receive some kind of education. That being said you do not have to send them to a public, private, or charter school. You are allowed to homeschool them if you so choose.

CHAPTER 29: ADOPTION

Sometimes an individual or couple wants to raise a child without conceiving one of their own, and sometimes there are children who are no longer in the care of their birth parents. Adoption can help bring these people together to form loving makeshift families that can be just as close as biological ones.

What is adoption?

Adoption is a legal process which terminates the legal relationship between a child and its biological parents and creating a new relationship with adoptive parents. The adopted child's birth certificate will be altered to show the adoptive parents as the child's true mother and father. There are statutes in Michigan which govern this process. An unmarried person or a married couple can adopt either a minor or an adult. However, an unmarried couple cannot adopt as a couple, only one of them would be the adoptive parent.

Where should I file the adoption petition?

Michigan law requires the petition to be filed either at the location of the petitioner (you) or the child being adopted. If both live outside of Michigan, then it is filed at the location where the child's biological parents had their rights terminated.

Do you need the permission of the biological parents to adopt the child?

Usually, you do. If the natural parents still have their parental rights, then there consent is needed. If the father is not married to the mother, his consent might not be required. However, if the state has already terminated parental rights, then permission is unnecessary.

Also, the court might waive the consent requirement if the biological parents are being unreasonable with their denial of consent and are not acting in the best interests of the child. Even if consent is waived, the biological parent still has a right to notice and a hearing about the adoption.

Also, the permission of an unmarried biological parent might still be required under certain circumstances. This hinges on the father's level of involvement in the child's life. Does he live with the child? Does he care for it? Does he visit the child regularly? Has he admitted paternity and/or paid child support? If the child is an infant, the court will look for "manifestations of parental responsibility". In the absence of these things, the non-marital father has no right to prior notice before his child is adopted.

Do you need a child's permission before you adopt them?

Only if the child is older than 14 years of age, otherwise, no consent is needed.

Will the state/court do anything to investigate the home of someone adopting a child?

Yes, a full investigation and approval by the court of the adoptive home is mandatory. The courts take the safety of all children in their care very seriously.

Can I pay the birth parents to choose me as the adoptive parent?

Absolutely not. Other than pregnancy related medical costs, you are forbidden by law to pay money to the birth parents. Most states try to avoid running the risk of developing a market for adopting kids.

What happens if someone violates one of the statutes regulating adoption?

Breaking adoption statutes is usually a crime. The first violation is a misdemeanor. The second is a felony.

What happens if the adoption is successful?

A new birth certificate will be issued. The new certificate will list the adoptive parents as the mother and father. This completely severs any right, claim, or obligation the birth parents had with the child and transfers them to the adoptive parents. Sometimes a birth parent will terminate their own parental rights so that they can jointly adopt their child with their new spouse.

What if I do not want to adopt, but cannot have children of my own?

Then you should consider surrogacy. There are two types of surrogacy to choose from:

- Traditional surrogacy: The surrogate's egg is fertilized with the prospective father's sperm, making him and the surrogate the biological parents.
- Gestational surrogacy: The egg of a woman other than the surrogate (usually the father's wife) is fertilized and implanted in the surrogate's womb. Depending on how biological parenthood is defined, all three parties might be considered biological parents.

Whichever surrogacy method you choose, there are some things you should know before arranging a surrogacy in Michigan. For starters, paid (commercial) Surrogacy is illegal in Michigan. Violation of that law carries penalties of up to $50,000 and/or up to 5 years in prison. Furthermore, the courts will not enforce any surrogacy contract. Even if the surrogacy is altruistic (uncompensated). It is also incredibly important to know that violation of the law against commercial surrogacy will most likely result in the participants losing custody of any child that results from that surrogacy.

This is quite important because a surrogacy contract is about more than just getting some woman to carry the baby to term. They also contain provisions giving custody to the parents who appointed the surrogate. This helps avoid messy disputes and reneging on the surrogacy. It might not seem like such a big deal considering that most surrogate children have zero genetic relation to the surrogate mother. However, a surrogate mother might still be able to apply for physical custody over the child. In which case the court will apply a "best interest of the child" analysis.

Due in part to the uncertainty created by this system, the Michigan legislature is currently considering legislation that might reform surrogacy law.

CHAPTER 30: SAME SEX CUSTODY AND ADOPTION

Are custody and adoption the same for same-sex couples as they are for heterosexual couples?

For the most part yes, to the extent that any other person in the same circumstances would face the same conditions. The law does not explicitly distinguish gay and straight couples. The issue is that gay couples tend experience a unique set of circumstances.

Whether married, unmarried, or in a civil union, same-sex couples cannot produce biological offspring outside of surrogacy. Even then the child is not the biological child of both partners. This is not much of an issue if the partners are married, because both partners would then be the legal parent of the child born from surrogacy. If they are not married, then the non-biological parent must formally adopt the child. When both parents are the legal parent, they are completely equal in terms of parental rights. It is even possible for the non-biological parent to gain sole physical custody in the event of a separation or divorce.

Adoption is a slightly murkier topic. Married same sex couples can freely and jointly adopt a child that is unrelated to either of them. However, the adoption law of Michigan is remarkably unclear about unmarried couples. Some cases read the adoption statute to say that unmarried people (gay or otherwise) cannot jointly adopt. However, at least one recent case has implied that the answer is unclear or ambiguous.

You should also be forewarned that Michigan is one of six states that permits adoption agencies to act upon religious convictions in ways that discriminate against same-sex couples.

CHAPTER 31: CUSTODY AND SURROGACY

How is the custody of a child born from surrogacy determined?

As mentioned in the previous section on surrogacy, the laws of custody and surrogacy in MI are a mess. Due to the fact that all surrogacy contracts (even for legal altruistic surrogacy) are unenforceable, there is no legal way to guarantee that the family who commissioned the surrogacy will get custody. If the surrogate mother petitions for custody, she has just as much of a shot as anyone else under the Michigan system which seeks the best interest of the child.

CHAPTER 32: SAME SEX SURROGACY

Is surrogacy different when it involves a same sex couple?

Yes and no. The law itself does not treat same sex couples any differently than straight ones. However, do to the nature of a same-sex relationship, only one of the partners will be the child's biological parent. For custody purposes, this means that the non-biological parent will likely have to adopt the child in order to be considered that child's legal parent.

CHAPTER 33: NON-MARITAL CHILDREN AND PATERNITY

I am married, but my husband does not believe the child is his, does he still have to support this child?

If a woman is married, the court will presume that her children are the offspring of her husband so long as they were married within a certain time period of her pregnancy.

The government is discriminating against my children because they were born out of wedlock, can it do that?

While not as strongly protected as other vulnerable groups, non-marital children still enjoy some protection from government discrimination. The government must show that the discrimination is substantially related to an important government purpose (intermediate scrutiny).

That said, federal courts will not uphold any legislation whose sole purpose is to punish non-marital children. Laws which deny inheritance, deny child support, denial of government benefits, or even barring them from wrongful death suits for the deaths of their other parent will not be upheld. The courts have also struck down statutes of limitation on paternity suits. The only such law that has been allowed to stand is one which granted immigration preference to marital children.

I am an unmarried father, and my son was killed in an accident, can I sue the person responsible?

Possibly. An unmarried mother is always able to file such a lawsuit. However, the unmarried father will not be able to do so if he has not legally recognized the child as his before the accident.

I am unmarried, and my child was born on foreign soil, is that child still a U.S. citizen?

If you are an American woman, the government and the courts will automatically grant and recognize your child's citizenship. However, an unmarried American man will have to take certain steps to prove his child's citizenship.

We are an unmarried couple with a child. However, we are now separating, how will we determine the custody of this child?

Michigan has a law called the Acknowledgement of Parentage Act for just such an occasion. If both of you sign a document acknowledging that both of you are the parents of this child, the initial custody will go to the mother. However, this does not in any way hurt the father's chances at gaining ultimate custody. Final custody will be decided by either the court or an agreement between the parents.

I am not married to the mother of my children, but she is keeping me from seeing them. Is there anything I can do?

Michigan family law will still protect an unmarried father's due process right to have a relationship with his children. However, this only applies if he has actually helped raise the child and has shown that he is committed to the responsibilities and obligations of fatherhood. Does he supervise the child daily? Has he helped at all with the child's education?

If the child is an infant, the father must have demonstrated a willingness to assume sole custody of the child if that ever becomes necessary. He cannot simply prevent others from adopting in the case of the mother's death. The court will also consider whether or not he has publicly acknowledged the child as his and whether he has helped pay any of the expenses from the pregnancy or birth.

I am not married to the mother of my child, do I have legal custody over that child?

Not automatically. The mother, by virtue of giving birth, is automatically given maternity and legal custody of the child. Unless you married her soon after she gave birth, you're going to have to work a little harder to get legal custody. You can hold the child out as your biological child, put your name on the birth certificate, or formally acknowledge paternity. The same result will also occur if there is a successful suit to establish paternity.

My mother and I believe that this man is my biological father, but he won't admit it, what can we do?

You can file a suit to establish paternity. Such a lawsuit can be brought by you, your mother, the alleged father, or any family independence agency that is currently supporting you. If you succeed, the alleged father will have to pay child support, gain visitation rights, and can even apply for physical custody of you.

You should be aware that there is a statute of limitations. The suit must be brought before your (the child's) 18th birthday.

There is a variety of evidence that you can use to prove paternity. Photographs showing a physical resemblance, statements by the father acknowledging paternity, testimony by a doctor, and blood/genetic samples are all good examples. Be careful, because if your genetic evidence shows that he cannot be your father, then the case will be dismissed automatically. On the other hand, if he completely refuses to submit to such testing, then the court will enter a default judgement against him. The records of paternity suits are usually sealed.

I work at a welfare office, and we sometimes get non-marital children seeking assistance. We can't file a paternity suit, is there anything we can do.

The Genetic Parentage act is here to help. This act can be used to determine paternity without a paternity suit. If you present genetic evidence showing at least a 99% probability that this person is the father, then they will automatically grant a paternity order.

The family court rendered a paternity order against me. I know I am not the father, what can I do?

The Revocation of Paternity Act gives you a remedy. This act grants Michigan courts the power to set aside a paternity order. However, it only applies if the paternity order was made under the following circumstances

- An acknowledgement of parentage (by you)
- Evidence of conduct by another man who could have been the father
- Another court order relating to a potential father
- A presumption that another man who is married to the child's mother is the child's father.

You, the mother, or a prosecuting attorney can file an action under this act. The burden of proof is on the person trying to revoke paternity. They must prove non-paternity with clear and convincing evidence. There is also a statute of limitations which requires the suit to be filed no later than three years after the birth of the child or one year after you acknowledged paternity in the first place. If you can show a mistake of fact, evidence of fraud by the mother, duress, or newly discovered evidence; then the court might be willing to grant you an extension.

The court can do more than just set aside the paternity order. They can also assign paternity to the man who was shown to be the actual father. Furthermore, you can sue that man for any child support you have already paid.

However, the court might also refuse to set aside the order if it finds that doing so is not in the best interest of the child. They will do this even if there is strong evidence that you are not the father. It will make this determination based on the following factors.

- Whether or not the father has been prevented from denying paternity because of prior conduct: (i.e., the issue of paternity was never explored)
- How long this person was aware that he might not be the actual father (the longer he waits, the more likely it is the court will reject)
- The type of evidence that led to the idea that he was not the father
- The relationship between this person and the child. (The stronger the current relationship, the less likely it is that the court will break it up)
- The age of the child
- Possible harm to the child
- Other issues of fairness arising from disrupting the father-child relationship
- Any other factor the court deems relevant

CHAPTER 34: THE EFFECT OF CHILD CUSTODY AND SUPPORT ON TAXES

How will child support payments affect my taxes?

Unlike spousal support, child support payments do not count as income for the receiving parent. Likewise, they are not deductible from your (the paying parent's) taxable income. This is mainly because those payments are not meant for the benefit of the receiving parent (it's for the child) and is considered an obligation of the paying parent. Although on the surface it may look like this rule favors the receiving parent (usually the mother), this is not really the correct way to view child support.

How will child custody affect my taxes?

Having physical custody of a child allows you to claim them as dependents when filing taxes. Claiming dependents has the following tax benefits:

- Allows you to file as a head of household
- Allows you to claim the child tax credit or $500 non-refundable Dependent tax credit
- Allows you to claim the credit for child and dependent care expenses
- Allows you to claim a higher earned income tax credit

- Allows you to exclude dependent care benefits from your taxable income

Once again, this looks like a substantial benefit to the parent that gets physical custody. However, it should still be noted that the parent is incurring expenses to care for the needs of those children. However, if that parent were able to find ways to reduce the expenses for providing for the children in their custody without undermining the wellbeing of said children, then the associated tax benefits might prove to be profitable.

What if we share joint custody? Can we still claim dependents and the associated tax benefits?

You can both claim the children as dependents as long as you both file jointly. Unfortunately, a divorce couple may only file jointly for the last year that you were still married. After that only one of you will be able to claim the children as dependents. If both of you attempt to do so, the IRS will only allow the parent who has spent the most time with the children to claim the dependents and the associated tax credits.

This is a rather unfortunately designed system that is set up in a way that creates economic tension between the parents and result in competitive or adversarial behavior. A better system would somehow split the benefits between the parents but that is not the system we have now. It would be highly advisable for any parents with joint custody to acknowledge this disparity and strive to come to a private arrangement that shares the benefits of the tax system and promotes harmony between them for the good of their children.

CHAPTER 35: MILITARY CHILD CUSTODY

What happens if I am overseas during a divorce when I have children?

Then you are protected by the Military Child Custody Act (MCCA). The MCCA disallows courts from making a final custody order while the military parent is overseas. A temporary order can be made for the best interest of the child, but it will be revoked and the status quo be restored the moment the military parent returns home. After that, the court can decide the matter properly.

If I have physical custody, who takes care of my children when I'm deployed?

All service members with children are required to establish a Military Family Care Plan to address the care of their children during a deployment. Typically this involves assigning a guardianship. A Family Plan will not control a custody case.

Which state court will hear my case?

Military families relocate frequently, so it pays to familiarize yourself with the UCCJEA (see section on 'child custody'), or to hire an attorney who has.

What happens if someone tries to violate my custody while my child and I are on foreign soil?

Your child is protected by The Hague convention, which commands the prompt return of any wrongfully removed or retained child. It also establishes rules governing when removal is wrongful as well as exceptions to those rules.

The Michigan Child Custody act prohibits parenting time from being exercised in a country that is not a party to the Hague convention on child custody unless both parents give their written consent.

CHAPTER 36: GETTING A SECOND OPINION

Every licensed attorney in the United States is obligate to represent their clients competently and zealously. By the same token, everyone who retains and attorney should be sure that this attorney is adequately serving their needs. However, it can sometimes be difficult for non-lawyers to adequately assess the performance of a lawyer. This chapter is intended to help bridge this gap by giving you some insight into the expected performance of family law attorneys and attorneys in general.

This chapter is also intended to get you to consider whether specific advice from your lawyer is sound. If you have any questions about any advice or information that an attorney has given you, then you would be well served in seeking a second opinion from another lawyer.

Does your lawyer consistently communicate with you about your case?

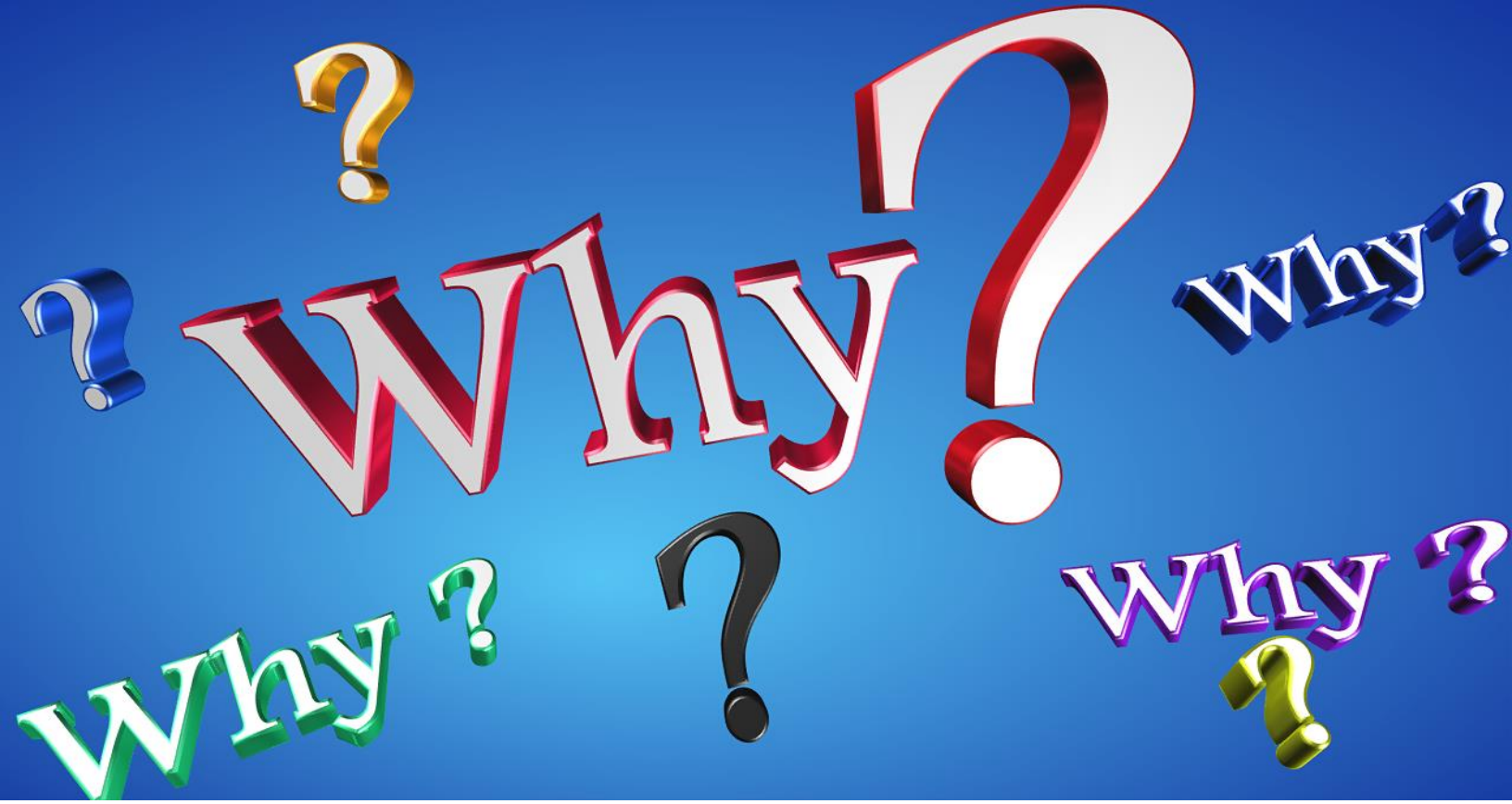
Constant and consistent communication is essential for an effective attorney-client relationship. Your attorney should be sending you bi-weekly (if not weekly) updates about what they have done with your case. They should be taking the time to explain the current strategy of the cases and the likelihood of that strategy succeeding. When deciding on a strategy, a good attorney should explain the pros and cons of all available strategies to their client. In the event of an emergency, an attorney should be reachable by their client in less than 24 hours.

Has your attorney demonstrated effective knowledge of the law?

You hire an attorney because you assume they are knowledgeable about the law. If your attorney demonstrates a mistaken or incomplete understanding of the law, that can hinder your case. If you are uncertain about your attorney's expertise, it would behoove you to seek a second opinion. In the worst case scenario, it may be wise to find a different attorney.

Does your attorney understand your needs, concerns, and interests?

Divorce (and other family law matters) are about more than just "winning" and "losing". They can also be very emotionally taxing. Even if the lawyer is competent, it can still make things harder for the client if they don't feel like the attorney understands what they are going through. If you are worried about your child's education, if you want to make sure both parents can still have a healthy relationship with the children, if you want to avoid a contentious divorce, a good family law attorney should be able to understand these concerns.



CHAPTER 37: 7 REASONS TO FIRE YOUR ATTORNEY

It is important to able to assess how good of a job your attorney is doing, and the section above will help you do just that. Many of the issues mentioned above can probably be remedied. However, it is equally important to know when it is time to ditch your attorney and find a new one. Here a handy list of 7 signs that it's time to find a new lawyer:

1. Your attorney persistently refuses to answer and/or return your phone calls

There is virtually nothing more important to an attorney-client relationship than proper communication. Not only does the lack of it hinder the success of a legal case, it is also fundamentally disrespectful to the client. Even if the attorney misses the call for some reason they should attempt to get into contact with you as soon as possible. If they continue to ignore your calls and refuse to remedy this when called out on it, then you need to find someone new.

2. Your attorney intimidates you or you are otherwise uncomfortable communicating with them or asking questions

Even if they show a willingness to follow up and communicate, it is completely pointless if you yourself are not comfortable communicating with them. You need to be able to ask questions in order for your case to be successful. It is also important for attorneys to take steps to ensure their client's peace of mind. After all, legal disputes are often stressful and anxious affairs. If your attorney shows hostile behavior, or worse yet,

bullies you whenever you try to speak with them or ask questions; then that is unacceptable. This is your case, not theirs and they need to understand and respect that.

3. A lack of updates has caused you to miss an important date/deadline or if you have ever had to remind your attorney about the status of your case

Handling your case is literally your attorney's job. Furthermore, the court and opposing council are likely communicating relevant details with your client rather than you. As such, nobody should be more aware of events in your case and any relevant deadlines than your attorney. Under no circumstances should your lawyer's negligence cause you to miss a hearing or any other important date/deadline, then you need to find someone else. If you have had to inform/remind your attorney about an event or deadline they should have already known about, then that is the first and only sign that you need to fire them.

4. Your attorney has lied to you or otherwise mislead you

There is no excuse for this. As the client of your legal case, you are entitled to nothing short of the truth. No matter how inconvenient or upsetting that truth might be, your attorney should never be telling you things he knows are not true. Details may suddenly emerge, law might be changed or repealed, and situations can alter drastically. You should be informed immediately of such detail or if your attorney is altering his or her strategy in any way. If they have ever withheld such information or have ever intentionally mislead you, then you need new representation immediately.

5. Your attorney has demonstrated a consistent lack of compatibility or inability to properly understand your situation and needs

Legal cases are complex and nuanced. They depend heavily on the small facts which vary with the circumstances. A competent attorney usually only grasp these nuances by understanding their client and their needs. If your attorney just isn't forming that connection with you, and clearly isn't understanding your situation, then perhaps you should consider finding one that can. Just be sure that your expectations are reasonable.

6. Your attorney has demonstrated a repeated and egregious lack of knowledge of the law and/or facts of the case

People hire attorneys because of their knowledge of the law and the fact that they are trained to apply that law to that law to facts. You are paying substantial amounts of money based in the belief that your attorney is competent enough to give you the best chance of success with your legal issue. It should also be noted that legal questions are often complex and nuanced enough there you could argue several different answers or position for a given legal question. However, if you find that your lawyer has demonstrated clear ignorance or mistaken understanding of an issue of law, or has failed to understand the specific facts of your case; then maybe you aren't getting the legal service that you paid for.

7. Your attorney charges unreasonable fees

In the same vein as the previous red flag, any legal fees or costs should be reasonable. Even if the attorney in question is competent, and has avoided any of the other misconduct on this list, they should still only be charging fees that are fair and reasonable for the service they are providing. This is such a major issue in the legal profession that there are court enforced ethical rule which require that all lawyers must charge fees that are reasonable. An attorney who charges unreasonable fees can be sanctioned and could even lose their license to practice law. If you suspect that you are being charged too much, don't be afraid to check prices at other firms and don't hesitate to report an unscrupulous lawyer to the state bar of Michigan.

CHAPTER 38: DIVORCE WITH SPECIAL NEEDS CHILDREN

Does the presence of a special needs child effect a divorce?

Yes, it most certainly does? While many aspects of the divorce process are similar to those involving ordinary children, a special needs child presents complicating factors that must be accounted for.

For one thing, special needs children are much more expensive to care for. As a result it would be unfair for a custodial parent with a special needs child to receive the same amount in child support as the same parent with an ordinary child would. Therefore, it is essential for the custodial parent and their attorney to seek a deviation from the standard Michigan child support formula in order to account for this. It is also very important to collect accurate and specific records and evidence of the expenses associated with the daily care and maintenance of your special needs child.

Child support is not the only aspect which should take the expense of caring for a special needs child into account. This increased financial burden should also be take into account when dividing the marital property as well as spousal support/alimony.

Another big difference is that a special needs child may never reach the point where they are able to live on their own. In which case support and other provisions may need to continue indefinitely. Therefore it is important to make sure this is accounted for and written into the divorce agreement.

Is there anything else I should be aware of?

Absolutely. Special needs children and adults are often eligible for certain public programs. Furthermore they can also receive portions of their parents' social security retirement benefits. However, there are two wrinkles that all parents with special needs children should be aware of.

One thing to be aware of is that many of these benefits will only pay out the maximum benefit if there is an official order for child support for a special needs child. Therefore, it is very important to get such an order, even if you trust your former spouse to pay support without such an order.

The other wrinkle is that child support payments can result in reductions in means tested public benefits. The same goes for a disabled child beneficiary of a parent's life insurance policy (it may penalize the child's public benefits). The presence of a court order will prevent reductions in social security and Medicaid benefits. Furthermore the parent's own social security retirement or disability payments will not be penalized if the child has special needs, and a portion of that payment can be given to the child. It is therefore essential that you seek the advice and counsel of someone knowledgeable in these laws and programs to ensure you get all the support that you are entitled to.

Can I rely in my lawyer to help me with this?

A lawyer familiar with divorce law is essential to any divorce case. However, a standard divorce lawyer may not be enough for a divorce with a special needs child. Due to the specialized knowledge of public benefit programs and the added complexities involved with a special needs child, it is highly advisable to also retain someone (maybe attorney) who has such specialized expertise.

How should we (the parents) approach a divorce with a special needs child?

Even if you are certain that you cannot live with your spouse any longer, it is still important that the two of you approach your divorce with civility and collaboration if you have a child with special needs. It is important that both of you are in explicit agreement about crucial aspects of your child's care. This includes medical care, education, and social workers. If the two of you have a history of disagreeing, or if you feel that your former spouse will oppose your wishes simply to spite you, then it would be advisable to seek court orders requiring that any agreement about the care of your child must be abided by.

CHAPTER 39: MARRIAGE

What is marriage?

Marriage is the legal union of two individuals. It comes with many different rights, benefits, and responsibilities.

My Fiancé promised to marry me but backed out at the last minute, can I sue them?

No, you may not. The state of Michigan no longer recognizes lawsuits for “breach of promise to marry”. This also means that you cannot be contractually obligated to marry someone. Such a contract would be unenforceable.

My Fiancé backedout of our engagement, will I be able to get the ring back?

Yes, if the marriage does not go through, then all gifts given “in contemplation of marriage” (including the engagement ring) must be returned. Unlike some states, Michigan treats the engagement ring as a “conditional gift”. The rationale is that the man only buys his fiancé an expensive ring because he expects her to marry him. If she had said “no” to his proposal, he would have kept the ring himself.

What if he/she left me at the altar? Can I sue for the costs of the wedding?

You might be able to sue them in small claims court.

Who can get married?

First, you have to be old enough to get married. Usually, you have to be 18, but a 16 year old with one parent's consent can also wed. If your would-be spouse is under 16, they need both parents' permission the consent of a judge. It should be noted that there have been recent attempts to change the law in order to prohibit any marriages involving anyone under the age of 16 in order to address the issue of "child marriages".

Also, your marriage might be prohibited because of something like incest or polygamy. Most blood relatives cannot get married. A marriage must also consist of only two people.

Both parties must be able to consent to the marriage. You cannot enter into a marriage while under the influence of drugs or alcohol, nor can those lacking mental capacity. This also prevents people from being forced into marriages by fraud or threats of violence.

Finally, you must not have any pre-existing marriage that has not been dissolved through divorce, annulment, separation, etc. Most states also prohibit bigamous marriages.

Can I marry my cousin? What would make a marriage "incestuous"?

No, not if they are your first cousin (although 26 states do allow that). In Michigan, a marriage is incestuous if it involves any of the following:

- A parent and their child
- Direct lineal descendants/ancestors (grandparents, great grandparents, grandchildren, etc.)
- Uncles, aunts, nieces, and nephews
- Brothers and sisters
- First cousins

Can I marry a step child if they are of age? What about adopted relatives?

Not while they are still your step-child as that would be bigamy (Still married to the child's biological parent. If you have legally adopted them, or the other person is some other relation via adoption (such as an adopted sibling), then they are relatives and the marriage is prohibited by law.

Oddly enough, an adopted child is still legally allowed to marry any biological child of their adoptive parents.

Are the children of incestuous or other invalid marriages illegitimate children?

No, the children of any prohibited marriage are still legitimate, even if the marriage was invalid.

What does a valid legal marriage require?

A valid marriage in Michigan requires a marriage license and solemnization. The license must be acquired first. No blood tests are necessary, but you will be given educational materials on HIV and other STD's. After applying for the license, there will be a 72 hour waiting period before you actually receive it.

A valid solemnization is simply a ceremony performed by a valid officiator. Any of the following can perform a valid marriage in Michigan:

- An ordained minister (Priest, rabbi, imam, etc.)
- Judges
- Court clerks
- Justices of the peace
- Mayors of Michigan cities
- Any civil officer with the power to administer and enforce the law.

What does the ceremony have to include?

The only requirement is that both people verbally agree to be married and there must be at least two witnesses who are 18 or older. Anything else is completely up to you.

Now that we have a marriage license, can we wait a year before having the ceremony?

No, a Michigan marriage license is only valid for 33 days. You must get married before then.

Is there a fee to get a marriage license?

Yes. For Michigan residents, it is twenty dollars. For non-residents, it is thirty.

Will we have to prove our age to get a marriage license? What else will we need?

Yes, you do. You will have to present a photo ID (with current address) and proof of age. Birth certificates and valid passports are both adequate proof of age. However, if you use the passport you must be able to provide your parents' full name as well as their state/country of birth. Residents of Michigan must get their licenses from their county of residence. Non-residents must obtain their license in the county where they will get married. Both do not have to be present to get a license so long as you bring your future spouse's documents. If you were divorced from a previous marriage within the last six months, you will also need to provide the proof of divorce.

Is it actually a crime to perform a marriage ceremony for a couple without a marriage license?

Yes, it is a misdemeanor offense. The penalty for this violation of Michigan marriage licensing laws is up to

90 days in prison or fines of up to $1000.

Where do they keep the record of our marriage?

The records of marriages are kept in the same place as the birth, marriage and divorce records. More specifically, all of these records can be found at the State of Michigan Vital Records Office at 333 S. Grand Avenue (first floor).

What if we move to another state? Are we still married?

Yes, you are. The Full Faith and Credit clause of the constitution applies to all marriages in every state. If the marriage is valid in the state where you got married, then it is valid in all 50 states, even if it would not have been valid if you had gotten married in the state you are now moving to.

What is a common law marriage and how can I get one?

A common law marriage is a marriage that was not officially conducted through the state (no license or ceremony). Michigan law does not recognize common law marriages but will recognize common law marriages from other states. A common law marriage requires all of the following:

- An exchange of consent between people capable of giving consent.
- The spouses must live together (i.e. cohabit)
- They must present themselves as married to the public (i.e. calling each other husband and wife, taking on the others last name, etc.)

How will marriage effect my insurance?

This is an important thing to take into consideration both before getting married and when considering a divorce. Married couples are typically allowed to share on insurance policy and may enjoy numerous other insurance benefits from being married. The common types of insurance are discussed below in detail.

- Auto insurance: Not only can you and your spouse share a single auto insurance policy (assuming it is cheaper to do so), but young married person might receive a rate cut of up to 26% because auto insurers assume that married people are more prudent. This benefit diminishes relative to the age of the person getting married (the older the less prominent) and is automatically applied when the couple get a rate quote for a shared insurance policy.
- Home/rental insurance: You will need to add your spouse to your insurance the same way you would add them to the deed of a house you already own separately. Insurers typically offer modest rate discounts to married individuals and couples.
- Health insurance: Marriage is a qualifying life event that opens a special enrollment period for you to buy a new policy or add your spouse to your current one. Confer with your spouse to figure out what policy will be most affordable.

- Life insurance: There are not usually discounts for married couples, but you should make sure that your spouse is listed as a beneficiary.

How will marriage affect my taxes?

That depends on several factor such as income and whether or not the couple has children. A couple with children who either earns less than $37,000 or more than $171,000 will likely end up paying more in taxes than they did when they were single, even if they file jointly. Otherwise, childless couples within that golden income range can actually getting tax discounts of 5% or more.

How will getting married affect my financial accounts?

Being married does not automatically give your spouse access to your financial accounts. Hopefully you and your spouse have sat down and had a reasonable discussion about how what will happen to your various accounts and how debts and expenses will be handled. It is highly recommended that you both create and share a joint checking account (assuming neither of you has poor credit).

How will marriage affect my inheritance?

As mentioned in the section of this book dealing with property division in a divorce; any gift or inheritance will remain separate property unless comingled with an asset that belongs to your spouse.

How is knowing about marriage relevant to my divorce?

Given that divorce is the dissolution of marriage, the connection between the two is self-evident. That being said, it is worth discussing the precise practical effect that marriage and the laws associated with it have upon divorce. There are really two major ways that this influence manifests:

1. First, you can only obtain a divorce if you are married. If there was no marriage or the marriage was invalid, then you cannot dissolve it via divorce. You would have to resort to a different alternative to divorce (discussed in a later chapter).
2. It is important to understand how marriage affected various aspects of your life (such as property, finances, legal relationships, etc.) so that you understand the effect that dissolving that marriage will have. It is vitally important to understand what property you owned going into the marriage and what was acquired during it so you will know what to expect when property is divided (See relevant chapters). It is equally essential that you are aware of how marriage affected your financial situation as well as your spouses. Likewise, you should be aware of what roles and contributions you and your spouse have made to the marital household as well as to the raising of any children you two may have.

Now that I am in the process of getting married, what can I do now to increase my odds of getting what I want in the event of a divorce?

It can be unpleasant to think about your happy marriage ending in a divorce, but sometimes that foresight is rewarding. If you find yourself contemplating such things, there are a couple of things that you can do now to

hedge your bets.

- Keep accurate documentation of all of the family finances. This is the information that will be used to determine spousal and child support, as well as the division of property. The last thing you want to do is leave that information ambiguous thus allowing your spouse and their attorney to submit their own numbers which might be more favorable to them
- Take care how you allow the parental duties to be divided. If you are dead set on getting sole custody or joint custody, the last thing you should ever do is allow your spouse to be the only direct caregiver and relegate yourself to being the breadwinner. Shared parental responsibilities generally results in more equal shared custody in the event of a divorce.
- If you and your spouse have any preferences about how a hypothetical divorce should take place, then you should record those preferences in a premarital agreement (also known as a pre-nuptial agreement or a pre-nup). A divorce judge is likely to make this agreement into the final divorce order even if the normal rules and standards for deciding the many facets of divorce would normally direct them to do something different. The only exception is child custody (and to a lesser extent child support) which will be determined primarily by the best interest of the child.

CHAPTER 40: PREMARITAL AGREEMENTS

Sometimes marriage vows just aren't enough. Some couples need a more nuanced agreement to make their relationship a stable one. This chapter will help prepare an effective and beneficial premarital agreement.

What is a premarital agreement?

An agreement made between soon-to-be spouses. It defines additional terms of the marriage that are not otherwise prescribed by law. They are typically used to determine what will happen in the event of a divorce.

My fiancé wants a prenup, what do I need to know? What can be included in the agreement?

A prenuptial agreement is valid as long as it complies with the Uniform Premarital Agreement Act. This act says nothing about what content can or cannot be in the agreement. What it does say is that spouses may have a contract regarding any of the following:

- The property rights of either or both spouses
- The right to buy, sell or lease property
- Determining what happens to property in the event of divorce or death. Can also apply to legal separation, annulment, or any other triggering event the couple desires.

- Changing or eliminating spousal support
- Making wills and trusts
- Ownership of death benefits or life insurance benefits
- Which states laws will govern the interpretation and enforcement of the premarital agreement
- Any other issue that does not run afoul of state public policy (you cannot decide child custody in a premarital agreement)

In order for such a contract to be enforceable, most courts require that it meet the following criteria:

- The agreement was voluntarily entered into
- The agreement must be in writing and signed
- Both parties must have honestly disclosed their net worth
- Any financial provisions must be reasonable and fair

It is also important to be aware that the courts will also refuse to enforce a premarital agreement that is considered "unconscionable". A good way to think about it is as an agreement so unfairly lopsided that no sane person would agree to it willingly.

Can we also use the agreement to decide which state's law applies in regard to the agreement?

Yes, as mentioned in the list of permitted content above, choice of law may also be included in the agreement. That being said, you may not use the agreement to decide which state has jurisdiction over any divorce, support, or custody related issue.

Can we use a premarital agreement to decide child custody in case of divorce?

Absolutely not. Child custody can never be determined by any prior agreement between the parents. The court will never allow parents to completely bypass the standard of "best interests of the child" that undergirds child custody determinations.

What is the Uniform Premarital Agreement Act? Has Michigan adopted it?

The UPAA is a model legislation for premarital agreements that has been adopted by many states, including Michigan. Rules of permitted content, the requirements for enforceability and many other rules regarding premarital agreements are taken directly from the UPAA. The one exception is the UPAA provision which renders premarital agreements unenforceable if the removal of spousal support from that agreement would render that spouse ineligible for public assistance. That provision was removed in Michigan's version (i.e. a valid agreement can affect access to public assistance).

Should my spouse and I hire lawyers to help us write this agreement?

It is highly advisable but not strictly necessary for both spouses to have their own separate attorneys to advise them when drafting a premarital agreement. This arrangement drastically reduces the likelihood of the court refusing to enforce the agreement even if one or more provisions seem lop-sided or unfair. However, there is still a chance that the court will reject the agreement if it excessively curtails spousal support upon divorce, especially if doing so would force that spouse to rely on public assistance.

Is it a good idea to finalize a premarital agreement the day before the wedding?

Absolutely not, any premarital agreement should be written up and finalized well in advance of a wedding. Without that level of pre-planning and consideration, the family court is far more likely to find the agreement to be unenforceable.

When does the premarital agreement go into effect?

It goes into effect as soon as you both are married. A “marital” contract is one that is written after the marriage takes place. Marital agreements go into effect immediately.

Can we modify our premarital agreement at a later date?

Not really. Once the agreement is effective, the spouses can’t just revoke it. However, if circumstances change so much that the original agreement becomes unfair or unreasonable, courts will typically refuse to enforce it.

What happens to a premarital agreement if the marriage is late found invalid/void? (See Alternatives to Divorce: annulments)

If the court finds the underlying marriage to be invalid or void, then the premarital agreement becomes largely unenforceable. The court will only enforce the parts of the agreement that are necessary to avoid an unfair result.

So if there is a prenuptial agreement, is there also such a thing as a “post”-nuptial agreement.

Yes, there is, although it has nothing to do with divorce. A postnuptial agreement is simply another way of securing a legal separation. Please see the relevant subsection in the chapter on “Alternatives to Marriage” (page 19) for more details.

CHAPTER 41: RIGHTS AND RESPONSIBILITIES OF MARRIAGE

Aside from the basic responsibilities of respect and fidelity, married couples have a number of responsibilities towards each other and a number of rights.

What happens to my property now that I am married?

Any property that you owned before the marriage remains your property. Anything acquired during the marriage is marital property that belongs to both of you.

What does it mean to own real estate in both of our names?

When title to a piece of real estate is in the name of two spouses, this is called a “tenancy by the entirety. This creates what is called a “right of survivorship”.This means that if one spouse dies, their ownership transfers to their spouse, who becomes the sole owner. Having the title in both named also prevents either spouse from selling or gifting their ownership to someone else. It also prevents either spouse from individually getting a lien (an “encumbrance”) on the property.

In the event the couple gets a divorce, the ownership becomes a regular tenancy in common. Either ex-spouse may then freely sell, gift, or place liens on their portion of the tenancy.

When would a married couple need to visit a register of deeds?

One or both of you would visit a register of deeds if you wanted to issue a new deed that placed real estate in both of your name and also whenever you wanted to refinance your home.

If I have a will, will getting married affect that will? What if I don't have a will?

If you get married, it is highly advisable that you rewrite your will, especially if you have any specific desires about how your spouse will inherit. Marriage will not automatically invalidate an existing will, however, Michigan law recognizes that a spouse has a legal right to inherit from the other spouse's estate. As such, if they are not mentioned in your will at all, they will still inherit the same way they would have if you had died without a will (intestate). Anything remaining will be distributed according to the pre-existing will.

If there is no will, then Michigan law will determine inheritance based on factors such as surviving parents as well as the existence and number of descendants. If the deceased has no surviving parents or descendants, then their spouse shall be the sole heir of their estate and inherit everything (living siblings don't count).

If there are surviving parents, but no descendant, then the spouse is entitled to the first $204,000 if the estate plus three quarters of whatever remains. The parents will be given the remaining quarter.

If there are surviving descendants who are also descendants of the surviving spouse, then the surviving spouse receives the same $204,000 but must split their remainder with all of those descendants. This less generous treatment of shared descendants is based on the assumption that those descendants will eventually inherit from their mother/father later when she/he dies later.

If the surviving descendants are not the descendants of the surviving spouse (i.e. stepchildren), then the surviving spouse is only entitled to the first $136,000 and must split the remainder with those stepchildren.

If there is no surviving spouse then the order of priority is as follows:

- Direct descendants
- The parents of the deceased
- Any siblings of the deceased
- Any nieces or nephews of the deceased
- Split half and half with the paternal and maternal grandparents.

Unless you really like the arrangement set up above, then you should definitely write a will and rewrite it whenever you get married.

How will marriage affect my social security benefits?

That depends on which benefit you are talking about. Marriage has no effect whatsoever on the standard retirement benefit or the disability benefit (SSDI). However, getting married might entitle you to the spousal

benefit, which you would receive in lieu of your own retirement benefit. The spousal benefit is worth up to half of your spouse's (or ex spouse's) retirement benefit. Obviously you would choose to take whichever benefit is greater.

If you receive Supplemental Security Income (SSI), your benefits will be reduced based on your spouse's income, which will be imputed to you. That imputed income may also determine whether you are eligible for those benefits period. Also, if both spouses receive SSI, then they will receive the couple's rate rather than the individual one.

If you receive divorced spouse's benefits, then you will stop receiving them once you are married.

You will not receive widow/widower or divorced widow/widower if you remarry before age 60 unless you are disabled, in which case the deadline is age 50 (at which point other benefits kick in).

How will getting married effect my other government benefits?

Many of those benefits will also be reduced or even terminated when you get married. Programs such as food stamps and Supplemental security income will treat your spouse's income as part of yours for the purposes of determining eligibility as well as the level of benefits.

To what extent am I responsible for supporting my spouse financially? Can I be held responsible for their debts?

You are generally obligated to ensure the wellbeing of your spouse. However, you are not liable for any debt incurred by your spouse unless you also signed the contract. This is because Michigan is an equitable division state. The only exception to this is if you entered into the debt together (which typically involves both of you signing the debt agreement.

Is my separate property subject to my spouse's debt?

No, it is not. Just like your money, Michigan equitable division and other domestic laws protect separate property from the other spouse's debt unless both parties signed the document agreeing to the debt or they otherwise enter into the debt together.

Are there any expenditures that we are jointly liable for?

Yes, by the same token that makes you responsible for providing for your spouse, both spouses are jointly and separately liable for any purchase of "necessities". If a married couple accumulates a great deal of debt buying groceries, food, and gasoline, then that debt might be divided between them when they divorce even if only one of the spouses made those purchases.

Am I allowed to lock my spouse out of our home?

Technically no unless you have a court order excluding them from said home. That being said, it is perfectly

ok to change the locks. In the same vein, your spouse is legally allowed to break into the house and change the locks themselves.

To what extent can the government regulate the affairs of my family? To what extent does the law protect our privacy?

The law generally prevents the government from regulating internal familial affairs. The Supreme Court has determined that the liberty right of the due process clause grants a right of privacy. This is a fundamental right which the government may not infringe upon without a compelling government interest. This right to Privacy includes a number of rights such as

- The right to marry (including same sex marriage)
- The right to procreate
- The right to use and sell contraceptives
- The right to an abortion (with some limits)
- The right for related people to live together
- A parent's right to homeschool their child
- A parent's right to make important decisions for their children

I am facing criminal charges, and my spouse is being used as a witness against me. Do I have any way to stop this?

A married person cannot be legally compelled to testify against their spouse in any legal proceeding. However, this right takes a different form depending on what kind of case it is.

If the case is civil or administrative, then the privilege belongs to the non-testifying spouse (i.e. you). This means that they can force their spouse not to testify even if that spouse would be willing to do so.

In a criminal case, that privilege belongs to the spouse being used as a witness. This means that the testifying spouse cannot be forced to testify by the prosecutor, but may testify if they choose to do so. The spouse facing charges has no power to stop them from doing so. This immunity can only be invoked during a valid marriage.

Spouses also have rights of confidentiality that protect private conversations between spouses. In criminal cases, this allows either spouse to refuse to disclose. However, in civil cases, one spouse can actively prevent the other spouse from disclosing. However, these privileges do not apply when the spouses are suing each other or when the crime is against the testifying spouse or their children.

Someone is turning my spouse away from me, can I sue them for the emotional harm they are causing.

No, you cannot. There used to be causes of action under Michigan law when someone alienates a spouse's affection or commits adultery with your spouse (Criminal Conversation), but both of these torts have been abolished in Michigan.

Someone has injured or killed my spouse, can I sue them for the loss of companionship?

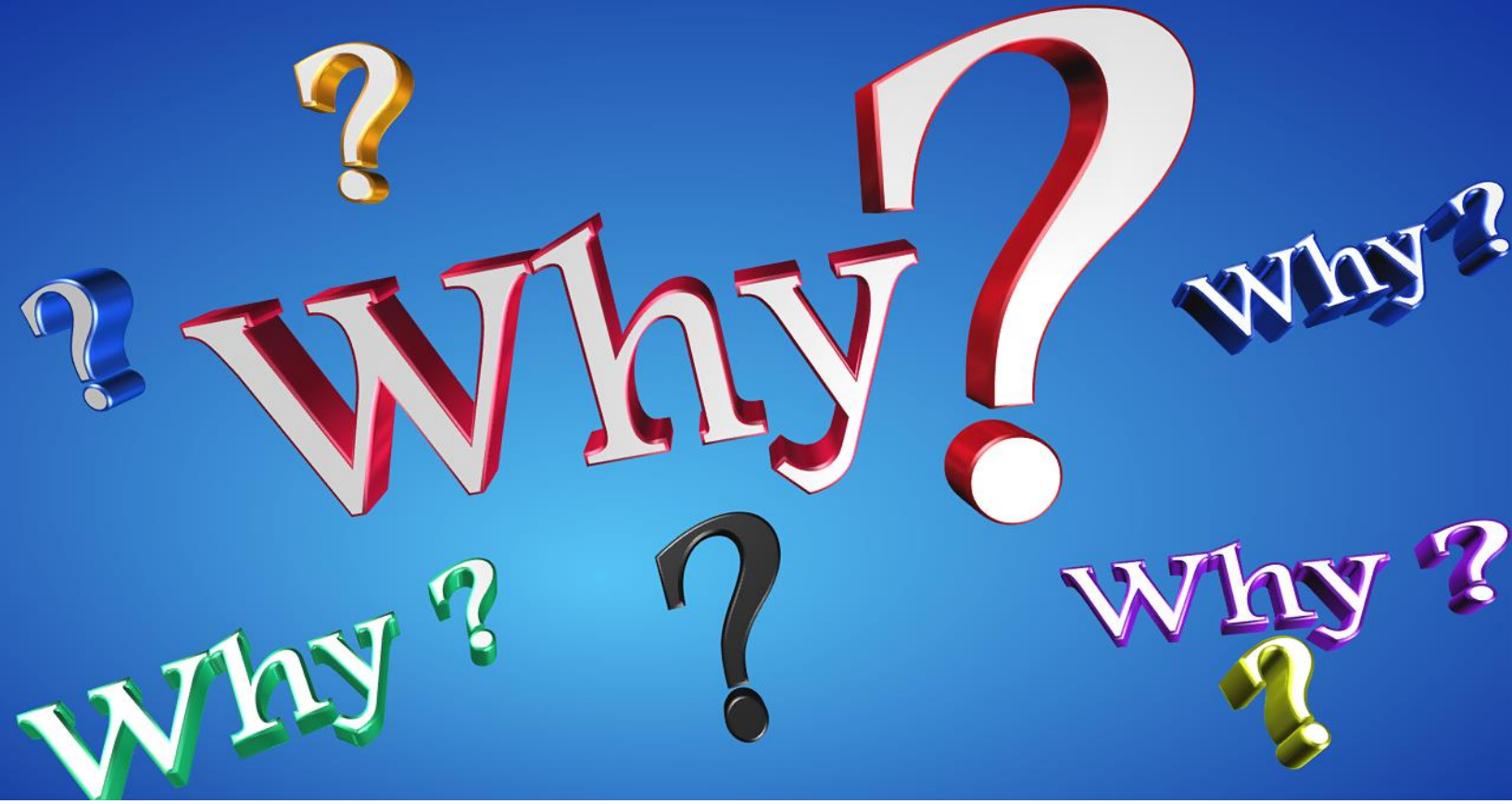
Yes, you can. This is called loss of consortium or interference with services. These causes of action are still available in Michigan.

We are cohabiting but not married, do we have any of the same rights as a married couple? Do we have any special rights?

A cohabiting couple has similar contract rights to a married couple. If they make a clear contract about their earnings or ownership of property, the family courts will usually enforce it. Unless of course one of the cohabitants is only offering sexual relations as their part of the exchange. If the contract is only implied, the court is less likely to enforce it. For best results, you should get all of your contracts in writing.

Michigan law also allows courts to divide cohabitants' property in the same way that a divorced couple. However, it will only do so if there is a clear contract between the parties.

An unmarried, cohabiting couple does not have any special rights simply because they live together. They still retain their individual rights.



CHAPTER 42: GENERAL FAMILY LAW Q AND A

This section is a collection of the most commonly asked questions about each and every subtopic covered in this book. It contains copies of question already answered elsewhere in this guide, but repeated here for your convenience.

What does a valid legal marriage require?

A valid marriage in Michigan requires a marriage license and solemnization. The license must be acquired first. No blood tests are necessary, but you will be given educational materials on HIV and other STD's. After applying for the license, there will be a 72 hour waiting period before you actually receive it.

A valid solemnization is simply a ceremony performed by a valid officiator. Any of the following can perform a valid marriage in Michigan:

- An ordained minister (Priest, rabbi, imam, etc.)
- Judges
- Court clerks
- Justices of the peace
- Mayors of Michigan cities

- Any civil officer with the power to administer and enforce the law.

Now that I am in the process of getting married, what can I do now to increase my odds of getting what I want in the event of a divorce?

It can be unpleasant to think about your happy marriage ending in a divorce, but sometimes that foresight is rewarding. If you find yourself contemplating such things, there are a couple of things that you can do now to hedge your bets.

- Keep accurate documentation of all of the family finances. This is the information that will be used to determine spousal and child support, as well as the division of property. The last thing you want to do is leave that information ambiguous thus allowing your spouse and their attorney to submit their own numbers which might be more favorable to them
- Take care how you allow the parental duties to be divided. If you are dead set on getting sole custody or joint custody, the last thing you should ever do is allow your spouse to be the only direct caregiver and relegate yourself to being the breadwinner. Shared parental responsibilities generally results in more equal shared custody in the event of a divorce.
- If you and your spouse have any preferences about how a hypothetical divorce should take place, then you should record those preferences in a premarital agreement (also known as a pre-nuptial agreement or a pre-nup). A divorce judge is likely to make this agreement into the final divorce order even if the normal rules and standards for deciding the many facets of divorce would normally direct them to do something different. The only exception is child custody (and to a lesser extent child support) which will be determined primarily by the best interest of the child.

Do we have to be separated to get a divorce?

No, you do not. You do not have to live separately or have a legal separation in order to file for divorce. Living separately is only a requirement if you have already obtained a legal separation. In the case of divorce, you may remain married and live in the marital household until the moment the final divorce order is handed down by the judge.

If my spouse has served me with divorce papers, how should I respond?

Technically you don't have to respond at all. Given that Michigan is a no fault divorce state, your spouse can see through their divorce from you without any input from you unless you either challenge the divorce or have children. If you wish to challenge the divorce, then you must file an answer which challenges the assertion that the marital relationship has irrevocably broken down.

The complaint from your spouse also contains your spouse's initial claims in terms of custody, spousal support, and child support. If you agree with their idea to get divorced, but disagree with these claims, then you must file a counterclaim. If you fail to respond, you run the significant risk that the judge will grant all of your spouse's requests. However, filing a counterclaim may create complications if you decide not to get

divorced later (see the following section for more details).

What is a No Fault divorce?

No-fault divorce means that you do not have to show any wrongdoing on the part of your soon-to-be former spouse in order to get a divorce. Just the basic requirement (a marriage broken beyond repair) is all that you need. However, fault may become relevant if any aspect of the divorce is contested. If there is fault with one of the parties, and the judge decides to consider that fault in the divorce judgement, that party may get a less favorable outcome in terms of division of assets, alimony, or child custody. If the divorce is uncontested (see the question below), you will most likely be unable to use that person's fault against them.

What is an uncontested divorce?

A divorce is uncontested when both spouses agree to the divorce, and there is no dispute about alimony, custody, division of property, etc. This results in an agreement being settled between them that will usually become the final divorce judgement. While this can save a lot of time and money, it will not shorten the minimum duration of six months if there are children involved. Furthermore, there will still be at least one hearing where the question of marital breakdown will be considered. Furthermore, a family court may ignore or reject such an agreement between spouses regarding child support or custody if it believes that the agreement is not in the child's best interest.

What is a contested divorce?

A contested divorce is simply a case where one or both spouses disagree about some aspect of the divorce. This requires the court to settle the dispute when deciding the terms of the divorce. This often extends the duration of the divorce process and increases the stress and financial burden for both parties.

How do I initiate the divorce?

To get the ball rolling, you need to file a complaint for divorce with the clerk at the family court. The complaint alleges basic facts about your divorce. It will also contain your initial proposal for the conditions of the divorce such as property division, custody, support, etc. This document should include the grounds for your divorce.

How long does it take to get a divorce?

That depends on the circumstances as well as how long you have lived in the state and county. In order to file for divorce in Michigan you must be a resident of the state for at least 180 days (six months) and a resident of the county where you file for divorce for at least 10 days. After the residency requirement is met, and you file for divorce, you will be subject to a mandatory waiting period before the divorce may be finalized. The waiting period is 60 days (two months) from the time papers are served if there are no children, 180 days (six months) if there are children. These are just the minimum timeframes, a contested divorce might take even longer.

Will we have to go to court to get a divorce?

The one who files for divorce will have to sit for at least one (and possibly more hearings) in order to persuade the judge that the marriage is broken beyond repair. The other spouse does not have to respond in any way or appear in court unless they wish to contest some issue of the divorce. The other spouse's permission is not required, and they cannot simply forbid it. If any aspect of the divorce is contested, then both spouses must attend every hearing dealing with the contested issue.

What do we do about custody, parenting time, visitation, property, and other issues while the divorce is proceeding?

The court will generally issue "ex-parte" orders which will temporarily decide things like custody, who gets to live in the family home, etc. These temporary orders are meant to maintain the status quo. These orders will be issued at brief court hearings where the spouse(s) will usually only be allowed to submit affidavits. These orders will take effect within 14 days unless the other party objects. Because these hearings and orders can be made before service even happens and with only one party present, copies of ex parte orders must be served along with the complaint.

In order to get as much of what I want out of my divorce, what are some useful tips?

1. Make sure you understand what your spouse wants out of your divorce
2. The law is more or less set in stone, and it is not always fair
3. Make sure your expectations of your attorney are reasonable and realistic
4. That being said, don't be afraid to assess their performance, we have chapters in this guide that will help you do just that
5. Make sure your email and social media are secure
6. If you are concerned about custody or spousal support, make sure you know the consequences of moving out of the marital home. Consult your attorney before making any significant decisions
7. Private agreements with your spouse are likely to be more accommodating to your wants and needs than anything handed down by the court.

What If I don't want a divorce, but no longer want to stay with my spouse?

In the state of Michigan, divorce is not the only method for ending/dissolving a marriage. There are two other methods that are both very different. It is important to understand these differences so that you can make an informed decision about which path is right for you and your family.

Some families have a religious objection to divorce. For this and other reasons, a couple might pursue a separate maintenance (i.e. a legal separation) in lieu of a divorce. These are extremely rare occurrences. The only difference between an action for separate maintenance and a divorce is that the parties will be prevented from remarrying. However, if one of the parties files for divorce, the family court will default to the divorce and toss out the action for separate maintenance.

You can also get an annulment (see relevant section of this guide).

How will our property be divided?

Married couples usually share their house and other property. They also acquire property during the course of the marriage. For this reason, the court must determine what property belongs to whom, and how shared property should be divided. Like Spousal support, one of the objectives of property division is to return the other spouse to the position they were in before or during the marriage. The court will also try to give each spouse all of the property they have "equitable title" to.

There are many approaches to property division utilized by various states. In Michigan, the preferred approach is known as "equitable division of marital property". Under this approach, any property which was owned by either spouse before the marriage is their own "separate property". Any property which was acquired during the marriage is divided up in a fair and generally equal matter. That being said, what is fair will not always be "equal", and the family court will seek fairness above all else. However, under certain circumstances, the court may dip into one party's separate property to give to the other in order to achieve "fairness and equity". They are also likely to treat what would otherwise be separate property as marital property if the other spouse was somehow instrumental in acquiring or developing that property.

What is marital Property?

In general, marital property is any property that was acquired during the marriage. There are, however, certain types of assets that the court deals with in a very specific manner. It is important to know about these in advance of a divorce case.

- *Pensions:* Only the part of a pension that was earned while married is marital property.
- *Professional Licenses and Degrees:* These are also considered marital property if acquired during the marriage. However, the court will not actually take a degree/license and give it to the other spouse. Instead, the court will add the equivalent value of the certification to the "pot" of marital property and then divide it accordingly.
- *Stock Options:* If they are earned during the marriage they are marital property, even if they can't be exercised until after the divorce.
- *Employment Bonus:* If it is earned during the marriage, it is marital property. However, if the bonus depends on a condition that does not occur until after the marriage, it is not considered "earned" during the marriage.
- *Workers' Compensation Benefits:* Only benefits for wages lost during the marriage. Also, if the injury occurred before the marriage, and the benefit for the lost wages is received during the marriage, then that benefit is also marital property.

Aside from these specific examples, all other property will be treated according to the basic protocol. Not only will property acquired during the marriage be considered marital property, but if the value of a piece of separate property increased during the marriage, then the court will presume that the increase was caused by

the marriage to the other spouse, and will therefore consider the added value to be divisible marital property. This typically manifests itself as one spouse being able to claim a greater amount or value of the shared marital assets.

What about the marital/family home? Who gets it? Will we lose it?

That depends on the circumstances. If there are no minor children involved in the divorce, then the marital home will be divided on the same basis as all the other marital property. That being said, the court will show some preference for keeping the entire house in the possession of at least one of the spouses if it is possible to do so fairly.

Typically if there are few other assets other than the house, then the house will likely be sold and the proceeds will be divided accordingly between the spouses. The other option is if the spouse who does get the house has enough personal wealth, or if there is sufficient other property, then the recipient spouse will have to "buy out" the non-recipients share of the total value of the house.

If one spouse is the primary caregiver and has been given possession of the house, then that spouse is more likely to receive the marital home to ensure the continuity of the environment for their children and minimize the psychological harm that divorces often cause.

Who will be responsible for the marital debts following the divorce?

Marital debt is distributed along with property, albeit using different standards and procedures. The court will generally strive for fairness in the distribution. This typically means that the marital debt is divided roughly equally. However, the judge might opt for a more lopsided distribution if they felt it would be fairer to do so. Unequal distribution might be justified in the following scenarios:

- One spouse was more at fault for the marriage ending (see sections dealing with fault grounds)
- One spouse has a significantly greater ability to pay
- One spouse is responsible for accruing an outsized amount of debt without the other spouse's consent, for purposes unrelated to the benefit of the household (such as gambling debts or other personal recreation).

How can I make sure that I get the property I deserve when property is divided?

The first and most important thing you can do going into a divorce in order to have a more favorable property distribution is to have either a premarital agreement that memorializes the desired arrangement of you and your spouse or a separate document signed by the both of you which declares the particular designation of marital and separate property which is most likely to result in the desired distribution. Here a few other things you can do to boost your odds of a favorable outcome.

- Be aware of how property becomes separate or marital. If your marriage is approaching and there is a particular piece of property that you want to be separate, do not wait until after you are married to buy

it.

- Consider keeping your own separate bank account that you use for personal purchases. This makes it slightly more likely that those purchases will be considered separate property, especially if they are designated as such in an agreement with your spouse.
- Make financial prudence a core value of your household. If you allow your spouse to accrue an excessive amount of debt, it is possible that you will be made responsible for an unfair portion of that debt.
- Be careful about allowing your spouse to help pay for an item you would like to be considered separate property as any contribution is likely to convert it into marital property
- Be careful about allowing something that was separate property to be mingled with anything that is marital property

How is alimony/spousal support determined?

The amount is generally left up to the court's discretion. The Michigan family court will consider the following factors when determining the amount.

- The relationship and conduct of the former spouses
- The length of the marriage (a longer marriage might mean one of the spouses has less independent earning power)
- The ability of either spouse to work
- The type and amount of property that was awarded when the marital property was divided (a generous award might mean less generous support payments)
- The paying spouse's ability to pay. (Family courts typically try to avoid bankrupting people.)
- The needs/health/situation of either spouse
- The prior standard of living of either spouse. (The rule of thumb is that the court will try to give the spouse being paid the "standard of living to which he/she has become accustomed)
- The contributions each spouse made to the marital estate
- Any fault by either party (abuse, adultery, etc.)
- How living together affected each spouse's financial situation (cohabiting is a great way to save costs)
- General principles of fairness

The amount and duration of spousal support also depends on what type of support it is:

- Permanent Support is a payment given to one spouse because they lack the means to support themselves. This will either take the form of regular payments made to the other spouse for the remainder of their lifetime or one "lump sum" payment.

- Rehabilitative support is a periodic payment made for a limited time so that the other spouse can gain the skills to become self-supporting.
- A reimbursement support payment is sometimes ordered by the court when there is a situation where one spouse supported the other while they earned a degree or a professional license. The amount is based on how much help the supporting spouse gave, not the value of the degree license.

How can I make sure that I get the spousal support benefits that I deserve or only pay an amount that is fair?

The most reliable way is to write up a premarital agreement that discusses spousal support. It goes without saying that you should make sure that the type and amount of support is what you want and deserve. If you believe spousal support will be decided in court, then things will get a bit more complicated.

In any case, you should keep relatively detailed records of your, and your spouse's income before and after getting married. The last thing you want is to give your spouse and opportunity to push arbitrary and made up numbers for their own benefit. Furthermore, having documentary proof will make your own arguments more persuasive. Be aware, that if your spouse draws down their own career in order to spend more time at home, that will likely mean that they will receive support from you if the two of you divorce. Obviously the reverse is true if your spouse ends up playing the role of breadwinner.

You should also be aware of the extent to which your spouse assists you in pursuing education, acquiring property, etc. These can result in an order of support even if your spouse has greater income and even if you suffered a loss of income as a result of getting married.

Keeping all of this in mind going into a marriage, you can then determine to what extent it is appropriate for you and your spouse the arrange your new life as a married family in order to effect the outcome of a hypothetical property division in a divorce. Although it is entirely possible that you and your spouse won't actually care that much and will (hopefully) just come to an agreement amicably if it ever comes to that.

What can I do to make sure I get the modification that I want, or to make sure my spouse doesn't get a modification they don't deserve?

No matter which side of the modification process you end up on, the advice is largely the same. The most important step is to keep adequate financial records for both yourself and your former spouse (if possible). Your (the paying spouse's) own records are more important as a modification will typically stem from your own income either increasing or decreasing. Sometimes you might need documents from a third party. For example if the receiving spouse is asking for modification because they lost a job, it might be helpful to obtain a document from their former employer stating that they were fired for cause. You might be able to use this to argue that you shouldn't have to pay more in spousal support because their diminished income was their own fault.

How does the court decide which parent(s) get custody of the children?

There are actually two types of custody that a parent has under the law. The first is legal custody, which is the right of every parent to make major decisions in their child's life and to be able to visit and have contact with them. Both parents generally retain legal custody even after the divorce is concluded. Usually, the only way you lose it is if you lose your parental rights or the courts make a rare decision to grant sole legal custody to the other parent.

The other form of custody is physical custody. Physical custody is where you actually keep the child in your home, under your roof. The child lives with you. When you change houses, so does the child. This form of custody is usually only given to one of the parents but can sometimes be shared between both. This is the form of custody that ex-spouses sometimes dispute over during a divorce case.

The core rule the court uses when determining custody is the best interest of the child. The interests of the parents themselves are strictly secondary. The court will consider any factor which affects the child's wellbeing. There are twelve factors in total:

- Maintaining the relationships of love and affection shared between parent and child. (Courts assume such relationships are highly beneficial to children)
- The capability of the parents to provide that love and affection
- The ability of the parent to provide necessities such as food, clothing, shelter, and medical care (obvious factor in a child's well-being)
- Maintaining and continuing the stable environment the child has grown up with (including living with siblings)(family courts firmly believe that children need consistency and stability)
- The court will try its best to keep the child in their current home. This why the court almost always gives the family residence to the custodial parent
- The moral fitness of either parent (including criminal records or the child knowing that one of the parents had an extramarital affair) (parents set a moral example for their children to follow)
- The mental and physical wellbeing of the parents (without discriminating against certain disabilities)
- The child's school, home, and community records
- Child's reasonable preference: if the child is old enough, then the court will conduct an in-person interview, and any reasonable preference will be taken into consideration
- The willingness of either parent to facilitate the child's relationship with the other parent (Actions taken to shield a child from domestic violence or sexual assault may not be counted against this factor)
- Any history of domestic violence

Please note that custody can be given to someone who is not a biological parent. This is rare, but the court will also apply these factors in reference to an aunt, uncle, grandparent, or even a non-relative.

Will the court automatically give custody to the mother?

Technically no. The court will avoid any explicit gender preference. However, as a rule, the court prefers to give custody to the parent who was the primary caregiver. In practice, this usually results in the mother getting physical custody because most families still follow the model of male breadwinner/ female caretaker. However, with an increasing number of households with two working parents, the courts may tend to give joint custody.

How does the court decide which parent is a primary caregiver?

The family court will typically look at which parent spends more time with the children. It will also look at how many of the care childcare responsibilities such as:

- Bathing/grooming/dressing
- Buying clothes
- Buying groceries and preparing meals
- Ensuring proper healthcare
- Facilitating social activities and participation in extracurricular activities
- Teaching and helping with homework
- Attending parent-teacher meetings and other activities involving the child's education
- Playing with the child and other leisure activities

Based on these standards it is still possible to be considered the primary caregiver despite spending relatively fewer hours and minutes with the children if you undertake the lion's share of the caregiving responsibilities.

What can I do to make sure that I get the child custody arrangement that I want? Can I include it in a premarital agreement?

That depends on what you want in terms of a custody arrangement and what you are willing to give up in exchange. Primary physical custody typically goes to the primary caregiver, so a serious compromise of your family/career balance would be required to set the stage for you to be relatively certain to be granted primary physical custody. Otherwise, the relative balance of a joint custody arrangement will largely depend on your relative involvement in caring for your children. Think long and hard about what balance you are willing to strike and commit to it for the duration of your marriage.

The short and simple answer regarding custody in premarital agreements is "no". A family court will never deviate from the "best interest of the child standard" even if an accord is reached in a premarital agreement between the parents.

What can I do to make sure that the modification process yields a favorable outcome?

Whether you are the party seeking modification, or the other spouse seeking to block or mitigate the modification, the steps you must take are the same. Since you won't be able to protect or bolster your case with a premarital or post-marital agreement, you will have to understand the rules and standards that are used to make modification decisions. Once you understand that modification depends on a change in circumstances which causes such a modification to be in the best interest of the child, you can then figure out what you can do to make your case more compelling. An important step to take is to document relevant aspects of your domestic situation. If your former spouse is making assertions about the situation involving your children that you know to be false, then you can use documentary evidence to disprove those lies.

Having solid proof of your family situation is also very helpful if you are asking for a very generous custody order (such as sole custody) that the judge might not be willing to grant if they had to just take your word for it.

In theory it is also possible to intentionally alter your own circumstances in order to trigger a change in the custody arrangement, but the same issue arise that you face in the initial custody determination and then some. Not only do you have to carefully consider the costs and benefits of altering the balance between your career and your relationship with your children, but you also have to take into consideration the cost in time and money of going through a whole new custody determination.

How is child support determined?

Michigan courts will use certain statutory guidelines to determine how much to order in child support payments. These guidelines direct the court to use the following factors.

- Financial resources of the parents
- The size of the family
- The ages of the children
- The cost of childcare and education
- The cost of healthcare and dental care
- Other factors such as other support payments being made by that parent or other family obligations.

Michigan family courts utilize the Michigan Child Support Formula. This formula is publicly available and is relatively complex. The most important factor in the formula is the parent's net income. Net income is calculated by taking the gross income (the money in wages, profits, etc.) minus a number of deductions permitted by the court. Income taxes are deducted from net income, as is child support for children from a different relationship. Pensions, subsidies, and tips are all included in income. Nonmonetary benefits and perks are also included. If you cover certain expenses such as health insurance premiums, that will be deducted from your support amount.

The gross income (which is then deducted from to get the net income) also consists of (but is not limited to) the following items:

- Overtime pay, commissions, and bonuses
- Earnings generated from a business, self-employment, or rental
- Profits from profit sharing, pensions, insurance contract, trust fund, Social security, and certain other social welfare programs
- Losses from a business might not be counted if they are deemed to be a tax strategy rather than a legitimate loss
- Tips, gratuities, and royalties
- Interest payments and dividends
- Casino and lottery winnings will be counted if they represent regular income or are used to generate regular income via investment
- Capital gains will be counted if they occur in recurring transactions, result from a single identifiable event, or when the parent has insufficient cash
- A portion of the adoption subsidy
- The market value of some perks provided to employees such as housing, food stipends, and personal use of a company vehicle. This does not e=include benefits such as tuition reimbursements or health savings accounts
- Income that has been reduced or deferred unnecessarily (to prevent that parent from hiding their income).
- Certain tax deductions might be added back to the parent's income for child support purposes
- Income from spousal support from someone other than the other parent
- The potential income of a voluntarily unemployed or underemployed parent
- Does not usually include inheritance or other one-time gifts

Net income will be calculated by deducting certain items (such as those listed below) from the parent's gross income:

- Alimony/spousal support paid to someone other than the other parent
- Income and Medicare taxes
- Any mandatory payment that is a condition of employment (such as union dues)
- Premiums for any life insurance of which the shared child/children are a beneficiary
- The costs of any care or services associated with a case service or permanency plan associated with a CPS or juvenile delinquency case

- The cost of the parent's mandatory healthcare expenses

Your child support amount will be slightly decreased depending on how much parenting time you have. The rationale behind this is that if the child is living under your roof, then you are supporting them yourself during that time. Please note that this only includes the number of nights where the child stayed overnight.

Unlike some states, Michigan will still take the wages from a second job into consideration when determining ability to pay.

What can I do to get the best possible child support arrangement?

Whether you are the paying parent or the receiving parent, it is completely natural to want to get the most advantageous support arrangement for both you and your children. Just be sure to remember that, unlike spousal support, these payments are not meant for the benefit of the receiving spouse.

It is also important to remember that premarital and post-marital agreements are generally not effective methods of determining what the child support and custody arrangements will be given the court's commitment to the best interest of the child.

It is always a good idea to keep detailed and adequate documentation of all factors relevant to a child support determination such as: income, finances, other payments which are deductible from your gross income, child care expenses, and evidence regarding your role in raising the children as well as what the parenting time arrangement will be when the divorce is concluded.

It I also important to think about how you would like to prioritize the various factors of a child support/custody arrangement. Keep in mind, that you can reduce your child support obligation by simply taking more parenting time. However, it might very well be the case that by taking more time to work, you would end up making more money than you would pay in additional child support. At that point, it comes down to how you would weigh the monetary benefit against having more time with your children. Make sure that you discuss this thoroughly with your attorney in preparation for any hearings and mediation regarding child support and custody.

How is child support collected and paid out?

In the old days, you would have to mail a check to the FOC, who would then mail their own check to the recipient parent. Electronic banking has changed all that. Now Michigan uses the Michigan State Disbursement unit (MiSDU). Under this system, the amount of the paying parent's child support is automatically withheld from their paychecks and will be deposited in the other parent's bank account within 24 hours.

If the recipient parent does not have a bank account, then MiSDU will provide them with a debit card. If the paying parent does not receive their income in the form of paychecks, then they will have to mail checks to MiSDU.

Do we have to utilize FOC and MiSDU to handle our child support?

No, you and your former spouse may opt out of those services at any time. However, in doing so you waive the use of any of those services and must now make and receive child support payments directly. Furthermore, you may not call upon the court to settle any further disputes regarding support, custody, or parenting time (you'll have to settle those out of court). If you still want the court to settle those disputes for you, you must opt back in to FOC services. It is an all or nothing deal.

Please be advised that some courts are so strict that they will refuse to hear or settle any dispute that arises during an "opt out" period, so you should think very carefully before opting out.

Even if these services are voluntary, it is highly recommended that you use them rather than simply making the payments directly, because doing so pretty much eliminates the risk of the receiving parent wrongfully accusing you of failing to pay child support.

What can steps can I take to ensure the best outcome from a child support modification hearing?

The most important thing for you to do is to understand and remember what the legal basis for a support modification is. The court will only grant a modification if there has been a substantial change in circumstances which would cause such a modification to be in the best interest of the child or otherwise affects the ability of the paying parent to pay their child support obligation. With that in mind, you need to figure out how to prove this on court. Documents which show income and expenses are a great way to do this. Having documents make any claims and assertions you make or rebut more persuasive, especially if such assertions are particularly convenient and beneficial to you. Furthermore, it gives you a countermeasure if the other spouse tries to make a claim that is either exaggerated or untrue.

Please keep in mind that you will not be able to resolve this issue using premarital agreements for a couple of reasons. First, the courts will never enforce any contractual clause which deals with issues of child custody or support. They will only ever use the best interest of the child to determine that. Furthermore, enshrining it in a written agreement would do nothing at all to invalidate the issue of changed circumstances, even if the court were receptive to such an agreement.

Speaking of agreements, it is absolutely vital that you avoid relying on any "handshake deals" with the other parent. Unless a court order has officially modified your support obligation, the only thing such an ad hoc agreement will net you is contempt of court and unnecessary arrears.

What is the Michigan child support calculator and how does it work?

The state of Michigan offers its own free and official child support calculator. You can find the calculator on the Department of Health and Human Services website at:
micase.state.mi.us/calculatorapp/public/welcome/load.html

You use the application by filling in the various prompts which are meant to represent the variables utilized

by the official formula. Make sure that you are answering the prompts designated for your role in the proceedings (it has separate sections for each parent). Once all of the information is filled in, the calculator will determine, who, if anyone should pay support as well as how much they should pay.

Do I need a divorce lawyer?

That depends on the circumstances. In an amicable and uncontested divorce, avoiding the courts and lawyers as much as possible is a great way to reduce the stress and expense of your divorce. Also, in an already tense situation, lawyering up can often make things worse.

Having a divorce lawyer is helpful when there is a significant dispute over an important factor of the divorce or in situations involving abuse. Lawyering up can also be helpful if you reasonably suspect that your spouse is being dishonest. As a rule, you should hire an attorney if your soon-to-be former spouse has already done so.

What are the Different grounds for divorce?

Michigan only offers no-fault divorce (fault divorce is not available). This means that there is technically only one ground for divorce: that the marital relationship has irrevocable broken down beyond a reasonable hope of repair. Factors that might be considered fault grounds might still be relevant in deciding important factors of the divorce, such as child custody.

Some examples of fault grounds are:

- Adultery: marriage typically involves marital fidelity, so cheating can cause huge problems to a marriage.
- Cruelty: A spouse is expected to love, cherish, and protect the other. In eras past, the law might have required one spouse to show that the other was behaving in a very cruel and unspouselike manner in order to get a divorce from said spouse. Nowadays such abusive behavior tends to become ammunition in the disputes over custody, support, and property.
- Abandonment: similar to Cruelty in that it implicates the duty one spouse has towards the other. In this case, it means that one spouse is not upholding their duty to provide comfort, company, and companionship to their spouse.
- Mental illness/insanity: You do not have to spend the rest of your life with a crazy person. In the modern era, it is largely pointless in divorce proceedings because society now prefers to avoid discriminating against the mentally ill or disabled. The vast majority of family courts will refuse to give the “sane” spouse more favorable treatment on account of their former spouse’s unfortunate condition.
- Criminal conviction: This is particularly relevant if the spouse has been incarcerated for a very lengthy period of time.
- Religious differences: largely irrelevant due to changing attitudes and a trend against discriminating

against different religions.

What if I change my mind in the middle of the divorce process?

If you were the spouse who originally filed for divorce your spouse has not filed an answer, motion, or counterclaim, then you can file for dismissal automatically. However, if any of those things have been filed, then you need the signature of both spouses.

Also, if you have allowed the divorce process to continue to such an extent that you and your spouse are subject to a motion granted by the court or a counterclaim has been filed, then you need the written consent of your spouse to discontinue the divorce process. Otherwise, you risk your spouse getting awarded everything they asked for in their counterclaim because you stopped arguing your side of the case and handed them a victory be default

How do I get a PPO?

You must file a petition with a judge. This petition will contain all of the necessary information that the judge needs to determine if you qualify for a PPO. Try your best to give a detailed description of what happened and who did it to you? Try to remember dates and times as specifically as possible. If you have any copies of police reports, you should include them with your petition.

In addition to showing a domestic relationship, you must also demonstrate to the judge that you are afraid that the target of your order is likely to stalk, harass, threaten, or assault you.

What does a PPO do for me?

A PPO is a restraining order. It legally bars the person subjected to it from certain actions and behaviors. More specifically, it bans them from:

- Entering your home or any other place that you occupy
- Assaulting, attacking, or harassing another person
- Threatening to injure or kill you or another person
- Removing any child that you have legal custody over
- Buying or possessing a firearm
- Preventing you from removing your children or personal possessions from any place owned or leased by the abuser
- Interfering with you at your school or job; or otherwise harming your career, education, or environment
- Having access to your home or work address or any telephone number associated with a child you both share

- Stalking you
- Causing mental harm or otherwise coercing you by threatening to harm or take away an animal that you own
- Any other action that interferes with your personal freedom or causes a reasonable fear of violence

Violation of a protection order is a crime. If you call the police, the violator is subject to immediate arrest. Following a violation, you can petition the court for a motion to show cause for the violation of the protection order. This will likely result in the judge punishing your abuser.

It is extremely important that you report any violation of your order. Do not allow your abuser to convince you that "things will be different". Your order has a finite duration, allow that duration to run its course.

What does arrears mean?

Arrears or arrearage is the technical term for past due child support. Basically it is a debt you owe to either your former spouse or to the government.

I hate my parents, how can I get emancipated?

You are automatically emancipated when you turn 18, get married, or join the military. If you don't feel inclined to get hitched or fight for your country you can also file for emancipation with the family court. You will also be temporarily emancipate if you are receiving medical treatment or are in police custody and your parents can't be located.

If you are going to file for emancipation, there are some things you should know. First of all, you will need to file certain materials. In addition to the $175 fee and a copy of your birth certificate, you must also file an affidavit from a certified official (Doctor, teacher, priest, etc.) stating that emancipation is in your best interest. Your parents may try to block the emancipation, but their objections only matter if they are supporting you financially. Either way, you will have to prove to the judge that you understand and are ready to accept adult responsibilities. You will now have to support yourself and live on your own. You are not allowed to use government benefits as proof of your ability to care for yourself. The government will not permit an emancipation if it means the youth becomes a ward of the state. All documents that serve as evidence of both personal maturity and self-sufficiency should be filed with the request and other emancipation documents.

If your parents withhold consent to the emancipation, you will also have to prove that you are currently supporting yourself and that your parents are not. Otherwise, the emancipation will be denied.

What is adoption?

Adoption is a legal process which terminates the legal relationship between a child and its biological parents and creating a new relationship with adoptive parents. The adopted child's birth certificate will be altered to show the adoptive parents as the child's true mother and father. There are statutes in Michigan which govern

this process. An unmarried person or a married couple can adopt either a minor or an adult. However, an unmarried couple cannot adopt as a couple, only one of them would be the adoptive parent.

CHAPTER 43: WHO WE ARE

When Akiva Goldman first started practicing law, he exclusively did personal injury work. This all changed the day he got divorced from his first wife. As a personal injury attorney, he did not have the expertise to handle his divorce by himself, so he hired a divorce lawyer to help him. Throughout his emotionally trying divorce, he experienced the process first hand. He was even able to learn how to handle such cases himself. The whole affair was made even messier by the fact that he had children at the time. Even after the divorce was finalized, the impact on the family in the aftermath was even worse than the divorce itself. Even years later, when his daughter is now older and getting married herself, she can still feel the impact of her parent's divorce.

Ever since that day, Akiva Goldman has dedicated his practice to divorce cases. He now helps other families who are going through the same thing that he did all those years ago. It also because of that emotionally traumatic experience that he firmly believes that a divorce with children should be the very last resort. He will always advise his clients who have children to seek other alternatives first. Between his story and the information contained in this book, we sincerely hope that when you and your partner are experiencing difficulties, that will you try to do what is best for your family.

CHAPTER 44: DIVORCE AND CUSTODY: WE ARE DEDICATED TO YOU

Because we understand how hard and how important a divorce and custody is, we take each case from each client seriously. We dedicate ourselves to ensuring each client gets the best possible outcome. Clients can also expect empathy and understanding from an attorney who also wants to make this ordeal as painless as humanly possible.

We won't stop fighting and you can count on us to have the skills, knowledge, and professionalism to get you through this painful but important milestone in your life and to help ensure the happiest and most successful future possible for you and your family.

We treat our clients like family

As a law firm that primarily practices family law, we have always understood the unparalleled importance of family. Every client has parents, spouses, siblings, and children. In turn, this person is also a beloved family member to others. As such, we treat each client as if they were a member of our own family. Each client who walks through our door can expect dedicated service and the same fair treatment we would give to a loved one. This is the kind of service and dedication you need in a family law attorney.

Relentless legal defense: We fight for you

When you face a divorce or custody battle, whether civil or highly contentious, it is essential that you know that you have a great attorney on your side. You need an attorney willing to put in the work to review documents, develop evidence to help you achieve the est and most fair outcome for you. You need to know that they are putting exemplary effort, care, and expertise into every motion and hearing. This is essential not only for the outcome of your case but also for you peace of mind in what is typically a very stress inducing ordeal. This is the kind of committed and expert representation you can expect from our attorneys, and you can rest easy knowing that we will fight for you every step of the way.

Trusting your attorney is crucial

If you find yourself in court, it is important to have someone you trust to fight for you and to have your back. Not only do court cases often have fairly significant stakes, but attorneys are often both crucial and costly. As such, misplaced trust in an attorney can have terrible consequences. A trustworthy attorney should be able to demonstrate and explain the legal nuances of your case, communicate consistently, and make timely arrivals at all important court dates.

Trust is also important in regards to your relationship with your attorney. You need to be able to share important information with them and to consistently communicate your needs and desires. You will often have to trust your attorney with sensitive information. However, if you do trust your lawyer, and they are trustworthy in return, then you are much more likely to be successful together.

What you MUST KNOW regarding child protective services

If CPS is paying your family a visit, it is typically in response to allegations of abuse and or neglect. For this reason, it is imperative that you are careful about what questions you answer before you have an attorney assist you. Recklessly answered questions can be twisted or misunderstood, and can result in an attempt by cps to remove your children from custody or even terminate your parental rights entirely. Basically you should approach an encounter with CPS the same way you would approach a police officer investigating whether or not you committed a crime. It is important to hire an attorney ASAP to help you get through this situation.

Protecting you and your children from false accusations

Whether it's an attempt to gain an advantage in a custody battle or a situation where CPS is involved, any false accusation which threatens your relationship with your children is traumatic. Any such action forged on such false premises is a direct threat to the welbeing of those children, whose interest would best be served in the custody of their current parent(s). It is for this very reason, that any truly trustworthy family attorney understands how crucial it is to fight relentlessly and fight competently on behalf of a client that has been the target of false accusations.

Child custody: The most important fight of your life

Every divorce case will typically involve money and the monetary value of many varied assets. By contrast, custody of your children is literally priceless. Even if you might be able to contest or modify a child custody decision, it will still be months of irreplaceable time lost before you will be able to set things right.

As such, it is essential that your attorney understands how priceless custody is, and does not treat it as simply another item on the divorce agenda. He or she needs to be absolutely committed to getting the best and most just custody arrangement the first time around.

What filing first in divorce means to you

If you know that a divorce is unavoidable, than you are better off filing first. Being the one to draft and submit the original complaint means you are the one who introduces all of the relevant issues. Furthermore, the petitioner gets priority in terms of the introduction of evidence. This enables you to frame the issue in the eyes of the judge, which is a crucial advantage in any divorce case.

Divorce is a life storm, and we're here to help

Divorce is among the most stressful events that can occur in one's life. Even if you've never experienced it yourself, you probably know someone who has. They would tell you how awful it was and how eager they were to just get passed it. This is why it is important for a divorce attorney to do more than fight for the legal rights of their clients. They must also help their client identify specific goals and make noticeable and effective steps towards meeting those goals. This approach can make the entire divorce easier to endure for the client whose life is being turned upside down.

Why you need a lawyer in a divorce

A divorce is a stressful and life changing event. The very last thing you should do is face such a thing all by yourself. It is also important because it really takes someone with legal training to adequately understand and apply the laws which govern divorce. The moral support combined with the expertise of a competent attorney can make the entire process easier and ensure a better outcome than you might get if you did it alone. It should also be noted that most parties to a divorce tend to hire attorneys, meaning that not hiring one is likely to put you at a disadvantage relative to your former spouse.

Protecting your assets if you suspect divorce is imminent

Once a divorce complaint is filed it is not uncommon for the other spouse to empty bank accounts and max out credit cards in retaliation. This is also a vain attempt to make sure nothing is left to divide in the divorce. Not only is this incredibly unfair and inconvenient to both you and the court, but it can also make it more difficult to acquire an attorney to help you with the divorce case. If you suspect that either you or your spouse will be filing for divorce, it is a good idea to ask the court to file a protective order which prevents both you and your spouse from emptying shared accounts or otherwise liquidating marital assets.

What you must know to prepare for a divorce

If you are planning to file for a divorce you will not to accumulate a large array of documents in order to make your case in court. In order to adequately divide assets, the court must know what assets there are as well as how and when they were acquired. Your inventory of property should also include debts as those are also divisible in a divorce.