

MICHIGAN CHILD CUSTODY SURVIVAL GUIDE

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Written By: Goldman & Associates Attorneys

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TABLE OF CONTENTS

Chapter 1: Child Custody	4
Chapter 2: Child Custody Procedure	14
Chapter 3: The Effect of Divorce on Child Custody	16
Chapter 4: The Effect of Child Custody on Property Distribution	18
Chapter 5: How Annulments and Legal Separations handle Child Custody	19
Chapter 6: Child custody Between States	21
Chapter 7: Child Support	22
Chapter 8: Modifying Child Support	27
Chapter 9: Definitions and Explanations of the Different Models of Child Support	30
Chapter 10: How Child Custody Effects Child and Spousal Support	32
Chapter 11: Child Support Arrears	33
Chapter 12: The Rights of Mothers and Fathers	35
Chapter 13: Parents, Children, and the Government	37
Chapter 14: Adoption	39
Chapter 15: Same Sex Custody and Adoption	42
Chapter 16: Custody and Surrogacy	43
Chapter 17: Same Sex Surrogacy	44
Chapter 18: Non-marital Children and Paternity	45
Chapter 19: The Effect of Child Custody and Support on Taxes	49
Chapter 20: Military Child Custody	51
Chapter 21: Ten Things to Consider Before Divorcing with Children	53
Chapter 22: Getting a Second Opinion	56
Chapter 23: 7 Reasons to Fire Your Attorney	58
Chapter 24: Why Akiva Goldman Became a Divorce Lawyer	61

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CHAPTER 1: 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

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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)

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- 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.

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

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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.

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)

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- 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:

1. Whether the move will improve the quality of life for both the moving parent and the child
2. 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)
3. 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).
4. 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
5. 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:

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

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- 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 2: 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.

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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 3: 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 4: 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 5: 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.

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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 6: 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 7: 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 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

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- 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 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.

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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.

My ex is delinquent on their child support payments, can I deny him 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.

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.

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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 8: 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).

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 9: 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

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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 10: 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 11: 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 12: 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

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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 13: 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 emancipated 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 14: 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 their 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:

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- 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 renegeing 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 15: 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.

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CHAPTER 16: 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 17: 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, due 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 18: 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.

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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 19: 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 20: 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 21: 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 22: GETTING A SECOND OPINION

Every licensed attorney in the United States is obligated to represent their clients competently and zealously. By the same token, everyone who retains an 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?

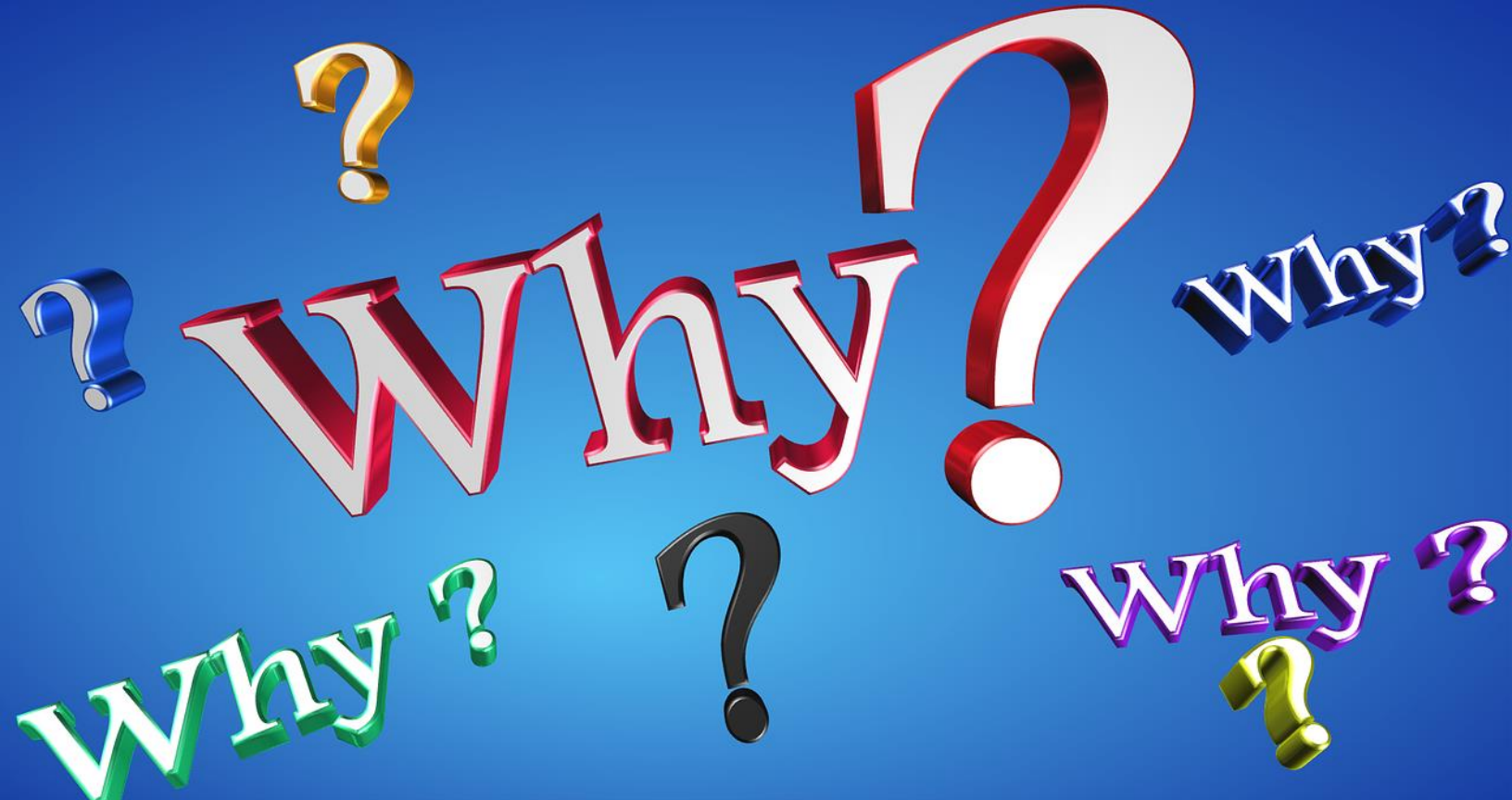
Constant and consistent communication is essential for an effective attorney-client relationship. Your attorney should be sending you bi-weekly (if not weekly) updates about what they have done with your case. They should be taking the time to explain the current strategy of the cases and the likelihood 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 23: 7 REASONS TO FIRE YOUR ATTORNEY

It is important to be 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,

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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

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CHAPTER 24: WHY AKIVA GOLDMAN BECAME A DIVORCE LAWYER

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.

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