MICHIGAN MILITARY DIVORCE AND CHILD CUSTODY SURVIVAL GUIDE

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INTRODUCTION

Divorce is by no means an easy path to embark upon, even for a soldier. Reaching the conclusion that your marriage has come to an end can be one of the hardest realties to face. This is just one more burden on top of all of those that you have undertaken in service of this country. When there are children involved divorce can become an even more daunting ordeal. This guide is designed to ease some of these worries and provide a general idea of what to expect during divorce and custody proceedings, as well as the ways in which your status as a serviceman, servicewoman, or veteran. It is important to keep in mind that this information is generalized as no two cases are the same.

This will also serve as a general guide to any other family law matters you might encounter. It covers specific aspects of divorce (property division, alimony, child custody) as well as other topics (marriage, adoption, etc.). Much of the content will be similar to information that would be relevant to a civilian. Each chapter will also contain sections which discuss issues which are specific to the military context.

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CHAPTER 1: MARRIAGE

What is marriage?

Marriage is the legal union of two individuals. It comes with many different rights, benefits, and responsibilities. For a soldier, family is an important source of stability and comfort.

Is marriage law different for servicemembers?

The law itself does not treat military personnel differently. However, there are military rules and regulations that govern servicemembers. These rules can effect a servicemember who decides they want to get married, so it is important to be aware of them.

For starters, cadets in a military academy are not permitted to get married until they either graduate or otherwise discontinue their training. Someone who is already married is not barred from entering the academy. There are no other general rules regarding who a servicemembers may marry and when they may get married.

Also, the military rules on fraternization prohibit an enlisted member from marrying an officer. However, this rule only applies if they carried those ranks at the time they were trying to get married. If two enlisted members marry, they do not have to get divorced if one of them is promoted.

There are also rules governing when a servicemember may have their spouses and families with them while

on deployment. Some deployment venues are too dangerous, so a servicemember might receive an order indicating that their deployment is "unaccompanied". Family accompaniment may also be disallowed if there is not enough family housing at the site of the deployment.

In order to receive military ID's and benefits, a sevicemember's spouse must be legally married according to the laws and requirements of one of the 50 states. The military does not recognize engagements or common law marriage.

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

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

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

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

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

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

Who can get married?

First, you have to be old enough to get married. Usually, you have to be 18, but a 16 year old with one parent's consent can also wed. If your would-be spouse is under 16, they need both parents' permission the consent of a judge.

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

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

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

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

No, not if they are your first cousin (although 26 states do allow that). In Michigan, a marriage is incestuous

if it involves any of the following:

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

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

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

What does a valid legal marriage require?

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

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

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

What does the ceremony have to include?

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

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

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

Is there a fee to get a marriage license?

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

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

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

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

Yes, it is a misdemeanor offense. The penalty for this violation of Michigan marriage licensing laws is up to 90 days in prison or fines of up to $1000.

Where do they keep the record of our marriage?

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

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

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

If I am deployed in a foreign country and I bring my family with me, is my marriage valid in that country?

That depends on the laws of the country where you are posted. You can consult the website of the consulate or embassy of that country and you will generally be able to find such information.

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

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

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

CHAPTER 2: PREMARITAL AGREEMENTS

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

What is a premarital agreement?

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

My fiancé wants a prenup, what do I need to know?

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

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

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

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

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

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

Are premarital agreements more or less important/useful for servicemembers?

A premarital agreement would be more important in a military marriage than a civilian one. Divorce rates are higher for servicemembers than for the civilian population. As a result the agreement is more likely to come into effect. Also, given the pension and other benefits afforded to servicemembers and veterans, the default rules of property division in a divorce are likely to be burdensome and unfair to a servicemember. It is advisable that any member of the military should get a premarital agreement that provides their spouse a fair distribution of property/support while largely exempting whatever portion of their benefits they deem appropriate.

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

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

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

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

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

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

When does the premarital agreement go into effect?

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

Can we modify our premarital agreement at a later date?

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

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

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

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

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

CHAPTER 3: RIGHTS AND RESPONSIBILITIES OF MARRIAGE

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

What happens to my property now that I am married?

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

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

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

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

Will getting married effect my will? Will it change what happens when I die?

Yes, if you have a will the probate court will change it if it fails to make adequate provisions for your spouse. If you don't have a will, then your estate will go through intestacy. The rules of intestacy will give at least half of your wealth to your spouse and the rest to your children.

How will getting married effect my government benefits?

That depends on the benefit. Your Social security retirement benefit, as well as the disability benefit (SSDI), will remain unaffected. However many of those benefits will be reduced or even terminated when you get married. Programs such as food stamps and Supplemental security income will treat your spouse's income as part of yours for the purposes of determining eligibility.

How will marriage effect my military/veteran's benefits?

Again, this depends on the benefit. Some programs might be shared with your spouse. Some benefits might become divisible property in the event of a divorce. Others are protected by federal statutes from being divided in this manner. Military spouses might also be entitled to benefits that are specifically for them, rather than shared with their soldier spouse.

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

You are generally obligated to ensure the wellbeing of your spouse. However, you are not liable for any debt incurred by your spouse unless you also signed the contract.

Are there any expenditures that we are jointly liable for?

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

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

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

- The right to marry (including same sex marriage)
- The right to procreate

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

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

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

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

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

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

Does Spousal privilege extend to a military court/tribunal?

Yes, military courts observe a rule of spousal privilege similar to that of civilian criminal courts. The right of refusal testify belongs to the witness spouse, and the servicemember may no prevent them from testifying if they choose to do so. The privilege protects all communications that were made during the marriage and it retains its force even after the marriage has ended. This privilege protects all subject matter except for a few exceptions:

- When both spouses are participants in a crime
- When one spouse is charged with a crime against the other or one of their children
- When the marriage was a sham
- When one spouse is being trafficked by the other.

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

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

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

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

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

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

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

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

CHAPTER 4: DIVORCE

What is divorce?

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

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

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

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

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

What does "Fault" Mean?

"Fault" is a legal term that means any form of wrongdoing that would have been necessary in order to get a divorce in the era before the advent of "no-fault" divorce. This generally meant adultery, domestic violence, or things of that nature.

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

The judge will never actually refer to them as "fault grounds". Furthermore, they won't use many of the grounds that would have netted you a divorce in eras past, such as infertility/impotence. The court will only really look at infidelity, abuse, neglect/abandonment, or drug/alcohol abuse.

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

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

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

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

A contested divorce is simply a case where one or both spouses disagree about some aspect of the divorce. This requires the court to settle the dispute when deciding the terms of the divorce.

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

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

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

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

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

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

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

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

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

If you would like to get your surname changed, you can have it done as part of the divorce process without any additional expense. However, if you wait until after the divorce, not only will you have to pay fees for a

whole new legal process, but the court will subject you to background checks and other time consuming requirements (to ensure that aren't using the name change to dodge your criminal record). Therefore, it is best to have your name changed during the divorce proceeding.

Where are can I find the record of my divorce?

In the same location as your marriage record. Please see the relevant subsection in the marriage chapter (Page 11).

CHAPTER 5: ALTERNATIVES TO DIVORCE

What If I don't want a divorce?

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

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

What is an annulment?

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

What is a void marriage?

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

What is a voidable marriage?

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

What is a legal separation/separate maintenance?

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

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

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

The grounds and requirements for a legal separation are the same as they are for divorce.

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

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

CHAPTER 6: 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. This is especially true if you or your spouse of servicemembers who might be deployed in other states or abroad.
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 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 7: DIVORCE PROCEDURE

When can I initiate the divorce?

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

How do I initiate the divorce?

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

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

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

If you have any minor children, you are also required to sign a verified statement containing information such as name/addresses of employers, and the healthcare information of the children.

What if my spouse is deployed? What if I am deployed and my spouse tries to initiate a divorce?

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

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

- Off-post in the United States: The same procedure as a civilian. The same goes for an off-duty national guardsman.
- On-post in the United States: Since most military bases are under federal jurisdiction, the assistance of military officials is often necessary to serve divorce papers.

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

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

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

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

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

If you are a servicemember anticipating a divorce, please consult the later section which covers the topic.

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

No, you cannot. You are not permitted to serve the papers yourself. You need to find someone else who is at least 18 years old to help you. That server must either hand deliver the papers or mail them through certified mail. After doing so, they must find a notary public, sign the proof of service, and file that with the court

clerk. They must also request a return receipt and a safe address to send it to. Service is complete when the other spouse accepts the delivery.

This of course, only applies if the servicemember is off-post on U.S. soil. IF that is not the case, then consult the section above to see how the situation changes.

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

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

If your spouse is a servicemember who is either on-post or not in the United States, please consult the prior section in order to understand how the circumstances of your spouse's deployment effects the procedure for dealing with refusal to accept service.

What happens after the papers are served? Is it the same rules if I/my spouse are deployed?

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

If the spouse is a deployed servicemember, there are regulations which change the rules regarding deadlines and default judgements (see the following section for details). Otherwise, off-site servicemembers are subject to the same deadlines and rules as civilians.

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

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

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

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

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

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

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

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

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

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

How does the court set aside default judgements?

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

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

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

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

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

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

What should I put in my answer?

For best results, your answer should be a line by line rebuttal of all the claims made in the complaint. If you

fail to address one of the points, the judge might decide that you are admitting to that point. Although admitting to facts that both parties agree about is also an excellent way to prevent unnecessary delay in the process.

What is the friend of the court?

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

The Friend of the court will usually hold a "conciliation conference" in which the parties will discuss the issues pertaining to any children (distinct from "mediation" which addresses everything else). Either the parties will reach an agreement during the conference or the Friend of the Court will give its recommendation to the court. These will serve as the basis for the temporary "ex-parte" orders the court will make soon after.

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

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

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

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

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

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

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

when “discovery” takes place.

What happens in discovery?

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

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

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

How does having children effect the process?

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

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

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

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

How does the divorce process end?

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

blown trial.

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

CHAPTER 8: SAME-SEX DIVORCE

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

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

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

What if there are no children involved?

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

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

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

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

How do children effect a same-sex divorce?

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

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

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

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

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

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

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

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

agreement, which are still legal in Michigan.

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

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

- The equitable parent and the child must acknowledge each other as parent and child
- The equitable parent desires to have parental rights.
- The equitable parent is willing to accept the obligation to pay child support, the same way any other parent would.

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

CHAPTER 9: DIVISION OF PROPERTY

When two spouses decide to stop living together, it also means that they can no longer share property. Decisions must be made about who now owns what, and how assets will be divided. A member of the armed forces who finds themselves in this situation will typically be subject to the same rules as a civilian. However, military service is associated with unique forms of property that are subject to specific rules that you should be made aware of.

Why is property divided in a divorce?

Married couples usually share their house and other property. They also acquire property during the course of the marriage. For this reason, the court must determine what property belongs to whom, and how shared property should be divided.

How does the court decide how to divide property?

There are many approaches to property division utilized by various states. In Michigan, the preferred approach is known as “equitable division of marital property”. Under this approach, any property which was owned by either spouse before the marriage is their own “separate property”. Any property which was acquired during the marriage is divided up in a fair and generally equal matter. However, under certain circumstances, the court may dip into one party’s separate property to give to the other in order to achieve “fairness and equity”.

Can the division of property be modified later?

No. It is very important to note that once the court reaches a final decision on the division of property, it can never be modified. So make sure the arrangement is satisfactory.

What is considered separate property?

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

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

Most of the time, but not always. The court might still take your separate property and give it to your former spouse for a couple of reasons. This might happen if the court determines that, after dividing the marital property, the other spouse is still in need of more. Another reason that might occur is if your spouse helped in the acquisition or development of an asset. For example, if you attended college or grad school while married and your spouse helped pay for your tuition. In any case, where the effort of one spouse or marital funds are used to improve the value of the other spouse's property, the court will generally either reimburse the other spouse for the value added or add that amount to the "pot" of marital property.

What is marital Property?

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

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

occurred before the marriage, and the benefit for the lost wages is received during the marriage, then that benefit is also marital property.

Is my husband's military pension divisible marital property?

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

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

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

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

Is social security a divisible asset?

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

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

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

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

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

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

What is mixed Property?

Aside from the material needs of the other spouse and said spouse's assistance in acquiring a piece of property, there are at least two other ways that property that would otherwise be separate can become marital property. One way this can happen is if the property is "mixed" with either marital property or with the former spouse's separate property to such a degree that it cannot be separated.

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

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

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

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

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

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

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

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

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

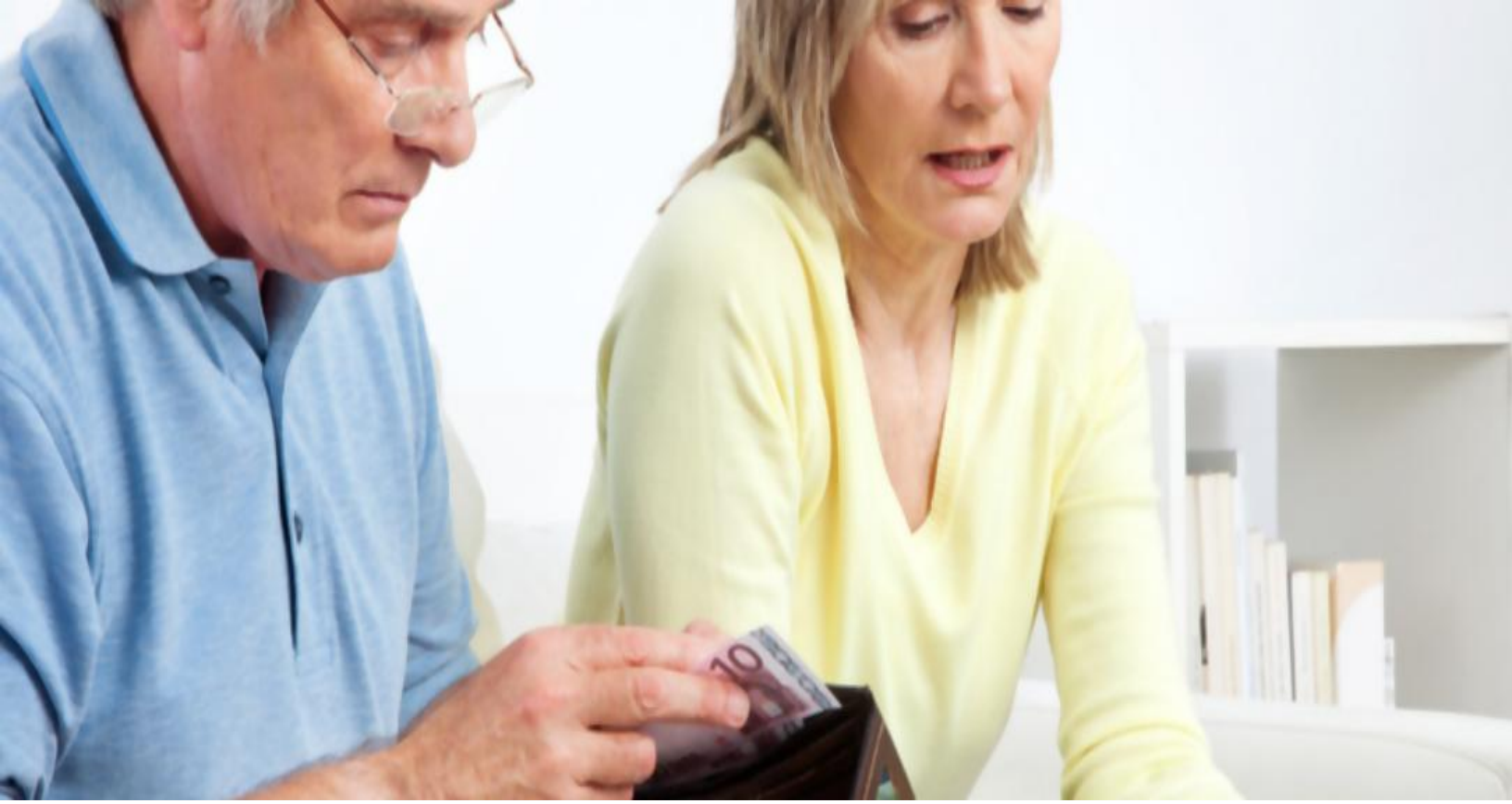
My Spouse and I are in complete agreement about which assets are marital and what our separate property consists of, is there anything we can do to save time and money on discovery?

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

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

It depends on which process you use. If you use legal separation, then property division is handled exactly the same as it is in a divorce.

However, if you get an annulment, the approach is slightly different. Rather than trying to meet the spouses' needs or trying to achieve equity/fairness, the court instead seeks to return each spouse to the position they were in before the marriage. The court will also try to give each spouse all of the property they have "equitable title" to.



CHAPTER 10: ALIMONY/SPOUSAL SUPPORT

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

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

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

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

- The relationship and conduct of the former spouses
- The length of the marriage (a longer marriage might mean one of the spouses has less independent earning power)
- The ability of either spouse to work
- The type and amount of property that was awarded when the marital property was divided (a generous award might mean less generous support payments)

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

What kinds of Alimony/support are there?

In Michigan family court you are likely to see one of three types of payments: permanent (periodic or lump sum), rehabilitative, and reimbursement.

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

Permanent Support is a payment given to one spouse because they lack the means to support themselves. This will either take the form of regular payments made to the other spouse for the remainder of their lifetime or one "lump sum" payment. This payment will automatically terminate if the receiving spouse dies or remarries. By definition, the "lump sum" cannot be modified or terminated.

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

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

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

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

What if my spouse (who owes alimony) is deployed in the military? Can I still sue him for what he owes?

It's complicated. Technically speaking, the military does not grant immunity to a lawsuit for unpaid alimony. However, the SCRA might be utilized to delay the proceedings if that spouse's deployment would hinder their ability to defend themselves against such a lawsuit. Furthermore the military is not capable of forcing the servicemember to pay alimony.

That being said, certain regulations dictate that a servicemember must provide support to dependents based on

his level of compensation and benefits. While some benefits are protected, many can be garnished for unpaid support with a court order.

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

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

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

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

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

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

However spousal support is rarely if ever given in an annulment.

CHAPTER 11: MODIFYING SPOUSAL SUPPORT

Can “permanent” spousal support be modified?

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

Can “rehabilitative” support be modified?

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

Can “reimbursement” support be modified?

Once ordered, this payment can never be modified or terminated.

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

Either party (paying or receiving) may ask for a modification if modification is permitted for that type of support. The “changed circumstances” must occur after the divorce order is finalized. The burden of proof is on the party seeking modification. Neither ex-spouse may order an entirely new type of support payment that was not part of the original divorce decree.

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

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

CHAPTER 12: CHILD SUPPORT

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.

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.

Is child support different for someone in the military?

Yes, it is. Federal regulations govern how military pay and benefits are calculated as income to determine child support obligations. The vast majority of a serviceman's compensation and benefits are included in that calculation. The formula used for that calculation is available in publicly available documents, but are too complex to discuss here.

Those regulations also create a priority list for when a member of the military has multiple obligations. Current obligations take priority over arrears, child support trumps alimony, and the oldest support obligations trump newer ones.

When it comes to garnishing wages, it depends on whether or not that person is also paying spousal support. With spousal support obligations, up to 50% of military pay can be garnished. In the absence of spousal support that maximum jumps to 60%. The cap will raise another 5% if the service member has 12 or more weeks' worth of arrearages.

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 effect child support obligations?

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

When can I stop paying child support?

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

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

How will child support payments effect 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.

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 13: 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. If the FOC agrees that the change in circumstances is significant enough they will file a motion with the family court. This 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 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.

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

Yes, 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 14: CHILD CUSTODY

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 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 effects the child's wellbeing. There are twelve factors in total:

- Maintaining the relationships of love and affection shared between parent and child.
- 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
- Maintaining and continuing the stable environment the child has grown up with (including living with siblings)
- 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)
- 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.

What happens if I am a servicemember 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.

How will my criminal record effect 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 children 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.

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.

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 rule 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.

How can I get joint custody?

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

- The fitness of either parent
- The parent's agreement to joint custody
- The ability of the ex-spouses to work together and communicate for the sake of the child's wellbeing
- The child's reasonable preference (see above)
- The involvement of either parent with the child's life
- How closely the two parents live to each other
- The similarities and differences between the two homes

- The effect of any decision on the child's psychological development
- The physical ability of the parents to carry out the joint custody arrangement

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

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 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.

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.

Military families relocate frequently, so it is important to familiarize yourself with the UCCJEA.

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.

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 wellbeing. 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 circumstance 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.

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 the how long, how often, and under what circumstances the parenting time will take place:

- The special needs and circumstances of the child/children
- Whether the child is an infant (less than 1) and or nursing
- The probability of abuse or neglect during the visit
- The likelihood of abuse or neglect as a result of the visit
- How traveling will impact the wellbeing of the child
- Whether or not the visiting parent is reasonably likely to be able to exercise parenting time in compliance with the court order
- How frequently (if at all) the parent has missed parenting time
- The danger of one parent concealing or hiding the child from the other parent
- 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.

Due to the possibility of long deployments, it is important for a servicemember and their lawyer to make sure that any custody or parenting time arrangement takes these circumstances into account. It might be a good

idea to insist that you be allowed to have sizeable blocks of parenting time allotted to you during periods where you are in the area. You should also reserve the right to modify the parenting time schedule based on the changing circumstances of your military career.

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.

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
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
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.

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?

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

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

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

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

However, even if you can prove with evidence that biological parent(s) are not acting in the child's best interest, the court must still decide if ordering grandparenting time is in the best interest of the child. The court will rely on the following factors:

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

- Whether the parent was denying access to grandparents for the child's wellbeing or was for another reason
- Any other factor pertaining to the child's wellbeing

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

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

No, it will not. Whether it's a separation, annulment, or divorce, the court will approach it the same way. The court will always seek the best interests of the child.

CHAPTER 15: THE RIGHTS OF MOTHERS AND FATHERS

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

What are my rights as a mother?

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

What are my rights as a father?

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

and nonmarital 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 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 16: 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, nonmarital 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 nonmarital 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. The courts have also struck down statutes of limitation on paternity suits. The only such law that has been allowed to stand is one which granted immigration preference to marital children.

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

Possibly. An unmarried mother is always able to file such a lawsuit. However, the unmarried father will not be able to do so if he has no 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, 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 the paternity order 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 17: PARENTS, CHILDREN, AND THE GOVERNMENT

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

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

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

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

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

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

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

I hate my parents, how can I get emancipated?

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

If you are going to file for emancipation, there are some things you should know. First of all, you will need to file certain materials. In addition to the $175 fee and a copy of your birth certificate, you must also file an affidavit from a certified official (Doctor, teacher, priest, etc.) stating that emancipation is in your best interest. Your parents may try to block the emancipation, but their objections only matter if they are supporting you financially. Either way, you will have to prove to the judge that you understand and are ready to accept adult responsibilities. You will now have to support yourself and live on your own.

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.

Can I sue my spouse? Can my child sue me?

Yes, Michigan has abolished any interfamily tort immunity. However, despite parent-child immunity being abolished, there are still sever limits on the situations where a child can sue their parent. A child may not sue their parent for any negligent act that takes the form of a reasonable exercise of parental authority, especially when it regards obtaining food and other necessities.

If I died or was injured, could my parents sue for the loss of my "consortium"? Could I do the same if they were killed/injured in an accident?

The answer to that question is unclear. In years past Michigan courts allowed children for the loss of their parent's company (known as "interference with a family relationship). However, the Michigan Supreme Court recently blocked a parent from recovering for the loss of their child. Therefore, it is unclear if the reverse is still allowed.

You should also know that where the case involves an injured, but still living family member, the action for interference with a family relationship is "Derivative". What this means is that if that family member fails

with their lawsuit for the injury to themselves, then your lawsuit for interference fails automatically as well.

Child Protective Services is speaking with me about my child, can they take my child away? Don't I have the constitutional right to be a parent?

That depends on the situation. If your child is severely misbehaving (skipping school or constantly running away) but is not committing crimes, this is known as a "Child in Need of Supervision". In this situation you will not lose your rights as a parent, but you might lose physical custody temporarily. The state might place the child under the supervision of a social worker, or that might place the child in the custody of a state agency.

You would be correct to assert that the constitution protects the right of parenthood, but that right is not unlimited. If the state can prove grounds for removal, they can terminate your parental rights. The constitution ensures you receive due process when this happens, but it will not outright prevent them from taking your children

Grounds for terminating parental rights are very serious. Deserting a child, physically or sexually abusing them (or one of their siblings), placing them in a "limited guardian ship, failing to comply with some family court orders, not supporting or communicating with your child for 2 years, failing to care for the child properly, being imprisoned for a crime for more than 2 years, having the state successfully take custody of one of your other children, or otherwise harming a child. The court will also terminate parental rights if you are convicted of certain crimes and the court deems the continued relationship with the child to be harmful.

Some person who isn't my ex-spouse and isn't family is trying to take custody of my child, is this even allowed?

While it is true that the biological parents have a very strong claim over their children, then claim is not absolute. This question is more than just the best interest of the child. Even if this third party person brings some evidence that giving them custody is in the best interest of the child, the court will presume that staying with the biological parents is what is actually in that child's best interest. However, if the third party can present strong clear and convincing evidence, that will "rebut" the presumption. Then the court might very well side against the biological parent(s). However, not everyone can make third-party custody claims. They are only available to certain guardians and relatives of the child.

Even if this guardian has had physical custody of the child for a long period of time, the court will still rely on the rule mentioned above.

I married a woman with a child from a previous marriage, and I would like to be that child's legal parent, is that possible?

Yes, it is. Michigan has something called the "equitable parent doctrine". This doctrine allows the spouse of a child's biological parent to gain parental rights as long as the following conditions are met:

- The would-be parent and the child mutually acknowledge a parental relationship
- The would-be parent demonstrates that they want to have parental rights
- The would-be parent is willing to pay child support

CHAPTER 18: ADOPTION

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. 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.

Does military service affect the adoption process?

Military service does not create any barriers to adopting unless that service directly undermines your ability to function as a safe and competent caretaker of children.

On the other hand, a servicemember can receive numerous benefits in order to support and subsidize the adoption of a child. There are reimbursements and also adoption leave available to any military personal who wishes to adopt a child.

Where should I file the adoption petition?

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

had their rights terminated.

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

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

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

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

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

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

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

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

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

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

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

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

What happens if the adoption is successful?

A new birth certificate will be issued. The new certificate will list the adoptive parents as the mother and father. This completely severs any right, claim, or obligation the birth parents had with the child and transfers them to the adoptive parents.

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

Then you should consider surrogacy. Whichever surrogacy method you choose, there are some things you should know before arranging a surrogacy in Michigan. For starters, paid 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.

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

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

CHAPTER 19: DOMESTIC VIOLENCE

Due to the immensely stressful and potentially traumatic nature of military service, servicemembers and their families might be at greater risk of committing or suffering domestic violence. It is highly advisable that all parties involved be aware of the risk and take steps to mitigate the risk. If all else fails, this guide should help you.

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

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

What makes it "domestic" violence?

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

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

How do I get a PPO?

You must file a petition with a judge. This petition will contain all of the necessary information that the judge needs to determine if you qualify for a PPO. Try your best to give a detailed description of what happened and who did it to you? Try to remember dates and times a specifically as possible. If you have any copies of police reports, you should include them with your petition.

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

What does a PPO do for me?

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

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

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

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

What happens if my domestic abuser is in the military?

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

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

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

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

This is an extremely important issue. You can and should ask for an ex-parte order. This temporary emergency order will protect without the need to have a hearing or inform your abuser. If you don't get an ex-parte order, not only will you have to serve notice on your abuser, but a hearing will be scheduled. In that hearing, your abuser will be allowed to testify and to contest your protection order. If the judge denies your request for annex-parte order, you can schedule a hearing within 21 days for a standard protection order.

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