Father's Rights Manual:
For frustrated fathers

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Thank you

Thank you for purchasing this manual. We hope that you will learn what you need to know about father's rights. As far as we know, it is the only source of its kind.

Introduction

They Are Calling All of You "DEADBEAT DADS"

You have probably figured it out already or you wouldn't be reading this manual. Unfortunately in our society it seems that every dad is a deadbeat. Dads are treated as though they are second class citizens of parenthood. Most dads don't realize this until there is a separation of the parents. As soon as a divorce takes place, Mom's are presumed to be better, and Dads have to work hard to prove that they are not deadbeats.

Thanks to the politicizing of issues in America, rather than intelligently dealing with issues, all Dads of divorce begin fighting the presumption that they are deadbeats. The media, so obsessed with sensationalizing all of their stories, has made "Deadbeat Dads" an infamous problem in America. Now, fathers all across America have been stigmatized. With divorce, a devoted dad instantly becomes a Deadbeat Dad because a few fathers leave their children and refuse to support them.

No one wants to talk about the fact that 80% of people who pay child support (men and women) will do so without any court order whatsoever. The courts are not even needed in 80% of the cases. This is hardly a evidence of a deadbeat dad problem. Yet the media, the courts and others perpetuate the myth.

Enough is enough. Most fathers are devoted dads, and that is why I wrote this manual. It has to be frustrating for fathers to deal with the deadbeat dad syndrome alone. But a father’s frustration has to be magnified by not knowing to cope with the deadbeat dad syndrome in a system he does not understand, using laws he does not understand and working with people in the system he does not understand. Fathers need knowledge to overcome all of these obstacles.

This Manual is the first step to educating fathers about their rights. Fathers everywhere need to tell the world that there are good devoted dads out there and that there are more devoted dads of divorce than Deadbeat Dads. Reading and understanding the materials in this manual will make your efforts to become a healthy part of your children’s lives more probable.

This Manual is Not Legal Advice

It is absolutely essential that the reader of this father's rights manual understand that the information contained herein is not meant to be a substitute for legal advice. Neither is the information contain on our law firm website. This manual is for informational purposes only.

No manual can be a substitute for competent legal advice of a licensed attorney. Each individual case needs to be evaluated by a professional to tailor the legal needs to unique requirements of each case.

The facts of an individual case change the law that may apply. Attorneys trained and experienced with the law are the people best equipped to properly apply the law to the facts of a particular case.

Any information contained within this manual that gives the appearance of being legal advice should be disregarded as legal advice. Instead the facts indicated within this manual are merely meant to inform the reader and expand his understanding of some of the laws and issues surrounding father's rights.

Suggestions or examples are meant to advance the reader's knowledge of father's rights so that one can more intelligently discuss or focus the issues with their attorney, with their ex-spouse, with their family, the courts or others.

One should always consult an attorney on any issue concerning child custody, parenting time (visitation) and child support.

This Manual Cannot Cover Every State Law

We live in a country where each of our 50 States can enact their own laws. This would make it impossible for me or any other lawyer to write an informational manual that specifically covers the difference of every State. However, I have found in the research that I have completed that States are copy cats. That is, there are very similar laws on the books of every State or at least most of them.

In the area of child custody, most States follow some variation of making determinations of child custody based upon the "best interests of the child." Later in this manual you will read about the "best interests of the child" standard.

The information you are about to read is a synopsis of Michigan Law. It is meant to give the reader a general overview of Michigan Law as it may be applied to father's rights issues. Since most States use the basic "best interests of the child" standard, you should still find this information helpful. If you are not in Michigan, the law may be similar but have some differences. You should take the time to research your own laws in your State and also listen to your attorney especially over differences so that you understand exactly what you need to do in your State.

The laws discussed are much more in depth than presented with this manual. There is a vast body of case law and statutory law that is not discussed. While the information contained herein is accurate to the date of the copyright, the law is constantly changing and some of the information inside this manual may change over time.

The laws in other States can vary widely so attempting to understand another State's laws merely by reading this manual is not advisable. There are strategies and procedures discussed to help you appreciate what needs to be done to assert your rights and fulfill your responsibilities. Those discussions cross State lines and should prove helpful regardless of the State you are in. Insight into what you are facing and what you should do can do nothing but help you in your endeavors as a father of divorce.

Finally, if you are looking for more information about the ins and outs of litigation, our *Litigation Survival Guide for Fathers* makes a great companion to this manual.

About the Writer

The Father's Rights Manual: for frustrated fathers was written by Ghazey H. Aleck II, Fathers Rights Attorney..

Ghazey H. Aleck II, is the founder of Aleck and Jenkins, Attorneys at Law located in Clare, Michigan, established in 1987. Mr. Aleck has been an attorney since 1986. Prior to becoming an attorney, he was a police officer for several years. In 1992, Ghazey Aleck was elected Clare County Prosecuting Attorney. Fathers rights litigation has been a large part of his practice since 1989.

In 1997, Mr. Aleck returned to the full-time private practice of law where he established himself as the father's rights attorney. With over many years of handling divorce and child custody matters, Ghazey H. Aleck II, has developed a significant body of knowledge and experience in getting father's their rights.

"I decided to begin emphasizing father's rights in my law practice because too much attention has been directed at going after 'deadbeat dads' while the devoted dads got little or no attention or help. Society is hurting our children by overlooking their need to have both a mother and a father, not just a mother and a banished father," Aleck says of his work. "Besides this, there are many fathers who are just better parents and should have custody of the children, for the children's sake."

Over the years, Ghazey H. Aleck II has become a well-known attorney having appeared on local television news broadcasts and programs around the State of Michigan. His cases have been reported in local, statewide and national newspapers and newsletters. Ghazey Aleck has been a guest on local, regional and national radio talk shows.

Besides litigating and fighting for fathers rights cases of his own, Ghazey H. Aleck II has also been a legal consultant for other lawyers and on other cases involving father's rights issues.

Child Custody and Fathers

Fathers in the United States will find that there is still some notable resistance to awarding fathers custody of children, especial very young children. This should not be the case under Michigan Law (nor the laws of most States), but there is still a human element that has a great deal of influence on who gets custody of the children. That is, most of us think of our mothers as very special people who we cannot imagine having lived without and many child custody decision makers cling to that image of mothers as well.

Society has changed and so has the roles of mothers and fathers. Many women have entered the workplace and do not occupy the same special position of mothers of the pasts who stayed at home and were there for a child's every need. Today fathers have had to assume a bigger role in the children's lives. Instead of leaving child-rearing tasks to stay at home mothers, fathers of today assume those tasks because mothers now work. Some women, contrary to the woman of the past, no longer see their primary role in life as solely raising children. In fact, some place other things as more important to raising children. Fathers have moved into fill a number of different kinds of voids left by many preoccupied mothers, including doing the majority of the tasks involved in raising the children. Some fathers take over the child rearing task completely.

The law changed with society. Prior to 1970, there was a legal presumption in Michigan and elsewhere that children under the age of 12 should be in the care and custody of their mother. However, in 1970, in Michigan a law was enacted which was supposed to equalize the positions of the mother and father. The Child Custody Act of 1970 put the best interests of the child in the forefront of considerations. Most States put the best interests of the child the foremost consideration as to whether a father or a mother gets primary custody of the children.

However, since 1970 the movement toward recognizing the father's right to child custody has been slow. There is still a tendency for Courts and the Friend of the Court (or other child support agencies) to assume that children should be in the mother's care and custody. It should be noted, though, that this tendency is not insurmountable. With the proper approach, a father can readily overcome any prejudices against awarding child custody to fathers. Despite the attitude of many lawyers, Friend of the Court personnel

(or other child support agencies) and Judges, fathers can and do win requests for custody of their children.

There should be no illusion, though; it is still an uphill battle, but a battle that can be won.

It is essential for a father that is seeking child custody, to generally understand the law, as it will be applied in determining the facts of their case. A father must understand that the facts are more important than the law, but knowing the law, provides for a deeper understanding of what facts will be needed to apply to the law. Thus while the law is discussed first, if the facts of a particular case are not strong enough, knowing the law will do little to help a father win his case.

Understanding the *burden of proof* and the *best interests of the child* is needed to get properly prepared for a father's request for child custody. Child custody can be changed at any time when it is in the best interests of the child.

Burden of Proof

The burden of proof refers to the weight a Judge gives to the facts in deciding a case. To win a case, a father must carry his burden of proof. In other words, when a father petitions for child custody, he has a responsibility to present proof to the Judge of a specific amount of facts. If a father gives the Judge facts that are of sufficient character and quality, he has satisfied his burden of proof.

Michigan Law has two different burdens for child custody cases. One burden of proof is providing proof that a change of child custody should occur only on a showing of *clear and convincing evidence* and the other is by providing proof by a showing of a *preponderance of the evidence.* A preponderance is a showing that just tilts the scale ever so slightly in favor of the one party over the other (imagine tilt of the scales of justice or 51%) and clear and convince is a heavier burden basic meaning that the evidence must be compelling. The tougher standard is required when there is an established custodial environment, and if there is no established custodial environment, the burden of proof will be the preponderance of the evidence standard.

The established custodial environment is defined by Michigan Statute. *The custodial environment of a child is established if over an appreciable time the child naturally looks to the custodian in that environment for guidance, discipline, the*

necessities of life, and parental comfort. The age of the child, the physical environment, and the inclination of the custodian and the child as to the permanency of the relationship shall also be considered.

Thus, if the Court rules that there is an established custodial environment, a change of child custody can only be made if it is shown by clear and convincing evidence that the change is in the best interests of the child. But, if the Court finds that there is no established custodial environment, then a change of child custody can occur by merely a showing by a preponderance of the evidence that it is in the best interest of the child. This brings us to the question, how does the court decide what is in the best interests of the child once the burden of proof is established?

Best Interests of the Child

In deciding a child custody case in Michigan, a trial Court must evaluate and consider each of the following 12 factors of the Child Custody Act of 1970. It is a requirement that the trial Court discuss each factor in determining whether to grant or deny a petition for change of child custody. Most States have multiple factors like this in determining the best interests of the child.

In divorce proceedings, a trial will occur if custody is in issue. Motions or Petitions for change of custody filed after your divorce is completed are resolved by a hearing like a trial. Unmarried persons can file actions against each other for child custody and in some cases third persons that are not parents can file actions for child custody. Moreover, no matter who it is that are filing for custody, and no matter when child custody occurs (during or after divorce for example) the trial court must address each of the best interest factors. In essence, all straightforward custody cases between parents are handled the same.

The 12 factors do not need to have equal importance to the trial Court. The trial court judge (there is no right to a jury in custody cases) decides how much importance to place upon each factor. Some factors will usually always be more important than others. It is not uncommon for the parties to be deemed equal on a number of factors and it is not uncommon for one factor weighed in favor of one party to justify a change of custody, when the facts call for it.

The 12 factors:

(a) The love, affection, and other emotional ties existing between the parties involved and the child.

This factor deals with the emotional bonds that already exist between the child and each parent. In most custody cases, this factor will be equal. Most custody lawyers will recommend that the father concede that the mother has a good emotional bond with the child(ren) mostly because it is not believable to claim otherwise and it could hurt the father's believability when it comes to the factors that really matter. In other words, a party better be able to clearly prove that no strong emotional bond exists. Furthermore, bitter mothers who interfere with the child-father relationship can hurt themselves just as bad in making a claim of lack of emotional bond between the child and father. The most

believable claim of lack of emotional bond is when one parent has been absent for a significant period of time or during an important emotional development stage of the child

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(b) The capacity and disposition of the parties involved to give the child love, affection, and guidance and to continue the education and raising of the child in his or her religion or creed if any.

Factor (b) is not the same as factor (a). Instead, this factor deals with both the ability and willingness of a parent to give the child emotional support in the future. And the court must consider how the parent will affect the child's guidance, education and/or religious training.

(c) The capacity and disposition of the parties involved providing the child with food, clothing, medical care or other remedial care, and other material needs.

This factor addresses both the ability and willingness of a party to provide for the physical needs of the child. It should be noted, however, that this is not to make an issue of who has the most money. The parent with the most money is not relevant. Rather, this is a question of whether either or both parents can and will provide for basic needs. The law does not punish a person for being poor or for being less affluent than the other parent.

(d) The length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.

This factor focuses on whether the child has lived in an appropriate and consistent environment for any length of time that would make it preferable to continue the child living in that environment. This does not mean that the mere existence of a temporary custody order creates stability.

(e) The permanence, as a family unit, of the existing or proposed custodial environment.

This factor is not about the acceptability of the family unit or the acceptability of

the proposed custodial environment. It is only about the permanence of the family unit or custodial environment.

(f) The moral fitness of the parties involved.

This factor is about moral fitness only as it relates to parenting ability. For example, being a prostitute is morally wrong to most people but a prostitute can be a good mother as long as she functions as an appropriate parent and does not involve the child in the morally offensive conduct or that the conduct is not so pervasive as to infect the child's life.

(g) The mental and physical health of the parties involved.

There is a public policy in favor of integrating the handicapped into society. Thus, a Court has to avoid any discriminating ruling. Otherwise, when the mental or physical health difficulties of a parent is such that the child's healthy development is in jeopardy by clearly articulable reasons, it can be weighed against awarding custody to that parent.

(h) The home, school, and community record of the child.

This factor focuses on the healthy or unhealthy record of the child and how it relates to the parent, the parent's plan or the parent's attitude toward continuing or discontinuing that record.

(i) The reasonable preference of the child, if the court considers the child to be of sufficient age to express a preference.

While the Court must address this factor and must take into account the child's preference when the child is old enough; the Court does not have to disclose what the child preferred. This is meant to preserve the child's relationship with both parents. The Court usually interviews the child in chambers. A child is usually considered old enough to express a preference starting around 9 years old, however the determination depends exclusively on the individual child. Some Judges try to set an arbitrary age but this is wrong. Instead, the child's own intellect, maturity and reasons should be assessed. A

reasonable preference, for example, is not; "I want to live with my dad because he buys me more things." Instead a child who can articulate solid reasons on issues of love, guidance, discipline, security or other healthy environment facets will be able to express a reasonable preference.

(j) The willingness and ability of each of the parties to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent or the child and parents.

This is usually a big factor for fathers to use to obtain or change custody because it focuses on the desire and capability of one parent to make sure the child has a relationship with the other parent. Constant refusal of visitation and parenting time, in and of itself, could very well be the reason to change child custody from one to the other.

(k) Domestic violence, regardless of whether the violence was directed against or witnessed by the child.

This factor is really anti-father in nature. While true wife or child abusers probably do not deserve to have custody of children, Michigan's Domestic Violence Laws are too broad and are allowing the police to arrest for what may turn out to be merely a domestic argument ("people being people"). Thus trumped up charges of abuse by a woman against a man is easy and can be used as a tool to shut out the father's request for child custody. Additionally, the police are predisposed to arrest the man. Furthermore, with or without an arrest on a man's record for domestic violence, women almost always claim that they were abused, at least verbally. Early psychological evaluation of the man prior to the allegations usually offset the affect of domestic violence claims.

(l) Any other factor considered by the Court to be relevant to a particular child custody dispute.

This is another dangerous factor for fathers. Individual characteristics could be used against what otherwise is a very good dad. For example, fathers who take their children for a ride on a farm tractor (considered completely acceptable to most intact farm families) could be considered a dangerous activity by some Judge, and then found

to represent bad judgment by the father.

Joint Custody

Joint custody means that the child resides equally and alternately for specific periods with both parties and that the parents share decision-making authority for decisions with the child's welfare.

Oftentimes, Courts split the concept of joint custody into two parts, "physical" and "legal". Joint legal custody means that the parties will cooperated in making important decisions in the child's welfare. Joint physical custody means that the children spend equal periods of time with both parents.

In Michigan, the parents must be advised of the availability of joint custody and if the parents agree to joint custody or joint legal custody, the Court must award joint custody unless there is a showing by clear and convincing evidence and the Court finds by clear and convincing evidence that joint custody is inappropriate.

There is some beginnings in Michigan toward a trend that joint custody (equal time and equal decision making) is most appropriate whenever possible. When the parties live close enough together and both are employed, joint custody is especially favorable. If a Court is against joint custody, it can easily be argued to the Court that any other determination than joint custody is merely a determination as to who gets to choose the babysitter when young children are involved, or that the parties are equally capable of feeding the children and putting them the bed during the week when the children are older and are in school.

Ask anybody who has had two good parents and they would tell you that faced with the proposition of separated parents they would like to spend as much time with both parents as would be humanly possible. Even a judge understands this truth.

Knowing the judge knew that I was a fathers rights lawyer, I have successfully made the argument that even if you do not recognize fathers rights as such, I think a child has a right, a right to have both a mommy and a daddy.

Change of Child Custody

A person requesting a change of child custody must show a Court three things:

1. that there is proper cause for change of custody by showing that there has been a change of circumstances;

2. demonstrate whether or not there is an established custodial environment (to establish the burden of proof);

3. that child custody modification is in the best interest of the child pursuant to the 12 factors of the Child Custody Act previously discussed.

Getting Prepared.

1. A person should keep a log of all contacts with the children and the other party that includes communication difficulties, discovery of problems, witnesses and dates and times.

2. Photos or videos of the proposed homes should be made.

3. All reasons for change of custody should be written down.

4. A pros and cons list prepared regarding both parents.

5. All potential documentary evidence should be compiled like report cards or medical records.

6. The father must be able to demonstrate clearly that he is a "Mr. Mom" and has a plan for taking care of all the child's needs and *anticipated needs*. Babysitters, doctors, schools should be able to be quickly articulated. Fathers should know the kids clothing sizes, favorite activities, favorite foods, biggest problems, ect.

7. A witness list should be made including names, addresses, phone numbers and a brief description of their anticipated testimony. Grandparents and other family members are appropriate but others like mutual friends, friends, teachers, daycare providers, doctors, police or others favorable to your side should be included.

8. Experts should be considered like psychologists, counselors ect.

9. A theme should be development to keep the emphasis on the strengths of your

case or the weakness of the case against you. An example for a case involving a mother who refuses the father parenting time is, "It is in the best interest of the children to have a mommy *and a daddy!*"

10. Know the Friend of the Court and its function and use it to your advantage (see "Knowing the Friend of the Court" in this manual).

11. Get a lawyer who believes in your case (see "Choosing a Lawyer" in this manual).

Most importantly, make sure that you are a devoted dad or no amount of preparation will get you a custody ruling. You and you own activities; the seeds you have sown yourself will expose the folly of your request if you are not a devoted dad. If you have been there for your kids at home, at school, in need, in support both financially and emotionally, it will be easy to show.

Knowing the Friend of the Court

(Or Other Support Agency)

Knowing the function the Friend of the Court and its relationship to the justice system is important when fathers are looking to assert their rights. The Friend of the Court is a wing of the Family Court. The Chief Judge of a circuit appoints the person who is appointed as "the Friend of the Court". The appointed Friend of the Court and all of the staff of the Friend of the Court are employees of the Family Court.

Thus, the Friend of the Court can exert a great deal of influence with the Court. Their recommendations are taken seriously by the Court. Their duties include investigating, settling and making recommendations in custody disputes, visitation disputes and child support disputes. They also serve as the collection agency for all child support and alimony obligations imposed upon a party by the Court.

Unfortunately, originally the Friend of the Court was primarily established to collect child support. Today, the child support collection activity is still the primary function of the Friend of the Court. The system was first established in Michigan and became a national model for dealing with "deadbeat dads".

As the system developed over the years, more and more duties have been delegated to the Friend of the Court. While the law requires the Friend of the Court to act as an impartial decision-maker and is held to the same standards as a Judge, there are some practical problems that impact on the requirement to act impartially.

The Friend of the Courts and Court would have to deny that the following about to be discussed affect impartiality, however it can still be argued that the following factors appear to detract from impartiality:

1. The majority of Friend of the Court employees are women, and despite their best intentions, their attitudes are shaped by their sex.

2. The Friend of the Court is evaluated on its child support collection success.

3. The Friend of the Court in a county has hundreds of new cases and thousands of old cases to oversee and has little time to do in depth analysis on any issue which can put an undue emphasis on a natural bias toward women.

4. The Friend of the Court is expected in most circuits to "get rid" of cases for the Judge(s). This really means that they are expected to settle issues, but the pressure of the number of cases can cause them to apply too much pressure in an effort to get rid of the caseload and unfairly categorize the cases they can't settle by denigrating the party that doesn't settle (usually the father) as unreasonable which can and does reach the judge.

5. The Friend of the Courts have heard it all before, having heard so many issues in so many cases and often times they have a hard time if not a complete inability to recognize that there is a pattern to human behavior so the same problems would normally keep arising over and over and should not be discounted as "we've heard that one before".

6. There is a greater pressure to show cause for contempt of court people for child support delinquencies than for parenting time violations.

7. It is easier to show cause for contempt of court persons for child support delinquencies than for parenting time violations that are often complicated.

8. The Friend of the Court cannot do in depth investigations so they lean toward the mother for custody because fathers are still not as special as mothers yet.

Thus, in dealing with the Friend of the Court investigator, caseworker or clerk, a father should be very careful. Getting mad or being sarcastic never helps but instead it can and does permanently hurt. Learn how to talk to the Friend of the Court by generally knowing the law about custody, visitation and child support and talk their language. It is better to talk about the "best interests" of the children than how "it affects me". Demonstrate a willingness to support your children, financially and emotionally. Be reasonable and in step with the law, that way when “attila the mom” screams at the Friend of the Court out of greed or in an effort to inflict pain on the father of her children, the Friend of the Court will naturally seek to equalize the parties by leaning the father's way, because the father is reasonable.

Frame the father's issue in brief terms. The staff of the Friend of the Court is very busy and does not have time for long-winded stories of woe. It is understandable that fathers are frustrated and going through a great deal of grief but telling the Friend of the Court all of the details makes a father a problem for the Friend of the Court because that father is cutting into the limited time that they have to get their work done.

So, if you lost your job and need a support reduction, say, "I was laid off and need to get my support lowered, can you help me?" rather than, "last Monday when I got to work my boss pulled me into his office for 2 hours and explained to me that the amount of business went down by 28 per cent and certain changes had to be made so he gave me a slip that said that the company was laying me off effective today so I have applied for unemployment and they told me that it would take 4 weeks to get my first check so I cannot pay my child support right now so I am calling you to find out what I should do?"

Also, for visitation issues, not only is it just important to be brief, but you should document your problem in writing without bad mouthing your spouse or ex spouse. Write a dated letter that says, dear Friend of the Court, on Friday, June 16, 2000, at 7:00 p.m. which is the beginning of my scheduled parenting time, I was refused my parenting time without reason and I request that the Friend of the Court show cause (mothers name) for contempt of court for violation of the visitation order presently in effect. Keep a copy of your letter and note the date it was sent.

Do not ever let your new spouse, your parent or anyone else, communicate with the Friend of the Court on your behalf. Except for you and lawyer no one should deal with the Friend of the Court. You new spouse or parent will look like a meddler and you will look like you don't really care about the issue if you can't do it yourself.

Be friendly, be brief, and be polite no matter what you encounter. You will then be pleasantly surprised by the effect, or at a minimum, you will probably avoid permanently hurting your chances.

Now that all said, I would like to make the case for abolishing the Friend of the Court. The Friend of the Court was first brought into existence to get all of the child support disputes off the judges' desks and to collect child support for the State when the custodial parent was on public assistance. It probably seemed like a lot of fathers and mothers were fighting over money--big surprise.

The Friend of the Court then took over. The Courts were then relieved of congestion, at least at first. The Friend of the Court staff grew to meet the load and is continuing to grow to meet the load. It is the accounting department for mothers or support receivers (and less arguably fathers). More importantly, it collects support for the State when the custodial parent receives public assistance.

None of these functions are essential. Today the Friend of the Court is in the middle of custody, visitation, alimony and support disputes. Its staff continues to grow. Their competence is not growing. Usually only the referee is an attorney and the rest of the staff is nothing more than educated or uneducated clerical workers with titles like "caseworker" or "investigator".

The whole concept is silly. If we abolish the Friend of the Court and put personal responsibility back on the parties, there will be more money available for more judges. If the judge orders child support and it is not paid, then recipient can take the payer into court and have a real judge take care of the problem. The same is true of custody, visitation and alimony disputes. The parties can be their own accountants. Government usually makes everything worse and most will agree that the Friend of the Court is no exception. With more judges, we can make sure that the “best interests” of the children are really being addressed.

Choosing a Lawyer

The biggest complaint that fathers have is that their lawyer would not fight for them.

However, on closer look, a father usually can look back to the first time they met with that lawyer for an explanation. Fathers who complain that their lawyer didn't fight for them, chose the wrong lawyer. And if pressed, most of these fathers will admit that they should have realized that the offending attorney would not fight for them when they had their first meeting.

A father serious about seeking all of his rights needs to inquire into the lawyer's attitude about fighting for father's rights. You know you are in trouble when you start hearing, "you can't get custody" early in the conversation before you have had a chance to tell the whole story. Quick judgments against father's rights demonstrate a built in prejudice against father's rights or at least, an unwillingness to buck the systems prejudice.

This doesn't make such lawyers bad. We all have certain beliefs about all kinds of issues that can stand in the way of our appreciating contrary positions. But, you are going to be paying the bill so you might as well pick a lawyer who is as excited about your prospects as you are, and who is open to your ideas. Keep in mind, though, that even lawyers who are effective in asserting father's rights may disagree with the strengths of your case and you should listen closely to the lawyer's reasoning.

Beware, while most lawyers are good, honest people serious about helping others, there are some lawyers who will lie to you, or exaggerate your prospects just to get your money. Also, be careful about looking for the crooked lawyer. Lay people tend to sometimes think that they need to find a crooked lawyer to deal with a crooked system or a lying ex-spouse. However, a crooked lawyer will also cheat his own client.

A good lawyer is like a good doctor with a patient bedside manner. The lawyer who is competent will take time to demonstrate his or her knowledge and experience in the field and explain the pros and cons of your case as well as his reasons concerning your chances of success.

You should expect the lawyer to be open to the prospect of fighting for fathers

rights to tell you that fathers do have rights. He or she will explain to you some of the built in prejudices against fathers in the system and that it will be an uphill battle although possible. A good lawyer will explain to you that no guarantees can be made and that the outcome of the case most often depends on factors beyond the attorney's control. Your lawyer will tell you that he cannot control how well witnesses will testify or how the judge will perceive your evidence.

The role of the lawyer is to marshal all of your strong points while attempting to downplay or protect against your weak points. The lawyer puts you best foot forward in a way that the judge is most likely to understand and accept. Your lawyer's job is to make sure your case is fully heard so that a proper decision can be reached.

Since you are only entitled to what is in the best interests of the child, the case will ultimately not be about you. The case is about what is best for the child. The father and the mother are not trying to be the best parent. They need to demonstrate that considering all of the circumstances, the best interests of the child dictate that the child should be in your care or that parenting time should be structured a certain way or support set at a certain level. No one in the system cares about how child custody affects you so start thinking about how you can phrase your concerns about your child. Don't say, "that won't give *me* enough time with my child. Say, "my *child* would benefit more by have more time with me. You will hear the same thing from a good lawyer.

A close friend or family member can sometimes make a good attorney referral but ask what they used the lawyer for before relying too much on this referral. The telephone advertisements are the best way to find out what the lawyers think they are good at, as is the Internet but that doesn't necessarily mean that others think the lawyer in good in the area he or she advertises. A lawyer's reputation in the community is also important. The friend or family member's attorney, if reputable and not a father's rights advocate, may be a good source to ask for a referral, and a good referral is worth the price of a consultation fee.

Certainly training and experience is important, but more importantly you need to assess the lawyer's attitude and ability to communicate. If the proposed lawyer can't communicate with you, how can you ever hope to have your case presented properly? Remember, you get what you pay for and if a good child custody lawyer demonstrates to

you that he is an expert in the field, he will also likely tell you that fathers traditionally will spend more money and resources in going after child custody than mothers, and that his fees are more expensive than some others in the field; and he will be able to justify it.

Keep in mind that higher hourly rates don't necessarily mean higher bills. An expert can accomplish legal requirements of the case quicker and with a better result that cuts down on the need to over-litigate or re-litigate certain issues. Be prepared to spend some real resources in seeking custody. If you are unwilling to commit sufficient resources, you are not really interested in pursuing custody because you have not accepted the requirements of the situation. Do not expect to win because you spend substantial resources, instead expect to have your case presented effectively.

The Trend Toward Self-Representation

What it means to you and your child

There is a disturbing trend toward opening the process to self-representation by the parties. It is disturbing because it is not conducive to the process of seeking truth and justice, nor does it assure that the best interests of the child are being protected.

Those who assert that it is a positive development for the Courts to create forms that can be filled out and argued by the parties, cite the fact that those expensive lawyers are being cut out of the process which saves people unwanted attorney fees and makes the process less complicated which advances the cause of the finding the truth. This is not true.

In essence, those who argue for simplifying the process are part of the politicizing of America. Everything we have held sacred in this Country for hundreds of years is being attacked for the political advancement of those in power. We are being led like sheep to the slaughter, though.

What really happens when the parties get to represent themselves? There is no accountability for the courts. The courts are the experts and the parties have no training. The parties have absolutely no clue on how to present their case. The parties do not know the law nor do they know how the facts of their case apply to the law (even if they knew some law). The parties have no idea what evidence is admissible or inadmissible. Bad evidence makes for bad decisions. The judges have not memorized all of the laws and different judges or lawyers have different interpretations of that law. The parties usually get bogged down in unimportant details far from the law that applies. The courts then can make decisions that cannot be challenged, and they can make decisions on facts that don't count, on the lack of law and on inadmissible evidence. They can stand there with a straight face and tell you, "trust us, we know", which cannot be further from the truth.

The process being opened up for parties to represent themselves is nothing more than another attempt to overturn time honored principles that have been developed over centuries to find truth and justice. It is not in the best interests of your children to have

your case trivialized in this manner. Once lost, you need to start over with new facts because the old facts have already been decided upon and it doesn't matter that the Court didn't get it because of bad presentation. Most court procedure do not allow matters to be re-litigated once heard. You will have to wait until new facts occur which could mean you would have to wait quite some time before you can start over.

Lawyers sift through the good facts and the bad facts. They work with the admissible evidence and keep out inadmissible evidence and they find the law and point it out to the judge, and argue your case. Lawyers argue cases all the time and know the best approach. Parties are hobby lawyers against their ex-spouses. Would you trust your kids to hobby doctors, untrained doctors? It is the same thing.

Also consider the situation whereby you have a lawyer and your spouse does not. The chances of success go up dramatically, like the chances of being cured go up from a witch doctor to a medical doctor. Most would gladly spend a hundred times more money on a medical doctor over the witch doctor because the chances of cure of illness are probably over a hundred times better. The same is true in the practice of law.

Tell those who say that you can do it yourself, "thanks but no thanks, my kids mean more to me than that."

The Court Referee

The Court Referee is a lawyer found at the Friend of the Court in Michigan who is assigned cases to resolve. A referee is like a judge but is really not a judge. His decision is not final unless you accept it. Typically, you have a right to object to the Friend of the Court's Referee's decision if you do so in writing within 21 or 14 days of receiving that decision depending on the situation. Timelines vary from jurisdiction to jurisdiction. In essence, his decision is really a recommendation to the court and will only become final if you do not object to it. You must file a timely written objection in Michigan to avoid the referee's decision becoming final.

In real child custody disputes, referees usually resolve nothing and needlessly increase the cost of litigation. People are unwilling to accept a decision from a referee because it is the judge who decides cases and because such decisions are final with judges only. A custody case is usually too emotional and too important for many to stop at a referees decision when they can still get heard by a judge. Furthermore, it makes sense that we want our disputes settled by our Judges, elected by the people, not by some appointed bureaucrat.

Thus, when cases that are hotly contested are assigned to a referee, the parties are being forced to pay for the costs of legal representation at two trials, one before the referee and another before the judge. This is typical of what is happening throughout our system of justice, and it is wrong. Lawyers are forced to have their clients' cases dragged into Court for countless meaningless hearings that needlessly increase the cost of litigation. Unfortunately, the lawyers get blamed for the high costs when it should be the courts and the legislature.

Think about it, when you are really in trouble with the government and the courts who is the only professional you can turn to for help?--it's the lawyer. It is a shame that it is the government that is the primary lawyer basher and it is the government that is making your resources get watered down by running the lawyers to the Courthouse needlessly.

Referees can settle only minor disputes and they should be limited to such matters. There is no strategy for making hotly contested cases turn out well in front of the referee other than preparing for it like you would for the judge. Michigan is trying to

force people to accept the referees decision now by only allowing review of the referee's decision by have a judge review the referee transcripts only. The likelihood that a judge will overrule a referee on review of the transcripts only is remote. The transcript is a stale, tasteless review. The demeanor and character of the witness is lost in the mere reading of words on a page. So in Michigan, more work must be done before the referee. Even for minor issues, proper preparation and presentation is still the best strategy, although there is a preference toward keeping it simple for Referees as their attention spans seem to wane in many cases, and more often than not, they are already opinionated on many issues. This is unfortunate for children because a judge's review is not likely to render a different result when limited to review of the transcripts. Many States follow some variation of Michigan's system.

Do not be overly impressed or fooled by the little courtrooms they are now building in the courthouses around the Country for these referees. The Referee is still a far cry from being a real judge. They are really just another layer of resistance for litigants to keep the cases out of the real courtrooms.

Visitation Issues

Now called "Parenting" Issues

The legislature in Michigan has dressed up "visitation" by renaming it. We are now supposed to call it parenting time. In a sense this is good. It is another step toward recognizing fathers as equal partners in parenting. In a different sense, it's bad because one parent (usually dad) ends up being a visiting parent regardless of what it is called. Substantive change is more important than mere changes of form. The IRS insists on "substance over form" or in other words, a deduction must really be something that qualifies as a deduction and merely renaming something that looks like a deduction doesn't make it a deduction. Parenting time should be more than a name as well.

There is a specific statute about how parenting time is to be established. It is really a list of reasons for the mother to tell the father to "drop dead, you're not visiting." "Drop dead mothers" actually are hurting the children and many fathers give up the fight without knowing their rights and end up not parenting at all.

The Michigan statute says that a Court may consider 9 factors in deciding the frequency, duration and type of parenting time as follows:

(a) The existence of any special circumstances or needs of the child.

(b) Whether the child is a nursing child less than 6 months of age, or less than 1 year if the child receives substantial nutrition through nursing.

(c) The reasonable likelihood of abuse or neglect of the child during parenting time.

(d) The reasonable likelihood of abuse of a parent resulting from the exercise of parenting time.

(e) The inconvenience to, and burdensome impact or effect on, the child of traveling for the purposes of parenting time.

(f) Whether a parent can reasonably be expected to exercise parenting time in accordance with the court order.

(g) Whether a parent has frequently failed to exercise reasonable parenting time.

(h) The threatened or actual detention of the child with the intent to retain the

child from the other parent or from a third person who has legal custody. A custodial parent's temporary residence with the child in a domestic violence shelter shall not be construed ass evidence of the custodial parent's intent to retain or conceal the child from the other parent.

(i) Any other relevant factor.

This statute is laughable. It is incredible in nature and clearly anti-father. All that really matters is the best interests of the child. It is presumed by law that it is in the best interests of the child to have a strong relationship with both parents. Codifying this list is merely an attempt to telegraph to rotten mothers more ways to thwart fathers parenting time. Fathers need to know that the list exists to protect themselves from being set up even worse than they usually find themselves.

If attacked with parts of this statute or some similar statute in your State, it is imperative that a father broadens the argument by insisting that it is the best interests that control. These 9 factors really deal with a determination of what is in the best interest of the child. They never needed to be codify in the first place. Keep it simple in response, show that the child's best interest is not being served.

A visitation or parenting order can set any reasonable terms or conditions that facilitate the orderly and meaningful exercise of parenting time including 1) defining the responsibility of transportation and its costs, 2) requiring or allowing third persons or agencies to assist in transfer or supervision, 3) setting the time and dates of visitation, 4) setting reasonable notice of refusal of parenting time or for the exercise of extended visitation during the summer or holidays, 5) requiring the child to be ready at a certain time or be at a certain place with certain effects or any other reasonable condition in particular set of circumstances unique to the specific case at hand.

Enforcement of Visitation

A father can use the Friend of the Court enforce parenting time violations or a father can hire an attorney and do it himself. In order to get help from the Friend of the Court you have to first make a written complaint.

Upon receipt of the written complaint, the Friend of the Court may decide not to act because it does not find merit in the complaint. Often times, it is possible for the Friend of the Court to fail to act because it is overburdened by its caseload. But, when

the Friend of the Court does act it usually sends out a 14-day Notice of violation that gives the opposing side time to respond. If the person fails to respond, the Friend of the Court *may* seek that the person be held in contempt. I always recommend that fathers file written complaints whether or not the Friend of the Court acts. This documents the file. A lawyer can then subpoena a caseworker and have them bring the file and testify as to the number of complaints they have received to fight for more parenting time or for a change of custody.

The 14-day Notice is an interesting development in the law because there is no counter-part for non-payment of child support. Imagine if the Friend of the Court gave delinquent payers of support 14 days to provide reasons for non-payment of support. Somehow, it is more important to give the parenting time violator a chance to explain but its not important for the child support violator. That's because the other parents would raise the roof off the courthouse over their missing support checks being put on hold another 14 days.

Interestingly, over many years of practice, when I have gotten fathers custody they were reluctant to seek child support from the mother. As they saw it, when you seek custody, the financial burden comes with the territory. The majority of fathers that are devoted enough to take the responsibility of child custody, take responsibility, period.

The majority of mothers on the other hand rarely waive child support and usually ask for the maximum amount. They see it as their right to seek support in maximum amounts from the fathers. They do not want the full financial responsibility of raising children in my view. Certainly it can be argued that mothers traditional don't make as much and the children are entitled to both parents income making ability, but after you get past the legal and moral views, it says a lot about attitudes as well.

We, as a society, seem overly concerned about the child support issues when parenting issues are more important. Fathers typically provide children with discipline and character while also nurturing the children while the opposite is true of mothers who primarily nurture children while imposing some discipline and character. Adding another 14 days to the parenting time violation is much more offensive to what really matters in the big scheme of life.

At any rate, after the 14 days go by, and when some (probably a female)

bureaucrat gets back to the complaint 15-plus days later, the Friend of the Court can schedule a meeting to resolve the problem, refer the problem to a mediator, proceed for contempt or make-up visitation time or petition for modification of parenting time.

Michigan law requires each Friend of the Court to have a make-up time policy that includes a requirement that the wrongfully denied parenting be made up with the same type of time that was missed (holiday for holiday time, ect.) It must also include that it is the non-custodial party who chooses the time of the make up time and that the make up time must occur within one year.

In order to get make up time, a father must notify the Friend of the Court of the violation within 7 days after the denial. The Friend of the Court then follows the procedures necessary to determine whether make up time will be given which ultimately can be decided by a Referee or Judge. If a father fails to follow the time requirements, he loses so check the time requirements in your State.

The Friend of the Court will only resort to contempt proceedings if the parties cannot resolve the problem any other way. If the Court ultimately finds the violator in contempt, then modification of time can occur, additional conditions set, jail can be given, or licenses to drive or practice a profession can be taken. In practice, don't count on much. It could take a number of visits to the judge before anything is done against the mother. A father must be prepared to lay siege to get anything done--this is important for your children too.

A father can attempt to use the Friend of the Court, but it is recommended that you see an attorney about enforcing the court order yourself. Obviously, special prolonging rules exist for the Friend of the Court will do nothing to redress the situation except to drag it out in the hope that it loses its importance or can be resolved after the violation becomes remote in time.

No matter what course of action is taken, do not give up. It opens the door for more violations and you lose credibility with the Friend of the Court when you give up, and guess what, the child pay for it more deeply than you do when they lose one parent by attrition. "Don't let the bastards grind me down" should be a devoted dad's rally cry

Managing Child Support

Its Amount or its Collection

Its true, most dads pay support while most moms don't. This is true because most moms get custody (although that is changing with more dads getting custody or joint custody awards), and even when dads get custody, the fathers don't ask for child support as often or as vigorously as mothers do.

Dads need to ask for child support maximums whenever they get custody. If enough non-custodial moms get stung as bad dads do, maybe the way child support is determined can be changed.

The philosophy behind child support is that the child is entitled to be supported by both parents. Theoretically, the laws are based on the idea that the child should be the beneficiary of the lifestyle the parties would have had, had they stayed together. This is a way of seeing to it that the child is not living poor with mom while dad lives rich. However, in many situations support orders actually cause the person paying to live poor while the other party lives better. This is because approximately 25% to 45% of the support payer's net income are paid to the other parent. This is excessive.

In the case of dads, usually mom gets remarried and has all of her income, her new spouses income and about a third of dad’s income while dad struggles by on a third less. When the kids go to dad, often times he is in poor financial condition and cannot afford to parent the children at the lifestyle they are used to living. This hurts because the kids can and often hold this against their dad, a dad who has no control over the support and financial situation.

There are good mothers out there that recognize this phenomenon and voluntarily reduce support obligations, but the court will not recognize the phenomenon. Understandably, the court will not count the income of a new spouse in making child support orders. The law will not impose the obligation of support on a non-parent. However, if the law was really concerned with the best interests of the child, a person who marries into a situation with children does change the financial landscape, sometimes considerably, and it is not in the best interests of the child to be going from an artificially inflated lifestyle to an artificially deflated lifestyle just because child support

orders are inflexible, maybe this will change with time.

In the meantime, a non custodial parent is obligated to support their children until they are 18 years of age and in some cases to age 19 1/2 as long as the child is living with the other parent full time and is attending high school with a reasonable expectation of graduating from high school.

The amount of child support is determined by the Michigan Child Support Formula which is fairly complex in nature but seemingly works out to 25% of dad's net pay for 1child, 35% of dad's net pay for 2 children and 45% of dad's net pay for 3 or more. If you are interested in running the actual computations yourself, you can get the child support guidelines and the formulas used at www. supremecourt.state.mi.us/courtdata/friend.htm or you can look it up at www. libofmich.lib.mi.us/services/midoclibs.html; or you can send a $5.00 check or money order payable to the State of Michigan to Department of Management and Budget, Office Services Division, Materials Management, P.O. Box 30026, Lansing, Michigan 48909 and ask for a copy of the Michigan Child Support Guidelines. You should use the internet to find the support formula for your State.

The Courts and the Friend of the Courts must use this formula in all Courts of the State. The genius that thought up this method of calculating child support should be condemned for the unfairness it represents. It is an attempt to standardize support awards, assuming that we all should be supporting our children the same. Apparently, all people are now the same and all children need the same proportion of the non-custodial parent's financial earnings so that they can live. This is a ridiculous proposition.

Every reasonable person knows that the overhead necessary to have a home and car will be the same with or without children with some minor deviations for more utility use. The extra children costs are for food, clothes, toys, medical, school or entertainment and this extra amount generally is not 1/3 of the non-custodial parent's income. The law is supposed to reasonable but the trend in Michigan and elsewhere defies reason and the child support formula lacks any rational basis.

A support order can deviate from the formula but getting a court to do it without the other spouse's consent is nearly impossible because again, it apparently is not politically correct to do so. Under Michigan law, though, if the application of the

formula is unjust or inappropriate, the court can deviate from the formula, and must then in writing or on the record state the actual amount determined by the formula, the amount of how the order will deviate, the value of other property given instead of under the formula if applicable and the reasons why the amount under the formula are unjust or inappropriate.

The best way to affect the amount of support is by keeping the court from using certain things as income. You need to find out what is considered income and work to keep things that are not income from being included that could unjustly inflate the support obligation. This may be difficult since income (everything earned) is broadly defined to include benefits like bonuses, cost of living allowances, strike pay, sick benefits and life insurance payments, as well as wages, commissions, extra part-time work, overtime, and military pay. Self-employed persons lose deductions like depreciation and some other expenses if the Friend of the Court is convinced that it reduces the income tax liability without an actual expenditure having been made.

A party may seek modification only if there is a change of circumstances. Thus, a reduction or increase in the non-custodial or custodial parent's income is a change of circumstances so either party can then ask for modification. The Friend of the Court is required by law to review all support orders at least once every 3 years although this may not always occur in vast ocean red tape. The petitioning party has the burden of proof and the modification should take into account the circumstances of the parties and the benefit that support affords to the children. The custodial parent’s increase in income will only reduce your support a few dollars but the non-custodial parent’s increase in income can increase support dramatically under the Michigan Child Support Guidelines.

If you are the non-custodial parent and you find yourself having 128 overnights or more parenting time with the children, you are entitled to have the support calculated or recalculated under a different formula called “Shared Economic Responsibility” which significant drops the amount of the child support. However, the 6 consecutive overnight 50% abatement is lost but it is worth it.

Generally, child support obligations or reductions cannot be made retroactive. It can date back to the date of the filing of the petition for modification or the date it is received by the opposing party. However, the parties can agree to modify it retroactively

as long as no State assistance was received during the period and it does not hurt the children. Two other ways that retroactive modification can occur is if there is a clerical mistake or if there is an intentional falsehood proved to have been made by one of the parties.

Remember that it doesn't hurt to get creative in arguments about child support but it does hurt to get ridiculous. You should always frame the issue in a way that shows you are devoted to your children but that reason and common sense has been violated that does not advance the best interests of the children.

Getting Wiped Out by Child Care

Watch out for the big wipe out--child care expenses! The Michigan Child Support Guidelines apportions childcare expense between the parties according to their incomes. Thus if dad makes $70,000 per year and mom makes $30,000 per year, dad pays 70% and mom 30 %. This is on top of child support!

This isn't as bad if dad makes a lot of money, but image dad making $40,000 per year and mom $12,000. This means dad pays 77%. With 2 kids in daycare, this could present a big problem for dad. Dad's take home after taxes is about $28,000 which means that his support obligation is about $186 per week out of a net of $538 per week. Daycare costs of $2.50 per child per hour for 50 hours per week (40 hour work and ½ hour travel to and from the daycare) is $250 per week Dad has another $192.50 per week to pay out of his $538 dollars per week take home for a total obligation of $378.50 making his real take home pay $159.50.

Mom making $12,000 takes home about $9,000 or $173 per week. She pays $57.50 for daycare each week that leaves her with $115.50. Add the $186 dollars per week in child support and mom gets $301.50 per week compared to dad's $159.50. Quite the shift even if you take the $57.50 in moms child care expense out of her share.

Neither amounts are really enough to live on, but Dad is obviously in terrible shape because it just doesn't make him pay more because he makes more, it is devastating. The $40,000 income has been obliterated and some dads just give up because they are working very hard only to take home less than minimum wage – and these poor guys are the some of guys they keep calling "deadbeat dads". They are still people, and we have to give them incentive to keep working otherwise they just can't hang on emotionally.

Faced with Contempt for Non-Payment of Support?

Know Your Rights!

Either the support recipient or the Friend of the Court can initiate a petition for an order to show cause (why you should not be held in contempt) for non-payment of child support.

You can be held in contempt of court for non-payment of arrearages if the court finds that you had the capacity to pay that support through the exercise of due diligence or that you have the capacity to pay that support out of currently available resources.

If the court finds you in contempt of court because you have current available resources, the court can do the following:

- commit you to the county jail;

- commit you to the county jail with work release;

- suspend your driver's license, an occupational license, a recreational or sporting license or any combination of licenses if a payment plan of the arrearage is not complied with (this is only available if your arrearage is equal to or exceeds 6 months of payments);

- order you to participate in a work activity if the child who is the subject of the support order receives federal financial assistance.

If the court finds you in contempt because you failed to exercise due diligence then the court can do the following:

-commit you to the county jail with work release or time to look for a job;

-suspend your driver's license, an occupational license, a recreational or sporting licensee or any combination of licenses if a payment plan of the arrearage is not complied with (this is only available if your arrearage is equal to or exceeds 6 months of payments);

-order you to participate in a work activity if the child who is the subject of the support order receive federal assistance;

An order for jail should, by law, may not be used unless other remedies seem to be unlikely to correct the problem. A first commitment to jail cannot exceed 45 days and second or subsequent commitments to jail cannot exceed 90 days.

A person claiming indigence may be entitled to court appointed counsel. If you are indigent and cannot afford a lawyer under certain guidelines (be careful claiming indigence you may not qualify) and the court refuses to appoint counsel, it cannot legally jail you. Never waive your right to a lawyer and if you can afford one the court may wonder why you can pay a lawyer and not your support (although the court will probably never say that). You should consult a lawyer before a show cause hearing and you may be justified in hiring a lawyer depending on the circumstances.

If you go to the hearing without consulting with a lawyer, more often than not the Friend of the Court will meet with you prior to the hearing to see if the matter can be worked out. You will get an idea at this meeting what will happen in court, but if a resolution cannot be reached, you should not go in and represent yourself. He who represents himself has a fool for a client. Ask for either a court appointed attorney or time to hire your own attorney rather than proceeding, get to a lawyer's office and explain the situation and see what can be done.

Knowing the Family Court Judges

Certainly not all judges are exactly alike nor can one capture the exact nature of what a father will encounter in court. There are some disturbing trends that must be discussed to show you what you are up against. This does not mean that the judge in your jurisdiction will be like anything about to be discussed. It is meant more to teach about the pitfalls that exist and about the potential landmines that must be navigated in some courts. A good attorney will be able to get around such problems a lot of the times but some things out there are even too tricky for good lawyers. Consider.

There appears to be a trend out there that the lawyers are part of the problem instead of part of the solution. Sometimes lawyers think that this is taught at judge seminars. This represents decay in the justice system. The government is stronger than the citizen. The lawyer is the great equalizer for the citizen against the government. The judge is part of government and will not be standing there for the citizen. We need only to look back to the injustices of the past to see that lawyers were part of the solution. People were ordered by a judge to be hanged and otherwise executed on a mere accusations. Lawyers make sure that the citizen is judged by reliable evidence in court proceedings. Rushing to judgment without the lawyer is the worst abomination our society could ever promote, yet that is where we are heading. The judge may sometimes scoff at your lawyer and if this happens, it is the judge who should be ridiculed not your lawyer.

Family judges seem prone to get tired of hearing all the arguments involved. It is said that most family judges think that both sides are lying and that the truth lays somewhere in the middle. The pressure seems to wear heavily on them. I imagine some wish it would all just stop and go away. The system is promoting this attitude with the layers of interference being laid in the path of litigants. Instead of layering a custody dispute with investigations, referrals and referee hearings, more judges trained in the law and sincere about resolving family matters should be added. At least then there is no excuses for the judges because that is just the way it is, "it comes with the territory" is accepted rather than avoided.

Another problem crops up in some courts when tired judges are sitting on cases. Evidence is mishandled. Either the tired judge lets everything in or tries to keep

everything out, and this is a nightmare for the lawyers and the litigants. Keep in mind that our society wants to preserve the image of judges as being great dispensers of impartial justice. Judges supposedly have great character and possess solid honor. Otherwise, attacking every bad decision as sinister would cause a breakdown in society, as society without justice, is not a society. Unfortunately, this means that not much can be done about tired judges who bend the rules. You get stuck with it for the sake of maintaining society.

There are multitude of situations out there you can encounter. Some judges refuse to believe certain things can be done while others (I submit who are the better judges) believe that unless it says somewhere that it can't be done, then it can. Judges are people, they are not special nor are they robots. They make mistakes no matter how pompous their attitudes are in court. They are usually not as knowledgeable as the experienced lawyers who appear in front of them but many act like the magical black rob made them a god of law. Good lawyers deal with these wayward judges all the time and find ways of dealing with them. Often times, the judges acting like black rob fools are no different than dealing with a spoiled child that is not your own and the joke is on them for their off track attitude.

With all this said, there are still some good judges out there who still believe in the system, the tradition and the honor of the practice of law. They exercise patience and dignity on the bench. They treat the litigants and the lawyers with respect, and you never hear about them finding ways of sanctioning lawyers for frivolous things like being a few minutes late to court. If you get one of these judges, they will treat your case as important, and you should consider yourself lucky.

Why Kids Go Bad

After many years of practicing law, I found that kids that were with their dads tended to do better in school and stay out of trouble. A case can be made that children get their character from their dad. Dads are the disciplinarians. Good dads give kids a good foundation toward self imposed responsibility that will make them productive members of society.

Two things have happened to our society. With around 50% - 65% of the marriages failing, a lot of kids have found themselves in divorced families. Mothers tended to get custody and discipline mostly imposed by fathers went out the window. Many mothers cannot exact personal responsibility. Kids run wild in these situations and do not do as well in school or find themselves in trouble with the law.

Some good fathers fight for custody and win either in the divorce or afterwards but many don't win. Some cannot afford to fight although they are good fathers. These fathers on the outside often get pushed further and further away until they just give up and go away (and end up being called deadbeats). This is caused by the system, a system that keeps getting worse.

Most often, the loss of fathers is why many kids go bad. If you can get a forthright Juvenile Court Judge to comment, I believe you would hear that most kids in trouble come from divorced families and that the mother is the one who shows up in court with the child without the father.

The counter-argument is that the mothers show up because the fathers don't care. The real answer most often is that those fathers are not allowed to care. The court system gave these mothers absolute control and the fathers were pushed into exile. Those fathers usually just give up because the wall between them and their children seemed insurmountable. The fathers in this situation usually shake their heads in downcast eyes knowing what we all know but are afraid to address out loud because of the backlash the political correctness of our society would cause. These mothers ruined the kids and there was nothing the father could do about it except live their lives as best they could and let the mother take the discredit she deserves in court.

Invariably every father I ever got custody for where the children were doing bad in school or were in trouble with the law, turned things around for the children and they

thrived in school and stayed out of trouble.

Fine Points of the Law

For information purpose, the following fine points are enumerated below which demonstrates how much more there is to the law. Each of these fine points, like the proceeding portions of this manual have a great body of law that goes along with the fine point being made and is not to be considered a complete statement on that point. It is meant only to touch on the multitude of some other areas that may touch on fathers rights type litigation.

1. The Uniform Foreign Money Judgment Act exists to enforce family support orders of a foreign country.

2. The Uniform Enforcement of Foreign Judgments Act exists for the enforcement of other states judgments.

3. The Uniform Interstate Family Support Act exists for the enforcement and modification of support over state lines.

4. A child support order must be enforced with 10 years from the date the last support payment is due or it is barred by the statute of limitations, however payment on the arrearage can be a waiver of the statute of limitations in some situations.

5. The Friend of the Court to collect child support arrearages can intercept your state or federal tax refund.

6. The Friend of the Court is authorized and does give consumer-reporting agencies access to information concerning child support arrearages.

7. Liens can be levied on you property, either personal property or real estate on support arrearages and Michigan Law makes each payment a Judgment when it becomes due that can be enforced like any other judgment.

8. Income withholding orders are automatic and become immediate.

9. Child support can terminate before a child turns 18 if there is a legal emancipation order entered.

10. Voluntary overpayment of support is considered a gift and may not be credited against existing or future support.

11. You are entitled to a 50% reduction in support for any 6 or more consecutive nights of visitation.

12. Grandparents may only seek a visitation order is there is a child custody dispute pending before the court and one of the parties previously married are deceased. There is a presumption against grandparent court ordered visitation.

13. The Uniform Child Custody Jurisdiction Act covers interstate parenting disputes.

14. Personal Protection Orders (PPO's) take precedence over custody or parenting time orders and a court must adjust any custody or parenting time order to accommodate the conditions of the PPO.

15. Parenting time may not be granted to a biological parent who is convicted of a criminal sexual conduct crime of any degree or an assault with intent to commit criminal sexual conduct in which the child was conceived as a result of that crime although parenting time can be allowed when the parties cohabit together after the conviction establishing a mutual established custodial environment for the child or if the conviction is based upon under aged consensual sex with a person between 13 and 16.

16. Parenting time may not be granted when or assault with the intent to commit criminal sexual conduct with his or her own child (including no parenting time with siblings) unless the parent and the child (if of suitable age to express his or her feelings) consent to the parenting time.

17. The Uniform Child Custody Jurisdiction Act resolves international child custody disputes as long as international decrees conform to the standards' of the act. The Hague Convention on the Civil Aspects of the International Child Abduction ratified by the United States in 1986 establishes the legal

rights governing the return of children wrongfully removed or retained from a country of signatory nations.

18. Change of venue, or moving the enforcement of the custody or support from one county to another can only be made when both parties live outside of the county and neither county in which a party resides touches any of its border upon the county of original jurisdiction. In these circumstances venue can be changed to the county in which the custodial parent and children reside.

THE MICHIGAN STATUTE

CHILD CUSTODY ACT OF 1970

An act to declare the inherent rights of minor children; to establish rights and duties to their custody, support, and parenting time in disputed actions; to establish rights and duties to provide support for a child after the child reaches the age of majority under certain circumstances; to provide for certain procedure and appeals; and to repeal certain acts an part of acts.

MCL 722.21. Short title.

Section 1. This act shall be known and may be cited as the "child custody act of 1970".

MCL 722.22. Definitions.

Section 2. As used in this act:

(a) " Agency" means any legally authorized public or private organization, or governmental unit or official, whether of this state or of another state or county, concerned in the welfare of minor children, including a licensed child placement agency.

(b) "Attorney" means, if appointed to represent a child under this act, an attorney serving as the child's legal advocate in a traditional attorney-client relationship with the child, as governed by the Michigan rules of professional conduct. An attorney defined under this subdivision owes the same duties of undivided loyalty, confidentiality, and zealous representat5ion of the child's expressed wishes as the attorney would to an adult client.

(c) "Child" means minor child and children. Subject to section 4a, for purposes of providing support, child includes a child and children who have reached 18 years of age.

(d) "Guardian ad litem" means an individual whom the court appoints to assist the court in determining the child's best interest. A guardian ad litem does not need to be an attorney.

(e) "Lawyer-guardian ad litem" means an attorney appointed under section 4. A lawyer-guardian ad litem represents the child, and has the powers and duties, as set forth in section 4.

(f) "Third person" means any individual other than a parent.

MCL 722.23. Best interests of the child, definitions.

Section 3. As used in this act, "best interests of the child" means the sum total of the following factors to be considered, evaluated and determined by the court:

(a) The love, affection, and other emotional ties existing between the parties involved and the child.

(b) The capacity and disposition of the parties involved to give the child love, affection, and guidance and to continue the education and raising of the child in his or her religion or creed, if any.

(c) The capacity and disposition of the parties involved to provide the child with food, clothing, medial care or other remedial care recognized and permitted under the laws of this state in place medical care, and other materials needs.

(d) The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity.

(e) The permanence, as a family unit, of the existing or proposed custodial home or homes.

(f) The moral fitness of the parties involved.

(g) The mental and physical health of the parties involved.

(h) The home, school, and community record of the child.

(i) The reasonable preference of the child, if the court considers the child to be of sufficient age to express preference.

(j) The willingness and ability of each of the parties to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent or the child and the parents.

(k) Domestic violence, regardless of whether the violence was directed against or witnessed by the child.

(l) Any other factor considered by the court to be relevant to a particular child custody dispute.

MCL 772.24. Child's inherent rights, declaration; custody, support, and visitation, establishment; representation of child's best interest, appointment of lawyer-guardian ad litem; report and recommendation; costs and fees.

Section 4. (1) In all actions involving dispute of a minor child's custody, the court shall declare the child's inherent rights, and establish the rights and duties as to the child's custody, support, and parenting time in accordance with this act.

(2) If, at any time in the proceeding, the court determines that the child's best interests are inadequately represented, the court may appoint a lawyer-guardian ad litem to represent the child. A lawyer-guardian ad litem represents the child and has powers and duties in relation to that representation as set forth in section 17d of chapter XIIA of 1939 PA 288, MCL 712A.17d. All provisions of section 17 d of chapter XIIA of 1939

PA 288, MCL 712A.17d, apply to a lawyer-guardian ad litem appointed under this act.

(3) In a proceeding in which a lawyer-guardian ad litem represents a child, he or she may file a written report and recommendation. The court may read the report and recommendation. The court shall not, however, admit the report and recommendation into evidence unless all parties stipulate the admission. The parties may make use of the report and recommendation for the purposes of settlement conference.

(4) After a determination of ability to pay, the court may assess all or part of the costs and reasonable fees of the lawyer-guardian ad litem against 1 or more of the parties involved in the proceedings or against the money allocated from marriage license fees for family counseling services under section 3 of 1887 PA 128, MCL 551.103. A lawyer-guardian ad litem appointed under this section shall not be paid a fee unless the court first receives and approves the fee.

MCL 772.24a. Post-majority child support; full-time students; court orders; validity of prior judgments or orders.

Section 4a. (1) The court may order support for a child pursuant to section 7 to provide support after the child reaches 18 years of age as provided in this section.

(2) Beginning on the effective date of this section, the court may order support for the time a child is regularly attending high school on a full-time basis with a reasonable expectation of completing sufficient credits to graduate from high school while residing on a full-time basis with the payee of support or at an institution, but in no case after the child reaches 19 years and 6 months of age.

(3) A provision contained in a judgment or an order entered under this act before the effective date of this section that provides for the support of a child after the child reaches 18 years of age, without an agreement of the parties as described in subsection (4), is valid and enforceable to the extent the provision provides support for the child for the time the child is regularly attending high school on a full-time basis with a reasonable expectation of completing sufficient credits to graduate from high school while residing on a full-time basis with the payee of support or at an institution, but in no case after the child reaches 19 years and 6 month of age. This subsection shall not require any payment of support for a child after the child reaches 18 years of age for any period between November 8, 1989 and the effective date of this section in those judicial circuits that did not enforce support for a child after the reached 18 years of age during the period between November 8, 1989 and the effective date of this section.

(4) Notwithstanding subsection (2), a provision contained in a judgment or an order entered under this act before, on, and after the effective date of this section that provides for the support of a child after the child reaches 18 years of age is valid and enforceable if 1 or more of the following apply:

(a) The provision is contained in the judgment or order by agreement of the

parties as stated in the judgment or order.

(b) The provision is contained in the judgment or order by agreement of the parties as evidenced by the approval of the substance of the judgment or order by the parties or their attorneys.

(c) The provision is contained in the judgment or the record by the parties or their attorneys.

MCL 722.25. Best interests of the child, effect, presumption; parent, individual convicted of criminal sexual conduct.

Section 5. (1) If a child custody dispute is between the parents, between agencies, or between third persons, the best interests of the child control. If the child custody dispute is between the parent or parents and an agency or a third person, the court shall presume that the best interests of the child are served by awarding custody to the parent or parents, unless the contrary is established by clear and convincing evidence.

(2) Notwithstanding other provisions of this act, if a child custody dispute involves a child who is conceived as the result of acts for which 1 of the child's biological parents is convicted of criminal sexual conduct as provided in sections 520a to 520e and 529g of the Michigan Compiled Laws, the court shall not award custody to the convicted biological parent. This subsection does not apply to a conviction under section 520d(1)(a) of Michigan penal code, Act No. 328 of the Public Acts of 1931, being section subsection does not apply if , after the date of the conviction, the biological parents cohabit and establish a mutual custodial environment for the child.

(3) Notwithstanding other provisions of this act, if an individual is convicted of criminal sexual conduct as provided in sections 520a to 520e of Act No. 328 of the Public Acts of 1931 and the victim is the individual's child, the court shall not award custody of that child or a sibling of that child to that individual, unless both the child's other parent and, if the court considers the child or sibling to be of sufficient age to express his or her desires, the child or sibling consent to the custody.

MCL 722.26. Liberal construction; application precedence over other civil actions; venue; habeas corpus or warrant.

Section 6. (1) This act is equitable in nature and shall be liberally construed and applied to establish promptly the rights of the child and the rights and duties of the parties involved. This act applies to all circuit court child custody disputes and actions, whether original or incidental to other actions. Those disputes and actions shall have precedence for hearing and assignment for trial over other civil actions.

(2) Except as otherwise provided in section 6b or 6e, if the circuit court of this state does not have prior continuing jurisdiction over a child, the action shall be submitted to the circuit court of the county where the child resides or may be found by

complaint or complaint and motion for order to show cause. An application for a writ of habeas corpus or for a warrant in its place to obtain custody of a child shall not be granted unless it appears that this act is inadequate and ineffective to resolve the particular child custody dispute.

MCL 722.261. Joint custody.

Section 6a. (1) In custody disputes between parents, the parents shall be advised of joint custody. At the request of either parent, the court shall consider an award of joint custody, and shall state on the record the reasons for granting or denying a request. In other cases joint custody may be considered by the court. The court shall determine whether joint custody is in the best interest of the child by considering the following factors:

(a) The factors enumerated in section 3.

(b) Whether the parents will be able to cooperate and generally agree concerning important decisions affecting the welfare of the child.

(2) If the parents agree on joint custody, the court shall award joint custody unless the court determines on the record, based upon clear and convincing evidence, that joint custody is no in the best interests of the child.

(3) If the court awards joint custody, the court may include in its award a statement regarding when the child shall reside with each parent, or may provide that physical custody be shared by the parents in a manner to assure the child continuing contact with both parents.

(4) During the time a child resides with a parent, that parent shall decide all routine matters concerning the child.

(5) If there is a dispute regarding residency, the court shall state the basis for a residency award on the record or in writing.

(6) Joint custody shall not eliminate the responsibility for child support. Each parent shall be responsible for child support based on the needs of the child and the actual resources of each parent. If a parent would otherwise be unable to maintain adequate housing for the child and the other parent has sufficient resources, the court may order modified support payments for a portion of housing expenses even during a period when the child is not residing in the home of the parent receiving support. An order of joint custody, in and of itself, shall not constitute grounds for modifying a support order.

(7) As used in this section, "joint custody" means an order of the court in which 1 or both of the following is specified:

(a) That the child shall reside alternately for specific periods with each of the

parents.

(b) That the parents shall share decision-making authority as to the important decisions affecting the welfare of the child.

MCL 722.26b. Actions for custody by guardian of child; venue; stay; judicial assignment.

Section 6b. (1) Except as otherwise provided in subsection (2), a guardian or limited guardian of a child has standing to bring an action for custody of the child pursuant to this act.

(2) A limited guardian of a child does not have standing to bring an action for custody of the child if the parent or parents of the child have substantially complied with a limited guardianship placement plan regarding the child entered in to pursuant to section 424a of the revised probate code, Act No. 642 of the Public Acts of 1978, being section 700.424a of the Michigan Compiled Laws.

(3) If the circuit court does not have prior continuing jurisdiction over the child, a child custody action brought by a guardian or limited guardian of the child shall be filed in the circuit court in the county in which the probate court appointed the guardian.

(4) Upon the filing of a child custody action brought by a guardian or limited guardian of the child, all guardianship proceedings concerning that child in the probate court shall be stayed until disposition of the child custody action. An order of the probate court concerning the guardianship of the child shall continue in force until superseded by an order of the circuit court. If the circuit court awards custody of the child, it shall send a copy of the judgment or order of disposition to the probate court in the county that appointed the guardian for the child.

(5) If a guardian or limited guardian of a child brings a child custody action, the circuit court shall request the supreme court pursuant to section 225 of the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, being section 600.225 of the Michigan Compiled Laws, to assign the judge of the probate court who appointed that guardian or limited guardian to serve as a judge of the circuit court and hear the child custody action.

MCL 722.26c. Actions for custody by third persons; prerequisites.

Section 6c. (1) A third person may bring an action for custody of a child if the court finds either of the following:

(a) Both of the following:

(i) The child was placed for adoption with the third person under the adoption laws of this or another state, and the placement order is till in effect at the time the action

is filed.

(ii) After the placement, the child has resided with the third person for a minimum of 6 months.

(b) All of the following:

(i) The child's biological parents have never been married to one another.

(ii) The child's parent who has custody of the child dies or is missing and the other parent has not been granted legal custody under court order.

(iii) The third person is related to the child within the third degree by marriage, blood, or adoption.

(2) A third person shall include with an action filed under this section both of the following:

(a) An affidavit setting forth facts relative to the existence of the prerequisites required by subsection (1)(a) or 9b).

(b) Notice that a defense or objection to a third person's right to bring an action for custody may be raised as an affirmative defense or by a motion as provided in the Michigan court rules.

MCL 722.26d. Actions by third persons; venue.

Section 6d. A third person filing action under section 6c shall proceed as follows:

(a) If the circuit court has continuing jurisdiction over the child, the action shall be filed in the circuit court that has continuing jurisdiction over the child.

(b) If the circuit court does not have continuing jurisdiction over the child, the action shall be filed in the circuit court in the county where the child has resided for the 6 months immediately preceding the filing of the action or, if the child has not resided in any county for the 6 months immediately preceding the filing of the action, the action shall be filed in the circuit court in the county having the most significant connection with the child.

MCL 722.26e. Actions by third persons; notice; attorney for parent; expenses.

Section 6e. (1) A third person filing an action under section 6c shall send notice of the action to each party who has legal custody of the child and to each parent whose parental rights have not been terminated.

(2) In addition to other powers of the court, in an action under section 6c, the court may do any of the following:

(a) Appoint an attorney for a parent.

(b) Order that a necessary and reasonable amount of money be paid to the court for reimbursement of a party's attorney. A party may request an order under this subdivision. The moving party shall allege facts showing that the party is otherwise unable to bear the expense of the action. The court shall require the disclosure of attorney fees or other expenses paid.

(c) The court may award costs and fees as provided in section 2591 of the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, being section 600.2591 of the Michigan Compiled Laws.

MCL 722.27. Custody, support and parenting time awards, judgments, orders; child support formula; information required by friend of the court office; support expenses; enforcement.

Section 7. (1) If a child custody dispute has been submitted to the circuit court as an original action under this act or has arisen incidentally from another action in the circuit court or an order or judgment of the circuit court, for the best interests of the child the court may do 1 or more of the following:

(a) Award the custody of the child to 1 or more of the parties involved or to others and provide for payment of support for the child, until the child reaches 18 years of age. Subject to section 4a, the court may also order support as provided in this section for a child after he or she reaches 18 years of age. The court may require that support payments shall be made through the friend of the court or court clerk.

(b) Provide for reasonable parenting time of the child by the parties involved, by the maternal or paternal grandparents, or by others, by general or specific terms and conditions. Parenting time of the child by the parents is governed by section 7a.

(c) Modify or amend its previous judgments or orders for proper cause shown or because of change of circumstances until the child reaches 18 years of age and, subject to section 4a, until the child reaches 19 years and 6 months of age. The court shall not modify or amend its previous judgments or orders or issue a new order so as to change the established custodial environment of a child unless there is presented clear and convincing evidence that it is in the best interest of the child. The custodial environment of a child is established if over an appreciable time the child naturally looks to the custodian in that environment for guidance, discipline, the necessities of life, and parental comfort. The age of the child, the physical environment, and the inclination of the custodian and the child as to permanency of the relationship shall also be considered.

(d) Utilize a guardian ad litem or the community resources in behavioral sciences and other professions in the investigation and study of custody disputes and consider their recommendations for the resolution of the disputes.

(e) Take any other action considered to be necessary in a particular child custody dispute.

(f) Upon petition consider the reasonable grandparenting time of maternal or paternal grandparents as provided in section 7b and, if denied, make a record of such denial.

(2) Except as otherwise provided in this section, the court shall order support in an amount determined by application of the child support formula developed by the state friend of the court bureau. The court may enter an order that deviates from the formula if the court determines from the facts of the case that application of the child support formula would be unjust or inappropriate and sets forth in writing or on the record all of the following:

(a) The support amount determined by application of the child support formula

(b) How the support order deviates from the child support formula.

(c) The value of property or other support awarded in lieu of the payment of child support, if applicable.

(d) The reasons why application of the child support formula would be unjust or inappropriate in the case.

(3) Subsection (2) does not prohibit the court from entering a support order that is agreed to by the parties and that deviates from the child support formula, if the requirements of subsection (2) are met.

(4) Beginning January 1, 1991, each support order entered, modified, or amended by the court shall provide that each party shall keep the office of the friend of the court informed of both of the following:

(a) The name and address of his or her current source of income. As used in this subdivision, "source of income" means that term as defined in section 2 of the support and parenting time enforcement act, 1982 PA 295, MCL 552.602.

(b) Any health care coverage that is available to him or her as a benefit of employment or that is maintained by him or her; the name of the insurance company, health care organization, or health maintenance organization; the policy, certificate, or contract number; and the names and birth dates of the persons for whose benefit he or she maintains health care coverage under the policy, certificate, or contract.

(5) For the purposes of this act, "support" may include payment of the expenses of medical, dental, and other health care, childcare expenses, and educational expenses. The court shall require 1 or both parents of a child who is the subject of a petition under this

section to obtain or maintain any health care coverage that is available to them at a reasonable cost, as a benefit of employment, for the benefit of the child. If a parent is self-employed and maintains health care coverage, the court shall require the parent to obtain or maintain dependent coverage for the benefit of the child, if available at a reasonable cost.

(6) A judgment or order entered under this act providing for the support of a child is enforceable as provided in the support and parenting time enforcement act, 1982 PA 295, MCL 552,601 to 552,650.

MCL 722.27a. Parenting time; presumptions, factors, terms; temporary and ex parte orders; objections, modification, notice.

Section 7a. (1) Parenting time shall be granted in accordance with the best interests of the child. It is presumed to be in the best interests of a child for the child to have a strong relationship with both of his or her parents. Except as otherwise provided in this section, parenting time shall be granted to a parent in a frequency, duration, and type reasonably calculated to promote a strong relationship between the child an the parent granted parenting time.

(2) If the parents of a child agree on parenting time terms, the court shall order the parenting time terms unless the court determines on the record by clear and convincing evidence that the parenting terms are not in the best interests of the child.

(3) A child has a right to parenting time with a parent unless it is shown on the record by clear and convincing evidence that it would endanger the child's physical, mental, or emotional health.

(4) Notwithstanding other provisions of this act, if a proceeding regarding parenting time involves a child who is conceived as the result of acts for which 1 of the child's biological parents is convicted of criminal sexual conduct as provided in sections 520 a to 520e and 520g of the Michigan penal sections 750.520a to 750.520e and 750.520g of Michigan Compiled Laws, the court shall not grant parenting time to the convicted biological parent. This subsection does not apply to convictions under section 520d(1)(a) of Act No. 328 of the Public Acts of 1931, being section 750.520d of the Michigan Compiled Laws. This subsection does not apply if, after the date of the conviction, the biological parents cohabit and establish a mutual custodial environment for the child.

(5) Notwithstanding other provisions of this act, if an individual is convicted of criminal sexual conduct as provided in sections 520a to 520e and 520g of Act No. 328 of the Public Acts of 1931 and the victim is the individual's child, the court shall not grant parenting time with that child or a sibling of that child to that individual, unless both the child's other parent and , if the court considers the child or sibling to be of sufficient age to express his or her desires, the child or sibling consent to the parenting time.

(6) The court may consider the following factors when determining the frequency, duration, and type of parenting time to be granted:

(a) The existence of any special circumstances or needs of the child.

(b) Whether the child is a nursing child less than 6 months of age, or less than 1 year of age if the child receives substantial nutrition through nursing.

(c) The reasonable likelihood of abuse or neglect of the child during parenting time.

(d) The reasonable likelihood of abuse of a parent resulting from the exercise of parenting time.

(e) The inconvenience to, and burdensome impact or effect on, the child of traveling for the purposes of parenting time.

(f) Whether a parent can reasonably be expected to exercise parenting time in accordance with the court order.

(g) Whether a parent has frequently failed to exercise reasonable parenting time.

(h) The threatened or actual detention of the child with the intent to retain or conceal the child from the other parent or from a third person who has legal custody. A custodial parent's temporary residence with the child in a domestic violence shelter shall not be construed as evidence of the custodial parent's intent to retain or conceal the child from the other parent.

(i) Any other relevant factor.

(7) Parenting time shall be granted in specific terms if requested by either party at any time.

(8) Parenting time order may contain any reasonable terms or conditions that facilitate the orderly and meaningful exercise of parenting time by a parent, including 1 or more of the following:

(a) Division of the responsibility to transport the child.

(b) Division of the cost of transporting the child.

(c) Restrictions on the presence of third persons during the parenting time.

(d) Requirements that the child be ready for parenting time at a specific time.

(e) Requirements that the parent arrive for parenting time and return the child

from parenting time at specific times.

(f) Requirements that parenting time occur in the presence of a third person or agency.

(g)Requirements that a party post a bond to assure compliance with a parenting time order.

(h) Requirements of reasonable notice when parenting time will not occur.

(I) Any other reasonable condition determined to be appropriate in the particular case.

(9) During the time a child is with a parent to whom parenting time has been awarded, that parent shall decide all routine matters concerning the child.

(10) Prior to entry of a temporary order, a parent may seek an ex parte interim order concerning parenting time. If the court enters an ex parte interim order concerning parenting time, the party on whose motion the ex parte interim order is entered shall have a true copy of the order served on the friend of the court and the opposing party.

(11) If the opposing party objects to the ex parte interim order, he or she shall file with the clerk of the court within 14 days after receiving notice of the order a written objection to, or a motion to modify or rescind, the ex parte interim order. The opposing party shall have a true copy of the written objection or motion served on the friend of the court and the party who obtained the ex parte interim order.

(12) If the opposing party files a written objection to the ex parte interim order, the friend of the court shall attempt to resolve the dispute within 14 days after receiving it. If the matter cannot be resolved, the friend of the court shall provide the opposing party with a form motion and order with written instructions for their use in modifying or rescinding the ex parte order without assistance of counsel. If the opposing party wishes to proceed without the assistance of counsel, the friend of the court shall schedule a hearing with the court that shall be held within 21 days after the filing of the motion. If the opposing party files a motion to modify or rescind the ex parte interim order and requests a hearing, the court shall resolve the dispute within 28 days after the hearing is requested.

(13) An ex parte interim order issued under this section shall contain the following notice:

NOTICE

1 you may file a written objection to this order or a motion to modify or rescind this order. You must file the written objection or motion with the clerk of the cour4t within 14 days after you were served with this order. You must serve a true copy of the objection or motion on the friend of the court and the party who obtained the order.

2. If you file a written objection, the friend of the court must try to resolve the dispute. If the friend of the court cannot resolve the dispute and if you wish to bring the3 matter before the court without the assistance of counsel, the friend of the court must provide you with form pleadings and written instructions and must schedule a hearing with the court.

MCL 722.27b. Grandparenting time; deceased natural parent; adoption by stepparent; actions; attorney fees.

Section 7b. (1) Except as provided in this subsection, a grandparent of the child may seek an order for grandparenting time in the manner set forth in this section only if a child custody dispute with respect to that child is pending before the court. If a natural parent of an unmarried child is deceased, a parent of the deceased person may commence an action for grandparenting time. Adoption of the child by a stepparent under chapter X of Act No. 288 of the Public Acts of 1939, being sections 710.21 to 710.70 of the Michigan Compiled Laws, does not terminate the right of a parent of the deceased person to commence an action for grandparenting time.

(2) As used in this section, "child custody dispute" includes a proceeding in which any of the following occurs:

(a) The marriage of the child's parents is declared invalid or is dissolved by the court, or a court enters a decree of legal separation with regard to the marriage.

(b) Legal custody of the child is given to a party other than the child's parent, or the child is placed outside of and does not reside in the home of a parent, excluding any child who has been placed for adoption with other than a stepparent, or whose adoption by other than a stepparent has been legally finalized.

(3) A grandparent seeking a grandparenting time order may commence an action for grandparenting time, by complaint or complaint and motion for an order to show cause, in the circuit court in the county in which the grandchild resides. If a child custody dispute is pending, the order shall be sought by motion for an order to show cause. The complaint or motion shall be accompanied by an affidavit setting forth facts supporting the requested order. The grandparent shall give notice of the filing to each party who has legal custody of the grandchild. A party having legal custody may file an opposing affidavit. A hearing shall be held by the court on its own motion or if a party so requests. At the hearing, parties submitting affidavits shall be allowed an opportunity to

be heard. At the conclusion of the hearing, if the court finds that it is in the best interests of the child to enter a grandparenting time order, the court shall enter an order providing for reasonable grandparenting time of the child by the grandparent by general or specific terms and conditions. If a hearing is not held, the court shall enter a grandparenting time order only upon a finding that grandparenting time is in the best interests of the child. A grandparenting time order shall not be entered for the parents of a putative father unless the father has acknowledged paternity in writing, has been adjudicated to be the father by a court of competent jurisdiction , or has contributed regularly to the support of the child or children. The court shall make a record of the reasons for the denial of a requested grandparenting time order.

(4) A grandparent may not file more than once every 2 years, absent a showing of good cause, a complaint or motion seeking a grandparenting time order. If the court finds there is good cause to allow a grand parent to file more than 1 complaint or motion under this section in a 2-year period, the court shall allow the filing and shall consider the complaint or motion. The court may order reasonable attorney fees to the prevailing party.

(5) The court shall not enter an order restricting the movement of the grandchild if the restriction is solely for the purpose of allowing the grandparents to exercise the rights conferred in a grandparenting time order.

(6) A grandparenting time order entered in accordance with this section shall not be considered to have created parental rights in the person or persons to whom grandparenting time rights are granted. The entry of a grandparenting time order shall not prevent a court of competent jurisdiction from acting upon the custody of the child, the parental rights of the child, or the adoption of the child.

(7) The court may enter an order modifying or terminating a granparenting time order whenever such a modification or termination is in the best interests of the child.

MCL 722.28. Review.

Section 8. To expedite the resolution of a child custody dispute by prompt and final adjudication, all orders and judgments of the circuit court shall be affirmed on appeal unless the trial judge made findings of fact against the great weight of evidence or committed a palpable abuse of discretion or clear legal error on a major issue.

MCL 722.29. Repealer.

Section 9. Act No. 192 of the Public Acts of 1873, being section 722.541 of the Compiled Laws of 1948, is repealed.

MCL 722.30. Noncustodial parents' access to records or information.

Section 10. Notwithstanding any other provision of law, a parent shall not be

denied access to records or information concerning his or her child because the parent is not the child's custodial parent, unless the parent is prohibited from having access to the records or information by a protective order. As used in this section, "records or information" includes, but is not limited to, medical, dental, and school records, day care provider's records, and notification of meetings regarding the child's education.