Proposal Re: Attorney Solicitation

Issue

Should the State Bar of Michigan adopt the following resolution submitted by the Family Law Council on behalf of the Family Law Section of the State Bar of Michigan calling for an Amendment to **either** the Michigan Rules of Professional Conduct or the Michigan Court Rules regarding the solicitation of potential Family Law clients by attorneys?

RESOLVED, that the State Bar of Michigan supports an Amendment to **either** the Michigan Rules of Professional Conduct (MRPC) **or** the Michigan Court Rules regarding the solicitation of potential Family Law clients by attorneys.

FURTHER RESOLVED that the State Bar of Michigan proposes either an Amendment to the Michigan Rules of Professional Conduct, §7.3 (adding a new section "c") or an addition to the Michigan Court Rules §8.xxxx, Administrative Rules of Court the following:

"In no matter involving a Family Law case filed in Michigan Courts, shall any attorney contact or solicit a prospective party for purposes of establishing an attorney client relationship, where the attorney had no prior or family professional relationship, until the first to occur of the following: fourteen (14) days from the date of the filing of the particular case, or service of process upon the party in the case."

Synopsis

Family Law cases involve unique risks to vulnerable parties, as well as innocent children, not present in other areas of our jurisprudence. There are no current restrictions preventing attorneys from soliciting legal representation of parties who may engage in Domestic Violence **prior to** being served with Ex Parte Orders intended to safeguard the parties physical safety and preserve the financial *status quo* or other *ex parte* Orders designed to insure the orderly and efficient judicial administration of the case.

Information regarding case filings is readily available to attorneys through personal inspection of public filings, newspapers, and the Internet. There is an alarming incidence of attorneys soliciting prospective representations before a party even knows that an action has been filed, as well as prior to *ex parte* Orders having been entered by the Court, and prior to service on the other party.

The Family Law Council, on behalf of the Family Law Section, unanimously recommends an Amendment to either the Michigan Rules of Professional Conduct or the Michigan Court Rules to address the increasing incidence of attorneys soliciting representation of potential clients prior to their having been served with process, and prior to *Ex Parte* Orders having been served.

Background

The Family Law Council, on behalf of the Family Law Section unanimously voted 18-0 on July 30, 2009 to submit this proposed Amendment for consideration by the Representative Assembly at the September 17, 2009 meeting of the Representative Assembly. This vote followed months of discussion and constructive modification of the "information" proposal presented at the April, 2009 meeting of the Representative Assembly.

The Family Law Council views the issues as of such paramount importance that it recommends that **either** an Amendment to the Michigan Rules or Professional Conduct **or** an Amendment to the Michigan Court Rules address this problem. The Family Law Council does not believe that the "form" of the proposed Amendment (as either a MRPC or Court Rule Amendment) is nearly as important at the critical importance of it being enacted. The proposal "in the alternative" is intended to indicate the flexibility of the Council on the issue.

The current proposal approved by the Family Law Council on behalf of the Family Law Section on July 30, 2009 imposes far narrower restrictions upon solicitation by attorneys than submitted at the April, 2009 meeting in at least the following respects: (1) the proposal would only apply to Family Law matters, and (2) the *de minimis* restrictions has been reduced from twenty-one (21) days to fourteen (14) days.

There is a compelling interest in prohibiting a party from evading the specific terms of *ex parte* Orders involving Domestic Violence & Personal Protection, or Restraining Orders prohibiting illegal transfers of assets, during the period of time from presentation of an Order to the Court, and service upon a Party.

There is also a particular vulnerability to parties receiving initial notice of the filing of a Family Law action from a third party solicitation for legal representation, in contrast with traditional service of a Summons & Complaint and customary legal pleadings. The Family Law Council has grave concern over nature of the third party solicitations which are occurring with increasing frequency.

The "Case Codes" to which this proposal would apply involve the following specific actions: DC; DM; DO; DP; DS; DZ; TC; NA; PJ; PH; PP; or VP. The application to these particular Case Codes is particularly targeted toward application of this narrow restriction to Family Law cases only, and not apply to the remainder of our civil or criminal cases.

Opposition

None known.

Prior Action by Representative Assembly

This issue was presented to the Representative Assembly as an information item at the April, 2009 meeting.

Fiscal and Staffing Impact on State Bar of Michigan

None known.

STATE BAR OF MICHIGAN POSITION
By vote of the Representative Assembly on September 17, 2009

Should the Representative Assembly adopt the above resolution ?

(a) Yes

or

(b) No

SBM STATE BAR OF MICHIGAN

Professional Ethics Committee

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June 25, 2009

Katherine Kakish
Chairperson, Representative Assembly
Office of the Attorney General
Licensing and Regulation Division
Cadillac Place
3030 W. Grand Blvd., Ste 10-200
Detroit, MI 48202

Re: Family Law Section proposal regarding attorney solicitation

Dear Ms. Kakish:

This letter expresses the view of the Standing Committee on Professional Ethics of the State Bar of Michigan (the "Committee") on a proposal of the Family Law Section (the "Section") to amend Rule 7.3 of the Rules of Professional Conduct or to effect a change in the Rules through amendment of like import of a Court Rule. In doing so, the Committee does not speak on behalf of the State Bar of Michigan.

The draft proposal presented to the Representative Assembly on April 18, 2009, was cast as a Court Rule amendment. We understand the Section intends to recast the proposal as an amendment to Rule 7.3. As changes in the proposal are developed, the Committee reserves the privilege of commenting on the changes.

The proposal as written forbids a lawyer from contacting a person known to be a defendant in a proceeding in any trial court for the purpose of soliciting that person as a client until the solicited person has been served with process in the action. Information presented with the proposal recognizes that information of the filing of an action is readily available to attorneys through personal inspection of public filings, newspapers, and internet service.

The Section claims it has received "numerous" complaints from persons whose first knowledge of a pending action is a mailed communication from a lawyer soliciting representation of the person. The practice is characterized in the Section's transmittal of

its proposal as "trolling" for clients, which it regards as "offensive". These are the only facts and wrongs alleged by the Section in its written communication. In less formal communications, and in statements to the Representative Assembly, the Section justifies the proposal as protecting potential victims of domestic violence from deadly assaults, as well as from "predatory solicitation". The proposal thus appears to have two purposes: the one on its face, to restrain lawyer solicitation of persons known to require the kind of services offered by the lawyer before service of process; and the other unstated, to prevent spousal abuse.

As to the matter of restraining solicitation of clients, Rule 7.3 expressly permits written solicitation of persons known to need services a lawyer offers to the extent required by *Shapero v Kentucky Bar Assn.*, 486 U.S. 466 (1988). That case holds that commercial speech is constitutionally protected if it concerns lawful activities and is not misleading, but such speech may be subject to regulation by laws that "directly advance a substantial government interest and are appropriately tailored to that purpose." (quoting from dissent, at 485) The decision does not suggest that it is limited to a specific fact situation beyond the fact that the person being solicited is one who actually may need the lawyer's services. Although the Committee may not be qualified to speak authoritatively on the constitutional law analysis required to understand the "extent required" by the *Shapero* decision, the proponents would have to concede that representation of a defendant by a lawyer would be a lawful activity, and that the act of solicitation to represent is not inherently misleading. Thus the question remains whether the proposal directly advances a substantial government interest and is appropriately tailored to achieve that purpose.

If the purpose of the proposal is to prevent "trolling for clients", that purpose is served for only a limited period of time. No facts are presented to indicate why "trolling" is to be restrained until service of process, but permitted after. "Trolling" before service is characterized by the proponents as offensive or predatory, but these characterizations do not express a government purpose. There must be something unique, entitled to government protection, about "trolling" before service is made.

If "trolling" before service is a cause of domestic violence and deadly assaults, the questions that must be answered include whether governmental interest in protecting against such assault is sufficient to impose a prior restraint on that conduct. Would this restraint directly advance a substantial government interest? Is lawyer solicitation before service a unique cause of domestic violence? Is it a uniquely aggravating cause? Can it be proven that it is a cause at all? Or does domestic violence occur because knowledge of the fact that a divorce action has been filed is gained, and the "trolling" lawyer is merely an instrument of knowledge? If knowledge of an action obtained before service

is, in fact, what triggers violence, is newspaper publication of the filing equally culpable? As would information from nonlawyers? Or knowledge from lawyers NOT seeking to represent? And what is it about the occurrence of service that mitigates the cause of domestic violence and deadly assaults when the "trolling" lawyer communicates?

The fact of the filing of an action in a court is public information unless the file is suppressed. Information about it can be known by many persons, and communicated by anyone. The proposal would not prevent a lawyer from advising a person if that lawyer is not soliciting the representation. Unless conveyance of the knowledge of the suit by a lawyer soliciting business can be proven to be a uniquely aggravating cause of domestic violence, distinct from the reactions that occur from any other communication, for any other purpose, from any source, there is no purpose to the proposal that would begin to satisfy the constitutional requirement of *Shapero*.

The proposal is not limited to domestic relations cases, or spousal abuse: It applies to every action in every trial court, civil or criminal. The proposal would prevent pre-service solicitation in any action. The proposal would prevent a party's regular counsel from advising the client of a suit filed against it. There is no exception for existing or prior client relationships, relatives, officers of corporate clients, or persons with whom there is a close personal relationship. In fact, the only "tailoring" in advancing whatever government interest is alleged is the timing of solicitation. The boundless scope of the proposal undermines the claim of sympathetic purpose of preventing domestic violence.

There are far simpler and constitutionally more sound approaches to the untimely disclosure of a suit if there is a causal connection between such untimely disclosure and the occurrence of a state interest that is to be protected. One is to require suits that are likely to result in violent reaction of a defendant to be filed under seal until process is served. Concomitantly, no ex parte orders affecting the property rights of the defendant could be obtained until service has been made and proof of service returned. Unless collateral advantages are to be obtained, there is no point in filing a suit in a domestic matter and then refraining from serving process. That there may be some tactical advantage to the filing spouse, or the spouse's lawyer, not to inform or to serve immediately cannot be justification for a regulation that promotes ignorance of the ability to protect legal interests and limits free speech, effectively in violation of the Constitution of the United States.

If there might be a rational purpose in allowing for a period after filing for service to be made before solicitation – and we do not assume that there is -- another solution may be to provide a waiting period of a specific few days (5, for example) after filing of a divorce complaint to effect service, after which solicitation is permitted regardless of whether

service has been effected. We are cannot say whether such a delay would satisfy the Constitution, but it if responsive to a state interest, it is more tailored in its limitation. Either of these alternatives would not require amendment to Rules of Professional Conduct, but can be accomplished appropriately through Court rule change.

The Committee opposes the proposal as presented. We believe it violates every Constitutional principle elucidated in the *Shapero* decision.

Respectfully submitted,

William B. Dunn, Chair
For the Committee

NEED INFORMATION FOR
YOUR PENDING DIVORCE
IN OAKLAND COUNTY CIRCUIT COURT?

A CASE HAS BEEN FILED WITH THE CLERK OF THE OAKLAND COUNTY CIRCUIT COURT

ENCLOSED PLEASE FIND A COMPILATION OF HELPFUL INFORMATION WHICH WE PROVIDE TO INDIVIDUALS INVOLVED IN DIVORCE LITIGATION. THE MATERIALS ARE FREE AND MAY BE OF SOME USE TO YOU OR HELP TO ANSWER SOME OF THE QUESTIONS YOU MIGHT HAVE.

IF YOU HAVE ANY OTHER QUESTIONS, PLEASE SEE THE LAST PAGE OF THE ENCLOSED MATERIALS. WE PROVIDE PEOPLE WITH A FREE HALF HOUR CONSULTATION WHICH CAN BE DONE IN PERSON (IN [redacted]) OR OVER THE PHONE. WE MAKE THE SERVICE AVAILABLE DURING EVENING AND WEEKEND HOURS AS WELL AS NORMAL BUSINESS HOURS. IF WE CAN NOT PROVIDE INFORMATION YOU REQUIRE, OR OTHERWISE HELP YOU WITH YOUR NEEDS, WE WILL MAKE EVERY EFFORT TO REFER YOU SOMEONE WHO CAN.

[redacted]

We also have facilities in [redacted] and [redacted]

The Law Offices Of [redacted]

Oakland County Office [redacted] (24 Hr. #) - Washtenaw & Wayne County Office [redacted]

CONFIDENTIAL DIVORCE REPORT

"Discover The 7 Dirty Divorce Schemes And Power Games Your Soon-To-Be Ex-Spouse May Play On You."

"Know About The "Innocent Spouse Rule And The IRS."

"Discover The 6 Clauses That Must Be Included In Your Final Divorce Order."

"Arm Yourself With Information About Alimony, Child Support, Deadbeats, Children's Bill Of Rights, What To Expect In The Courtroom, Custody, Dating As A Single Parent, And the Do's And Don'ts of Divorce."

BEFORE YOU HIRE A DIVORCE LAWYER, YOU SHOUD KNOW THE ANSWERS TO THESE QUESTIONS:

The 7 Dirty Divorce Schemes, Tricks and Power Games

Divorce can be a dirty business when in the hands of lawyers who play power games to gain an unfair advantage over the other side. The same applies for angry, vindictive soon-to-be ex-spouses who have a "win at all costs" attitude. If this happens in your divorce, there are few things that you can do to control the other side, but there are several things you can do to prepare and manage the divorce.

The first thing to do is recognize a scheme and power play when you see it. The second thing is to not lose your cool and try to fight fire with fire. It will only cause things to escalate and your entire family will suffer. The final step is to think ahead and plan positive steps to counter your spouse's power game. Get outside help if necessary. The following list has descriptions and examples of some of those nasty tricks lawyers and their clients will sometimes pull. If your lawyer recommends that you do this, he or she is setting you up to take unfair advantage of your soon-to-be ex-spouse.

1. Take the money out of jointly held bank accounts, put it *all* into an account in your name alone and don't tell your spouse about it beforehand. Then let your spouse handle the problems associated with covering the bounced checks. This works best if your spouse usually writes the checks to pay the household bills.

2. Use credit cards to purchase and stock up on personal items or make large purchases. Make sure to use the cards that your spouse is the primary cardholder on. This is especially effective at the beginning or near the end of a divorce. One lawyer actually told her client to go out the day before the settlement hearing and use her husband's credit cards to purchase all the items she needed to set up her new household. Her husband would then be stuck with the bills because he had agreed to be responsible for the debt on his credit card as of the day of the divorce.
3. If you have moved out of the family home and are the primary source of income for the family, refuse to pay any household bills or send any support until you are forced to do it by the court. This is one of the steps in a routine called "Starve Out The Other Spouse". The goal is to get the other spouse in a financial position where he or she, out of desperation, will accept an unfair settlement.
4. If your spouse doesn't have an income withholding order, wait until the latest possible day to pay support money, even if you've got the money to send. In some states support doesn't become delinquent until it's 30 days past due and your spouse can't do anything to you until the 31st day. Never mind that your spouse just might need the money to pay bills or buy things for the children.
5. Petition the court for primary custody of your children when you will actually agree to a joint custody or visitation arrangement. The real purpose for the request is to strike fear into the heart of your spouse and use it as a club to get your spouse to give up on something else, usually a financial benefit.
6. Refuse to speak with your spouse about anything, including arrangements for him or her to have parenting time with your children. This falls into the category of a tactic used by some lawyers to create conflict, create issues that don't need to exist, increase legal fees and wear the other side down. It can also cause a serious break in parent-child ties if the noncustodial parent doesn't get to see the children because he or she can't set up any parenting time.
7. File a bogus petition to have your spouse excluded from the family home under your state's protection from abuse laws.

These are just a few of the sneaky things that can and have happened in divorces. They are sometimes successful, but are also very destructive to any meaningful and fair settlement discussions. In addition, the residual hard-feelings and bitterness they can leave after the divorce, could hamper you and your ex-spouse's ability to effectively co-parent your children.

Getting a divorce is really just a risk/reward type of thing for some people. Is the risk and potential loss if you get caught by dirty tricks worth any potential benefit, financial or otherwise, that you might get if you win the game?

Innocent Spouse Rule & The IRS

In July 1998 Congress passed the Innocent Spouse Election law as part of the reform of the Internal Revenue Code. Under the new law certain types of protection may be available to an ex-spouse or spouse depending upon the particular facts of each person's situation.The election is available for the current tax year, as well as for any other years as far back as the IRS can assess liability.

If the IRS finds a tax underpayment in a joint return, the Innocent Spouse Election may be available to a spouse or ex-spouse who:

1. Filed joint tax returns and then got a divorce, a legal separation or lived apart from his or her spouse for at least one year.
2. Filed joint tax returns and did not get a divorce, legal separation or live apart from his or her spouse for at least one year.

If you and your spouse are divorced, legally separated or have lived apart for a year and you file the Innocent Spouse Election, you are giving notice to the IRS that you want to be held accountable for only the tax that is "allocable" to the income that you earned or received. The IRS may or may not accept the election. If not, then you may have to pay the tax owed regardless of whose income it is allocable to if the IRS proves that when you signed the tax return you had "actual knowledge" of the "item giving rise to the deficiency".

If you and your spouse are not divorced, legally separated or haven't lived apart for a year and you file the Innocent Spouse Election, you may have to pay the tax owed if you can't prove that you "didn't know or didn't have reason to know" that there was an understatement of income or an overstatement of deductions that resulted in an underpayment of income tax.

Note that these two elections are only available if your spouse under-reports income or over-reports deductions or an adjustment reducing taxable income, thereby resulting in an underpayment of tax. The Innocent Spouse Election is not available to you if your spouse or ex-spouse fails to pay the income tax that each of you owes on a joint tax return. However, you can ask the IRS or Tax Court for "equitable relief" from having to pay the tax.

There are some deadlines and timelines you must be aware of when filing of an Innocent Spouse Election. If you miss a deadline, you won't be able to take advantage of any protection the law might have given you.

3. You have two years after the first "collection activity" by the IRS to file the election.
4. If collection activity is already in progress, you have two years from the date the legislation was signed into law to file the election.
5. If collection by the IRS is pending, they have to stop all "collection activity" until the 90 day period for you to file an appeal has ended or, if you file an appeal, the Tax Court makes a final decision.

If you file the election, the IRS has six months after you file the election to notify you whether it is denying or accepting the election. If you don't receive a denial or acceptance notice, it appears that the IRS's failure to respond is treated as a denial. If you receive a notice of denial, you have 90 days after the date of denial to file an appeal to the Tax Court. By the same token, if the IRS fails to respond to the election, you may have 90 days after the expiration of the six month response period to file an appeal.

Divorce lawyers and tax experts are divided into two camps about when an Innocent Spouse Election should be filed.

One faction believes that it should be filed immediately upon the divorce or filing of the tax return. Their reasoning to support their position is:

1. If you file right away, things are fresh in your mind and you reduce the risk of missing a deadline if the IRS takes some action years after the divorce or filing of the return.
2. The IRS may look upon your filing the Innocent Spouse Election as a show of good faith and notice that you didn't participate in any fraudulent filing made by your spouse or ex-spouse.

The other faction believes that you should only file the Innocent Spouse Election after the IRS has begun some "collection activity". Their reasons for this position are:

3. You may bring your tax return to the attention of the IRS by filing the Innocent Spouse Election--kind of a "red flag" that could cause an audit of your tax return.
4. Your election may not be valid until collection activity begins or the IRS finds that there is a tax deficiency.
5. You may miss a Notice of Denial from the IRS and lose out on the opportunity to file an appeal.
6. There is no body of law interpreting some of the new phrases ("actual knowledge", "item giving rise to deficiency" "collection activity") used in the new law.

Another unresolved question concerns what the IRS will do if both spouses file an Innocent Spouse Election for the same return.

According to the new law, the IRS has 180 days from the signing of the law to issue its official Innocent Spouse Election form. If the IRS is true to its past practice, the official form won't appear for quite a while after the 180 days have passed. Until then, you can use the existing Form 8857, Request for Innocent Spouse Relief and write on the form that you are taking the election under IRC Section 6015. Be aware though, that you might have to refile the election once the official forms are released.

Regardless of whether you intend to file an Innocent Spouse Election, if you get divorced you should have some type of indemnification clause written into your divorce agreement or court order. This is another layer of protection for you that may permit you to go after your ex-spouse for reimbursement of any money you have paid for a tax liability that he or she agreed to pay or was ordered to pay. In addition, the indemnification clause may provide you with some relief regarding any costs, such as legal fees or accounting fees, you might incur to defend against any collection action by the IRS or any action you bring to enforce the indemnification clause.

Time and test cases will disclose how the IRS handles the tax returns and liabilities of those people who filed an Innocent Spouse Election. Until that time arrives, a few things are certainties. The IRS has a new way to search for tax fraud, divorce lawyers must deal with this issue, and there will be more tax law litigation

Dating as a Single Parent

What are the qualities that a single parent should look for in someone they are deciding to date?

1. Playful, light and fun with kids. (Kids have an innate instinct about people. Watch how your child interacts with him/her.)

2. Doesn't try to make the kids like activities they "should" like. Will accept a child's declining to participate in an activity that he/she likes. Open to learning about your child's activities and interests.
3. Doesn't try to discipline kids. Setting rules, boundaries and giving consequences needs to be done by the biological parent.
4. Not jealous if you need to put the children first or when they need your attention. Childhood goes by very quickly. Give you children the attention they need. Help with homework, the chance to talk about their day, etc.
5. Willing to be introduced into the lives of the kids slowly.
6. Will accept your boundaries about how much affection you are comfortable with expressing in front of your kids, and at what pace. Progress slowly in the relationship, at least in front of your children.
7. Speaks to children respectfully but not patronizingly. Speaks to them in age-appropriate ways about topics of interest to kids not just to him/her. Never uses degrading or belittling language. Never calls anyone derogatory names.
8. Doesn't want to exclusively do activities with children or only activities in which kids are excluded. A healthy relationship has a mix of adult-only and child-included activities.
9. Doesn't scold, lecture or "should" you about how you interact with the children's other parent.
10. Is patient when children express jealous and interfering behaviors.
11. Sees you as a competent adult and a devoted parent.
12. Understands all kids are different. Doesn't compare your kids with his/her kids (or kids seen on TV!).
13. Able to be flexible with the unexpected and roll with the unplanned events that always seem to arise in a household with children.
14. Is there to hold you when you are missing your kids. Doesn't try to talk you out of how you feel or rationalize away your sadness.
15. Understands that kids do grow up and that life-partners are together long after the kids have left home.
16. Willing to model respect and adoration for you in front of your children. It is good for kids to see their parent treated well by another adult.
17. Able to have open and non-defensive conversations about how you feel and what you want about your relationship and your children.
18. Willing to participate in family established rituals such as birthdays, holidays, special days, etc.
19. Does not use alcohol to excess or drugs.
20. Able to apologize and model asking for forgiveness when he/she makes a mistake. Able to easily and quickly forgive when asked for forgiveness.

WHAT IS ALIMONY?

Alimony is the amount of money one spouse pays to the other, by court order, for support and maintenance.

In recent years alimony, due to the negative connotations, has been referred to as maintenance. Traditionally, alimony was awarded to the wife and paid by the husband. However during the 1970's and 1980's judges began to award alimony to the husband depending upon the circumstances. Alimony is awarded to either spouse in an effort to maintain the standard of living that both parties were accustomed to during the marriage.

Alimony awarded prior to the divorce is called pendente lite alimony. It is taxable income to the recipient and tax deductible to the payor.

At the time of the divorce if alimony is awarded it can be one or a combination of the following:

1. Permanent: This type of alimony is to be paid until either the death of the payor of the remarriage of the recipient. Some agreements may include a "cohabitation" clause that states alimony ends when the recipient cohabits with another person in the avoidance of marriage.

2. Lump sum: This type of alimony is one payment of alimony instead of periodic (usually weekly or monthly) payments. Lump sum alimony just like all other alimony is taxable. so be sure to consult with a CPA experienced in divorce to determine the tax consequences of this type of payment prior to agreeing to it.

3. Temporary: This type of alimony lasts for a specific period of time, usually one to two years. This type of alimony may be awarded when the persons involved are on almost equal ground but due to certain circumstances one person may need financial assistance in order to "get on their feet".

4. Rehabilitative: This type of alimony is the most commonly awarded alimony. It is awarded in a situation where the recipient is younger, or able to eventually enter or return to the workforce and become financially self supporting. Rehabilitative alimony may include payments for the education necessary to enable the recipient to become self supporting.

Keep in mind that if you are awarded any type of alimony it will cease upon death of the payor. It is a good idea to include a life and disability insurance policies in an amount sufficient to replace the alimony. Because you have an insurable interest in the person being insured you are able to buy the policy yourself. This could be money well spent in the event that life and disability insurance are not part of your agreement. Every state has its own criteria for determining the need and extent of alimony. However, generally the following factors may be considered:

1. Duration of the marriage.

2. Earning capacity of both parties.

3. Age, as well as physical, mental and emotional state of each party.

4. Other income, including but not limited to interest and dividends.

5. The contribution by one spouse to education and furtherance of career of the other.

6. The contribution of one spouse as a homemaker.

7. How much earning power will be affected by the parenting requirements of the custodial parent.

In addition to the above, the judge may consider ANY economic circumstances of either party that they (the judge) deem to be just or proper.

The amount of alimony payments is generally calculated based on the above considerations. As with any other aspect of your divorce, if possible it is always best to negotiate alimony rather than have a judge arbitrarily determine if your situation is one that will include alimony and how much will be awarded.

Every state has different statutes regarding the award of alimony. Therefore it is imperative that you consult an attorney that specializes in divorce before making any decisions regarding alimony.

WHAT EXACTLY IS CHILD SUPPORT?

By definition, CHILD SUPPORT is a financial contribution paid by the non custodial parent to the custodial parent towards the expenses of raising his or her children. That seems pretty cut and dry. However, child support can turn into a major issue as divorces are often wrought with emotions.

In most states there are specific guidelines which are followed in the determination of how much child support is to be allocated. Each state is different, but most states take into consideration the income levels (both earned and unearned) of both the parents as well as the expenses associated with raising the child in their determination. That is a very broad example of how it can be calculated. Often there are complicated formulas and schedules that are used. Keep in mind that a judge has the authority to deviate from the guidelines if he or she determines that the situation warrants it.

Unfortunately, child support is often misconstrued by the payor, who may feel that the custodial parent is not using the funds to support the child. On the other side of the equation is the custodial parent who may feel that they are barely making ends meet while the non custodial parent's lifestyle has barely changed. More often than not, they are misconceptions.

Here are a few things to keep in mind about child support:

1. Child support is money that is being used for the child. The payor may not agree with how the funds are being used, but that isn't their decision to make. The use of

child support funds is at the discretion of the custodial parent.

2. Even if the custodial parent earns more than the non custodial parent, child support payments will have to be made.

3. Child support often doesn't include extra curricular activities. Extra curricular activities would include such things as Little League, dance lessons, etc. If possible, both parents should contribute to these in addition to the court ordered child support. Often if there are specific, known extra expenses their payment can be allocated in the divorce agreement.

4. Child support is not taxable to the recipient nor is it deductible to the payor.

5. Always make your child support payments on time, with pride in the knowledge that you are contributing to the support of your children. There is no room in child support for bitterness or anger at your ex. This is true for the recipient as well as well as the payor.

6. It is common in most states, and mandatory in others to have wages garnished for child support. This is nothing to be ashamed of. It is such a common occurrence that there is no longer any stigma attached to it. Today most employers have direct deposit of payroll checks where the employee's pay can go to several accounts in the amount established by the employee. If this is available to you, you should try to make an agreement with your ex spouse to have the child support payments made through direct deposit. This will be easier and better for everyone. First the payor does not have to write a check which is always done begrudgingly when made payable to the ex-spouse even when it is for the support of the children. This will avoid that problem. As far as a record, your pay stub is your receipt. Secondly, the support money will always be paid on time and will be available for immediate use.

7. Do not involve your children. Your children should never know the amount of support that is to be paid. All discussions regarding support should be handled directly between the parents. Remember to keep the children "out of your battles".

8. If you are not receiving your child support payments try to work it out with your ex spouse. If this is not possible or is not satisfactory then it would be better to seek professional intervention such as an attorney or mediator.

9. Remember that you should never use your children as pawns in a child support dispute. If payments are not made or not made promptly, do not interfere with the visitation rights of your ex-spouse. Support and visitation should be kept as separate issues. While the financial support is important, it is equally important for the children to have the love and emotional support of both parents.

10. While child support payments are determined based upon specific guidelines, they can also be negotiated. If you and your ex-spouse can reach a fair and amicable decision on how much the child support should be than all those involved will be happier in the long run. Why put the determination of child support into the hands of a stranger (the judge) if you don't have to. CONSULT AN ATTORNEY BEFORE AGREEING TO ANY CHILD SUPPORT ARRANGEMENT.

Child support payments will continue until all the children of the marriage become emancipated. Basically emancipation is an act by which parents relinquish their right to custody and are relieved of their duty to support the child. Emancipation can occur upon a child's marriage, induction into military service, by court order based on the child's best interest, as stipulated in the divorce agreement or when the child reaches an appropriate age. Appropriate age does not always mean 18 as many believe. When drawing up your divorce agreement it is important to clearly state at what age or milestone (such as high school graduation, college graduation, marriage or they become self sufficient) emancipation will occur. If your children are young, you may not even consider this issue, but you should. An unclear agreement made today may haunt you in the years to come.

If you have more than one child and a child is emancipated the amount of support that is to be paid is recalculated according to the schedules and guidelines of your particular state. It is not a percentage of the number of remaining children. Let's say that you have 3 children and the amount of support is $300 per week. The amount of support is not $100 per child, so therefore when the first child is emancipated the support amount does not automatically become $200, it will be recalculated based on 2 children.

One last thought on the subject. Keep in mind that child support is for the children. It is to keep their lifestyles the same as if you were not divorced. Children should not be victims of divorce or deprived of a normal childhood because of it.

WHAT ARE THE CHILDREN'S BILL OF RIGHTS?

We the *children* of the divorcing parents, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish these Bill Of Rights for all children.

1. The right not to be asked to "choose sides" or be put in a situation where I would have to take sides between my parents.

2. The right to be treated as a person and not as a pawn, possession or a negotiating chip.

3. The right to freely and privately communicate with both parents.

4. The right not to be asked questions by one parent about the other.

5. The right not to be a messenger.

6. The right to express my feelings.

7. The right to adequate visitation with the non-custodial parent which will best serve my needs and wishes.

8. The right to love and have a relationship with both parents without being made to feel guilty.

9. The right not to hear either parent say anything bad about the other.

10. The right to the same educational opportunities and economic support that I would have had if my parents did not divorce.

11. The right to have what is in my best interest protected at all times.

12. The right to maintain my status as a child and not to take on adult responsibilities for the sake of the parent's well being.

13. The right to request my parents seek appropriate emotional and social support when needed.

14. The right to expect consistent parenting at a time when little in my life seems constant or secure.

15. The right to expect healthy relationship modeling, despite the recent events.

16. The right to expect the utmost support when taking the time and steps needed to secure a healthy adjustment to the current situation.

WHAT ABOUT COLLECTING FROM A DEADBEAT?

The Court ordered your spouse to pay child support. That's great! Your spouse is not paying it. That's unforgivable!

You have gone through the normal channels to get your (ex)spouse to pay and yet still nothing. What can you do? Plenty!

The first thing you will have to do is to treat the collection of unpaid child support as a business transaction. Although it is very personal, you can not treat it that way. Do not let your emotions get in the way of what you must do to collect the money you are owed. There are many reasons why you need to collect the money and they are all important to you and your children. But remember one thing, in the Courts and judicial system there is only one reason why you should collect the money. That reason is because you are legally owed that money. That's it. It doesn't matter that you need the money for clothes, shelter, or food. The Courts just want to know if you are legally entitled the money.

Hiring an attorney

If you can, it would be much easier on you if you hired an attorney. Most attorneys specialize in certain types of law, the same as Doctors specialize in certain areas of medicine. You would not go to a cardiologist if you had a headache. Therefore the attorney you hire should probably not be the attorney that did your divorce. What you need now is a debt collection attorney not a family law attorney.

You should interview several attorneys before making your selection. Find out how many of his/her debt collections were for child support. What methods are used to collect the money. Do they subscribe to any credit reporting agencies? Will they obtain liens, judgments and wage executions? Will they issue subpoenas and conduct judgment exams for you? What are his/her fees? Are they on a contingency basis, or on a per hour basis; are there any consultation fees; is a retainer required; if the fee is based on a hourly rate then ask if you could be on a payment plan?

If you can not afford an attorney or decide it is too costly there is still plenty you can do on your own.

Getting your money

There are several options in getting your money. They all involve work and judgments from the Courts (court orders). The following outlines various type of judgment where you will be able to get your money. Don't be afraid to use these options because after all it is your money. The money you need to feed, clothe and provide a place for your children to live.

DO YOU KNOW WHAT TO EXPECT IN COURT?

The Court Room is one of the most intimidating places you will ever be. Once you have entered into the Court Room you will have given control of your divorce to someone you have never seen or met before - the Judge. You no longer have control. All decisions will now be made by a

stranger. A very human stranger who is prone to mood swings, illogical thinking, feelings of superiority, and contempt for anyone that stands before him/her. Scary isn't it. Well it is.

The following are some tips to help prepare you for the Court Room

1. Do not expect the Judge to make the "right" decision. There are three directions the judge can go when making a decision: Your way, your spouse's way, or the Judge's way. As you can see 2 out 3 are not in your favor.

2. Try to settle as many issues as possible before entering the Court Room. See Tip #1.

3. If you have an attorney do not speak unless asked to do so by the Judge.

4. When addressing the Judge call him/her "Your Honor". When a Judge puts on the robe they believe they are the supreme being and want to be treated as such.

5. Always thank the Judge when you are finished speaking. Always be respectful, see above.

6. Never speak to or make comments to your opposition when you are before the Judge.

7. Leave all hostile and negative emotions at the door. Do not make faces or gestures when the judge or your spouse's attorney is speaking. Judges see this and do not appreciate it.

8. Dress appropriately. Your attorney will have a certain strategy on how he/she wants you to be portrayed. Therefore consult your attorney on how he/she wants you to dress.

9. Take notes. Don't leave anything to chance. Your attorney will be very busy during the process and can not remember or write everything down.

10. Do not take children into the Court Room unless told to do so by your attorney. This is your divorce not your children's and they should not hear what goes on in that room.

11. Be prepared. Bring as much information, documentation and any pertinent documents that you possibly can with you. It is better to have too much ammunition than to be caught short.

12. Bring a book to read as you might have a long wait before your case is heard.

WHAT ABOUT CUSTODY

Divorce in itself is trying enough. If children are involved it becomes even more trying and extremely emotional. Parents often loose sight of what is in the best interest of their children. Where do the children fit into this whole new life that is being created. Unfortunately children often become financial pawns in a divorce when child custody issues are being decided.

Before the divorce is finalized a temporary custody arrangement is put into place. This can usually be done without the courts intervention if both parties can reach an agreement. The temporary custody arrangements are not necessarily what the final custody arrangement will be. The agreement should be well thought out and comprehensive. It is best to put it on the court record to make it binding.

TYPES OF CUSTODY

There are 2 basic issues in regards to custody:

1. Physical or residential custody - Which parent the children will live with.

2. This parent is referred to as the Residential Custodian. Legal custody - who will make the decisions on behalf of the children concerning health, education, religion and general welfare.

The most common form of custody is Joint Legal Custody. This is where the children live with one parent (residential custodian) while the other parent has visitation rights. With Joint Legal Custody, both parents make the decisions on behalf of the children concerning health, education, religion and general welfare.

Joint physical custody Often referred to as shared parenting, it is when the child resides with both parents for a significant amount of time. This arrangement does not always work out to be an exact 50/50 split. In order for this type of situation to work, there must be cooperation on both sides. The parents would also have to live in close proximity as not to affect the child's schooling. A few years ago there was a trend towards awarding this type of custody, however recently it has been determined that this may not be in the best interest of the child.

Sole legal custody Is when one parent has the right to make all the legal decisions regarding issues such as health, education, general welfare and religion. This type of custody is not very common anymore.

When the divorce is finalized both physical (residential) and legal custody will be determined.

THE CUSTODY AGREEMENT

The purpose of the custody agreement is to reach an understanding on how to raise and care for the child with both parents sharing in the responsibilities and maintaining involvement in the day to day life of the child. For the custody agreement to work it is essential that you be flexible.

Make every attempt to encourage and respect the relationship of your child and the other parent. Don't assume anything and keep an open mind. Easier said than done when in the midst of the turmoil that naturally goes with a divorce. Keep in mind you and your spouse are getting the divorce, you are not divorcing your children. What if you can't come to an agreement on custody? Then be prepared for a custody battle.

THE CUSTODY BATTLE

Unfortunately, a battle is exactly what it will turn into. Before you reach the point of court intervention to decide custody think long and hard. A custody battle puts the child right smack in the middle of your battle. Why are you fighting for custody? Are you fighting FOR custody or fighting so that your ex-spouse DOESN'T HAVE custody? Is it in the best interest of the child? If you've determined that it's the right thing to do for the children to go forward, what can you expect when the court intervenes?

1. The court will take into consideration the best interest of the child when making the decision.

2. If the court feels that neither parent is acting in the best interest of the child a guardian ad litem may be appointed to help in making decisions on the behalf of the child.

3. Depending on the age of the child, their wishes may or may not be taken into consideration. Some states strongly take into consideration the wishes of the child depending on their age, some states do not consider the child's wishes at all, without regard to age.

4. Traditionally, the judicial system leans towards deciding in favor of the mother in custody cases. However, with more women pursuing full time careers this trend may be changing. It is no longer assumed that the mother is the primary caregiver.

5. Unless the situation is so obvious that one parent should have custodial rights over the other (such as in drug abuse or physical abuse) a court ordered independent evaluation will probably be ordered. The evaluation is usually done by a court appointed mental health professional such as a psychologist or a social worker. A thorough evaluation can include the following: interviews with all the parties involved (individually and possibly with the parent and child together); psychological testing of both parents and the child; review of school records and or conversations with teachers; review of medical records and developmental history; review of legal records, such as the papers filed regarding the divorce, any possible domestic disputes and any criminal records of either party involved. Be prepared for the evaluation to take at least four to six weeks if not longer. Be prepared for a time consuming and costly battle.

No matter how strongly you believe you would be the better parent and should have custody of the children, be prepared for the court to decide against you. Be ready to accept the courts decision and move forward to work with your ex-spouse to raise your children in a way that is best for them.

NEVER use a custody battle as a chip in negotiating a better financial settlement. Once the battle has begun, everyone will be scarred including the children. So think long and hard about the consequences of your actions and always keep the children's best interest in mind, long and short term.

DO YOU KNOW THE DO'S AND DON'TS OF DIVORCE?

This is an extremely turbulent and emotional time. As such you may find yourself thinking and doing things that you would not normally do. The most devoted of parents have been known to put their children in the middle. Often times you will hear somebody say, "I just don't know this person anymore" about somebody in the process of a divorce. They are right. Most people do go through some sort of metamorphosis during their divorce. We tend to be much more emotional and rash in our decision making. It's part of the process that we must watch very carefully. Try to always think before you act. What will be the effect of today's action tomorrow?
This is a list of things that under normal circumstances most people would never do. This list was developed based on personal experiences, having had these things done to us, or as much as we may hate to admit it, having done some of these ourselves. If you can follow these guidelines you will find that you behaved in a mature rational way. Not only can you be proud but you will find that more things will be better in the long run. Easier said than done but give it your best try.

DON'T put your children in the middle of your divorce. The divorce is between you and your spouse. The children are innocent victims. DO show them the love and attention they deserve. Make sure that they know they are not the reason for the divorce.

DON'T stop the children from seeing your (ex)spouse during their scheduled visitation time because he/she owes you money. DO try to resolve the matter with your (ex)spouse. If the two of you can't resolve the problem then contact your attorney to find out what legal actions you can take.

DON'T put your spouse down in front of the children. DO show respect towards your spouse in front of the children. If you can't do that then do not say anything at all. It will only come back to haunt you as well as send the wrong message to the children.

DON'T use your children as a negotiating ploy during the settlement process. DO be honest and upfront. Judges know when the children are being used and do not look highly upon such tactics.

DON'T spend $1,000 on attorney fees fighting over a $150 piece of furniture. DO use good business sense when deciding what to fight for and at what cost should you fight for it.

DON'T get greedy. It doesn't matter if you wanted the divorce or your spouse did. Just because you're hurt and your emotions are running high, does not mean that you are entitled to more than the law allows. This attitude will cost you unnecessary attorney fees and the judicial system doesn't care about your personal feelings. DO be reasonable and flexible. Find out from your attorney what you are entitled to by state law regarding equitable distribution, alimony and child support.

DON'T use your children as a therapist. They are not equipped to handle the emotional strain being placed on them. DO get professional help if you need it to cope with your divorce.

DON'T represent yourself. Not only will your inexperience will bite you in the butt, you will also come off as selfish and self serving. Besides Judges do not like it when you represent yourself. Even experienced attorneys that are getting divorced use attorneys. DO use an experienced matrimonial attorney. Although you may feel like you will save money, it will cost you more in the long run by not having the proper representation and someone with experience and knowledge of the law looking out for your best interest.

DON'T let your friends tell you what to do. Though they mean well they are not experienced in the coming and goings of a matrimonial courtroom. DO listen to your attorney, he/she knows more than your friends.

DON'T depend upon your memory. DO document everything that you might think will be important later on. Also keep a journal of important dates and events.

DON'T pay you child support late. DO pay it on time. Not only will you avoid legal ramifications, you are also supporting your children. The money goes towards the rent/mortgage, food, clothes, utilities and other necessities.

DON'T call your visitation with your children "Your time" and base things around your schedule. DO remember that the children have a social life too. They have soccer, birthday parties and friends. It is important that their social life be as normal as possible. They are not the ones who are divorcing, you are. So let them maintain a normal social calendar.

DON'T let the children guess when they are supposed to be with you. DO keep a calendar for the children as to the regular visitation and special visitation such as holidays and vacations.

DON'T pick up your children for visitation if have been drinking or have been doing drugs. DO arrange with your (ex)spouse for another time that you can spend with the children.

DON'T make your children feel like a "guest" in your new home. DO make the children feel that your new home is also their home. That should include whatever chores they were responsible for at your prior home they should also be responsible for at your new home.

DON'T let the children play one parent against the other. DO talk to your (ex)spouse when you feel this happening and make sure that the two of you are on the same page.

DON'T question the children regarding the activities of your (ex)spouse. DO keep the children out of the line of fire between you and your (ex)spouse.

DON'T use the children as messengers. This puts them right in the middle. Not only are you risking their love and affection you are also relying upon the child to get the message to your spouse correctly and in the manner you meant it. DO speak directly to your (ex)spouse. This way there is no miscommunication or confusion. If there is a restraining order in place that forbids contact then ask your attorney on how you should proceed.

DON'T make promises to the children that you can not keep, especially extravagant ones. DO make sure your promises are realistic, appropriate and that you are capable of carrying out the promise.

DON'T rehash the things that have happened in the past, you can't change what has already ready happened. DO learn from those things, fix what you can and then let them go.

THE 6 PROVISIONS ALL DIVORCE JUDGMENTS MUST INCLUDE.

1. **Property Division**

This provision divides the parties' real estate and personal property and makes an allocation of their debts. This will apply to property brought or acquired during the marriage and, under some circumstances, may affect property which a party owned at the time he/she entered into the marriage.

2. **Pension Annuity and Retirement Benefits**

This provision determines the parties' rights in pension, annuity or retirement accounts which accrued during the marriage. This provision is ordinarily put into effect through a separate document which is usually titled "Qualified Domestic Relations Order."

3. **Spousal Support (also known as Alimony)**

This provision either states that Spousal Support is forever barred between the parties, or that the issue is reserved until some later time, or it specifies the amount of Spousal Support and the manner in which it is to be paid.

4. **Insurance Provision**

Under Michigan law, the entry of a Judgment of Divorce terminates the other parties' interest as a beneficiary in any life insurance, endowment or annuity on the life of the other spouse. This is true unless the Judgment of Divorce contains

a provision which is to the contrary. All Judgments of Divorce should contain a statement that such interests are either terminated or continued on some set of conditions.

5. **Dower**

This provision extinguishes all claims which a wife may have against any property in which her husband holds and interest. The concept is Dower is probably antiquated in today's society, however it remains a law on the books and needs to be addressed in each Judgment of Divorce.

6. **Mandatory Support Order Provisions**

These provisions include the procedures for paying child or spousal support through the Friend of the Court Office, requirements for payment of Friend of the Court fee, procedures for entry of wage withholding orders for support obligations, employment information regarding the parties and address information for minor children who are the subject of any support order. The are also a number of miscellaneous provisions regarding support arrearages, modification of support orders, and support surcharges.

These Six provisions apply to all Judgments of Divorce regardless of whether the parties have minor children. If there are minor children, there are also provisions required to set forth the custody arrangement, parenting time, child support level, health insurance for the minor children and allocation between the parties of uninsured medical expenses for the children.

Divorce is a serious matter. Please take advantage of a FREE 30 minute consultation with an experienced divorce lawyer. You can do this in person, or on the telephone – If you can not call during work hours, call [redacted] during evening or weekend hours. There is NO obligation of any kind. If we can't help you, we will be glad to find you someone who can.

FREE 30 MINUTE CONSULTATION:
& Divorce Assessment

Either in person, or on the telephone

Offer expires in 7 Days