



GLOSSARY OF TERMS IN FAMILY LAW

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Following is a listing of terms that may be helpful to the client as they proceed through a family law matter.

Alimony

Also known as spousal support. Alimony is a form of support provided to a spouse for their support and maintenance. Alimony is based upon various factors which include a disparity of income between the parties and the needs of the recipient to receive spousal support. It may be modifiable as to term and amount, or may be non-modifiable if it is agreed to by and between the parties.

- Alimony may be subject to modification as to amount and term agreed to by the parties, or ordered by the court based on a substantial change in circumstance.
- Non-modifiable means that no change of circumstance, whether substantial or not, will change the terms of alimony agreed to by the parties. The court cannot order non-modifiable alimony without agreement of the parties. If the parties want non-modifiable alimony where no change of circumstances will change the amount and/or term of alimony, the parties must agree regarding non-modifiable alimony and waive their statutory right to modifiable alimony and consent to non-modifiable alimony. If the court orders alimony it must be modifiable.
- Deductibility and includibility are the terms used in conjunction with alimony. Alimony generally is tax deductible to the payor if it is in accordance with the Internal Revenue Service Code.

Alternative Dispute Resolution

- Mediation/Facilitation – A non-binding process where the mediator who is a facilitator attempts to assist the parties to reach resolution on some or all issues.
- Arbitration – A voluntary process where the parties mutually agree to submit some or all issues in their case to a binding arbitrator who acts as a circuit court judge. The arbitrator acts under an arbitration agreement and/or court order.
- Collaborative Law – A process by which the parties act

together with going to court. It is a “win-win” situation for the parties and the families. It is unique in that the true form of collaborative law requires the parties and legal counsel to sign a contract that requires the attorneys and any experts hired by the parties during the process to withdraw from the matter if either of the parties chooses to go to the court to resolve the matters where the parties cannot agree. After all the matters are resolved, the parties approve a settlement agreement and proposed judgment which can then be entered by the court. The intent is not to go to court to resolve disputed matters.

Burden of Proof

The burden of proof is the evidentiary standard establishing the degree of proof necessary for a court to reach a determination on an issue. Two most common forms of burden of proof are:

- Preponderance of evidence is a determination by the court that the weight of relevant evidence presented on an issue is slightly more than 50 percent in favor of one party.
- Clear and convincing is a determination by the court that the weight of relevant evidence presented on an issue is substantially more than 50 percent in favor of one party. When the burden of proof to be used to decide an issue is clear and convincing, the trier of fact must find against a litigant on the specific issue even if the court determines a party would prevail by slightly more than 50 percent. To prevail when clear and convincing evidence is required, the party must who has the responsibility of the burden of proof must prevail by substantially more than 50 percent.

The standard of proof may change depending on the issue, the timing of presenting the issues and circumstances of the issue presented.

Child Care

Child care costs are costs related to the care of the minor children. When one party or the other has parenting time and child care is necessary for either work related or educational purposes of the parent needing child care, the



court will order that the other party share in the child care expenses. The child support formula will allocate the amount each parent is to pay toward child care. It considers a child care tax credit being received by a parent.

Child Custody

- Legal Custody – Legal custody identifies the party who is going to make major decisions for the minor children. It is common for parties to be awarded joint legal custody requiring the input of both parties with respect to major decisions such as which school the children will attend and elective health care decisions. Sole legal custody provides that only one parent will make those major decisions, whereas joint legal custody mandates that both parents participate in such decision-making. Routine decisions are made by parents when they have parenting time with the minor children.
- Physical custody – Physical custody usually designates the parent who has the majority of time with the children. The children normally go to school in a school district where the physical custodial parent resides or the court makes the decision. Where there is joint legal and joint physical custody, the parties agree where the child goes to school or the court will decide. Joint physical custody usually includes a specific parenting time schedule as to the time the children spend with each parent. (See also Parenting Time)

Child Support

Child support is the money one parent pays to the other parent for support and maintenance of the minor children. Child support is established by using the Michigan Child Support Formula. The formula is available in the Michigan Child Support Guideline Manual and in at least two computer programs. The formula considers the income of each party as well as other items which are referenced in the Michigan Child Support Formula Manual. Child support is presumptive and there is very little, if any, deviation from the guidelines. If there is agreement of the parties and good cause shown to the court they may deviate from the child support guideline. If a parent is allocated more than 128 overnights of parenting time in a year, the child support guideline provides for a shared economic formula which is a reduction from full child support. Full child support and the shared economic formula, where appropriate, will be reflected in the child support program.

Dependency Exemption

A tax exemption pursuant to the Internal Revenue Service Code which goes to the party with primary physical custody unless otherwise agreed by the parties or ordered by the court. The exemption is a tax benefit to the party receiving the exemption.

Discovery

The process by which information is gathered from each party and others which may be relevant to the resolution of the matter.

- Interrogatories – A series of questions submitted to a party which must be answered under oath, in writing, by the party to whom the interrogatory questions are submitted.
- Deposition – A deposition is the testimony of a witness taken under oath, normally before a court reporter. Depositions are normally taken by a party's counsel of the other party or witnesses prior to a trial. A deposition *de bene esse*, allowed under certain circumstances, is testimony taken to be read at a trial as though the witness were present in court so long as the testimony is relevant and competent.
- Subpoena – A process which causes a witness to appear and give testimony, commanding them to appear at a certain place and at a certain time. A subpoena is also issued to individuals and entities such as corporations requesting them to appear and produce requested documents at a certain time and place to be examined by the person (usually an attorney) issuing the subpoena.

Domestic Violence

Domestic violence refers to abusive behavior by one or both parties in a marital relationship. If there is sufficient evidence by one party or another, the court may issue a Personal Protection Order regarding certain behaviors of a party.

Domicile/Residency of Children

The domicile and residency of the minor child(ren) is the state in which the minor child(ren) shall be domiciled and reside and can only be changed with further court order. Also, the one hundred mile rule requires that each parent who has joint custody must live within one hundred miles of where the child's primary residence is located at the commencement of the case.

Ex-Parte Order

An order issued by the court without the benefit of both sides appearing and having input into the matter heard before a judge issues the order. Ex-parte orders are not normally issued by the court. If an ex parte order is issued, the other side is given the opportunity to object within a limited time.



Expert

Experts are persons who have a special expertise which may be relied upon by the court. Experts are used by the court and the parties assisting them in reaching decisions in the court process. There are many different types of experts.

- In custody matters there may be an expert mental health professional making recommendations pertaining to custody and parenting time;
- A parenting coordinator is a facilitator attempting to assist parties to agree on issues relating to minor children and the parenting coordinator's recommendation may be attached to a motion to be reviewed by a court if the parties still disagree.
- Appraiser. An appraiser is a professional with the responsibility of valuing the assets of the parties which may include businesses, homes, other real estate, jewelry, and other assets. An appraiser provides an expert opinion regarding an issue on which they are qualified to testify. All experts must be qualified as experts. A real estate appraiser must be certified and may value a home or other real property, such as raw land or a commercial building. A business evaluator values a person's interest in a business. A jeweler may be used to appraise jewelry. Items such as antiques, collectibles, coins, etc. may be appraised by an appropriate expert. The job of the appraiser is to provide values and the basis upon which they arrived at the value to assist parties to reach resolution in domestic matters or the court to make determinations.
- An occupational expert is used to evaluate a person's ability to work.

Fault

Although Michigan is a no-fault divorce state and will grant a divorce whether there is fault or not, the court may consider fault as a factor in both property division and alimony determinations. Common fault factors considered by the court relate to the conduct of parties that bear upon the breakdown of the marital relationship. The most common fault factors considered by the court are domestic violence, infidelity and substance abuse. Fault may, but does not always, result in a somewhat disproportionate property settlement award.

Fee Contract

The contract between the client and the attorney that spells out the terms of agreement between the attorney and the client.

Friend of the Court

This is the agency that assists the parties and the court regarding family matters. The court has referees who are attorneys who may hold evidentiary hearings and make recommendations with respect to support, custody, parenting time and other issues.

The Friend of the Court staff also includes counselors who assist the parties with child related issues and recommendations related to custody and parenting time. The Friend of the Court has additional staff which includes support specialists and other people who assist the parties in answering questions and providing recommendations to the court.

Health Care Costs

Health care costs are those related to health care of the minor children. At least one of the parents is obligated to carry health care insurance if it can be obtained at a reasonable cost or as a benefit of employment, and uninsured health care costs are allocated between the parties according to the child support formula.

Inheritance

An inheritance is property received by a party as a result of death which normally is allocated to the party receiving the inheritance if it is kept separate or is traceable.

Judge

A judge in the family court is the person assigned to handle the matter. The judge is the trier of fact and decision-maker in a divorce or other family law case.

Marital Property

Marital property is property accumulated during the marriage, subject to some exceptions such as gifts or inheritances.

Motion

A motion is a request by a party for a disputed matter to be brought before a court. Motions are heard by a judge who makes a ruling concerning the matters brought before them.

Parenting Time

Parenting time is the designation of the time that each parent has allocated to them with the minor children. Parenting time is a better descriptive term for each parent's participation



in the children's lives as opposed to the term "visitation" for the parent who has less time with the minor children. Parenting time allocations generally are broken into regular parenting time during a school year and holiday, summer and vacation time. Parenting time may be specific or flexible as agreed by the parties when they have the ability to communicate with each other and work together.

Pre-nuptial Agreement

A pre-nuptial agreement (also known as an ante-nuptial agreement) is a contract entered into prior to a marriage that incorporates the agreement of the parties regarding their assets and support issues in the event of a death and/or divorce. There are specific requirements in order for a pre-nuptial agreement to be valid and binding including the requirement that there be a full disclosure of assets of both parties.

Putative Father

A man who is not married to the mother of a child and is alleged to be the biological father of the child.

Qualified Domestic Relations Order (QDRO)

A court order that divides retirement plans which are federally qualified plans under the Internal Revenue Service Code without there being tax implications to either party. QDRO's are specific and deal with many issues including survivorship rights and enhancements to the plan. QDROs are used to divide retirement plans, including 401(k), 403(b) and defined benefit pension plans.

Separate Property

Separate property is property that is either pre-marital or acquired during the marriage but not considered as marital. Examples of separate property acquired during the marriage include gifts, inheritances, passive growth on pre-marital assets. Active management of an asset, payment of taxes, and other factors may cause separate property to be included in property division. The court may also invade separate property if it is necessary for the adequate support of the other party. There are specific statutes and case law that may allow a court to invade separate property.

