



# MEET YOUR FAMILY LAW JUDGE

BY HON. BILL CALLAHAN  
WAYNE COUNTY CIRCUIT COURT FAMILY DIVISION<sup>1</sup>

There are few common factors to describe judges, other than the interest in a prompt, fair decision after providing due process of the law in all respects. All judges in Michigan must be lawyers for at least five years. There are few other legal qualifications to be a judge besides age and residency. The judges assigned to Family Law are primarily circuit court judges. In some counties, probate judges also hear Family Law cases.

The bench is comprised of members of all ethnic, religious, and socioeconomic backgrounds. Both genders are well represented. Some judges are lifelong members of a political party, while others have no political connections. Some are former prosecutors; some civil lawyers who specialized in plaintiff or defense work; some – law professors; some come from large law firms, others small practices; some – District Court judges before becoming Circuit Court judges. Many have a combination of the above experiences. The point is that the bench is a reflection of the community that it serves. Judges have children, grandchildren, or maybe no children. Some are divorced. Some never married. More than one is a single parent.

Prior to October 1997, Michigan courts had no Family Division. At that time, a Family Division was created in all circuit courts in our state. Since then, I have had the privilege of sitting exclusively in the then created Family Division of the Wayne County Circuit Court.

Michigan does not have a dedicated Family Court, only a Family Division as part of the Circuit Court. This means that the judge handling your divorce case may recently have been a civil division judge. In Wayne County, there is a Criminal Division as well. Some of our Family Division judges were once assigned to the Criminal or Civil Divisions. In some counties, assignment of judges is by seniority. In many counties the newer judges are predominately assigned to the Family Division.

The judge's role in a family case consists of managing the docket, scheduling conferences, appointing experts, and helping parties to choose the best method to resolve their disputes. Overall, the judge is there to assist the parties in concluding their case. Where the parties are unable to agree, then the judge is to make decisions on preliminary and final matters. The practices that judges employ to accomplish such goals vary widely by county. In some counties, judges rely heavily on conciliation. In those cases,

parties are referred to the Friend of the Court for conciliation to resolve immediate issues such as temporary custody (e.g. Grand Traverse County), parenting time, and child support. In other counties (e.g. Wayne County), temporary ex-parte orders are found to be most effective, and conciliation is never used. Some states require that children have their own attorney to represent their interests. Because Michigan does not have such a requirement, the role of the Michigan judge is expanded even more so than in other states.

In all cases involving a child, the best interest of the child must be paramount. I encourage parties to make as many decisions as they can without my involvement, because there is little chance that a stranger in a black robe can know the parties, the child, and the history of the relationship better than mom and dad. An unofficial survey (of all people who have asked me to decide a major issue in their lives) says that I have erred at least 50% of the time. Some parties were very unhappy with my decision. Of course, these people had expected that the other side was going to be the unhappy one. Personally, I am surprised at the number of people who chose to "roll the dice" on matters of great importance to them and their children.

When I first came onto the bench ten years ago, I wanted to be known as a judge who makes tough calls. Now I see a different role for myself. Today's family judges conduct more administrative duties than merely decide cases. We help attorneys to schedule meetings, to pick experts or the right mediators or facilitators, and to negotiate settlements. These days, very few cases require a decision by the judge.

Judges spend much of their time in their chambers, meeting attorneys or preparing for hearings. When meeting with attorneys, I insist that I have a list of issues first. After we begin to talk, I usually learn that the list is incomplete. Many times, it turns out that unstated issues are the reason that the identified issues cannot be resolved. Other judges probably have different techniques. I know one technique that involves insisting that everyone stay until at least some of the issues are resolved through negotiation. In some cases, a judge may suggest alternatives not yet considered by the parties. We judges use the techniques that work best for us.

Despite all the attempts to improve the system, judges come to work with human weaknesses. Some days, judges may simply suffer from "getting out of the bed on the wrong side," or much worse. We have our own family problems.



We sometimes do not get enough sleep. We may have a spouse who is sick, or be awaiting the birth of our first child. In spite of numerous potential distractions, judges are always expected to make the right decision. If I were a novelist, I would have many stories to tell. I have learned never say that I have heard it all, because I have eaten those words too many times. Without disclosing more, I do confess that in the stories that I hear, I usually recognize something about my life and myself.

Lawyers are sometimes defined as “someone who can predict a judge’s decision.” Decisions of judges in Family Division are probably the most difficult. The tendency to award spousal support, custody, and property to a particular gender is rumored to vary greatly by county. At one conference of Family Division judges that I attended, a room of about thirty judges disagreed on a hypothetical spousal support case to the point that about 20% would have awarded no spousal support, while the remainder varied from \$20,000 per year to over \$100,000 per year. The facts of that hypothetical case were extreme, but based upon several real factual situations. The point is that judicial decisions are as difficult to predict as the factual situations that create them.

Many people believe that judges have unfettered power, but this is not true. To enforce this, the constitution and legislature have created a Court of Appeals and Supreme Court. Also, judges must follow Judicial Ethics. There is a Judicial Tenure Commission in Michigan that decides if these ethics have been breached.

Parties sometimes have power that a judge does not. Parties may agree to an order to do some things that a judge expressly cannot do. For example, parties may decide to forever bar the modification of ordinary spousal support; award property to third parties; and require child support for adult children. The parties in a divorce case can agree to each of these items, and this often occurs. If the parties agree to an order (as compared to the judge making the decision), then such an order can be entered and enforced by the judge. In one of my cases, the parties agreed to the sharing of the college education expenses of their adult son. This son was also entitled to enforce the divorce judgment against a defaulting parent. My point is that, though a judge could not have made a decision to provide this relief, the judge may enforce a valid agreement to do the same.

Judges take note of the behavior of the parties in the courtroom. Many people think that what they do or say does not matter if they are not under oath in the witness stand. They are often surprised if a decision is based upon their demeanor or reaction to others’ testimony in the courtroom. For example, if “anger management” is an issue, I do not ignore emotional outbreaks.

Parties would be well advised to treat their judges with



utmost respect. This means referring to the judge as “your honor” and facing the judge when testifying. It will not have a great effect on the outcome, but it avoids the effect that might happen if the judge were to determine that a party disrespects the court.

The same would apply to treatment of opponents. The judge will be taking notes. Someone asking for custody may argue that they are more likely to facilitate the relationship of the child with the other parent, but open hostility and rudeness may belie this. If you feel attacked in court, don’t demonstrate anger. If asked a question that seems inappropriate, ask the court, “Do I have to respond?” Remember that if you treat your opponent with less respect than appropriate, the court will notice.

In this same regard, the parties would be well advised to remember that the court staff is like a family. If anyone were to insult a staff member, then the court might similarly take offense. As judges, we do our best to ensure a fair and impartial result. On the other hand, the ethical rules and court decisions define bias to exclude opinions formed during court proceedings. Therefore, parties can definitely prejudice themselves by making inappropriate remarks to the judge or court staff in the judge’s presence.

If represented by a lawyer, remember the reasons why the lawyer was hired. Many clients insist that their lawyers say certain things or add facts that appear irrelevant to me on the bench. It is usually apparent when the client is insistent on these items, because the lawyer is too knowledgeable to want to say them. In other words, the client seems to me to be attempting to take control of the case. In the mind of the lawyer, the arguments are those that the client wants to hear, rather than arguments that the court wishes to hear. Some clients do worse by subverting their lawyer’s ability to argue without interruption. As judge, I sit politely through this and try to be patient, as lawyers are required by clients to make arguments that are unavailing, but demanded by the client. Be prepared to compromise on insignificant points. You will win points with the court by demonstrating willingness to compromise.



In any custody or parenting time matter, forget your own interests. Do not consider it a loss if a child spends more time with the other parent. Do not ask a court to give you more time, because it's fairer to you. The child's interest is the only interest that counts. An argument based upon your interests should fail. Instead, concentrate on what is best for the child. Be prepared to tell the court about the needs of the child, and how those needs are better served by your proposals.

In conclusion, it would be fair to say that judges are the same as all people. They just appear to be vested differently. They

come from the same background, schools, and ethnic and religious groups as the rest of the community. They get tired and ill just like all others. When you remember the human side of the judge's nature, and the fact that no two humans will agree on everything, you start to get an understanding of the difficulty in describing a judge's role.

### **Endnote**

- I. With special thanks to Christina V. Kennedy, Esq. for invaluable assistance in preparation.

