

WHAT TO EXPECT DURING YOUR DIVORCE

A guide to legal procedures and court proceedings and the emotional impact encountered by couples and their children

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Introduction

The law firm of *Miller & Bartnicki, P.C.* understands that even contemplating a divorce can be frightening and emotionally traumatic. We will help you through the difficult stages if you are facing a divorce situation. Our experience and expertise in this field will help enable you to get through this trying time while we look out for the best interests of you, and any children you may have. *Miller & Bartnicki, P.C.* represents both men and women in domestic relations matters, and fight for your rights and a fair and equitable result regardless of your sex. We can also be of assistance in post-judgment matters such as changes in custody or support.

This handbook is designed as an informative guide to answering some of the most frequently asked questions, and to put your mind at ease about the unknown. It also includes information for other resources you may wish to contact for inquiries in various areas. If at any time you have any additional questions that can not be answered by the information contained in this guide, please feel free to contact our office by calling (734) 455-1230.

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Definitions - Terms and Explanations

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| Alimony | Money paid to one party by the other following a divorce for the support of the recipient. |
| Alimony Prognosticator | A software program that estimates the amount of alimony that may be awarded based on the situation of the parties. Factors considered are age and length of the parties marriage, education levels, income, etc. |
| Answer | Pleading filed by Defendant in response to a divorce Complaint. |
| Appearance | A pleading or form which basically provides that a party to an action, or counsel for a party, enters his or her appearance in the case and may consent to an entry of divorce. |
| Arrearage | Support which is owed and not paid. |
| Child Support | Amount of money usually paid to the custodial parent for the maintenance and support of the children. Child support is sometimes paid directly to the custodial parent from the non-custodial parent, or is paid through the Friend of the Court for the county where the divorce was filed. |
| Child Support Factors | In determining the amount of child support to be paid, the Courts and statutes have looked to child support factors to determine the amount of support, such as the income of the parties, age of children, etc. Refer to State of Michigan Child Support Guidelines section of this guide for additional information. |
| Child Support Worksheet | A worksheet used to evaluate child support to comply with the child support guidelines. |
| Child Support Guidelines | All states now have child support guidelines to assist the Court and parties to calculate the amount of child support that should be paid. If the guidelines are followed, the chance of support amount the parties agree to will be approved is increased. If the child support guidelines are not followed, reasons must be provided as to why there should be a deviation from the guidelines in the case. The deviation may be more or less than the guidelines. Refer to State of Michigan Child Support Guidelines section of this guide for additional information. |
| Complaint | A pleading(document) used to commence a divorce action dissolving the bonds of matrimony. The complaint is filed with the court clerk, usually in the county of residence of the parties. |
| Contested | When one party does not consent to the divorce. |
| Counter-Complaint | A complaint filed by a defendant against a plaintiff. |
| Court Clerk | Courts have clerks who handle the processing of court papers, hearings and other matters. A Complaint is filed with the Court Clerk usually in the county of residence of the parties. |
| Custodial Parent | The parent who has physical custody of the children, with them residing primarily with that parent. |
| Defendant | The person who is being sued for divorce. |
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| Deposition | Oral questions from one party to another usually asked by the party's attorney while the deponent is sworn under oath before a certified court reporter. |
| Discovery | The process where one party seeks to obtain information from the other party relevant to the case through Interrogatories, Requests for Documents, Requests for Admissions, Depositions, Subpoenas, etc. |
| Equitable Distribution | Division of marital property between the husband and wife. |
| Ex-parte | On the request of one party only, without notice to the other party. |
| Filing Fee | A fee paid to the court at the time of filing the Complaint. Additional fees may also be required for mediation, arbitration, Friend of the Court investigation, etc. |
| Final Judgment | The document which concludes the divorce and dissolves the marriage is called a final Judgment (also Divorce Judgment, Consent Judgment of Divorce, etc.) It is presented to the Court after all requirements to obtain the divorce have been met. |
| Financial Statement | Statement of parties' assets, liabilities, and net worth. Some states also include income and expenses. |
| Friend of the Court Referee | Typically an attorney who is in good standing with the State Bar who assists the court by hearing certain motions in domestic relations matters, and makes a recommendation to the presiding Judge. |
| Friend of the Court | The Friend of the Court is responsible for initiating proceedings to enforce an order of judgment for support, visitation or custody. Friend of the Court Referees may hear motions and make a recommendation to the Judge presiding over the case for final determination. |
| Interrogatories | Written discovery questions from one party to another. |
| Irreconcilable Differences | A typical no-fault grounds for divorce. |
| Joint Custody | Michigan allows joint custody in certain cases where both parents are entitled to care for and obtain information about the children. Support may still be paid and joint custody may be equal or divided. Some courts do not favor joint custody while others routinely accept it. Joint custody does not necessarily mean equal time parenting. It may simply indicate both parents have meaningful involvement. |
| Joint Property | Property owned by husband and wife equally. |
| Joint Complaint | Complaint filed by both husband and wife. |
| Jurisdiction | The authoritative basis for the Court to hear a case. Which court hears or presides over the divorce. |
| Legal Custody | Although one parent may have physical custody, both parents have joint legal custody and are equally entitled to make decisions regarding the health, care and general welfare of the children, as well as have equal access to all information concerning the children. Parties may have joint legal custody. |
| Marital | Property acquired during the marriage. |

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| Property | |
| MCL | Abbreviation/citation for Michigan Compiled Laws. |
| MCR | Abbreviation/citation for Michigan Rules of Court. |
| Military Affidavit | Under a Federal Soldiers and Sailors' Civil Relief Act, a divorce action may not be allowed to proceed if the defendant is in the active military service. This affidavit states that the defendant is not in the active military service and is required to be filed in most States in order to show the Court that the action can proceed because the defendant is not in the military. |
| No-Fault | No need to prove actual fault grounds for divorce. |
| Non-custodial Parent | The parent that does not have physical custody of the children. |
| Physical Custody | The parent that will have physical custody of the children, meaning the children primarily reside with that parent, while the other parent will have visitation rights. Joint physical custody is also used. |
| Plaintiff | The person who files suit with the court requesting a dissolution of the marriage. |
| ODRO | Qualified Domestic Relations Order- a document prepared providing for the division of a pension or retirement plan in a divorce. |
| Request for Admissions | Written questions from one party to another requesting an admission or denial of statements of fact. |
| Residency Requirement | The length of time one or both parties reside in the State/County before a divorce action may be filed. In Michigan a party must reside in the State 180 days, and in the County for at least 10 days. |
| Separate Property | Property not acquired during the marriage. |
| Settlement Agreement | Agreement between the parties settling all property, medical, child support, custody and other issues. |
| Settlement Conference | A hearing scheduled by the Court where appearance of both parties is mandatory. The parties usually negotiate possible terms of settlement. The Judge may indicate what the Court is inclined to rule should the case proceed to trial. Parties may participate in more than one settlement conference. If settlement is not reached, a date may be set for trial. |
| Shared Economic Responsibility | When children spend substantial amounts of time with both parents (minimum 128 overnights), the child support calculation presumes that as parents spend more time with their children they directly contribute toward a greater share of all expenses. |
| Show Cause Hearing | A court hearing allowing a person to present reasons why he or she should not be considered in violation of a specific court order. Also known as a contempt of court hearing. |
| Summons | A document signed by the Court Clerk and served on the defendant. It informs |

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| | the defendant that a complaint has been filed and directs the defendant to file an Answer within the required time (21 days if personally served, 28 days if served by alternate means). |
| Uncontested | Agreed divorce or divorce where Defendant does not appear. |
| Venue | The proper county in which to file the divorce. |
| Verified Statement | In an action involving a minor, or if child support or spousal support is requested, the party seeking relief must attach a verified statement to the divorce papers being served on the opposing party and provide a copy to the Friend of the Court, stating specific information such as residency, social security number and income information, etc. |
| Visitation | Right of non-custodial parent to visit with children, i.e. every other weekend, etc. |
| Waiting Period | Michigan has a waiting period from the time of filing the Complaint before the matter may be heard or a final judgment entered. You can not set the case for trial or present a judgment of divorce until the waiting period has expired. The waiting period is 6 months if the parties have minor children, and 60 days if the parties do not have children. Also known as "cooling off period." |

What to Expect

Following is a brief outline of what you may expect to encounter in a typical divorce situation while being represented by *Miller & Bartnicki, P.C.*:

Office Consultation

An experienced divorce attorney at *Miller & Bartnicki, P.C.*, will meet with you for a FREE ½ hour initial consultation if you are contemplating filing for divorce, or if your spouse has indicated that divorce is possible or eminent. This meeting is confidential. The attorney will discuss with you different facets of your marital relationship, children, property, etc. He will also inquire as to what you desire to get out of the divorce, what your views are on custody, and whether any support is appropriate. He will advise you as to your rights, options and his opinion as to the likely outcome. You may ask about any concerns or questions you have at that time.

If it is determined that you wish to initiate a divorce proceeding, or hire the firm to defend you in a divorce, you will need to fill out a divorce questionnaire. The questionnaire provides vital information needed to file suit, and during the pendency of the action. You will need to provide detailed information concerning your marriage, financial and business affairs. In many instances, clients take the questionnaire home to return completed at a later date. See "Client Information - Domestic Matter" form attached.

The attorney will also discuss his fees with you. A retainer fee is required to retain the firm's legal services. The amount of a retainer may vary depending on the complexity of your case. If you wish to hire the attorney to represent you in the divorce, you pay a retainer fee and sign an hourly fee agreement for services. The retainer will be applied to your account and you will receive regular invoices itemizing the work the attorney has done on your behalf at his hourly rate, as well as any expenses that have been incurred.

Preparation and Filing of Suit

Once all of the necessary information is compiled, the attorney will prepare a Verified Complaint for Divorce and Verified Statement. You will be asked to review these pleadings and documents for accuracy, and to sign the divorce papers.

Michigan requires a search of court records to determine whether any previous divorce actions have been filed. As such, the divorce papers have to be filed in person with the Clerk at the Circuit Court for the County where the divorce is being filed. *Miller & Bartnicki, P.C.* is familiar with the procedures for Wayne, Washtenaw, Oakland, Livingston and Macomb Counties.

A filing fee is required by the court to initiate litigation. Additional fees may arise where mediators, facilitators, arbitrators, Friend of the Court investigators or others become involved with the issues of the divorce. These fees are typically factored in to your retainer fee, although as all fees and costs cannot be anticipated, additional fees may become due during the pendency of the action. If those fees and costs are advanced by *Miller & Bartnicki, P.C.* on your behalf, they will appear on your statement of services rendered for reimbursement of costs. The case is assigned to a Judge who only handles domestic relations matters, a Summons is issued, and a case number is assigned.

Service of Process

After filing the Complaint with the Court, the Defendant must be served process, which means he or she is given copies of all the pleadings filed with the court either in person by a process server; by signing for a certified mailing; or by signing an Acknowledgment of Service. Once served, your spouse has 21 days to file an Answer or responsive pleading if served personally, or 28 days if he/she was served via an alternate means.

Answer

If you or your spouse fail to file an Answer within the above-described time period, a default or default judgment may be entered with the court. In most situations, the spouse retains an attorney of his or her own and an Answer is filed in a timely manner. Occasionally, if an attorney has been hired, but the deadline to file the Answer is approaching, the attorney will file his or her Appearance in the case and request an extension to file the Answer.

Temporary Orders

At the time of filing the Complaint, or shortly after the Defendant is served, some temporary Orders may be entered where appropriate. These may deal with issues such as temporary custody, support, visitation, maintenance of household bills, restraining orders, etc. Either party may file a motion with the Court asking for temporary custody, parenting time, child support and sometimes spousal support to be determined. While a Friend of the Court Referee can hear certain disputes, he or she can only make recommendations for an order to the judge; only a judge can enter orders or judgments. All parties must abide by all orders until the order expires or a new order is entered replacing the previous order.

Discovery Period

At any point after the filing of the Complaint, a party may seek to obtain information from the other party relevant to the case through written questions and requests called Interrogatories, Request for Production of

Documents and Requests for Admissions. Additional information may need to be acquired through the use of Subpoenas. Subpoenas are often used to obtain financial information, bank statements, or employment information. Another proceeding conducted to obtain information is oral questioning of the parties via a deposition taken before a court reporter. It is necessary to obtain all of this information to disclose all of the marital property (real and personal), assets and liabilities of the parties so that a fair and equitable divorce settlement is reached.

Friend of the Court Investigations

The Friend of the Court makes decisions on behalf of the court. Each Judge has an assigned Friend of the Court Referee who may be referred matters to make recommendations on regarding child support, custody, etc. In order to make an informed decision, investigations or appointments are sometimes scheduled with the parties and a Friend of the Court investigator.

Settlement Negotiations

Prior to the trial date, the parties usually have settlement conferences and present settlement proposals concerning the issues to be resolved by the divorce. It is often times beneficial when the parties are able to resolve property division, support and custody matters amicably. If all matters are resolved, the settlement can then be reduced to a Divorce Judgment and presented to the Court for entry once the waiting period has lapsed. As with any type of negotiation process, the parties may go back and forth with their proposals or demands before an agreement is reached. If all issues are resolved, a Consent Judgment of Divorce is prepared. If the parties are unable to stipulate to these matters or reach a compromise, then they will go before court for intervention and determination. *Miller & Bartnicki, P.C.* pride themselves on their ability to negotiate fair and equitable divorce settlement agreements. Only a small percentage of the cases handled by *Miller & Bartnicki, P.C.* are unable to be settled and proceed to trial.

We suggest you think strategically in the negotiation process and choose your battles wisely. Consider these factors:

- ✧ How much is this issue worth to me in dollars?
- ✧ How likely is it that I will prevail?
- ✧ What is it costing me to fight about it?

Alternative Dispute Resolution

It is highly beneficial to resolve your differences short of going to trial. This is often times accomplished with the assistance of your attorneys, or through the use of an arbitrator, facilitator, or mediator.

As explained in the Wayne County Friend of the Court Handbook, which is available from the court or on-line at http://www.3rdcc.org/foc_main.htm, family law Judges and Friend of the Court Referees often refer parties to the Family Evaluation, Mediation, and Counseling Unit ("FEMC"). The FEMC provides mediation services whenever there is a dispute that requires in-depth intervention in custody and parenting time matters or any other matters referred by the Court.

In an evaluation, a FEMC professional clinician meets with the parents and children, and reviews documents relevant to the issue at hand. Evaluations may also include home visits, referral for substance abuse screening, psychological testing, and interviews with third parties and agencies. The clinician then issues a report and a recommendation to the Court regarding the matter in dispute. The report may include any agreement reached by the parents. Evaluation appointments can range in length from ½ day to two days.

Mediation provides both parents the opportunity to communicate, cooperate and, with the assistance of a neutral third party, resolve any disputes regarding custody or parenting time. Parties are strongly encouraged to participate in the mediation process to assure a direct and more desirable impact on the outcome. Children are not generally included in mediation; usually only the parents participate. The number of mediation sessions required to settle a matter can range from one 2-hour session to four sessions. The parties are required to pay fees pursuant to the FEMC fee schedule contained in the Friend of the Court Handbook.

For additional information see the article "Divorce Mediation" located at www.divorceinfo.com/mediation.htm.

Pre-trial Motions

During the pendency of the divorce action, issues arise where a party seeks assistance from the court for various reasons. If a party is not cooperating, allowing discovery, or a party seeks to change support or visitation for example. The procedure to seek relief from the Court is done in the form of a motion. A written motion and brief are prepared describing the issues to be resolved, a fee is paid to the court and the motion is scheduled for hearing before the Judge or Friend of the Court Referee.

Waiting Period

Even if all the issues have been resolved between the parties, Michigan has a waiting period from the time of filing the Complaint before the matter may be heard, or a final judgment entered. You can not set the case for trial or present a judgment of divorce until the waiting period has expired. The waiting period

is 6 months if the parties have minor children, or 60 days if the parties do not have any minor children born to the marriage.

Trial

If the parties are unable to reach a settlement agreement, then they will proceed to court on the date set for trial. Typically this results in further settlement negotiations, where the Judge might force one party's hand and indicate what he/she is inclined to rule should the case go to trial before him/her. As in any trial, opening and closing arguments are heard from the attorneys, evidence is presented, and testimony is given in the formal manner.

The Court's ruling is placed on the record, and reduced to a written Judgment of Divorce spelling out the terms. A record of divorce sheet may also be needed at this time.

Judgment of Divorce

A Judgment of Divorce is the formal order dissolving the bonds of matrimony. Certain statutory language contained in the divorce judgment is mandatory. The Judgment sets forth the terms of the settlement, including custody, child support, alimony, visitation, property division, etc.

Post-Judgment Proceedings

Some parties never experience any problems requiring court intervention following entry of the Judgment of Divorce. However, it is not entirely uncommon for changes in circumstances to warrant the need to request an increase or decrease in child support/alimony payments, or changes in custody arrangements or visitation schedules. *Miller & Bartnicki, P.C.* will not abandon you once your marriage has been dissolved. We can be of assistance in post-Judgment matters such as changes in custody or support where the need arises. Additionally, depending on the terms of the Judgment, a deed for property may need to be prepared, executed and recorded, or a Qualified Domestic Relations Order ("QDRO") may need to be drafted providing for the division of a pension or retirement plan. Modifications may be made to a Judgment of Divorce regarding custody, parenting time, child support and change of residence if in the best interests of the children. A change can only occur if the court grants a party's motion requesting a change or both parties agree to the modification.

Best Interests of the Children Factors

Parents are encouraged to reach their own agreements regarding custody. When this cannot be accomplished, the court system must decide the issue of custody. In determining custody, the court will look at several factors to determine which custody arrangement is in the best interest of the child. The factors to be considered are set forth in the Michigan Child Custody Act, MCL 722.23; MSA 25.312(3) as follows:

As used in the 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, medical care or other remedial care recognized and permitted under the laws of this state in place of medical care, and other material 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.

The Michigan Child Custody Act also addresses considerations factored in when deciding a parenting time schedule and pursuant to MCL 722.27a states, in part:

- (1) Parenting time shall be granted in accordance with the best

interest 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 and 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 time 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.

- (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 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 factors.

- (7) Parenting time shall be granted in specific terms if requested by either party at any time.
- (8) A 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 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 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 resolved the dispute within 28 days after the hearing is requested.

The Friend of the Court

The Friend of the Court has the power and duties prescribed by statute, including those duties in the Friend of the Court Act, MCL 552.501 et seq.; MSA 25.176(1) et seq., and the Support and Visitation Enforcement Act, MCL 552.601 et seq.; MSA 25.164(1) et seq.

The Friend of the Court is responsible for initiating proceedings to enforce an order of judgment for support, visitation or custody. Friend of the Court Referees may hear motions and make a recommendation to the Judge presiding over the case for final determination.

You may call the 24-Hour Wayne County Friend of the Court Information Line to access account and case specific information by calling (313) 224-5300. The Wayne County Friend of the Court Handbook, is available from the court or on-line at http://www.3rdcc.org/foc_main.htm, or you may request a copy from *Miller & Bartnicki, P.C.*

State of Michigan Child Support Guidelines

The Michigan Child Support Formula Manual takes into consideration both parents' income levels when establishing or changing support. *Miller & Bartnicki, P.C.* can provide an estimate of the calculations for you using the manual, or a software program containing the guidelines. You may also review the manual on-line at <http://courts.michigan.gov/scao/services/focb/mcsf.htm>.

Except as otherwise provided by statute, Michigan law requires that the Friend of the Court use the established child support formula when issuing child support recommendations. The formula implemented in determining child support amounts is actually quite complex and takes into consideration many factors. Among those factors are : income levels of the parties; shared economic responsibility; parenting time support abatement; health care and medical support; child care support; third party custodians; different custody arrangements for different children; arrearage guidelines; agreements related to property; order conversion; proration; and

rounding. It also requires judges to adhere to the formula when ordering child support. However, the Friend of the Court's recommendation and the judge's determination can deviate from the formula when they state, either in writing or on the court record, why use of the formula would be "unjust or inappropriate."

Deviation Criteria

Pursuant to section 1.04(D)(5) of the Michigan Child Support Formula Manual of 2004, in exercising the discretion to deviate from the formula, the court may consider any or all of the following factors, as well as any additional factor that it determines to be relevant to the best interests of the child:

- (a) The child has special needs.
- (b) The child has extraordinary educational expenses.
- (c) One or both of the parents are minors.
- (d) The child's residence income is below the threshold to qualify for public assistance, and at least one parent has sufficient income to pay additional support to raise the child's standard of living above the public assistance threshold.
- (e) A reduction of income available to support a child has occurred due to extraordinary levels of jointly accumulated debt.
- (f) The court awards property in lieu of support for the benefit of the child.
- (g) One or both parents are incarcerated without income or assets.
- (h) One or both parents have incurred, or are likely to incur, extraordinary medical expenses either for themselves or a dependent.
- (i) One or both parents earn incomes of a magnitude not fully taken into consideration by the formula.
- (j) One or both parents have varying amounts of irregular bonus income.
- (k) Someone other than the parent can supply reasonable and appropriate health care coverage.

Alimony

The State of Michigan requires a party who requests spousal support to allege facts sufficient to show a need for such support and that the other party is able to pay. MCR 3.206(6)(A).

In every action brought, either for a divorce or for a separation, the court may require either party to pay alimony for the suitable maintenance of the adverse party, to pay such sums as shall be deemed proper and necessary to conserve any real or personal property owned by the parties or either of them, and to pay any sums necessary to enable the adverse party to carry on or defend the action, during its pendency. It may award costs against either party and award execution for the same, or it may direct such costs to be paid out of any property sequestered, or in the power of the court, or in the hands of a receiver.

An award of alimony may be terminated by the court as of the date the party receiving alimony remarries unless a contrary agreement is specifically stated in the judgment of divorce. Termination of an award under this subsection shall not affect alimony payments which have accrued prior to that termination. MCL 552.13

Alimony Factors and/or Calculations

Factors to be considered by the court in determining whether alimony should be awarded in a Judgment of Divorce include: (1) the past relations and conduct of the parties; (2) the length of the marriage; (3) the ability of the parties to work; (4) the source of and amount of property awarded to the parties; (5) the age of the parties; (6) the ability of the parties to pay alimony; (7) the present situation of the parties; (8) the needs of the parties; (9) the health of the parties; (10) the prior standard of living of the parties and whether either is responsible for the support of others; and (11) general principles of equity.

Among the factors considered in determining alimony amounts are age, length of the parties marriage, education levels, income, etc. *Miller & Bartnicki, P.C.* can input you and your spouse's information into the computer on the Alimony Prognosticator software program and give you an estimate as to the amount of alimony that may likely be awarded, if any.

Support Enforcement

In some instances, support payments are not made timely causing an arrearage to exist. In extreme cases, failure to pay child support may be a felony under federal and state law. There are many options available to attempt to collect support, including, but not limited to, the following:

- ✧ Income Withholding
- ✧ Contempt of Court/Show Cause Hearing
- ✧ Bench Warrants
- ✧ Income Tax Interception
- ✧ Liens

Payors in significant arrears may be subject to consumer reporting, passport denial, license suspensions, cash bonds or criminal action.

By operation of law, if alimony or an allowance for the support and education of the children is awarded to either party, the amount of the alimony or allowance constitutes a lien upon the real and personal estate of the adverse party as provided in section 25a of the support and parenting time enforcement act, MCL 552.65a. Pursuant to the statute, the court may do 1 or more of the following if the party defaults on the payment amount awarded:

- (a) Order the sale of the property against which the lien is adjudged in the same manner and upon the same notice as in suits for the foreclosure of mortgage liens.
- (b) Award execution for the collection of the judgment.
- (c) Order the sequestration of the real and personal estate of either party and may appoint a receiver of the real estate or personal estate, or both, and cause the personal estate and the rents and profits of the real estate to be applied to the payment of the judgment.
- (d) Award a division between the husband and wife of the real and personal estate of either party or of the husband and wife by joint ownership or right as the court considers equitable and just.

DOs

During the pendency of a divorce action, *Miller & Bartnicki, P.C.* would like to offer the following suggestions to assist in making the experience as tolerable as possible:

- o DO be civil. Despite any irreconcilable differences between you and your spouse, try to remain calm and be civil with one another throughout the divorce process. Any animosity between the parties only serves to aggravate an already stressful and tense situation. Remember that any agreements you can reach amicably regarding custody, visitation, finances, etc. will be beneficial. You do not want to fight over issues that can be resolved, or areas where compromises can be reached.
- o DO respect your children's co-parent. Perhaps more importantly than how you benefit from being civil to your spouse, is how your ability to communicate effectively affects your children. Kids are traumatized enough as it is with their family breaking up, and seeing their parents argue or physically fight can play havoc with a child's mental health and well being. Too many children are sitting in a psychologist's office for just such trauma.
- o DO sit down with your spouse and children to inform children of the decision to obtain a divorce and attempt to explain what is going to happen. Remember to inform your children that they are not at fault for the divorce.
- o DO compromise and be flexible. Although you should fight for certain rights in which you are entitled, negotiation is a give-and-take process, so you should pick and choose your battles carefully.
- o DO exercise your right to visitation, and remain punctual for all visits.
- o DO utilize child support payments for support and maintenance of your children if you are the recipient, DO pay your child support and child care expenses if you are the payor.
- o DO attempt to coordinate the children's activities with your spouse.

DON'Ts

- o DO NOT argue in front of your children.
- o DO NOT purposefully be difficult or act out of spite; do not make a false domestic abuse charge.
- o DO NOT attempt to assign blame on your spouse to your children.
- o DO NOT make disparaging remarks concerning your spouse in the presence of your children.
- o DO NOT resort to physical violence, antagonize your spouse to resort to physical violence, or make false allegations regarding physical violence.
- o DO NOT resist assistance from others, or turn down spousal support out of pride.
- o DO NOT separate children for visitation.
- o DO NOT be selfish.
- o DO NOT attempt to "hide" assets or property, or unilaterally dispose of marital assets without talking to your attorney.
- o DO NOT run up a huge credit card bill thinking your spouse will be responsible for payment.
- o DO NOT threaten to withhold visitation from your spouse if your demands are not met.
- o DO NOT let yourself get overly depressed.
- o DO NOT abuse alcohol, drugs or any other substance.
- o DO NOT leave your kids unattended or not properly cared for.
- o DO NOT have "overnight" guests during the pendency of the divorce action.
- o DO NOT hesitate to place the divorce proceedings on hold to attempt reconciliation.

- o DO NOT give children false hope that you and your spouse will reunite.

What to Tell Children When Parents Get Divorced

Remember that divorce is confusing for children. When you first talk with children, limit your discussion to the most important and most immediate issues. Children can become confused if they are given too much information at once. Children need to hear that their basic needs will be met, that someone will still fix breakfast in the morning, help them with their homework, and tuck them into bed at night. Children also need to know that their relationship with BOTH parents will continue, if possible.ⁱ

When telling children about a divorce, its very important not to make them take sides. If you are justifiably hurt and angry, keep the children out of the struggle between you and your spouse. It would be optimal to have both parents sit down with the kids and tell them that their Dad/Mom has decided to move out on their own. You can tell them as much or as little as you think in necessary. If your spouse is not going to be around for quite some time, then you could let them know that their Dad/Mom is leaving. Remember, do not make your husband/wife look like the bad guy, even if justified. Your kids love their father/mother, and any negative comments will only upset your kids even further. Be sure and explain that this is something between two parents, the kids are not to blame, and both parents still love and will take care of them. Divorce means change, and change causes stress. Your children may feel angry, abandoned, and fearful. Keep the communication lines open, and answer all their questions. Depending on the emotional stress that results, family counseling would be beneficial.ⁱⁱ

Be aware that children may experience periods of anxiety and anger as a result of their parents breaking up. Sometimes physical symptoms of anxiety manifest in the form of nausea, diarrhea, headaches, dizziness, thumb sucking, bed-wetting and clinginess. Make certain you reassure your children that you are there to listen to their feelings. If outside support or assistance is needed for you or your children, there are support groups on-line and in most areas, or you may contact medical professionals for referrals or resources.ⁱⁱⁱ You and your children may feel as if you are on an endless emotional roller coaster. You will likely experience a myriad of feelings that run the gambit. Remember, you can adequately care for your children and move on with your lives without also taking care of yourself. Read "How Can I Take Care of Myself?" from divorceinfo.com found at **Appendix A-8**.

Directory

- Miller & Bartnicki, P.C.
134 N. Main Street
Plymouth, MI 4170 Tel: (734) 455-1230 Fax: (734) 453-1413
- Wayne County Circuit Court
Coleman A. Young Municipal Center
2 Woodward Ave.
Detroit, MI 48226 (313) 224-6262
- Wayne County Friend of the Court
Penobscot Building
645 Griswold
Detroit, MI 48226 (313) 224-5300
- Wayne County Family Evaluation Mediation and Counseling Unit
Room 710 Coleman A. Young Municipal Center (313) 224-5266
- Wayne County FOC Investigations Department
Divorce Investigation (313) 224-0150
- Wayne County 24-Hour FOC Information (313) 224-5300
- Washtenaw County Circuit Court
101 E. Huron
Ann Arbor, MI 48107 (734) 222-3001
- Washtenaw County Friend of the Court (734) 994-2466
- Oakland County Circuit Court
1200 N. Telegraph Rd.
Dept. 480
Pontiac, MI 48341 (248) 858-0582
- Oakland County Friend of the Court (248) 858-0950
- Macomb County Circuit Court
Macomb County Court Building
40 N Main St.
Mt. Clemens, MI 48043 (586) 469-5208
- Macomb County Friend of the Court (586) 469-5160

Interactive Voice Response System(586) 469-7618

Livingston County Circuit Court

The Judicial Center

204 S. Highlander Way

Suite #5

Howell, MI 48843(517) 546-9816

Livingston County Friend of the Court(517) 546-0230

Publications, Resources and Websites

Nancy J. Diehl, 70th President of the State Bar of Michigan, Chief of the Felony Trial Division in the Wayne County Prosecutor's office and Child and Family Abuse Bureau, has co-authored four booklets for children in domestic violence situations that are requested nationwide. A range of topics are covered including titles like:

It is Good to Tell the Truth

Kids Go to Court

Kids and Secrets

Sometimes it is Sad to be at Home...What is a Kid to do about Domestic Violence.

Divorceinfo.com has compiled a list of recommended books on divorce and include the following titles:

Crazy Time: Surviving Divorce & Building a New Life, by Abigail Trafford

How to Avoid the Divorce from Hell, and Dance Together at Your Daughter's Wedding, by Sue Talia

The Good Divorce by Constance R. Ahrons

Visit <http://www.divorceinfo.com/bestbooks.htm> for descriptions of the publications.

There are many informative divorce area related articles and websites that may be of interest and apply to your family.

Visit www.drdaveanddee.com/divorce.html for topics such as:

Divorce Too Recent, Not Ready to Commit

Effect of Divorce on Children

Divorce Laws by State

Visit <http://www.Uptoparents.org> for some of the most comprehensive resources available on-line.

Following are websites that you may wish to visit throughout your divorce proceedings:

The Michigan Child Support Formula Manual is available on-line at:

<http://courts.michigan.gov/scao/services/focb/mcsf.htm>

The Wayne County Friend of the Court Handbook, is available from the court, or on-line at http://www.3rdcc.org/foc_main.htm,

The Washtenaw County Friend of the Court can be found at

<http://www.courts.ewashtenaw.org/foc/foc.htm>.

The Macomb County Circuit Court website is [http://www.co.macomb.mi.us/circuit court](http://www.co.macomb.mi.us/circuitcourt)

Visit <http://www.millerandbartnicki.com> for other web resources, links and useful information, including links to local courts.

APPENDIX

Date of separation (if applicable): _____

Any prior action _____ Case # _____

Amount of monthly mortgage _____ or rental payments on marital home _____
paid by: _____

Reason for break-up of marital relationship: _____

CHILDREN:

Number of children: _____

For each child please state:

Name: _____ Date of birth: _____

Social Security No: _____

Currently residing at: _____

Child's prior address (last 5 years) _____

Name: _____ Date of birth: _____

Social Security No: _____

Currently residing at: _____

Child's prior address (last 5 years) _____

Name: _____ Date of birth: _____

Social Security No: _____

Currently residing at: _____

Child's prior address (last 5 years) _____

Health care coverage for the minor children: Insurance Co. Name: _____

Policy # _____ Insured/Policy Holder _____

Other minor children of either party:

| <u>Name</u> | <u>D/O/Birth</u> | <u>Age</u> | <u>SS#</u> | <u>Address</u> |
|-------------|------------------|------------|------------|----------------|
|-------------|------------------|------------|------------|----------------|

PROPERTY

Address: _____

Date of Purchase: _____ Market Value: _____

Mortgage Co: _____ Monthly Payment: _____

Automobiles and Other Vehicles

(1) Auto Make and Year: _____ Titled: Husband/Wife

Vehicle No: _____ Market Value: _____

Lien (Name of Company and Amount): _____

(2) Auto Make and Year: _____ Titled: Husband/Wife

Vehicle No: _____ Market Value: _____

Lien (Name of Company and Amount): _____

Stocks and Bonds:

| <u>Company</u> | <u>No. Of Shares</u> | <u>Value Per Share</u> | <u>Total</u> |
|----------------|----------------------|------------------------|--------------|
| | | | |
| | | | |

Insurance:

| <u>Owner: H/Wife</u> | <u>Company/ Policy No.</u> | <u>Whole/Term</u> | <u>Balance</u> | <u>Value</u> |
|----------------------|--------------------------------|-------------------|----------------|--------------|
| | | | | |
| | | | | |

Bank Accounts:

| <u>Bank</u> | <u>Type of Account</u> | <u>Co-Tenant</u> | <u>Balance</u> |
|-------------|------------------------|------------------|----------------|
| | | | |
| | | | |

Retirement and Pension Benefits: _____

AGREEMENT WITH CLIENT REGARDING FEES AND COSTS:

The minimum, non-refundable fee shall be \$ _____ or the total time at \$ _____ per hour, plus actual costs incurred, whichever is greater. Client acknowledges that the retainer is non-refundable and that by agreeing to take on this case, the attorney will be pre-empted from taking on additional work in reliance on this retainer and the intention on handling of this matter.

The client agrees that billing shall be on a monthly basis and the attorney may pay from said retainer each month's bill, and upon receipt of each monthly bill, client will be required to forward to Miller & Bartnicki, P.C., whatever amount is necessary to bring the retainer back up to \$_____. These monies shall be paid within thirty (30) days of the billing for services performed.

Any monies left in the attorney's trust account after the initial retainer which are not used to pay the attorney's fees and costs will be refunded to the client within thirty days of the rendering of the judgment and/or settlement.

Client Signature

Date

Retainer of \$ _____ received. _____