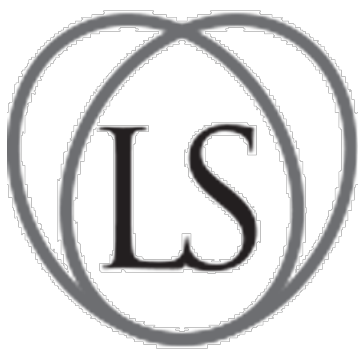


# NAVIGATING A CUSTODY DISPUTE IN MICHIGAN

*How To Prepare To Win Your Custody Case*



LISA STERN



## INTRODUCTION

By Lisa D. Stern

Whether married or unwed, if you and your former partner share a child, the legal agreement that establishes custody and parenting time should be the central focus of litigation.

The initial steps taken by either parent, at or around the time of filing a court case, will often dictate whether you find yourself embroiled in a custody battle or are able to reach an agreement without litigation.



Maintenance of children during the pendency of an action for divorce or custody. The Child Custody Act of 1970 places an affirmative obligation on the court to “declare the child’s inherent rights and establish the rights and duties as to the child’s custody, support, and parenting time” in accordance with the act. MCL 722.24(1).

# UNDERSTAND MICHIGAN CUSTODY LAW

By Lisa D. Stern

It is vital for anyone going through a divorce with children or a custody proceeding to first understand the law applicable to custody decisions.

- I. **JURISDICTION:** Under MCL 600.1021, the family division hears cases on most aspects of family [LS1] law, including custody and parenting time matters. The family court is authorized to enter an ex parte or temporary orders for the care, custody.
  
- II. **II. JOINT VERSUS SOLE CUSTODY:** You will hear the attorneys and court use the terms “joint” and “sole” when referring to the custody arrangement. Significantly, the Child Custody Act of 1970 does not define sole custody, joint physical custody, or joint legal custody despite their use by family law practitioners.
  - a. Sole physical custody describes an arrangement when a parent provides most of the day-to-day care for the child. Joint physical custody is often used to describe an arrangement where the parties share roughly equal parenting time. However, I often describe the term joint physical custody as “wrapping paper” because it lacks the importance of what is on the inside. (i.e. the parenting time schedule.) Simply stated, a judgment can include the label of joint physical custody when one of the parties enjoys time with the child on a limited basis.
  - b. Sole legal custody means that only one parent has the decision-making authority over major life decisions.
  - c. Joint legal custody is used to describe the situation where both parties have equal decision-making authority over major decisions regarding a child’s upbringing, including medical treatment, enrollment in school, and religious instruction.

### III. **III. ESTABLISHED CUSTODIAL**

**ENVIRONMENT:** The Michigan Supreme Court has defined an established custodial environment as “a custodial relationship of a significant duration in which the child is provided the parental care, discipline, love, guidance, and attention appropriate to his age and individual needs; an environment in both the physical and psychological sense in which the relationship between the custodian and the child is marked by qualities of security, stability, and permanence.” The Child Custody Act of 1970 contains a statutory presumption in favor of an established custody environment. The purpose of the Child Custody Act is to provide a stable environment for children that is free of unwarranted custody changes. MCL 722.21 et seq.

Although the existence of an established custodial environment can be apparent in some cases, it is often a source of contention and one that needs to be determined by a court before any changes or disputes related to custody are resolved.

### IV. **BEST INTEREST FACTORS MCL:**

722.23 defines the best interests of the child as follows:

“[B]est 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.
  - a. To whom is the child bonded?
  - b. About whom has the child made statements indicative of bonding?
  - c. Who does the child turn to when there is a problem?
  - d. Who spends more time with the child?
  - e. Who can separate the child’s needs from their own and put the child first?
  - f. To whom does the child openly show signs of affection?
  
- 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.

- a. Who stays home from work when the child is sick?
  - b. Who disciplines the child?
  - c. Who takes primary responsibility for involvement in extracurriculars?
- 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 law of this state in place of medical care and other material needs.
- a. Who makes purchases for the child?
  - b. Who has the greater earning capacity?
  - c. Who has greater certainty of future income?
- D) The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity.
- a. Who provides a safe environment?
  - b. Who can provide continuity?
- E) The permanence, as a family unit, of the existing or proposed custodial home or homes.
- a. In whose custody will the family unit remain intact?
- F) The moral fitness of the parties involved.
- a. Has either parent been involved in an extramarital affair known by the child?
  - b. Has either parent been verbally abusive?
  - c. Does either parent have a drug or alcohol problem?
  - d. Has a parent been physically or sexually abusive toward the child? Primarily, issues of moral fitness are focused on incidents that have occurred in the presence of the child or incidents of which the child is aware.
- G) The mental and physical health of the parties involved.
- a. Does either party have a physical or mental health problem that significantly interferes with the ability to care for the child?
- H) The home, school, and community records of the child.
- a. Which party can provide leadership and attend school events?
  - b. Who can provide leadership in extracurricular activities?
  - c. Who can more adequately ensure the child's access to friends and peers?
- I) The reasonable preference of the child if the court considers the child to be of sufficient age to express preference.
- a. Who does the child favor and why?

- 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.
- a. Who can best comply with a parenting time schedule?
  - b. Who is least likely to disparage the other parent in the presence of the child?
- K) Domestic violence.
- a. Have there been incidents of violence in the home by any party against any other party?
  - b. Has there been police involvement?
  - c. Has there been a pattern of violence whether reported or not reported?
- L) Any other factor considered by the court to be relevant to particular child custody dispute.

It should be noted that the factors need not be given equal weight. The weight to any given factor is ultimately left to the discretion of the court. *Riemer v. Johnson*, 311 Mich App 632, 876 NW2d 279 (2015) (not error for the court to order joint physical custody when more best interest factors favored father because court could value factors differently)



## LISA'S MESSAGE

Navigating custody disputes in Michigan can be overwhelming, but I'm here to help. With compassion and expertise, I'll guide you through custody laws, from joint versus sole custody to the best interest factors. Together, we'll strategize for success in family court, ensuring you're well prepared and supported every step of the way.

### CUSTODY TERMS

- **Legal Custody** is when a parent has the responsibility of making all major decisions regarding the child's upbringing.
- **Physical Custody** is when a parent provides most of the day-to-day care for the child.
- **Ex Parte Order** is an order a judge signs without having a hearing first.
- **Established Custodial Environment** is when over an appreciable time the child naturally looks to the custodian in that environment for guidance, discipline, the necessities of life, and parental comfort.
- **Best Interest Factors** is the sum total of the factors to be considered, evaluated, and determined by the court.
- **Motions and Briefs** A motion is an application to the court requesting a specific order or decision to favor the applicant. A brief is a written argument submitted by counsel outlining facts and legal reasoning to support the client's case. Together, they help present and argue a client's position in court.
- **Judgment** The court's final order that tells you about the decision in your case.





# TIPS FOR HOW TO BEST POSITION YOURSELF TO WIN A CHILD CUSTODY CASE

- **CONDUCT THROUGHOUT THE CASE**

It is of the utmost importance for a party seeking custody to be compliant with all court orders and recognize that everything said or done during the many months of litigation will be viewed “under a microscope.”, A disputed custody case in Michigan often takes up to one year to resolve.

Throughout those months, each party’s communication will be highly scrutinized by the court. The court will be looking into whether a party is able to treat the other with respect and is able to effectively co-parent with the other party. Often at the commencement of a contested custody proceeding, the court will enter an order requiring the parties to speak through an application which can be accessed by the attorneys of record and the court. These applications not only provide the court with an undisturbed written record of communication but also tracks the other’s response time. Some of these applications even have a “tone meter” to aid in determining whether a party’s chosen words are appropriate for the purposes of co-parenting.



- **EVIDENCE, EVIDENCE, EVIDENCE:** Present evidence on each factor!! The importance of providing the Judge with evidence regarding each of the 12 best interest factors cannot be overstated. The trial judge is required under Michigan law to make specific findings on each factor as part of the final decision.
- **PROVIDE TRUTHFUL TESTIMONY:** The Judge is in the unique position of being best able to determine the veracity of the parties and witnesses in a case. When the court is provided with competing testimony and evidence, the final decision will likely rest upon a finding of truthfulness by one party over the other.

- **SOCIAL MEDIA:** While sharing personal lives online has become the norm, it is crucial to be mindful of your online presence during a child custody proceeding. The best advice is to simply go “cold turkey” and quit all social media platforms during a custody battle. If quitting social media is not possible, stay clear of posting anything that references court proceedings and/or can be understood by others as a negative reference toward the other parent.
- **BECOME FAMILIAR WITH YOUR JUDGE:** You know the adage, “it isn’t what you know, it is who you know”. This holds true in any custody case. Often, the terms of your custody and parenting time order will be largely molded and/or influenced by the assigned Judge. In contested Michigan custody cases, the judge plays the role of the jury. They are vested with the role of decisionmaker regarding all factual issues in the case. The Judge not only serves as the fact finder in your custody case but is tasked with interpreting and applying the law. To familiarize yourself with your assigned judge, speak with local attorneys and engage in online research.
- **CHOOSE THE RIGHT ATTORNEY:** Hire a family law attorney with a focus on contested child custody cases. Do not hire your family’s corporate attorney or your criminal defense attorney to handle your child custody case. You wouldn’t use your internist to perform open heart surgery; likewise, you should not use an attorney to fight for the custody of your child who does not have the appropriate experience.

## ISSUES INVOLVING MENTAL HEALTH

Often a party seeks custody of a child due to a mental illness or personality disorder of the other parent. In Michigan, as part of a custody proceeding and upon showing of good cause, the court can require one or both parties to undergo a psychological evaluation. There are primarily two types of psychological evaluations that a judge can order a party to undergo as part of a custody matter: a psychological evaluation for purposes of diagnosis and a forensic psychological evaluation for purposes of a custody evaluation.



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