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## CHILD CUSTODY DISPUTES

Michigan Courts decide custody disputes according to “the best interests of the child” factors listed below. When there is a custody dispute the Court usually orders the Friend of the Court (FOC) to conduct a child custody evaluation. The FOC will interview the parents, the child if of sufficient age, and review relevant information provided to it. The results of that evaluation are made known in a Report and Recommendation that evaluates both parents according to the “best interest” factors below. Unless both parties agree, the report is itself not admissible in evidence, but shows what the FOC caseworker would testify to, if called to testify. Because the report carries great weight, it often serves as the basis for a negotiated custody settlement.

To properly prepare for a FOC interview, you should review the eleven statutory factors. Your focus should be on providing relevant information which will help lead the Court worker to decide some of the factors in your favor. Usually the FOC rules that both parties are equal on most of the factors but that a few of the factors predominate in favor of one parent.

Do not attempt to memorize your answers or even demonstrate that you have the eleven factors memorized. Many of the questions will be indirect; the FOC will not recite the language of the statute but will ask questions that will supply them with information which they will use to decide how they will recommend on each of the eleven factors. Because the questions are often indirect, you should review the attached material that provides some sample questions to prepare some rough idea of your answer before you enter the FOC office. You can then make a good impression. You do not have to be a super salesperson, but you must demonstrate that you are a reasonable person who would be the best primary care giver for your child(ren).

Because first impressions often last, you should spend some time establishing a good relationship with the FOC caseworker. Do not spend too much time trying to “run your spouse into the ground”. Do not say anything negative about your spouse until you reach a factor on which you believe you have a clear advantage. When the questions begin to center around such a factor, try to say good things about your spouse but then, in a seemingly reluctant manner, state the negative factors that weigh against your spouse on that factor.

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### **WARNING**

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**SETTLEMENT:** Because the FOC often wants to settle the matter as quickly and easily as possible, they may want to work out a possible negotiated settlement, right on the spot. Be prepared for a potential “compromise”. Don’t agree to anything unless you are sure it is the right thing. Don’t

make the mistake of accepting a settlement in the rush of the moment, and then later wishing you had not done so. You may want to think of the possible terms of a settlement. If you are asked for one, don't immediately go to your bottom line, leave yourself some negotiating room, but asking for a little bit more than what you would settle for. Don't be afraid to offer your spouse liberal visitation, but be prepared to argue that you should have primary physical custody.

**ALCOHOL OR DRUGS:** If your spouse will allege that you have substance or alcohol abuse problems, *immediately* stop using any alcohol or drugs. Don't offer the other side any ammunition. Similarly, if there is an allegation that you are having an affair, you should discontinue the affair.

**CALENDAR:** Keep a calendar and write down what hours you work, what time you got home, what you did with your child(ren), what time your spouse got home, what they drank, etc. That way, if your spouse alleges you returned home at 3:00 a.m., you can turn to your calendar as proof of what really happened. This does not have to be a long recitation, but only of major events.

**EXPERTS:** If you can afford it, you may want to use an expert witness to assist in the preparation of your child custody case. Often, a psychologist or counselor can prove of immense benefit in the contested custody case. Discuss this with your attorney.

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### **BEST INTERESTS OF THE CHILD FACTORS**

**The factors which the FOC and which later the Court will consider are:**

- (1) The love, affection and other emotional ties existing between the parties and the child.**
  - (I) Who gets the child's breakfast, lunch and dinner?
  - (ii) What are your child's favorite food, television programs, stories, etc.?
  - (iii) How would you describe the child's relationship with you? With the other party?
  - (iv) How has the child been affected by the marital separation?
  - (v) How would you go about correcting this?
  - (vi) Do you feel the bond and ties to the child are about equal between you and the other party?
  - (vii) Do you feel the bond is closer to you, and why?
  - (viii) How does your child know that you love him/her? What will your child say about this, if asked?
  - (ix) Which of you is more apt to hear about your child's problems, triumphs, adventures (i.e. comfort needed for a skinned knee, joy shared with a home run hit)?
  
- (2) The capacity and disposition of the parties involved to give the child love, affection and guidance and continuation of the educating and raising of the child in its religion or creed, if any.**

- (I) Who feeds the child?
- (ii) Who bathes/dresses the child?
- (iii) Who stays home from work when the child is sick? Why is that the person who stays home? (Work schedule flexibility? Sick days easier to get off, etc?)
- (iv) Who arranged for nursery school enrollment/religious education?
- (v) How are these decisions made with the other party?
- (vi) Who puts the child to bed?
- (vii) How do you teach your child manners? How does the other party?
- (viii) How do you discipline the child? How does the other party?
- (ix) Describe a typical day with your child.
- (x) What is each party's present religious practice?
- (xi) How does each party handle any tears manifested by the child if they become aware of such?
- (xii) what are the positive and negative points of each party's parenting skills as you see them?
- (xiii) How do you show your child love and affection?
- (xiv) Is there anything about yourself that affects your ability to give love, affection and guidance? How about the other party?
- (xv) What kinds of activities do you share with the child, how much time is spent, how much involvement in the child's school and extra curricular activities do you spend? How much time does the other party spend?
- (xvi) What are the rules of the home, how is discipline handled, and do you and the other party agree/disagree and what form of discipline is used?
- (xvii) How is each party's ability to discipline themselves - who comes first, the parent or the child.

**(3) The capacity and disposition of the parties involved to provide the child with food, clothing, medical care, other remedial care recognized and permitted under the laws of this State in place of medical care, and other material needs.**

- (I) Who purchases the child's clothes, toys and other equipment?
- (ii) Who arranges for and takes the child to the doctor/dentist appointments?
- (iii) Who arranges for the babysitter/child care?
- (iv) Are there any special needs of the child? Medical, education, speech, etc?
- (v) What is being done about these special needs and which party is attending to this?
- (vi) How well do you feel you manage your money?
- (vii) How well do you feel the other party manages money?
- (viii) What is the earning capacity of each party? If employed, what arrangements have been made when the child is not in school?

**(4) The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity.**

- (I) Describe the present custodial home.
- (ii) Describe the proposed custodial home (i.e., is it in the same geographical location? How will a move affect the child?)
- (iii) Describe the housekeeping standards of each home.
- (iv) Who sleeps where in each home?
- (v) What is the address of the custodial home, length of time in this home, and who all lives there?
- (vi) Give an explanation of residential changes of residences?
- (vii) How has the child adjusted to changes of residences?
- (viii) Is the current home environment safe/stable for the child?
- (ix) Is the proposed home environment safe/stable for the child?
- (x) Which home will provide the child with the most love, affection, guidance, moral and spiritual training, educational and fulfillment opportunities?
- (xi) Where do the child's friends and relatives reside?

**(5) The permanence as a family unit of the existing of proposed custodial home or homes.**

- (I) What is the child's relationship to other siblings?
- (ii) What is the child's relationship with the parents?
- (iii) How do you think the child perceives the family unit?
- (iv) What future home is proposed by the petitioning party, and what future relationships would that involve?
- (v) Do you have any immediate prospects of remarriage or a continuing relationship with a person who will be significant in the life of the child? If so, describe that person's relationship with the child and how this relationship may effect the factors in the Child Custody Act.

**(6) The moral fitness of the parties involved.**

- (I) Has there been any drug and/or alcohol involvement by either party or stepparents? If so, how much?
- (ii) If so, what treatment has been sought and what has that individual's response been to that treatment?
- (iii) Are there any romantic liaisons by either party?
- (iv) What has the effect of said liaisons been on the child?
- (v) Is foul language used by either party in front of the child?
- (vi) What has the effect of said language been on the child?
- (vii) What do you see as your strengths and weaknesses of your moral belief? And to the other party's?
- (viii) Have there been any allegations of physical or sexual abuse of this or any other

- children by any party to this action?
- (ix) Have any of these allegations been confirmed?
  - (x) Have there been any allegations of spouse abuse by any party to this action?
  - (xi) Have any of these allegations been confirmed?
  - (xii) Does either party have a driving record (excessive violations, OUIL's, or reckless and/or careless driving convictions)?
  - (xiii) What has the child's exposure to moral issues been and what has the child's response been to the same?

**(7) The mental and physical health of the parties involved.**

- (I) State the physical health, any chronic illness or medicine taken regularly of all parties to this action.
- (ii) State the mental health history, marriage counseling or hospitalizations of all parties to this action.
- (iii) Have the parties to this action had counseling?
- (iv) Is mental/emotional health related to divorce/custody disputes or to long-term instability?

**(8) The home, school and community record of the child.**

- (I) What school does the child attend?
- (ii) What is the attendance record of the child?
- (iii) What is the academic record of the child?
- (iv) What is the child's attitude toward school?
- (v) What extracurricular activities does the child participate in?
- (vi) What is the parents' involvement in these activities, if any?
- (vii) What are the child's responsibilities at home (clean room, does dishes, mows grass)?
- (viii) What are the parties' involvement in the child's responsibilities?
- (ix) Does the child have any juvenile or other agency involvement?
- (x) Does the child have close relationships with friends in the area?

**(9) The reasonable preference of the child, if the Court deems the child to be of sufficient age to express a preference.**

- (I) Do you feel the child has a preference?
- (ii) How do you feel the child would react if a change of custody is granted?
- (iii) Why does the other party want this change in custody?
- (iv) Why don't you want this change of custody?

**(10) The willingness and ability of each of the parents to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent.**

- (I) What is your proposed visitation schedule?
- (ii) Do you talk about the other parent in front of the child? If so, in what manner?
- (iii) How do you and the other party get along with each other?
- (iv) Attorney must assess statements made by this client throughout the interview to determine willingness to facilitate a relationship between the child and the other party.

**(11) Any other factor considered by the Court to be relevant to a particular child custody dispute.**

- (I) Are you aware of the availability of joint custody and what joint custody is?
- (ii) What is your understanding of the definition of joint custody?
- (iii) Any other questions not covered in the previous factors that the attorney/client deems necessary and not answered previously.

**(12) Whether there has been a history of domestic violence (whether or not it has been witnessed by the child).**

**Are there any factors with reference to your spouse which you believe should be emphasized to the Court which may affect the Court's decision? A list of factors which judges sometimes consider are as follows:**

- (I) Occasional acts of adultery committed prior to separation.
- (ii) Occasional acts of adultery committed after separation.
- (iii) An ongoing affair that continues at this time.
- (iv) Living with a member of the opposite sex without getting married.
- (v) Occasional acts of homosexuality.
- (vi) A practicing homosexual or bi-sexual.
- (vii) Engages in kinky sex.
- (viii) Conviction of a serious crime.
- (ix) Gambling - occasional, moderate stakes.
- (x) Gambling - frequent, high stakes.
- (xi) Regular church attendance.
- (xii) Spouse's moral values.
- (xiii) Objectionable business practices.
- (xiv) Objectionable social practices.