

ABOUT OUR LAW FIRM

Williams, Hughes & Cook, PLLC is comprised of attorneys Ted Williams, Doug Hughes and Shon Cook. The combined experience of these attorneys totals over 60 years. Williams, Hughes & Cook PLLC is a full service firm, offering representation in all matters of litigation and estate and business work. We hope that your relationship with our office will result in achieving your legal goals within the context of the law. We also hope when your case is completed that you will feel we have done our best to serve you and treated you with the respect and dignity that you deserve. Thank you for allowing us to represent you.

THE ATTORNEYS

THEODORE N. WILLIAMS, JR.

Theodore N. Williams, Jr. has been engaged in the practice of law since 1980. He has an active general civil practice involving representation of various institutions in the Muskegon County area as well as representing individuals in various types of litigation. He is actively engaged in employment, personal injury and discrimination litigation. He also represents clients in labor relation matters, including contract negotiations, arbitration, mediation and unfair labor practice proceedings.

He obtained his law degree from Wayne State University in June of 1980, after obtaining an advanced degree from Pennsylvania State University and completing his undergraduate work at Western Michigan University.

DOUGLAS M. HUGHES

In 1977, Doug accepted his first job in the legal profession as an intern/associate in the Family Division at Wayne County=s Legal Aide program. There he represented the family law interests of the economically challenged. He graduated from law school in 1979. His practice

over the years has been transformed from criminal defense, family law and personal injury clients, to institutional representation of public entities such as Cities, Villages, Townships and Housing Commissions.

SHON A. COOK

Shon Cook has been practicing law in Michigan since 1995. She graduated from Creighton Law School in Omaha, Nebraska in 1994 and shortly thereafter moved to Michigan. Shon has handled hundreds of divorces in Muskegon, Oceana, Newaygo, and Ottawa County. She has also tried hundreds of custody cases throughout Western Michigan. Shon splits her practice between family law, criminal defense, civil litigation and family law mediation. Shon has trial experience in insurance and corporate litigation, landlord-tenant and personal injury matters. Shon is also licensed to practice in the United States Supreme Court and the State of Iowa.

REFERRALS

Williams, Hughes & Cook have extremely competent attorneys in all areas of litigation, estate planning and business matters. Occasionally there are legal matters that Williams, Hughes & Cook will not be able to handle, due to the current case load, conflicts, or because the matter is not part of their normal practice. When that occurs, Williams, Hughes & Cook will refer your case to a competent attorney within the Muskegon area. Williams, Hughes & Cook will also do a follow-up on that referral to make sure that you are satisfied with the attorney and that the attorney has made contact with you. We ask that you give us an opportunity to help you find a competent attorney in all areas of law, rather than trying to make this difficult decision alone.

Williams, Hughes & Cook also have access to numerous professional referrals including accountants, appraisers, private investigators, psychologists, counselors and landlords. Because so many issues are involved in divorce and custody, it is often necessary that professionals be

consulted to assist with issues that are beyond our areas of expertise. Whenever we can make the transition through your custody or divorce case easier, please ask one of us for a professional referral.

THE RETAINER

Williams, Hughes & Cook has developed a fee agreement that specifically pertains to divorce and child custody matters. Every client is charged an up-front non-refundable fee (retainer). That fee varies upon the facts of the case and the initial work that the attorney anticipates will be involved. The retainer is non-refundable and insures the appearance of Williams, Hughes, & Cook PLLC at all of your court appearances.

The amount initially paid (retainer) will be billed against at the rate of \$175/hour. If the retainer is exhausted you will receive a monthly billing statement indicating the amount of time spent on your case and the amount of your bill. In addition to the retainer, costs are also the responsibility of the client. Normal costs include filing fees, process server fees and a fee for the final Judgment of Divorce. Other costs may include expert witness fees, subpoena fees, appraisals, depositions and transcripts. You are not billed for copying or postage unless the amount becomes excessive.

It is our policy that all outstanding bills are paid within 30 days. If the balance lapses beyond 60 days, we reserve the right to withdraw from your case and/or refer your case to collections. We will try to work with our clients who have encountered unexpected financial problems, but we cannot remain in business upon client=s promises to pay.

DIVORCE

There is evidence to establish that going through a divorce or custody battle is more emotionally trying than losing a loved one to death. Divorce brings forward the most difficult issues that can arise in an individual=s life: domestic violence, mental illness, financial

insecurity, child custody, parenting time, housing, and job constraints. While at least some of these issues arise in nearly every divorce, most are much more manageable than they initially appear.

THE PROCESS

A. COMPLAINT

The divorce is started when a party files a Complaint for the divorce. The Complaint states where the parties live, when they married, whether there are children of the marriage, a brief description of the property and that *“there has been a breakdown in the marital relationship to the extent that the objects of matrimony have been destroyed and there remains no reasonable likelihood that the marriage can be preserved.”* With the Complaint, a Summons is attached to serve the other party and if there are children, a Verified Statement regarding income and a Domestic Relations Information Form is attached.

Once the Complaint is filed with the Circuit Court for the county in which the Plaintiff (the filing party) lives, the Complaint is then served on the defendant/opposing party. This service can be by Process Server, certified/restricted mail or by the opposing party coming into our office and personally picking up their copy of the Complaint.

Process Servers serve the other party at home or work, depending upon the wishes of the Plaintiff or the availability of locating the other party. If the Complaint is sent Certified/Restricted Mail, the defendant/opposing party must sign for the Complaint.

B. ANSWER

Once the Defendant (the responding party) is served, he/she has 21 days to file a response with the Court. If the Defendant does not respond, he/she can be stopped from participating in the divorce and having a say in the split of property and the custody of the children. This is called a default

Normally, within that time-period the defendant will hire an attorney and file a written response. That tells the Court that the parties are ready to proceed with the divorce. Shortly thereafter, the Court will set a trial date down the road (2-3 months if no minor children involved, 6 months if there are minor children involved) and the attorneys will begin working on resolving the case.

C. TIME PERIODS

As previously mentioned the earliest a divorce may be completed is two months if there are no minor children. If the parties have minor children, the divorce will take at least six months. Occasionally, this time-period can be waived, if the parties reach a complete agreement on all issues before the trial date and good cause is established to waive the time period. A Motion has to be filed and a hearing held before the assigned Judge to determine if the waiting period is to be waived. These are statutory time limits that the Court must follow for all cases. If the parties don't reach agreement by the original trial date, a new trial date will be set. The original trial date is only 15 minutes, and designed to finalize cases.

D. MEDIATION

An alternative to having a trial or litigating matters in the courtroom is mediation. Mediation is a method where a third-party, a trained family law mediator, meets with the parties to help reach resolution on every issue that can arise in a divorce, even those that are not of legal consequence. The mediator will help the parties to reach agreements that are those of the parties,

and not something that the Judge decides. The mediation process can and should involve the attorneys representing the parties, if the parties have retained counsel. The attorneys can help draft the agreements and offer advice on how to proceed during the course of the mediation if requested.

The mediator does not tell the parties what to do, but rather offers solutions and possible resolutions, while also giving the parties a chance to find their own solutions. Parties may agree to mediate or they may be court – ordered to do so. If the parties agree to mediation, any written and signed agreements that are entered into at the mediation become binding in a court of law.

Mediators do charge for their services. The private mediator option provides an alternative to the litigation process and provides a more confidential method of resolving cases. The mediation process is generally much quicker and can lead to resolution in a shorter time frame. Ask your attorney if you are interested in pursuing mediation.

E. SETTLEMENT CONFERENCES

One of the advantages to both sides having their own attorneys is that nearly all attorneys that practice family law are working to resolve the case with the client=s best interests in mind. With that principle forefront, the attorneys will normally schedule a settlement conference to discuss the major issues, resolve some of the financial issues (who pays what bills during the pendency of the case and the temporary issues of child custody, parenting time and child support). If the settlement conference does not help reach resolution then the attorneys may resort to filing court motions to have the Judge decide important issues.

F. MOTIONS

When emergency issues come to the forefront that must be resolved before the trial date, the attorneys will file a motion to have the issue heard before the Judge. You will receive a copy of any Motions filed and notification of the hearing. The hearing will be an opportunity to present witnesses and evidence if necessary. Often the hearings involve statements by the attorneys in the Judge's chambers (office) without a hearing. If there is actually a court hearing, the hearings are scheduled for 15 minutes unless otherwise noted. This does not usually leave much time for testimony. Most major issues regarding custody and property division are left for the trial date.

G. TRIAL

The court will initially schedule a trial date that requires only fifteen to thirty minutes of the Court's time. The Court assumes that most divorces will be concluded without the need for a full trial. If it appears that a trial will be necessary and the parties can not reach agreement, then the Court will re-schedule the trial to a date further on their calendar for a longer period of time.

The trial is the time to call witnesses, argue about property, custody, parenting time, child support and spousal support. Your attorney will spend a great deal of time preparing for this trial by interviewing witnesses, obtaining financial information and preparing the case. You should anticipate higher attorney fees and costs if the case proceeds to trial.

THE PARTIES

While it might seem that the only people involved in a divorce are you and your spouse, the legal process brings many more players into the picture. The Judge, Attorneys, and Friend of the Court staff will all have influence on how your case proceeds.

A. FRIEND OF THE COURT

The Friend of the Court is an administrative agency that works through the Family Court system to help deal with any issues pertaining to minor children, including custody, child support and parenting time. The Friend of the Court will be immediately involved in any divorce with minor children. Within 30 days of the filing of the Complaint, the Friend of the Court will schedule a Conciliation Conference (mediation) . This mediation is scheduled to determine temporary custody, support and parenting time during the pendency of the divorce. The mediation can last from 1-4 hours depending on the parties. You will receive the Conciliation Date and a packet to complete directly from the Friend of the Court. At that conference, the parties will sit down with a mediator and try to resolve the issues of custody, parenting time and support on a temporary basis. Attorneys are not allowed at the Friend of the Court Conciliation / Mediation. Children and other third parties are not allowed at mediation.

If the parties agree to the Friend of the Court Mediator=s recommendation, an Order is prepared that day, signed by all parties and entered with the Court. If the parties do not agree, the Friend of the Court Mediator issues a recommendation. Either party can then object to the recommendation and request a hearing in front of the Judge to decide any of the temporary issues regarding the children. If you are unsure about the recommendation, do not sign an Order and speak with your attorney.

B. THE REFEREE

The Referee is an attorney with authority granted by the Court to act as a judicial officer and to hear family law issues. The Referee will hear initial matters that are in dispute between the parties with regard to minor children such as child support and parenting time. If the parties disagree with the Referee, then the parties can appeal the Referee decision to the Family Court

Judge. If the parties do agree or don't timely object, then the decision of the Referee becomes the Order of the Court that the parties must follow.

C. THE JUDGE

In Muskegon County there are four Family Court Judges: Judge William C. Marietti, Judge Neil G. Mullally, Judge Gregory Pittman, and Judge John C. Ruck. Each Judge will bring his own philosophies and opinions to the case. All of our Judges are good Judges who genuinely care about the issues before them. If you treat them with respect, they will generally do the same with you. They do have limited time to hear cases, so it is important that we focus on current issues and not past matters or grudges. Williams, Hughes, & Cook PLLC also practices in neighboring counties and are familiar with the Judges in those jurisdictions. If your case is in a different county, we will give you an idea of what you can expect regarding that Judge=s opinions and general philosophy.

D. THE ATTORNEY

Much of how a case proceeds depends upon the opposing counsel. Most attorneys in the Muskegon area are looking to resolve the case with their client=s best interests in mind. Some attorneys are looking to run up attorney fees or have a personal grudge with the other attorney. The good attorneys only prolong trial or file motions to advance their client=s interests, not to harass or delay proceedings. We will be very honest with you regarding opposing counsel and what to expect. We will also tell you if your issues should be brought before a Judge or discussed with the other attorney. Our goal is effective representation which includes maintaining a good relationship with the other attorney. However, when the opposing counsel is unreasonable or resorts to unprofessional conduct, you can anticipate that negotiation will no longer occur.

PROPERTY DIVISION

Absent fault, (infidelity, physical abuse, drug/alcohol abuse, or criminal activity), the property division of assets acquired after the marriage or assets that have increased in value since the marriage will be approximately equal. If fault is involved, then the division of assets may result in a different split. Assets that were acquired before the marriage are only included in the division if the assets have increased in value during the term of the marriage. Personal property, real property, investments, insurance, bank accounts, employment benefits, and anything else that can be considered an asset may be subject to the property division.

Williams, Hughes & Cook encourages their clients to try and resolve property issues without court intervention. It is always easier to decide the value and future of your own collectibles and memorabilia than ask a judge to do it. If there is fault in the marriage, and a party can show that their spouse caused the marital breakdown, then the distribution of property may be different than 50/50. The greatest split that has been approved by the Michigan Supreme Court is 60/40. It should be considered up-front, that the party with the children will usually take the marital home and the vehicle that is in the best condition and that the party will also have to pay those debts. It should also be noted that the party with the greatest earning power usually assumes the most debt without getting more assets.

A. REAL PROPERTY

Real property is often considered real estate B homes, hunting property, vacation property and adjoining lots. Interests in real estate may be through land contract, deeds or other investment devices. Determining the value of real estate requires an independent appraisal, real-estate market analysis or reliance upon the state equalized value which is often too low. The parties can also agree on a value. As mentioned each party, absent fault, is entitled to one-half the assets accumulated during the marriage. When valuing real estate, the parties are only

entitled to one-half the equity of the property (value less the debt). The debt amount is usually referred to as a payoff and the bank can provide that payoff information to a party at any time.

Usually the parties= real property is one of the greatest assets. There may be a dispute as to which party gets to keep the property. Whichever party takes the property must pay the other party one-half the equity. The parties can also agree to sell the property and split the proceeds.

In past years, the real estate market has often resulted in homes being sold with no equity or negative equity. In those instances, we have to focus on how to split debt and allocate the loss.

B. EMPLOYMENT BENEFITS

Money that is accumulated in any employment investment fund since the marriage began is subject to division in the divorce proceedings. Investments like 401ks, SEPS, and IRA=s are marital assets.

Other employment benefits subject to division include pension, profit sharing, built up vacation pay, sick leave and frequent flyer miles. In order to discover the value of these benefits either party can subpoena (court order) the parties= employer to produce the information on the benefits. The amount of the benefit that the spouse is entitled to depends on the length of the marriage, when the benefit began accruing and the value of the benefit.

C. BANK AND INVESTMENT ACCOUNTS

All bank accounts may be subject to marital division if they were opened during the term of the marriage and were not based on money earned before the marriage. Bank accounts include: 1) checking, 2) savings, 3) certificates of deposits, 4) lines of credit, and 5) investment funds through a lending institution where the account is located.

D. LIFE INSURANCE

Life insurance benefits that are for investment purposes may be subject to division. It is important that the attorney have the name of the company in order to learn the value of the policy. Usually if the policy names the child/children as beneficiary/s, the policy will not be subject to division by the parties.

E. PERSONAL PROPERTY

Personal property includes home furnishings, vehicles, collectibles, boats, trailers, tools, animals, and everything not bolted to the home. In some circumstances, appliances and fixtures may be considered personal property.

Personal property is divided mainly by agreement of the parties. In some circumstances an appraiser can be hired to value the contents of antiques, collectibles, guns, etc. If the parties cannot agree on the division of personal property, the Judge will decide, normally by ordering the sale of the property. Sometimes the issue of personal property is mediated. We strongly urge parties to reach agreement on the division of the personal property to avoid potential sale of an asset at a loss.

One of the most frequent motions that our firm files in divorce cases is to prevent either party from removing marital assets (personal property) from the marital home. It is not unusual for one party to try to gain the upper hand by removing as much as possible from the marital home either right before filing or shortly after. When that happens it is difficult to recover the property and apply a proper value. If you believe that this may be an issue, please advise us as soon as possible.

F. BUSINESSES

Many parties open a business during their marriage either together or in one parties= name. Regardless of whose name the business is in, the spouse generally has some interest in the profit of the business and is entitled to be compensated for that interest in the divorce.

Businesses create unique issues in regard to valuation, organization, division of assets and taxation issues.

It is difficult to cover all of the contingencies that may arise when businesses are involved, but any information you have on the business should be immediately brought to the attorney=s attention. If the business has any profit margin, we will normally hire an expert (accountant) to assist in determining the value of the business.

G. DEBT ALLOCATION

Just like assets are divided during a divorce, so is debt. Debt includes all loans (whether to banks, lending institutions, or family), credit cards, revolving lines of credit, land contracts, mortgages and unpaid bills. Generally, the Court will take into consideration the earning power of the parties in distributing debt, but it can also be used to offset asset distribution in the final judgment of divorce. In some cases, the parties= debts exceed the assets. In those cases, we may recommend that the client consider bankruptcy in order to get his/her head above water.

It is important to note that a Judgment of Divorce will only be enforceable in relation to the parties. In other words, your creditors don=t care what your Judgment says. If your Judgment says that your spouse is responsible for marital bills and you are still named on the debt, the creditors can still collect against you.

The Judgment of Divorce will only allow you to re-sue your spouse for contribution on that marital debt or to seek spousal support equal to the amount you had to pay on the creditors.

The creditors can continue to pursue you for the account regardless of the terms of the Judgment of Divorce.

Mortgages and car loans present a unique issue in regards to re-financing. Because most parties purchase a home or car based upon their joint income, a bank may not agree to re-finance the home or the vehicle in only one party=s name. That means that even after the divorce that you may be liable for a vehicle you don=t drive or a house you don=t live in. Once again, the only protection that your divorce attorney can provide is to reserve Spousal Support and to allocate the debt in the Judgment of Divorce.

H. SEPARATE PROPERTY

As mentioned, the Court will divide marital assets and debt. However, in many marriages, one party may have brought significant assets to the marriage, ie, land, vehicles, a prior home, a significant savings or a retirement act. The separate property does not normally get divided unless the separate property is co-mingled during the divorce. Inheritance and gifts are normally considered separate property. Please advise your attorney up-front of any separate property concerns.

Issues with separate property are numerous. If money or property has been re-invested or co-mingled with assets of the spouse, it may lose its separate property status. Further, even if the Court determines the property is separate, the Court can order the separate assets go to the other spouse to equitably divide property in the divorce.

Often, separate property is an issue if the parties have pre-nuptial or antenuptial agreements. These agreements have a huge impact on the division of marital property.

CUSTODY/PARENTING TIME AND CHILD SUPPORT

Custody refers to two things B legal custody and physical custody. Legal custody relates to major decision making regarding school, major medical decisions and religious education. Physical custody is where the child will physically reside. The parent with physical custody will make all of the day to day decisions in the child(ren)'s life. Normally every parent will share legal custody with the other parent. Physical custody is the issue that parties typically argue about. Physical custody is also the determining factor in who pays child support, obtains child care credits and tax exemptions, and who exercises what parenting time.

A. PHYSICAL CUSTODY

Physical custody means different things to different people. Usually, one party will have the child the majority of the time, and the other parent will exercise parenting time. There are circumstances where the parties actually share physical custody, either week to week, month to month, or with one party getting school year and the other party having the summers. There are even circumstances where the parties work different shifts and share the time with the children on a daily basis.

There are different types of physical custody and the arrangement that the parties end up with will control the parenting schedules, the school schedules, the special events the child is involved in, and often the amount of child support. Most parents want custody of their children, as they have always seen their children on a daily basis and the thought of anything else is devastating. Of course, that becomes impossible in most divorces and requires a literal sharing of the children. How that is accomplished is up to the parents initially and absent an agreement, up to the Judge.

One of the trends in the court system is joint physical custody, where the parties have nearly equal time with the child(ren). Again, this can occur in many different manners, but the

idea is that the child(ren) is/are with each parent on an equal basis. If one parent requests joint physical custody, there is a presumption that joint physical custody is in the child(ren)'s best interest and the other party must prove it is not. Two of our Judges feel strongly that both parents should have equal access to their children and the presumption is hard to overcome.

The best advice when dealing with custody and parenting time issues is that the parties should try very hard (with the help of their attorneys) to reach resolution. Litigating issues about children is emotionally traumatic for the parents and the children. It also results in a Judge, who does not know you or your family, making decisions about the contact you and your spouse will have with the children. Custody and parenting time issues are often matters that can be best handled in mediation with the Friend of the Court or if necessary in private mediation.

B. FRIEND OF THE COURT

As previously mentioned, the Friend of the Court is an agency that works through the Family Court System to help decide issues of custody, parenting time, and support. The first time the parties will have any experience with the Friend of the Court is at the Conciliation Conference. At the meeting, each party will be present and there will be a mediator from the Friend of the Court. The parties will discuss their wishes for the child(ren), who wants custody, and the parenting time each parent anticipates. If the parties reach agreement at the conciliation conference, they will be asked to sign an Order stating the agreement. Remember, attorneys, children and third parties do not attend this Conciliation Conference. If the recommendation does not become an order that day, the Mediator will file the recommendation and the parties will have 14 days to object to the recommendation and request a hearing before the Judge. If no objection is received, the recommendation becomes an Order of the Court and stays in effect during the pendency of the case.

C. CUSTODY RESOLUTION CONFERENCE

The Custody Resolution Conference (CRC) is an extension of the initial Conciliation conference that is held at the Friend of the Court. Often before the Court allows the parties to fully litigate issues surrounding children, the Court will require that each party meet with a mediator from the Friend of the Court one more time to see if issues can be resolved. Once again, no attorneys or third parties are allowed to participate. If the parties reach an agreement at this point, the Friend of the Court Mediator will prepare the agreement and the parties will sign the agreement. If signed by the parties, the agreement will then become a court order. If the parties don't reach agreement, they will proceed to trial.

D. CHILD CUSTODY FACTORS

Whether it is the Friend of the Court or the Judge deciding issues of Custody, each must look at twelve (12) statutory factors to determine who should have custody of the child(ren).

These factors are:

a. THE LOVE AFFECTION AND OTHER EMOTIONAL TIES EXISTING BETWEEN THE PARTIES INVOLVED AND THE CHILD/REN;

- (1) Meal preparation;
- (2) Bonding with and relationship to competing parties;
- (3) To whom is child bonded;
- (4) When child has a problem to whom does the child speak;
- (5) When the child has a triumph to whom does the child speak;
- (6) Hours each party spends with the child each day;
- (7) Statements of child indicative of bonding;
- (8) Ability to separate child=s needs from ones own;
- (9) Empathy with child.

b. THE CAPACITY AND DISPOSITION OF THE PARTIES INVOLVED TO GIVE THE CHILD LOVE, AFFECTION, AND GUIDANCE AND CONTINUATION TO THE EDUCATION AND RAISING OF THE CHILD IN ITS RELIGION OR CREED, IF ANY;

- (1) Who bathes and dresses the child;
- (2) Who stays at home when the child is sick;
- (3) Who takes responsibility for involvement in academic affairs;
- (4) Who takes responsibility for involvement in extracurricular activities;
- (5) Who disciplines the child: who uses preferable discipline techniques;
- (6) Who

has preference because of the others verbal abuse, substance abuse or arrest record;

(5) Who has preference because of ability to provide child access to extended family;

(6) Are there other children, including children not a part of this litigation, whose custody would impact upon the court's decision in the case?

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;

(1) Who makes purchases for the child;

(2) Who attends to special needs of the child;

(3) Who has greater earning capacity;

(4) Who adjusts working hours based on need of child;

(5) Who has certainty of future income;

(6) Who has ability to provide insurance for child;

(7) Who attends classes for professional improvement;

(8) Who has requisite knowledge to meet the needs of the child.

d. THE LENGTH OF TIME THE CHILD HAS LIVED IN A STABLE SATISFACTORY ENVIRONMENT AND THE DESIRABILITY OF MAINTAINING CONTINUITY.

(1) Who can provide safe environment;

(2) Who can provide continuity;

(3) Is the current environment stable and satisfactory.

e. THE PERMANENCE, AS A FAMILY UNIT, OF THE EXISTING OR PROPOSED CUSTODIAL HOME OR HOMES;

(1) In whose custody will family unit not be split;

(2) Who makes up family the unit;

(3) Where is family unit located;

(4) Is there closeness of the family unit.

f. THE MORAL FITNESS OF THE PARTIES INVOLVED;

(1) Who has priority as a result of other party having an extramarital affair known by the children;

(2) Is there verbal abuse, a drinking problem, driving record, physical or sexual abuse of child, or other illegal or offensive behaviors?

g. THE MENTAL AND PHYSICAL HEALTH OF THE PARTIES INVOLVED;

Physical or mental health problem that significantly interferes with ability to safeguard a child=s health and well being.

h. THE HOME, COMMUNITY AND SCHOOL RECORD OF THE CHILD;

- (1) Who can provide leadership to attend school;
- (2) Who can provide leadership in extracurricular activity participation;
- (3) Who is actively involved in school conferences, transportation and attendance at school events;
- (4) Who can more adequately assist either reducing necessity for other agency involvement (Juvenile Court, DSS) or if the agency is involved;
- (5) Who can cooperate more fully.

i. THE REASONABLE PREFERENCE OF THE CHILD, IF THE COURT DEEMS THE CHILD TO BE OF SUFFICIENT AGE TO EXPRESS PREFERENCE;

Whom does child favor and why? (usually applies to children 10 and older)

j. THE WILLINGNESS AND ABILITY OF THE PARTIES TO FACILITATE AND ENCOURAGE A CLOSE AND CONTINUING PARENT-CHLD RELATIONSHIP BETWEEN THE CHILD AND THE OTHER PARENT.

- (1) Who can best cooperate with an appropriate visitation schedule by the other party;
- (2) Who is least likely to disparage the other parent in the presence of the child based on past performance.

k. DOMESTIC VIOLENCE, REGARDLESS OF WHETHER THE VIOLENCE WAS DIRECTED AGAINST OR WITNESS BY THE CHILD;

Have there been incidents of violence in the home by any party against any party; if so, has there been a police report, arrest or conviction? Has there been a pattern of violence whether reported or not reported?

l. ANY OTHER FACTOR CONSIDERED TO BE RELEVANT TO A PARTICULAR CHILD CUSTODY DISPUTE.

Who can most likely address the special needs of the child? Do any of the following apply:

- (1) Threats of kidnapping;
- (2) Excessive time involved in traveling for child;
- (3) Record of failure to exercise visitation;

- (4) Failure to notify;
- (5) Failure to return child;
- (6) Failure to complete court reports;
- (7) Does investigation reveal unsatisfactory conditions;
- (8) Are there other children, whether a part of this litigation or not;
- (9) Whose custody is relevant to this child=s best interests;
- (10) Are there significant others or new spouses whose relationship with the child affects the child=s best interests.

As you can see, the Friend of the Court and Judge look at many issues to decide which party is better able to care for the child the majority of the time. In preparing for the Conciliation Conference, the Custody Resolution Conference or the actual trial, you must take into consideration all of these factors and be prepared to respond to these issues with documentation and witnesses. Williams, Hughes & Cook will assist with preparing for all of these meetings/hearings. Be prepared to spend some time developing these factors and your theory of the case for a custody trial.

E. PARENTING TIME

Once physical custody is determined, the issue of parenting time for the non-custodial parent becomes an issue. As previously mentioned there are many different ways the parenting time can be divided when it comes to summer vacations, holidays, school vacations and weekends. Here are some examples on how parenting time can be arranged:

1. The non-custodial parent can exercise alternating weekends, one night a week, and alternating holidays, split breaks and 2-6 weeks in the summer.
2. The non-custodial parent can exercise more nights/week (6-9 or overnight), and have the entire summer.
3. The non-custodial parent can have first option at day-care B meaning that when the custodial parent is working or not with the child, the non-custodial parent has the first option to be with the child.

There are circumstances where a parent is denied parenting time because that parent presents harm to the child due to violence, drug use, or inappropriate parenting skill. In those

circumstances the Court can Order the parenting time to be supervised, or simply deny the parenting time until the parent goes through specific counseling, parenting classes or substance abuse treatment.

When the parent is a convicted sex offender (or there is substantial evidence of sexual abuse), a parent will normally be denied parenting time, or granted parenting time only if it is supervised. If the sex offense is against a child, it is unlikely they will be granted parenting time at all.

F. Child Support

Child Support is paid by the non-custodial parent to the parent with physical custody for the support and welfare of the child. The amount of the child support is based upon the net income of each party, the number of children and the number of overnights each party has with the child.

The net income of the parties takes into consideration all mandatory deductions from the paycheck B such as city, state and federal tax, insurance, FICA and union dues. Deductions for profit sharing, loans or garnishments do not count and will be added back into the net income figure. Once each party's net income is determined on a weekly basis, the Friend of the Court utilizes these numbers on a grid pursuant to the current Michigan Child Support Guidelines. Whatever the number is that the grid shows, that is the amount that the non-custodial parent must pay in child support. The law assumes that the figures are reasonable and it does not matter how many other financial obligations the non-custodial parent has; the child support figure generally will not change. The parties can come to an agreement on their own for a different figure than what is represented by the Michigan Child Support Guidelines.

For each child that is part of the marriage, the non-custodial parent will pay more money for the welfare of each child. The child support figures do not charge equally for each child, but give a percentage rebate as the number of children increase.

If either parent has children outside of the marriage that the parent is supporting, the parent will receive a deduction against his/her net income to offset the support obligation to the children from the marriage. Stepchildren are not computed into the Michigan Child Support Guidelines.

The child support obligation begins from the time of the Conciliation Conference recommendation until the child reaches the age of 19 2 or completes high school, whichever is sooner. The obligation can change upon a change in the income of the parties, but the Friend of the Court must be notified of the change in income status, the loss of job or disability of either party. A party cannot voluntarily terminate or take a reduction in pay in order to avoid a child support obligation. If the Court determines that the reduction or job loss was voluntary, the child support obligation will not decrease.

The other factor that the Court considers in determining support is the number of overnights that each party has with the child. If a party has 128 overnights or more, then the Michigan Child Support Guidelines give the non-custodial parent a substantial rebate in the child support obligation. Additionally, if the non-custodial parent has the child for six overnights or more in a row, then the non-custodial parent generally receives an abatement of 50% during that time B (non-custodial parent only pays 2 of the child support obligation during this time frame).

Normally, once the child support amount is computed, an income withholding order will issue through the Friend of the Court, and the child support will come directly out of the non-custodial parent's paycheck. The money is then sent to the Friend of the Court Distribution Unit in Lansing, Michigan, and forwarded to the custodial parent. This process can take 3-4 weeks to

begin, so the non-custodial parent is always advised to pay directly to the Friend of the Court Office until the deduction is seen in his/her paycheck.

The parties can agree that the payments will be paid directly to the custodial parent without the Friend of the Court involvement. We urge our clients to run child support payments through the Friend of the Court. Based upon experience, those who agree to direct pay often run into problems at a later time regarding accounting, and proof of payment.

Child support creates a problem when one or both of the parents are self-employed. Determining the real income of the party is difficult, because much of the income could be unrecorded or under the table payments. Further, the self employed individual may be claiming a loss every year on tax returns through creative accounting. While the Friend of the Court will require each party to produce W-2=s, tax returns, and pay stubs, it is difficult to document the income of the self employed. It is also nearly impossible to issue income-withholding to the self-employed parent, because of the difficulty with enforcement issues.

Enforcement of child support is the most frustrating aspect for custodial parents. While there may be a child support figure entered, if the non-custodial parent moves out of state, loses a job, or refuses to work, it is difficult to Aget blood out of a turnip.@ The Court can issue contempt charges against the non-custodial parent, fine him/her or put him/her in jail. The Court can also take his/her license to drive, or professional licenses. Even with these remedies available, the reality is that there may be circumstances where the custodial parent never gets child support. In recent years, legislation has changed, allowing the county to prosecute non-custodial parents that are significantly behind in child support. If the arrears exceed \$10,000.00, then the prosecutor=s office may charge the delinquent parent with a felony. The payment of money is then part of the sentence of the delinquent parent, along with potential jail or prison time.

Other issues that go hand in hand with child support are daycare expenses, tax exemptions and medical insurance. Daycare expenses are usually split by the parties based upon the incomes of the parties. Uninsured medical expenses are shared the same way. Each party is obligated to provide insurance for the minor children if available at a reasonable expense through their employer. If the non-custodial parent is current on support, he/she is entitled to receive the tax exemptions on an alternating basis.

G. OPTING OUT OF FRIEND OF THE COURT

If you and your spouse agree, support payments can be paid directly, without the services of the Friend of the Court. Both parties have to agree to this and sign the Advise of Rights and Opt Out Form to be filed with the Court to allow direct support payments. The court may also request a motion is filed.

You need to remember that, if you Opt Out of the Friend of the Court, you will not be eligible for any of their services, including enforcement of past due support payments, modification or support reviews, custody or parenting time enforcement, and any mediation services.

H. GRANDPARENT RIGHTS

Frequently we encounter grandparents who wish to have grand parenting time or even pursue custody of their grandchildren while parties are embroiled in a divorce. During a divorce, grandparents can intervene for custody or grandparenting time. After the divorce is over, however, it is much more difficult for the grandparent to be considered for custody of the children unless the parents are truly unfit. Custody by a grandparent occurs frequently when the parents are extremely young, have drug/alcohol problems or are incarcerated.

The court looks to the parents first to provide the care of the children, but upon clear and convincing evidence, the grandparents can convince the Court that it is in the child=s best interest to live with them.

If should be noted that we cannot represent a grandparent and a parent. If your parents wish to pursue grand parenting time or custody, we will make a referral to a competent family law attorney.

Grand parenting time has taken some turns through the Court and legislature. Currently grandparents can seek visitation but it is much more difficult than it used to be. You should consult Williams, Hughes & Cook to determine if your facts meet the law=s requirements.

ALIMONY/SPOUSAL SUPPORT

In the old days, payments to the ex-spouse were called alimony. Today the politically correct term is spousal support. Spousal support can be granted for a lifetime, a term of years or even for just a year as part of the property settlement. It is not unusual for a party to get spousal support for a short time period in order to get on his/her feet after the divorce. In order to qualify for spousal support, the court looks at several factors:

- a. Past relations and conduct of the parties;
- b. Length of marriage;

- c. The ability of the parties to work;
- d. The source and amount of property awarded to the parties;
- e. The age of the parties;
- f. The ability of the parties to pay alimony;
- g. The present situation of the parties;
- h. The needs of the parties;
- i. The health of the parties;
- j. The prior standard of living of the parties and whether either is responsible for the care of others;
- k. General principles of equity.

Williams, Hughes & Cook PLLC has alimony guidelines on their networked computer system and can advise whether spousal support is applicable in your case. It is often necessary to employ an expert to analyze future earning capability of the parties to determine the proper time period for alimony, once it is determined that alimony would be an issue in your case.

PERSONAL PROTECTION ORDERS (PPO=S)

It is not unusual for a divorce to bring out physical or verbal violence between the parties. If you are legitimately fearful of your spouse, due to previous episodes of violence, stalking, threats or harassment, you should seek a Personal Protection Order (PPO). Forms can be obtained at Circuit Court Records on the 6th floor of the Courthouse free of charge. When filling out the PPO, you need to specifically state what incidents occurred, where they occurred, who was there, and specific dates and times. Indicate any injuries suffered, whether a previous police report was filed, and if criminal charges have been issued.

Once you have filled out the appropriate information, you return the form to Circuit Court Records for processing. You will then have to take the form to the Judge assigned and request that he signs the Order. This will be the same Judge assigned to your divorce case. Upon the Judge=s signature, you will return to Circuit Court Records to complete the process. A Process Server must serve the paperwork upon the spouse and upon the police/sheriff=s department, where it will be entered on lien. You will have to pay the Process Server his/her fee to serve these papers. Once the PPO is obtained, you should give a copy to your divorce attorney.

The Court can issue a PPO for as little as six months and for as long as one year. The PPO can be renewed before it expires if you deem it necessary. The PPO prevents all contact between the parties, usually resulting in one party being forced out of the marital home. The PPO can also prohibits ownership of weapons as long as it remains in effect.

Your spouse can object to the PPO and request a hearing. The Court will then determine if the PPO should stay in place, be modified or terminated. If the Court feels that the PPO was not requested for a legitimate reason, the Court can impose sanctions against the requesting party. It is important to note that Judges strongly disapprove of the parties using a PPO to gain an upper hand in their divorce case or to keep a significant other away from the children during a custody battle.

CONCLUSION

You will notice as you go through the process of divorce/and or custody that you will change dramatically. You may regain control in your life that had been taken away by your spouse. You may discover a new found freedom or confidence that seemed to previously escape you. What will be evident is that things have changed financially, emotionally and maybe even physically.

The information that this Handbook provides is designed to operate as an informational guide. Every divorce is different, because all people are different. What may seem important in your property distribution may never be an issue in someone else's divorce. The facts of your custody or child support dispute may be unique to your situation. Try not to compare your outcomes and results with others that have gone through a divorce.

Every case is unique due to the parties, the attorneys and Judges. Because people are different, results are different. Also be careful in allowing friends and family to dictate how things should be both personally and legally. Remember it is your divorce or custody battle and you hired an attorney to assist you with those legal issues.

As difficult as this process can be, we hope that we make it easier. When your case is completed, it is our goal that you leave satisfied with our representation. Thank you for choosing Williams, Hughes & Cook PLLC. We look forward to working with you.