

NEWSLETTER



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CHILD CUSTODY FAQ'S

By Monica Rossi Baylis

There are many things to think about and plan for when going through a divorce. One of the most common, most important, and most challenging aspects is child custody. Here are some common questions regarding child custody when going through a divorce.

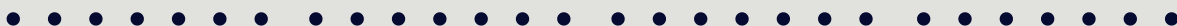
What is Child Custody?

In Michigan, you will find two different types of custody. There is legal custody and physical custody.

If a parent is awarded legal custody, then they must make the important life decisions for the child such as the general welfare of the child

including medical and educational decisions. Joint legal custody means that both parents make these decisions together for the child or children. If one parent has sole legal custody, it means that they are the only parent making these important life decisions for their child or children. The non-custodial parent, however, still has the legal right to obtain important information regarding the child even if they do not share legal custody of the child.

If a parent has physical custody of a child or children, then that refers to the actual physical residence and the day-to-day care of the child or children. Joint physical custody means the child or children reside with both parents.



Typically, one parent is the primary physical custodian and the primary residence of the children, and the other parent has parenting time, with or without a specific parenting time schedule. Sole physical custody means that the child or children have permanent residence with only one parent.

If parents share custody of the child or children, is child support still required to be paid?

Even if you share joint physical custody after a divorce, it's probable that a judge will still order child support to be paid by one parent. The Michigan Child Support Formula calculates which parent pays child support and the amount. Some of the factors that are considered when calculating child support through this formula are:

- Income of each parent
- Number of children
- Number of overnights that each parent has the child or children per year
- Health care costs
- Childcare expenses

If you fail to pay court ordered child support, you could face legal charges including jail time.

Can a child choose which parent they want to live with?

Typically, it is up to the judge to determine who the child or children will live with. According to the custody laws in Michigan, it is not legally up to the child. However, the judge may take the child or children's preferences into consideration if the child is of an age where their preference has weight. Usually, this is not the case for children under the age of 12.

How is child custody determined?

According to the Michigan Child Custody Act, Michigan courts use the 12 factors to

determine what is in the "best interest of the child" in deciding custody and parenting time. Each one is important, but they do not need to be weighed equally. The 12 factors defined by the State of Michigan are as follows:

Factor a: The love, affection, and other emotional ties existing between the parties involved and the child.

Factor 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.

Factor 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.

Factor d: The length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.

Factor e: The permanence, as a family unit, of the existing or proposed custodial home or homes.

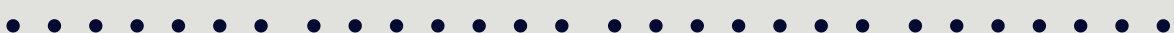
Factor f: The moral fitness of the parties involved.

Factor g: The mental and physical health of the parties involved.

Factor h: The home, school, and community record of the child.

Factor i: The reasonable preference of the child if the court considers the child to be of sufficient age to express preference.

Factor j: The willingness and ability of each of the parties to facilitate and encourage a close and continuing parent-child relationship



in your divorce judgment memorializing the consent of the parents regarding these issues as well as how the parents will share in the expense.

- **Rules for the child or children based on their age:** This provision can help parents manage the rules they have for their child or children. As children grow up, rules change based on their ages. So, agreeing on specific age-based rules can be beneficial for the parents and the children so they know what to expect in each household.

Jeffrey Haynes has been selected for Michigan Lawyers Weekly "Hall of Fame" Class of 2024.



Congratulations to Jeffrey Haynes for being named to Michigan Lawyers Weekly "Hall of Fame" Class of 2024.

Michigan Lawyers Weekly states, "The Hall of Fame program recognizes Michigan's legal leaders who have been in practice for 30 years for their successful careers and valuable contributions to the community. These legendary lawyers have made their mark, either in the courtroom or the boardroom, in their law firms or legal departments, with community organizations, and with local, state, and national bar associations."

Does the Court favor the stay at home parent over the working parent when it comes to child custody?

Courts prefer that the child or children have a nurturing relationship with both parents, regardless of who has historically been the primary caregiver. Legal custody over the children is almost always shared by both parents in Michigan. Physical custody is sometimes favored towards the parent who has been the primary caretaker of the children, especially if the children are of a very young age. However, just because one parent was the bread earner while the other parent stayed home to care for the children does not mean that the court will not give the parents joint physical custody with equal parenting time. What ultimately determines legal and physical custody of the children are the best interest factors that the court weighs and not just who was the primary caregiver.

Do grandparents have rights when it comes to the children?

Grandparents do not automatically have custody or visitation rights in Michigan, but in some situations, grandparents may have grounds to petition the court for these. It is common for the parents of the child or children and the grandparents to work out an informal visitation schedule for the grandparents without the courts being involved. However, if that does not work, the grandparents, if they meet the statutory requirements, may file an action with the court requesting an order for grand-parenting time.

Child custody issues can be very emotional and sensitive to all the parties involved. It is imperative that your family law attorney understands this and provides the kind of attention, care, and sensitivity to your case so that your interests, as well as the interests of your children, are protected. ◇



NON-DISCLOSURE AGREEMENTS: AN OVERVIEW

By Michael C. Gibbons

Non-disclosure agreements (NDAs), also referred to as Confidentiality Agreements, are legally binding contracts in which one or more parties enter into a confidential relationship because of sensitive information. NDAs are used to help keep valuable business information secret.

NDAs are not just for large businesses. Small businesses will also benefit from having non-disclosure agreements because they too have information worth protecting and keeping confidential. Some businesses may require all employees to sign NDAs when they are hired, but others may just require the employees with access to confidential information to sign them. This confidential information could include:

- **Trade Secrets such as test data, customer lists, new products or new developments, and expansion plans, among others;**
- **Business plans, processes, and procedures;**
- **Intellectual Property such as copyright, trademarks, patents, etc.;**
- **Research and Development;**
- **Client information;**
- **Sales and marketing plans; and**
- **Company financials and passwords.**

Another reason an NDA would be used is to protect the company from an employee leaving and using the information they were taught to start their own competing business. Non-disclosure agreements are not only used by businesses with their employees, but they can also be used with independent

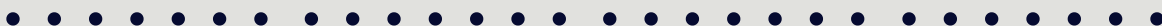
contractors, potential investors, vendors, and other business associates.

There are several benefits to having an NDA for your business:

- **Keep sensitive and confidential information about your business a secret.**
- **Inexpensive way to help keep business information secret.**
- **Builds trust between the parties signing the NDA.**
- **Limits the likelihood of information being leaked or information being stolen by competitors.**
- **Helps attract investors which in turn would help businesses gain the capital they need.**

If the employer requires its employees to sign NDAs, it is important that the employees fully understand what they are signing so they do not accidentally leak information or violate the contract without knowing it. It is also important that NDAs contain specific information to make sure they are legally valid. They must contain:

- **The names of all parties involved in the contract.**
- **A description of the confidential information that the employer wants the employee to keep private. It is important to be as specific as possible.**
- **The owner of the confidential information.**
- **The reason the information is confidential, so the employee understands why they are required to sign the contract.**



- **The length of time that the information should be kept confidential.**
- **The remedies in the event the NDA were breached or suspected of being breached.**

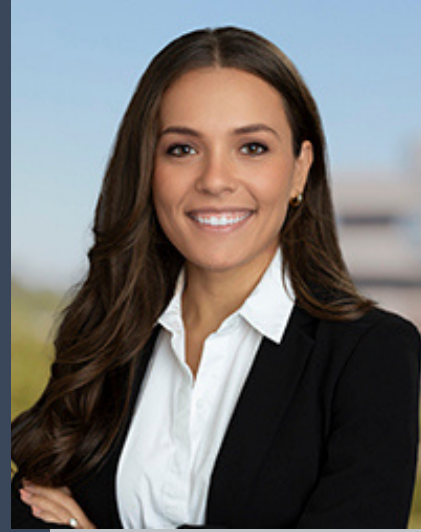
NDA's are legally binding contracts, so if they are breached, the parties involved could be subject to lawsuits. Typically, in the employment context, upon finding out that an NDA was breached an investigation will be conducted by a legal team and the HR (Human Resources) department. Concrete evidence will need to be found to prove the NDA was violated. The consequences would depend on what the terms of the contract say. If an individual breaches an NDA they could face financial penalties, termination of employment, reputation damages, and in some cases criminal charges.

One current concern with NDA's involves their use in a separation agreement. The National Labor Relations Board (NLRB) has found that the employer's use of NDA's and non-disparagement provisions in separation agreements for non-managerial employees may unlawfully interfere with, restrain or coerce the employee's exercise of their right to engage in concerted activities.

The confidential information protected by a non-disclosure agreement is typically the information that makes your business successful and unique. Having a non-disclosure agreement for your business can help put your mind at ease. With so much involved in running a business, making sure your confidential information is protected is a necessity. ♦



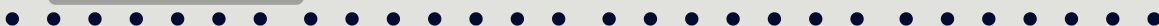
MEET ATTORNEY MONIKA KOLECI MARKU



Monika works across many practice areas with a focus in our municipal law practice. She serves as the Assistant City Attorney for the City of Birmingham, the City of Orchard Lake Village, and the Village of Lake Orion. She has experience in prosecuting traffic violations and criminal cases as well as drafting pleadings, motions, and conducting legal research for criminal and civil cases.

Monika is fluent in Albanian, speaking and writing. She is also a published author, having written the book **Shame Among the Shameless**, in 2020. This is a non-fiction story about an Albanian family that was harshly persecuted for resisting the Albanian communist regime at the end of World War II.

To learn more about Monika or contact her, click [HERE](#).



ESTATE PLANNING PREPARATION

By Katherine B. Albrecht



For most of us, thinking about and planning for the end of life or what to do if you become incapacitated can carry a lot of different emotions. Even though it is not something that people want to think about, it is extremely important to have all your affairs in order before you pass or before you become incapacitated, so you can lay out your exact wishes and so your family and loved ones can carry them out for you with as little disruptions as possible.

WHAT IS ESTATE PLANNING?

It is the process of making known how you want your estate handled when you can no longer handle your own affairs during your lifetime, and after you pass away. It is not just for the wealthy. Estate Plans should include directions regarding your care, and management and distribution of all your property, assets, and belongings. Many different documents can be a part of an estate plan, including the following:

- **Will**
- **Trusts (revocable and irrevocable)**
- **Financial Durable Power of Attorney**
- **Durable Power of Attorney for Care of Minor or Incapacitated Person**
- **Patient Advocate Designation**
- **Authorization to Disclose Medical Information**
- **Designation of Funeral Representative**

It is important to regularly review your estate plan, either every two or three years or after any life-changing event. Depending on circumstances, your beneficiaries could change over time so keeping them as current as possible is recommended. Every document

in your estate plan should be up to date so that when it is time to be used, it is straightforward for the individuals administering the estate.

Here are some things that you should do to help get your affairs in order.

CHOOSE SOMEONE TO HANDLE FINANCIAL MATTERS AND SOMEONE TO HANDLE MEDICAL AND CARE DECISIONS

These persons should be someone you trust completely because they are the ones who will be arranging for your care during periods of incapacity and administering your estate after you pass. You want someone you know will carry out your wishes exactly how you want them to be. You will want to select someone who is knowledgeable, organized, skilled at communicating, and mentally fit to take on the role. Oftentimes, the term fiduciary describes the individual in this role. A fiduciary is an individual or organization responsible for managing money, property, and assets for another individual. They have an ethical and legal duty to act in the best interest of another person, not their own.

TAKE INVENTORY OF YOUR ASSETS

This could feel overwhelming, but it is beneficial to make a list of all your assets and clarify who owns them (if they are just in your name or if they are jointly owned) and who you would like to receive them after you pass. Examples of this would be:

- **Your home and any other real property**
- **Bank Accounts**
- **Retirement Accounts**
- **Life Insurance**



- **Stocks and Bonds**
- **Brokerage Accounts**
- **Vehicles**
- **Household Items**
- **Clothing & Jewelry**

It is a huge weight to place on family and loved ones to take care of your home after you pass away so it would be a smart idea to start to go through all your belongings and condense as much as you can while you are still able. You should also simplify your finances if you can. If you have several 401(k) accounts from different jobs, or several bank accounts, it might be a good idea to consolidate these. By consolidating them, you can lower costs and make it easier for you, the Personal Representative or Trustee, and your beneficiaries to manage.

You should also be sure to make a list of monies you receive periodically. These would include:

- **Social Security**
- **Pensions**
- **Dividends and Interest**
- **Annuities**
- **IRA and 401(k) Distributions**

WHERE YOU KEEP YOUR IMPORTANT DOCUMENTS

The ones caring for you and administering your estate or trust must know where to find all your important documents. It would be a good idea to keep most, if not all, of these documents and pieces of information in one location such as a safe deposit box or a fireproof safe. Some examples of these important documents are as follows:

- **Wills, trusts, other estate planning documents**
- **Deeds, mortgages, and land contracts**
- **Titles to things like vehicles, boats, etc.**
- **Stock certificates**

- **Bank account information-bank name and location, account numbers, lock boxes, etc.**
- **Copies of tax returns**
- **Birth certificates, marriage certificates, and passports**
- **Military service records**
- **Insurance policies**

DIGITAL ASSETS

Many people pay bills online, have shopping accounts, cloud storage, and manage their bank or investments online. Be sure that login and password information for each of these is saved in a specific location, preferably the same location as your other important documents.

You should also provide social media account information which should include the platform you have an account with (Facebook, Instagram, LinkedIn, Twitter, etc.), the login and password information, and instructions on what to do with the account after you pass or become incapacitated. If you own a website or have a blog, be sure to include how these accounts are accessed and what to do with these accounts after you pass or become incapacitated.

WHAT BILLS YOU PAY

If you become incapacitated, it is important that someone knows what bills you have, when they are due, and how you pay them. Some examples of the bills would be:

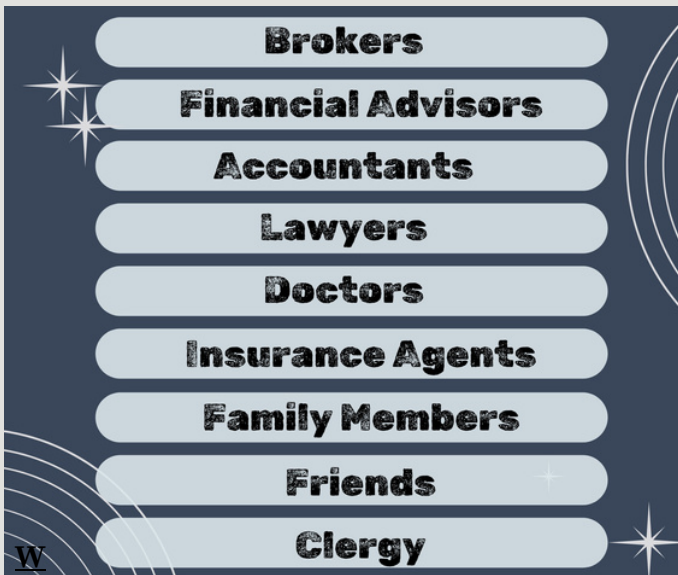
- **Personal insurance premiums including health, disability, life, long term care, etc.**
- **Other insurance premiums such as homeowner, car, umbrella, etc.**
- **Mortgage payments, rent payments, association fees, etc.**
- **Utility fees, yard maintenance, snow removal, etc.**



- **Credit cards-what kind of cards do you have, who has access to use them, are there automatic charges that occur on these cards?**
- **Property and income taxes**

A LIST OF YOUR KEY CONTACTS

You should have a list of all your key contacts including their names, phone numbers, and addresses. The types of contacts you should document are:



END OF LIFE CARE

You should declare somewhere in your estate plan the care you wish to receive at end of life. First, do you have long term care insurance? You should educate yourself on what is included in that insurance plan. You should decide whether you would like to stay in your own home or if you would like to be in a facility. Also, you should make known your wishes when it comes to the use or withdrawal of life support measures as well as organ donation.

FUNERAL AND BURIAL/CREMATION

Since there are a lot of decisions involved in funeral and burial planning, it would be a wise idea to make these decisions and wishes

before you pass away and leave these instructions for your loved ones. One of the first things you should do is name a Funeral Representative. This person will be the individual who will carry out your funeral wishes. You should also decide the following and make sure to discuss this with the appropriate individuals:

- **If you want to be buried or cremated**
- **If you decide on cremation, you need to specify where you would like your ashes to be:**
 - **Given to a specific individual**
 - **Scattered somewhere specific**
- **Specify what types of religious or cultural traditions you would like during the funeral service, visitation, or memorial service**
- **Determine who you would like to be involved in the service**
- **Which funeral home you prefer**
- **Where you would like to be buried**
- **What you would like your headstone to look like**
- **Make the payment arrangements**

You should make copies of all this information and keep the original documents in a fireproof safe or a safety deposit box. It is also important that you are open and communicative with those that will be administering your estate after your death. This does not have to be a grim conversation, but one that will provide the information necessary for your end-of-life care and administering your estate in the way you would like it to be.

Getting all your affairs in order will give you a sense of peace, knowing that everything is organized and easy to find and laid out exactly how you wish. Having an estate planning attorney walk you through this entire process will help limit the overwhelming feelings and make sure you do not miss any important information needed for your estate plan. ◇



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