

A portrait of Liisa Speaker, a woman with short grey hair, wearing purple-rimmed glasses and a bright orange top. She is smiling slightly and looking towards the camera.

THE PARENT'S GUIDE

PREPARED BY:
Liisa Speaker



KIDS CAUGHT IN THE MIDDLE

HOW FAMILIES
ARE HARMED
WHEN JUDGES
DON'T FOLLOW
THE LAW



THE PARENT'S GUIDE

WHO: This guide is for parents who are facing or anticipating court proceedings involving their children. The guide covers topics from custody and parenting time disputes when the parents cannot get along, to guardianship and adoption proceedings when the parents are not able to care for their children, and even to termination of parental rights when the state wants to end the parent-child relationship.

WHAT: Use this guide to give you a quick overview of the law that will impact your family, to summarize the kind of mistakes trial judges are making in cases involving children, and to help you understand the issues where it is hard to predict what the judge will do.

WHY: When judges do not follow the law, it demonstrates a lack of care – not only to the families who are impacted by the decision, but also to the people of Michigan who elect legislators to enact the laws that protect our children and families.

Next Steps: Liisa's website (www.liisaspeaker.com/mybook) lists the "next steps" each of us can take to overhaul Michigan's family courts and improve the lives of our children and families!

Let's take the next step together!

We thank you for your continued support in our efforts to get trial judges to follow the law

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CHAPTER 1: DUE PROCESS VIOLATIONS

Purpose: Due process of law is the right to have notice and opportunity to be heard before the government infringes on your right to life, liberty, or property. In family law cases, due process is the parents' liberty interest related to the parenting of their children.

Quick Legal Summary: Before a judge can make a decision affecting a person's rights, that person must be provided with notice and an opportunity to be heard.

Problem Areas – This is where judges are making mistakes:

- Temporary orders entered without following the law
- Delays between an improperly entered temporary order and the final order
- Systemic delays in custody cases
- How trial judges handle cases after being reversed or vacated
- The intersection of the FOC proceedings with the trial judge's decision-making
- Ignoring legal errors on grounds that the errors were harmless
- The Court of Appeals fails to correct the trial judge's errors
- Allowing the FOC investigator to testify as a witness
- Preventing a parent from objecting to the FOC recommendation
- Trial judge's unclear appointment of an L-GAL or GAL

Unresolved Issues – Here's when it's harder to predict what the courts will do:

- Use of FOC investigations and conciliations in later court proceedings.
- Adopting an investigator's findings without an evidentiary hearing.
- Delegating judicial authority to a GAL who may not even be an attorney.

Jennifer's Story: Mother Loses Custody after Noninjury Accident

Jennifer had been the primary caretaker of her son for his entire seven years of life. One day, while Jennifer was at work, her boyfriend drove with her son in the car after consuming alcohol. He had an accident. Thankfully no one was injured, but it prompted the boy's father to request custody. An FOC investigator recommended a custody change, and the trial judge rubber-stamped the investigator's decision.

It made Jennifer feel that the judge would not listen to her side of the story as the mother. Her son was shocked and very upset when he was taken away from his mother's home. He had looked forward to coming back home. But after the Court of Appeals overturned the judge's decision, it went back to the same judge—he did not change his mind. "The trial judge never wanted to listen to anything I had to say and was only interested in what the father was saying."

"We are seeing a dangerous trend in child custody disputes where courts are obliterating the requirements of the Child Custody Act for a quick resolution. It's very harmful to Michigan families...It runs afoul of the constitutional protections embodied in the Child Custody Act that protects the parent-child relationship and protects the stability that is necessary for children to grow up to be productive adults in society."

- TRISH HAAS, attorney,
Grosse Pointe, MI

CHAPTER 2: CHILD CUSTODY

Purpose: To avoid disruptions of the child's established custodial environment unless there is a very compelling reason.

Quick Legal Summary: When trial judges are making initial custody decisions, such as in a judgment of divorce or child custody order, there are several steps they must take. Typically, there is some sort of temporary order or interim order in place, often resulting from the Friend of the Court process. Even so, the trial judge still must make findings to support their decision in the custody decision.

Problem Areas – This is where judges are making mistakes:

- Lack of findings on the established custodial environment
- When children do not have an established custodial environment with either parent
- Best interest factors
- Trial judge's obligation to consider up-to-date evidence on remand
- Ex parte or temporary orders
- Trial judges rubber-stamping initial orders from the Friend of Court
- Fixing legal errors quickly, or not
- Interstate and international custody issues heighten cases' complexity and parents' emotions

Unresolved Issues – Here's when it's harder to predict what the courts will do:

- Trial judges failing to fully examine the best interests of the child after a full custody trial.
- Conclusory findings on the established custodial environment.
- Appeals court giving deference to trial court decisions based on transcripts of referee hearings.
- The judges interview of the child in chambers.
- Reasonableness of child's preference.
- Considering each individual child's best interests.
- Are stay-at-home parents favored by judges?

Michael's Story: The Judge Enters a Temporary Order Allowing the Children to Move Seven Hours Away

Michael and his wife had been married for fourteen years and were the proud parents of three boys – ages nine, five, and four. The family lived in the western Upper Peninsula, where the boys enjoyed many outdoor activities. When the mom filed for divorce, she obtained a temporary order from the judge that allowed her to move the boys seven hours away from the home and community they had known their entire lives without following the law on established custodial environment or best interests.

Michael filed an emergency appeal, and the Court of Appeals reversed right away, but then the trial judge disregarded the court's instructions, and Michael had to file an emergency motion in the appeal. Again, the Court of Appeals sided with Michael.

With the abrupt changes imposed by the judge's temporary orders, the boys were "super confused about their new school, what town they lived in, who they were living with." They had to go to counseling a couple of times a week, fell behind on homework, didn't receive report cards due to multiple moves, and missed out on hockey, their Christmas concert, and First Communion. The youngest child started showing signs of separation anxiety, begging to sleep with his dad and go to work with him. The middle son started sucking his thumb again. The judge's bad rulings had an "emotional and mental toll on the children. Eventually, the judge allowed the boys to stay with their father during the week but spend every weekend with their mother –which required a seven-to eight-hour drive each way.

CHAPTER 3: CHILD CUSTODY MODIFICATION

Purpose: Postjudgment custody modification is based on the same premise as initial custody decisions: the best interests of the child. Trial judges should avoid unnecessary disruptions to a child's life. The Child Custody Act was designed to "erect a barrier against removal of a child from an established custodial environment and to minimize unwarranted and disruptive changes of custody orders."

Quick Legal Summary: A parent who wants to modify an existing custody order must file a motion alleging facts that amount to proper cause or a change of circumstances threshold. Depending on the extent of the modification (that is, how the proposed change alters the number of days the child spends with each parent), different threshold standards apply.

Problem Areas – This is where judges are making mistakes:

- Expanding the De Novo hearing beyond the objection to the referee recommendation
- Using the wrong burden of proof to modify custody
- Judges entering temporary orders without evidence or fact-findings
- When the parents are practically equal on all best-interest factors
- Custody findings against the great weight of the evidence
- Delay between ex parte custody modification and final order
- Allegations that a parent has a mental health issue that requires custody changes
- Parental alienation as reason to change custody

Unresolved Issues – Here's when it's harder to predict what the courts will do:

- Whether an evidentiary hearing is rescheduled when there is a dispute on threshold facts.
- Relevance of evidence from before the last custody order.
- Children and social media.
- Holding a custody trial before making a threshold finding.
- What it means when an appellate court vacates or reverses a trial judge's decision.

Ryan's Story: Mom's Move to Ohio Results in Custody Change

Ryan's daughter was connected to the local community - including both her extended family and sports teams. Her mom had commuted to Toledo for work for years. When the mom decided to marry, she sought to move to Ohio with the child. The judge granted the mom's request but also changed custody, even though such a motion had not been filed. The Court of Appeals sent the case back, warning the trial judge to follow the law for domicile and custody cases. Eventually, Ryan's daughter was allowed to move back to her father's home in Michigan, but it took a while. The judge did not accept that her order had been "vacated" on legal grounds.

Ryan was particularly frustrated by the judge holding court in chambers rather than on the record, which meant the parents only heard what happened after the fact. He felt the judge's decision had already been made, and they were just going through the motions. The judge's decision also emboldened the mom to do "whatever she wanted," including keeping the child away from Ryan.

The judge's decision hurt the child emotionally and academically; changing schools was a tough adjustment.

"It would be better for Michigan families and children to tie child support to one parent's need and the other parent's ability to pay rather than how many overnights the parent has with their children. If that sort of change were implemented, then not only would the judges' caseloads be reduced, but they could spend more time on what was best for the kids."

- ROSS STANCATI, attorney,
Kalamazoo, MI

CHAPTER 4: LEGAL CUSTODY

Purpose: Each parent should be involved in the important decisions that affect their child's life, including medical, educational, and religious issues. Even when one parent has sole legal custody, the noncustodial parent is still entitled to access to their children's medical and school information.

Quick Legal Summary: Joint legal custody means that parents "share decision-making authority as to the important decisions affecting the welfare of the child." However, when parents cannot agree on those important decisions, it is appropriate to award sole legal custody to one parent. A sole legal custodian does not need input or permission from the other parent to make medical decisions or choose a school for the child.

Problem Areas – This is where judges are making mistakes:

- Evaluating the best interests of the child
 - When legal custody problems bleed into physical custody and parenting-time decisions
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Unresolved Issues – Here's when it's harder to predict what the courts will do:

- What are routine decisions – versus "important decisions" affecting the child's health, safety, and welfare?
- When the parents cannot agree on the child's extracurricular activities.
- Interviewing the child for reasonable preference in a legal custody dispute.
- Best interests related to legal custody.

Kathy's Story: Multiple Motions and Appeals Wear Down Mother

Kathy was a disabled attorney, but she retained sole physical and legal custody of her son after the divorce. Within days of the judgment being entered, the father began to file custody motions. After seven months of the father's motions on parenting time and custody, including a motion based on the child's absences from school, the trial judge eventually found there was a change of circumstances. The judge completely switched custody to the father. The Court of Appeals held that these absences were not a change from the family's behavior during the marriage. On remand, Kathy asked the judge to consider up-to-date evidence on how her son was doing. The judge refused. Sadly, the Court of Appeals also ignored the law and kept the custody order in place.

The trial judge's decision had a long-term impact on this family, especially the child. Kathy described her son as a good kid who, more than anything, wanted to make his father happy. She felt the trial judge did not listen to or respect her and wanted her to just do what her ex-husband told her. The decision also drastically affected her relationship with her son. Before the custody ruling, she had been the one to bring him up, but the court's decision "still affects him to this day because he has spent most of his high school days with his father and not his mother." She says he "was so innocent in all of this, and it was wrong to put him in a tug-of-war situation." Ultimately, Kathy decided to stop arguing with her ex-husband because it only hurt her son more, and it had already taken "an emotional toll on him not to have both parents present" in his life.

CHAPTER 5: DOMICILE

Purpose: Change of domicile law focuses on the effect a move has on a child and the child's relationships with the parents. Generally, the child should be able to move with a parent who has established a custodial environment. But if the child has an established custodial environment with both parents, judges should be cautious in disrupting those environments unless it has compelling reasons to do so.

Quick Legal Summary: To make a change of domicile, the parent who wants to move the child more than 100 miles must file a motion, and the trial judge must consider a number of factors. If the parent proves these change-of-domicile factors by a preponderance of the evidence, then the trial judge must ask whether the move would change the child's established custodial environment. If not, then the trial judge can allow the move without any further inquiry. If, however, the move will change the child's established custodial environment, then the trial judge must decide if there is clear and convincing evidence that the move is in the child's best interest using the factors in the Child Custody Act.

Problem Areas – This is where judges are making mistakes:

- The parent has already moved when the domicile motion is denied
- Trial judges must still decide best interest when the moving parent has sole legal custody
- Adding up miles on successive moves
- Measuring miles as the crow flies
- When a parent's move is less than one hundred miles, but out of state

Unresolved Issues – Here's when it's harder to predict what the courts will do:

- Findings on each of the domicile factors.
- The sole legal custodian wants to move out-of-state.
- When neither parent can demonstrate clear and convincing evidence to support the custody change created by a move.

Lali's Story:

Divorced Mom Cannot Find Local Job in Her Field, but Judge Won't Allow Her to Move with Her Child

Lali and her husband moved to the Upper Peninsula for his university job. As a college art professor, Lali's job opportunities were limited, so she stayed home and raised their son. After the divorce, with no family in the state, no job, and no spousal support, Lali had no choice but to embark on a nationwide job search. She landed a university job in upstate New York, but the judge said "no" to the move. The judge failed to consider how denying the child's move would also change custody: from the child's primary-caretaker mom to his less-involved father. The judge ruled against Lali even though most of the best-interest factors favored her.

The court process left Lali feeling helpless, like an outsider (she is a Muslim). The judge believed Lali should be able to find a job in Michigan despite the evidence that she had looked extensively in the state without success. Now Lali travels the twelve hours from New York to Michigan every other week to see her son, and she speaks to him every day. The judge was mad when the Court of Appeals overturned her decision, but it just gave the judge another opportunity to hurt Lali and her son.

Her son was very upset with the new custody arrangement. He cried every day and was very angry because he did not want to leave Lali's side when his weekends with her ended. He also became isolated in school and did not make many friends due to the harm caused by the court's decision.

CHAPTER 6: PARENTING TIME

Purpose: The Child Custody Act acknowledges that it is “in the best interests of a child for the child to have a strong relationship with both of his or her parents.” Trial judges must award parenting time “in a frequency, duration, and type reasonably calculated to promote a strong relationship between the child and the parent.” Depriving a child of a parent is a drastic measure that should only be undertaken under dire circumstances, and then using the Child Custody Act’s procedures.

Quick Legal Summary: The Child Custody Act’s parenting-time provisions address several factors trial judges must consider when awarding parenting time. A parent should not be denied parenting time unless “it is shown on the record by clear and convincing evidence that it would endanger the child’s physical, mental, or emotional health.” In addition to the best-interest factors, the trial judge should also consider the parenting-time factors, including special circumstances of the child, whether the child is nursing, and the likelihood of abuse or neglect during parenting time.

Problem Areas – This is where judges are making mistakes:

- Calling it "Parenting Time" results in judge using wrong threshold
 - Evaluating best interests for a parenting-time modification
 - Parenting-time orders are not appealable by right
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Unresolved Issues – Here’s when it’s harder to predict what the courts will do:

- When a parenting-time change amounts to a custody modification.
- Removing a condition on parenting time.
- The difficulty of paying for a parenting-time supervisor.
- Difficulty in reinstating parenting time.

Meghan's Story: Misdiagnosis Results in Mom Fighting for Years to Regain Unsupervised Parenting Time

Meghan was married to a powerful and emotionally abusive man. After Meghan gave birth to the parties' first child, she suffered from a depressive episode. The couple was also going through a divorce and living in different states. At one point, she brought the baby with her to New York (where she lived and worked) and her husband accused her of kidnapping. Nonetheless, the couple had another child together. But this time, the husband obtained a court order to remove the baby from Meghan within hours of her giving birth, citing Meghan's prior "kidnapping" and mental health issues. One of those mental health issues was that she had been diagnosed with borderline personality disorder. Due to that diagnosis, when the parties divorced, Meghan agreed to supervised parenting time with her two young daughters. A year later, after being tested and treated by other physicians, those physicians concluded that Meghan did not have a borderline personality disorder. Based on the misdiagnosis (and after learning that the psychologist who had misdiagnosed her had her license under review by the State for doing the same thing in multiple custody cases), and the fact that Meghan had exercised over 600 hours of supervised parenting time without incident, Meghan filed a motion to remove the supervision requirement and to expand her parenting time (supervised parenting time means a parent will have one or two hours per week with their children).

Meghan filed her motion and the judge initially held, at a hearing on her motion, that she had passed the threshold to modify parenting time. However, three months after that hearing, the judge issued an order

Meghan's Story Continued:

stating the exact opposite, and scheduled Meghan's motion for an evidentiary hearing on the threshold. Five months after that order, the judge dismissed Meghan's motion after her ex-husband filed a motion for summary disposition. Meghan appealed and the Court of Appeals reversed and directed the trial court to articulate which threshold standard applied. However, when Meghan filed a motion to schedule the hearing, the judge denied the motion and ordered that a hearing on the issue was unnecessary, despite the fact that it had been two years since Meghan had filed her motion. Meghan appealed once again, and the Court of Appeals again reversed and directed the judge to hold a hearing on Meghan's motion. The judge said the custody threshold applied, even though Meghan was not asking to change custody. The judge went on to hold a hearing, and finally three years after Meghan filed her parenting time motion, the trial court held that Meghan did not meet the custody threshold. Meghan appealed again. But while the appeal was pending, the judge moved off the family law bench and the new judge began to unravel everything the prior judge had done in the prior five years, including removing supervision and eventually expanding Meghan's parenting time to include two overnights. Eventually, the Court of Appeals affirmed the original judge, rubber stamping his reasons for supervised parenting time. Yet due to the new judge, the reality was much different than when the original judge dictated and what the Court of Appeals affirmed.

"We always encourage our clients to agree to work together for what's right for their family and their children. The parents should ask themselves, "Is this parenting-time decision for the parent or for the child?" It should be about what is in the best interest of the child."

- SUSAN LICHTERMAN, attorney,
Detroit, MI

CHAPTER 7: GRANDPARENTING TIME

Purpose: Although children frequently benefit from close relationships with their grandparents, that benefit does not overcome a parent's right to make decisions about who their child associates with, including relatives. A fit parent can deny grandparenting time unless the grandparents can show that the denial poses a substantial risk of harm to the child.

Quick Legal Summary: Grandparents can only seek grandparenting time when:

- the parents are either divorced or were never married,
- the grandparent's child is deceased, or
- the grandparent provided an established custodial environment in the year before the grandparenting time request

Once the grandparents have demonstrated that they have standing to request grandparenting time, they must then prove by a preponderance of the evidence that the parent's denial of grandparenting time "creates a substantial risk of harm to the child's mental, physical, or emotional health." But two fit parents can deny grandparenting time and prevent the grandparenting time motion from going forward.

Problem Areas – This is where judges are making mistakes:

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| <ul style="list-style-type: none">• The heavy burden of proving substantial risk of harm• Whether there is an appeal by right from a grandparenting-time order | <ul style="list-style-type: none">• Expert witness to prove substantial risk of harm• Granting grandparenting time without the proper analysis or fact-findings |
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Unresolved Issues – Here's when it's harder to predict what the courts will do:

- "Preponderance of the evidence" versus "clear and convincing evidence".
- Can a grandparent seek grandparenting time after their own child's rights to the grandchild were terminated?
- Interim grandparenting-time orders.
- Two fit parents who object to grandparenting time.

Unresolved Issues Continued:

- How much grandparenting time is appropriate.
- A parent's denial of grandparenting time as a prerequisite of the grandparents' motion.

Kristen's Story:

Trial Judge Takes Away Mother's Decision-Making by Ignoring the Grandparenting Time Statute

Kristen and her husband had a beautiful family until her husband died after battling illness. Kristen allowed their young son to visit his paternal grandparents, but it seemed that every time he visited them, all the grandparents would do is talk about their deceased son. The child would return home "upset" and "obsessed with death." Kristen stopped allowing him to visit, hoping to give her son time to heal and adjust to their new life without her husband and his father. The grandparents filed suit asking the court to award them grandparenting time. The trial judge not only granted their request on a temporary basis, without making any findings, at the end of the case, the judge kept her award in place, even though the grandparents did not present evidence that the denial of grandparenting time posed a substantial risk of harm to their grandchild's physical, emotional or mental health. Normally expert testimony would be needed to meet this difficult standard, yet all the grandparents presented was their own testimony about how much they loved their grandson (of course they did) and how they did not want him to forget his father.

The Court of Appeals reversed the trial judge's decision because the evidence presented by the grandparents did not overcome the presumption in favor of Kristen to decide whether to allow grandparenting time.

CHAPTER 8: THIRD-PARTY CUSTODY

Purpose: The courts presume that custody with a parent is in the best interests of the child. The fitness to parent your child is the “touchstone for invoking the constitutional protections of fundamental parental rights.” When a parent is unfit, a third party may step in.

Quick Legal Summary: For a nonparent to seek custody of a child, that nonparent must be the legal guardian or have a substantive right to custody. The presumption in favor of maintaining the child’s established custodial environment with the third party is outweighed by the parental presumption in the Child Custody Act. When a parent wants to regain custody, the nonparent should only retain custody where there is clear and convincing evidence that doing so is in the best interests of the child.

Problem Areas – This is where judges are making mistakes:

- Tension between established custodial environment and parental presumption
- Standing to seek third-party custody
- Parent does not need to demonstrate proper cause or change in circumstances to file a motion for custody

Unresolved Issues – Here’s when it’s harder to predict what the courts will do:

- Misusing a temporary guardianship order to file for third-party custody.
- There are not a lot of these cases so judges may get confused.
- Interplay with guardianship case or child welfare case.

Amber's Story:

After Her Ex-Husband Died, His Parents Stole the Kids

After her divorce, Amber had some CPS issues, which she resolved. She enjoyed frequent parenting time with her children and had joint legal custody with her ex-husband. But when her ex-husband died unexpectedly, his parents came to the funeral and took the children away. Amber asked the police for help, but they would not get involved in a "family dispute." The grandparents obtained temporary guardianship, even though they did not have standing. Amber objected, but before the hearing date, the grandparents rushed to circuit court to file a third-party custody complaint, which stopped the guardianship case. For three months, Amber was unable to have any contact with her children until finally the circuit court recognized her as sole legal custodian, and the kids went home. In a curious move, the judge awarded grandparenting time - even though they did not request it - without any of the required findings.

The whole ordeal made Amber feel "like [she] had no rights, that [she] was unimportant, and they were not interested in the family unit itself." There was a lot of anger and hurt, especially since the judge did not follow the law and made a decision without "considering my natural rights of raising one's child, which falls within the Constitution."

It was horrible for the kids, who had just lost their father, that Amber "wasn't able to be there for them, to console them, and they still have anger toward [her] for not being there." Amber said, "I feel like everything that happened, that I had no control over, caused irreparable harm to my kids, both emotionally and mentally." Once she regained custody, the judge acted like Amber "should be satisfied with that, and I should be OK with grandparenting time that was erroneously granted with no basis."

CHAPTER 9: GUARDIANSHIPS

Purpose: Guardianships are designed to keep children in a safe home when parents are unable to care for the children and to give caretakers legal authority over the children in the parent's absence.

Quick Legal Summary: There are different types of guardianships, depending on whether the parent left the child with someone without legal authority or is seeking a guardian for their child.

- **EPIC guardianships** are created under the Estate and Protected Individuals Code. They can be temporary or full guardianships. Typically, an EPIC guardianship is used when a parent leaves the child with a caretaker without giving them legal authority over the child's care and maintenance. An EPIC guardianship gives the parent fewer rights and does not require a parenting plan.
- A **Limited Guardianship** is formed by agreement between the parent and caretaker. It includes a parenting plan that allows the parent to maintain a relationship with the child. However, if the parent does not comply with the requirements of the limited guardianship, the guardian can seek termination of the parent's rights.
- A **Juvenile Guardianship** is a relatively new feature of the Juvenile Code. It allows the court in an abuse and neglect case to place a child with a guardian instead of terminating parental rights. Trial judges typically use juvenile guardianships if they determine that the child should not return home, but termination is not appropriate.

Problem Areas – This is where judges are making mistakes:

- Did the parent grant permission for the children to stay with the caretaker?
 - When a guardian wants to seek termination of parental rights so that the guardian can adopt the child
 - Which best-interest factors to use in guardianship cases
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Unresolved Issues – Here's when it's harder to predict what the courts will do:

- Is temporary placement enough?
- Does the fact that the children are in a guardianship placement mean that the parent is unfit?
- Granting a caretaker "legal authority" over the child.

Nick's Story:

Children are Split Up Once Mother Dies, Even After Father is Released from Prison

Nick made mistakes and served time in a Texas prison. While he was there, the mother of his children passed away, and he placed the children with his mother. Nick's mom is a nurse, and she worked very hard to keep the girls safe. But the trial judge granted a co-guardianship between the paternal grandmother, maternal grandfather, and maternal step-grandmother, granting these people, living in three different households, joint legal custody. When Nick was released from prison, he wanted to return home to be with his children, but the judge refused to end the guardianship. Rather than keeping the girls with their grandparents, the judge allowed the older daughter to live with an aunt, while the younger daughter lived with her step-grandmother.

While Nick and his younger daughter remain very close, Nick is worried that the older child will have emotional problems as she gets older; she is torn between her families and feels like she has to pick sides – to the point where she does not even feel like she can give her dad a hug in front of her mother's family.

Nick felt the judge was unfair and unwilling to give Nick a chance to parent his children, since Nick had appeared before him as a juvenile. Even though several more years have gone by, Nick does not feel as though he will get a fair hearing with the judge.

CHAPTER 10: ADOPTION

Purpose: The adoption code identifies five core purposes focused on the child's permanency, stability, and best interests:

- To ensure adoptees receive the services they need.
- To safeguard and promote adoptees' rights and best interests as paramount while also protecting the rights of all parties concerned.
- To place the adoptees with adoptive families as quickly as possible.
- To achieve permanency and stability for adoptees as quickly as possible.
- To allow all interested parties to participate in adoption proceedings so that, once finalized, each adoption will be permanent.

The Safe Delivery of Newborns Law has as its primary goal to save the lives of newborn infants who would otherwise be at risk of being abandoned by a mother in distress, and to protect the privacy of the mother.

Quick Legal Summary: There are four main types of contested adoption cases. Each type has its own set of statutory requirements, its own problem areas, and its own unresolved issues:

- **Section 39** cases arise when an unmarried mother arranges for direct placement, selecting a family to adopt her newborn baby.
- **Section 45** hearings typically occur when the parent's rights have already been terminated and a prospective adoptive family is denied consent to adopt.
- **Stepparent adoptions** occur when one parent's spouse wants to become the legal parent of their stepchildren.
- **Safe Delivery** cases arise when a surrendering parent (usually the mother) surrenders a newborn at the hospital or to an emergency service provider within 72 hours of the newborn's birth. Both the surrendering parent and non-surrendering parent have an opportunity to come to court and request custody. The safe delivery court can terminate parental rights to make way for an adoption.

Problem Areas – This is where judges are making mistakes:

- **Section 39 Problems:** Adjourning an adoption case in favor of a paternity case.
 - **Section 45 Problems:** Cases under Section 45 is the near-impossible burden posed by the statute. A prospective adopter must prove MCI's decision to deny consent to adopt was arbitrary and capricious by clear and convincing evidence. This is perhaps the most onerous standard in Michigan.
 - **Stepparent Adoption Problems:** The Legislature needs to revise the stepparent adoption provisions of the Adoption Code to correct unintended consequences of a recent amendment.
 - **Safe Delivery Problems:** Most judges and attorneys have never handled such a case before, and judges have failed to follow the statutory requirements.
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Unresolved Issues – Here's when it's harder to predict what the courts will do:

- **Section 39 Unresolved Issues:**
 - Good cause to adjourn highest priority adoption cases.
 - Can a paternity order make an adoption appeal moot?
 - Personal attendance at a Section 39 hearing.
 - Conditional requests for custody.
 - Sporadic or limited-duration support.
- **Section 45 Unresolved Issues:**
 - Timing and the ability to file a request for a Section 45 hearing.
- **Stepparent Adoption Unresolved Issues:**
 - Newly entered custody or support orders.
 - Having the ability to support or have contact with the child.
- **Safe Delivery Unresolved Issues:**
 - Does the agency satisfy reasonable efforts to locate a non-surrendering parent by publishing notice when the agency does not know any identifying information about the non-surrendering parent.
 - What qualifies as reasonable efforts to notify the non-surrendering parent when the mother is not required to divulge any identifying information.

- **Safe Delivery Unresolved Issues Continued:**
 - If the non-surrendering parent files a custody action in a different county, what is the consequence if that custody judge does not follow the law that requires him to locate the safe delivery case and to transfer the custody case to the safe delivery judge.
 - If the child is born to a drug-addicted mother and CPS swoops in to remove the child, does the mother still have the authority to surrender the child under the safe delivery law as long as it is within the 72 hours of birth.

Michael's Story: Persevering to Create a Family Despite Numerous Obstacles

Michael and his wife wanted a family and worked with an unwed pregnant mother for an adoption. The baby came home with them from the hospital. The biological father had done nothing to support the mother during her pregnancy, but he objected to the adoption because he did not want “strangers” raising his child. He did not want to raise the child himself either. Instead he wanted either the mother or one of his aunts to raise the child. The adoption trial took eighteen months! The judge highlighted many negative facts about the putative father but still found a way to deny the adoption. The judge said that although the putative father had not shown any level of commitment in his whole life, the judge believed he would muddle through adequately for this child.

At the same time, the judge in the paternity case did not understand adoption law. The Court of Appeals had allowed Michael and his wife to keep the child in their home while they appealed the Section 39 order, but the paternity judge ordered Michael to hand the eighteen-month-old child over to the biological parents the baby had never met, even while ordering

Michael's Story Continued:

that both parents' time with the child must be supervised by their own family members at all times. It took a week of emergency appellate filings before the child came back home to Michael and his wife. "It was incredibly difficult to watch him grow, have us fall more in love, and not just the idea of having a child but genuinely having the connection with this child and witnessing the milestones at three months, six months, nine months, eighteen months and beyond." Michael and his wife wrestled with two things: "(1) How do we compartmentalize these feelings to protect this child because he deserves to grow up in a stable environment without anxiety, and (2) how do we guard ourselves if the law gets this completely wrong and we don't win our appeal to adopt this child?" The Supreme Court reversed the adoption court, and the Court of Appeals reversed the paternity court. Now Michael's family is whole.

"Family court judges are often unfamiliar with the Michigan Adoption Code and therefore interpret its provisions as suggestions rather than mandatory statutory requirements...We find, at the trial level, that referees and judges simply do not appreciate the emotional and financial consequences of postponing adoptions to accommodate the schedules of hearing participants or their own busy dockets..."

- DONNA MEDINA, attorney,
Birmingham, MI

CHAPTER II: REVOCATION OF PATERNITY

Purpose: The Revocation of Paternity Act provides a way to revoke a man's legal parental status when he is not the child's biological father, making way for the child to have a legal relationship with the biological father. The Act was created to update Michigan's paternity law and address the fact that more children are born out of wedlock, and that there are biological fathers who want relationships with their children.

Quick Legal Summary: There are four types of legal fathers whose rights can be revoked to make way for another man to be declared the father. There is a different set of requirements for each type of legal father:

- **Affiliated fathers** establish paternity through an order of filiation.
- **Acknowledged fathers** establish paternity through an acknowledgment of parentage.
- **Genetic fathers** establish paternity solely through DNA testing.
- **Presumed fathers** establish paternity by being married to the mother when the child was conceived or born.

Problem Areas – This is where judges are making mistakes:

- The need for an evidentiary hearing under the revocation statute
 - The alleged father's standing to revoke paternity requires clean hands
 - The alleged father's ability to intervene in the divorce case
-

Unresolved Issues – Here's when it's harder to predict what the courts will do:

- Standard for deciding revocation of paternity.
- Burden of proof to revoke.
- Burden of proof for the best-interest analysis.

Karen's Story: Trying to Make a Family with Her Daughter's Father

Because Karen was married when she became pregnant by another man, the child was legally her husband's. After the divorce, Karen and her child's father married. They then sought to revoke the husband's paternity and have the biological father recognized as the legal father. They hoped to recognize the family they had created - a child being raised by her two parents. The trial judge said no, concluding that the divorce finalized who the father was for all time.

At the time of the judge's decision, her child was very young and lived with her two biological parents but was required to have parenting time with her mother's ex-husband, who had moved out of state. It was very confusing for her. The relationship with Karen's ex-husband deteriorated further. It took an appeal to finally revoke the ex-husband's paternity.

In the end, Karen and the child's father forged an even closer bond with each other and with their child. They did their best to support their child in a very confusing situation. Even though her ex-husband treated her child kindly, the visitations still impacted the child, who needed to see a child psychologist.

"The Revocation of Paternity Act represents an entirely new statutory creation, but many judges could not get past the old way of doing things....The "circumstances of the modern family do not fit within the traditional modes of the Paternity Act". It is imperative that judges and practitioners set aside their personal views and look to the legislative intent to properly apply new statutory creations..."

- ANDREW COHEN, attorney,
Southfield, MI

CHAPTER 12:

TERMINATION OF PARENTAL RIGHTS

Purpose: The purpose of child welfare laws is to keep children safe if the parents are unable to care for them or if the children have been abused or neglected by their parents.

Quick Legal Summary: Child Protective Services (CPS) investigates all allegations that a parent has abused or neglected his or her child. If CPS believes that the child is in danger, then the Department of Health and Human Services (DHHS) can file a child-protective petition. Most of the time, the child is removed from the parent's home, but sometimes DHHS can develop a safety plan to keep the child and parent together in the same house.

The trial judge or a jury can decide whether there are grounds to take jurisdiction over the child - this is called the adjudication. Rather than going through an adjudication trial, most parents take a plea allowing the court to take jurisdiction, which enables them to receive services to reunify with their children.

If DHHS has proven 1 of the 14 statutory grounds to terminate by clear and convincing evidence, then the trial judge must consider whether termination is in the child's best interests by a preponderance of the evidence. Some of the factors the trial judge may consider are the child's bond to the parent; the parent's parenting ability; the child's need for permanency, stability, and finality; the advantages of a foster home over the parent's home; and the child's placement with relatives as a reason not to terminate parental rights.

"Given the fundamental rights at stake in cases involving foster care, it's crucial that judges follow the law. If they don't, it increases the likelihood that children will be unnecessarily separated from their families, which will cause a lifetime of trauma, pain, and suffering."

- VIVEK S. SANKARAN, attorney & clinical professor of law,
University of Michigan Law School

Problem Areas – This is where judges are making mistakes:

- **Adjudication Problems:**
 - When a parent takes plea to jurisdiction
 - Jurisdiction based on only one parent's conduct
 - Adjudication over siblings with different issues
 - **Reasonable Efforts Problems:**
 - Immediate termination without aggravated circumstances
 - DHHS failing to provide or verify services for incarcerated parents
 - Interplay of criminal and termination cases
 - Demanding confession of abuse to reunify with children
 - **Statutory Grounds Problems**
 - Terminating based on a parent's incarceration
 - Terminating based on parent's right to other children having been previously terminated
 - **Best-Interest Problems:**
 - Failing to determine if a child or parent is a member of an Indian tribe
 - Failing to consider relative placement as a reason not to terminate parental rights
 - Consideration of each child's best interests individually
-

Unresolved Issues – Here's when it's harder to predict what the courts will do:

- **Unresolved Adjudication Issues:**
 - Anticipatory neglect as a ground to take jurisdiction over the child.
- **Unresolved Reasonable Efforts Issues:**
 - Not allowing visitation after adjudication.
- **Unresolved Statutory Grounds Issues:**
 - Termination based on anticipatory failure to protect.
 - Using parent's status as domestic violence victim as grounds to terminate parental rights.
- **Unresolved Best-Interest Issues:**
 - Using preponderance standard for best interests of child.

Sherise's Story:
**Her Baby was Injured in Father's Care, but DHHS Took
Both Her Kids Away**

Sherise has two sons, an eight-year-old and a three-month-old. Sherise was at work when the baby was injured while in his father's care. Sherise brought the child to the hospital as soon as she learned of the injuries, but DHHS intervened and took away both children. DHHS and the judge seemed to focus on Sherise's reaction at the hospital, saying that she was not upset enough and DHHS was concerned that she would allow the father to be in the baby's life. Her older son was sent to his father, whom he had not seen in five years, and that man abused her son while Sherise was waiting for the appeal. At least the baby was safe with his mother, but that did not lessen the pain of separation.

The trial judge quickly terminated her rights, even though she did everything DHHS told her to. Sherise's older son cried when they took him away, but she was only given five minutes to say goodbye to him. Sherise felt like her "whole life was over" but decided she would "fight this until the day [she died]." It took an appeal to vacate that termination and finally bring her babies home.

The baby is now four years old and medically handicapped from his injuries, but Sherise is a nurse and is the best person to take care of him. Her older son used to be a straight-A student, but after the trauma of removal, he began to have behavior issues in school, telling the teachers he missed his mom.

THE LAW IS DESIGNED TO PROTECT FAMILIES -
WHEN JUDGES FOLLOW IT.



GLOSSARY:

Against the great weight of the evidence: not sufficiently supported by the evidence in the record.

Burden of Persuasion: a party's duty to convince the fact finder to view the facts in a way that favors that party.

Burden of Proof: a party's duty to prove a disputed assertion or charge.

Change of Circumstances: a modification in the physical, emotional, or financial condition of one or both parents that justifies the modification of a custody, parenting time, or support order.

Clear and Convincing Evidence: evidence indicating that the thing to be proved is highly probable or reasonably certain; this standard is appropriate if the trial judge's decision changes the established custodial environment.

Clearly Erroneous: the standard of review that an appellate court applies in judging a trial court's treatment of factual issues; under this standard, a judgment will be upheld unless the appellate court is left with the firm conviction that an error has been committed.

De Novo Hearing: the hearing before the trial judge after a parent objects to referee recommendations.

De Novo Review: the appellate court looks at trial proceedings anew, without giving deference to trial court's decisions on legal matters.

Established Custodial Environment: which parent the child looks to for guidance, discipline, the necessities of life, and parental comfort and does so for an appreciable time, while also considering the age of the child, the physical environment, and the inclination of the custodian and the child as to permanency of the relationship.

Friend of the Court (FOC): an official who investigates and advises the court in domestic relations cases involving minors.

GLOSSARY:

Guardian Ad Litem (GAL): a person, who does not have to be an attorney, appointed to advise the trial judge, and who makes recommendations to the judge about what is the child's best interest.

Interim Order: a temporary court decree that remains in effect for a specified time or until a specified event occurs.

Lawyer Guardian Ad Litem (L-GAL): an attorney who is appointed to advocate for the child; the child's attorney in a custody case.

Michigan Children's Institute (MCI): the ward for all foster children in the State of Michigan with authority to consent to their placement for adoption.

Peremptory Reversal: an immediate reversal by the appellate court without full briefing or oral argument.

Preponderance of the Evidence: the evidence may be close but it weighs in favor of one parent a little more than 50%; this standard is appropriate when both parents share an established custodial environment, and the judge awards joint physical custody.

Proper Cause: one or more appropriate grounds to reevaluate a child's custodial situation that have or could have a significant effect on that child's life.

Sequestered: to segregate or isolate a witness during trial.

Standing: a party's right to make a legal claim or seek judicial enforcement of a duty or right.

Temporary Order: a court order issued while a suit is pending, before the final order or judgment has been entered.

The Record: the pleadings, filings, transcripts of hearings, and exhibits admitted as evidence before the trial court.

NEXT STEPS!

Parents who come before the family law courts often feel powerless and lost in the system. But there is action you can take, along with other people in this State who are troubled by the problems discussed in this guide.

You can make a difference! And here's how...

1

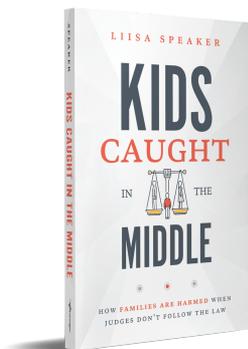
Vote! Vote for judges and legislators who are willing to be educated on family law issues and who are willing to take action to improve the lives of our children and families. Start by looking into the backgrounds of those folks on the ballot. Is the person running for judge on the family law bench experienced in family law? Is the person running for a legislative seat being backed by family law attorneys, or the Family Law PAC?

2

Vote out judges who don't follow the law! So many times, once a person is put on the bench, they are re-elected because only attorneys in the community know whether the judges are doing a good job or not. The Family Law Section hopes to create a process so we can inform the electorate about which candidates for the family law bench have family law experience and which judges are treating the families in their courtroom with dignity and respect, and correctly interpreting and applying the law.

3

Contact your legislator and invite them to hear from a variety of family law attorneys – the Family Law Section is one example. The legislators need to hear from attorneys who are not promoting legislation for one particular case, but who instead are advocating for the best interests of the children.



LEARN MORE!

To get more information on Liisa's book and to get a copy for yourself visit: www.liisaspeaker.com/mybook

Kids Caught In The Middle

How Families are Harmed When Judges Don't Follow the Law



ABOUT THE AUTHOR

Liisa Speaker

Liisa Speaker is an appellate attorney based in Lansing, Michigan. She is the owner and lead attorney of Speaker Law Firm, PLLC - the only appellate boutique firm in the state of Michigan. Since graduating from The University of Texas School of Law, one of the nation's top law schools, Liisa has become well known for her excellent written and oral advocacy. Her appellate skills have helped clients



obtain victories in appeals ranging from custody disputes to no-fault automobile insurance. But in the past five years, Liisa has focused her appellate practice on family law, adoption and child welfare cases. She achieved the status of fellow in the American Academy of Matrimonial Attorneys, an elite group of family law attorneys and serves as an officer for the State Bar of Michigan Family Law Section.

After starting her firm in 2007, she began taking on more family law cases. Her interest in family law grew to a passion, and today she focuses the work of her law firm with one goal in mind: to get trial court judges to follow the law! That goal continues to drive her work as an attorney and author and provides her clients with a second chance and a voice that they may have been denied in the trial court.

THE PARENT'S GUIDE

PREPARED BY:
Liisa Speaker

