

# Local Voice

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## Parenting time schedules and best interests of child

In Michigan we are governed by the best interests of the child statute which looks at 12 factors for the court to follow when there is a child custody or parenting time dispute.

In the vast majority of divorces or paternity cases where custody is an issue the parents are able to work out a solution based upon their life styles and what makes sense for their children. Most cases are resolved without court intervention.

What about those high conflict divorces where court intervention is necessary?

First let's look at the role of our judges. In Oakland County, where the bulk of my practice is centered, we have six hard-working family court judges. They are required to spend their days handling not only divorces and custody disputes, but also paternity, juvenile criminal cases as well as those dealing with abuse and neglect of children. They also handle many cases where someone is seeking a personal protection order based upon allegations of abuse or other mistreatment. They also handle adoption proceedings. To say the least, there are not enough hours in the day to cover all of these cases.

I read with interest the recent article written by a family law attorney titled, "Parenting Time Schedules: A Child-Centric Approach."

She states in the article that in most cases the judges are taking a cookie cutter approach and using a shared custodial arrangement that is often 50-50. She states that, "beginning a divorce action with an award of equal time to each parent gives little to no consideration for



She then goes on to state that "what adds to the problem is the fact that, after a divorce action is filed, the judge is not required to immediately perform a lengthy legal analysis about what is best for the children, before granting the parties a 50/50 parenting time schedule, pending a trial."

This proposal makes no sense in reality, if only because the judges have no time to do this. This requirement would make crowded dockets, especially on Wednesday mornings even more unmanageable.

Let's step back and look at the reality in our lives and those of our children's today. More and more families who are going through a divorce or have never married and are splitting up are reaching agreements that are equal or close to equal in custodial and parenting time arrangements. There is nothing wrong with this. In fact, in many cases a couple will sit down and work out this type of arrangement.

In those cases where parenting time and custody is disputed there are steps that can be taken at the onset. The parties can file motions that are then heard on a Wednesday, which is motion day in Oakland County. This often results in a resolution through the hard working family counselors and friend of the court referees. Those that are not resolved are often referred to the friend of the court for an in depth analysis

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## Case-by-case approach is best

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and recommendations regarding parenting time and custody issues.

I agree that there is no room for a one size fits all solution. Requiring a judge to go through the child custody act before rendering an interim parenting plan where there has been no hearing or testimony in court makes no sense and in reality is an impossibility based upon the busy dockets and time constraints that our judges face every day.

We have other factors including the requirement for an Early Intervention Conference at the friend of the court. (More commonly known as an EIC) This is mandated with both attorneys and clients to appear to discuss issues early on before the referee. This occurs on the 56th day after a divorce with children has been filed. In addition on that same morning the parents are required to attend SMILE, which is short for "Start Making It Livable for Everyone." This is a program that features speakers and a video. Its goal is to get parents to step back and try to resolve their differences without putting their children in the middle of the fray. Clearly children

should be kept out of the divorce. They are the innocent victims of the breakup of their parents.

I agree with the article that matters should be handled on a case-by-case basis. Requiring an interim parenting plan where the judge must go through all of the 12 factors of the child custody act on the record at the onset of the case is not realistic or workable.

The case-by-case approach is handled through the friend of the court and the various other facilities available. In high conflict divorces, there may be a need for psychological evaluations and or the appointment of guardians for the children but these are issues that must be determined as the case progresses.

In my practice where I have a case that could be high conflict, I will go into early stage mediation to try to get an immediate handle on the situation.

I have been practicing family law for more than 45 years and am currently writing my second book, "Child Custody Demystified," with my co-author, Dr. Jack Haynes. My first book is "Divorce Demystified, Everything You Need to Know Before You File for Divorce."

Clearly we have to deal with realities based upon time and what is actually going on in our courts and our society.

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