THE ISSUES: 
MONEY, LEGALITIES, CUSTODY

In a divorce, there is usually one area that becomes a focal point or battleground. It may be money, the family pet, a household possession, or custody. Try to see your power struggles clearly. Many custody cases are really about control—not custody. Divorce is a lose-lose situation for adults and children. If you really need to do battle over something, be sure it is not the children.

These issues are hardest for the person who is left in the marriage. The person who initiates the uncoupling usually has a life plan; the one being left seldom has one.

MONEY MATTERS

Money can become one of the most important and disruptive issues in a divorce. The central money issue for women is the fear that they won’t be able to survive financially even when there is money available, and the issue is exacerbated when money is in short supply. Overall, the time of divorce and separation is scary. For the majority of American families, the decision of the parents to separate and divorce will mean that children will experience a significant decline in their standard of living; the exceptions are the children of the very wealthy or the very poor. The average family’s standard of living cannot be maintained when there are two households. The same income, for the most part, will now be needed to finance two separate households. Unfortunately the current system is stacked against dependent spouses and favors the breadwinner.
It would be nice to be able to say that custody concerns and money concerns are separate issues. This is true legally, but the reality is different. One study found 56 percent of mothers with sole custody returned to court because their ex-husbands refused to pay child support. (Interestingly, there were no mothers with joint custody who had returned to court for child support matters in this study.) Don’t confuse custody-sole or joint-with child support. Child support is a financial arrangement. Custody has to do with time spent with and taking care of a child. Ultimately parenting arrangements are based on what the parents can agree upon, what the lawyers will settle for, or what a judge decides. The unfortunate reality is that no two individuals ever seem able to agree on what is fair or reasonable when it comes to dividing resources. Look for equitable.

EQUITABLE DOES NOT HAVE TO BE THE SAME AS EQUAL.

Money has emotional overtones as well as real ramifications. Children may view a lack of financial support and a reduction in lifestyle as a parent’s loss of love and trust. It’s hard for a mother or father to feel good about her or his children’s relationship with the other parent if that person left them floundering financially. And parents trying to cope with the loss of respect from their children when funds are tight (or when they are being tight with funds), struggle too.

If there is bitterness from the start, money disagreements will usually follow the lines of anger. Again, it is the children who suffer. If he is not satisfied with visitation arrangements, a man may use money as a weapon by making support payments late or withholding them altogether. Mothers, on the other hand, have been known to make access to the children difficult when payments are not made on time. Both of these methods are illegal and unfair to children.

If money was an issue in your marriage, it will most likely be a BIG issue in your divorce. Money is a
symbol that often goes beyond the actual dollars and cents involved. If you were married and the major income earner lost his or her job, you would make the necessary adjustments. Unfortunately, you must keep this in mind in a divorce, too. As long as you will be receiving child-support payments, you will be sharing the downside—as well as the upside—of your former spouse’s income. Thus, you cannot look to child support as a concrete form of security or income. Conversely, if your children are young, it is important to build in a cost-of-living provision, because it is only fair that each parent share in the cost of inflation, as well as the rising expenses associated with teenagers.

Separation is a time when you will start separating financially. This will mean setting up new checking or saving accounts, making changes on credit cards, making financial decisions without sharing those decisions with someone. You need to become familiar with your tax returns (yes, you can understand them—if not the first time, then you will by the second or third time round) as well as medical insurance benefits and payments. For the uninitiated, this is usually new and often difficult, but it does get easier with practice. Separation is also a time of growing mistrust between separating spouses as you begin to have different vested interests. That is a normal, albeit unfortunate, spill-over of separation and divorce. Keep in mind that knowledge of all financial matters—yours and your exiting spouse’s—is important and should not be ignored in the pain of your separation. A family’s separation usually occurs quickly. Money issues can last for years. It is important to keep these matters between the adults involved, so that children are not subject to the ongoing insecurity of their parent’s financial battles.

Money issues seem to bring out the worst in people. More times than not, the saying that “If you don’t hate him (her) now, you will before this is over,” is all too accurate.

Today, maintenance or spousal support (alimony) for a wife, even a traditional homemaker, is difficult to get for more than a few years if you are young. A marriage
license does not translate into a perpetual pension, especially if you are young enough and able enough to work or learn new job skills. Thus, for many women, negotiations for good child-support terms have become more important. We have yet to address the unfairness of a system that devalues the contribution of a primary caregiver and stay-at-home mom while at the same time giving mothers lip service of supposed value. Still, it’s important to understand that the current emphasis of laws regarding raising children and paying child-related expenses is seen as a joint responsibility.

Middle-class women whose husbands’ salaries are high and whose own work experience is limited suffer the greatest drop in income after divorce in what has been referred to as “the feminization of poverty.” Lenore Weitzman, in her book The Divorce Revolution (The Free Press, 1986), claimed that the average divorced woman suffers a 73% decline in her standard of living in the first year, whereas that of her former husband increases by 42%. Before you panic, you should know that her numbers have been successfully challenged and Weitzman herself has acknowledged the inaccuracies of her data. Still, the basic premise of reduced income for divorcing women does stand, though not to the degree she claimed.

**WHAT DOES CHILD SUPPORT COVER?**

What child support covers is often hard to separate from support of the custodial parent. Paying for a roof over your child’s head means paying for the roof over the former spouse’s head, too. Men often feel their former wives are spending support payments frivolously and battles intensify. The issue is not simple, and it seldom seems fair to either side.

I cannot emphasize enough how important it is to get a carefully worded and detailed court order in the area of child support. Don’t let your lawyer agree to a dollar amount alone. Terms should be spelled out. For instance, does the child-support payment cover the
children’s medical and dental insurance as well, or will that be separate? Will there be a cost-of-living increase clause? Support groups such as ACES (see page 105) will help educate you in such matters.

Even in joint custody arrangements where parents have drawn up careful schedules for sharing normal expenses, new expenses arise continuously. How does one deal with those one-time, large, nonbudgeted expenses, like braces, glasses, special tutoring, sports equipment, and the real biggie-college tuition? The older your kids get, the more it costs to support them. Raising children is expensive and the noncustodial parent must be aware that all those one-time expenses are costly.

Generally, parents are not legally responsible for paying college costs. Still, a court may order a non-custodial parent to pay college costs if a combination of factors indicates that financial ability and previous expectation for such has been shown.

ITS AGAINST THE LAW NOT TO SUPPORT ONE’S CHILDREN.

What is typical for child-support payments? Unfortunately, there is no uniform answer. Every family is unique. Incomes, prior living styles, physical, emotional, and educational needs, parents’ resources—all must be taken into account. Your lawyer or mediator will be able to give you an idea of what’s common in your state (most have certain guidelines) given your net worth and income(s). One rule of thumb is 25 percent of the noncustodial’s take-home pay at the time of your divorce will go to child support. But only a professional can tell you whether this will be applicable for you. Don’t rely on stories by friends and neighbors.

Second marriages often suffer because of the pressure of payments to the first family. The second wife is usually well aware of her husband’s obligation, but resentments can grow with time, nonetheless. In theory, a second wife’s income is not taken into account regarding financial arrangements for a man’s first family,
but often it is because it affects his lifestyle. If a child is born into the second marriage, everyone concerned may suffer financially. In the cases of multiple marriages, the issue of money becomes even more confusing as parents negotiate their financial responsibility to children, stepchildren, and former stepchildren. Another important question to be addressed is this: Given all these variations and combinations, who should be listed in one’s will.

She expected nothing from him but trouble. Already that was a help. Once she ceased expecting, she ceased being angry ... for anger is really disappointed hope. -Erica Jong, PARACHUTES AND KISSES

THE HOUSE DIVIDED

It’s a common practice for the home to go to the wife in divorce. Sometimes women fail to get good advice on the tax aspects of receiving the family home. Women over the age of 55 may lose half of the one-time capital gain exclusion. Also, a couple who agrees to split the proceeds from the sale of a house (often only after the children are no longer living there) will be tied together long after their divorce. Don’t rush into any significant decisions, such as how to deal with the family home without receiving sound advice and having adequate time to weigh all the implications.

THE PAYING PARENT

Writing a check each month to one’s former spouse for child support is usually a painful act. Child support often feels like alimony/spousal support when it comes to writing that check. But child support is more than
money—something the noncustodial parent seldom understands. It carries with it an emotional commitment to one’s children and is perceived in this light by the custodial parent and child. That is why late or unreceived child-support payments lead to heightened financial difficulties because of the anger and fear of abandonment that is felt.

Child support payments are over and above the amount of money needed when the children are spending time with the noncustodial parent. Child support payments assume that the paying parent will have his or her own child-related expenses; you can’t deduct out-of-pocket costs from child support. Custodial parents have fixed costs for the kids, no matter where the kids are on a given day. If the children spend extended time with the noncustodial parent, support agreements can change. This cannot be done as a unilateral move, however.

Any number of fractured families spend April playing the game called, “Who Gets the Kids as a Tax Deduction?”
- Ellen Goodman, The Boston Globe

IF YOU ARE THE LESS WELL-OFF PARENT

In marriage, spouses share a lifestyle. If there’s money for luxuries, both enjoy them. In divorce, after the assets are divided, one parent—most often the husband (the one with whom the child spends the least time)—usually ends up with more discretionary income than the other. If you’re the one who has little or no money for luxuries, it’s understandable for you to be angry about this apparent unfairness. However, it’s unhealthy and ultimately damaging for you to stay angry about it.

Financial inequity exists because society, at any given time, values certain activities more than others. This does not mean that one parent works less hard or is
KNOW YOUR TERMS....

MAINTENANCE or SPOUSAL SUPPORT (alimony): payment of support by one spouse to another in satisfaction of marital obligations
- is taxable, periodic income (versus a lump sum) to the recipient and a tax deduction for the one who pays it, providing:
  (a) it is paid in cash under the terms of a written agreement or a divorce decree, and
  (b) that the couple does not live in the same house or file a joint return;
- is considered earned income for the purpose of qualifying for an IRA;
- ends upon the death of the paying spouse
(The tax law is quite precise about what alimony is and isn’t so that it can’t be “hidden” in child support or a property settlement.)

CHILD SUPPORT: monthly sums paid by a divorced parent for the continued medical, educational, and financial needs of the child,
- is not taxable for the receiving parent, and
- is not deductible for the paying parent.
(If a former spouse moves to another state, an order filed in one state can be carried out in another state.)

CLAIMING CHILDREN AS EXEMPTIONS: the per child exemption can be claimed by the parent having custody for the greater part of the year. This exemption can be claimed by the noncustodial parent when:
- the custodial parent signs an authorizing waiver that the noncustodial parent attaches to his or her tax return.
(Giving the exemption credit to the noncustodial parent does not affect the custodial parent’s right to claim head-of-household status.)
and THEIR TAX CONSEQUENCES

MEDICAL EXPENSES
• can be deducted by the noncustodial parent who pays them, and
• can be taxable to the custodial parent not paying for them.

PROPERTY SETTLEMENTS
• are transferred with no taxable gain or loss for the recipient, and
• are usually lump-sum payments or property transfers. (When the asset transferred is property, it is always in the best interest of the person transferring the property to give a low-basis property that has appreciated—the high tax liability is therefore passed along. Conversely, it is always in the best interest of the recipient to take a high-basis property value so as not to get hit with a high tax bill when the property is sold.)

LEGAL FEES
• are NOT tax deductible in a divorce or determination of child support or child custody;
• are usually paid separately by each of those involved;
• are deductible if you are seeking or receiving alimony (be sure your lawyer itemizes the bill, separating all alimony-related costs).

STATUTORY REQUIREMENTS
• can set aside even a mutually agreeable stipulation in whole or in part if it doesn’t meet your state’s requirements. This is especially true in interstate cases.
a less productive person than the other. The parent with less income will have to overcome feelings of competitiveness and inadequacy. Children are also more likely to prefer to spend time where there are more material things. This is a normal reaction and doesn’t mean they love or value you less. Children who have to live with fewer luxuries may resent the lifestyle of their wealthier parent. You may be jealous when your better-off ex does things with and buys gifts for your child that you cannot afford to do and buy. “Saturday Santas” try to compensate for limited time spent with their kids. Absence from everyday routines often works to the advantage of the noncustodial parent, and you may feel hurt when he (or she) appears to be more admired by your child.

Custodial parents prefer the visiting parent to give time and affection rather than gifts and perceived extravagance to children. But noncustodial parents feel the need to do special things to make up for their limited time with their kids. It’s important to put a leash on your judgmental views and to be appreciative of the fact that he or she does all these seemingly inappropriate things. Think of the alternative!

Force yourself, if necessary, to express interest in that glorious time your child has had with the other parent. If you allow your irritation or jealousy to show, the child will become defensive and protective of the other parent and feel guilty about loving him or her. In other words, your child will once again be caught in the middle of your problem.

IF YOU ARE THE BETTER-OFF PARENT

Try to understand that your ex-spouse may resent your comparative wealth. If there are things you can do to help financially, try to do so. You don’t want to be taken advantage of, but your added help with expenses can go a long way to lessen the difficulties of your
children. Many children are concerned about college expenses and many dads who would gladly pay kids’ college tuition if he were still married to their mom won’t do so after the divorce. Remember, you divorced your spouse, not your children! Some parents divide the expenses of the children based on the income of the parents; the parent who earns twice as much pays twice as many of the expenses. Parents with joint custody are more likely to make these kinds of arrangements.

While vacationing in the Caribbean, a friend met a very nice couple. The man had been married before. His new wife said that whenever they took a vacation, they gave the same kind of vacation to his ex-wife. When my friend expressed her amazement at their generosity, they said it was a good investment. His ex-wife could not afford those kinds of vacations on her own, and they did not want her resentment over their better circumstances to sour her relationship with them.-Unsigned

THE REALITY OF NONSUPPORT

Many noncustodial parents avoid paying their fair share of the costs involved in raising their children. “Deadbeat dads” and a small group of moms are said to owe $14.8 billion to their children’s support. In 1985 only two million of the nine million women raising their children alone received full child support payments. Recent state and federal legislation is helping, but more effective laws are required. One law allows the Internal Revenue Service to deduct overdue support payments from returns due to taxpayers. The 1992 Child Support Recovery Act makes it a federal crime to avoid paying child support by fleeing the state. Current local and county family support units accept cases, not only for the poor, but for families in which a non-paying parent
Vicki Lansky’s Divorce Book for Parents

has moved out of state. In low-income families, fathers often officially leave their homes to enable spouses to qualify for welfare payments. Dads must be approached in new ways to enable shared financial responsibility. Many states are taking new approaches to collecting support, including public exposés (releasing names and addresses to the newspaper and TV) to bring public pressure to bear on “deadbeat” dads.

Only 10 percent of the men eligible for support receive it. Contrary to cultural stereotypes, many sole custodial fathers also need child support.

**SAD BUT TRUE**

- 85 percent of divorced women receive no alimony or spousal support.
- 26 percent of divorced mothers never receive any child support.
- The average support payment is only 13 percent of the father’s income.
- Only 48 percent of dads who are ordered to pay child support do so regularly. 27 percent pay partially; 26 percent never pay.
- 20 percent of parents are not in complete compliance when child support agreements were voluntarily agreed to.
- Fewer than 10 percent of divorce settlements include college tuition.

It is illegal for a parent not to pay court-ordered support. The Supreme Court has upheld nonpayment as civil contempt, which means a parent who has failed to pay maybe jailed. This is a powerful remedy against self-employed parents and those who are able to hide assets, especially in cases where a state can’t reach a parent by withholding wages. Child support legislation currently under consideration would make income with-
holding automatic, rather than waiting for a parent to default. But for now, withholding income (wages, pensions, unemployment benefits) of parents delinquent in child support payments is the primary remedy, and putting a lean on tax refunds is next.

It is important to take action when your ex first defaults, before payments accumulate. Being generous, forgiving, and patient seldom works to your benefit. Anything that involves the legal system is slow, so it is important not to wait long before taking action.

There are places for you to turn for help. Among these are the state agencies of CSEA (Child Support Enforcement Agency), the Legal Aid Society, legal clinics, the IRS Interceptor Program, or your attorney. Many have also begun to hire private child support “hunters” who charge a bounty for tracking down “deadbeats” avoiding court ordered support and making them pay, such as Child Support Enforcement at 800-801-KIDS.

You can also get the emotional support and information you may need by joining your local non-profit chapter of ACES (Association for Children for Enforcement of Support). For information on a chapter near you—or how to establish one—and/or to order a copy of their How to Collect Child Support, contact ACES, PO Box 7842, Fredericksburg, VA 22404 (800-738-ACES) www.childsupport-aces.org.

Another group you may wish to contact is the Children’s Rights Council, Inc.(CRC), 8181 Professional Place, suite #240, Landover, MD 20785 (www.crekids.org/301-459-1220) which lobbies nationally on behalf of parents regarding the divorce and support laws that affect them. CRC works to assure a child’s frequent, meaningful and continuing contact with both parents. CRC holds an annual conference, publishes reports, audio cassettes, model bills, legal briefs, and provides information about school-based programs to help kids and court-mandated parenting programs.
UNCLE SAM TO YOUR RESCUE

The Federal Child Support Enforcement Amendments of 1984 require employers, when directed by the appropriate state agency, to automatically withhold child support from the wages of employees who are more than 30 days delinquent. States may also collect from other sources such as tax refunds and bank accounts.

Contact the OFFICE OF CHILD SUPPORT ENFORCEMENT, US Dept of Health and Human Services, 4th floor, 370 L’Enfant Promenade S.W., Washington, DC 20447, 202-401-9373. This center also publishes a national newsletter and provides other informative booklets. For a free copy of their Handbook on Child Support Enforcement, a 40-page booklet that lists the basic steps to follow if you need child support enforcement services, plus tips on solving enforcement problems, call their National Reference Center at 202-401-9383. Their Internet address is http://www.acf.dhhs.gov/ACFPrograms/CSE/ocsehome.html.

For military spouses in a divorce, contact EX-POSE, PO Box 11191 Alexandria, VA 22312, 703-941-5844, for legal referrals and information. (www.ex-pose.org)

Despite the grim picture painted here, keep in mind that many hundreds of thousands of divorced, noncustodial parents and parents sharing custody are financially responsible.

MAKING IT LEGAL

Divorce is a legal dissolution of marriage, and the laws that cover it are different in every state. In even the most amicable of divorces, you’ll need a lawyer to lead you through the legal ramifications. You never understand the legality of your marriage until it comes to taking it apart in a divorce. If you had no children,
you could use a do-it-yourself kit. But you do have children, so you need to be sure their interests are protected too.

Today, no-fault divorce means it is not necessary to do an autopsy on a marriage to place blame for its failure. Beware of conducting your own ongoing dissection of your marital split. If the marriage is over—even if for only one spouse—then it is over for both.

*It’s better to send your own kids to college than your lawyer’s.*
-Stephen Erickson, J.D., mediator

**MEDIATION AS AN OPTION**
When disassembling a marriage—a life—a family needs all the resources it can muster. Professional help is available for you. In my opinion, one type of help growing in popularity is mediation. It should probably be mandatory in every divorce, especially when there are differences of opinion about custody and money. Mediators are not there to take sides or to try to save a marriage, or to decide personal issues. They help a couple to define the divorce issues and reach agreement. They operate on the premise that the parents’ divorce is not the end of the family, but the beginning of the reorganization of the family into two separate units—an idea distinctly comforting to children. The mediator’s role is to flush out the real concerns and fears that lie buried under the anger and resentment. There are numerous benefits to mediation. Private mediation is a service that is less expensive than your legal fees will probably prove to be; it encourages parents to look forward rather than rehashing the past; and since both spouses participate in deciding the issues, experience has shown that parents generally live up to their agreements. According to Hugh McIssac, director of the Los Angeles Conciliation Court’s Services, “Recent research shows that kids do best when parents
have reached a mediated settlement."

Mediators will help the two of you work out an agreement that you take to your lawyers for its legal conclusion. Mediators can deal with your finances, your custody and parenting agreements, and anything else you need help negotiating. A good mediator will keep you focused on the task and help you arrive at what you both think is fair.

These trained third party people bring you together in an emotionally safe environment to help you work your divorce through to its legal conclusion. Mediation is NOT a binding decision. Mediators do not try to act as divorce lawyers. Today many lawyers are actually becoming trained mediators and they, too, will send you to other lawyers to finalize your divorce. (It is ethically inappropriate for them not to do so.)

Even very angry couples benefit from mediation so don’t let the fact that you and your exiting spouse may not be speaking to each other rule out this option. If you “drop out” at some point in the process, mediation can still be worthwhile because many, if not all, of your issues can be decided on or at least discussed.

One problem some have with mediation is that the “weaker personality” or the person hurting the most might not be able to stand up for his or her needs at this difficult time. Skilled mediators can balance the process. In addition, any conclusions must be reviewed by the lawyers for each party so each person is still protected. The mediation process allows lawyers to become advisors instead of gladiators. (Mediation, however, is rarely recommended for couples who have experienced abuse.)

Because both parents are interested in having the needs of the children met, mediation is often used in this area. In many states mediation is mandatory if parents are unable to reach an agreement in court.

Consider letting your children participate in at least one of your sessions, if you are not locked in battle. It will allay their fears about what is going on and will give them a chance to speak, be heard, and thereby gain a sense of
control over their lives. My children were surprised at the orderliness of mediation. They had envisioned a long table where we sparred verbally with mediators trying to control us. They were surprised about the small room, the informal setting, and the fact that the mediator was in charge.

_before going to custody mediation services provided by our local county court service, we used the book, _MOM’S HOUSE_, _DAD’S HOUSE_ as our guideline. It helped tremendously-again by putting the focus on our parenting roles rather than on our differences._-Karyn Herrmann, Minneapolis, MN

You can use mediation after your divorce is final, too. The process can be helpful in discussing changes in visitation and other child-oriented concerns. In fact, you might want a clause in your divorce decree requiring that you first use mediation to modify the existing agreement before legal action can be taken.

An excellent source of information is the Assn for Conflict Resolution, 1015 18th Street NW (#1150), Washington, DC 20036, (202) 464-9700, www.acresolution.org. formed from three previous organizations, AFM, CREnet and SPIDR.

**ARBITRATION**

Another kind of help is arbitration. Although used infrequently in settling a divorce with the growing use of mediation, in some cases, when no solution seems possible, it can save divorcing couples the expense and turmoil of a court battle. More often it is used to settle subsequent disputes that might arise out of a divorce decree when arbitration has been specified as the solution for future changes. Arbitration tends to be used most frequently in property divisions.

The arbitrator is a person hired and empowered to judge a case and make decisions. Arbitration hearings work like courts but are more informal. Affidavits
aren’t required and witnesses are not expected to be advocates for either side. In binding arbitration, the spouses agree beforehand that they will abide by the arbitrator’s decision. In advisory, nonbinding arbitration, the parties may reject a decision, and the case can still go to court.

For more information, contact The American Arbitration Association, 335 Madison Ave, 10th Fl, New York, NY 10017, 800-778-7879. (www.adr.org) They will direct you to your local arbitration association.

NEW ALTERNATIVES

Family courts continue to be an inefficient place to handle divorce matters and different jurisdictions are experimenting with other avenues. A program being tried in Northern California and some other areas calls for the use of Masters. A Master is a person who is part of the judicial system, acting somewhere between the parameters of mediator, arbitrator and court judge. There is also a variation of mediation called collaborative divorce that may be available to you. Check out www.collaborativelaw.com.

YOUR LAWYER

There is your emotional divorce and there is your legal divorce. The first you must do yourself. The second you can’t do without a lawyer. If you haven’t contacted a lawyer by now-and you are separated-you have little choice but to line one up for yourself immediately. You will need to find someone familiar with family law and comfortable handling divorce cases.

Your lawyer will need to know what you want-if you know-in settling your divorce. You will need to consider your house, your money, assets, debts, custody of your children, and your future. It will be necessary to provide information about your finances and those of your spouse.
Most people begin the legal part of their divorce with naive, preset ideas. Women tend to be either angry (an “I’ll-get-him-for-all-he’s-worth” attitude) or the reverse—a passive (“let’s-not-get-him-upset”) attitude. Men, on the other hand, tend to assume that the divorce can be done quickly, the assets divided fairly (which is usually their definition of “fair”) with any business assets going to them, selling the house, and seeing the kids whenever they think they should or can. None of these scenarios is common. The legal process usually takes on a life and time frame of its own over which neither party exerts control. This is often one of the biggest surprises about divorcing to men and women alike.

WHAT WILL A LAWYER DO?

You can expect your lawyer to do the following:

• File your suit for divorce, see that the papers are served on your spouse, and handle the slew of legal documents the procedure requires.

• Provide you with advice on your rights and review decisions made between you and your spouse.

• Review any agreements you arrive at with a mediator to be sure they are legal and not unfair to you.

• Negotiate with your spouse through his or her lawyer(s) if you cannot reach agreement about the division of property, alimony, and/or child-support settlements and parenting arrangements. (It is not standard operating procedure for one spouse to talk to the other’s lawyer.) There is times this makes the process more expensive for all involved. There is no prohibition, however, about you and your spouse talking; but do discuss this first with your lawyer before you take it upon yourself to enter into direct negotiations.

• Represent you in court if you can’t agree on terms.
What your lawyer will NOT do is act as a peacemaker for you. If your spouse assaults you, do not call your lawyer until after you have called the police and pressed charges. Neither lawyers nor judges can help you handle visitation problems. Do not waste your money by calling your lawyer with “she’s-turning-the-kids-against-me” or “he-never-picks-the-kids-up-on-time” problems. Your lawyer might like to help you but there is nothing he or she can actually do.

Be aware that a lawyer, especially an adversarial lawyer, may aggravate your difficulties with your spouse. Your lawyer is your advocate, and if he or she is aggressive, this may create problems years from now when you must still have contact with your ex. Keep in mind that lawyers also tend to represent the perceived best interests of parents—not those of the children.

NEVER NEGOTIATE A SIDE DEAL WITH YOUR EXITING SPOUSE OR SIGN ANYTHING WITHOUT TALKING TO YOUR LAWYER FIRST.

Watching my lawyer, my spouse’s lawyer, and the judge in our first confrontation in a court hearing was eye-opening for me. I realized that there was a language, a protocol, a ritual occurring that had little to do with our case but completely impacted on it. I then understood why you don’t represent yourself in court. It had little to do with truth or fairness. Lawyers know the game that is being played and that’s what you are paying for. -Tammi Green, Chelsea, MI

CHOOSING A LAWYER

Referrals from friends and business acquaintances are the most common way to find local lawyers. You can also phone your local Bar Association for referrals, or find lawyers listed under “Attorneys” in the Yellow
Money, Legalities, Custody

Pages. Some states have certified specialty laws which require that lawyers demonstrate a level of competence in a given field before they can specialize. There is also the American Academy of Matrimonial Lawyers (150 N. Michigan Ave., Chicago, IL 60601, 312-263-6477, www.aaml.org) that you can contact for referrals in your area. Many states offer free legal aid, but you’ll probably have to put your name on a waiting list; if it is determined that your income is too large, however, you will not qualify.

Ask for an appointment to interview your prospective lawyer. If you can’t get beyond a secretary on your first call, it may indicate how accessible he or she will be later on. Make it clear to this lawyer in your telephone call that you want this initial meeting as an interview only (though some do charge and should tell you in advance). There may be no charge for a half-hour consultation. Interview at least three lawyers, if time permits. You will learn a lot in the process both about the lawyer, your case, and how you interact with your prospective lawyer. Never feel you have to hire the first lawyer you call or see. You should feel a rapport and trust with your lawyer. In an interview:

- Bring a pad and pencil and take notes.
- Try to get a reading on how each lawyer feels about divorce, joint custody, and mediation.
- Find out what percentage of his or her time is spent on divorce clients. How long has he or she been practicing family law? You want a lawyer who knows your local court personnel and procedures and has frequent contact with the judicial officers who will be hearing your case, if you think that you might end up in court.
- Ask about a monetary range for cases similar to yours.
- Ask about fees and billing procedures. There are flat fees, percentage of property settlement fees (illegal in some states), and hourly fees. Many ask for an opening retainer (deposit). You will also be billed for phone calls, correspondence, court time, and time talking with the opposing lawyer.
• Ask if there will (or can) be a written agreement that will cover what your charges will be, the way you will be billed, and what the lawyer will and will not do. (This should be signed by you and your lawyer when you do hire one.)

Don’t share a lawyer with your spouse. It may seem less expensive but in the long run it almost surely will not be. It’s also illegal in some states. And lawyers are not allowed to accept contingency (a percentage of what you receive) fees in divorce cases.

Until recently, lawyers have tended to from upon the use of mediation (fear of potential loss of clients or just unfamiliarity with the concept) but this is no longer the case. As attorneys are becoming more familiar with its use as well as being exposed to it in law school, many are becoming mediators themselves and mediation is becoming more widespread. Time lost with one client has translated into more time for additional clients. It also promotes less strife between parents which helps kids and parents alike.

**ADDITIONAL PROFESSIONAL RESOURCES**

Association of Family Conciliation Courts
American Bar Association &
Dispute Resolution Center
6525 Grand Teton Plaza 740 15th St. NW, 9th floor
Madison, WI 53719 Washington, DC 20005
608-664-3750 202-662-1000
www.afccnet.org www.abanet.org

**MONEY-SAVING TIPS**

It has been said that some lawyers prolong proceedings for money. This may be true or not, but there is no real way of determining it. You must remember to maintain some control as you proceed, even asking for
Money, Legalities, Custody

an occasional recap on where your case is going. Making this judgment call is difficult, because you only get one chance to determine how you will live for a long time and you must do the best you can for yourself.

You must learn to measure your words in terms of time because time is costly with lawyers. Don’t use your lawyer as your therapist. It might feel good to have a lawyer who is a good listener but it will also be expensive. It’s less expensive and more effective to go to a therapist to deal with the emotional unfairness of your divorce. Also:

• Learn to use your lawyer’s secretary effectively. Call to relay information or confirm correspondence without having to speak to your lawyer.
• Write rather than call. Conversations can be longer than you planned, especially if you are doing a lot of talking or your lawyer is content to do a lot of listening.
• Don’t call to complain about your spouse. Do so only when calling can accomplish something tangible.
• When you do call, make a list of what you want to discuss beforehand, so your comments and questions will be specific.

Remember, you are the one who has hired the lawyer. Your lawyer works for you. It’s never easy to know when to accept or reject advice given you. You’re going to have to live with your divorce decree—not your lawyer or your friends. You may make mistakes in this area that only time will reveal. Your advocate will be trying to look down the road for you but will never walk in your shoes. There is no shame in changing lawyers at any point in the proceedings if you feel your interests will be better served by a change in attorneys. If you do discharge your attorney, however, do it in writing and keep a copy of your dated letter.

You should expect to pay your own attorney’s fees, even if you did not initiate the divorce. That’s the usual procedure today. If payment is a problem, most lawyers will be willing to work out a monthly payment plan.
Vicki Lansky’s Divorce Book for Parents

Try to keep things in perspective when problems arise. There is probably not a lot a lawyer can do at 9 P.m. on a Sunday other than get irritated. Although it may be rough on you at times, remember that lawyers have their own lives, too.

Also your lawyer can not “fix” your ex. Trying to use your lawyer to turn your ex into a sensitive person or parent is a waste your lawyer’s time and ultimately, your money.

There is no such thing as a win or victory in a divorce. The end result will be a shade of gray, not black or white. If you can both walk away feeling only somewhat dissatisfied, then it was probably a fair outcome.

During our negotiation proceedings my husband was doing some unfair, even illegal, actions. I could afford to fight him. A male friend gave me some important insights. He said, based on my tiresome retelling of my ‘poor me’ story, “It sounds like your husband has to win to be a whole person, do you? “ That helped me take a step back and look at what was really happening. I directed my lawyer to settle. It was against his advice. The bottom line worked out okay though never the 50-50 that I was due, but I saved myself incredible heartache. My ex continued to indicate he was shortchanged. Yet I now know that if he had not felt he had “won, “ I’d probably still be fighting for my half today.
-Toni Mitchell, Mt. Vernon, NY

Are you online? The American Bar Association has information available on the Internet at www.grover.abanet.org. Educate yourself through your computer instead of through your lawyer’s hourly fee.

JUST HOW MUCH JUSTICE CAN YOU AFFORD?
SOME GOOD ADVICE

PUTTING THE KIDS FIRST.- Walking Away From the Marriage Without Walking Over the Kids by Michael Oddenino (1995, Family Connections). Real advice from a practicing divorce lawyer on how to meet the demands of post-divorce parenting. As a divorced parent himself who relocated to be near his children, his book will give you important insights and information. Included are sample mediation/parenting agreements. Available from Oddenino & Gaule, Arcadia, CA, 626-447-5454.

GOING TO COURT FOR CUSTODY

Going to court to have custody determined is probably the hardest thing any family will have to face. A stranger (even if he or she is a kindly-looking judge), will probably take no more than five minutes of deliberation to decide your family’s fate for years to come. And one parent will come away feeling like a loser. If you think a court battle in which the children are the prize becomes “proof” that you are the more loving parent, guess again. It’s a self-deception. It’s also a rotten thing to do to your kids. In a custody battle, they are no longer your children but fought-over possessions; and they know it—and may even use it to play you and your ex-spouse against each other.

If your children are asked for their preference (which usually happens with young teenagers), they are given power that perhaps they should not have. No matter what, they will be settling for second best because they will prefer their first choice of having both parents together. Asking their choice of parent and living arrangements
puts incredible pressure on children, because they must hurt one parent terribly. Often they have to convince themselves that the parent they rejected is really bad in order to justify having made a preference choice. Neither parent nor (hopefully) the judge will directly ask children who they wish to live with. To do so will damage any parent-child relationship. The best thing to hope for is that the judge will render the least harmful judgment. But don’t kid yourself; it will not be easy on anyone involved.

If children are involved by the judge, the interview will be conducted in private in the judge’s chambers. This is called an “in camera” (“in chambers”) proceeding. It will be attended by the children and the lawyers. Many courts have court-appointed social workers interview both parents and children beforehand for an assessment of the situation. If the custody fight is really ugly, the court might even appoint an attorney for the children to protect their rights.

If your children will be involved in your legalities, talk with them about the reason this is happening, stressing that it’s not their fault and acknowledging that it is not an easy situation for them. Don’t discuss what they should say to a judge even though they might want some idea about what will be asked of them.

If the final judgment goes against you, your children should know that it hasn’t changed your love for them. A judge can decide whether your kids will live with you or not but not how much you love them. Let them know your commitment to them wasn’t based on winning in court. Be honest without being divisive. You can express sadness, but tell them you all will make this work as best you can.

Keep in mind that going to court for a property settlement or custody case always costs more than you thought, and will be painfully lengthy, keeping your life on hold.

Custody of children can change if circumstances change. It’s best when these changes can be done without going to court.
When I was going through a custody battle the judge complimented my ex-wife and me for never downgrading the other parent to the child. I felt so "clean" about that and better that the battle ended. The emphasis is now on cooperation.
-David Levy, Washington, DC

A judge can decide whether your kids will live with you but not how much you’ll love them. Just keep loving them, whatever happens, and they’ll know in their hearts they can count on you.
-16-year-old daughter, now living with the noncustodial mother

WHEN YOU ARE GETTING KICKED FROM BEHIND, IT MEANS YOU’RE OUT IN FRONT.

YOUR PARENTING ARRANGEMENT (aka CUSTODY)

I did not save custody as the last issue to discuss because it is less important, but rather because it is the MOST important. Custody is the parenting arrangement we work out to participate in our legal responsibility for our children. Instead of fighting over which parent gets custody—making the children a battleground for your divorce—the focus should be placed simply on when each child will be with you. The word custody, with its unfortunate overtone of ownership, has some states choosing to eliminate the use of the word. Someday maybe we’ll change all our terminology to parenting agreement/schedule to eliminate the competitive overtone that the word custody conveys. (It has also been suggested that even the words access or visitation be replaced with family time or parenting time, and noncustodial parent with nonresidential parent.) To any parent given inadequate time with his or her children, any and all of these terms are reprehensible.
CUSTODY IS ACCESS TO OUR CHILDREN, CUSTODY IS ALSO CHILDREN’S ACCESS TO THEIR PARENTS

Legal custody (sole, joint, or otherwise) does not necessarily have to reflect how your physical parenting schedule actually works. In some families the legal sole custodian is one parent, while the children still split their time fairly evenly between the two parents. And there is legal joint custody where a father’s visitation schedule may actually be minimal. Legal sole custody means only that one parent is given the authority to make medical, religious, educational and legal decisions for the child without having to consult or inform the other parent. Joint legal custody means you are both responsible for sharing in these decisions. In reality, even in a joint custody situation, these decisions may fall by habit or circumstance to one parent. In short, the terms joint legal and joint physical are often used interchangeably today as joint custody. But joint custody will translate differently for each family. It’s an umbrella term that can describe many different arrangements. Joint custody doesn’t mean equal but it tends to indicate a flexible or equitable approach to parenting.

Figuring out how you will arrange your parenting time is obviously an important part of separating and divorcing. It will determine the boundaries of the joys and benefits of being a parent, as well as limit a child’s right to be parented by both parents. It has financial implications (“Will I get less if he or she sees them more often?”) and perhaps more important, emotional complications (“Will his/her new ‘significant other’ replace me as my children’s father/mother?”). For many parents, children can be the providers of love, companionship, and even purpose, causing them to become the focal point of a custody battle. These are understandable parental
needs—but should not be filled at the expense of a child’s emotional health. The best interest of a child is never served by being the focal point of a battle. Good parental attitudes and cooperation, rather than any specific custodial arrangements you make will ultimately help your child make his or her best adjustment.

Interwoven in your parenting agreement is visitation, also known as access. Access/visitation is an artificial and arbitrary concept that enables the court to keep peace between the parents by specifying dates and times of contact. It’s also insurance that noncustodial parents have access to their children. This is an important concept because children need and are entitled to both parents. And the freer the access a child has to both, the better it usually is for the child. Today many states even recognize grandparents’ rights to visitation.

The term reasonable visitation, included in many custody agreements, is a broad and indefinite concept, if one is left with just those words. Reasonable refers to what’s best for the children first, and for the parents, second. It allows for a variety of visiting patterns that may range from almost daily, if the children are very young, to annually, if the parents live far apart. Reasonable should always be translated into a minimum of specific dates and days in any agreement.

Dr. Maria Isaacs, psychologist and director of the Families of Divorce Project in Philadelphia, has reported that the impact of a stable visitation arrangement is more positive than the frequency of visits. Fathers with visitation schedules see their children more often than ones without a schedule. Most important, children who have regular visitation arrangements for up to three years after their parents’ separation do best and are more competent socially. Families who had established schedules in the first year of separation were most likely to maintain them, indicating that the first year is a crucial period to set future patterns.

When parents live in the same area, perhaps the most common arrangement is a weekly visit, which
may or may not include an overnight stay. It may take awhile for visiting routines that work best for all to be worked out. Parents can always enlarge upon and vary any arrangements initially made.

*Parents shouldn’t be considered visitors when their children are with them, even if it’s only once a week. Words can have powerful meaning, and the term visitation creates negative images about the relationship between noncustodial parents and their children.*

-David Levy, Esq., President Children’s Rights Council, Inc., Washington, DC

No matter how your custody arrangement works at first, it is likely to change over the years and have to be renegotiated or rearranged. Although difficult, renegotiation may be easier further down the road because you have settled other matters and have built some trust, history, and expectations about your former spouse in the area of parenting.

**WHAT ARE THE OPTIONS IN CUSTODY?**

Sole custody, when given, is almost invariably held by the mother (72 percent), but this is changing, as noncustodial fathers become more vocal and more women enter the work force. Over a hundred years ago, fathers always got custody because children (and wives) were considered property. Our current stereotyped idea of the mother as best nurturer is changing, too. As we realize that either parent may be able to supply the nurturing, supportive atmosphere kids need, we have devised different arrangements that allow parents to arrange custody in ways that will be best for all. California, which has always been a leader in matters of family law, enacted a Joint Custody provision in divorce laws a number of years ago. By 1986, 33 states had followed
suit and in most states it is now the preferred option. Courts
Courts are free to order joint custody today, even if one
parent opposes it.

Some states distinguish between “legal” joint custody,
in which parents have equal rights in decision making, and
“physical” joint custody (also referred to by some as split-
custody, just to add to the confusion), in which children
live with each parent for equitable or equal amounts of
time. According to the CRC, the minimum amount of time
that generally qualifies as physical joint custody is at least
one-third of the time with either parent in a legal joint cus-
todial agreement. In a joint physical custody arrangement,
most parents prefer the terms co-parenting, shared parent-
ing, or separate parenting. One joint custody alternative
that has received some publicity is called the “birds’ nest”
arrangement. The family home is kept intact for the kids,
and the parents move in and out on a regular schedule.
This arrangement can work initially, but it usually doesn’t
succeed over any period of time-and the expense of main-
taining three domiciles is prohibitive.

Other kinds of custody besides sole or joint are
possible, and special circumstances may make one or
another more desirable:

• Alternating custody. A child lives with one parent
for a fairly lengthy period-perhaps a year or more than with
the other. This arrangement sometimes is a solution when
the parents are separated by great geographic distance.

• Split custody. Each parent has sole custody of one
or more of the children. Courts seldom divide children,
believing that siblings should grow up together and that
older children can help younger ones adjust to the new way
of life. Yet, for some families this works best. For example,
a teenage son may live with his father, whereas younger
siblings stay with the mother.

• Serial custody. One parent has custody of the children
for several years, and then the other parent does. A father,
for example, may take over the custody of teenage boys if
a mother finds she cannot handle them or if both parents agree the boys need to be with a male.

• Third-party custody. This is where custody is sought by a grandparent, another family member, a non-family member, or the state. Child neglect or abuse are usually the reasons for the court to conclude that a parent should not have custody of a child.

Parents who jointly make parenting decisions about their children are the parents who, fortunately, feel the least amount of unfairness, and for whom custody arrangements work best. Court decisions about custody are necessary only when parents can’t agree. Anything that both parents want to arrange or experiment with can be done even after all the papers are signed without involving lawyers and judges. Changes in divorce decrees for legal purposes are another matter.

The best custody agreement for your family will be the one that takes into consideration the needs of both parents and children. Be imaginative. There are many options but be sure to address:

• Time sharing (weekly, monthly, vacations, holidays, birthdays-yours and theirs, family gatherings, grand parents time, etc.)
• Transportation responsibilities
• Communication (who does the calendar, phone guidelines, school information, etc.)
• Money (support, health insurance, college, etc.)

*In the throes of divorce foresight dims. To fight over how many weekends or vacations your children will spend with your ex is foolish and to everyone’s detriment. Kids love change and you’ll discover that child-free weekends are so great that they might have even saved your marriage.*

-Hester Mundis, W. Shokan, NY
THE RIGHT TO MOVE AWAY

The mere thought that one parent would consider taking the kids and moving away is enough to ignite any non-custodial parent’s anger. Moving apart is probably the hardest of any form of parenting arrangement. Does one parent have the right to force a long-distance parenting arrangement on the other parent and child(ren)? Should the custodial or noncustodial parent be denied the right to a better job opportunity in another community, or to follow a new spouse? (Yes, sometimes moving away is to escape the former spouse or to purposely deny access to their child, but this is not usually the case.) What about the joint custodial parent who turns down an advancement requiring a move in order to stay close to his or her children? Or the spouse who uproots him or herself and takes a lower paying job just to be near the kids who were moved away?

All parents have the right to move and travel but do they have that right when the moving and traveling is with their minor children? The current trend in California (which often sets the tone for the rest of the country) has been to put more of the “burden of proof” on the moving, custodial parent for just cause.

Most parenting agreements include a clause in which the custodial parent can’t move without notification and approval of the other parent. When such situations arise there often have to be changes in divorce decree financial allocations to reflect travel expenses. Even if there is no mention of a move apart in your agreement, the other party still has the right to go to court in such circumstances.

Some are trying a “cost contract” as part of their settlement. As a preventive measure a large financial obligation might discourage a parent from moving out of spite. At least it could build in an equitable arrangement for the expense of travel for the child or the other parent, and other long distance costs.

This is a growing problem with no current good solution and one area of divorce that often calls upon parents to make supreme effort—and perhaps sacrifice.
PARENT DIVORCE EDUCATION

Across the country court-affiliated and mandated divorce parenting programs are the fastest growing trend in family court today. The programs offer classes varying in cost, content and number of sessions. The programs are being mandated because they’ve proven successful in helping divorcing parents focus on the needs of their children and, in the process, reducing court/legal costs caused by the anger and personal pain divorce seems to engender. The classes educate parents to the effects of conflict/divorce on their children. Such programs are often offered by non-profit or court-affiliated agencies. Studies report that even parents who resent being ordered to enroll in these parenting classes later admit they were worthwhile. One such program is, SANDCASTLES, developed by M. Gary Neuman who can be reached at 305-532-2558, or mgaryneuman@sandcastlesprogram.com (www.sandcastlesprogram.com.)

WHO DECIDES?

Custody decisions are often made when tempers are the hottest. Custody and visitation should be flexible enough to meet the changing desires and needs of all the people involved over the years.

In about 75 percent of divorce cases, parents themselves make custody decisions, often with the help of mediators. Some resort to arbitration. For the other-10 to 15 percent-there are legal custody battles that are expensive, impersonal, and painful.

But state laws are changing as our legal system tries to devise blanket directives to help, not hinder, family change. (Given the variations of divorcing families’ situations, laws often complicate and impede rather than help and expedite.) Your state’s laws may not be up to speed or in need of change. Get involved. CRC (see page 105) is represented by local groups in almost every state to help you focus your energies.
Another resource at your disposal is the web site www.infoforparents.com which will give you access to various types of information you can use to educate yourself.

**LET THE CHILDREN CHOOSE?**

It’s unfair for parents to force children to take sides by even casually asking them their preferences in custody matters. Too often children choose one parent over another out of loyalty for the one they perceive as “wronged” or because they think one needs them more than the other does. Whatever they say, children struggle with guilt and fairness issues. Often what we ask when we ask our children this question really is, “Who do you love more? Mommy or Daddy?” This is no different than the question children with siblings often ask, “Don’t you really love me more than (Susie)?” Yes, we all love to be anyone’s favorite person, especially a significant family member’s. It’s a normal fantasy. But it’s a childish question or hope at best. Divorcing spouses too often look upon their children as possessions to be fought over instead of as individuals whose interests should come first. Financial problems, insecurity, parenting schedules, and just plain anger often cause parents to use their children as pawns without realizing they are doing so. Few, if any, would consciously put their children in the middle, but they fail to see that is exactly what is happening as they deal with their own emotional agendas. Parents are wise to consider any definite wishes that are expressed, but final decisions should be made by the parents-and the children should know that.

**KIDS NEED TWO PARENTS TO GET THROUGH YOUR DIVORCE BECAUSE IT’S THEIR DIVORCE, TOO.**
CUSTODY BATTLES

As Of 2004, David Levy of the Children’s Rights Council reported there are 15 million noncustodial fathers in our country and 3 million noncustodial mothers. As difficult as this whole custody issue is, for many it becomes even more problematic. Adults lose sight of their children’s needs as they escalate actions that use the children as their pawns.

Hopefully you have not entered this battle zone, but if you have and you need to know what you’re up against you probably should read Custody For Fathers; A Practical Guide Through the Combat Zone of a Brutal Custody Battle by C&M Brennan (2007, Brennan Publishing, Costa Mesa, CA, 949-646-9842). Also at Amazon.com. Check other on-line sources, too.

Beware, too, of custody battles for the heart and soul of a child (now known as Parent Alienation Syndrome). This is just as unfair and damaging to a child.

DENIED ACCESS/VISITATION

Unfortunate but true: A 1977 study by the National Institute of Health reports that during the first two years after divorce, 40 percent of those custodial mothers asked, admitted that they had, at least once, refused to let their ex-husbands see their children for punitive reasons. It’s important to remember that you can’t use visitation as a weapon, or means of making a statement about your ex’s parenting skills (“Our child is watching too much TV at your house.”) or to express disapproval of your former spouse’s new “significant other.” It is not acceptable to deny access to punish a spouse who left you for another. This sort of revenge will hurt your child more than your ex. However, access to children of abusive, violent, noncustodial parents needs to be limited and conditional (i.e., requiring the presence of a third party, and such).

If you are worried, as the noncustodial parent, that
access may become a problem, keep a diary or log of events to prove visitation has been denied. And if you know anyone who has witnessed your access being denied ask them if they would testify for you if the need arises. Or ask a trusted person to go with you during your scheduled time with your child(ren) who could act as a witness. Don’t withhold support payments because you’ll only weaken your own case. Your conduct must be beyond reproach. Before seeking legal help, send a registered letter (and keep a copy) in which you request, in nonthreatening words, a return of your visitation schedule so that you won’t be forced to seek any enforcement of your rights.

I was divorced when my daughter was two and a half. She’s eleven now. Our custody arrangements looked great on paper but my ex-husband decided not to abide by them and chose his own arrangements instead. He calls once a year at Christmas and demands to see her. I don’t comply and he thinks I’m unreasonable. And he doesn’t see how unfair he is being to our daughter. -Kathi Baldwin, Rancho Cucamongo, CA

The legal remedies for denied visitation are expensive. A writ of habeas corpus can compel a custodial parent who has denied visitation to appear in court. The parent can be cited for contempt or even be punished by temporary cessation of all or part of support payments. If your custodial ex-spouse has made an unwarranted move out of state, then you can trigger the Uniform Child Custody Jurisdiction Act, which has been adopted by all 50 states. Your visitation can be enforced even if your child is halfway across the country. Some states now have laws making even a late return of a child visiting a noncustodial parent a felony.

A court cannot force a parent to act responsibly as a father or mother against his or her will. A parent who refuses to visit at allocated times and is current on any financial obligations is beyond the reach of the law.
THE ACCUSING FINGER

Custody and visitation may be denied legally if a parent can be shown to be abusive—physically or sexually. Defending against this accusation is no easy matter. There are numerous cases today where sexual and spousal abuse are being brought—many believe—to keep noncustodial fathers or mothers from their children. Molestation litigation has been referred to by one author as “the nuclear bomb” of custody hearings. True or false, these charges are painful for all involved. Polygraph testing is now being suggested as one way to deal with this problem. Each parent would be tested, as well as the child. And children can manipulate such a situation just as well as an angry parent can.

According to Dr. Melvin Greyer of Family Law Project of the University of Michigan, most sexual abuse allegations made in custody disputes are false. Mothers are also much more likely to make these allegations than fathers. In his study Of 30 cases of alleged sexual abuse, 83 percent were unconfirmed. In general 60-80% of accusations have been found to be unfounded.

Self-help support groups have formed to counter these false charges. Two websites that can offer information are:

www.accused.com
www.childprotectionreform.org

Dean Tong is a consultant who wrote Survival Guide For the Falsely Accused. You can find his information at: www.abuse-excuse.com.

But if you DO suspect current abuse, contact the national hotline for crisis intervention at 800-4-A-CHILD which offers referrals to service agencies in the US and Canada.

CUSTODY BATTLES ARE NEVER GOOD FOR THE CHILDREN,
PARENTAL KIDNAPPING

Thousands of children are spirited away from their homes by noncustodial parents every year. Most child-snatching occurs right before or after divorce proceedings. This parental kidnapping has been described as the last desperate act in the tragic ending of a relationship. In many cases, the primary motivation is not concern for the child. Rather, spite and a desire to get even and shut the other parent out of the child’s life are the motivations, although the angry parent may deny this. Parental kidnapping is also a federal offense.

According to Mary Anne Kiser, founder of Parents Alone, in Wichita, Kansas, abductions by an estranged parent can be predicted in 75 percent of the cases. Parents’ perceptions and fear of abduction are often valid indicators. A history of violence is another link, including threats to kill the custodial parent. Fifty-three percent of abductors had beaten their spouses and 30 percent had beaten a firstborn child. Children ages 3 to 9 are the most vulnerable to abduction. Age, not sex, is the main factor.

Still there is little legal protection available beforehand. A parent’s visitation rights usually will not be curtailed unless there is serious harm, or the likelihood of kidnapping can be proven. Every state now has adopted the Federal Uniform Child Custody Jurisdiction Act, however, which honors and enforces custody and visitation decisions made in another state. This means you can obtain an enforcement order in your state and it is given full force and effect in your ex’s state.

Although it is a crime to kidnap your child by taking him or her to a different state, a parent taking a child out of the country will effectively circumvent American law in most cases. There is little or no legal recourse for the other parent. While signers of the Hague Convention hold some authority in divorce cases, no international agreements specifically cover custody cases. Japan, for
example, never signed the Hague Convention agreements so children are not legally “recoverable.” The greatest number of children taken out of the United States are taken to West Germany, Mexico, the United Kingdom, and Italy. Those taken to the Middle East are the hardest to recover, because of cultural differences where women have little clout and foreign citizen fathers can get passports of their country for their children.

**BEING CAUTIOUS**

Always take an angry spouse’s threats of abduction seriously. Generally child snatchers do not keep their intentions a secret. Here are a few precautions to take if you fear kidnapping by your noncustodial spouse:

- Stay on good terms with your ex-spouse, as well as with his or her family and friends. Most child snatchings are undertaken to get revenge.
- Compile a paper trail file for tracing your spouse: social security number, driver’s license, credit card numbers, and maybe even bank account numbers.
- Advise school personnel about your concerns and tell them to allow only someone you have delegated to take your child from the school grounds.
- Ask teachers, bus drivers, and others who are likely to be on school grounds to watch for suspicious loiterers who appear to be interested in your child and to notify you of them.
- Prepare your child without alarming him or her. If you have sole custody, let your child know he or she does not have the right to go anywhere without your permission—even with the other parent.
- Apply for a passport right away for your child. It’s not a guarantee against abduction but it’s an additional obstacle as the other parent won’t be able to get a child’s passport easily.
- Write to the U.S. Passport Office and request that
no passport be issued to a child of yours on the application of the other parent. You will need to enclose a certified copy of the court order of legal custody.

- Alert local police to your fears so they will respond immediately to a call from you. They may require a certified copy of your custody order, too.

If abduction is a real concern for you, read Dr. Jeffrey Greif’s *When Parents Kidnap* (Free Press, 1993) and any other material you can to become knowledgeable about your situation.

And if you ARE a victim and your child has been taken, contact-in addition to your local police department-the National Center for Missing and Exploited Children for help. Call 800-THE-LOST (800-843-5678) or go to: www.missingkids.com.