

Michael Idema
Divorce Lawyer
6410 Alpine Ave NW, Suite A
Comstock Park, MI 49321
(616) 647-2200

DICTIONARY OF TERMS USED IN DOMESTIC RELATIONS CASES

Alimony - money paid for support of spouse

Alimony in Gross - money paid in installments to spouse as part of property settlement

Annulment - determination by the court that the marriage was invalid

Appearance - document filed to advise court attorney is representing you; also, physical presence of party or attorney before Judge

Answer - document filed by *Defendant* in response to *Complaint*

Affidavit of Non-Military Service - affidavit advising court of *Defendant's* military status, required where *Defendant* is *Defaulted*

Affidavit - written, sworn, notarized statement

Arbitration - a third party, usually an attorney, is given the authority to decide terms of the divorce

Child Support - money paid for support of children

Abatement - usually, child support is reduced 50% for periods of visitation lasting 6 or more consecutive overnights

Arrearage - overdue child support

Guidelines - outline required to be followed by court in calculating child support, unless the court finds that it would be unjust or inappropriate to follow guidelines due to unusual circumstances. Guidelines take into consideration number of children; incomes of both parents, but weighted toward consideration of income of non-custodial parent; child care expenses; and other factors.

Not Retroactively Modifiable Clause - clause in child support orders providing that, once a child support payment comes due, it should not thereafter be modified by the court; reductions in child support are generally only effective back to the date that the payer of support filed a *Motion* asking that the support be reduced

Case - legal action filed to resolve some dispute

Consent case - the parties agree regarding the *Relief* to be granted by the court

Default case - the *Defendant* did not contest or consent, and *Plaintiff* obtains *Relief* by *Default*

Contested case - the *Defendant* files an *Answer*, placing issues in dispute

Complaint - document filed with court to start case

Consent - parties have agreed to *Entry* of an *Order* or *Judgment*

Contempt of Court - failure to follow an *Order* of the court; punishable by fine or jail

Custody - authority of parent or other party over child

Custody Act - State law governing how disputes regarding custody of children should be resolved

Legal custody - right of person to make important decisions concerning child, to deal with school authorities, doctors, and other persons concerning child

Physical custody - person child lives with

Joint custody - custody is shared; there can be joint physical custody, joint legal custody, or joint legal and physical custody. The most common custody arrangement in divorce is sole physical custody to one parent and joint legal custody to both parents

Split Custody - each parent has physical custody of at least one of their children

Dower Clause - standard clause in *Judgment of Divorce* which terminates inheritance rights

Michael Idema
Divorce Lawyer
6410 Alpine Ave NW, Suite A
Comstock Park, MI 49321
(616) 647-2200

DICTIONARY (continued)

- Defendant** - the party against whom the case was filed
- Enter, Entry** - process of obtaining an *Order* or *Judgment*; i.e., an *Order* is submitted to the Judge for approval and the Judge signs the *Order*
- Equity** - what is fair
- Default** - failure of the *Defendant* to file an *Answer* to defend the case; also, document filed with court to place the *Defendant* in a default status, which permits the *Plaintiff* to apply to the court for a *Judgment* without obtaining the *Defendant's* consent to the terms of the *Judgment* or having to schedule a *Trial*
- Defined Benefit Plan** - a type of retirement plan which permits the employee to obtain a monthly benefit upon retirement, i.e., a pension; may need to be appraised
- Defined Contribution Plan** - a type of retirement plan which accumulates money or other investments in an account for the benefit of the employee, i.e., 401(k), 403(b), ESOP, Profit-Share ; should not need to be appraised
- Deposition** - testimony taken from witness before a court reporter, but not at court; usually at one of the attorney's offices; usually to discover information in the possession of the deposed person
- Discovery** - process of obtaining information; may involve *Interrogatories*, *Request to Produce Documents*, *Deposition*, *Subpoena*
- Dismissal** - process of dismissing case, usually by filing a *Stipulation*, but may occur in other ways
- Domicile Clause** - standard clause in a custody order providing that the residence of the child not be removed from the State without the consent of the court.
- EDRO** - Eligible Domestic Relations Order; an order dividing a State of Michigan regulated retirement benefit between the parties in a divorce action
- Friend of the Court** - agency of the Circuit Court which investigates and makes recommendations to the court regarding custody, visitation, and child support, and which enforces visitation and support orders
- Grounds** - for divorce, there is only one ground in Michigan: there has been a breakdown in the marriage relationship to the extent that the objects of matrimony have been destroyed, and there is no reasonable likelihood the marriage can be preserved. As a practical matter, if one party wants a divorce, the court will grant it. We no longer contest divorce cases as to whether there will be a divorce, but rather as to what the terms of the divorce will be
- Hearing** - court proceeding in which a disputed issue is resolved by the court, usually without *Testimony*
- Hold Harmless Clause** - a clause in a *Temporary Order* or *Judgment* which states which party should be responsible for payment of a debt, and provides that, if the other party is forced to make the payment, the party who should have paid will owe that money to the party who did pay
- Interrogatories** - written questions which must be answered in writing under oath, usually used to discover information in the possession of the other party
- Income Withholding** - the court will order that an employer withhold from the paycheck, and send to the *Friend of the Court*, child support payments owed by wage earners
- Judgment** - final *Order* concluding case; may be obtained by *Default*, *Consent*, or following *Trial*

Michael Idema
Divorce Lawyer
6410 Alpine Ave NW, Suite A
Comstock Park, MI 49321
(616) 647-2200

DICTIONARY (continued)

Judgment of Divorce -final *Order* which grants the divorce, and also sets forth the terms of the divorce, including, as appropriate, child custody, visitation, support, alimony, and property division

Jurisdiction - authority of court to act; divorce cases may be filed in the court where one of the parties has resided for 10 days if the party has also resided in the State of Michigan for 180 days

Legal Separation - technically, this is something we do not have in Michigan. Generally, it refers to a divorce action having been filed, the parties are not living together, a *Temporary Order* is in place setting forth the responsibilities of the parties until the divorce is finalized. But see also *Separate Maintenance*

Mediation- a third party, usually an attorney, assists the parties in negotiating a settlement, but does not authority to force a settlement

Motion - document requesting that the court order something; also, the appearance at court to argue the motion; although the court appearance for the motion is called a *Hearing*, no *Testimony* is usually taken

Notice of Hearing - document stating when and where a *Hearing* or *Motion* will be held

Parenting Time - synonym for *visitation*

Plaintiff - party who files a case

Pleading - document which asks for *Relief*, i.e., usually a *Complaint*, *Answer*, or *Motion*

Prayer for Relief - that part of a *Pleading* stating what *Relief* is requested from the court

Pre-trial Conference - Also called Settlement Conference: meeting between attorneys and Judge in attempt to settle case. In Kent County the attorneys must file a brief setting forth the basic facts of the case, what their clients want in settlement and why their client should receive what is being requested. The parties must appear at court for the pretrial conference. Most cases which have not already been settled informally will be settled at the pre-trial conference. If the case is not settled, the next step is trial.

Pro Con Hearing - *Hearing* to finalize the divorce in cases in which either a *Default* was obtained or in which the parties have settled and consented to the terms of the *Judgment*; Plaintiff testifies that marriage has broken down and can not be saved

Proof of Service - document filed with court showing upon whom, when and how papers have been served

QDRO - Qualified Domestic Relations Order; an order dividing a federally regulated retirement benefit between the parties in a divorce action

Order - document signed by the Judge directing some action or result; the final order concluding the case is the *Judgment*

Order to Show Cause - *Order* issued by court directing a party to appear before the court and show cause why they should not be punished for *Contempt of Court*

Record of Divorce - document filed with court clerk, and, if divorce is granted, sent to state agency which keeps vital statistics

Relief - what a party asks the court to do, or what the court grants to a party

Request to Produce Documents - document directing person to allow inspection and copying of documents, used in *Discovery*

Michael Idema
Divorce Lawyer
6410 Alpine Ave NW, Suite A
Comstock Park, MI 49321
(616) 647-2200

DICTIONARY (continued)

Restraining Order - also called injunction; an order that a party refrain from doing an act or acts

To Conserve Assets - a restraining order requiring that parties not dispose of property until the court determines who should receive the property

Civil - a restraining order which is enforced by civil process; if the restrained party violates the order, the attorney files a *Motion* advising the court of the violation; the court issues an *Order To Show Cause* requiring the party to appear at court, and then determines whether, and how, to punish the *Contempt of Court*

Personal Protection Order - a restraining order preventing a party from entering the residence of the other party, assaulting the other party, or taking children from the custody of the other party. A copy is filed with the police or sheriff department; if the restrained party violates the order, he or she may be arrested by the police or sheriff and brought before the court for punishment

Ex parte - a restraining order signed by the Judge before notice was given to the restrained party; can be to conserve assets, civil or personal protection order

Separate Maintenance - a type of case which is very similar to a divorce case, except that at the end, in the *Judgment*, the parties are not granted a divorce, though other issues concerning minor children, alimony, and property division are resolved. The parties are then still married but as nearly divorced as possible without an actual divorce. Neither party may remarry unless first a divorce is obtained.

Service of Process - *Summons*, *Complaint*, and often other papers are given to the *Defendant*, and a *Proof of Service* is filed with the court; usually done by process server, may be done by certified mail, may need to be done by publication, or the *Defendant* may sign an acknowledgment that the papers were received

Settlement - an agreement resolving disputed issues

Settlement Conference - see Pretrial Conference

Statutory Insurance Clause - standard clause in divorce judgment ending life insurance beneficiary interest in spouse's life

Status Quo - the current state of things; to "maintain the status quo" is to keep things the way they presently are

Stipulation - document setting forth agreement of parties on some matter

Stipulation and Order - a Stipulation which is also made into an *Order*

Stipulation to Proceed - document filed in case where *Consent Judgment* is being *Entered* authorizing *Plaintiff* to proceed with testimony in *Pro Con Hearing*

Subpoena - *Order* for a person to appear at a *Hearing*, *Deposition*, or to produce documents

Summons - document providing notice to the *Defendant* that suit has been filed

Temporary Order - *Order* entered at or near the beginning of the case; typically entered to establish child custody, visitation, and child support while the case is pending, but also may deal with other issues which cannot wait until the *Judgment* can be *Entered*

Testimony - sworn statements in court by a witness, or before a court reporter at a *Deposition*, subject to cross examination by the other parties' attorney

Trial - a formal *Hearing* with witnesses at which the Judge will resolve disputes that the parties were unable to settle. There is no jury in divorce or custody cases.

Michael Idema
Divorce Lawyer
6410 Alpine Ave NW, Suite A
Comstock Park, MI 49321
(616) 647-2200

DICTIONARY (continued)

Verified - a sworn statement, but not notarized

Verified Statement - a sworn document containing information required by the *Friend of the Court*

Visitation - also called *Parenting Time*

Waiting Period - two months if there is no minor child; six months if there is; starts from date
Complaint is filed; case is not automatically over at the end of the waiting period