

***KINDNESS IN THE PRACTICE OF FAMILY LAW***  
***NON-CUSTODIAL PARENTS OVERNIGHT, UNSUPERVISED***  
***PARENTING TIME FOR CHILDREN FROM 1 TO 5 YEARS OF AGE***

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MCL §722.24 of the Child Custody Act of 1970, the Court shall declare the child's inherent rights and establish the rights and duties as to the child's custody, support, and parenting time in accordance with this statute.

Under MCL §722.23 of the Child Custody Act of 1970, "Best Interests of the Child", the court must apply the twelve best interest factors which shall be considered, evaluated and determined by the court.

Under MCR 2.517(A)(1) and *Arndt v Kasem*, 156, 156 Mich App 706, 710; 402 NW2d 77 (1986), the trial court must make adequate findings of fact and conclusions of law on the best interest factors in support of the visitation decision. However, there is a split of opinion in the Court of Appeals whether the trial court must evaluate each of the best interest factors and make findings of fact and conclusions of law in visitation disputes. Cases finding that the trial court must make specific findings of fact on each of the 12 best interest factors in visitation cases *Daniels v Daniels*, 165 Mich App 726; 418 NW2d 924 (1988), and *Dowd v Dowd*, 97 Mich App 276; 293 NW2d 797 (1980). However, in *Hoffman v Hoffman*, 119 Mich App 79; 326 Nw2d (1982), in a visitation case, findings of fact and conclusions of law were required only on those issues in contest.

In a divorce case involving a non-custodial parent's overnight, unsupervised parenting time for children from one to five years of age, Section 722.27a of the Child Custody Act of 1970 provides for parenting time; presumptions, factors, terms; temporary and ex-parte orders; objections, modifications, and notice.

**(Exhibit 1)**

In a divorce case where there is a dispute as to a non-custodial parent's right to overnight, unsupervised parenting time for children from one to five years of age, this issue should be addressed and presented under factor (I) of the Child Custody Act of 1970 which states "Any other factor considered by the court to be relevant to a particular child custody dispute.

For clients, family law lawyers and family law judges to reach an understanding, approach and informed opinion on the best interests of these innocent, special, and precious human beings, several research articles should be read and analyzed:

- *A Letter to the Court*, by Isabelle Fox, Ph.D.
- *The Difference: Night and Day*, by Isabelle Fox, Ph.D.
- *Child Centered Residential Schedules*, published by the Spokane County Bar Association, Spokane, Washington
- *Using Child Development Research to Make Appropriate Custody and Access Decisions*, by Joan B. Kelly and Michael E. Lamb
- *Blanket Restrictions, Overnight Contact Between Parents and Young Children*, by Richard A. Warshak
- *Who Will Be There When I Cry In The Night?, Revisiting Overnights – A Rejoinder to Biringen et al*, by Richard A. Warshak

Respectfully submitted,

Dated: April 15, 2005

Kenneth E. Prather, Sr.

## **Exhibit 1**

KENNETH E. PRATHER, SR., has practiced family law for over 44 years. He is a diplomat of the American College of Family Trial Lawyers. Since 1973 he has been a Fellow of the American Academy of Matrimonial Lawyers (AAML). He is a former Governor of the AAML and a former President of the Michigan Chapter of the AAML. He is a former chairperson of the Family Law Section of the State Bar of Michigan. From 1982 to 2000, he was an adjunct professor of family law at the University of Detroit Mercy Law School. From 1983 through 2003, in all publications of The Best Lawyers in America, he has been designated as one of the best family law lawyers in the State of Michigan. He is the author of several editions of Divorce Trial Practice published by the Michigan Institute of Continuing Legal Education. He has participated as a speaker in all programs presented by the Michigan Chapter of the AAML.