

## ANSWER TO QUESTION 8

**I.** No. A court *must* order support in the amount determined by applying the child support formula unless it determines from the facts of the case that application of the formula would be unjust or inappropriate. MCL 552.605(2). If the court deviates from the formula, it must set forth on the record: (1) the amount determined by the formula; (2) how the ordered support deviates from the formula; (3) the value of property or other support ordered in lieu of child support, if applicable; and (4) the reasons the application of the formula would be unjust or inappropriate. MCL 552.605(2); *Ghidotti v Barber*, 459 Mich 189, 191 (1998). There is no reason to deviate from the guidelines in this case. The parties' incomes will be factored directly into the calculation of the guidelines, and the support Lisa receives from her parents can be attributed to her as income. See Michigan Child Support Formula Manual, §2.05.

**2. Yes.** A Michigan court would have authority to take jurisdiction over the custody of the children. Interstate custody disputes are governed by the Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA). The UCCJEA sets forth several grounds for a finding of jurisdiction over a custody dispute, the most important of which is that "[Michigan] is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within 6 months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state." MCL 722.1201(1) (a).

The "home state" is defined as "the state in which a child lived with a parent or a person acting as a parent for at least 6 consecutive months immediately before the commencement of a child-custody proceeding". MCL 722.1102(g).

Since Lisa has lived with the children in Michigan since the fall of 2008, i.e., more than six months, Michigan is the home state, arguably because the children lived in Michigan for six consecutive months before the filing of the proceeding. Even if the children are in Ohio, Lisa is still in Michigan, so Michigan was the home state "within six months before the commencement of the proceeding."

**3.** In Michigan, every custody determination must be based on the "best interests of the child." MCL 722.25(1). The first step

is to determine whether an "established custodial environment" has been established by either party, because a judge may not issue an order changing an established custodial environment absent clear and convincing evidence that such a change is in the best interests of the child. MCL 722.27(1)(c). This is an essential first step in any custody dispute. *Stringer v Vincent*, 161 Mich App 429, 434

(1987). The custodial environment is established if, over an appreciable time, the child naturally looks to the custodian in that environment for guidance, discipline, the necessities of life, and parental comfort. MCL 722.27(1)(c). Here, given the fact that the children have lived with their mother in Michigan all of their lives, except for one summer in Ohio, the court would definitely find that an established custodial environment existed with Lisa in Michigan. Larry would thus have a very high burden of establishing that it would be in the best interest of the children to move to Ohio.

The list of factors a court must consider in determining the best interests of the child are set forth at MCL 722.23:

(a) The love, affection, and other emotional ties existing between the parties involved and the child.

(b) The capacity and disposition of the parties involved to give the child love, affection, and guidance and to continue the education and raising of the child in his or her religion or creed, if any.

(c) The capacity and disposition of the parties involved to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the laws of this state in place of medical care, and other material needs.

(d) The length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.

(e) The permanence, as a family unit, of the existing or proposed custodial home or homes.

(f) The moral fitness of the parties involved.

(g) The mental and physical health of the parties involved.

(h) The home, school, and community record of the child.

(i) The reasonable preference of the child, if the court considers the child to be of sufficient age to express preference.

(j) The willingness and ability of each of the parties to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent or the child and the parents.

(k) Domestic violence, regardless of whether the violence was directed against or witnessed by the child.

(l) Any other factor considered by the court to be relevant to a particular child custody dispute.

Specifically, the following factors should be noted: (a) Lisa is likely to have more significant emotional ties with the children since she has been raising them without Larry; (b) Larry's explosive temper would arguably impact his ability to provide love, affection and guidance; (c) the parties' incomes are equal, so neither is in a better position to provide for the children's physical needs, and in fact Lisa might be better positioned because of the support from her parents; (d) stability and continuity favor Lisa; and (f) Larry's "moral fitness" could be questioned because he left his wife and children, and he threatened a custody fight after Lisa requested child support.

Given that the known factors tend to weigh in Lisa's favor, and the established custodial environment is with Lisa in Michigan, she would very likely be awarded physical custody of the children.