

**LINDA ROBERSON'S CAPITOL TIMES COLUMN  
ARCHIVED COLUMNS – OTHER**

These columns address topics including non-marital family disputes, adoption, legal problems faced by adolescents and their parents, grandparent visitation rights, restraining orders, name changes, cohabitation, and general questions about legal representation.

**June 3, 2004**

**Q: I am having a problem with health insurance. I thought there was a federal law that guaranteed me the right to continue with my insurance after I leave my job. I am moving out of state and don't have a new job yet, so I need to continue my current insurance. But our office manager says the company won't continue to cover me. They have to, don't they?**

A: There is a misconception that COBRA benefits – health insurance benefits under the Consolidated Omnibus Budget Reconciliation Act – cover all workers. Unfortunately, they do not; the federal law applies only to employers with 20 or more employees. The state of Wisconsin has a similar law that applies to all employers, but a covered individual loses eligibility for continued coverage if he or she moves out of the state. From your question, it would seem likely that you work for a small employer and the federal law mandating continued coverage for 18 months does not apply to your insurer as a result. If in fact you work for a large employer, your office manager is wrong and you qualify for COBRA benefits. But if you work for a small company, your right to continued coverage will end when you move your residence to another state.

**Q: I have agreed to lend my adult son the money to make a down payment on a house. I can't afford to give him the money, and I need to work out an arrangement whereby he pays interest and principal regularly. How do I do this?**

A: You need two documents: a promissory note and a mortgage. The promissory note is your son's promise to pay you back the money you are lending to him. It details the amount of the loan, the amount of interest charged, the total amount and frequency of his payments, and when the final payment is due. Any time you lend money to a family member, it's a good idea to memorialize the details of your agreement in a promissory note.

Additionally, particularly if the sum of money is a large one, it probably makes sense to secure the obligation with a mortgage. The mortgage is essentially a lien in your favor on the real estate. If the debt is not paid pursuant to the provisions of the promissory note, the fact that you hold a mortgage on the property means that you can foreclose on the property if necessary to obtain payment. Additionally, in the event that your son were to borrow money from someone else and secure it with this property – with a home equity loan, for example – your mortgage on the property would protect you if the other lender decided to foreclose.

As with most legal documents these days, you can probably find a free form on the internet. However, it would be wise to consult counsel because states vary in their acceptance of generic forms and you may need some assistance in filling out the paperwork.

**January 29, 2004**

**Q: I tried to call a lawyer to discuss a legal matter. Before the secretary would transfer my call, she wanted to know a lot of personal information about me – including what the case was about, who was on the other side, where I work, and more. I was taken aback but I answered the questions because I needed to talk to the lawyer. And then she told me that the lawyer would call me back later! What gives?**

A: This secretary was probably following standard procedure for the office you called, and for many other offices as well. Attorneys are often not available to take calls as they come in; they are in court, or meeting with clients, or talking on the phone on a pre-scheduled call. So when a call from a prospective new client comes in, other office personnel often perform two important functions. One is to determine if your issue is in the attorney's field of expertise. For example, if you called my office with a criminal law matter, my staff would tell you right away not to wait for a call back from me, because I don't practice in that area. The other function is to determine if the attorney or someone in his/her office has a conflict because he or she already represents a person who is or may be on the other side of your case. If the lawyer can't take your case, it's important for you to know this so you don't waste time trying to connect and can move on quickly to find an attorney who is willing and able to represent you. The point of the questions is to reduce frustration and help you connect as quickly as possible with an attorney who can help you.

**Q: I need to start a divorce action but all of the lawyers I have talked to charge \$150 to over \$300 an hour and they want several thousand dollars paid in advance. I don't have that kind of money. What can I do?**

**Q: I decided to start the new year right by making a will but the lawyer I talked to says that my wife and I each need a will and in addition we need some kind of agreement, and the cost will be over \$2000. I don't have thousands of dollars to spend on this now, so I would like to do my will myself. Can you point me in the right direction?**

A: Affording quality legal services is a challenge for middle-income people. The fees quoted in both of these questions are within the range of expected charges for the services desired, and on the low side for an experienced attorney. The reality is that an estate plan can cost as much as a nice vacation, and a relatively straight-forward divorce can cost as much as a new car, if not more. There are really only three choices here.

First, you can decide that legal services are a necessary expense and do what you have to do to acquire the money to purchase the help you need. You can plan ahead and save for the expense; you can borrow from family or from your bank; you can increase your

charge card balance; you can talk to your attorney about a payment plan (though a bank loan is usually cheaper). If you have a complex problem, or if there is a lot at stake, this is really the best choice.

Second, you can adopt a “bargain basement” approach to legal services. Perhaps you can consult occasionally with an attorney, depending on the other party to prepare documents and just asking your lawyer to read them and make sure you understand them. At least you’ll know what you’re agreeing to, though you won’t have someone to advocate for you, get information for you, and help you to arrive at a reasonable settlement. If you are preparing your own documents, you will probably use commercially sold forms, which you should approach with caution: in general, they are generic in nature and geared to the country as a whole instead of to Wisconsin’s somewhat unique laws, and the “fill-in-the-blank” approach doesn’t help you to determine what your special issues are or what other problems you may have that you should address. The Dane County Clerk of Courts has a useful web site and information on where to get the best forms available. You can find it at <http://www.co.dane.wi.us/clrk cort/clrkhome.htm>. If you’re writing your will, you should be aware that the way you go about signing the document may be as important as what is in it. Because Wisconsin is a community property state, married people usually need a marital property agreement in addition to a will for each spouse.

For me, this seems a lot like trying to do my own car repairs. I could probably learn how to do simple mechanical adjustments, but instead I take my car to a reputable dealer for tune-ups and repairs. Of course it costs more to consult a professional than to do it myself. But I don’t have to spend the time learning about auto mechanics, I don’t have to deal with the frustrations of struggling to perform unfamiliar tasks, and I don’t have to deal with big trouble if I find out down the road that I didn’t do something right.

The third option is to do without legal services. Sometimes that’s not an option; if you’re the defendant in a lawsuit or the respondent in a divorce action, you can’t avoid the legal system. And it’s never a good option: if you don’t plan your estate, issues like how your property will be distributed and who will care for your children may be resolved only after a bitter and expensive legal battle, and in a way you wouldn’t have chosen. If you don’t consult counsel when you buy a house, the offer to purchase may not say everything it should, or the deed may be incorrect. Paying a lawyer now may save you money, time and trouble in the long run.

**August 14, 2003**

**Q: Several years ago you wrote an article on common law name change, which made sense to me. You warned that some people aren’t going to be as willing to accept the new name. How do you suggest going about changing one’s name on significant documents, such as a driver’s license, passport, credit cards, utilities, apartment lease, etc.?**

A. When people marry and change their surnames they are doing a common law name

change. They don't go to court; they don't have a paper that documents a change in their names. They just begin using the new name. Because in this culture it is common for people – especially women – to change surnames at marriage, newlyweds are generally congratulated when they go to motor vehicles or the passport agency to request a name change. It's not always so easy when you are changing your name for reasons other than marriage, however.

The best place to start is with a document that is widely accepted as identifying you, such as a driver's license or passport. The passport authorities have specific requirements for name changes. If you have a marriage license or divorce decree, you can download the name change forms from the internet and mail them in. However, if you don't have legal documentation of your new name, you must apply in person and bring a witness with you who can attest that the new-name you is the same person as the old-name you who originally obtained the passport. The people at the driver's license bureau may want written documentation that your name has changed. If you have already changed your passport, that will work. If you are changing your name because of a divorce, a copy of your divorce judgment may suffice. Many agencies will accept a notarized statement that Mary Smith has changed her name to Mary Doe.

The next thing to do is to change the name on your checks, because if your checks don't match your identification, you will have a hard time cashing a check. After that, it's time to deal with credit or debit cards and social security. Simply informing the credit or debit card company of your name change is generally sufficient, though it may take several weeks for you to get your new card. Your local social security office has a form for you to fill out to change your name on your social security card.

With respect to your utility bills and lease, all you need to do is to inform the company or landlord of your new name when you send in your next payment. Telephone book listings generally need to be in by the first of October for the following year.

After dealing with all of this, I personally wouldn't bother to change the name on magazine subscriptions!

**July 3, 2003**

**Q: My partner and I are thinking about moving in together. Are there legal steps we should take to protect both of us?**

A: Because you refer to a "partner" I assume this is not a simple roommate situation but rather a long-term personal commitment. Although there was a time, not so long ago, when courts would not enforce agreements between unmarried cohabitants, Wisconsin law (and the law of most other states) now recognizes the right of domestic partners to enter into property and support agreements. These agreements can accomplish any number of results, from establishing ownership interests in property to providing for support rights if the relationship ends to waiving all claims to property or support. In the

absence of an agreement, the courts may impose equitable remedies to give relief to a partner who is disadvantaged at the termination of the relationship – so negotiating a fair agreement at the outset can save unpleasant surprises and significant legal fees.

Additionally, domestic partners should pay special attention to their estate planning. Properly drawn wills, beneficiary designations, and powers of attorney will ensure that the partners' wishes are carried out if one of them becomes disabled or dies.

**Q: My 16-year-old is driving me nuts. He thinks there is absolutely no problem with his recreational use of marijuana. He points out that the Madison ordinances impose only minor penalties, and he says that as long as he's under 18 any infractions "don't count." As a parent, I'm concerned that there may be long-range legal ramifications if he is picked up for using drugs.**

A: You're right to be concerned. It may well be that marijuana use, like alcohol use, should be legalized. But since that hasn't happened, there are a number of possible legal consequences for teens who are charged with possession of illicit drugs or drug paraphernalia. Loss of driving privileges is a possible consequence. Ineligibility for school-sponsored extracurricular activities or sports leagues may result. Educational financial aid eligibility may be affected. Employers and insurers may legitimately ask about past drug use; honest answers may create problems in finding employment or qualifying for insurance, and dishonest answers may result in dismissal or the retroactive voiding of a policy if and when the truth is discovered. Drug use or possession of drug paraphernalia may result in expulsion from private educational institutions with no tuition refund. In short, marijuana smokers should look beyond the immediate consequences if they get busted and realize that their choices now can significantly restrict their future options in many respects.

**October 24, 2002**

**Q: We have always been conservative in our income tax withholding with the result that we end up writing checks to state and federal taxing authorities on April 15 each year. This past April the tax bite was especially painful and my wife has been nagging me to increase our withholding so that maybe we could actually get some money back like most people do. Is this a wise move?**

A: The IRS keeps statistics on the percentage of people who receive refunds, and your wife is right that most people receive substantial refunds. But I think she's wrong to suggest that you should do the same. You might envy the people who are getting checks from the government at the time you are paying money out, but you shouldn't: the people who receive refunds have actually been lending their money to the government at no interest. If you would prefer to earn interest on your money rather than give the government an interest-free loan, you should keep your withholding conservative and let your money continue to work for you until you have to give it to Uncle Sam. Be sure to talk to your accountant, though, so you don't risk penalties for underwithholding or failing to pay

estimated taxes.

**Q: I am a father and a very cautious parent. My parents would like to spend time alone with my daughter but I don't feel comfortable permitting it because of abuse issues that arose with their own children. What kind of rights do they have in court?**

A: Grandparents can go to court to obtain visitation rights with their grandchildren if the parents are divorced or if one parent has died. In such cases, courts will attempt to balance the child's interest in continuing existing relationships with both sides of the family with the parent or parents' interest in managing family relationships and bringing up the child as he/she/they deem appropriate. In an intact family, the parents' decisions control and the grandparents have no cause of action.

**July 25, 2002**

**Q: My 18-year-old son has recently been in drug rehab but has made good progress and has not used drugs for a year. He wants to get a driver's license and a car and I am inclined to help him do so. However, his dad strongly disagrees because he says we will be liable if our son has an accident while driving under the influence. What exactly is our liability?**

A: Your 18-year-old does not need parental permission to get a driver's license. As a legal adult, he can do this on his own. Whether you let him use your car, however, is another matter. If he has an accident while driving your car, you can expect to be sued – not because he's your son, but because it's your car. If he's driving his own car and has an accident, you would not be liable. If you do decide as a family to help him get a car, and want to minimize your personal liability, he should own the car in his own name. And you should make sure he has adequate insurance coverage.

**June 20, 2002**

**Q: My daughter became pregnant at 16 with an out-of-wedlock child. Because of her immaturity and drug addiction, my husband and I assumed virtually full responsibility for the baby, and took care of him 100% of the time while she was in treatment. She is now doing much better and the little boy now lives with her. I have been critical of some inappropriate parenting (hopefully constructively so) and now our daughter does not want to see us and will not let us see our grandson. This is painful for us and, we believe, very bad for the child. Can we do anything legally to protect our relationship with him? He is only four years old.**

A: A recent U. S. Supreme Court case has created uncertainty as to the legal status of grandparents such as yourself. In *Troxel v. Granville*, the Supreme Court restricted grandparents' access to their grandchildren where a parent objects to the contact. However, Wisconsin appellate courts have interpreted *Troxel* and our statutes permitting

grandparent visitation together, and have concluded that while a parent's opinion is entitled to great weight, it is not necessarily controlling. You should contact an attorney to determine whether, under the specific facts of your case, it makes sense to try to find a legal solution.

Alternatively, or perhaps additionally, it may be useful to contact a family therapist to attempt to overcome the estrangement between you and your daughter, and to work out a reasonable opportunity for you to maintain contact with your grandson. In some circumstances, going to court can increase the hostility between grandparent and parent, which makes finding a long-term solution extremely difficult.

**May 6, 2002**

**Q: My problem is my uncle. He is 40 years old and is addicted to painkillers and other drugs. He has ruined my grandparents' credit. He lives with my grandparents and he steals from them and other family members whenever he has a chance. My grandparents can't leave him alone in the house overnight and can't go the places they'd like to. My grandfather would like to kick him out of the house but my grandmother doesn't want to do this. What can we do?**

A. This is a problem that doesn't have a good legal answer. Your grandparents have no legal obligation to continue to provide a home and support for their adult son. However, if they choose to do so, that is their business, and there is nothing other family members can do to force him to leave. Organizations such as Al-Anon, or private personal counseling, have helped others in similar situations to see that their accommodation to a family member's addiction simply enables the addict to continue with his or her self-destructive behavior. You and other family members might encourage your grandparents to seek this sort of help. Unfortunately, the situation is unlikely to improve unless and until your grandparents can present a united front and stop tolerating your uncle's manipulative behavior. There is no law that can make them do that.

**August 30, 2001**

**Q: I'm in a long-distance relationship with a man who is separated from his wife. His wife thinks I am the reason their marriage is over, but I didn't start dating him until after they were separated. She has been harassing me at work and leaving my boss and me messages on voice mail. She has made up stuff, like telling my boss I stole from the company when I didn't. My boss is supportive and told me to find a lawyer to protect me from this woman. How can I keep her from bothering me? They have 2 kids; if we were to get married, how would I keep her from bothering me when she picks up the kids?**

A. In Wisconsin, you're entitled to bring an action for a restraining order and injunction to prevent further harassment. The law defines harassment as striking, shoving, kicking, or otherwise subjecting another person to physical contact or attempting or threatening to do

the same; and also engaging in a course of conduct or repeatedly committing acts which harass or intimidate another person and which serve no useful purpose. From your letter, it sounds like your lover's ex is engaging in the latter activity. If your request for an injunction is granted, the offender is prohibited from having any contact with you for a period of up to two years.

If this woman does not reside in Wisconsin, you will need to check the law of her state of residence. Many states have similar laws.

If you are planning to marry this man, you will be the stepmother of your harasser's children. It's important to think about the long-term family relationships seriously and not to make a knee-jerk reaction to take her to court, just because she's behaving badly and you have the upper hand legally. The woman is distraught over the end of her marriage and is not at her best right now. If you can cut her some slack for a few months, perhaps things will blow over and she can move on to a more mature and respectful approach to her changing family situation. If she is causing significant problems for you or if you are afraid of her, of course you must do what you need to do to protect yourself. But the call to the cops, the trip to court, and the imposition of the restraining order are humiliating experiences for a woman who is already not doing well, and if there is a way to smooth over the family situation without legal action I predict that new family relationships will proceed much more smoothly down the line.

This is a hard time. Good luck!

**Q: How hard is it to take a child out of his home? I'm an aunt, not a parent. The father is on drugs and beats the mother. The child's safety is at risk.**

A: A child who is being abused or neglected can be made a ward of the state under applicable provisions of the children's code, and then placed with a parent (subject to certain conditions), a relative, or in an institutional setting, depending on the child's condition and the alternatives available to the family. While no one would think that the home situation you describe is good for the child affected, it may well not rise to the level of abuse or neglect necessary to invoke the jurisdiction of the juvenile court and remove the child from the home. Long-standing Wisconsin case law makes it clear that parents have first rights to care for their children, and only in extreme circumstances can third parties such as other relatives step in. Many families deal with this kind of situation informally by having the child spend significant time with a grandparent, aunt, or other relative, by mutual agreement. If there are times when the drug use and violence appear to be worse – weekends, for instance – perhaps you can develop a routine of inviting the child over for weekends, thus giving him a break and protecting him from the worst of the abuse. In terms of legal actions, though, relatives other than parents are clearly second-class citizens, even though the parents' behavior is far inferior to first-class.

**Q: Last night my husband gave away our two beautiful dogs. Tonight, I went to this man's house and begged him please to return them; he refused. The kids and I have**

**been crying since last night because part of our family is gone. Don't we have 72 hours to undo this deal? Can't we make him give our dogs back?**

A. Assuming that the dogs were acquired with assets generated during your marriage in Wisconsin, they are marital property. Each spouse has the obligation to act in good faith with respect to marital property. Each spouse owns an equal, undivided, one-half interest in marital property. Each spouse has the right to make gifts of up to \$1000 (or larger reasonable amount, depending on family circumstances) of marital property. If the value of the two dogs exceeds that, you have a legal right to recover the gifted property. Other community property states have comparable protections; common law states such as Illinois and Minnesota generally do not provide a remedy in this situation. However, if the dogs are worth less than \$1000, your husband can probably be successful in giving them away without your consent.

**Q: My 16-year-old daughter is pregnant by an 18-year-old. Are we stuck paying for everything ourselves or is he responsible for medical bills?**

A. If your daughter wants financial support from the father of her baby-to-be, she should initiate a paternity action. The father will be responsible for payment of medical bills and ongoing child support costs, to the extent that his income enables him to contribute. He will also then have ongoing rights to care for and make decisions regarding the child; parenthood entails rights and well as responsibilities. You and your daughter should consider whether it's best for her and the baby to have an ongoing family-type relationship with the young man. You're unlikely to be able to get access to his wallet without getting the rest of him too.

**Q: I recently ended a four-month relationship with a guy. I was unemployed for about a month of this time. During that period, my boyfriend gave me \$400 for a car payment. I offered to pay him back, but he insisted that it was not a loan, it was a gift. There was no memo on his check stating that it was a loan, and he never asked me to sign anything saying that it was a loan. Rather, he insisted that he wanted to do this for me as a gift. Well ... now that we have broken off our relationship, he has changed his mind and is demanding that I pay him back. He is threatening to take me to small claims court. Does he have a case for this money he gave to me? Or should I allow it to go to court and let the judge decide?**

A. Legally, he made a gift, not a loan. It was a gratuitous transfer – you didn't ask for it, didn't expect it, offered to pay it back and he specifically declined the offer. There is no contemporaneous writing that would indicate his expectation that you pay him back or that would obligate you to do so.

But ... do you want to take the time and experience the discomfort of going to court? Do you want to confront this angry guy again? If you were willing to pay him back during the period of your friendship, has something happened since that should make you change your sense of entitlement or fairness about this transfer of money? While he likely cannot

renege on his gift, does this entitle you to renege on your initial offer to pay? (He made the gift in the expectation that the relationship would continue. Obviously you had different expectations.) Wouldn't everybody be better off if you extended the olive branch and split the difference with him?

**June 6, 2001**

**Q: We live in Wisconsin and our 17-year-old son has been charged with sexual assault because he had consensual sex with his 14-year-old girlfriend. Should my son end this relationship or can he safely continue to see his girlfriend? The girl and her parents are not pressing charges, and the kids want to be together. The D.A. is doing this on his own.**

A. This is a very serious matter. Your son has been charged with a felony and may be required to register as a sex offender. A condition of whatever sentencing arrangement is made will likely be a "no contact" order with his girlfriend. I personally think this is a tragic situation and am appalled that the D.A.'s office continues to charge sexually active adolescents with crimes that will follow them throughout their entire lives. Surely there are better things for the D.A.'s office to do than to ruin kids' lives in this way. Of course teenagers shouldn't be involved in sexual relationships, but this certainly isn't the way to stop consensual teenage sexual activity. All it does is make a bad matter worse.

**February 1, 2001**

**Q: Can someone of legal age divorce his or her parents? I want all ties to my parents legally severed so that in the case of my death, they cannot have legal rights to my children. What can I do legally to see that my wishes are carried out?**

A: Divorce is a statutory legal process for terminating a marriage. Since you're not married to your parents, you can't divorce them. Parents can terminate their legal rights to minor children through a different statutory process. There is no procedure for a child – whether minor or adult – to terminate the parents' parental rights.

However, you are of legal age so your parents have no legal rights with respect to you, nor do they have legal rights over your children. If you were to die, the children's father, if living, would have the right to their custody and control. If the father is unknown, unavailable, or incapable of assuming the responsibility of caring for the children, a person of your choice can be appointed their guardian. You make this choice in your will. Unless there are very unusual circumstances that are detrimental to the children, your choice of guardian would be upheld even over your parents' objections.

You should make a will to protect your and your children's interests. You should also execute health care and financial powers of attorney, so that someone you choose will be able to make decisions for you if you are unable to do so yourself.

**Q: My daughter was born before her father and I were married. Her birth certificate shows my last name as her last name and lists the father as unknown. (We were having problems at that time and didn't know if we would get married.) Now we would like her to have our last name. How do we do this?**

**Q: My step-daughter wants to change her last name to that of her father. He is not on the birth certificate but has taken a paternity test. He pays child support and we see her once a month or so. Can her mother fight the name change? How much will it cost?**

A: The procedure for changing one's name is defined by state statute, and differs from state to state. In Wisconsin, a minor who has reached the age of 14 may petition the court for a name change; a younger child needs the permission of both parents or a court order in which the court permits the change despite a parent's objection. If the process is uncontested, it involves petitioning the court, publishing a legal notice of the anticipated change in the newspaper for three weeks, and going before a judge to have the name change granted. Depending on the hourly rate charged by the attorney involved, the cost would likely be between \$500 and \$1,500. If the step-daughter's mother contests the proceeding, there would likely be a hearing and the cost would be higher. The court might appoint a guardian *ad litem* (a lawyer charged with representing the minor child's interests) for the step-daughter and in that case would likely follow the guardian's recommendation. The parents would be responsible for the cost of the guardian *ad litem* in addition to paying their own attorney's fees.

Now let me talk about another problem that the questioner doesn't raise. With respect to the child born prior to marriage whose parents have subsequently married, there is an issue beyond the issue of her name. She is entitled to a legal father, who has a legal obligation to support her. For this family, I would recommend a voluntary paternity proceeding to have the husband and father added to the birth certificate. This approach protects the rights of all involved, and is consistent with the way the family is living.

**Q: My 16-year-old son and his girlfriend of the same age have decided to give up their child for adoption. They do not have my permission or the permission of the girlfriend's mother. I would like to adopt this child but am told I have no legal rights. I have a wonderful job and a comfortable home. I am economically, emotionally, physically, spiritually, and mentally sound. Do I have a chance to stop them from giving this child to a stranger?**

A: Before a child can be adopted, his or her birth parents must terminate their parental rights. Only the parents can decide to do this. If and when they do so, the legal relationship between the child and the grandparents are also terminated. After parental rights are terminated, an adoption can occur. State law regulates the adoption process. If your son and his girlfriend are working through an agency, they will almost certainly place the baby with a family unknown to you or your son. Many states permit independent adoptions, which require that the birth parents and adoptive parent(s) agree on the

placement. If you, your son, and his girlfriend cannot agree that you should raise this child, realistically speaking you do not have much reason to hope for a different resolution of the issue through the legal process.

**Q: My sister and her husband gave me a house that they had moved out of. They said as long as I fixed up the place I could live there rent free and not have to pay them for anything. Several people heard them say this. Now they want me to pay \$300 a month rent and say that if I don't pay it one of these days they will put a padlock on the door. Can I fight this in court?**

A: In a word, no. Your sister and her husband didn't "give" you the house. If they had, they would have executed a deed designating you as the owner. Nor did they enter into a legally binding contract with you; since the use of land over a considerable period of time is involved, such an agreement would have to be in writing. It sounds to me like they generously offered you a rent-free place to live on a short-term basis and you want to extend your stay beyond the time period they intended. Remember that they are paying real estate taxes and other expenses on this property, while you pay nothing. And you live there; they don't. \$300 a month sounds to me like a very favorable rent for a house. In my view, you should be appreciative and cooperative rather than threatening to take them to court.

**December 21, 2000**

**Q: I have cosigned a car loan for my nephew. In the event of an accident, can I be sued? Does it make a difference if someone other than my nephew is driving? He is 21 years old and does not live with me.**

A: When your nephew borrowed money to buy his car, he had to sign a promissory note – a legally binding contract to pay the lender the amount of the loan, plus interest. Presumably because he was not credit-worthy in his own right, the lender required a cosigner with a deeper pocket. You agreed to be the cosigner, and thus you signed the promissory note along with your nephew. The only obligation you have is to the lender. If your nephew does not make his car payments as required by the terms of the note, the lender can require you to repay the loan. You would be liable in the event of an accident only if you had an ownership interest in the car (which presumably you don't – it sounds like you only signed on the note and are not designated as an owner on the car title) – or, of course, if you were driving the car at the time of the accident.

**Q: My 16-year-old daughter got in trouble for making a threat over the phone. She was given one year probation and ten days on a work program which is hard labor. She is the only girl on the work crew and is not used to this type of work. I know a minor who got busted for driving while intoxicated and his sentence was less. What's up?**

A: There are a couple of plausible explanations for the difference in penalty. One is that

judges have a certain amount of discretion in setting penalties; some judges are more lenient than others. Another possibility is that the minor with the driving offense went to adult court, paid a fine, and now has a criminal record, where it sounds as if your daughter's case was handled in juvenile court, in which records are sealed and not available to employers, lenders, etc. Juvenile court has many advantages for your daughter over adult court, not the least of which is that she will not have to answer affirmatively the question, "Have you ever been arrested?" – which is often asked on applications for jobs and higher education admission.

It seems to me that the sentence your daughter received is not unduly harsh. While I'm sure the work crew isn't anyone's idea of a good time, the ordeal was limited to a short time period. Probation simply requires her not to get into trouble for the next year – a goal you no doubt share. And this adolescent mistake will not follow her into her adult life. I hope that she has learned a valuable lesson from this experience and that your distress with the disposition of her case does not lead her to conclude that she should not have to bear appropriate consequences when she screws up.

**Q: Can a child be legally adopted by the birth mother's husband if the father is unknown?**

A: Yes. Before the mother's husband can adopt, the birth father's parental rights must be terminated. This is accomplished in a court proceeding, of which the birth father be notified and in which he must be given the opportunity to participate. Usually he must be personally served with the legal papers for terminating his rights. In cases where the birth father's identity is not known, personal service is obviously impossible. Instead, the birth mother must publish a legal notice in the newspaper, giving the relevant information. This procedure is accepted by the court as adequate notice, permitting the court to terminate the birth father's rights and clearing the way for the adoption.

**September 28, 2000**

**Q: My mom is in prison and she left me to take care of my two and a half year old sister. Now her father, who has had nothing to do with her until now, has decided that he wants to keep her. I am only 16, but I have been the only one that has been there for my sister when no one else was. If I get emancipated can I get custody of my sister? This is very important to me.**

A: I admire you very much for taking on such a huge amount of responsibility at such an early age. Your sister is very lucky to have you in her life. Unfortunately, in most states (including Wisconsin) a parent has custody rights that supercede those of any other relative, unless the parent is proved to be unfit. The fact that your sister's father apparently abandoned your sister for the first two years of her life may be enough to establish his unfitness. However, your age is going to work against you. Moreover, "getting emancipated" isn't as easy as it sounds. There is no statutory procedure for doing this in Wisconsin. Case law suggests that marrying or joining the military are

sufficient to emancipate a minor; it isn't clear how else this can be accomplished. I hope you have been able to stay in school, and I hope you have some adult relatives to help you at this difficult time in your life. Good luck to you.

**Q: My daughter will be 18 soon. Will she be legally able to have her mother's new husband adopt her without my consent?**

A: Parents must give consent or have their parental rights terminated before a minor child can be adopted. This rule does not apply to adults. If your daughter wants her step-father to adopt her and he wants to do so, you cannot prevent the adoption. Your legal responsibilities to your daughter end when she reaches age 18 and graduates from high school – and your ability to exercise control over her life ends as well.

**Q: My father and uncle inherited a small family farm. Can one partner force the sale of the property against the other's wishes? Can one partner force the division of the property?**

A: Your father and uncle are tenants in common – each owning a one-half interest – in the property they inherited. If they cannot agree on how to deal with the property, either of them may go to court and bring a partition action to divide the property into two separate parcels. A survey may be necessary in order for this division to take place. I hope they can work out their differences and avoid the legal and emotional costs of a court battle over the family farm.

**January 20, 2000**

**Q: I have searched the whole Internet for a simple question and have found no answers. Is a deed legal and binding if all the grantors did not sign?**

A: A deed is a legal document by which ownership of real estate is conveyed from one owner or group of owners to another. In general, all current owners need to sign to convey their interest in the property to a new owner. However, if one or more of the current owners has granted a valid power of attorney to another owner or a third party, the person who is designated as agent under the power of attorney can execute the deed in place of the principal. In that situation, a deed could be valid even if all owners have not signed the document.

**September 9, 1999**

**Q: I have been with a man for 14 years. We have lived as married; I have a wedding band that he bought me. If we go our own ways, what rights do I have? We have lived in several different states ... .**

A: The first question for you to answer is whether you have lived in a state that recognizes "common law marriage" for a long enough time for you to be considered married in that

state. American states differ significantly in their willingness to recognize common law marriage. Wisconsin does not recognize common law marriage at all; some states, however, consider “a significant” (not defined in any state) period of cohabitation to be sufficient to establish a marriage at common law, provided that the couple holds itself out as married -- e.g., by filing joint tax returns, using the same last name, or referring to each other as “husband” and “wife.”

States that recognize common law marriage are: Alabama, Colorado, District of Columbia, Iowa, Kansas, Montana, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Texas, and Utah. New Hampshire recognizes common law marriage for inheritance purposes only.

If you and your partner had lived together for the requisite period of time in a state that considers common law marriage to be a valid form of marriage, you will be viewed as married, even if you are now residing in a state that does not, on its own, recognize common law marriage. Each state gives “full faith and credit” to the laws of the other states, so that people’s rights and statuses do not change just because they moved across state lines.

In your particular situation, none of the states in which you have lived recognize common law marriage. Therefore, you are left with the alternative of filing what has been popularly referred to as a “palimony” suit, which first came to public prominence some years ago when Jennifer Triola sued actor Lee Marvin. A lawsuit of this kind requires that you prove that you have been unfairly treated because of your role in and contributions to the relationship. If you can establish that you have been unfairly disadvantaged and your partner has been unjustly enriched as a result of your relationship, you may be entitled to compensation. You are not entitled to spousal support (usually called “alimony” or “maintenance”), however.

Of course, if you and your partner own property jointly (in both of your names), you are entitled to your share of the property. You may have to bring an action for sale or partition of the property in order to recoup your interest.

**Q: On a harassment charge stemming from a domestic dispute (after which the parties kissed and made up), if the other party does not show up to testify against the defendant, does the case have to be dropped?**

A: If the case is a civil case in which the victim of harassment filed for a restraining order, generally there are no witnesses other than the victim and the defendant. Without the victim’s testimony, there really is no case and thus the victim can probably call the court and cancel the hearing.

However, if the charge arose as a result of an arrest and a police report, we have a very different situation. The district attorney makes decisions about what cases to prosecute, when to offer other dispositions, and when not to proceed at all. If there are other

witnesses and a police report to provide evidence to the court, the case can proceed even if the victim wishes not to pursue the matter.

In either situation, some counseling might make sense to make sure you and your significant other are not mistreating each other and to help you not to find yourselves in this situation again.