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## 1999 Lawyers of the Year: Richard S. Victor, Bloomfield Hills

By Kelly A. McCauley



**Richard S. Victor**  
Bloomfield Hills

**Born:** Detroit, MI (1949)

**Education:** Detroit College of Law (1974); Wayne State University (1971)

**Admitted to Bar:** 1974

**Legal Experience:** Victor & Robbins (principal and founding partner)

**Affiliations/Activities:** State Bar of Michigan; Michigan State Bar Foundation (fellow); University of Michigan Law School, Child Advocacy Clinic; Grandparents Rights Organization; American Bar Association; American Academy of Matrimonial Lawyers; Start Making It Liveable For Everyone (SMILE); Co-Parenting Effectively (COPE); Step-Parents' Day (national founder); Hear My Voice (children's rights group) (national advisory council)

**Honors:** Lifetime Achievement Award, Family Law Section, State Bar of Michigan; Meritorious Service to the Children of America Award, National Council of Juvenile and Family Court Judges; special honor by Joint Legislative Resolution #454

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Family-law attorney Richard S. Victor is on a mission: to change both the public's and the profession's perception that divorce attorneys occupy the lowest rung on the legal ladder.

For 25 years, Victor has exclusively practiced family law. His first case, which he took pro bono, was on behalf of a grandmother who wanted visitation rights with her grandchildren.

Victor's tireless dedication to his practice is primarily reflected in programs he has helped develop for divorcing parents. The first, Start Making It Liveable For Everyone (SMILE), celebrated its tenth anniversary in 1999 and went national. The second, Co-Parenting Effectively (COPE), was formed this year with the help of Oakland County Circuit Court Chief Judge Edward Sosnick and many volunteers.

Additionally, Victor is the executive director and founder of the national nonprofit Grandparents Rights Organization (GRO). The organization had hoped to file an amicus brief in the case of *Troxel v. Granville*, soon to be argued before the U.S. Supreme Court, but the organization was not able to meet the filing deadline. Victor is extremely concerned about the ramifications of that case because he says it has been "mischaracterized" by the national press as a grandparents' rights case. According to Victor, the case is really about the "overbroad language" in the state of Washington's visitation laws, which say that "any person at any time" may file for visitation rights.

*Q. A program that you codeveloped, Start Making It Liveable For Everyone (SMILE), is now in its tenth year. Tell me about the program and how it's progressing.*

A. We created a video when I was president of the Family Law Section in 1991-92, and now the program has gone national. Most people don't know this, but the SMILE program was originally developed as "post-divorce education," to be used by people *after* a divorce judgment is entered.

We had a period in the very beginning when we sat down to discuss how the SMILE program was progressing, and we decided we needed to make changes. So we changed the program from post-divorce education to education immediately after a divorce has been *filed*.

In a divorce, nobody tells you the rules. The SMILE program teaches the rules and what happens when you break

the rules; not necessarily what happens to the parents, but what sort of effect it will have on the children.

*Q. Is the SMILE program a success in other states which have used it?*

A. I was the keynote speaker at the Arizona State Bar Convention in June. I literally had rough, loud lawyers who defined themselves like that to me crying when they saw the SMILE video and I explained the program. They applauded the idea, commenting that it was really just common sense.

*Q. Did you retain the copyright to the SMILE program?*

A. Judge Sosnick and myself and the people involved in helping to create this program have decided that there is no proprietary interest for any of the developers. Judge Sosnick and myself donated our copyright to SMILE to the State Bar of Michigan. We made sure that no one can make money off these programs.

*Q. You also helped develop the Co-Parenting Effectively (COPE) program this year. Tell me about that.*

A. Chief Judge Sosnick formed the steering committee that put the program together. We're still in the developmental stage in Oakland County, and we will be reviewing the COPE program to see how it is working, and if it is assisting in the resolution of issues.

COPE is not mandatory but is highly encouraged. It's a form of alternative dispute resolution and it is more intensive than SMILE.

The process right now for COPE is that parents with minor children must go to an early intervention conference in Oakland County within two months of filing for divorce. The lawyers and the parties meet with the caseworker or referee assigned to the judge's docket. All the parties involved determine what is going on in the case, and then try to determine if a referral to a caseworker is necessary. If there is no agreement about the parenting schedule, the order is entered and they meet with a caseworker.

Oftentimes, the caseworker is able to sit down and resolve things. If the caseworker sees that there are significant problems which may require a therapist or psychologist because of emotional problems or accusations, then they'll be referred to the COPE program.

*Q. What happens after a referral is made to COPE?*

A. The parties meet with a therapist for half-a-day with no lawyers. The therapist then assists them to try to come to a resolution or at least an understanding of what is going on. After the half-day session, either an agreement is reached and the lawyers have 14 days to object, or the therapist may say that there are problems that need a full-blown psychological evaluation.

Working with a therapist helps the parents see each other's perspective. It opens lines of communication, so that long after the lawyers and the judge are out of the case, the divorced parents still have those rules and assist their own family the correct way.

COPE helps to cut down costs of some custody cases by using ADR and having the parents work together to reach a resolution. Only those who are referred to COPE pay \$500, which can be split between the parties equally or broken down accordingly due to a disparity in income.

*Q. What is your role in COPE? Will you be the "national spokesman?"*

A. I've been appointed as the state COPE chair by Gerald Gorcyca, who is the president of the Family Law Section, and if the program is indeed successful I've been asked to form a statewide COPE program similar to what we did with SMILE. If it takes off statewide, I will lecture to academic groups and bar associations around the country. If it

works, we will put it out there nationally.

*Q. How are children brought into the SMILE and COPE programs?*

A. The children are not brought into either program directly. Instead, they are affected indirectly by the results of the program's success on their parents. SMILE gives the divorcing parents education to know what the children are going through at the different developmental stages of life and how they deal with it, and what the rules to live by are.

*Q. In addition to co-developing the SMILE and COPE programs, you are the founder and executive director of the Grandparents Rights Organization. The U.S. Supreme Court is scheduled to hear oral arguments in Troxel v. Granville, a Washington state case which involves a grandparent's request for visitation rights. Tell me about the GRO and that case.*

A. In the case, the father of two girls ultimately committed suicide in 1993. He and the mother were never married. When the couple separated, the father went to live with his parents and the girls regularly visited him there and developed a close, nurturing relationship with their grandparents. After the father died, the girls continued to see the grandparents regularly until the mother stopped the visits.

In 1995, the grandparents went to the state court in Washington and obtained visitation rights under the third-party visitation law. The mother did not make any allegations pertaining to physical or emotional harm to the girls if they continued the relationship, but she appealed the court's opinion saying that she would be the one who would make the decisions for her children, not the court. While the case was pending, she got married and the husband adopted the children.

The matter was first heard by the Washington appellate court, and then went to the Washington Supreme Court. Both of those courts granted the mother's petition, saying that the law in Washington which allowed the grandparents to ask for visitation was unconstitutional.

*Q. How so?*

A. What is unique here is that the law in the state of Washington says that "any person may petition the court for visitation rights at any time including but not limited to custody proceedings. The court may order visitation rights for any person when visitation may serve the best interests of the child whether or not there have been any change of circumstances."

The Washington Supreme Court held that the law did give the grandparents standing. But the court also held, by a narrow 5-4 decision, and I quote, "The statute violates the parents' constitutionally protected interests. These statutes allow any person, at any time, to petition for visitation without regard to relationship to the child, without regard to changed circumstances, and without regard to harm."

*Q. Grandparents' rights brings up many issues, primarily the fact that there are many "nontraditional" families, including single parents, step-parents, lesbian couples and so forth. How do we, as a society, define what a family is and to whom do we extend visitation rights?*

A. Do you define family from the eyes of the parent or the adult? Or do you define family through the eyes of a child? In every divorce case, we have the same question. The reality today is that we have significantly complicated family structures because of divorce, people not marrying, single-parent families, remarriages that create step-families, and people who have abandoned or are unable to care for their children because of drug or alcohol dependency problems. To ignore that reality is to ignore the reality of what the American family is today to children. It's their family.

We're hoping that the U.S. Supreme Court will recognize that the concept of family is as important now as it always has been, and that it has been redefined because of reality.

*Q. Some people would disagree with you about grandparents having visitation rights. How would you persuade them*

*otherwise?*

A. First, we need to determine if the relationship is in the child's best interests. Then we need to ask, "Should there be a path through the court system to give standing to these adults to ask for visitation with the condition that it must be in the child's best interests?" Courts do not come willy-nilly and say "Yeah, fine." They look at best interest factors very carefully before judges make decisions affecting children. It's not a small standard.

These best interest conditions are significant safeguards but, in my opinion, you need to have a path to get to the court system in order to "force" family members to talk.

*Q. What changes would you like to see to visitation laws?*

A. Michigan laws are a problem because we still do not recognize the rights of children out of wedlock. If a child does not live in the intact family because of divorce, then there is a right for grandparent visitation. But if the child is not living in the intact home because the parents never married, then there is no right for grandparent visitation. In my opinion, there's no logical explanation as to what the difference is in the eyes of the child.

House Bill 4283, which will create rights for children who are born out of wedlock and the right to have grandparenting time, is pending in the Michigan Legislature. We are asking the Legislature to move on this bill because we aren't asking to expand the rights. From my perspective, it only creates equality for children who are born out of wedlock.

*Q. The public's perception of attorneys, especially divorce lawyers, is predominantly negative. What are you doing to change that perception?*

A. You are 100 percent right about the public's perception. But one thing I've found lecturing nationally is that fellow attorneys hold the same negative perception as the public. It is so sad because, of all the areas of law, the one that has the greatest impact on the family for generations is family law. One of the things I try to do is to educate lawyers as to how important they really are and, because they are so important, they must practice family law differently than any other area of law.

*Q. What do you mean by "practice differently?"*

A. Lawyers who practice family law should *never* be involved in a mindset of winning or losing. They must go in and attempt to resolve dysfunctional family problems and property right interests so that both mother and father who will be dealing with each other for the rest of their lives because of the connection of their children and potential grandchildren do not disrespect each other. If you don't have the ability to handle that stress and emotion, or if you don't have the empathy to feel for the family, choose another area of law.