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November 3-4, 2022
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20TH ANNUAL

FAMILY LAW INSTITUTE

November 3 & 4, 2022

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20th ANNUAL
FAMILY LAW INSTITUTE
Agenda

Day One

8:30 A.M. **Registration and Coffee**

8:50 A.M. Welcome and Introduction
- *Andrew C. Mallor*, Institute Chair

9:00 A.M. Children in Contested Divorce: Litigation and Mastering Ethics, Hearsay and Other Issues with Children
- *Honorable William J. Hughes, Michael J. Jenuwine, Ph.D., J.D., Kathryn Hillebrands Burroughs*

10:30 A.M. **Coffee Break**

10:45 A.M. Divorce and the Family Business: Creative Solutions to Difficult Problems and Ethical Dilemmas*
- *James A. Reed*

11:45 A.M. **Lunch Break**

1:00 P.M. Seminal Updates: How New Legal Developments Impact ART Law
- *Professor Jody Lyneé Madeira*

2:00 P.M. Mediating Difficult Issues Involving Children and Property**
- *Jill E. Goldenberg, Deborah Farmer Smith, Andrew C. Mallor*

3:00 P.M. **Refreshment Break**

3:15 P.M. Trial Preparation from A to Z
- *Brian K. Zoeller*

4:45 P.M. **Adjourn**

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Agenda

Day Two

8:30 A.M. Everything You Need to Know About a Military Divorce and Military Benefits
- *Steven F. Fillenwarth, J. David Roellgen*

9:30 A.M. The Art of Making Objections
- *Honorable William J. Hughes, Honorable Catherine Stafford, Kendra G. Gjerdingen*

10:30 A.M. Coffee Break

10:45 A.M. Utilizing Tax Returns and Financial Statements
- *Bret G. Brewer, Jordan Wright, Andrew C. Mallor*

11:45 A.M. Lunch Break

1:00 P.M. Case and Statutory Law Update
- *Andrew Z. Soshnick*

2:30 P.M. Flawless Cross-Examination
- *Linda Peters Chrzan*

3:30 P.M. Refreshment Break

3:30 P.M. Ask a Judge
- *Honorable William Hughes, Honorable Catherine Stafford, Honorable Stephenie K. Gookins, Honorable Andrew R. Bloch, Kathryn Hillebrands Burroughs - moderator*

4:45 P.M. Adjourn

November 3 & 4, 2022

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Hon. Catherine Berg Stafford
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November 3 & 4, 2022

CURRICULUM VITAE

ANDREW C. MALLOR

PERSONAL BACKGROUND

A.	Date of Birth:	January 19, 1949
B.	Place of Birth:	Newark, New Jersey
C:	Spouse:	Jane P. Mallor
D:	Children:	Jessica D. Mallor
		Katharine R. Mallor

EDUCATIONAL BACKGROUND

A. Indiana University, Bloomington, Indiana, B.A., 1971
B. Indiana University, Bloomington, Indiana, School of Law, J.D., 1974

PROFESSIONAL

Founding Partner, Mallor Grodner LLP

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Indianapolis Office:
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PROFESSIONAL ASSOCIATIONS

A. Indiana State Bar Association
B. American Bar Association
C. Diplomate, American College of Family Trial Lawyers
D. American Academy of Matrimonial Lawyers, admitted 1984
E. International Academy of Collaborative Professionals

COURTS ADMITTED TO PRACTICE

A. State Bar of Indiana, 1974
B. U.S. District Court, Southern District of Indiana, 1974
C. U.S. Supreme Court, 1977

PROFESSIONAL RESPONSIBILITIES & HONORS

A. Original Co-Chair, Indiana State Bar Association, Independent Certifying Organization Committee for Family Law Specialties and Certified Family Law Specialist, by the Family Law Certification Board, Indiana

B. 2015 Recipient of the *Excellence in Continuing Legal Education Award*, Indiana Continuing Legal Education Forum

C. 2007 Recipient of the Gale Phelps Award, Indiana State Bar Association, Family and Juvenile Law Section, 2007

D. Fellow, 1984-Present, American Academy of Matrimonial Lawyers, Various Committees

ARTICLES AND PAPERS PRESENTED FOR CONTINUING EDUCATION

A. Seminar Chair, 20th Annual Family Law Institute, ICLEF, October 2022, and all previous Institutes

B. Seminar Chair and Faculty Member, 19th Annual Family Law Institute, ICLEF, October 2021, "Having Fun with Taxes"

C. Faculty Member and Co-Presenter with Audrey R. Brittingham, Mallor Grodner LLP, seminar for Family Law Mediators, ICLEF, August 2021, "Personality Types in Mediation"

D. Seminar Chair and Co-Presenter with Timothy M. Sledd, Mallor Grodner LLP, 18th Annual Family Law Institute, ICLEF, October 2020, "Mediation in a Zoom Environment"

E. Seminar Chair and Featured Presenter, 17th Annual Family Law Institute, ICLEF, October 2019, "Self-Settled Trust and Premarital Agreements: The Perfect Combination" and "Invite a Financial Expert to Mediation"

F. Seminar Chair and Faculty Panel Member, 16th Annual Family Law Institute, ICLEF, October 2018, "The New Tax Law & Divorce" and "Creative Solutions in Mediation"

G. Seminar Faculty, CME for Family Mediators, "Pros and Cons of Marathon Sessions v. Multiple Sessions" and "Party Crashers: Dealing with Non-Parties Who Attend," ICLEF, August 2016

H. Seminar Chair and Featured Presenter, 13th Annual Family Law Institute, "Can We Now Do Post Marital Agreements: Benefits and Pitfalls," ICLEF October 2015

I. Seminar Chair and Featured Presenter, 12th Annual Family Law Institute, "Premarital Agreements: The Good, the Bad and the Ugly" ICLEF October 2014

J. Seminar Chair and Featured Presenter, 11th Annual Family Law Institute, "Planning after DOMA: Cohabitation Agreements for Non-Traditional Families and Other Issues Involving Marriage and Divorce", ICLEF October 2013

K. Featured Presenter, Advanced Family Law North "The Increasing Sophistication of Divorce Over the Past Fifty Years and Emerging Trends Today" (with Andrew Z. Soshnick of Faegre Baker Daniels), ICLEF September 2013

L. Seminar Chair and Featured Presenter, 10th Annual Family Law Institute, "Hot Tips – The value of Frequent Case Review," ICLEF October 2012

M. Contributing Author, 2012, Supplement to "Valuing Professional Practices & Licenses; A Guide for the Matrimonial Practitioner" 3rd edition; Chapter 13B, "The Professional Practice: Paying Taxes and Keeping You and Your Client Out of Jail"

N. Featured Presenter, "2012 Family Law Practical Application Series: Discovery 101," Indianapolis Bar Association, March 2012

O. Seminar Faculty, Advanced Family Law, "Complicated Business Issues in Divorce," December 2011

P. Seminar Faculty, CME for Family Mediators, "ADR Updates and Trends: Mini Mediation, Arbitration, and Pro se Mediation," and "Financial Considerations in Family Mediations," ICLEF August 2011

Q. Contributing Author, 2011, Supplement to "Valuing Professional Practices & Licenses; A Guide for the Matrimonial Practitioner" 3rd edition; Chapter 13B, "The Professional Practice: Paying Taxes and Keeping You and Your Client Out of Jail," and Chapter 46, "Estate Planning for the Divorcing Professional Client."

R. Seminar Faculty, CME for Family Mediators, "Mini Mediation, Arbitration, and Pro se Mediation;" and "Financial Considerations in Family Mediation;" ICLEF October 2010

S. Seminar Faculty, "Use of Demonstrative Evidence in a Dissolution and Discovery," IPA 30th Anniversary Celebration, October 2009

T. Seminar Chair, "Family ICO and Institute," ICLEF October 2009

U. Seminar Faculty, Advanced Family Law, ICLEF September 2009, "What You Must Know for Complex and Substantial Asset Cases"

V. Seminar Faculty, "Divorce Taxation: Pitfalls and Problems" and "Billing Methods and Fee Agreements," ICLEF October 2008

W. Seminar Faculty, "Family Law Mediation, Techniques Unique to Family Law Matters," ICLEF July 2008

X. Seminar Faculty, "Maximizing Tax Savings in Divorce Settlements," ICLEF September 2007

Y. Seminar Faculty, "Mediation Process and Procedure," ICLEF October 2006

Z. Seminar Faculty, "Hot Topics in Child Custody," ICLEF July 2006

AA. Seminar Chair, "Collaborative Law," ICLEF May 2006

BB. Contributing Author, 2006 Supplement to "Valuing Professional Practices & Licenses; A Guide for the Matrimonial Practitioner"

CC. "All in the Family? Federal Income Taxation and Transfers of Property within the Family," Co-Author Belinda R. Johnson, *Indiana Civil Litigation Review*, Volume II, Fall 2005

DD. Seminar Faculty, "Divorce 101," ICLEF April 2005

EE. Seminar Chair, "Effective Financial Strategies," PESI October 2004

FF. Seminar Faculty, "Family Law Summer Institute," ICLEF July 2004

GG. Seminar Faculty, "New Child Support Guidelines," ICLEF January 2004

HH. "Some Tax Considerations Attendant to Businesses and Professional Practices in Marital Dissolution Actions," *American Journal of Family Law*, Fall 2003

II. Seminar Faculty, "Divorce Litigation Institute," ICLEF July 2003

JJ. Seminar Faculty, "Family ICO Training," ICLEF April 2003

KK. Seminar Faculty, "Family Law Practice," ICLEF March 2003

LL. Seminar Chair, "Divorce for Paralegals," ICLEF September 2002

MM. Seminar Chair, "Advanced Family Law," ICLEF May 2002

NN. Seminar Faculty, "Divorce Taxation," ICLEF April 2002

OO. Seminar Faculty, "Child Custody and Support," ICLEF September 2001

PP. "Estate Planning for the Divorcing Client," *American Journal of Family Law*, Fall 2000

QQ. Seminar Faculty, "Ethics for the Family Lawyer," ICLEF October 2000

RR. Seminar Faculty, “Two Worlds Collide: Family Law Meets Bankruptcy,” ICLEF September 2000

SS. Seminar Faculty, “Planning Your First Divorce,” ICLEF July 2000

TT. Seminar Chair, “Divorce Practice,” ICLEF April 2000

UU. Seminar Faculty, “Divorce Advocacy,” ICLEF December 1999

VV. Seminar Faculty, “Hot Tips from Family Law Experts,” ICLEF September 1998

WW. Seminar Faculty, “Ethics in Family Law,” ICLEF August 1998

XX. Seminar Faculty, “Valuation Techniques Employed in Marital Dissolution Actions,” ICLEF June 1998

YY. Seminar Faculty, “Practicing Family Law, Making Money and Maintaining Your Sanity,” ICLEF June 1998

ZZ. Seminar Faculty, “Tax Considerations Attendant to Business and Professional Practices in Marital Dissolution Actions,” ICLEF December 1997

AAA. Seminar Faculty, “Ethics for The Family Lawyer,” ICLEF August 1997

BBB. Seminar Faculty, “Drafting for Child Custody,” Advanced Family Law, July 1997

CCC. Seminar Faculty, “Hot Tips from Family Law Experts: Practical Solutions for Family Law - Sensible Answers to Common Problems,” ICLEF June 1997

DDD. Seminar Faculty, “Wiretapping – Tips and Traps,” Co-author Kendra Gowdy Gjerdingen, ICLEF December 1996

EEE. Seminar Faculty, “The Art of Persuasion - Selling Your Business Valuation,” Advanced Family Law, May/June 1996

FFF. Seminar Faculty, “Hot Tips for New Practitioners,” ICLEF November 1995

GGG. Seminar Faculty, “Pre-Marital Agreements,” ICLEF September 1995

HHH. Participant in Mock Trial for Seminar Entitled “Domestic Violence: What’s a Lawyer to Do?” ICLEF July 1995

III. Seminar Chair, “Advanced Family Law,” ICLEF June 1994

JJJ. Seminar Chair, “The Parental Alienation Syndrome and Child Abuse Allegations in Child Custody Cases: Is the System Working?” ICLEF March 1994

KKK. Seminar Chair, “Advanced Family Law Workshop,” ICLEF June 1993

LLL. Seminar Chair, “Drafting Settlement Agreements in Divorce,” ICLEF August 1992

MMM. "When a Simple 'I Do' Won't Do: How to Draft a Premarital Agreement—and Survive," Co-Author Franklin I. Miroff, American Bar Association, *Family Advocate*, Spring 1991

NNN. Seminar Faculty, "Divorce Drafting," ICLEF 1991

OOO. Seminar Faculty, "Torts – Creative Causes of Action," ICLEF 1990

PPP. Seminar Faculty, "Indiana's New Bifurcation Statute – Ideas, Problems and Uses," ICLEF 1990

QQQ. Seminar Faculty, "Matrimonial Law," ICLEF 1990

RRR. Seminar Co-Chair, "Discovery in Domestic Relations Cases," ICLEF 1990

SSS. Seminar Faculty, "Overview of Tax Problems in Divorce," ICLEF 1990

TTT. Seminar Co-Chair, "Everything Else You Needed to Know About Family Law," ICLEF 1989

UUU. Seminar Faculty, "Litigating Pre-Marital Agreements," ICLEF 1989

VVV. Seminar Faculty, "Estate Planning for the Divorcing Client," ICLEF 1988

WWW. Panelist, "Refusal of Lifesaving Treatment for Minors," University of Louisville School of Law, 1984-1985

MISCELLANEOUS

A. 2022 Academy of Law Alumni Fellows, IU Maurer School of Law

B. Selected for inclusion in *Law & Politics* magazine's Top 50 Indiana Super Lawyers® list, Family Law, consecutive years since 2004; Top 50 Indiana Attorneys 2004-2014, 2020-2022

C. Listed in "The Best Lawyers in America" – Family Law, 1989-2022; Family Law Mediation, 2021-2022

D. Selected for inclusion in 2020 Lawdragon 500 Leading Family Lawyers list of the nation's best attorneys for divorce

E. First Indiana attorney inducted into the American College of Family Trial Lawyers, an organization of the top 100 family law lawyers from across the United States

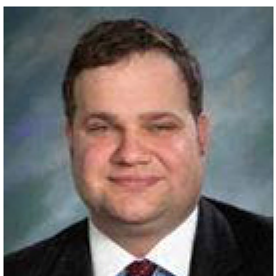
F. 2014 Edition of *Best Lawyers in America* for Family Law and 2014 Lawyer of the Year for Family Law, Indianapolis metro area

G. Indianapolis Family Law Lawyer of the Year 2013

H. Martindale-Hubbell – Peer Review Rated AV®

I. Recipient of the 2012 Leadership in Law Distinguished Barrister Award, *Indiana Lawyer*

Hon. Andrew R. Bloch, Magistrate, Hamilton County Superior Court, Noblesville



Andrew R. Bloch serves as Magistrate for the Hamilton Superior Court, where he hears a variety of family, civil, and criminal matters. He is a Certified Family Law Specialist (Family Law Certification Board) and serves as the District 19 Representative to the Indiana Judge's Association where he represents Magistrates from Carroll, Tippecanoe, Benton, Fountain, Montgomery Warren, Clinton, Grant, Madison, Hancock, Henry, Rush, Boone, Hamilton, Hendricks, Morgan, Johnson, Shelby, Bartholomew, Brown, Jackson, Lawrence, Monroe, Daviess, Martin, Pike, Dubois, Spencer, Know, Gibson, Posey, Vanderburgh, and Warrick counties.

Prior to his appointment to the bench, he was a Registered Family Law Mediator, Trained Family Law Arbitrator, Trained Guardian Ad Litem, and Trained in Collaborative Family Law (CIACP). He received his B.S.B.A. in Information Systems from Xavier University and his J.D. from the Indiana School of Law – Indianapolis (n/k/a Robert McKinney School of Law), where he was also awarded the Norman Lefstein Award of Excellence. Drew was named a "Super Lawyer" for 2019 as well as a "Rising Star" in Family Law in 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, and 2018, as published in Indianapolis Monthly.

He is a member of the Domestic Relations Committee, as appointed by the Indiana Supreme Court; the Domestic Relations Bench Book Committee, as appointed by the Indiana Supreme Court; Hamilton County Bar Association; Indianapolis Bar Association; American Bar Association; and Indiana State Bar Association (Family Law Executive Committee). Drew was a Co-Chair of the Indiana State Bar Summer Study Committee of Presumptive Joint Physical Custody (2021). He previously served as the Chair of the Bankruptcy Committee - Family Law Section of the American Bar Association. As well as a member of the Muncie Bar Association (Executive Committee) and a former member of the Ratliff-Cox Inns of Court.

Drew serves as Secretary on the Board of the Indiana Continuing Legal Education Forum (ICLEF) and is a four-time chair of the Advanced Family Law (South) Program.

Drew is a sought-after presenter for several organizations and a featured speaker on a variety of Family Law topics across the state of Indiana. Formerly, as a Partner at Cross, Pennamped, Woolsey & Glazier, P.C., he devoted 100% of his practice to family law matters including mediation, arbitration, trial work, and appeals. Before joining Cross, Pennamped, Woolsey & Glazier, P.C. Drew served as a Commissioner in the Marion Circuit Court – Paternity Division, hearing custody, visitation, and child support cases. He also served as Judge Pro Tem in Hamilton, Delaware, and Marion County in a variety of family law, civil, and criminal matters.

In addition to his service on the Board at ICLEF, Drew served as the Indianapolis Alumni Chapter President for Xavier University for six years. He is a member of the Lew Hirt Society at Xavier University. He also served as a Board Member on multiple charter school boards across the state of Indiana and has lectured on Open Door Law in Indiana with respect to charter schools.

Hon. Stephenie K. Gookins, Judge, Hamilton Superior Court 7, Noblesville Carmel

Stephenie K. Gookins is a judge for Hamilton Superior Court 6. She was admitted to the Indiana bar in 1998. Born in Greensburg, IN, Ms. Gookins graduated from Indiana University with a B.S. in Public Affairs and received her law degree from The McKinney School of Law, Indiana University. Prior to starting Terry & Gookins, LLC, Stephenie practiced law at Campbell, Kyle Proffitt for 11 years as both an associate and partner. Also, she was an associate attorney at Holt Legal Group from 2001-2004 and was employed at Rolls-Royce in the Contracts Department from 1998-2001. In addition to representing individual clients, Ms. Gookins has served as a public defender in Hamilton Superior Court 5 for over 18 years. She is a member of the Advisory Board for Hamilton County Community Corrections where she has served two terms as President. In 2019, Ms. Gookins was selected as a Super Lawyer and has previously been named a "Rising Star" by the Indiana SuperLawyers Magazine in 2009, 2011, and 2012. Ms. Gookins coordinates the Hamilton County Bar Association Mock Trial program for Hamilton County high school students and has been recognized with the Indiana Bar Foundation Law-Related Education Award in 2013 & 2018. Ms. Gookins is active in her community serving as Troop Committee Chair for a scout troop in Scouts BSA. Ms. Gookins' practice areas include family law, divorce, mediation, criminal law, social security disability, and appellate law.

Hon. William J. Hughes, Judge, Hamilton Superior Court, Noblesville

William J. Hughes is a judge for the Hamilton County Superior Court in Hamilton County, Indiana. He has served as a judge for the court since July 1988 and is currently the longest serving judge in Hamilton County.

Hughes was re-elected to the Hamilton County Superior Court on November 4, 2014, for a term that expires on December 31, 2020

Hon. Catherine B. Stafford, Judge, Monroe Circuit Court 4, Bloomington

Judge at Monroe Circuit Court IV

Curriculum Vitae

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Experience

As a winner of the Indiana CPA Society's Five Under 35 Award, Bret G. Brewer is one of seven people in the nation with all of the following recognized business appraisal credentials: Certified Business Appraiser (CBA), Certified Valuation Analyst (CVA), Accredited Senior Appraiser (ASA), and Certified Public Accountant (CPA) Accredited in Business Valuation (ABV).

The development of Bret's appraisal experience stems from his business development, tax and consulting services over the prior 20 years as applied to privately held companies. This understanding lends insight to "what is really happening" inside a business, an extremely important appraisal procedure. Utilizing attention to detail, Bret has appraised over 600 companies (not including other appraisal related consulting engagements) in a multitude of industries for: financial accounting, litigation support, mergers and acquisitions, buy/sell agreements, gifting and estate tax purposes.

Bret is committed to full time, accurate business valuation services pursuant to the Business Appraisal Standards and Code of Ethics of the Institute of Business Appraisers, the Principles of Appraisal Practice and Code of Ethics of the American Society of Appraisers, the Professional Standards of the National Association of Certified Valuation Analysts, the American Institute of Certified Public Accountants, and the Uniform Standards of Appraisal Practice.

Work experience includes K.B. Parrish & Co., LLP with the Auto Dealership team performing business appraisals, compilations, reviews, audits, taxes, projections, system reviews, forensic accounting, business development, financial and acquisition strategy and completion. This was followed by employment as the Director of Business Valuation Services at a local CPA firm for over 2-½ years prior to the completion of a wide variety of valuation engagements as an independent appraiser for Houlihan Valuation Advisors for an additional 2-½ years.

Education

Miami University of Oxford, Ohio - Bachelor of Science degrees in Finance and General Business, 1993
Indiana University – Purdue University of Indianapolis, Indiana - additional accounting undergraduate courses, 1995 – 1996

Certified Public Accountant (CPA) designation, 1997
Certified Valuation Analyst (CVA) designation, 1998
Certified Business Appraiser (CBA) designation, 2004
Accredited Senior Appraiser (ASA) designation, 2004
Accredited in Business Valuation (ABV) designation, 2004
Certified in Financial Forensics (CFF) designation, 2008
Collaboratively Trained Professional, 2014

Professional Associations	American Institute of Certified Public Accountants (AICPA) Indiana Certified Public Accountants Society (INCPAS) National Association of Certified Valuation Analysts (NACVA) The Institute of Business Appraisers (IBA) – Lifetime Member The American Society of Appraisers (ASA) Central Indiana Association of Collaborative Professionals (CIACP)
Speaking & Teaching Engagements	2021 – Business Valuation Conference, Moderator and Speaker, Ask the Experts Panel, Indiana CPA Society, Online video 2019 – Business Valuation Conference, Business Valuation 101: What You Need To Know, Indiana CPA Society, Carmel, Indiana 2019 – Business Valuations for the Champagne Case on a Beer Budget, American Bar Association, Dominican Republic 2018 – Business Valuation, A Consensus View panel discussion, NACVA, Indianapolis 2017 – Business Valuation Conference – Chairman and Moderator, Indiana CPA Society, Indianapolis, Indiana 2017 – Case Law Update on Business Valuation, NACVA, Indianapolis 2017 – Financial Statements in the Courtroom (Business Valuations) Spring Judicial Conference, Indianapolis, Indiana 2016 – Business Valuation Conference, Smashing the Experts – Estate of Gallagher and Mock Trial Panelist, Indiana CPA Society, Carmel, Indiana 2016 – Advanced Issues in Family Law, Business Valuation Mock Case Study Indiana Continuing Legal Education Foundation, French Lick, Indiana 2015 – Complex Assets in Divorce, Valuing and dividing Business Assets, National Business Institute, Indianapolis, Indiana 2015 – Family Law Institute, Indiana Continuing Legal Education Forum – Faculty Member, "Calculating Income for Child Support Purposes" 2014 – Helping Your Client Buy or Sell a Small-to-Medium Sized Business, National Business Institute, Indianapolis, Indiana 2014 – Family Law Institute, Indiana Continuing Legal Education Forum – Faculty Member, "Calculating Income for Child Support Purposes" 2014 – *Case Law Update*, NACVA Indiana State Chapter, Indianapolis, IN 2014 – A Paralegal's Guide to Reading Financial Statements, National Business Institute, Eau Claire, Wisconsin – Webcast available 2012 – Business Ownership Succession Planning, Valuing Closely Held Companies, National Business Institute, Indianapolis, Indiana 2012 – Business Valuation in Litigation and Rules of Practice and Procedure Update, NACVA Indiana State Chapter, Indianapolis, Indiana 2012 – Helping Your Client Buy or Sell a Small-to-Medium Sized Business, National Business Institute, Indianapolis, Indiana 2012 – *Family Law Track:, Docs for Dummies*, indybar Bench Bar Conference, Indianapolis Bar Association Bench and Bar, French Lick, Indiana 2012 – Gift & Inheritance Tax: Business Valuations: Closely Held Companies, National Business Institute, Indianapolis, Indiana 2011 – Mergers and Acquisitions: Nuts and Bolts, National Business Institute, Indianapolis, Indiana 2011 – *Expert Witness Training Seminar*, Taft Law/NACVA/ASA joint expert training seminar, Indianapolis, Indiana 2010 – Business Valuations: Methods, Approaches and Using the Valuation *Results*, National Business Institute, Indianapolis, Indiana 2010 – Institute of Management Accountants, *Business Valuation Methods,* Indianapolis, Indiana 2010 – Helping Your Client Buy or Sell a Small-to-medium Sized Business, National Business Institute, Indianapolis, Indiana

2010 – NACVA, Indiana State Chapter, *Goodwill in Divorce*, Indianapolis
2010 – Gift & Inheritance Tax: Business Valuations and Closely Held Companies, National Business Institute, Indianapolis, Indiana
2009 – Business Valuations: Methods, Approaches and Using the Valuation Results*,* National Business Institute, Indianapolis, Indiana
2009 – Family Law Institute, Indiana Continuing Legal Education Forum – Faculty Member, "Unraveling, Mysteries of Business Tax Returns"
2009 – Business Valuations: The Valuation in Compliance with SSVS1, National Business Institute, Boston, MA – Rebroadcast via Webcast in October, 2009
2008 – Family Law Institute, Indiana Continuing Legal Education Forum – Faculty Member, "Business Valuation: Critical Analysis of a Report"
2008 – NACVA, Indiana State Chapter – Speaker, "Valuations in Litigation - Preparing for Deposition and Trial"
2008 – Gift and Inheritance Tax: Procedure and Strategy, National Business Institute, "Overcoming Taxation Challenges in Specific Situations"
2007 – Family Law Institute, Indiana Continuing Legal Education Forum – Faculty Member of Continuing Legal Education Seminar
2007 – *Business Valuations,* Indianapolis Bar Association - Continuing Legal Education Seminar
2006 – Circular 230 and Appraiser Penalties, American Society of Appraisers – Indiana Chapter, Indiana
Prior to 2006 on file

Publications

Brewer, Bret. "Are we being misled by Wal-Mart already?" Zionsville Times Sentinel November 21, 2012, page A4.
Brewer, Bret. "The Walmart factor(s)." Current in Zionsville November 20, 2012, page 5.
Brewer, Bret. "American Jobs Creation Act of 2004 Positively Impacts Company Value." Shannon Pratt's Business Valuation Update 11, No. 9, (2005): 14.
Brewer, Bret. "American Jobs Creation Act of 2004 Positively Impacts Company Value." The Value Examiner Jan/Feb (2005): 25-28.
Brewer, Bret and Schlegel, Robert. "Marital Interests in S-Corporations May Have Differing Value." The Matrimonial Strategist Sep.(2004), cover
Brewer, Bret. "Estate Tax Strategy and Business Valuation." Your Business Mar. (2003): 2.

Expert Testimony

2021 – Hamilton Superior Court No. 1, Cause No. 29D01-1910-DC-009127 (Child Support)
2020 – Johnson Superior Court No. 4, Cause No. 41D04-1802-DC-76, via Zoom (Marital Dissolution)
2020 – Hamilton Superior Court No. 1, Cause No. 29D01-1910-DC-009597 (Marital Dissolution)
2020 – Hamilton Superior Court No. 3, Cause No. 29D03-1809-DN-008918 (Marital Dissolution)
2019 – Marion County Superior Court No. 2, Cause No. 49D02-1612-DR-044346 (Marital Dissolution)
2019 – Hamilton Superior Court, Cause No. 29D04-1504-DR-03068 (Marital Dissolution)
2018 – Marion County Circuit Court, Cause No. 49D10-1510-DR-034864 (Marital Dissolution)

2018 – Gallatin County Circuit Court, Illinois, Cause No. 2015-D-15
(Marital Dissolution)
2018 – Hamilton Superior Court, Cause No. 29D04-1404-DR-003232
(Marital Dissolution)
2018 – Hamilton Superior Court, Cause No. 29D04-1504-DR-03068
(Marital Dissolution)
2018 – Marion County Superior Court, Cause No. 16-03349-RLM-7
(Bankruptcy)
2017 – Hamilton County Superior Court, Cause No. 29D05-1604-DR-003342
(Marital Dissolution)
2017 – Tippecanoe Superior Court, Cause No. 79D01-1403-DR-000044
(Marital Dissolution - trial)
2017 – Marion County Superior Court No. 2, Cause No. 49D02-1612-DR-044346
(Marital Dissolution)
2017 – First Judicial Court, Williamson County, IL No. 14-D-339
(Marital Dissolution)
2017 – Tippecanoe Superior Court, Cause No. 79D01-1403-DR-000044
(Marital Dissolution - deposition)
2016 – Hamilton County Superior Court, Cause No. 29D02-0904-PL-567
(Economic Damages)
2016 – Hamilton County Superior Court, Cause No. 29D01-1412-DR-12357
(Marital Dissolution)
2016 – Hamilton County Superior Court, Cause No. 29D03-1406-DR-6306
(Marital Dissolution)
2016 – Boone County Circuit Court, Cause No. 06C01-0902-DR-0168
(Income for Child Support – deposition and trial)
2015 – Brown County Circuit Court, Cause No. 07C01-1208-DR-000444
(Marital Dissolution - Pension Calculation)
2015 – Hamilton County Superior Court, Cause No. 29D03-1406-DR-6306
(Marital Dissolution)
2015 – Boone County Circuit Court, Cause No. 06C01-0902-DR-0168
(Income for Child Support - deposition)
2015 – Marion County Superior Court, Cause No. 49D14-1210-DR-039137
(Marital Dissolution)
2014 – Fayette County Circuit Court, Cause No. 21C01-1205-DR-425
(Marital Dissolution)
2013 – Boone County Circuit Court, Cause No. 06C01-0801-DR-061
(Income for Child Support - deposition)
2012 – Rush County Superior Court, Cause No. 70D01-1103-DR-144
(Marital Dissolution)
2011 – Hamilton County Superior Court, Cause No. 29D03-0909-DR-001207
(Marital Dissolution)
2010 – Hamilton County Superior Court, Cause No. 29D02-0504-DR-00383
(Marital Dissolution)
2009 – Hamilton County Superior Court, Cause No. 29D03-0810-DR-1206
(Marital Dissolution)
2009 – Marion County Superior Court, Cause No. 49D12-0811-DR-53868
(Marital Dissolution)
2009 – Owen Circuit Court, Cause No. 60C01-0601-DR-0006
(Marital Dissolution)
2008 - Hamilton County Superior Court, Cause No. 29D02-0708-DR-870
(Marital Dissolution)
2007 – Hamilton County Superior Court, Cause No. 29D02-0504-DR-383
(Marital Dissolution)

2005 – Jefferson Circuit Court, Indiana, Cause No. 39C01-0303-DR-124 (Marital Dissolution)
2005 – Marion Superior Court No. 12, Indiana, Cause No. 46D12-0201-CT-000049 (Economic Damages)
2005 – Hendricks County Circuit Court, Indiana, Cause No. 55D01-0410-DR-646 (Marital Dissolution)
2005 – Morgan County Superior Court, Indiana, Cause No. 55002-0406-DR (Marital Dissolution)
2004 – Shelby County Circuit Court, Indiana, Cause No. 73C01-0301-DR-000007 (Marital Dissolution)
2004 – Hendricks County Superior Court, Indiana, Cause No. 32D01-0204-CC-38 (Economic Damages)

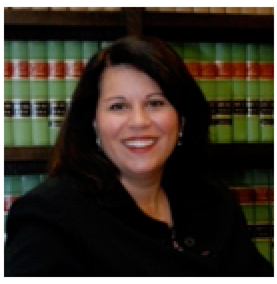
Continuing Appraisal Education

2009 and forward - have continuously researched and written coursework materials for classes. Required accounting and ethics courses not included.
2008 – Valuation of Intellectual Property and Case Analysis, NACVA class
2008 – Using the Duff & Phelps Database and Case Analysis, NACVA class
2006 – The Transaction Method: Uses & Abuses of Market Data, AICPA class
2006 – Damages in Business Interruption Claims: Disasters and Other Business Interruptions, NACVA course, Indianapolis, Indiana
2005 – Rendering Solvency Opinions in Today's Transaction Environment, 2-hour BVResources phone conference
2004 – Effective Financial Strategies in Divorce, PESI class, Indianapolis, IN
2004 – Transaction Method of Valuing a Business, Shannon Pratt conference
2004 – Uniform Standards of Professional Appraisal Practice (USPAP) – Course and Exam
2003 – ASA – Principles of Appraisal Practice and Code of Ethics exam
2003 – INCPAS Courses – Business Valuation Roundtable and Business *Valuation for Divorce*, Knowledge Networks, Indianapolis, Indiana
2003 – IBA Courses – Valuing ESOP's and Report Writing & Analysis, St. Louis, Missouri
2002 and prior – various NACVA and other courses in business appraisal

Professional Appointments

2015 through 2021 – Business Valuation Conference Project Team - Indiana CPA Society, Chair in 2017
2009 – Grant County Superior Court, Cause No. 27D03-0809-DR-291, Court appointed appraiser (Martial Dissolution)
National Association of Certified Valuation Analysts – *Mentor* – 2008 - present
American Society of Appraisers (Indiana Chapter) – *State Director* – 2007-2008
American Society of Appraisers (Indiana Chapter) – *President* – 2006 - 2007
American Society of Appraisers (Indiana Chapter) – *Treasurer* – 2005 - 2006
Institute of Business Appraisers – *Mentor* – 2005 - 2006
INCPAS – Vice-Chairman of Information Technology Committee –1998 – 1999

Kathryn Hillebrands Burroughs, Cross Glazier Reed Burroughs, PC, Indianapolis



Kathryn Hillebrands Burroughs concentrates her practice in matrimonial and family law including premarital agreements; cohabitation agreements; dissolution of marriage; child custody, parenting time and support; and interstate disputes and modifications.

Ms. Burroughs became a Certified Family Law Specialist in 2002, the first year it was available in Indiana. Kathryn is the immediate past chair of the Indiana State Bar Association, Family and Juvenile Law Section. She also serves as a board member of the State of Indiana Independent Certification Organization, which certifies family law specialists.

Kathryn presently serves as a member of the Indiana Board of Law Examiners by appointment of the Indiana Supreme Court. She also serves on the Indiana Child Custody and Support Advisory Committee, a committee created by statute to make recommendations to the Indiana Supreme Court on the Child Support Guidelines and other terms relating to the welfare of children of families no longer intact.

Linda Peters Chrzan, Chrzan Law, LLC, Fort Wayne

PROFESSIONAL
Chrzan Law, LLC, Fort Wayne, Indiana. Admitted to bar: 1986, Indiana. Adjunct Professor of Law, Indiana Tech Law School

MEMBERSHIPS
Fellow – American Academy of Matrimonial Lawyers
Allen County Bar Association (Board of Directors for two (2) years
Ethics Committee, Chair for two (2) years; Fee Dispute Committee
Lawyer Helping Lawyer Committee
New Members Committee, Co-Chair, and Membership Committee, Chair for two (2) years
Family Law Executive Committee (2000 – current), Chairman (2005 – 2007)
Allen County Chapter of the Inns of Court (2000 – 2002; 2010 – current), Secretary (2001); Grievance Committee (2010 – current)
Volunteer Lawyer Program, member (attorney of the year 1997).
Free Mediation Day Coordinator (2011-2013)
Frequent CLE presenter and contributor to Domestic Help, the Allen County Family Law Section newsletter.

BOARD MEMBERSHIPS
Indiana Family Law Certification Board Member
Lutheran Life Villages Board of Directors

PRACTICE AREAS INCLUDE
Domestic and Family Relations
Collaborative Law and Cooperative Law
Adoptions and Contested Adoptions
Divorces and Property Division
Custody, Parenting Time and Child Support Disputes Paternity, Guardianships, Protective Orders
Family Mediation
Wills, Trusts, Estate Planning and Estate Administration

Steven F. Fillenwarth, Fillenwarth & Associates, Carmel

Steve Fillenwarth is a principal in Fillenwarth & Associates practicing almost exclusively family law in Indianapolis, Indiana. Mr. Fillenwarth is also a Certified Public Accountant who brings extensive experience in business and pension valuation, estate planning techniques, and knowledge of complex tax matters relating to divorce and relationship dissolutions to his practice of family law. Mr. Fillenwarth specializes in financially complicated marital estates. He also has extensive experience representing parents and children litigating and negotiating complex child custody and divorce cases. Mr. Fillenwarth is a co-author of Kleinroch Publishing's Divorce Taxation. He has also lectured at numerous continuing legal education seminars throughout the United States. Mr. Fillenwarth is a Fellow of the American Academy of Matrimonial Lawyers; a Certified Family Law Mediator; and a Lieutenant Colonel in the United States Army Reserve JAG Corps. Educational Background: Indiana University, Bloomington, B.S. Indiana University School of Law, Bloomington, J.D. Bar Admissions: Indiana Bar, 1985 Honors: Indiana Super Lawyers®. Voted one of the top 5% of all lawyers in Indiana by peer selection. Fellow, American Academy of Matrimonial Lawyers Distinguished Fellow, Indiana Bar Association Organizations: Indiana Bar Association ABA AICPA Indiana CPA Society American Academy of Matrimonial Lawyers Certified Indiana Family Law Specialist Publications: Divorce Taxation, Co-author Tax Aspects of Divorce in Indiana, 2001 Estate and Tax Planning for Qualified Retirement Plans and IRAs in Indiana, 1998 Certifications: Certified Indiana Family Law Specialist Certified Indiana Family Law Mediator Seminars: Faculty: Divorce Valuations, 2002 Tax Aspects of Divorce in Indiana, Chair and Faculty, 2001 Minimizing the Tax Consequences of Divorce in Indiana, Chair and Faculty, 2000 The ABCs of QDROs, Chair and Faculty, 1999 Divorce Practice: Problems that Will Trip You Up, Chair and Faculty, 1998 Indiana Family Law Practice for Paralegals, Faculty, 1997 The Basic Divorce Case in Indiana, Faculty, 1996 The Financial Aspects of Divorce, Faculty, 1995 Civic Involvement: JAG Officer in the USAR Capital Campaign Committee, St. Simon the Apostle Church Basketball Coach, St. Simon the Apostle and Tabernacle Presbyterian Church.

Kendra G. Gjerdingen, Mallor Grodner LLP, Bloomington and Indianapolis

Kendra G. Gjerdingen chairs the firm's Appellate Law Group and handles the legal needs of private and business clients in civil litigation and family law. Her concentration includes family law and jurisdiction, interstate and international custody disputes, appeals, and civil litigation.

Kendra is a leading family law and appellate lawyer in Indiana. She also has extensive experience in jurisdictional disputes. She has represented many clients in Hague Convention cases, as well as those involving interstate custody disputes, in addition to assisting fellow practitioners and members of the judiciary in understanding the complexities involved when parents live in different states or countries.

Kendra utilizes the Family Law Group's team approach to assure that a client's needs are addressed quickly and efficiently. Kendra is a successful litigator with extensive courtroom experience. She also brings her compassion and knowledge to each case, as well as her attention to detail and dedication to civility in the practice of law. Kendra is an advocate of alternative dispute resolution, especially in family law, understanding the importance of reducing conflict in order to reach desired results.

Kendra is a Registered Family Law Mediator and a Certified Family Law Specialist, by the Family Law Certification Board. She is a past-chair of the Indiana State Bar Association Appellate Practice Section, and currently serves as the chair of its continuing education committee. She is also on the council of the Family and Juvenile Law Section of the ISBA.

Kendra is married to a law professor at the Indiana University Maurer School of Law, and they have two children and three granddaughters.

Jill E. Goldenberg Schuman, Cohen Garelick & Glazier, Indianapolis, Indiana

Jill is a divorce lawyer and family law attorney focusing on the areas of mediation, arbitration, domestic relations litigation, and alternative dispute resolution since 1993. As a certified family law specialist as certified by the Family Law Certification Board and a registered domestic mediator, she has been helping families access the necessary resources to successfully move through the most challenging times in life.

In her free time, Jill enjoys traveling with her family and attending her kids' sports and extracurricular events.

Practice Areas

- Alternative Dispute Resolution
- Arbitration
- Domestic Relations Litigation
- Family Law
- Mediation

Education

- Boston University School of Law, JD
- Indiana University, BS

Bar Admissions

- Indiana, 1993

Honors / Awards

- Best Lawyers®, 2007-2022. And Lawyer of the Year in Family Law, 2022
- Super Lawyers®, 2008-2021
- Top 25 Women Indiana Super Lawyers, 2009-2016; 2018-2021

- Top 50 Super Lawyers, 2011-2016; 2019-2021

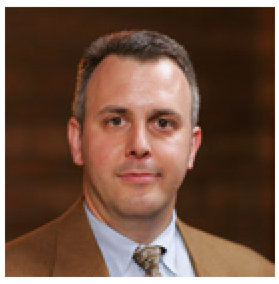
Professional Affiliations

- Indianapolis Bar Association, Alternative Dispute Resolution Section, Past Chair
- Indiana State Bar Association, Family Law Certification Board, Co-Chair 2020
- Indiana State Bar Association, Family and Juvenile Section, Vice Chair 2019-2021

Community Involvement

- Wine Women & Shoes for Gleaners Food Bank of Indiana, Co-Chair, 2013-2017

Dr. Michael J. Jenuwine, J.D., Ph.D., Legal Clinic, University of Notre Dame, South Bend



University of Notre Dame Law School, Notre Dame
Forensic & Clinical Psychology, LLC, South Bend

Michael Jenuwine has been on the faculty of the Notre Dame Law School since 2005. He is licensed as both an attorney and a clinical psychologist, and directs the Notre Dame Applied Mediation Clinic, supervising student mediators in civil and domestic relations cases from Indiana and Michigan courts. He earned his B.S. from the University of Michigan in 1988, his A.M. in Educational Psychology from the University of Chicago in 1990, his J.D. from Loyola University Chicago in 2000, and his Ph.D. in Psychology-Human Development from the University of Chicago in 2000. While at Loyola, he was a Civitas Child law Fellow and earned a certificate in Child and Family Law. He teaches courses at Notre Dame Law School in professional responsibility, dispute resolution, mediation, negotiation, animal law, and mental health law.

Dr. Jenuwine has a private practice where he conducts forensic psychological evaluations in civil and criminal cases in Indiana and Michigan, and also conducts mediations, custody evaluations, and serves as a parenting coordinator & guardian ad litem. Dr. Jenuwine was appointed to the Indiana State Board of Law Examiners in 2012, and has research interests in professional responsibility, family law, child advocacy, mental health law, and interdisciplinary legal practice. He is also a National Certified Guardian, actively involved in research on adult guardianships, and has served on the Indiana State Adult Guardianship Taskforce since 2008.

BIOGRAPHICAL SKETCH – JODY LYNEÉ MADEIRA

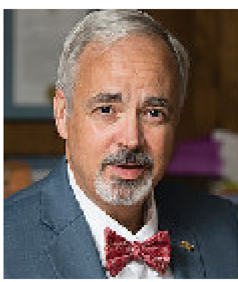
Jody Lyneé Madeira is a Professor of Law and Louis F. Niezer Faculty Fellow at the Indiana University Maurer School of Law in Bloomington, Indiana. Before joining the Maurer School of Law faculty in 2007, Madeira served as a Climenko Fellow and Lecturer in Law at Harvard Law School and clerked for the Hon. Richard Cudahy on the United States Court of Appeals for the Seventh Circuit. She obtained her J.D. from the University of Pennsylvania, and her Ph.D. from the Annenberg School of Communication at the University of Pennsylvania, and her M.S. in Sociolinguistics from Georgetown University. Madeira's research examines the intersection of law and emotion in criminal and family law. Her first book, *Killing McVeigh: The Death Penalty and the Myth of Closure* (New York University Press, 2012) applied collective memory to criminal prosecution and sentencing, exploring the ways in which victims' families and survivors came to comprehend and cope with the Oklahoma City bombing through membership in community groups as well as through attendance and participation in Timothy McVeigh's prosecution and execution. Her second book, *Taking Baby Steps: How Patients and Fertility Clinics Collaborate in Conception* (University of California Press, 2018) examines how patient emotions and doctor-patient relationships in reproductive medicine affect treatment decision-making. She is also co-editor for the *Edward Elgar Research Handbook on Law and Emotion* (Edward Elgar, 2021). She has two forthcoming publications, including the *Indiana Personal Injury Law Treatise* (2023) and a co-edited Second Amendment casebook.

James Reed, Cross Glazier Reed Burroughs, PC, Carmel

Jim Reed has dedicated his nearly 40-year legal career to all aspects of relationship transitions, from the needs of a couple entering a new relationship to the legal and financial matters involved in the dissolution of a relationship. His practice includes counseling cohabitating partners in implementing plans for estate transitions, health care decision-making, joint ownership and survivorship as well as representing partners in the conclusion of relationships, custody and support of their children, and the division of property and assets.

Mr. Reed's clients are often high-profile individuals in entertainment, sports and politics, professionals, business owners and executives, and the spouses/partners of these individuals. For many business owners, their business is their most valuable asset. Mr. Reed works with business owners and their partners to identify how to protect the business in the beginning of a relationship. He also understands the complexities that often arise in divorce involving business owners, such as dividing a business, ownership questions, and business valuation.
Mr. Reed has been consistently selected for inclusion in the Indiana Super Lawyers and The Best Lawyers in America in the field of Family Law. He is a sought-after source for insight on matrimonial and family law matters in Indiana and beyond.

J. David Roellgen, Kolb Roellgen & Traylor LLP, Vincennes



Dave is a partner at Kolb Roellgen & Traylor LLP, Vincennes, Indiana. He was born in Vincennes and his family is from Knox County. He was admitted to the Indiana bar in 1979 and to the Illinois bar in 1990.

He attended high school in Vincennes Indiana and attended Vincennes University, earning an A.S. degree in 1974; He then attended Indiana State University in Terre Haute, Indiana, obtaining his B.S. in Business Administration and Management in 1976; He attended Indiana University-Indianapolis, earning his J.D. (Cum Laude) in 1979.

Dave joined the Indiana Army National Guard in 1985 as a member of the JAG Corps. He retired after serving 21 years at both the 38th Infantry Division (Mech) and the 76th Separate Infantry Brigade.

His memberships include: the Knox County Bar Association, Past President, 1996; past member Board of Governors for the ISBA; a past board member of the Defense Trial Counsel of Indiana; ISBA; Past Chair, Family & Juvenile Law Section and current board member, Member and Past Chair ISBA Technology Committee; Indiana State Bar Association.

Dave is a member of the Indiana, Illinois, Knox County, and American Bar Associations. He is a Fellow of the Indiana Bar Foundation and is admitted to the US Court of Military Appeals.

Dave is a Retired LTC, Indiana Army National Guard, last serving as the Staff Judge Advocate for the 38th INF. DIV. (MECH), and is City Attorney, City of Vincennes, 1992–1995; 2001-2007; and 2012-present.

Deborah Farmer Smith, Cohen Garelick & Glazier, Indianapolis, Indiana

Deborah has been practicing family law for nearly 40 years, and loves it as much as when she began. Deb does both litigation and alternative dispute resolution, including mediation, arbitration, and collaborative practice. She is a Certified Family Law Specialist and a Registered Domestic Relations Mediator in Indiana, successfully mediating hundreds of family law matters.

Deb is passionate about making a difference in the lives of her clients and their children. She is equally experienced with both complex property division and child custody, parenting time and support. She most enjoys helping clients navigate through one of the most challenging experiences in life by providing both good legal advice and empathy.

Deb is a frequent speaker for the Indiana Continuing Legal Education Forum.

When not practicing law, Deborah enjoys traveling and going to concerts with her husband. She also loves playing the piano, having served as pianist for the Noblesville First United Methodist Church for over 30 years.

Practice Areas

- Family Law (Property Division, Children's Issues and Post-Decree Modification)
- Alternative Dispute Resolution
- Domestic Relations Litigation
- Family Law Arbitration
- Mediation

Education

- Indiana University School of Law, JD, magna cum laude, 1983.
- Butler University, BS, Education, cum laude, 1976.

Bar Admissions

- Indiana, 1983
- U.S. District Court, Northern District of Indiana, 1983

Honors / Awards

- Super Lawyers, Top 25 Indiana Women
- Best Lawyers
- Gale M. Phelps Award, Family & Juvenile Law Section of the Indiana State Bar Association, 2010
- Presidential Citations, Indiana State Bar Association

Professional Affiliations

- Indiana State Bar Association, Member, 1983-Present
- Indiana State Bar Association, first Counsel to the President
- Indiana State Bar Association, past Chair, Family and Juvenile Law Section
- Indiana Bar Foundation, Past President and Fellow
- Family Law Certification Board, Co-Chair, 2002-2017
- Hamilton County Bar Association, Member
- American Academy of Matrimonial Lawyers, Fellow

Andrew Z. Soshnick, Faegre Drinker Biddle & Reath LLP, Indianapolis

Drew Soshnick concentrates his practice in counseling and representing individuals in a wide array of family law matters, with particular emphasis on the economic aspects of matrimonial law. This concentration includes, among other things, addressing sophisticated financial issues such as valuing and dividing complex marital assets (including corporations, partnerships, professional practices and proprietorships), assessing executive compensation and benefits, tax analysis and planning, tracing of assets, and drafting premarital agreements. Drew also represents clients in contested child custody and child support proceedings. Faegre Baker Daniels' family law group draws upon the firm's breadth of experience and resources in litigation, corporate, financial services, entrepreneurial services, taxation, estate planning, real estate and bankruptcy in providing comprehensive personal services.

Drew is past chair of both the Indiana State Bar Association Family & Juvenile Law Section and the Indianapolis Bar Association Family Law Section. Drew also serves as a member of the State of Indiana Family Law Independent Certification Organization.

Drew is a frequent speaker at national and state family law seminars, including the American Academy of Matrimonial Lawyers' annual meeting in Chicago and the American Bar Association annual meeting. Since 1999, Drew has presented the annual "Family Law Update" to Indiana jurists at the Judicial Conference of Indiana. Drew also writes extensively on family law in both national and state treatises and publications.

Certifications
•Certified Family Law Specialist, as certified by the Family Law Certification Board
•State of Indiana Registered Family Law Mediator

Jordan R. Wright, CVA
Manager
317.472.2294
jrwright@somersetcpas.com

Jordan joined Somerset in January of 2017. He is a Manager on our Business Valuation and Transaction Advisory Teams. He helps run valuation engagements as well as sell-side and buy-side transaction support. This includes quality of earning engagements, EBITDA analysis, net working capital analysis, and other transaction support analysis. He has been a Certified Valuation Analyst (CVA) through the National Association of Certified Valuators and Analysts since 2018. He is involved in business valuations for various purposes listed below across a variety of industries.

Outside of the office, Jordan was recently married to his lovely wife. He also enjoys golfing and spending time with his friends and family. He likes to travel, and his dream vacation would be to Europe.

EXPERTISE

- Business Valuations for Various Purposes, Including:
  - Divorce and Litigation
  - Estate Planning
  - Gift Tax
  - Succession Planning
  - Management Planning
  - ESOP
  - Mergers and Acquisitions
  - Compliance with Ownership and Legal Agreements
  - Fair Value for Acquisition Accounting
- Buy-Side and Sell-Side Quality of Earnings Analysis
- Consulting Services Including – Projections and Budgeting, Performance Metric Analysis, and Other Financial Analysis Services
- Feasibility Analysis

EDUCATION

- Indiana Wesleyan University – Marion, Indiana
  - Bachelor of Science – Finance
  - Bachelor of Science – Marketing

PROFESSIONAL AFFILIATIONS

- National Association of Certified Valuators and Analysts - Member
- Association for Corporate Growth, Indiana - Member
- ESOP Association (Past Member)

COMMUNITY AFFILIATIONS

- Friends of Riley – Former Vice President of Internal Affairs
- Traders Point Christian Church

BRIAN K. ZOELLER
Cohen & Malad, LLP
One Indiana Square, Suite 1400
Indianapolis, Indiana 46204
(317) 636-6481
bzoeller@cohenandmalad.com

Brian K. Zoeller is a partner and Family Law Practice Chair at Cohen & Malad, LLP. Brian joined Cohen & Malad, LLP in 1999. He concentrates his practice in high asset dissolutions, custody matters and complex jurisdictional cases.

Certifications/Specialties and Awards

- Certified Family Law Specialist, Family Law Certification Board
- Super Lawyer Designation for Family Law Attorneys by *Indianapolis Monthly Magazine*, 2003 – present. Top 50 Attorneys 2014, 2015, 2017-2019, 2021

Published Works

- "Taking Abusers to Court," Trial Magazine, June 1995
- "Interpersonal Relationship Violence Suits," Crime Victim's Litigation Quarterly, November 1995
- "Suing the Abuser: Tort Remedies for Domestic Violence," Victim Advocate, Spring 2004.
- "Use Depositions over Interrogatories in Family Law Matters," Indiana Lawyer, 2015

Pro Bono Activities

Brian has volunteered as a guardian ad litem since 1999 and has represented the interests of dozens of children before Indiana Courts. Brian's extensive volunteer work as a guardian ad litem as well as the efforts of his fellow partners led to Cohen & Malad, LLP receiving the distinguished Heartland Pro Bono Award. He also served as Teen Court Judge, provided free legal advice through Legal Line, and volunteered to represent numerous indigent individuals in dissolutions.

CLE Presenter

Brian has presented on numerous family law topics and typically presents no less than twice each year. Brian has been a frequent speaker for Bench/Bar, for ICLEF, the Applied Professionalism Course, and the Indianapolis Bar Association.

Table of Contents

Section One

Children in Contested Divorce: Litigation and Mastering Ethics, Hearsay and Other Issues with Children.................................Hon. William J. Hughes
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Section One

Indiana Family Law Institute

November 3, 2022

Children in Contested Divorce: Litigation and Mastering Ethics, Hearsay and Other Issues with Children

Presented By:

The Honorable William J. Hughes
Judge, Hamilton County Superior Court 3

Michael J. Jenuwine, Ph.D., J.D.

Kathryn Hillebrands Burroughs, J.D.

*With written materials contributed in part by Mark Glazier

Section One

Children in Contested Divorce: Litigation and Mastering Ethics, Hearsay and Other Issues with Children……………………………..Hon. William J. Hughes
Michael J. Jenuwine, Ph.D., J.D.
Kathryn Hillebrands Burroughs, J.D.

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1. Child Input.

    a. Child-in Court Testimony
    b. *In camera* Interviews
    c. GAL or Custody Evaluator meetings with Children
    d. Children in mediation
    e. Children in parenting coordinator process
    f. Children talking to attorneys

2. Specific Issues with Child Input.

    a. Parent-Child Contact Problem/Allegations of Parent Alienation (evidentiary/ethical issues)
    b. Sex Abuse Allegations (evidentiary/ethical issues)
    c. Audio/Video Recordings (evidentiary/ethical issues)

Evidence Scenarios

Evidence Scenario 1:

Tom and Jane have one small child. They separate, Jane files for divorce in Marion County. During the separation, Jane falls madly in love with Dawson. She's so blinded by love, however, that she overlooks the fact that Dawson was convicted of two counts of felony neglect regarding his two children in Hendricks County. Dawson's criminal file contains the charging information, to which a probable cause affidavit is attached. The criminal court file also includes an order accepting Dawson's guilty plea and the sentencing order. All of the criminal court documents are stamped with "Confidential—Not for Public Access" but are not on green paper. Dawson's kids were subject to a CHINS action in Hendricks County as well. That court file contains the CHINS petition with an attached affidavit from the intake family case manager. Dawson and his then wife admitted the CHINS, and entered into agreed dispositional orders. All of those documents are contained in the CHINS file. In response to a deposition subpoena, Dawson provides copies of the 310 and 311 completed by the Hendricks County DCS, with an affidavit from the records custodian. One week before trial, Jane tells Tom that she's broken up with Dawson and will stipulate that he should not be around their kids. However, two days before trial, Dawson is at Jane's house when Tom returns the kids after parenting time.

The only witnesses Tom calls during the final hearing in his divorce case with Jane are the parties and Dawson. Assume all the court documents are certified.

Is it in or is it out?

1. The charging information and probable cause affidavit in Dawson's criminal case?
2. The plea agreement and sentencing order in Dawson's criminal case?
3. The CHINS petition and attached affidavit?
4. The CHINS dispositional orders?
5. The 310 and 311?

Evidence Scenario 2:

Three young children experience an unbelievable tragedy when their mother kills their father and then herself. Both parents' families seek care and custody of the children. The children are enrolled in grief counseling with an LCSW, and the custody court appoints a GAL. The GAL speaks with all relevant individuals, including the LCSW. The GAL timely issues a report and recommendation for custody. The GAL, who participated in mediation and was copied on all settlement letters, also includes in the report a detailed discussion of each party's settlement offers. Counsel for one of the families seeking custody consults with a PhD psychologist through the course of the case. The psychologist does not interview the children or any party. The psychologist is identified as a potential witness and is deposed based on "hypotheticals." The GAL, the LCSW and the psychologist all have opinions as to what custodial situation would be best for the kids. All three are scheduled to testify at hearing. One week before trial, counsel for the other family filed a "Motion to Exclude" the psychologist's testimony in its entirety for lack of personal knowledge.

Is it in or is it out?

1. The custody recommendation of the LCSW?
2. The custody recommendation of the LCSW through the GAL?
3. The GAL report?
4. The custody recommendation of the GAL?
5. The testimony of the PhD?
6. The custody recommendation of the PhD?

Evidence Scenario 3:

Yanna is from Russia and emigrates to the US as a student when she is 20. She meets Pete, a US citizen during her junior year at IU. The fall madly in love and marry the week after graduation. Yanna and Pete have two children. While she enjoys the US, Yanna wants the children to know their Russian heritage and culture, with Pete's full support. The family travels to Russia as frequently as they can. Pete learns and becomes fluent in Russian. The family speaks Russian in the home, but English outside the home. The family joins Russian-American social clubs and the children attend several weeks each year of summer camp devoted to Russian culture. When the children are 10 and 12, the parents divorce. Although she is the primary custodian, Yanna's relationship with her older child greatly deteriorates. Pete files for custody, and the court appoints a GAL. The child clearly states on numerous occasions to both parents and the GAL that she hates her mother and wants to live with her father. The GAL only speaks English. Yanna has text messages with her child, in Russian, that purportedly state that the child loves Yanna, but has been pressured by Pete to say otherwise. Yanna brings her phone to court, along with a transcript of the text messages in English that she prepared.

The parties are in court on Pete's petition to modify.

Is it in or is it out?

1. Screen shots of the text messages in Russian?
2. Yanna's translation/transcription of the text messages?
3. Does it make a difference if counsel asks Pete to read the text messages aloud, in English, from Yanna's phone?
4. Does it make a different if counsel hires a certified translator to read the messages into the record.

Evidence Scenario 4:

Ethel and Ricky have one child born out of wedlock when they are both 29 years old. They enter a paternity agreement and get along fairly well until Ricky, at age 32, marries Ethel's best friend, Lucy. Ethel and Lucy were roommates at Purdue, then pledged the sorority, Alpha Beta Gamma. At Purdue, Lucy enjoyed all the experiences college had to offer, including the experimentation with some recreational substances. Lucy enjoyed herself so much that she had to take a semester off to spend some time at Fairbanks. She also was convicted of check deception trying to get money for drugs. Ethel continued with her studies, and the two women grew apart. Lucy finished her degree at IUPUI, works full time as a 911 operator, and has custody of her two kids from her first marriage.

When Ethel learns of the marriage, she tells Ricky that Lucy is a drug addict and that he'll have no more parenting time as long as that woman is in his house. Ethel contacts an attorney through a Find-a-lawyer website. In her contact email to the lawyer, she notes that she really doesn't think Lucy does drugs, but she's so angry with Ricky for not notifying her that he was going to marry Lucy and wants to get back at him. The attorney emails back that Ethel should deny all parenting time prior to a hearing, and Ethel follows this advice. As it turns out, the attorney also went to Purdue and was an Alpha Beta Gamma. She remembered seeing Lucy do drugs at parties, and knows she left the house to go to rehab. Ricky files a petition for contempt. Through discovery, a copy of the initial email exchange between Ethel and her lawyer is inadvertently shared. About one month prior to hearing, Ethel's lawyer files a motion to withdraw and attaches to the motion a letter to Ethel. That letter notes that Ethel has not kept in sufficient communication with the attorney and has not paid the attorney pursuant to their contract. In the letter, the attorney advises Ethel to get another lawyer prior to hearing and notes that she should offer supervised parenting time to Ricky pending the hearing. Before the motion to withdraw has been granted, Ethel pays her attorney and the attorney withdraws the motion.

The parties are at a hearing on Ricky's petition for contempt. Lucy testifies at the hearing and conveniently can't recall the answers to most of the attorney's questions regarding her time at Purdue.

Is it in or is it out?

1. Ethel's email to the lawyer noting she's really not concerned about Lucy?
2. The attorney's response recommending she deny all parenting time?
3. Lucy's conviction for check deception?
4. The attorney's testimony regarding Lucy's conduct at Purdue?

Evidence Fact Patterns

#1

Fact Pattern

Example: Papa was juggling knives in the kitchen while his three young children played at his feet. His wife, Mama, was on the phone in the same room talking to her sister Louise. Mama, while eyeing her husband's antics, said to her sister, 'Yes, he's practicing his juggling right now, using my best set of kitchen knives.' Just at that moment, Papa dropped one of the knives on his four-year-old son Bobby. Bobby screamed, 'Owwww, Papa cut me!' Mama shouted, 'I warned you not to throw knives in the air with all those kids around!' And Bobby's sister Annie yawned and commented, 'Here we go again, Bobby cries every day about something.' Assume Louise overheard all of these statements and is called to testify about what she heard. Which of these statements would be admissible for the truth of the matter asserted?"

Questions:

"Yes, he's practicing his juggling right now, using my best set of kitchen knives."

- Does it come in?
- If so, under what exception?
- "Owwww, Papa cut me!"
- Does it come in?
- If so, under what exception?

"I warned you not to throw knives in the air with all those kids around!"

- Does it come in?
- If so, under what exception?

"Here we go again, Bobby cries every day about something."

- Does it come in?
- If so, under what exception?

#2 - *Lasater v. Lasater*, 809 N.E.2d 380, 395-396 (Ind. Ct. App. 2004).

Fact Pattern A:

During Father's case-in-chief, he called Shelly Clodfelter to testify. Clodfelter is the school counselor at C.L.'s school.

During her testimony, Father asked her if she was familiar with records that are kept at the school, in particular a conference record, and asked her if she recognized the exhibit marked Petitioner's Exhibit 25. She indicated that she was familiar with the record. Father then asked her if it would be a record normally kept in the regular course of business, to which she replied that it would be. Thereafter, Father moved to admit the exhibit, which was C.L.'s record. Mother objected on the basis that "Ms. Clodfelter has had nothing to do with that. The teacher who has is not here to testify to that and explain that." Tr. p. 1639. The trial court told Mother, "The testimony was this is a regular business record. Any other objection Ma'am?" Tr. p. 1639. Mother responded, "Again, I believe the person who reported that is not here to testify to it . . . ." Tr. p. 1639. The trial court overruled the objection and admitted the record as a regular business exception.

<u>Question:</u>

- Does it come in under the exception provided by Ind. Evidence Rule 803(4) if the teacher is not there to testify?

<u>Fact Pattern B:</u>

Seeking a less high profile life, Arnold and Maria relocate to Indiana. Although they had hoped that the move would help them repair their marriage, it did not. In a highly contentious custody dispute, Maria accuses Arnold of abusing the couple's children. Arnold called Dr. Phil to testify as to the Child Abuse Potential Inventory (CAPI), which test Dr. Phil used to evaluate Arnold. In his testimony, Dr. Phil explained "Now, the CAPI, the Child Abuse Potential Inventory, is a 160-question inventory that is often used, I often use it in cases where there is a question concerning abuse. I'll use it in CPS cases that I evaluate, or child custody cases. It doesn't confirm or disconfirm whether abuse has occurred or whether a person, you know, truly is an abuser or not an abuser, but it helps me to compare their scores with those of bona fide, adjudicated abusers."

Maria argues that Dr. Phil's testimony was presented in violation of Indiana law and the case of *Buzzard v. State*, 669 N.E.2d 996 (Ind. Ct. App. 1996), in particular. In that case, a psychologist was called to testify and presented profile type testimony regarding molested children and pedophiles.

<u>Question:</u>

- Should Maria prevail?

<u>Fact Pattern C:</u>

Dr. Phil also described a "hypervigilant" character type in his testimony. He then answered the following question posed by counsel: "Do you have an opinion as to what the effect on a child would be if the hypervigilant person was the custodial parent and the person about which he or she was concerned was the father of the child? What effect, if any, could that have-long term-on the father of the child? What effect, if any, could that have-long term-on the well-being of the child?" Dr. Phil's answer included a hypothetical situation.

Mother objects on the grounds that Dr. Phil is not qualified to provide this opinion because he has not an evaluation on the custodial parent (Mother, in this case) or the child.

Question:

- Should Mother's objection be sustained?

#3: *Humbert v. Smith*, 664 N.E.2d 356 (Ind. 1996).

Fact Pattern:

Mother offered the results of a court-ordered blood test into evidence to prove Humbert was the Arnold. Arnold objected that Mother did not lay the proper foundation. [Mother, in fact, did not lay the foundation required for business records under 803(6)]. The Court admitted the blood test.

Question:

- On appeal, does the blood test come in? Why or why not?

#4: *Owensby v. Lepper*, 666 N.E.2d 1251 (Ind. Ct. App. 1996).

Fact Pattern:

At the trial, the Court took under advisement the admissibility of a written report by Dr. Richard Lawlor, a clinical psychologist. In an earlier order, the Court had directed that Dr. Lawlor update a previous … report which had essentially involved [J.C.], Wife's daughter by a prior relationship. The first report is referenced in one of the [Marion County Domestic Relations Counseling Bureau] evaluations. Without interviewing Husband, and without a request from the Court, Dr. Lawlor submitted the report directly to the Court, ex *parte*, just prior to trial. The Court then granted the Husband's Motion to Strike the report. The Wife offered the report as an exhibit at trial, over Husband's objection that the report did not constitute an exception to the hearsay rule under the new Indiana Rules of Evidence. The report does not comport [sic] to be a physical or mental evaluation of the parties, and is not then a Trial Rule 35 report, and Dr. Lawlor did not comply with the specific requirements of I.C. 31-1-11.5-22(c), the report is not one anticipated by I.C. [**6] 31-1-11.5-22. The report is hearsay and cross-examination is impossible, and Dr. Lawlor's report is not admissible, however relevant.

Question:

- Should the report have been excluded? Why or why not?

#5: *Apter v. Ross*, 781 N.E.2d 744, 750-751 (Ind. Ct. App. 2003).

Father recorded a conversation between his minor daughter and his ex-wife on his home answering machine. At trial, Father attempted to enter the tape into evidence.

Question:

- What are the requirements to admit a tape recording into evidence in a civil trial?

EVIDENCE CHEAT SHEETS

PRESENT SENSE IMPRESSION EXCEPTION, 803(1)

Definitions

Indiana Rules of Evidence 803(1): "Present Sense Impression. A statement describing or explaining a material event, condition or transaction, made while the declarant was perceiving the event, condition or transaction, or immediately thereafter."

Foundation to Establish Present Sense Impression

Show:

- An event or condition (or transaction, under I.R.E) occurred,
- The declarant has personal knowledge of the event,
- The declarant made the statement during or very shortly after the event, and
- The statement related to the event.

Note: There is NO requirement that the event be an exciting one (this exception is distinct from the excited utterance exception).

Reasoning Behind the Exception

The statement has a greater likelihood of trustworthiness because the declarant has little time for reflection and so is considered less likely to fabricate a self-serving statement.

EXCITED UTTERANCE EXCEPTION, 803(2)

Definitions

Indiana Rules of Evidence 803(2): "**Excited Utterance.** A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition."

Foundation to Establish Excited Utterance Exception

Show:

- An event occurred,
- The event was startling, or at least stressful,
- The declarant had personal knowledge of the event,
- The declarant made a statement about the event, and
- The declarant made the statement while he was in a state of nervous excitement from the event.

Note: This exception *does* require that the event be an exciting or startling one.

Reasoning Behind the Exception

The rationale for the exception lies in the special reliability that is furnished when excitement suspends the declarant's powers of reflection and fabrication. This factor also serves to justify dispensing with any requirement that the declarant be unavailable because it suggests that testimony on the stand, given at a time when the powers of reflection and fabrication are operative, is no more (and perhaps less) reliable than the out-of-court statement. Excited Utterances, Supplements to Notes in Main Volume, 2 *McCormick on Evid.* § 272 (6th ed.) (footnotes omitted).

THEN EXISTING MENTAL, EMOTIONAL, OR PHYSICAL CONDITION, 803(3)

Definitions

Indiana Rules of Evidence 803(3): "**Then Existing Mental, Emotional, or Physical Condition.** A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it related to the execution, revocation, identification, or terms of declarant's will."

Foundation to Establish Then Existing Mental, Emotional, or Physical Condition Exception

Show:
- Where the statement was made,
- When the statement was made,
- Who was present,
- The tenor of the statement (for the child, cannot be one of the child's memory or belief).

Tips:
- Don't focus on "state of mind" to the exclusion of statements relating to physical and emotional condition!
  - Be careful of statements which provide circumstantial evidence of the declarant's state of mind, rather than a direct assertion of the declarant's state of mind. (e.g., The statement "John threatened me," implies that the declarant might be afraid of John, and is not admissible under this rule, while "I am afraid of John" is a direct assertion of the declarant's state of mind and so *is* admissible.)

Notes:
- In Indiana this exception is sometimes divided into subparts, with 803(A) used for statements of emotion or intent, and 803(B) used to admit statements of pain or physical condition.
- This exception differs from 803(4); here, the statement need not be made for purpose of medical diagnosis/treatment and need not be spoken to a health care professional. Statements of past sensations not allowed.

STATEMENTS FOR PURPOSES OF MEDICAL DIAGNOSIS OR TREATMENT, 803(4)

Definitions

Indiana Rules of Evidence 803(4): "**Statements for Purposes of Medical Diagnosis or Treatment.** Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment."

Foundation to Establish Present Sense Impression

Show:

- Statement was made to another,
- for the purposes of diagnosis or treatment, and
- the statement concerns past or present symptoms or sensations or the inception, cause, or source of the condition

EXCEPTION FOR RECORDS OF REGULARLY CONDUCTED ACTIVITY, 803(6)

Definitions

Indiana Rules of Evidence 803(6): "**Records of Regularly Conducted Business Activity.** A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony or affidavit of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate a lack of trustworthiness. The term "business" as used in this Rule includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit**.**"

Foundation to Establish Record of Regularly Conducted (Business) Activity

Show:

- Reports/facts/documents prepared by person within the organization;
- Information was obtained from the person responsible for maintaining the reports/facts/documents;
- Informant had personal knowledge of the facts, reports, or events reported;
- The written report was prepared contemporaneously with the facts or events;
- It was the routine practice of the business/organization to prepare such reports;
- The report was reduced to written form; and
- The report was made in the regular course of business.

Tip: Medical offices, schools, and churches, etc. are all considered "businesses" for the purpose of this rule. A child's statements contained in the entity's records, therefore, should be admissible under this rule.

Section Two

Divorce and the Family Business: Creative Solutions to Difficult Problems and Ethical Dilemmas

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Section Two

Divorce and the Family Business:
Creative Solutions to Difficult
Problems and Ethical Dilemmas………………………………..... James A. Reed
Michael R. Kohlhaas

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Divorce and the Family Business:
Creative Solutions to Difficult Problems and Ethical Dilemmas

Presented by: James A. Reed

With written materials by: Michael R. Kohlhaas and James A. Reed

It is common for a divorce to involve the ownership and operation of a family or other closely-held business entity. While the term "family business" may trigger thoughts of nostalgic businesses, like a corner store or a family farm, today it is as likely to refer to some type of tech start-up, an environmental consulting firm, or a cryptocurrency trading operation. No matter the type of enterprise the family business engages in, they all share a similar set of challenges for divorce purposes.

Family Business Management While the Divorce Is Pending

- How will the family business be run while the divorce is pending?
    - No two family businesses operate in the same way
        - Some have substantially equal involvement by both spouses; others have the involvement of only one spouse.
        - In family businesses with substantial involvement by both spouses, often the spouses' respective involvement is complementary (e.g., one spouse manages the office and the books, while the other tends to business operations).
        - Some family businesses are owned and/or run exclusively by the divorcing couple; others also have involvement by parents, siblings, or other third parties.
    - Will both parties continue to run the family business together, as per past practice?
        - Often, whether this is a possibility hinges on the circumstances that led to the divorce. A couple who is divorcing because they have slowly grown apart are probably more likely to be able to continue running the business

together than a marriage that is ending because of a painful discovery of infidelity.

    - It is not possible in all situations, but having the parties continue to run the business together, consistent with past practice, is usually an optimal arrangement both because it is better for the health of the business operations, but also it gives each party a better insight into how the business is performing financially, which may help reduce suspicion between the parties that money is missing, or that sales are being diverted, etc.

- Or will one party drop out of the day-to-day operations?

    - In some cases, only one party will be materially involved in the family business operations during the divorce. This can create multiple complications.

    - Will there be regular accountings provided to the spouse not involved with running the business?

    - Will the spouse who dropped out of the family business no longer receive a paycheck?

    - Could business operations ever become so bad as to force a receivership or some other third party to assume operations of the business?

- What happens if one spouse decides to walk away from the business, and start up a competitor?

- In dealing with these preliminary issues and the operation of the business, it is important to be mindful of the recent case of *Rambo v. Rambo*, 187 N.E.3d 301 (Ind. Ct. App. 2022).

    - Therein, the Indiana Court of Appeals noted that a divorce court's ability to issue preliminary orders is limited by statute, specifically, Ind. Code 31-15-4.

    - The *Rambo* case held that, absent the agreement of both parties, a trial court cannot order the sale of a marital residence or any other marital property as part of a preliminary order.

    - Ind. Code 31-15-4 provides, in part, as follows:

> (a) In an action for dissolution of marriage under IC 31-15-2 or legal separation under IC 31-15-3, either party may file a motion for any of the following:
>
> (1) Temporary maintenance.
>
> (2) Temporary support or custody of a child of the marriage entitled to support.
>
> (3) Possession of property.
>
> (4) Counseling.
>
> (5) A protective order under IC 34-26-5.

Therefore, it is unclear what if any detailed instructions concerning the operation of a family business during the pendency that the divorce court can issue absent the agreement of the parties. It is also unclear if any orders regarding the operation of the family business would fall under the "possession of property" provision.

Valuation Considerations

- Once the immediate issues of how the business will be run during the pendency of the divorce are resolved, it is typically time to pivot to the valuation of the business.
    - Valuation conundrum: is your client going to be the "buyer" or the "seller"?
    - In many cases, the resolution of this question is obvious, because one spouse has been exclusively involved in the running of the business (e.g., the medical practice will be awarded to the physician spouse.)
        - But in other cases, either spouse could theoretically assume and continue the business without the involvement of the other spouse (e.g., husband and wife architects who are co-owners of an architectural firm.)
    - **Ethical Issue:** What are the ethical considerations of a joint valuation engagement?
    - **Ethical Issue:** What are the ethical considerations of divorce counsel trying to steer the valuation expert towards a high or low number, based upon which party the attorney represents?

Liquidity Problem / Pay Over Time

- Not infrequently, once a divorce establishes a value on the family business, and it is determined that the family business will be retained by only one spouse, there will be

insufficient other assets of the marriage to allocate to the other spouse to offset the family business award.

- In this situation, usually the only option is to have the spouse who is retaining the family business pay the other spouse over time.

- What interest and/or security considerations should the payee spouse demand?

    - Interest? How should the rate be determined?

    - Risk of payor spouse's death

        - Life insurance, other estate planning requirements

    - Risk of payor spouse's default

        - Mortgage

        - Lien on securities or other property

- **Ethical Issue**: if the payee spouse is to receive a large share of property settlement as payments over time, this can mean that counsel for the payee spouse may need to wait to get their legal fees paid over time.

    - Can this create a conflict where the best resolution of the case for the payee spouse is not necessarily the best resolution of the case for that payee spouse's attorney?

Lookback Provision

- One risk of a resolution where one spouse completely buys out the other in the divorce is that the buy-out is based upon some agreed upon valuation, but then the spouse who retains the family business goes on to sell the business at a much higher value after the divorce.

- One option to address this is to include some type of a "lookback" provision in the Decree, which is generally some formula that would calculate a supplemental payment due to the spouse who was bought out, if the family business is sold at some premium and within some time period after the divorce.

    - For example: "If Husband sells Family Business within 24 months of Decree for an amount in excess of $1,000,000, then Husband shall pay to Wife an amount equal to 50% of the gross sales price of the Family Business to the extent it exceeds $1,000,000, as a supplemental property settlement payment."

    - This example is a gross simplification. In practice, drafting these clauses is very tricky.

- In practice, lookback provisions are not common, as the spouse keeping the family business will seldom agree to such a provision in the interest of achieving a clean break with the other spouse.

- Best practice is to include a term in the Decree that the spouse retaining the Family Business will cause the Family Business to execute a mutual release and indemnification agreement with the spouse who is not keeping the business.

    - This prevents (hopefully) any litigation between the departing spouse and the Family Business about events that occurred prior to the divorce.

<u>Continued Co-Owners / Equitable Trust Options</u>

- It is not common, but in some cases the parties will agree to continue to co-own the business after the divorce.

    - Typically, this is unworkable because the same relationship problems that resulted in the filing of a divorce likewise render being ongoing co-owners of the family business unworkable.

    - But, we have seen exceptions. When spouses agree to continue as co-owners of the business after divorce, this usually has the added benefit of avoiding the time and expense of a valuation of the business.

    - It is prudent as part of such a resolution of the case to have the parties engage separate corporate counsel to revisit their operating agreement, buy-sell provisions, and other organizational documents.

    - As part of the post-divorce reorganization process, sometimes the spouses will agree to install "exit rights" in the form of "put options" and "call options."

        - For example, one or both spouses may have an established right to require the other spouse to buy him or her out, at some point in time, for an amount that is either agreed upon in advance or derivable from a formula. But, the key to this put option is that it's *optional*. If the spouse does not wish to be bought out—and instead, say, continue to enjoy dividends and appreciation of value of the business—the spouse can decline to exercise the put option.

        - Similarly, the exit rights may include a call option, in which, at some point in time, one or either of the spouses can require the other spouse to sell his or her interest in the business, again, either at some predetermined value or

based upon a formula. But, as with the put option, the call option is purely optional.

- **Ethics Issue:** What are the ethical considerations of using the same, single attorney who has previously done all the corporate legal work to navigate the corporate changes arising from the parties' divorce?

- In some cases, the parties will agree to resolve the ownership of certain entities by continuing to be equal co-owners; *however*, because of the involvement of other third party owners, or restrictions on transferring ownership of the entity, only one of the spouses can continue as the owner of record.

  - In this situation, the matter can be resolved through the use of a constructive trust that is articulated in the property settlement agreement.

  - For example:

1.01 Business Interests to Be Divided Between Husband and Wife.

(a) Division Entities. Husband is a minority owner of the following business entities: ABC, LLC; DEF, LLC; GHI, LLC; and XYZ, LLC (each is a "Division Entity" or, together, the "Division Entities").

(b) Good Faith Exploration of Re-Titling. The parties shall make a good faith effort to explore transferring and re-titling a one-half (1/2) share of Husband's interests in each of the respective Division Entities to Wife and, if feasible and possible to do so within 60 days, then they shall do so. Any actual costs imposed by any third parties in the course of doing so shall be paid equally by Husband and Wife. The parties acknowledge and agree that such a re-titling requires the consent and cooperation of third parties beyond the scope of the parties' control and, thus, may not be possible. Therefore, there is no absolute or categorical obligation imposed upon either party with respect to re-titling, other than making the good faith effort. Pending a re-titling, and indefinitely thereafter if a re-titling cannot be accomplished, the parties shall comply with the constructive trust equal division of economic value that follows herein.

(c) Constructive Trust and Division of Economic Value of Division Entities. Notwithstanding any other provision herein, after Decree, and until any of the respective Division Entities can be re-titled one-half into Wife's name, if re-titling is possible, all economic consequences arising from Husband's ownership interests in the Division Entities shall be shared equally between Husband and Wife. This includes but is not limited to proceeds of sale, all tax consequences, distributions (if applicable), and contributing to capital calls (if applicable).

(d) Tax Holdbacks. If any or all of Husband's interest in one of the

Division Entities is involved in a transaction that results in capital gains tax consequences (*e.g.*, it is sold), then, unless agreed otherwise, Husband shall hold back Forty Percent (40%) of Husband's transaction receipts (*e.g.*, gross sale proceeds to Husband) to cover the estimated capital gain tax consequences arising from the transaction. If any portion of Husband's interest in one of the Division Entities results in a distribution that is subject to ordinary income consequences, unless agreed otherwise, Husband shall hold back Forty Percent (40%) of Husband's receipts on the distribution for taxes.

(e) True-Ups. Once Husband's tax return for the year in which any of the above transactions with tax consequences occurs is completed and filed, a *pro forma* return (without the given Division Entity transaction) shall be generated to isolate the tax consequences related to the Division Entity transaction, and the parties shall within 30 days thereof undertake a "true-up" between them relative to the amount initially held back for taxes; that is, if the initial holdback for taxes was greater than the actual tax consequences, then Husband shall owe Wife as part of the true-up one-half (1/2) of the amount over-withheld; or, if the initial holdback for taxes was less than the actual tax consequences, then Wife shall owe Husband as part of the true-up one-half (1/2) of the amount under-withheld.)

(f) Continuing Jurisdiction. The Court shall retain continuing jurisdiction to issue supplemental and more specific orders concerning the Division Entities provided such orders are consistent with the overarching goal of this Section, which is to ensure that all economic consequences, favorable and/or unfavorable, occurring after the Decree and arising from Husband's ownership interests in the Division Entities shall be shared equally between Husband and Wife.

Sell the Family Business

- If an inter-spouse buyout of the family business is not a viable solution for both spouses, then another strategy may be to sell the family business and divide the net proceeds. This is a common solution when dividing other types of property, such as the marital residence. However, a sale of the family business may not be possible without a court order if one spouse insists on continuing the business.

- For example: After months of negotiating, Husband and Wife determine that it would be best simply to sell the family business to a third party and split the proceeds equally. Fortunately, the family business has been highly profitable, and the economic cycle is fortuitous for business sales. A third-party purchaser agrees to buy the business for $1 million, which is consistent with the valuation conclusions that were generated for the spouses as part of their divorce proceedings. Accordingly, Husband and Wife will each receive 50% of the net proceeds from the sale of the business.

- However, even if both parties initially agree, selling a private family business may have its own challenges, depending on marketability, profitability, and economic conditions.

- It may be difficult to find an independent third party interested in buying the business for strategic or tactical purposes, and it could take many years to actually sell the business.
- Additionally, the spouses must consider how they will continue to manage the business while it is in the process of being sold.
- The spouses may disagree about the price offered by a third-party purchaser, especially if it is lower than a valuation that was undertaken as part of the divorce proceedings.

Creative Structuring: Planning that Leaves the Business to Children of the Marriage

- When the ownership and/or value of an asset is disputed, one creative resolution is to provide that *neither* spouse will receive it.
- Frequently, this settlement mechanism is used for marital property of modest value, or items like personal property.
- However, there's no reason that it could not theoretically be applied to a family business, too.
- It would likely be a most attractive option if the divorcing spouses were of an age where they were preparing to transition ownership and management of the family business to the next generation, anyway.
- But, if Husband and Wife agree that they will transfer all their ownership in the family business, say, equally among their three adult children, that can completely resolve the issue from a divorce perspective (although it may raise some new estate and gift tax considerations, depending upon the value of the family business.)

Section Three

FALL 2022

SEMINAL UPDATES:

HOW NEW LEGAL DEVELOPMENTS IMPACT ART LAW

Jody Lyneé Madeira, J.D., Ph.D.

Section Three

Seminal Updates: How New Legal Developments Impact ART Law……………..Jody Lyneé Madeira, J.D., Ph.D.

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INTRODUCTION

In vitro fertilization (IVF) is now quite a common procedure in the United States, particularly among women and men in higher socioeconomic demographics levels. IVF is expensive, with the average cycle using "fresh" or unfrozen eggs costing approximately $12,400.[1] Ordinarily, a woman's monthly ovulatory cycle only produces one or two mature eggs. But in IVF, an intended mother or egg donor takes medications designed to stimulate the maturation of multiple eggs in one month, possibly growing over 20 eggs at one time. These eggs are retrieved using ultrasound-guided needle aspiration, generally while the woman is under general anesthesia. Mature eggs are then placed in petri dishes with a special medium with sperm from the intended father or a sperm donor. If a woman's eggs previously had low fertilization rates or a male partner has male factor infertility, embryologists sometimes assist in the process of fertilization through a process known as intracytoplasmic sperm injection, or ICSI, which adds an average of $1,544.[2] The embryos are then left undisturbed for a period of at least three days, after which they should have grown to seven to eight cells in size. Since all of these cells are identical, at this time it is possible to remove one of these cells to perform preimplantation genetic diagnoses (PGD), essentially discovering an embryo's genetic code, increasing the price of an IVF cycle by approximately $3,550.[3] This procedure is most often done to avoid transferring embryos with genetic conditions such as cystic fibrosis. On day three or five following egg retrieval, the embryos are transferred back into the uterus of the intended

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[1] RESOLVE The National Infertility Association, "The Costs of Infertility Treatment," *available at* http://www.resolve.org/family-building-options/making-treatment-affordable/the-costs-of-infertility-treatment.html (last accessed October 6, 2015).
[2] *Id.*
[3] *Id.*

mother or surrogate to attempt to conceive a pregnancy.[4] The Centers for Disease Control report data on IVF success rates annually.[5]

With the increased use of IVF comes an epidemic of embryonic proportions. The most recent empirical update, a research brief from 2003 authored by RAND and the Society of Assisted Reproductive Technology (SART), found that as of April 11, 2002, 396,526 abandoned cryopreserved embryos were still being stored in facilities across the United States.[6] In a *New York Times* article dated June 17, 2015, journalist Tamar Lewin speculated that there might now be a million surplus cryopreserved embryos.[7] Still other cryopreserved embryos are the focus of intense disputes over their disposition following unforeseen events such as partners' death or divorce. And there is a lack of consensus about what to do about either problem.

Nowadays, the vast majority of couples undergoing in vitro fertilization sign embryo disposition agreements in addition to other informed consent forms prior to their cycle to choose what will happen to their embryos should such an unfortunate event come to pass. Options include destroying the embryos, donating them to research, donating them to another couple, keeping them frozen, or transferring them into the intended mother's uterus at a time she is not likely to become pregnant. Not all disposition options may be available at every clinic. Problems occur, however, when patients change their minds about their chosen embryo disposition, particularly between the time they first sign the agreement and the time of divorce.

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[4] There are several good resources for learning about the basics of IVF and other procedures. The National Infertility Association (RESOLVE) (http://www.resolve.org/)has several excellent links on their website. *See, e.g., http://www.resolve.org/family-building-options/ivf-art/.*

[5] Centers for Disease Control and Prevention, "ART Success Rates," *available at* http://www.cdc.gov/art/reports/index.html (last accessed October 6, 2015)

[6] Davis I Hoffman et al., "RAND Research Brief: How Many Frozen Human Embryos Are Available for Research?" (2003), *available at* http://www.rand.org/pubs/research_briefs/RB9038.html (last accessed October 6, 2015).

[7] Tamar Lewin, "Industry's Growth Leads to Leftover Embryos, and Painful Choices," NEW YORK TIMES (June 17, 2015), *available at* http://www.nytimes.com/2015/06/18/us/embryos-egg-donors-difficult-issues.html?_r=1 (last accessed October 6, 2015).

The first question one might have is whether embryos are considered property. Most courts hold that embryos are not "property" subject to division in divorce, but belong to an interim category deserving of special respect because of their potential to become children.[8] A few have held that, while embryos themselves are not property, the contractual right to dispose of embryos in the event of divorce *is* a type of property.[9]

Most states do not have laws regarding embryo disposition in the event of death or divorce.[10] Some states require fertility providers to obtain informed consent regarding embryo disposition, but these statutes might not specify the legal effect of these disposition agreements—to what extent they are binding—or give guidance in the event of divorce or death.[11] In Florida, couples undergoing IVF are required to have a written disposition agreement with their physician, but also establishes rules for situations where there is no written agreement, where the couple jointly shares decision-making authority.[12] Some states also have parentage statutes that "clarify that if a marriage dissolves . . . prior to placement of gametes or embryos, the former spouse will not be considered the legal parent of any subsequently resulting child" absent written consent to do so after divorce.[13] According to Professor Deborah Forman, not only is "placement" ambiguous, but these statutory provisions would allow a former spouse to revoke consent prior to embryo transfer, which significantly weakens the effect of any existing disposition agreements.[14] Finally, one outlier statute is worth of note; In Louisiana, a statute provides that embryos are "juridical persons" and have the same legal rights as live-born

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[8] *See* Davis v. Davis, 842 S.W.2d 588 (Tenn. 1992).
[9] In re Marriage of Dahl, 194 P.3d 834 (Or. Ct. App., 2008)
[10] *See generally* Deborah L. Forman, *Embryo Disposition and Divorce: Why Clinic Consent Forms Are Not the Answer*, 24 J. AM. ACAD. MATRIM. LAW. 57, 89 (2011).
[11] *Id.* at 90; CAL. HEALTH & SAFETY CODE Sec. 125315 (West 2015); MASS. GEN. LAWS ANN. CH. 111L § 4 (West 2015).
[12] FLA. STAT. ANN. § 742.17 (2015).
[13] *See, e.g.*, COLO. REV. STAT. ANN. § 19-106 (West 2015). *See* Forman, *supra* note 8, at 92 for other examples.
[14] Forman, *supra* note 8, at 92-93.

children.[15] This prevents couples with surplus frozen embryos from choosing certain dispositions that would be available in other states, such as disposal or donating the embryos to research.

Because there is such a paucity of state statutory regulation of embryo disposition following death or divorce, state courts have had to take up the torch, addressing the issue through one of several approaches. As of yet, the Indiana Supreme Court has not ruled on this issue; although the Indiana Law Blog reported in July of 2004 that a Hamilton County judge has resolved two such cases this year; in one case, the couple agreed that the woman would have custody and decision making authority over the embryos.[16] Surprisingly, a Westlaw search on Indiana state case law using the terms "embryo disposition," "frozen embryos," "embryo and divorce" yields no relevant results. Some states such as Tennessee have adopted a constitutional balancing test; others such as New York, Texas, New Jersey, and Iowa have held that couples should adhere to any written disposition agreements (although sometimes acknowledging that these agreements are not inviolable since people can change their mind). Still other states, however, have refused to enforce such a preexisting disposition agreement if the parties now disagree on the disposition, instead choosing to enforce the right of one party to refuse to become a genetic parent. In the increasingly unlikely event that a written disposition does not exist, many courts prioritize the wishes of the party wishing to avoid genetic parenthood.

This chapter will describe how courts across the country have resolved embryo disposition disputes in the event of divorce. In Part I, it will explore three main approaches developed in early embryo disposition cases, including the contractual approach,

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[15] La. Rev. Stat. Ann. § 9:122 (West 2014).

[16] Marcia Oddi, "Indiana Law – Who Owns the Embryo?" The Indiana Law Blog (July 11, 2004), *available at* http://indianalawblog.com/archives/2004/07/indiana_law_who.html (last accessed October 6, 2015).

contemporaneous mutual consent, and the constitutional balancing or public policy approach. In Part II, this chapter will discuss more recent case law, highlighting two recent developments: increased adherence to the contractual approach and different outcomes to the constitutional balancing test if one spouse has been rendered permanently infertile. Finally, in Part III, the chapter will conclude by considering how new technologies such as egg freezing and the use of egg precursor cells as well as new legal developments such as same-sex marriage may change the future landscape of embryo disposition case law.

I. INFLUENTIAL EARLY CASES

The earliest and most influential embryo disposition case is undoubtedly the Tennessee Supreme Court's opinion in *Davis v. Davis*.[17] Here, Junior and Mary Sue Davis underwent seven unsuccessful IVF cycles without signing an embryo disposition agreement, yielding seven cryopreserved embryos. Shortly after the embryos were frozen, Junior filed for divorce. While Junior wished to dispose of the embryos, Mary Sue initially wanted to transfer them to her own uterus, and ultimately decided she wanted to donate them to a childless couple. The trial court initially awarded custody to Mary Sue, holding that the embryos were human beings from conception; the Court of Appeals reversed, holding that the embryos were property and awarded custody to both Junior and Mary Sue. The Supreme Court of Tennessee held determined that the embryos were "not, strictly speaking, either "persons" or "property," but occupied an interim category that entitles them to special respect because of their potential for human life."[18] The Davises had a "nature in the interest of ownership" since they had "decision-making authority"

[17] 842 S.W.2d 588 (Tenn. 1992).
[18] *Id.*at 597.

over them.[19] In a hypothetical, the court stated that, had there been a prior disposition agreement, it should be "presumed valid and should be enforced as between the progenitors" because they retain decision-making authority.[20] It recognized, however, that these agreements may nonetheless be problematic:

> life is not static, and that human emotions run particularly high when a married couple is attempting to overcome infertility problems. It follows that the parties' initial "informed consent" to IVF procedures will often not be truly informed because of the near impossibility of anticipating, emotionally and psychologically, all the turns that events may take as the IVF process unfolds.[21]

With no agreement, the Tennessee Supreme Court was forced to resolve this case on other grounds. The Davis court enunciated a three-part test focusing on a) the progenitors' preferences; b) prior agreements; and c) procreation avoidance:

> disputes involving the disposition of preembryos produced by *in vitro* fertilization should be resolved, first, by looking to the preferences of the progenitors. If their wishes cannot be ascertained, or if there is dispute, then their prior agreement concerning disposition should be carried out. If no prior agreement exists, then the relative interests of the parties in using or not using the preembryos must be weighed. Ordinarily, the party wishing to avoid procreation should prevail, assuming that the other party has a reasonable possibility of achieving parenthood by means other than use of the preembryos in question. If no other reasonable alternatives exist, then the argument in favor of using the preembryos to achieve pregnancy should be considered. However, if the party seeking control of the preembryos intends merely to donate them to another couple, the objecting party obviously has the greater interest and should prevail.[22]

Holding that the case would have been closer if Mary Sue had wished to sue the embryos herself and could not achieve parenthood by other reasonable means, the court held that Junior's wish to

[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] *Id.* at 604.

avoid becoming a genetic parent was the more weighty interest.[23] The court made much of the fact that Junior did not want to father a child who would not live with both parents.

Following *Davis*, courts across the United States most often took one of three approaches to resolving embryo disputes: a "contractual" approach, a "contemporaneous mutual consent" approach, and a "public policy" approach.

A. THE CONTRACTUAL APPROACH TO EMBRYO DISPOSITION

Following *Davis*, courts across the country began to anticipate these disputes. In 1998, the Court of Appeals of New York used a different contractual approach to decide another well-known disposition case, *Kass v. Kass*.[24] Steven and Maureen Kass were a divorcing couple with five frozen embryos; while Steven wanted to donate them to research, Maureen wanted to transfer them to her own uterus in an attempt to conceive. Prior to undergoing IVF, they signed four consent forms, including a cryopreservation informed consent form stating that in the event of divorce, a court would determine the embryos' legal ownership in a property settlement, and an addendum stating that the embryos would be donated to research if the couple no longer wished to pursue pregnancy or could not decide on embryo disposition.[25] Three weeks after the parties signed the consent forms, they signed an "uncontested divorce agreement" that affirmed their willingness to adhere to the consent form disposition; nonetheless, it was not long before Maureen requested sole custody of the embryos to attempt to conceive.[26] The trial court granted her custody of the embryos and directed her to implant them within a medically reasonable time, reasoning that a women undergoing IVF had "exclusive decisional authority" over embryos just as a pregnant woman has over a nonviable fetus. The appellate court reversed, holding a

[23] *Id.*
[24] 696 N.E.2d 174 (N.Y. 1998).
[25] *Id.* at 176-77.
[26] *Id.* at 177.

woman's right to privacy and bodily integrity do not take effect before implantation; the court split as to whether the agreement was clear enough to enforce, with the plurality holding that the couple had unanimously consented to donate the embryos for research.[27] Citing *Davis*, the Court of Appeals of New York (the highest state court) actually interpreted the agreement against itself, stating that the couple could not possibly have intended to surrender control over embryo disposition to a court, that the court did not have authority to make such a decision, and that the couple clearly intended to donate the embryos for research.[28] The court directed the embryos to be disposed of pursuant to the parties' agreement.[29] This manner of deciding cases has become known as the "contract approach" to embryo disposition.

The next case of significance came before the Supreme Court of Washington in 2002. In *Litowitz vs. Litowitz*,[30] David and Becky Litowitz had signed two consent forms when they formed embryos from donated eggs and Mr. Litowitz's sperm. Three were transferred to a surrogate and the other two were frozen. A cryopreservation contract directed the embryos be thawed if the couple had not requested an extension beyond five years and that, if the parties could not agree on embryo disposition, they had to petition a court for instructions.[31] Both David and Becky wanted to avoid the destruction of the embryos; the husband wanted to donate them to another couple and the wife wanted to attempt to conceive another child through a surrogate. The trial court awarded the embryos to David based on the "best interest of the child" standard and the Court of Appeals affirmed.[32] The Supreme Court of Washington held that, because the parties had agreed to petition a court for instructions in the event they could not

[27] *Id.* at 180.
[28] *Id.* at 180-81.
[29] *Id.* at 182.
[30] 48 P.3d 261 (Wash. 2002) (en banc).
[31] *Id*. at 263-64.
[32] *Id.* at 264-65.

agree, as here, and that there was clear intent to allow the IVF center to thaw the embryos.[33] Noting that the cryopreservation contract had directed the embryos be thawed after five years unless the parties requested an extension, the court ordered there had been no such request and directed the embryos to be thawed.[34] The dissent, however, argued that the contractual text instructing the couple to petition the court for instructions gave the court discretion to determine an appropriate disposition.[35]

B. THE CONTEMPORANEOUS MUTUAL CONSENT APPROACH TO EMBRYO DISPOSITION

The contemporaneous mutual consent approach, in contrast, requires that both parties agree to embryo disposition before embryos can be used or destroyed. In *In re Marriage of Witten*,[36] the Supreme Court of Iowa decided the fate of 17 embryos belonging to Trip and Tamera Witten. The Wittens had signed an embryo storage agreement that stated that the embryos could be released only with the both parties' written approval, with some exceptions including the death of one or both parties.[37] While Tamera sought to use the embryos herself, Trip neither wanted the embryos to be destroyed or used by Tamera, and accordingly asked the court to enforce the embryo storage agreement.[38] After reviewing three different approaches to resolving embryo disposition disputes (the contractual approach, the contemporaneous mutual consent model, and the balancing test), the Supreme Court of Iowa noted, "we think judicial decisions and statutes in Iowa reflect respect for the right of individuals to make family and reproductive decisions based on their current views and values," and accordingly ruled that "judicial enforcement of an

[33] *Id.* at 271.
[34] *Id.* at 269.
[35] *Id.* at 272-73.
[36] 672 N.W.2d 768 (Iowa 2003).
[37] *Id.* at 772.
[38] *Id.* at 772-73.

agreement *between a couple* regarding their future family and reproductive choices would be against the public policy of this state."[39] The court accordingly rejected the contractual approach and found that signed disposition agreements are enforceable subject to the right of either party to change his or her mind up to the point of embryo use or destruction, opting for contemporaneous mutual consent in which the embryos would be stored indefinitely unless both parties could agree upon their use or destruction, until which time the part(ies) opposing destruction should be responsible for storage fees.[40]

C. THE PUBLIC POLICY APPROACH TO EMBRYO DISPOSITION

But not all courts look to preexisting or contemporaneous agreements to resolve embryos disposition cases. In *A.Z. v. B.Z.*,[41] the Supreme Judicial Court of Massachusetts introduced the "public policy" approach, which mirrors the balancing approach used in *Davis*. This was the first decision to involve a written contract that explicitly awarded embryos to one of the parties in the event of divorce.[42] B.Z. had twin daughters from IVF and had two vials of frozen embryos remaining. Three years later, she used one vial, unsuccessfully transferring one embryo without informing her husband, who learned of this fact only when he received notice from his insurance company.[43] Thereafter, A.Z. filed for divorce and filed a motion to obtain an injunction preventing B.Z. from using the remaining vial. Each time the couple had gone through IVF, they had signed consent forms stating that, in the event of separation, the embryos should be given to the wife for conception attempts.[44] A.Z. signed the first consent form and then signed each form in blank afterwards, after which B.Z. selected the disposition.[45] The

[39] *Id.* at 783.
[40] *Id.*
[41] 725 N.E.2d 1051 (Mass. 2000)
[42] *Id.* at 1054.
[43] *Id.* at 1053.
[44] *Id.* at 1054.
[45] *Id.*

probate court refused to enforce the agreement because of a "change in circumstances," including the birth of twins, the divorce filing, and B.Z.'s desire to have additional children; relying on a balancing test, the judge determined that A.Z.'s desire in avoiding genetic parenthood outweighed B.Z.'s interest in having additional children.[46] Rejecting the *Davis* court's test that preconception agreements are presumptively valid and should be enforced, the Supreme Judicial Court of Massachusetts stated that it was "dubious at best that it represents the intent of the husband and the wife" regarding disposition, and that the form should not be enforced.[47] The court further observed that the consent form was not intended to act as a binding disposition agreement but rather defined the donors' relationship with the clinic, that the agreement did not contain a duration provision, that the form mentioned separation and not divorce, and that it could not conclude that the form represented A.Z.'s intentions for embryo disposition.[48] Finally, the Supreme Judicial Court emphasized that "even if the husband and wife entered into an unambiguous agreement between themselves regarding the disposition . . . we would not enforce an agreement that would compel one donor to become a parent against his or her will."[49] For these reasons, the court held that, "as a matter of public policy, we conclude that forced procreation is not an area amenable to judicial enforcement," and that it would not enforce an agreement that would compel AZ to become a parent against his will since that violated public policy favoring private ordering of family relationships.[50]

The Supreme Court of New Jersey also followed the public policy approach in deciding *J.B. v. M.B.*[51] In this case involving seven frozen embryos, it was M.B., the husband, who

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[46] *Id.* at 1055.
[47] *Id.* at 1056.
[48] *Id* at 1056-57.
[49] *Id.* at 1057.
[50] *Id.* at 1057-58.
[51] 783 A.2d 707 (N.J. 2001).

wished to donate the frozen embryos to an infertile couple, while his wife J.B. preferred they be destroyed.[52] The consent form the couple had signed prior to undergoing IVF stated that they agreed that in the event of marital dissolution control and ownership of the embryos would revert to the IVF program unless a court specified who took control and direction under court order.[53] The trial court granted summary judgement to the wife on the grounds that the embryos were created for procreation within the marriage, which was now impossible, and the appellate court affirmed.[54] Finding that no contract to use or donate the embryos existed since an exception allowed a court order to determine disposition,[55] the Supreme Court of New Jersey turned to public policy, awarding the embryos to J.B. because of her interest in avoiding involuntary procreation, especially since M.B. could still father other children.[56] Citing *A.Z. v. B.Z.,* the court stated, "the laws of New Jersey also evince a policy against enforcing private contracts to enter into or terminate familial relationships,"[57] and so ordered the embryos destroyed.[58] The court intentionally left open the question of whether a now-infertile spouse would have an equal or superior right than that of a spouse seeking to avoid genetic parenthood.[59]

II. TRENDS IN MORE RECENT CASELAW

These prior cases from *Davis v. Davis* to *J.B. v. M.B.* represent the canon of embryo disposition cases—those precedents that make up the backbone of law review articles and case books. However, new cases have since been decided that take the contractual or the public

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[52] *Id.*at 710.
[53] *Id.*
[54] *Id.* at 711.
[55] *Id.* at 713-714.
[56] *Id.* at 716-717.
[57] *Id.* at 717.
[58] *Id.* at 720.
[59] *Id.*

policy/constitutional balancing approach—and some of these cases have gone in very different directions from their predecessors.

A. CONTINUED SUPPORT FOR THE CONTRACT PERSPECTIVE

In the 2006 Texas Court of Civil Appeals case *Roman v. Roman*,[60] Randy and Augusta Roman filed for divorce after having undergone one egg retrieval and embryo fertilization process; they signed consent forms before the cycle choosing to discard the embryos in the event of divorce.[61] The night before the scheduled embryo transfer, the husband withdrew his consent to the procedure and the resulting three embryos were cryopreserved.[62] A month later, they signed an agreement to unfreeze the embryos and transfer them, contingent upon them getting a counselor's approval; however, the couple never met this condition and so the embryos remained frozen.[63] After Randy filed for divorce a few months later, he asked the court to uphold their disposition agreement to discard the embryos, but Augusta wanted to transfer them to her own uterus and agreed to absolve Randy of all parental rights and responsibilities.[64] The trial court awarded the embryos to Augusta.[65]

Randy appealed, arguing again that the disposition agreement should be enforced. Augusta, however, argued that she understood the agreement to apply to embryos only after a transfer attempt had occurred and that she did not intend to destroy all embryos without a transfer attempt.[66] The court held that the trial court erred in awarding the embryos to Augusta, and under the contractual approach found that the disposition agreement should be enforced.[67]

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[60] 193 S.W.3d 40 (Tex. App. 2006)
[61] *Id.* at 42.
[62] *Id.*
[63] *Id.* at 42-43.
[64] *Id.* at 43.
[65] *Id.*
[66] *Id.* at 52.
[67] *Id.* at 55.

The contractual approach found additional support in the Oregon case *In re Marriage of Dahl and Angle*.[68] After getting married and conceiving one child without intervention, Laura Lee Dahl and Darrell Lee Angle unsuccessfully attempted to conceive another through IVF, leaving six frozen embryos. Before undergoing IVF, the couple had signed an embryology laboratory specimen storage agreement providing that the facility could transfer or dispose of the embryos in accordance with the couples' "written joint authorization" or, if the couple was unable or unwilling to execute a joint authorization, pursuant to the wishes of a specific party.[69] On the completed agreement, Laura's name was listed as the recipient, along with both Laura's and Darrell's initials for approval.[70] The agreement also specified the steps that the facility would take to dispose of the embryos upon the parties' noncompliance or death, including donating the embryos for research, which both Laura and Darrell selected and approved; if neither option was selected or if the university could not accomplish the selected option, the agreement specified that the facility could thaw and discard the embryos.[71] After the parties became divorced, Laura testified that she believed that if she and Darrell disagreed on the embryos' disposition, she would have sole control over that matter, and was concerned that any offspring born from them would attempt to contact her existing child and that she would not want another to raise her genetic children.[72] Darrell testified that he had not read or initialed the storage agreement and that he believed that embryos were "life" and was opposed to their destruction and so wished to have them donated to others.[73] The court found that both parties

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[68] 194 P.3d 834 (Or. Ct. App. October 8, 2008).
[69] *Id.* at 836.
[70] *Id.*
[71] *Id.* at 837.
[72] *Id.*
[73] *Id.*

had signed the agreement with a notary present and ordered the embryos to be destroyed, unless they could jointly agree to donate the embryos to research.[74]

On appeal, Darrell argued that the embryos should be awarded to him, since preserving life should outweigh Laura's interest in avoiding genetic parenthood; Laura countered that the court lacked authority over this matter since the embryos were not property subject to court disposition in marital dissolution, and requested that the court order the embryos to be destroyed or donated for research purposes, and asserted her interests in avoiding genetic parenthood prevailed. Finding that the contractual right to determine embryo disposition was property subject to division in marital dissolution,[75] the Court of Appeals of Oregon reviewed existing case law, ultimately adopting the reasoning of *Davis* and *Kass* "in which courts give effect to the progenitors' intent by enforcing the progenitors' advance directive regarding the embryos."[76] Since the Court of Appeals of Oregon found that the storage agreement "evinced the parties' intent," it found that Darrell's interest was inferior to Laura's and so awarded her decision making authority over the embryos, thus affirming the trial court's order for the embryos to be destroyed.[77]

Finally, the contractual approach was also utilized by the Court of Appeals of Washington in *In re Marriage of Nash*.[78] James and Tina Nash underwent IVF to attempt to conceive, signing a cryopreservation agreement stating that in the event of divorce embryo disposition would be determined by Tina; James testified that the couple did not discuss the cryopreservation agreement, that he did not read the agreement before signing, and that Tina

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[74] *Id.*
[75] *Id.* at 839.
[76] *Id.* at 840.
[77] *Id.* at 841-42.
[78] 150 Wash. App. 1029 (Wash. Ct. App. 2009) (unpublished opinion).

signed the form first and initialed certain provisions than told him where to write his initials.[79] Two months later, the couple signed an egg donor agreement stating that both parties would control embryo disposition and that the agreement's terms were only effective for six months after the egg retrieval.[80] Tina and James used the embryos to conceive two children before Tina filed for divorce, after which the couple signed a mediation agreement stating that control over the embryos would be determined by a judge at trial.[81] Tina, who wanted the embryos destroyed, argued that the cryopreservation agreement gave her control of the embryos and that the mediation agreement did not modify its terms.[82] James, however, wished to have more children and countered that Tina only had the authority to determine the embryos' disposition if the agreement was not addressed in the divorce settlement, and that in signing the mediation agreement Tina had agreed to allow a judge to decide who would have control over the remaining embryos.[83]

The trial court held that control over the embryos was to be settled pursuant to the mediation agreement, and awarded James control over the embryos because Tina had no genetic ties to the embryos and so she would not be forced to become a genetic parent against her will and that James had no reasonable alternatives to become a parent.[84] On appeal, the Court of Appeals of Washington affirmed, holding that the couple had agreed in the mediation agreement that the court would determine control over the embryos.[85] Although Tina made last-ditch arguments on appeal, contending that the trial court erred by prospectively terminating her rights to any child born from the embryos and that she had maternal rights per a state statute and the

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[79] *Id.* at 1.
[80] *Id.* at 2.
[81] *Id.* at 3.
[82] *Id.*
[83] *Id.*
[84] *Id.* at 3-4.
[85] *Id.* at 7.

donor agreement, the court rejected both assertions, finding that the donor agreement expired six months after the egg retrieval.[86]

B. NEW DEVELOPMENTS IN CONSTITUTIONAL BALANCING TEST CASES

One recent case featured a rather surprising outcome: the judicial adoption of a balancing approach to award embryos to the party *desiring* genetic procreation instead of the party seeking to void genetic procreation. In *Reber v. Reiss*,[87] the Pennsylvania Superior Court ruled on the case of Andrea Lynn Reiss and Bret Howard Reber, a married couple who underwent IVF in 2004 to preserve Andrea's fertility after she was diagnosed with breast cancer. Neither spouse signed a consent form relating to embryo disposition, and thirteen embryos were produced and cryopreserved.[88] Following her cancer treatment, Andrea was of the opinion that she was infertile. Bret filed for divorce in 2006, afterwards having a child with another woman. Andrea, now 44, sought the frozen embryos for her own use in the marital property division settlement. The Pennsylvania Court of Common Pleas awarded Andrea the embryos, accepting her testimony that her doctors had led her to believe she was infertile and holding that her inability to procreate outweighed Bret's desire to avoid procreation.[89] Opting for the balancing test, the Pennsylvania Superior Court affirmed, stating that her interest in biological procreation through the use of pre-embryos outweighed her husband's interest against procreation.[90] The court held that other pathways to parenthood, such as adoption and foster parenting, were "distinct experience[s]" from being pregnant and having a biological child, and that adoption was not a practical option because Andrea would have to go outside the United States to adopt, adoption

[86] *Id.*
[87] 42 A.3d 1131 (Pa. Super. Ct. 2012).
[88] *Id.* at 1133.
[89] *Id.* at 1134.
[90] *Id.* at 1142.

would be difficult given her history of cancer, and adoption was a complicated process.[91] Moreover, the court observed that it was not against Pennsylvania public policy to force Bret to procreate with Andrea against his will because the state public policy was "silent on the issue of forced procreation under these circumstances."[92]

The result in *Reber* has been followed most recently by the Appellate Court of Illinois, in *Szafranski v. Dunston*, a case with a similar fact pattern.[93] While Karla Dunston and Jacob Szafranski were dating, Karla was diagnosed with non-Hodgkin's lymphoma and asked Jacob to donate sperm for the purpose of creating embryos with her eggs. After Jacob agreed, the couple underwent IVF, signing a consent form stating that "no use could be made of these embryos without the consent of both partners" and that in the event the partnership dissolved the clinic would "abide by the terms of the court decree or settlement agreement regarding the ownership and/or other rights to the embryos."[94] After meeting with an attorney about this issue, the parties requested a co-parenting agreement providing that Jacob agreed to undertake all legal and custodial obligations to a child regardless of the changes in circumstances between the couple, that embryos created would be under Karla's control, and that Karla would control disposition if the couple separated.[95] Although the couple never signed the co-parenting agreement, Jacob donated sperm to Karla, and that IVF cycle resulted in three cryopreserved embryos.[96] The next month, Jacob broke up with Karla, and a few months later sought to enjoin her from using the embryos to preserve his right to not become a genetic parent against his will.[97] The parties filed cross-motions for summary judgment. In her motion, Karla raised two main arguments: a)

[91] *Id.* at 1138-39.
[92] *Id.* at 1142.
[93] 993 N.E.2d 502 (Ill. App. Ct. 2013).
[94] *Id.* at 504.
[95] *Id.*
[96] *Id.*
[97] *Id.* at 504-5.

James was bound by the terms of the co-parenting agreement since he had provided sperm samples and that he had induced her to rely on his representation that he would help her to have her own children, and b) under *Reber*, her interests outweighed his since she had ovarian failure as a result of chemotherapy.[98] In response, Jacob asserted his right not to be a parent, citing to abortion case law for the proposition that a man and women were in equal positions in the cryopreserved embryo context because the embryos had not yet implanted into the woman's uterus, and argued that *In re Marriage of Witten* should apply.[99] The circuit court found for Karla, holding that she should have control over the embryos under contract, promissory estoppel, and *Reber*'s balancing of interests analysis.[100]

On appeal, Jacob asserted the same arguments he had made in summary judgment. After reviewing the three primary approaches to resolving cryopreserved embryo disputes, the Appellate Court of Illinois announced it would adopt the contractual approach and "join those courts that have held that "agreements between progenitors, or gamete donors, regarding disposition of their pre-zygotes should generally be presumed valid and binding, and enforced in any dispute between them."[101] When there are no advance agreements, the court held that it was proper to balance the parties' interests.[102] The court rejected Jacob's analogy to abortion, finding that couples may waive their constitutional rights by contract or otherwise, and that there was no constitutional impediment to either enforcing a disposition agreement or balancing the parties' interests.[103] The court remanded the case to the circuit court to apply the contractual approach.[104]

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[98] *Id.* at 506.
[99] *Id.*
[100] *Id.*
[101] *Id.* at 514.
[102] *Id.*
[103] *Id*. at 516.
[104] *Id.* at 518.

On remand, the circuit court held a two-day trial and again entered judgment in favor of Karla, finding that the parties had an oral contract allowing Karla to use the embryos without Jacob's consent and found that the informed consent document did not modify or contradict that oral contract; moreover, the court reiterated that Karla's interests were superior under a balanced of interests test.[105] When Jacob appealed to the Appellate Court of Illinois a second time, that court affirmed, stating that Jacob's agreement to donate sperm to Karla constituted an oral contract and that they intended to allow Karla to use the embryos without limitation, that the informed consent agreement did not modify or contradict this oral contract, and that such advance agreements should be upheld because they "allow parties to settle their rights and obligations *before* an issue over rights or obligations arise."[106] Moreover, the informed consent agreement never specified what would happen if Jacob and Karla separated, which the court viewed as a "purposeful omission,"[107] and that it did not need to rule on the enforceability of the co-parenting agreement.[108] Finally, the court agreed that Karla's interests were superior under the balancing test, since she could not otherwise have a biological child and Jacob's privacy concerns were "largely moot now due as a result of the very public nature of this case"[109] and his concern that Karla's use of the embryos would prevent him from finding love in the future were speculative.[110] Indeed, the court remarked that

> many of Jacob's cited concerns were risks that both parties faced and knowingly accepted in agreeing to undergo IVF . . . . At the heart of the evidence is an irrefutable fact: the sole purpose for using Jacob's sperm to fertilize Karla's last viable eggs was to preserve her ability to have a biological child in the future at some point after her chemotherapy treatment ended.[111]

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[105] Szafranski v. Dunston, 34 N.E.3d 1132 (Ill. App. Ct. 2015).
[106] *Id.* at 1155.
[107] *Id.* at 1156.
[108] *Id.* at 1161.
[109] *Id.* at 1163.
[110] *Id.* at 1161.
[111] *Id.* at 1162.

The latest case to reach national media prominence, *Findley v. Lee*, reached the San Francisco Superior Court in August 2015. Stephen Findley and Mimi Lee underwent fertility treatments immediately before they were married, after Mimi was diagnosed with breast cancer, signing agreements stating that the embryos should be discarded in the event of divorce.[112] Five frozen embryos resulted from this cycle. Thereafter, Mimi underwent treatment for breast cancer that rendered her infertile; now 46, she seeks to use the embryos to conceive a genetic child whereas Stephen wanted them destroyed since he only wanted to conceive a child with Mimi if they were married.[113] As of September 19, 2015, the case remained undecided.

Also brewing in the national news is the case of "Modern Family" star Sofia Vergara and her ex-fiancé Nick Loeb, who underwent IVF together, signing agreements that Loeb describes as stating that "any embryos created through the process could be brought to term only with both parties' consent." [114] According to Loeb, he and Sofia had undergone IVF twice, with the first cycle resulting in two embryos, both of which were unsuccessfully transferred into surrogates. A second cycle created two more embryos, but the couple could not agree on their use and split up after Nick gave Sofia an "ultimatum."[115] Loeb not only sued Sofia for custody of the embryos, but has taken his case to the public, publishing an op-ed in the *New York Times* arguing that the embryos are "our girls" and asserting that Sofia's preferred option, freezing them forever, is "tantamount to killing them."[116]

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[112] Howard Mintz, "Frozen Embryo Trial: San Francisco Judge Now Set to Decide Legal Showdown," SAN JOSE MERCURY NEWS (August 4, 2015) (http://www.mercurynews.com/crime-courts/ci_28586100/frozen-embryo-trial-san-francisco-judge-now-set (last accessed October 6, 2015).
[113] *Id.*
[114] Nick Loeb, "Sofía Vergara's Ex-Fiancé: Our Frozen Embryos Have a Right to Live," NEW YORK TIMES (April 29, 2015), *available at* http://www.nytimes.com/2015/04/30/opinion/sofiavergaras-ex-fiance-our-frozen-embryos-have-a-right-to-live.html?_r=0 (last accessed October 6, 2015).
[115] *Id.*
[116] *Id.*

III. FUTURE TRENDS IN EMBRYO DISPOSITION CASES – NEW TECHNOLOGIES AND LEGAL DEVELOPMENTS

These latest judicial developments may well leave one wondering what the future holds. Recent case law as well as pending cases have unquestionably altered the landscape of embryo disposition precedent in the United States. These cases suggest two trends. First, courts are leaning towards the contractual approach for resolving embryo disputes, enforcing the progenitors' intentions as manifested in documents signed prior to undergoing IVF. Second, if one partner (thus far, the wife) is now infertile, a court may apply a constitutional balancing test to find that her interest in having a genetic child outweighs the other's right to avoid genetic parenthood. Of course, most courts use the balancing test only in the absence of an enforceable agreement between the parties, such as the oral contract that existed in *Szafranski*. *Findley v. Lee* offers an interesting twist on this fact pattern, as the couple had signed a form jointly agreeing to discard embryos in the event of divorce. It is difficult to argue that two cases as dissimilar as *Reber* and *Szafranski* could constitute a "trend" towards holding in favor of an partner who is now infertile seeking to use frozen embryos, particularly since courts across all fifty states may reach very different results.

A. EGG FREEZING AND OTHER TECHNOLOGIES

Divorce disputes over frozen embryos will likely be an unusual fact pattern in the not-too-distant future, however, due to advances in egg freezing technology. Rather than creating and cryopreserving embryos, if each partner freezes their respective gametes—women their eggs, and men their sperm—than each can depart from their relationship with their genetic material in hand. After the American Society for Reproductive Medicine deemed the technique no longer "experimental" in 2012, egg freezing has become more common, with employers such

as Facebook and Google contributing $20,000 toward such expenses for their employees.[117] Though egg freezing engenders a veritable thicket of cultural and ethical disputes, it has undisputed potential for solving the thorny issue of embryo disposition upon relational dissolution, as well as overcoming religious or moral objections to storing frozen embryos. The problem, of course, is that currently only a few women are taking advantage of this technology, although the *Washington Post* reported in November 2014 that "among urban women in their 30s, freezing is trending."[118] But at a cost of $12,500 to $18,000, egg freezing, like IVF, remains out of the reach of many women, and birth rates are still "fuzzy."[119]

The future will very likely bring still other technologies that frustrate us and challenge law's ability to pick up the pieces in the event of relational dissolution—bringing to mind technologies such as the "bokanovskified egg" described in Aldous Huxley's novel *Brave New World*, to which we, like Huxley's insidious Director, might well say, "Progress."[120] For example, entrepreneurial companies such as OvaScience are eliminating the need for egg donors with its Augment technology, in which mitochondria from a woman's egg precursor cells ("immature egg cells found in the protective lining of her ovaries") to stimulate mitochondria in her eggs (this technology has not yet received FDA approval and is currently available in Toronto, Canada but not in the United States).[121] OvaScience is also working on techniques to

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[117] Danielle Friedman, "Perk Up: Facebook and Apple Now Pay for Women to Freeze Eggs," NBC NEWS (October 14, 2014), *available at* http://www.nbcnews.com/news/us-news/perk-facebook-apple-now-pay-women-freeze-eggs-n225011 (last accessed October 6, 2015).
[118] Lavanya Ramanathan, "Egg Freezing's Popularity is Booming, But It's a Choice That Offers No Guarantees," WASHINGTON POST (November 20, 2014), *available at* https://www.washingtonpost.com/lifestyle/style/egg-freezings-popularity-is-booming-but-its-a-choice-that-offers-no-guarantees/2014/11/20/6b28752c-6b5b-11e4-9fb4-a622dae742a2_story.html (last accessed October 6, 2015)
[119] *Id.*
[120] ALDOUS HUXLEY, BRAVE NEW WORLD 3 (1932) (Reprint, Buccaneer Books 1995).
[121] OvaScience, "First Baby Born with OvaScience's AUGMENT Fertility Treatment," *available at* http://www.ovascience.com/news/article/first-baby-born-with-ovasciences-augment-fertility-treatment (last accessed October 6, 2015).

increase egg reserve and to obtain fertilizable eggs without the hormone injections currently used in IVF.[122] The key development will most likely be freezing partners' eggs and sperm separately to avoid the "splitting the baby" conundrums posed when the members of a divorcing couple both have genetic stakes in cryopreserved embryos and divergent ideas about their optimal disposition.

B. LEGAL DEVELOPMENTS SUCH AS SAME-SEX MARRIAGE

Legal developments, like technological developments, can also pose new challenges. In the wake of the Supreme Court's holding in *Obergefell v. Hodges*[123] extending the right to marry to same-sex couples under the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment, it is unclear whether disputes over frozen embryos belonging to same-sex couples would be resolved differently than those between heterosexual couples. One key difference between the same-sex and opposite-sex embryo disposition cases is that while heterosexual couples can choose to use donor gametes as substitutes for their own egg and/or sperm, same-sex couples undergoing IVF *must* use at least one form of donor gamete, which means that at least one of the partners will not be genetically related to any resulting children. In one 2005 case before the California Supreme Court, *K.M. v. E.G.,*[124] two women were in a same-sex relationship as registered domestic partners; the couple underwent IVF using eggs from K.M. that were then fertilized with donor sperm and transferred into E.G.'s uterus, conceiving twin girls that K.M. later parented. Thereafter, the couple separated, and E.G. rebuffed K.M.'s attempts to continue a parental relationship. Although the lower court held that K.M. was merely an egg donor who had signed a form waiving her parental rights, the California Supreme Court

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[122] OvaScience, "About Us," *available at* http://www.ovascience.com/about-us/ (last accessed October 6, 2015).
[123] 576 U.S. _____ (2015).
[124] 117 P.3d 673 (Cal. 2005).

held that both women were mothers of the children, since K.M. was genetically related to the children, and found that the donor form that K.M. had signed was not determinative of parentage since "a woman who supplies ova to be used to impregnate her lesbian partner, with the understanding that the resulting child will be raised in their joint home, cannot waive her responsibility to support that child. Nor can such a purported waiver effectively cause that woman to relinquish her parental rights."[125]

If embryo disposition disputes between same-sex couples were resolved like *In re Marriage of Nash*, with the court holding that the partner who is not genetically related to the embryos has no claim upon them, then in each dispute at least one partner would be in the same unenviable situation as Tina Nash. Thus, it would be especially important to execute a contract giving both partners equal decision making authority over any resulting cryopreserved embryos; recall that the egg donor agreement in *Nash* gave Tina decision making authority, but only temporarily as it expired a mere six months after egg retrieval. However, this would still arguably be highly inequitable, as it would require same-sex couples to take additional measures that heterosexual couples did not have to complete to safeguard their decision making authority over embryos as well as their parental rights.

Same-sex couples and advocacy groups in several states are currently suing or petitioning state legislatures to modernize their laws by recognizing that all intended parents using assisted reproductive technologies (ART) like IVF to conceive children should be recognized as parents, including listing both same-sex parents on birth certificates.[126] As these movements gather

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[125] *Id.* at 682.
[126] *See, e.g.,* National Center for Lesbian Rights, "Summary and History: California Assembly Bill 960," *available at* http://www.nclrights.org/cases-and-policy/policy-and-legislation/legislation-california-assembly-bill-960/ (last accessed October 6, 2015) (removing the requirement that couples involve a doctor using ART and "allow[ing] unmarried people using assisted reproduction to be fully recognized as parents on the same terms as married parents"); Peter Hancock, "Same-Sex Couples Take Birth Certificate Cases to Federal Court," LAWRENCE JOURNAL-

strength and their results come to fruition they will likely influence judicial resolutions of same-sex embryo disputes, with the result that courts will increasingly emphasize partners' reproductive intentions as well as genetic relationships as the California Supreme Court did in *K.M. v. E.G.*

Once again, technology may soon step into the fray and render this controversy moot. Researchers at the University of Cambridge in the United Kingdom and the Weizmann Institute of Science in Israel reported in early 2015 that they had created primordial germ cells (PCGs) using human stem cells derived from adult skin which later develop into eggs and sperm. This technology would allow *both partners* in a same-sex relationship to be genetically related to resulting embryos. One of the lead researchers, Dr. Jacob Hanna, reported that "gay groups had already shown interest in the project."[127] This technology would also enable people rendered infertile by cancer treatment and other conditions to have genetically related children.

CONCLUSION

In conclusion, then, a number of predictions are possible regarding future resolutions of embryo disposition in the event of divorce. First, the contractual approach will continue to dominate embryo disposition case law since the vast majority of couples must sign consent forms selecting embryo dispositions in the event of death or divorce prior to undergoing IVF. Second, technologies such as egg freezing could potentially eliminate embryo disposition disputes as there is no need to resolve such matters if the members of a divorcing couple simply take their respective gametes. While it is uncertain how many years must pass before embryo disposition

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WORLD (October 5, 2015), *available at* http://www2.ljworld.com/news/2015/oct/05/same-sex-couples-take-birth-certificate-cases-fede/ (last accessed October 6, 2015).

[127] Dana Dovey, "Stem Cell Breakthrough Opens Door For Two-Dad Babies In As Little As 2 Years," MEDICAL DAILY, *available at* http://www.medicaldaily.com/stem-cell-breakthrough-opens-door-two-dad-babies-little-2-years-323350 (last accessed October 6, 2015).

cases are affected by these technological changes, the eventual influence of such factors seems beyond doubt.

UPDATES – 2022

New Legal and Policy Developments

1. **How Indiana's Abortion law (SB1) affects ART**
    a. IVF treatment
        i. SB1 specifically exempts in vitro fertilization – IC § 16-34-1-0.5
        ii. States that life begins at fertilization: "Human physical life begins when a human ovum is fertilized by a human sperm." IC § 16-34-2-1.1
        iii. Indiana law has no definition of "pregnancy," and so, without further clarification, this language could be interpreted to state that life begins before an embryo implants in the uterine lining.
        iv. Therefore, SB1 could apply to a woman at any time from embryo transfer to a negative pregnancy test. After embryo transfer, a woman could be considered pregnant because she is aware that there is a fertilized embryo in her uterus until a negative pregnancy test or menstruation confirms that there is no pregnancy.
    b. Cryopreserved embryos
        i. Cryopreserved embryos are not mentioned in SB1, but because they are the product of in vitro fertilization, they should be exempted under IC § 16-34-1-0.5.
        ii. The exemption of IVF distinguishes embryos fertilized ex vivo (laboratory) from those fertilized in vivo (uterine); the former are not covered under SB1. It is unclear, therefore, whether ex vivo embryos constitute "human physical life."
        iii. This sets up a two-tier structure where an embryo constitutes a human life if it originates from coitus/spontaneous conception or has been transferred into a woman's uterus following IVF, but may not constitute life if fertilization occurs in a laboratory.
2. **ABA – Model Act Governing Reproduction** (January 28, 2019) – covers everything from mental health evals to loss of embryos due to various factors, disposition of embryos, parental status of donors and other issues relating to children of ART
3. **Second parent adoption for same-sex married couples**
    a. Is a birth certificate proof of parentage?
        i. Administrative document – not granted full faith and credit like a court order
    b. Henderson v. Adams/Henderson v. Box, 947 F.3d 482 (7th Cir. 2017)
        i. Feb. 2015 – eight female same-sex couples sued in S.D. Indiana for injunctive relief after Indiana denied both spouses' signatures on Indiana's Live Birth Worksheet; their children were given birth certificates only listing the birth spouse as the legal parent. The plaintiffs were told that the county did not allow the non-birthing spouse to sign the birth certificate without a court order. To be recognized on the birth certificate, the non-

birthing spouse would have to legally adopt the child. Moreover, because there was no "father" listed on the worksheet, the child was legally born out of wedlock and could only take the birth mother's last name even if she were married.

   ii. Ashlee and Ruby Henderson conceived a son in 2015 through artificial insemination who was gestated by Ruby, but Indiana refused to allow Ashlee to be listed and told her that she would have to legally adopt to have her parental rights acknowledged.
   iii. June 2016 – The U.S. District Court for the Southern District of Indiana ruled that these statutes violated the U.S. Constitution and Equal Protection and Due Process clauses and imposed a permanent injunction. Indiana Attorney General Greg Zoeller appealed to the Seventh Circuit, where the case was argued in May of 2017, but no opinion was issued for two years.
   iv. The Supreme Court of U.S. issued a *per curiam* decision in *Pavan v. Smith* (2017) holding that a similar Arkansas statute was unconstitutional.
   v. January 17, 2020 – The Seventh Circuit affirmed the lower court's ruling, reasoning that under a "presumption of parentage" statute, the spouse of the biological parent was presumed to be the child's second parent to provide the child with greater legal protections. The court ruled that both parents in a same-sex couple should be listed as parents on the birth certificate regardless of their biological ties, so that they can enjoy the same rights as heterosexual parents. Indiana General Attorney Hill appealed the decision to the Supreme Court, which denied Indiana's petition for cert.

c. Indiana statutes
   i. IC § 31-19-2-2 – any adult can petition to adopt, no state laws explicitly prohibit LGBTQ
   ii. IC § 31-19-2-4 – married person must petition to adopt jointly with their husband or wife
   iii. IC § 31-19-2-4 – any married person can adopt the child of their spouse through stepparent adoption

4. Fertility fraud

a. Indiana passed a law creating civil and criminal causes of action for fertility fraud in 2019.
   i. Indiana Code § 34-24-5 – allows a woman, her spouse, or the child born from the fraudulent artificial insemination to sue a health care provider who knowingly or intentionally used their own gametes without the patient's informed written consent.
   ii. This also permits a donor to sue a health care provider for using the donor's gametes when the provider knew or should have known the gametes were used without the donor's consent or in ways other than that to which the donor consented.

        iii. Plaintiffs can either choose liquidated damages of $10,000 or pursue a lawsuit for compensatory and punitive damages, the costs of the fertility treatment, and reasonable attorney's fees
        iv. Plaintiffs must sue by 10 years after the child's 18th birthday, OR 20 years after the procedure is performed, OR five years after the earliest date on which the person discovers evidence sufficient to bring an action through DNA analysis or becomes aware of a recording providing evidence sufficient to bring an action, OR the defendant confesses.
    b. The Indiana crime of fertility fraud is a Level 6 felony. IC § 35-43-5-4(b)(10).
    c. Fertility fraud cases have received jury awards in March and April of 2022
        i. Vermont – John Boyd Coates - $5.25 million ($5M punitive, $250,000 compensatory) – reduced to $2.2 million
        ii. Colorado – Paul Jones and clinic - $8.75 million (Jones 30% liable, clinic 70% liable; $3.75M of $8.75M total judgment was punitive damages.

5. **Colorado donor-conceived persons protection law - "Protections for Donor-conceived Persons and Families" (2022)**
    a. SB 22-224 – This bipartisan bill made CO the first state in the U.S. to bar anonymous sperm and egg donation and limit the number of families that can be created from one donor
    b. Takes effect Jan. 1, 2025
    c. Donors have to agree prior to donation to release identifying information and medical history to their donor-conceived children who turn 18.
    d. Donors are limited to creating 10 families in or outside CO.
    e. ART agencies must be licensed.
    f. ART agencies and clinics must request updates from donors every three years.
    g. ART agencies and clinics must permanently maintain records of donors' identifying information and medical history, number of families established with donor's gametes, genetic screening and testing.
    h. Once an ART agency has a record of or should know that 25 families have been established with a donor's gametes in or outside of CO, that agency shall not match or provide gametes from this donor to additional families.
    i. Before donation, each tissue donor and intended recipient should receive written educational materials developed by the Department of Public Health and Environment.

6. **Embryo and egg destruction due to clinic failure**
    a. March 2018 – 2 clinics had major incidents on same date, resulting in several lawsuits
        i. Pacific Fertility Center, San Francisco – 3,500 frozen eggs and embryos
            1. This incident was due to a parts defect that prevented accurate temperature monitoring; storage tank maker Chart Industries knew of this issue but did not recall units or warn about the problem.

2. $15M jury verdict against one clinic based on 5 patients (In re Pacific Fertility Centers Litigation, N.D. Cal.) – Chart Industries 90% liable, Pacific Fertility 10% liable

ii. University Hospitals Fertility Clinic, Cleveland – 4,000 eggs and embryos

1. Remote alarm system on tank was turned off (supposed to alert staff members to temperature swings)
2. Tank needed preventative maintenance – had been having issues with part that was supposed to automatically refill liquid nitrogen – it was being refilled manually.
3. More than 150 families settled claims in 2019, but some lawsuits are ongoing

b. Dec. 2019 – New Jersey becomes the first state to regulate the storage of human embryos (C.26:2A-23).

i. By early 2021, any facility storing human embryos in NJ must be licensed by the NJ Department of Health.

ii. Those who operate or assist in operating an embryo storage facility without a license, who use fraud/misrepresentation to obtain a license or in the subsequent operation of a facility, who offer/advertise/provides services from unlicensed facility, or who violates any other provision is guilty of a crime of the third degree (3-5 years imprisonment, fine of up to $15,000, felony conviction).

7. Surrogacy

a. DC, Washington, NJ, NY have passed legislation

i. DC – was illegal until 2017 – compensated surrogacy is allowed, traditional surrogacy is allowed, but parentage order not issued until 48 hours after baby is born, intended parents and surrogates must meet certain requirements

ii. NJ – surrogacy agreements enforceable under 2018 legislation, reasonable living expenses allowed, intended parents can get pre-birth agreement, traditional surrogacy permitted only if uncompensated with pre-birth order

iii. NY – legalized gestational surrogacy in 2021, allows compensated surrogacy, pre-birth parentage orders allowed, can get insurance for surrogates and intended parents' financial losses if surrogate does not perform

b. Cases

i. Strickland case –

1. Mississippi, same-sex couple conceived child through AI from anonymous donor in 2011 and couple separated in 2013. County Chancery Court found that non-bio parent could not be a legal parent because anonymous sperm donor had parental rights that needed to be terminated; Mississippi Supreme Court found that anonymous sperm donor could not be a parent and that equitable

estoppel prevented the bio parent from challenging the non-bio parent's legal parentage

ii. MI – LeFever v. Matthews – same-sex couple used reciprocal IVF (LeFever was bio mother, Matthews the gestational mother) – supposed to give birth in OH, but twins were born prematurely in Michigan – OH issues birth certificates to both moms , but Michigan does not so only Matthews was listed – twins were given LeFever's last name. Trial court ruled that Matthews was a surrogate and not a birth parent, removed her from the birth certificates, etc. Appeals court stated that court erred and that the lack of a genetic link didn't preclude Matthews from being a "natural parent."

iii. WI – Timmons-Olson case – married gay couple got frozen embryo donated as a gift, chose a WI surrogate, but rogue judge saw surrogacy as human trafficking nixed the interim order giving the couple parental rights and appointed an independent order to represent the child, required all parties to testify at formal depositions who had a Christian radio broadcast and who brought in another lawyer from a firm that had worked with Liberty Counsel – charged massive legal fees

iv. Internationally – babies have been denied citizenship, Singapore case, French ECHR cases

1. COVID-19 and travel restrictions left infants in liminal space
2. Singapore high court approved on appeal a gay man's application to adopt his biological sum, district judge initially refused permission to adopt him – policy against formation of same-sex families but child's welfare would be improved if adoption order was made
3. France refused to grant legal recognition to parent-child relationships established in the U.S> between children born from surrogacy and intended parents, unable to obtain recognition of parent-child relationships legally established abroad – ECHR said that this undermined children's identity in French society and violated their right to a private life under the European Convention on Human Rights

c. Including abortion in surrogacy contracts after *Dobbs* is very tricky

d. May 6, 2021- CO surrogacy law signed into law, effective immediately CRS 19-4.5-102(2)

i. Establishes consistent standards and procedural safeguards, protect all parties in surrogacy agreements, recognize tech advances in ART an allow them to be used according to public policy of state

ii. Applies to gestational and genetic surrogacy equally, does not apply to other ART techniques

iii. Surrogate requirements

iv. Must be 21, have given birth to at least one child before, complete a med eval related to the surrogacy arrangement by a licensed medical doctor, complete mental health consultation by licensed MHP, have independent representation of their choice by attorney licensed in CO throughout surrogacy arrangement
v. Intended Parent requirements
    1. Be at least 21 years of age
    2. Complete med eval related to the surrogacy arrangement by a licensed medical doctor, have independent legal representation of their choice throughout the surrogacy agreement
    3. NOT required to be married or partnered, not required to be genetically related to child
vi. Law applies if:
    1. At least one party is a resident of CO or birth anticipated to occur in CO or ART performed pursuant to agreement will take place in CO
vii. Misc – requirement to sign before notary, agreement must be completed before a medical procedure occurs other than the med eval and mental health consultation, intended parents may pay for surrogate's attorney, compensate surrogate, specific provisions for divorce/death
viii. Termination of agreement – either party may terminate prior to embryo transfer or after failed transfer, no penalty or liquidated damages except in cases of fraud
ix. Parentage orders – may be issued pre- or post- birth, enforcement stayed until birth of child, if parentage order issued in another state, the order must be registered with a CO court before being valid in CO

8. **Posthumous reproduction**
    a. Zhu case (NY, 2019) – implied consent for Posthumous Sperm Retrieval (PSR) - NY Supreme Court granted deceased man's parents full authority to decide ultimate disposition of son's sperm, including for future procreative purposes – had not expressed his intent to reproduce while alive, but court relied on his registration as an organ donor and past statements that he wanted to one day have a family of his own as finding presumed intent that parents were the proper party to make this decision – parents emphasized son's wishes to be a farther, cultural importance of continuing family legacy, and remedy for personal grief
    b. Robertson v. Saadat (CA Ct. of App., 2020) – required that gamete provider create a formal writing of their intent to provide sperm or eggs to be used for conception after their death

Embryo Disposition Caselaw Update

1. **Bilbao v. Goodwin, 2017 WL 5642280 (Conn. Super. Ct. Oct. 24, 2017)**

   a. Supreme Court of Connecticut adopted the contractual approach to determine embryo disposition; the storage agreement unambiguously stated that the parties had agreed that preembryos would be discarded in the event of divorce.
   b. The contract approach maximized parties' procreative liberty; making decisions in advance improved decision making and minimized communication problem; the approach reinforced state policy favoring enforcement of intimate partner agreements; and this approach aligned with the majority of states.
   c. In 2019, the Supreme Court of Connecticut affirmed the use of the contractual approach but found that the agreement was enforceable because there was consideration. The case was remanded, so that the embryos could be disposed of pursuant to the cryopreservation storage agreement.
2. **Matter of Marriage of Guardado, 2018 WL 718990 (Wash. Ct. App. Feb. 6, 2018)**
   a. Court of Appeals of Washington characterized appropriate analysis used by the trial court as balancing the parties' interests.
   b. But it appears that the court utilized the contemporaneous mutual consent approach.
   c. Husband wanted to use the embryo; the wife did not want to have a child.
   d. Trial court ruled the embryo would be stored at the husband's expense, but the parties could come to a future agreement regarding its disposition. Ultimately the court awarded the parties joint ownership.
3. **In re Marriage of Rooks, 429 P.3d 579 (Colo. 2018)**
   a. Featured a divorcing couple with three children; the wife wanted to use remaining embryos.
   b. Court first looked to the agreement between the parties.
   c. If there is no agreement, court applies a balancing interests approach including factors like intended use of embryos, ability of party seeking to preserve embryos to have biological children through other means, original reasons for undergoing IVF, hardship for party seeking to avoid genetic parenthood, either party's bad faith attempt to use the embryos as leverage. Courts CANNOT consider the party's ability to afford a child, the number of existing children, and whether a party can adopt instead.
4. **Finkelstein v. Finkelstein, 79 N.Y.S.3d 17 (N.Y. App. Div. 2018)**
   a. The Supreme Court of New York, Appellate Division, held that the lower court did not have authority to determine who owned the embryo and the ex-husband's revocation of consent was enough to revoke his consent to continue the IVF process.
   b. The plain language of the consent agreement authorized either party to withdraw consent, and the husband had signed a form revoking his consent to the use of his genetic material.
   c. Embryo could not be used by husband or wife but was ultimately awarded to the husband to ensure it is disposed of under the contract agreement.
5. **In re Marriage of Fabos and Olsen, 2019 WL 2219696 (Colo. Ct. App. May 23, 2019)**

   a. Colorado Court of Appeals – Parties signed an agreement with the clinic that did not specify a disposition for embryos in the event of divorce. The agreement stated that embryo disposition following divorce would be directed by court decree/settlement.
   b. The appellate court concluded that the trial court erred in weighing the wife's interest in donating more heavily than the husband's interest in avoiding procreation and remanded the case for rebalancing.

6. **Torres v. Terrell, 438 P.3d 681 (Ariz.Ct.App. 2019), Terrell v. Torres, 456 P.2d 13 (Ariz. 2020)**
   a. The Arizona Supreme Court applied K law to determine embryo disposition in a contract that permitted either destruction of the embryos upon divorce or having a court decree or settlement direct the disposition of the embryo; language suggested that without a contemporaneous agreement to use the embryos, the parties would donate them. The Arizona Supreme Court focused on a contract provision that stated that embryos could not be used to produce a pregnancy against the wishes of the other. However slim the ex-wife's chances of conceiving, she could not do without her husband's consent. The court ultimately ruled that the embryos should be donated. After the Arizona Supreme Court's decision, the wife appealed; the appellate court found in her favor and awarded her the embryos. The husband appealed that ruling and the Arizona Supreme Court stated that unless the parties unilaterally agreed on what to do with the embryos, the court could only opt to donate them.
   b. Embryo legislation – 25-318.03 – Judge must award embryos to divorcing spouse

7. **K.G. v. J.G., 72 Misc.3d 593 (2021)**
   a. A wife filed a Motion for Declaratory Judgment regarding her rights under an IVF contract with her husband and fertility clinic containing a contract for the cryopreservation of embryos. The husband argued that he was concerned over the wife's fitness to parent and the possibility of having to pay child support.
   b. The Supreme Court of Suffolk County, New York held that the husband's arguments could not succeed because these were foreseeable consequences when the husband entered into the IVF contract.

Section Four

Mediating Difficult Issues Involving Children & Property

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Section Four

Mediating Difficult Issues Involving Children & Property

Mediating Difficult Issues Involving Children & Property ……………………………………… Jill E. Goldenberg
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ADVANCED MEDIATION TIPS AND THE ABC'S OF MEDIATING

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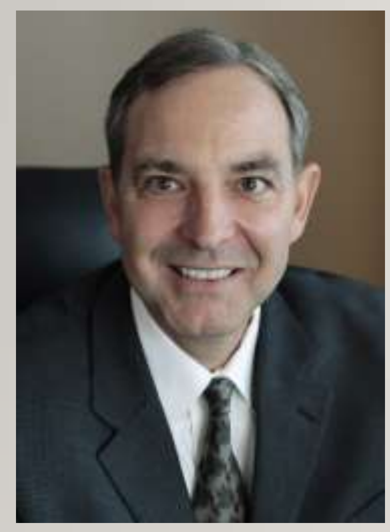

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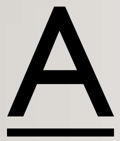


IS FOR

AMBIGUITY

…can be resolved by discussing and understanding the context of the underlying matter.

B

IS FOR

BALANCE

BALANCE

- Elicit information from both participants as evenly as possible
- Do not let one person dominate the conversation
- Bridge the gap in knowledge
- Can be imbalance in mental stability of parties
- Can be inequality of attorneys
- Power imbalance
- Coaches help with balance
- Preparation by attorneys with their client is crucial (role play)

IS FOR

CONVERSATION

PUTS PEOPLE AT EASE

"AT THE SAME TIME…"

AVOID "BUT"

AVOID ABSOLUTES

"AND"

"THANK YOU"

D

IS FOR

DEFUSE

"DUDE."

"How can I help?"

"What do you suggest?"

"I hear you."

"Don't let it control you."

DEFUSE

- Ask your bartender
- Anger, fear, and suspicion
- Making people pause for just a moment can reset the atmosphere
- Take a break (make them take a walk)
- Brain needs time to calm down
- Let person know they can ask for a break before starting

E

IS FOR

EMPATHY

EMPATHY

- The ability to connect emotionally or intellectually is critical to developing trust.
- Demonstrate a sense of common purpose.
- Use mirroring responses.
- Accept other people's quirks.

F

IS FOR

FUTURE

History has already happened.

FUTURE

- “What is important now, what’s important next?’
- “How would that help you get closer to what you hope for?”
- “What is it about _______ that is important to you?”

G

IS FOR

GOALS AND CONCERNS

A goal is the end toward which effort is directed to achieve.

GOALS AND CONCERNS

- Disentanglement?
- Tell us your goals.
- What do you worry will happen if ______?
- What concerns will keep you up at night if not addressed?
- What did you understand about your spouse's concerns?

H

IS FOR

HEALTH

MENTAL, EMOTIONAL, AND PHYSICAL

HEALTH

- Screen for domestic violence
- Don't expect rational thoughts from irrational people
- Consider using coaches
- Attorney-assisted mediation benefits
- Address perceived impairments
- Utilize appropriate outside professionals

COMMON MEDIATION MENTALITIES

Defensive

Not Invested

Resentful

Helplessness

Entrenched

Apprehension

Anger

Close-minded

Exhausted

Sadness

Denial

COMMON MEDIATION MENTALITIES

Jealous

Stubborn

Bully

Hopelessness/Hopefulness

Frustration

Stressed

Anxiety

Splitting

Vindictive

Numb

COMMON MEDIATION MENTALITIES

Know-It-All

Grieving

Manipulative

Uninformed

Paranoid

Overwhelmed

Betrayed

Spinning

Victimized

Vengeful

Depression

Regretful

I

IS FOR

INTERESTS

An INTEREST is a basic need that is related to your goal.

INTERESTS

- Focus on future interests, not positions.
- An interest may be housing and stability.

J

IS FOR

JENGA

Each step is integral to the whole process.

JENGA

- Every statement, process application, or nonverbal expression made needs to be carefully thought through.
- One perceived biased action can risk the entire mediation.

K

IS FOR

K.I.S.S.

KEEP IT SIMPLE STUPID.

L

IS FOR

LISTEN

LISTEN

- People need to be heard.
- Listen until they say they are finished.
- They must get it out to mentally move on.

M

IS FOR

MEETINGS

MEETINGS

- Lawyers together
- Lawyers and client
- All together
- Seating
- Caucusing
- Post-it notes

N

IS FOR

NEUTRAL

It is their life, not yours.

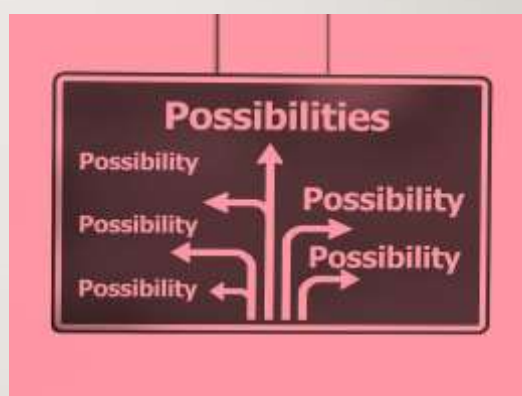
NEUTRAL

- Stay openminded.
- Don’t be judgmental.
- Shift parties’ goals from winning to finding common ground.

O

IS FOR

OPTIONS



Explore all options no matter how ridiculous or potentially unachievable.

OPTIONS

- Minimize anchoring.
- Avoid tunnel vision.
- Sometimes the best option isn't to find a resolution of a concern or goal, it's to find the process that will lead to the answer.

P

IS FOR

PROBE

Probe below the surface for economic and noneconomic values.

PROBE

- Know the elements of the law in question.
- Do not give legal advice.
- Utilize a financial neutral as needed.

Q

IS FOR

QUIET

Silence is your friend.

QUIET

- You are not learning if you are talking.
- Make participants talk.

R

IS FOR

REFRAMING

- “Sounds like _____ is something you really value.”
- “I see that _____ really matters to you.”
- “So you are hoping that an agreement will meet your desire for _____.”
- “How might that address your concern about _____?”

S

IS FOR

STYLES

Traditional Mediation

Collaborative Mediation

Facilitative

Mediating Collaboratively

Mediation/Arbitration

Evaluative

T

IS FOR

TRANSPARENCY

Discovery good, secrecy bad.

TRANSPARENCY

- Transparency provides faith in the process.
- It enables trust.

U

IS FOR

UNCERTAINTY

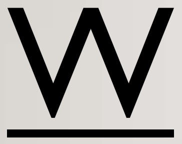
Break the complex into easily digestible portions.

UNCERTAINTY

- Uncertainty breeds anxiety.
- It is not complicated; it is just voluminous.

V IS FOR VOICE

- Mostly keep an even tone of voice.
- Pick your moments to accentuate.



IS FOR

WITTY BANTER

"Dude…"

"Whaaat?"

"Do you kick puppies too?"

"Accept it, don't expect it."

"Orrr…"

"Or not…"

"Keep your emotions on the inside."

WITTY BANTER

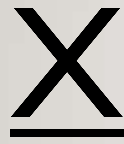
"I'm not the sharpest tool in the shed, but I'm in the shed."

"Have you ever considered meditation?"

"It only appears like I'm not paying attention."

"What we have here is a failure to communicate."

"God gave you two ears and one mouth for a reason!"



IS FOR

X-RAY VISION

"I see your body language. What is going on?"

"You look discouraged, why?"

Y

IS FOR

BE YOU.

Z

IS FOR

ZOOM

WELCOME TO A VITRUAL WORLD

ZOOM

- Build in breaks – Zoom fatigue
- Treat like a final pretrial
- Need more preparation
- Like watching a football game live (feel more) vs on TV (see more)
- Less ability to persuade person or attorney on Zoom (i.e. take attorney in the hall)
- On Zoom, you can see everyone in a mediation
- In breakout rooms, other side is at home and can relax, get lunch, etc. rather than sit and wait for mediation to come back in a caucus
- Can text with client

ARBITRATION CHEAT SHEET

FAMILY LAW ARBITRATION ACT codified at I.C. § 34-57-5-1 et seq.

Note, however, that an appellate court opinion interpreting or construing this statute has precedential value only for family law arbitration and does not apply to any other type of arbitration.

Who can be a family law arbitrator?

- -an attorney certified as a family law specialist in Indiana
- -a private judge qualified under Rule 1.3 of the ADR Rules
- -a former magistrate or commissioner of an Indiana court of record, or
- -an attorney who is a registered domestic relations mediator under Rule 2.5(B) of the ADR Rules

Types of family law matters to Arbitrate:

- -dissolution of marriage
- -petition to establish child support
- -petition to establish custody
- -petition to establish parenting time
- -petition to modify a decree, order or judgment entered under IC 31

Can only arbitrate if both parties are represented by attorneys or both parties are pro se. The Act does not apply if one party is represented by an attorney and the other is pro se.

If both parties agree to arbitration, they shall file an agreement with the Court identifying who they have chosen or they need to let the Court know to supply them with a panel of three attorneys qualified and willing to serve as a family law arbitrator from which the attorneys can strike.

The written agreement to arbitrate must state that the parties confer jurisdiction on the family law arbitrator to dissolve the marriage and to determine child support, custody, parenting time and any other matter over which the trial court would have jurisdiction concerning family law.

Unless BOTH parties agree in writing to repudiate the agreement to arbitrate, the agreement to submit to family law arbitration is VALID, IRREVOCABLE & ENFORCEABLE until the judgment is entered.

Within fifteen (15) days of selection of the arbitrator, either party may request in writing to have a record made of the proceeding. In the written request, the party is to specify the manner of recording and preserving the transcript. The family law arbitrator can select a person to record the proceedings and administer oaths.

The family law arbitrator shall sign a written copy of his or her oath to faithfully perform his or her duties of the family law arbitrator and to support and defend to the best of his or her ability the constitution and the laws of Indiana and the United States and shall submit his or her written oath to the Court.

The family law arbitrator shall comply with the division of marital property statute, as well as the child support and parenting time guidelines.

The family law arbitrator SHALL issue written findings of fact and conclusions of law within thirty (30) days of the hearing, unless the parties consent to an extension which can be extended to ninety (90) days from the hearing.

The family law arbitrator sends the findings to the parties and the court. The Court shall enter judgment on the findings and conclusions and an order for an entry on the docket regarding the judgment.

An Appeal may be taken after the entry of judgment as with any judgment in a civil action.

The fees for the family law arbitrator are to be shared equally by both parties unless otherwise agreed in writing.

The family law arbitrator may order a party to pay a reasonable amount for the cost of a party to maintain or defend the proceeding, and attorney fees and costs arising before the commencement of the proceedings or after the entry of judgment.

Fees for the family law arbitrator shall be paid not later than thirty (30) days after the court enters judgment.

The Indiana Supreme Court Rules for Alternative Dispute Resolution apply to family law arbitration in all matters not covered by the statute.

ADR RULES

Arbitrator has immunity

Binding arbitration my only be ordered by a judge upon the agreement of the parties

Case remains within the jurisdiction of the court that referred the case to ADR.

Hearing not open to public

Discovery Rules apply

Rules of Evidence need not apply

TIPS

Conduct Conference with Arbitrator and Attorneys (similar to case management conference) to determine:

1. whether and how the proceeding will be recorded
2. the issues and whether they all can be heard on the same date
3. scheduling the hearing and the time necessary for the hearing(s)
4. discovery time-table and manner of discovery
5. number of witnesses
6. manner in which evidence shall be received (application of ADR rules for submission of materials? See 3.4(B))
7. application of rules of evidence
8. formality (summary presentation of evidence?)
9. scheduling ongoing conferences

For practitioners, consider bifurcation of an issue to be arbitrated

Consider including an arbitration clause in a mediated agreement or an arbitration clause for a particular matter.

Consider an arbitration clause in a settlement agreement

PROS AND CONS

PROS:

Ability to choose your arbitrator

Maintaining privacy Saving

time

Saving money

CONS:

Costs (arbitrator and court reporter)

Fewer formalities

No record if the parties did not have one made

FAMILY LAW ARBITRATION ACT:

IC 34-57-5 Chapter 5. Family Law Arbitration

34-57-5-1Applicability of chapter
34-57-5-2Family law arbitration authorized; family law arbitration procedures
34-57-5-3Validity of family law arbitration agreement
34-57-5-4Residency requirements
34-57-5-5Guidelines
34-57-5-6Record of proceeding
34-57-5-7Written findings of fact and conclusions of law
34-57-5-8Division of property in dissolution of marriage
34-57-5-9Summary dissolution decrees in dissolution of marriage
34-57-5-10Award modification after written findings of fact and conclusions of law are made
34-57-5-11Appeals
34-57-5-12Family law arbitrator fees
34-57-5-13Application of Indiana Supreme Court Rules for Alternative Dispute Resolution

IC 34-57-5-1 Applicability of chapter

Sec. 1. (a) This chapter is applicable only to the family law matters described in section 2 of this chapter and does not apply to any other type of arbitration. An appellate court opinion interpreting or construing this chapter has precedential value only for family law arbitrations and does not apply to any other type of arbitration.

(b) This chapter is applicable only to an action in which each party is:

(1) represented by an attorney; or

(2) pro se.

This chapter does not apply if one (1) party is represented by an attorney and the other party is pro se.

As added by P.L.112-2005, SEC.2.

IC 34-57-5-2 Family law arbitration authorized; family law arbitration procedures

Sec. 2. (a) In an action:

(1) for the dissolution of a marriage;

(2) to establish:

(A) child support;

(B) custody; or

(C) parenting time; or

(3) to modify:

(A) a decree;

(B) a judgment; or

(C) an order;

entered under IC 31;

both parties may agree in writing to submit to arbitration by a family law arbitrator.

(b) If the parties file an agreement with a court to submit to arbitration, the parties shall:

(1) identify an individual to serve as a family law arbitrator; or

(2) indicate to the court that they have not selected a family law arbitrator.

(c) Each court shall maintain a list of attorneys who are:

(1) qualified; and

(2) willing to be appointed by the court;

to serve as family law arbitrators.

(d) If the parties indicate that they have not selected a family law arbitrator under subsection (b)(2), the court shall designate three (3) attorneys from the court's list of attorneys under subsection (c). The party initiating the action shall strike one (1) attorney, the other party shall strike one (1) attorney, and the remaining attorney is the family law arbitrator for the parties.

(e) In a dissolution of marriage case, the written agreement to submit to arbitration must state that both parties confer jurisdiction on the family law arbitrator to dissolve the marriage and to determine:

(1) child support, if there is a child of both parties to the marriage;

(2) custody, if there is a child of both parties to the marriage;

(3) parenting time, if there is a child of both parties to the marriage; or

(4) any other matter over which a trial court would have jurisdiction concerning family law.

As added by P.L.112-2005, SEC.2.

IC 34-57-5-3 Validity of family law arbitration agreement

Sec. 3. Unless both parties agree in writing to repudiate the agreement, an agreement to submit to arbitration by a family law arbitrator under this chapter is:

(1) valid;

(2) irrevocable; and

(3) enforceable;

until the judgment is entered in the matter in which arbitration has taken place.

As added by P.L.112-2005, SEC.2.

IC 34-57-5-4 Residency requirements

Sec. 4. For arbitration to take place under this chapter, at least one (1) of the parties must have been:

(1) a resident of Indiana; or

(2) stationed at a United States military installation in Indiana;

for at least six (6) months immediately preceding the filing of the petition or cause of action.

As added by P.L.112-2005, SEC.2.

IC 34-57-5-5 Guidelines

Sec. 5. (a) A family law arbitrator shall comply with the:

(1) child support; and

(2) parenting time;

guidelines adopted by the Indiana supreme court in family law arbitration if there is a child of both parties to the marriage.

(b) Before assuming the duties of a family law arbitrator, a family law arbitrator must take an oath to:

(1) faithfully perform the duties of the family law arbitrator; and

(2) support and defend to the best of the family law arbitrator's ability the constitution and laws of Indiana and the United States.

(c) The family law arbitrator shall sign a written copy of the oath described in subsection (b) and submit the signed copy to the court.

As added by P.L.112-2005, SEC.2.

IC 34-57-5-6 Record of proceeding

Sec. 6. (a) A record of the proceeding in family law arbitration may be requested by either party if written notice is given to the family law arbitrator not more than fifteen (15) days after the family law arbitrator has been selected.

(b) Written notice under subsection (a) must specify the requested manner of recording and preserving the transcript.

(c) The family law arbitrator may select a person to record any proceedings and to administer oaths.

As added by P.L.112-2005, SEC.2.

IC 34-57-5-7 Written findings of fact and conclusions of law

Sec. 7. (a) Except as provided in subsection (b), the family law arbitrator shall make written findings of fact and conclusions of law not later than thirty (30) days after the hearing.

(b) If both parties consent, the period for the family law arbitrator to make written findings of fact and conclusions of law may be extended to ninety (90) days after the hearing.

(c) The family law arbitrator shall send a copy of the written findings of fact and conclusions of law to:

(1) all parties participating in the arbitration; and

(2) the court.

(d) After the court has received a copy of the findings of fact and conclusions of law, the court shall enter:

(1) judgment; and

(2) an order for an entry on the docket regarding the judgment.

As added by P.L.112-2005, SEC.2.

IC 34-57-5-8 Division of property in dissolution of marriage

Sec. 8. (a) In a dissolution of marriage case, the family law arbitrator shall:

(1) divide the property of the parties, regardless of whether the property was:

(A) owned by either party before the marriage;

(B) acquired by either party in his or her own right:

(i) after the marriage; and

(ii) before final separation of the parties; or

(C) acquired by their joint efforts; and

(2) divide the property in a just and reasonable manner by:

(A) division of the property in kind;

(B) setting the property or parts of the property over to one (1) of the parties and requiring either party to pay an amount, either in gross or in installments, that is just and proper;
(C) ordering the sale of the property under the conditions the family law arbitrator prescribes and dividing the proceeds of the sale; or
(D) ordering the distribution of benefits described in IC 31-9-2-98(b)(2) or IC 31-9-2-98(b)(3) that are payable after the dissolution of marriage, by setting aside to either of the parties a percentage of those payments either by assignment or in kind at the time of receipt.

(b) The division of marital property under this section must comply with IC 31-15-7-5.
As added by P.L.112-2005, SEC.2.

IC 34-57-5-9 Summary dissolution decrees in dissolution of marriage

Sec. 9. In a dissolution of marriage case, at least sixty (60) days after the petition or cause of action is filed, the family law arbitrator may enter a summary dissolution decree without holding a hearing if verified pleadings have been filed with the family law arbitrator, signed by both parties, containing:
(1) a written waiver of hearing; and
(2) either:
(A) a statement that there are no contested issues in the action; or
(B) a written agreement made in accordance with IC 31-15-2-7 that settles any contested issues between the parties.
As added by P.L.112-2005, SEC.2.

IC 34-57-5-10 Award modification after written findings of fact and conclusions of law are made

Sec. 10. A family law arbitrator may modify an award after making written findings of fact and conclusions of law if:
(1) a party makes a fraudulent misrepresentation during the arbitration;
(2) the family law arbitrator is ordered to modify the award on remand; or
(3) both parties consent to the modification.
As added by P.L.112-2005, SEC.2.

IC 34-57-5-11 Appeals

Sec. 11. An appeal may be taken after the entry of judgment under section 7(d) of this chapter as may be taken after a judgment in a civil action.
As added by P.L.112-2005, SEC.2.

IC 34-57-5-12 Family law arbitrator fees

Sec. 12. (a) Except as provided in subsection (b), fees for the family law arbitrator shall be shared equally by both parties unless otherwise agreed in writing.

(b) The family law arbitrator may order a party to pay:
(1) a reasonable amount for the cost to the other party of:
(A) maintaining; or
(B) defending;
any proceeding under this chapter; and
(2) attorney's fees, including:

(A) amounts for legal services provided; and
(B) costs incurred:
(i) before the commencement of the proceedings; or
(ii) after entry of judgment.

(c) Fees for the family law arbitrator shall be paid not later than thirty (30) days after the court enters judgment.
As added by P.L.112-2005, SEC.2.

IC 34-57-5-13 Application of Indiana Supreme Court Rules for Alternative Dispute Resolution

Sec. 13. The Indiana Supreme Court Rules for Alternative Dispute Resolution apply to family law arbitration in all matters not covered by this chapter.
As added by P.L.112-2005, SEC.2.

ADR RULES

RULE 3. ARBITRATION

Rule 3.1. Agreement to Arbitrate

At any time fifteen (15) days or more after the period allowed for a peremptory change of venue under Trial Rule 76(B) has expired, the parties may file with the court an agreement to arbitrate wherein they stipulate whether arbitration is to be binding or nonbinding, whether the agreement extends to all of the case or is limited as to the issues subject to arbitration, and the procedural rules to be followed during the arbitration process. Upon approval, the agreement to arbitrate shall be noted on the Chronological Case Summary of the Case and placed in the Record of Judgments and Orders for the court.

Rule 3.2. Case Status During Arbitration

During arbitration, the case shall remain on the regular docket and trial calendar of the court. In the event the parties agree to be bound by the arbitration decision on all issues, the case shall be removed from the trial calendar. During arbitration the court shall remain available to rule and assist in any discovery or pre-arbitration matters or motions.

Rule 3.3. Assignment of Arbitrators

Each court shall maintain a listing of lawyers engaged in the practice of law in the State of Indiana who are willing to serve as arbitrators. Upon assignment of a case to arbitration, the plaintiff and the defendant shall, pursuant to their stipulation, select one or more arbitrators from the court listing or the listing of another court in the state. If the parties agree that the case should be presented to one arbitrator and the parties do not agree on the arbitrator, then the court shall designate three (3) arbitrators for alternate striking by each side. The party initiating the lawsuit shall strike first. If the parties agree to an arbitration panel, it shall be limited to three (3) persons.

If the parties fail to agree on who should serve as members of the panel, then each side shall select one arbitrator and the court shall select a third. When there is more than one arbitrator, the arbitrators shall select among themselves a Chair of the arbitration panel. Unless otherwise agreed between the parties, and the arbitrators selected under this provision, the Court shall set the rate of compensation for the arbitrator. Costs of arbitration are to be divided equally between the parties and paid within thirty (30) days after the arbitration evaluation, regardless of the outcome. Any arbitrator selected may refuse to serve without showing cause for such refusal.

Rule 3.4. Arbitration Procedure

(A) Notice of Hearing. Upon accepting the appointment to serve, the arbitrator or the Chair of an arbitration panel shall meet with all attorneys of record to set a time and place for an arbitration hearing. (Courts are encouraged to provide the use of facilities on a regular basis during times when use is not anticipated, i.e. jury deliberation room every Friday morning.)

(B) Submission of Materials. Unless otherwise agreed, all documents the parties desire to be considered in the arbitration process shall be filed with the arbitrator or Chair and exchanged among all attorneys of record no later than fifteen (15) days prior to any hearing relating to the matters set forth in the submission. Documents may include medical records, bills, records, photographs, and other material supporting the claim of a party. In the event of binding arbitration, any party may object to the admissibility of these documentary matters under traditional rules of evidence; however, the parties are encouraged to waive such objections and, unless objection is filed at least five (5) days prior to hearing, objections shall be deemed waived. In addition, no later than five (5) days prior to hearing, each party may file with the arbitrator or Chair a pre-arbitration brief setting forth factual and legal positions as to the issues being arbitrated; if filed, pre-arbitration briefs shall be served upon the opposing party or parties. The parties may in their Arbitration Agreement alter the filing deadlines. They are encouraged to use the provisions of Indiana's Arbitration Act (IC 34-57-1-1 et seq.) and the Uniform Arbitration Act (IC 34-57-2-1 et seq.) to the extent possible and appropriate under the circumstances.

(C) Discovery. Rules of discovery shall apply. Thirty (30) days before an arbitration hearing, each party shall file a listing of witnesses and documentary evidence to be considered. The listing of witnesses and documentary evidence shall be binding upon the parties for purposes of the arbitration hearing only. The listing of witnesses shall designate those to be called in person, by deposition and/or by written report.

(D) Hearing. Traditional rules of evidence need not apply with regard to the presentation of testimony. As permitted by the arbitrator or arbitrators, witnesses may be called. Attorneys may make oral presentation of the facts supporting a party's position and arbitrators are permitted to engage in critical questioning or dialogue with representatives of the parties. In this presentation, the representatives of the respective parties must be able to substantiate their statements or representations to the arbitrator or arbitrators as required by the Rules of Professional Conduct. The parties may be permitted to demonstrate scars, disfigurement, or other evidence of physical disability. Arbitration proceedings shall not be open to the public.

(E) Confidentiality. Arbitration proceedings shall be considered as settlement negotiations as governed by Ind. Evidence Rule 408. For purposes of reference, Evid.R. 408 provides as follows:

Rule 408. Compromise and Offers to Compromise

Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept a valuable consideration in compromising or attempting to compromise a claim, which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution. Compromise negotiations encompass alternative dispute resolution.

(F) Arbitration Determination. Within twenty (20) days after the hearing, the arbitrator or Chair shall file a written determination of the arbitration proceeding in the

pending litigation and serve a copy of this determination on all parties participating in the arbitration. If the parties had submitted this matter to binding arbitration on all issues, the court shall enter judgment on the determination. If the parties had submitted this matter to binding arbitration on fewer than all issues, the court shall accept the determination as a joint stipulation by the parties and proceed with the litigation. If the parties had submitted the matter to nonbinding arbitration on any or all issues, they shall have twenty (20) days from the filing of the written determination to affirmatively reject in writing the arbitration determination. If a nonbinding arbitration determination is not rejected, the determination shall be entered as the judgment or accepted as a joint stipulation as appropriate. In the event a nonbinding arbitration determination is rejected, all documentary evidence will be returned to the parties and the determination and all acceptances and rejections shall be sealed and placed in the case file.

Rule 3.5. Sanctions

Upon motion by either party and hearing, the court may impose sanctions against any party or attorney who fails to comply with the arbitration rules, limited to the assessment of arbitration costs and/or attorney fees relevant to the arbitration process.

FORMS

SAMPLE CLAUSE IN MEDIATED SETTLEMENT AGREEMENT PERTAINING TO ARBITRATION

Contents of Marital Home and Responsibility for Extra-Curricular Activities. This Agreement does not address the division of the contents of the marital home located at 1234 Main Street, Indianapolis, IN, or responsibility for the children's extra-curricular activity expenses. The parties shall exercise their best efforts to agree on this division of marital home contents, including without limitation which party shall receive which items, and responsibility for removing and disposing of items neither party wants. The parties shall also exercise their best efforts to agree on responsibility for the children's extra-curricular activity expenses. If the parties are unable to resolve either or both of these issues, the parties shall retain John Smith as Family Law Arbitrator under the Family Law Arbitration Act, in order to resolve this issue. Each party shall pay one-half the arbitrator's fees.

STATE OF INDIANA	)	IN THE MARION SUPERIOR CT
	) SS:	
COUNTY OF MARION	)	CAUSE NO.________________

IN RE THE MARRIAGE OF:)
)
JANE DOE,)
)
Petitioner,)
)
and)
)
JOHN DOE,)
)
Respondent.)
____________________________________)

OATH OF ARBITRATOR

Comes now, ________________________, having been selected as family law arbitrator pursuant to I.C. 34-57-5 *et seq.* in the *Matter of the Arbitration Agreement of Jane Doe v. John Doe*, and being eligible to serve as family law arbitrator as defined by I.C. 34-6-2-44.7, being first duly sworn, hereby accepts the appointment to serve as family law arbitrator. The undersigned will faithfully perform the duties of the family law arbitrator and comply with the terms and the issues set forth in the Agreement to Arbitrate and will support and defend to the best of the undersigned's ability the constitution and laws of Indiana and the United States.

____
(Name of Arbitrator)

STATE OF INDIANA	)	IN THE MARION SUPERIOR CT
	) SS:	
COUNTY OF MARION	)	CAUSE NO.________________

IN RE THE MARRIAGE OF:)
)
JANE DOE,)
)
Petitioner,)
)
and)
)
JOHN DOE,)
)
Respondent.)
__________________________________)

AGREEMENT TO ARBITRATE

Comes now the Petitioner, Jane Doe (hereinafter referred to as "Wife"), in person and by counsel, and the Respondent, John Doe (hereinafter referred to as "Husband"), in person and by counsel, and pursuant to I.C. § 34-57-5, submit this Agreement to Arbitrate as follows:

1. The parties have selected ______________ to serve as family law arbitrator. ___________ is qualified to serve as family law arbitrator by virtue of __________ as set forth in I.C. § 34-6-2-44.7( ). [if no arbitrator has been selected, the parties need to indicate to the court that they have not selected a family law arbitrator and request that the court designate three attorneys for striking with the party initiating the action striking first]

2. The parties confer jurisdiction on the family law arbitrator to dissolve

the marriage and to determine child support, custody and parenting time (if there is a child of both parties of the marriage) and any other matter over which the trial court would have jurisdiction concerning family law.

3. The issues for arbitration are as follows:

   a. dissolution of marriage
   b. disposition of property and debt of the marital estate;
   c. determination of custody (legal and physical);
   d. determination of parenting time;
   e. determination of child support (including arrearages if any);
   f. payment of health insurance coverage and uninsured medical expenses;
   g. ability to claim one or more of the children on taxes;
   h. payment of extracurricular activities;
   i. payment of extraordinary medical or educational expenses;
   j. allocation of post secondary educational expenses and definition of such expenses;
   k. attorney fees.

4. The parties acknowledge that this agreement to arbitrate is valid, irrevocable and enforceable until judgment is entered unless both parties agree in writing to repudiate this Agreement.

5. At least one party has been a resident of Indiana or stationed at a United States military installation in Indiana for at least six (6) months immediately preceding the filing of the petition or cause of action.

6. The family law arbitrator shall comply with the child support and

parenting time guidelines adopted by the Indiana Supreme Court.

7. The family law arbitrator shall divide the marital property of the parties in compliance with I.C. § 31-15-7-5.

8. The parties have been advised of their option to have the proceedings recorded and have requested that a record of the proceedings be made. The parties have agreed to use ** (court reporter) to record the proceedings and administer the oaths. The court reporter shall record the record using electronic devices and shall preserve the transcript of the proceedings.

9. The family law arbitrator shall make written findings of fact and conclusions of law not later than thirty (30) days following the arbitration, unless both parties agree to extend this time period for up to ninety (90) days following the arbitration.

10. The Court shall enter judgment on the findings and conclusions and an Order for entry on the Court docket regarding the judgment.

11. The family law arbitrator may modify an award after making written findings of fact and conclusions of law if: (a) a party makes a fraudulent misrepresentation during the arbitration; (b) the family law arbitrator is ordered to modify the award on remand; or (c) both parties consent to the modification.

12. An appeal may be taken after the entry of judgment the same as may be taken after a judgment in a civil action.

13. Fees for the family law arbitrator shall be shared equally by both

parties. OR, Husband shall be responsible for ___% of the fees and Wife shall be responsible for ___% of the fees.

14. A party may be ordered to pay a reasonable amount for the costs of maintaining or defending the proceeding, including attorney fees before the commencement of the proceedings and after entry of the judgment.

15. The Indiana Supreme Court Rules for Alternative Dispute Resolution attached hereto as Exhibit "A" apply to family law arbitration in all matters not covered by I.C. § 34-57-5.

AGREED:

___________________________	________________________________
Jane Doe, Wife/Petitioner	John Doe, Husband/Respondent
________________________	_____________________________
Attorney for Wife/Petitioner	Attorney for Husband/Respondent

ISSUE BIFURCATED AND RESERVED FOR FAMILY LAW ARBITRATION

Contents of Marital Home and Responsibility for Extra-Curricular Activities. This Agreement does not address the division of the contents of the marital home located at 1234 Main Street, Indianapolis, IN, or responsibility for the children's extra-curricular activity expenses. The parties shall exercise their best efforts to agree on this division of marital home contents, including without limitation which party shall receive which items, and responsibility for removing and disposing of items neither party wants. The parties shall also exercise their best efforts to agree on responsibility for the children's extra-curricular activity expenses. If the parties are unable to resolve either or both of these issues, the parties shall retain John Smith as Family Law Arbitrator under the Family Law Arbitration Act, in order to resolve this issue. Each party shall pay one-half the arbitrator's fees.

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Alternatives to the High Cost of Litigation
September, 2021

ADR Brief

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SURVEY SAYS: MEDIATION IN ARBITRATION SHOWS STRONG SETTLEMENT SUCCESS

WESTLAW LAWPRAC INDEX

AMS--Arbitration, Mediation, Settlement or other forms of Alternative Dispute Resolution

A law firm and an ADR provider teamed in London last year for a survey on the use of **mediation** in **arbitration** processes, revealing that **mediators** are leading parties to settlement at high rates in matters linked to **arbitration**.

These "mixed mode" results not only support **mediation** generally, but suggest that parties should consider the survey participants' responses in assessing **mediation's** applicability to their **arbitration** matters. The survey provides insight into the characteristics of **arbitration** cases that go to **mediation**.

Herbert Smith Freehills' **arbitration** team partnered with the London Chamber of **Arbitration** and **Mediation**, a division of the London Chamber of Commerce and Industry, for what they termed "a snapshot survey" of more than 50 **mediators**, conducted online. The survey closed in November 2020. They asked about the neutrals' 2019 and 2020 experience of **mediation** in **arbitration**.

Nearly half of the responding **mediators** with experience in using **mediation** in **arbitration** reported that they were settling at least 70% of the cases at the **mediation**. The majority of those respondents, according to the survey, indicated that their success rate for 2019 and 2020 was more than 80% for **mediation** in **arbitration**.

Another 17% of **mediators** with the specific experience of participating in **mediation** in **arbitration** reported a success rate in the 50% to 70% range. "[A]round a third of **mediators** with experience of **arbitration**-related **mediation** stat[ed] a success rate of less than 50%," according to the HSF report.

"The striking average settlement rates reported for **mediation** in **arbitration** by the **mediators** we surveyed underline the importance of considering **mediation** as a means of resolving disputes, particularly given the ***133** benefits for parties in terms of cost and time savings," an HSF blog post reporting on the survey notes.

The post adds later, "Perhaps most importantly, the impressive average settlement rates for **arbitration** cases revealed by the survey will assist parties to conduct a rounded analysis of the potential benefits of **mediating** their disputes."

The blog post and the survey work, which can be found at https://bit.ly/3IhEtE8, was prepared by an HSF team of Craig Tevendale, who heads the International **Arbitration** Group at Herbert Smith Freehills in London; Chris Parker, who is also is partner in the group in London, and Rebecca Warder, a former professional support lawyer in the group who is now head of knowledge in the London office of the law firm Hausfeld.

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The London Chamber posted a brief video summarizing the results on its LinkedIn page, available at https://bit.ly/37cz7Ss.

Combining ADR processes is not new but has become the focus of renewed practitioner attention in recent years. For example, the Mixed Mode Task Force, a combined effort by the College of Commercial **Arbitrators**, the International **Mediation** Institute and the Straus Institute for Dispute Resolution at Malibu, Calif.'s Pepperdine School of Law, since 2016 has been "examining and seeking to develop model standards and criteria for ways of combining different dispute resolution processes that may involve the interplay between public or private adjudicative systems (e.g., litigation, **arbitration**, or adjudication) with non-adjudicative methods that involve the use of a neutral (e.g., conciliation or **mediation**), whether in parallel, sequentially or as integrated processes." [*Alternatives'* publisher, CPR, has contributed to the task force work; for more information, see IMI's website at https://bit.ly/2T7SO6T.] See also eight articles constituting the "Reports from the Working Groups of the Mixed Mode Task Force," 14:1 N.Y. Dispute Resolution Lawyer (N.Y. State Bar Ass'n April 4, 2021) (available at https://bit.ly/3k2Ce5w).

The HSF survey results shed light on the timing question of moving to **mediation** in **arbitration**, the stages of the dispute at which these **mediations** are most likely to occur, and claim values.

On timing, the question is whether the **mediators** had engaged in sessions before or after document production. The responses were strongly on the pre-document production stage, "with 94% of the **mediators** having **mediated** at least one dispute at this stage in 2019 or 2020," according to the report.

Only "slightly more" than one quarter of the **mediators** had conducted **mediation** in **arbitration** after the document production stage, but before the hearing, and only 6% said they had conducted post-hearing **mediation**.

The blog post notes surprise that lower-value **arbitration** cases had less **mediation**, and hypothesizes that those cases involved direct negotiation to settle rather than a neutral third party.

"The results of the survey illustrate that proposing **mediation** early in an **arbitration** is usually more likely to be effective than attempting to settle relatively late in the day," the Herbert Smith Freehills blog report states.

The survey produced results from **mediators** who tackled high-value **arbitration** cases. The HSF blog says that the majority of the survey respondents said they conducted **mediations** "with a value in excess of £10M and just under 18% of **mediators** reported having **mediated** at least one claim in the £100M plus band."

The claim-value range where respondents were most likely to have experienced **mediating** was between £1 million and £10 million--about two-thirds of the **mediators** reported **mediatingarbitration** cases in the range.

The numbers and percentages of **mediation**-in-**arbitration** work were scattered-- "highly variable" and probably linked to **mediator** specialities, the study's blog report says. About a quarter of the respondents reported that **mediations** related to **arbitration** make up more than one-third of their **mediation** work, which the report says is a "significant" amount.

While just 10% of the **mediator** respondents reported that more than 50% of their **mediations** were **arbitration**-related, the HSF summary says that "just over half of the **mediators**" had "a highly litigation-dominated caseload, with **arbitration**-related **mediations** making up less than 10% of their caseload."

But the high success rates the survey reports stand out. The study's creators and blog post authors, Craig Tevendale, Chris Parker, and Rebecca Warder, recorded a pod-cast discussing the survey earlier this year, and focused on the settlement results.

Tevendale said that the success rate is likely the most significant finding in the study. Warder agreed that the numbers were "pretty impressive," even with one-third reporting success in less than half the cases.

The three agreed that the success numbers reflect **mediation's** low cost and risk, and an increasing interest in deploying the process.

Christopher Parker opened the podcast by analyzing the timing issue, and sparked an interesting discussion of the factors for initiating **mediation** in **arbitration**. He said that the pre-document production stage for **mediations** is "reasonably common," noting that "if you want the other side to buy into **mediating** the dispute, you generally don't want to leave it too late."

But Craig Tevendale, who hosted the podcast, quickly added that "the cost dimension" for the timing choice is a "good incentive to **mediate** earlier in the case and perhaps a disincentive to start the process ... too late."

Parker cautioned, however, that **mediations** in **arbitrations** indeed still do take place after document production, with about 25% occurring after production but before a hearing.

Rebecca Warder pointed out that 64% of the survey respondents had **mediated** disputes at the pre-**arbitration** commencement stage, indicating confidence in the process.

Tevendale noted that some **arbitration** contracts likely had multistep ADR-tiered clauses of which **arbitration** was a part, and there could even be jurisdictional bars on the adjudicative process without the **mediation** step.

He also said that it simply could be too early to start for many cases without document production.

The group agreed that the assessment on timing involves a balancing of considerations. Tevendale said that a fuller picture of the case, post-document production, can help prospects for **mediation** settlement, "but as ever there is a trade-off between being better informed and saving the cost of being better informed, ***134** and that may be the case in heavy document production matters."

Christopher Parker said that Tevendale's explanation is why, in higher-value cases, there is an incentive to wait until after document production, unless the costs are truly prohibitive.

Rebecca Warder added that the settlement of high-value cases in **mediation** also was "a striking outcome of the survey."

The podcast also covered barriers to **mediation**, including court rules and logistics, and challenges--and advantages--of the video sessions that became pervasive during the pandemic.

The full podcast is available on Sound-cloud at https://bit.ly/363fiwl.

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West's Colorado Revised Statutes Annotated
Title 13. Courts and Court Procedure
Contracts and Agreements
Article 22. Age of Competence--Arbitration--Mediation (Refs & Annos)
Part 3. Dispute Resolution Act (Refs & Annos)

C.R.S.A. § 13-22-313

§ 13-22-313. Judicial referral to ancillary forms of alternative dispute resolution

Currentness

(1) Any court of record, in its discretion, may refer a case to any ancillary form of alternative dispute resolution; except that the court shall not refer the case to any ancillary form of alternative dispute resolution where one of the parties claims that it has been the victim of physical or psychological abuse by the other party and states that it is thereby unwilling to enter into ancillary forms of alternative dispute resolution. In addition, the court may exempt from referral any case in which a party files with the court, within five days of a referral order, a motion objecting to ancillary forms of alternative dispute resolution and demonstrating compelling reasons why ancillary forms of alternative dispute resolution should not be ordered. Compelling reasons may include, but are not limited to, that the costs of ancillary forms of alternative dispute resolution would be higher than the requested relief and previous attempts to resolve the issues were not successful. Such forms of alternative dispute resolution may include, but are not limited to: arbitration, early neutral evaluation, **med-arb**, mini-trial, multi-door courthouse concepts, settlement conference, special master, summary jury trial, or any other form of alternative dispute resolution which the court deems to be an effective method for resolving the dispute in question. Parties and counsel are encouraged to seek the most appropriate forum for the resolution of their dispute. Judges may provide guidance or suggest an appropriate forum. However, nothing in this section shall impinge upon the right of parties to have their dispute tried in a court of law, including trial by jury.

(2) Ancillary programs may be established, made available, and promoted in any judicial district or combination of districts as designated by the chief judge of the affected district. Rules and regulations for ancillary forms of alternative dispute resolution shall be promulgated by the director of the office of dispute resolution.

(3) All rules, regulations, and procedures established pursuant to this section shall be subject to the approval of the chief justice.

(4) Nothing in this section shall preclude any court from making a referral to mediation services provided for in this article.

(5) All referrals under this section shall be made subject to the availability of alternative dispute resolution programs. Parties referred to ancillary forms of alternative dispute resolution may select services offered by the office of dispute resolution or by other individuals or organizations.

(6) This section shall not apply in any civil action where injunctive or similar equitable relief is the only remedy sought.

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Credits

Added by Laws 1992, H.B.92-1168, § 5, eff. June 2, 1992.

Notes of Decisions containing your search terms (0)

View all 1

C. R. S. A. § 13-22-313, CO ST § 13-22-313

Current through the Second Regular Session, 73rd General Assembly (2022). Some statute sections may be more current. See credits for details.

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West's Colorado Revised Statutes Annotated
Title 13. Courts and Court Procedure
Contracts and Agreements
Article 22. Age of Competence--Arbitration--Mediation (Refs & Annos)
Part 3. Dispute Resolution Act (Refs & Annos)

C.R.S.A. § 13-22-302

§ 13-22-302. Definitions

Currentness

As used in this part 3, unless the context otherwise requires:

(1) "Arbitration" means the referral of a dispute to one or more neutral third parties for a decision based on evidence and testimony provided by the disputants.

(1.3) "Chief justice" means the chief justice of the Colorado supreme court.

(1.7) "Director" means the director of the office of dispute resolution.

(2) "Early neutral evaluation" means an early intervention in a lawsuit by a court-appointed evaluator to narrow, eliminate, and simplify issues and assist in case planning and management. Settlement of the case may occur under early neutral evaluation.

(2.1) "Fact finding" means an investigation of a dispute by a public or private body that examines the issues and facts in a case and may or may not recommend settlement procedures.

(2.3) "Med-arb" means a process in which parties begin by mediation, and failing settlement, the same neutral third party acts as arbitrator of the remaining issues.

(2.4) "Mediation" means an intervention in dispute negotiations by a trained neutral third party with the purpose of assisting the parties to reach their own solution.

(2.5) "Mediation communication" means any oral or written communication prepared or expressed for the purposes of, in the course of, or pursuant to, any mediation services proceeding or dispute resolution program proceeding, including, but not limited to, any memoranda, notes, records, or work product of a mediator, mediation organization, or party; except that a written agreement to enter into a mediation service proceeding or dispute resolution proceeding, or a final written agreement reached as a result of a mediation service proceeding or dispute resolution proceeding, which has been fully executed, is not a mediation communication unless otherwise agreed upon by the parties.

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(2.7) "Mediation organization" means any public or private corporation, partnership, or association which provides mediation services or dispute resolution programs through a mediator or mediators.

(3) "Mediation services" or "dispute resolution programs" means a process by which parties involved in a dispute, whether or not an action has been filed in court, agree to enter into one or more settlement discussions with a mediator in order to resolve their dispute.

(4) "Mediator" means a trained individual who assists disputants to reach a mutually acceptable resolution of their disputes by identifying and evaluating alternatives.

(4.3) "Mini-trial" means a structured settlement process in which the principals involved meet at a hearing before a neutral advisor to present the merits of each side of the dispute and attempt to formulate a voluntary settlement.

(4.5) "Multi-door courthouse concepts" means that form of alternative dispute resolution in which the parties select any combination of problem solving methods designed to achieve effective resolution, including, but not limited to, arbitration, early neutral evaluation, med-arb, mini-trials, settlement conference, special masters, and summary jury trials.

(5) "Office" means the office of dispute resolution.

(6) "Party" means a mediation participant other than the mediator and may be a person, public officer, corporation, partnership, association, or other organization or entity, either public or private.

(7) "Settlement conference" means an informal assessment and negotiation session conducted by a legal professional who hears both sides of the case and may advise the parties on the law and precedent relating to the dispute and suggest a settlement.

(8) "Special master" means a court-appointed magistrate, auditor, or examiner who, subject to specifications and limitations stated in the court order, shall exercise the power to regulate all proceedings in every hearing before such special master, and to do all acts and take all measures necessary or proper for compliance with the court's order.

(9) "Summary jury trial" means summary presentations in complex cases before a jury empaneled to make findings which may or may not be binding.

Credits

Added by Laws 1983, H.B.1506, § 1, eff. July 1, 1983. Amended by Laws 1988, H.B.1217, § 1, eff. July 1, 1988; Laws 1991, S.B.91-161, § 1, eff. July 1, 1991; Laws 1992, H.B.92-1168, § 2, eff. June 2, 1992.

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Notes of Decisions (7)

C. R. S. A. § 13-22-302, CO ST § 13-22-302
Current through the Second Regular Session, 73rd General Assembly (2022). Some statute sections may be more current. See credits for details.

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FINAL SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made and entered into by and between ("Wife") and ("Husband") on ________________________ (NOTE: THIS FORMAT, RATHER THAN ____ DAY OF _____, 2022, WORKS BETTER WITH ELECTRONIC SIGNATURE PROGRAMS SUCH AS DOCUSIGN.)

RECITALS AND DEFINITIONS

The parties were married on ____________.

________ filed the Verified Petition for Dissolution of Marriage in this case on _____ .

Each party was, for more than six (6) consecutive months prior to _______, a *bona fide* resident of Indiana. (NOTE: IT IS NOT NECESSARY TO STATE THE COUNTY, THE COURT HAS JURISDICTION SO LONG AS THE STATE RESIDENCY REQUIREMENT IS MET)

The parties are the parents of ____ children, namely _____.

Wife is not pregnant.

The parties acknowledge, with regret, that their marriage is irretrievably broken and should be dissolved.

The parties have accumulated property and incurred obligations during the course of their marriage of which this Agreement provides for a just and reasonable division.

The parties desire and intend by this Agreement to fully and finally resolve all issues between themselves, whether or not arising out of their relationship as Husband and Wife, including but not limited to child custody and parenting time, child support, division of property, payment of obligations, payment of attorney fees, spousal maintenance, and interspousal torts.

"Decree" means the Summary Decree of Dissolution of Marriage which will be entered

in this case, upon the filing with this Court of the parties' Verified Waiver of Final Hearing and this Final Settlement Agreement.

"Filing Date" means _______.

"Marriage Date" means ______.

"Children" means __________.

"Marital Home" means the improved real estate located at ___________

"Indemnify and hold harmless" means, with respect to any financial obligation, to pay the obligation in full, to pay the obligation timely, and to comply with all requirements of any instrument by which the obligation was created or which governs the terms of the obligation. The requirement to indemnify and hold harmless includes the obligation to pay the other party's costs (including professional fees) to defend against any claim for payment of the obligation by the other party, and may include the obligation to pay the other party's damages, which may include damage to credit-worthiness, which result from the obligated party's failure to pay the obligation time and in full.

"Joint legal custody" means that the parties share, equally, the authority and responsibility for making major decisions concerning the children's upbringing, including matters of education, health care and religious training.

"Pro Rata Shares" means the parties' respective incomes, as determined from Box 5 of their Forms W-2, plus investment income as shown on any forms K-1 and 1099. The parties' initial Pro Rata Shares are _____% for Husband and _____% for Wife. (ALTERNATE LANGUAGE, AS DETERMINED FROM LINE 2 OF THEIR THEN-CURRENT CHILD SUPPORT OBLIGATION WORKSHEET)

ARTICLE 6
MISCELLANEOUS

6.01 Disclosure. This Agreement is based upon each party's REPRESENTATION and WARRANTY that:

a. He/she has supplied to the other, upon request, complete and accurate financial information;

b. This Agreement specifically provides for all assets of the marriage as defined in the Indiana Code; and

c. He/she, on the date of the filing of the petition for dissolution of marriage, had no interest, legal or equitable, tangible or intangible, direct or indirect, in any asset or thing of value not specifically provided for in this Agreement. (NOTE: MANY AGREEMENTS CONTAIN LANGUAGE THAT SAYS THERE HAVE BEEN NO MATERIAL CHANGES, ... CHANGES SINCE WHEN? CHANGES IN WHAT?)

6.02 Effective Date. This Agreement is intended to settle all property and other rights between the parties in the event of the entry of the Decree (NOTE: IF "DECREE" HAS BEEN DEFINED AT THE BEGINNING OF THE AGREEMENT, THEN JUST "THE DECREE" IS ALL THAT NEEDS TO BE STATED.). This Agreement will be submitted to the Court for approval. Having been reached in mediation, this Agreement is binding and enforceable immediately upon its execution by both parties and both attorneys. Should either party attempt to repudiate this Agreement before it is approved by the Court, this Agreement shall be admissible into evidence in any proceeding to enforce it.

6.03 Voluntary Execution. Each party makes this Agreement FREELY and

VOLUNTARILY. Each party acknowledges that he/she has not been the subject or victim of coercion, duress or undue influence. Each party has been represented by counsel of his or her choice in the negotiations leading to this Agreement.

6.04 Entire Agreement. This Agreement is the entire agreement between the parties. Neither party has made or relied upon any promise or representation, whether made in writing or orally, not contained in this Agreement. No such other written or oral promise or representation can in any way vary, add to, or subtract from the terms contained in this Agreement.

6.05 Modification or Waiver. A modification or waiver of any provision of this Agreement shall be effective and enforceable only if:

a. made in writing;

b. signed by both parties;

c. submitted to the Court for approval; and

d. approved by the Court.

6.06 Non-Performance. Failure of either party to insist upon strict performance of any term of this Agreement shall not operate as a waiver of any subsequent default of the same or similar nature.

6.07 Notification to Other Party. Until all rights and obligations as to property settlement, child support, and visitation have been fully satisfied and have terminated, each party shall, at all times, keep the other party informed of his/her place of residence and place of employment, giving the address and telephone number of each.

6.08 Attorney Fees and Litigation Expenses. ______________________________

6.09 Non-Disclosure. The parties acknowledge that they have exchanged private

financial [and business] information about each other. Each party agrees that he and she shall not disclose or share the financial [and business] information obtained in this action for purposes other than enforcement of this Agreement and/or consultation with attorneys and/or financial/tax advisors.

6.10 Electronic Mail, Online Accounts and Social Media. Each party shall receive his and her respective email address(es) and ownership of social media and other on-line accounts used primarily by that respective party. Each party will cooperate with the other in taking action which may be necessary to transfer ownership of, and/or access to, email addresses and/or online accounts to the proper owner. Each party is prohibited from using an email address, social media account, or online account of the other party.

6.11 Access to Private Information. Each party is prohibited from accessing the private information of the other. By way of example, and not of limitation, "private information" includes all information or date that is in any way password protected, including but not limited to: email accounts, social media accounts, credit monitoring accounts, financial accounts, credit card accounts, debt service accounts, retirement accounts, home security accounts, home utility accounts, health care accounts, voicemail accounts, and devices such as computers/tablets/smart phones, etc.

6.12 Execution of Additional Documents. Each party shall, upon request, execute any and all instruments necessary to carry out the terms and intent of this Agreement. If mortgage debt is required to be refinanced, this obligation shall include instruments of conveyance and instruments of indebtedness.

6.13 Waiver of Beneficiary Status. Absent an express provision in this agreement to the

contrary, each party waives any beneficiary interest that he or she may have in any life insurance policies, annuities, brokerage accounts, pay-on-death bank accounts, interests and trusts established by the other party, individual retirement accounts, or other instruments containing a beneficiary designation that are owned, or were established, by the other party. The parties expressly intend this provision to operate as a waiver of beneficiary status, and the right to receive any funds, proceeds, death benefits, or other property interests, pursuant to that beneficiary status even - and especially - in the event that either party fails to remove the other as designated beneficiary of any of the above-referenced property or expectancy interests following the entry of the Court's Decree.

6.14 Transfer of Property. The transferor of any property hereunder, at the time of the transfer, shall supply the transferee with records sufficient to determine the adjusted basis and holding period of the property as of the date of the transfer. In addition, in the case of a transfer of property that carries with it a potential liability for investment tax credit recapture, the transferor shall, at the time of the transfer, supply the transferee with records sufficient to determine the amount and period of such potential liability. (NOTE: THIS ISN'T NEEDED FOR SIMPLE MARITAL ESTATES, WITHOUT ASSETS HAVING BUILT-IN CAPITAL GAINS OR LOSSES.)

6.15 Interpretation. This Agreement is the product of negotiations between the parties. Neither party (or that party's attorney) is the principal author of its terms. Consequently, this Agreement shall not be construed in favor of or against either party.

6.16 Counterparts and Electronic Signatures. This Agreement may be executed in counterparts and have the same force and effect as if executed together. The parties may also

use electronic or e-mail signatures with the same force and effect of original signatures.

I AFFIRM UNDER PENALTIES FOR PERJURY THAT ALL OF THE FOREGOING IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I HAVE WAIVED MY RIGHT TO A FINAL HEARING, AND I REQUEST THAT THE COURT ISSUE A DECREE THAT INCORPORATES THE TERMS AND PROVISIONS OF THIS AGREEMENT.

______________________________	______________________________
______________________, Wife	________________________, Husband

APPROVED AS TO FORM:

By______________________________	By______________________________
Attorney for Wife Attorney No.: ___________	Attorney for Husband Attorney No.: __________

The parties shall attend co-parenting counseling with __________., or if ________ is not accepting new clients, or cannot schedule the parties within a reasonable amount of time, the parties shall select another agreed upon co-parenting counselor. The co-parenting counselor shall work with the parties on effective communication, _____________. The co-parenting counselor may work with the parties on other issues, with agreement of the parties. The frequency of co-parenting counseling sessions shall be no more/less than ___________. Co-parenting counseling shall conclude the earlier of (a) the elapse of _______ from the date of the first co-parenting counseling session; or (b) when the co-parenting counselor notifies both parties, in writing, that no further sessions are necessary. The parties shall pay the fees of the co-parenting counselor ______ by Father and _____ by Mother.

ORDER APPOINTING PARENTING COORDINATOR (JOINT LEGAL CUSTODY)

The Court, having considered the parties' agreement, enters the following Order appointing a Parenting Coordinator ("PC") and setting forth the PC's authority, rights and obligations. (NOTE: THE WORD AUTHORITY RARELY APPEARS IN PC APPOINTMENT ORDERS, BUT CAN BE USEFUL.)

IT IS, THEREFORE, ORDERED THAT:

1. Appointment. The Court hereby appoints ** as PC in this case, whose contact information is as follows: **; and the parties shall immediately contact said PC for scheduling purposes.

2. Expenses. ______ shall pay the initial $______ retainer fee. After the retainer has been exhausted, Mother shall pay ___% and Father shall pay __% of the PC's fees, including any additional retainer amount, for joint services. In addition, each parent shall reimburse the PC for the parent's pro rata share of the PC's expenses incurred, including, but not limited to, photocopies, messenger service, long distance telephone charges, express and/or certified mail costs, parking, mileage, and other travel expenses. The PC shall have the discretion to report to the Court that the PC desires to charge either party separately for individual contacts with that party or joint contacts made necessary by that party's behavior. The Court shall have the power to review, reallocate and enforce the payment of the fees of the PC. (ALTERNATE LANGUAGE: The PC shall have the authority to charge either party separately for individual contacts with that party or joint contacts made necessary by that party's behavior.) In the event that the testimony and or written report of the PC is required for any hearing, settlement conference or court action by one or both parties, the PC's fees for such services shall be paid by both parties, in advance according to the estimate provided by the PC. (ALTERNATE LANGUAGE: In the event either party subpoenas the PC to appear for any deposition, settlement conference, or court proceeding, or requests that the PC participate in any mediation or family law arbitration, that party shall pay the PC's fees for the PC's appearance or participation.)

1. **Role of the PC.**

   A. Role of the PC. The PC shall make recommendations and work to resolve conflicts between the parents involving the designated issues (NOTE: WHAT DESIGNATED ISSUES? THIS LANGUAGE IS IN ALMOST ALL PC ORDERS, BUT ADDS LITTLE TO THE CLARIFY OF THE ORDER), which do not affect the Court's exclusive jurisdiction to determine fundamental issues of custody and parenting time. Such recommendations, negotiations, and education shall include strategies for enforcing any shared parenting plan and contact/parenting time schedule, for minimizing child-related conflicts between the parties, and for eliminating unproductive or harmful behavior patterns by one or both parents.

   B. Authority of the PC. The PC's authority is set forth in this Agreement, and in Guideline V of the Indiana Parenting Time Guidelines. The PC shall attempt to resolve conflicts between the Parties by recommendation, negotiation, education and discussion. A

Parenting Coordinator's recommendations, which are not agreed to by the parties, may be submitted by the Parenting Coordinator as a written report to the court for consideration. The written report shall include an explanation as to how the recommended change is expected to benefit the family as a whole. The Parenting Coordinator's written report must contain a certificate of service which indicates that the Parenting Coordinator has sent a copy of the report to each party and their counsel.

C. Written Objection. Any party may file with the court and serve on the Parenting Coordinator and all other parties an objection to the written report within ten (10) days after the report is filed with the court, or within another time as the court may direct.

D. Responses to Written Objections. Responses to the objections shall be filed with the court and served on the Parenting Coordinator and all other parties within ten (10) days after the objection is served.

E. The Court's Authority. The court, upon receipt of a report and recommendation may take any of the following three actions.

a. If the court finds that time is of the essence, the court may approve the recommendation and immediately adopt it as an interim order of the court. However, if a party files an objection to the recommendation, the court shall set an expedited hearing to consider the recommendation and arguments of the parties in favor of and opposing the recommendation.

b. The court may reject the recommendation in whole or in part. However, if a party files an objection to the recommendation or objects to the court's rejection of all or part of the recommendation, the court shall set a hearing to consider the recommendation and arguments of the parties in favor of and opposing the recommendation.

c. The court may take no immediate action upon the recommendation. Upon the court's own motion or upon the request of any party, the court may set a hearing regarding the recommendation on the court's calendar.

2. **Issues for the PC to address.**

The PC shall always address the basic co-parenting issues which include but are not limited to the following list (NOTE: LITTLE ATTENTION IS USUALLY PAID TO THIS LIST. CAREFUL ATTENTION TO THE LIST, AND TO TAILORING THE LIST TO THE SPECIFIC NEEDS OF THE PARTIES, CAN BE VERY USEFUL. ALSO, PC APPOINTMENT ORDERS COULD OFTEN BE BETTER AT DIFFERENTIATING BETWEEN ISSUES THE PC IS AUTHORIZED TO DECIDE, AND ISSUES THE PC IS AUTHORIZED TO ASSIST THE PARTIES TO RESOLVE.):

a. implementing any voluntary or court-ordered plan or schedule;
b. vacation and/or holiday schedules;
c. transportation issues;

d. methods of pick-up and delivery;
e. dates and times of pick-up and delivery;
f. childcare, daycare and babysitting issues;
g. extracurricular and enrichment activities;
h. bedtime issues;
i. diet issues;
j. clothing issues;
k. discipline issues;
l. healthcare management;
m. participation in parenting time by significant others, relatives, etc.;
n. educate parents on how to effectively;
    i. communicate and negotiate;
    ii. develop and apply parenting skills;
    iii. meet the developmental needs of their child(ren);
    iv. disengage from each other when engagement leads to conflict;
    v. keep their child(ren) out of the middle of their adult disagreements; and identify the sources of their conflict with one another and work jointly to minimize conflict and lessen its harmful effects on the child(ren);
o. monitor the safety issues on behalf of the child;
p. monitor safety issues in those cases involving domestic violence; and
q. monitor implementation of a voluntary or court-ordered parenting plan or contact/parenting time schedule and mediate the parents' disputes regarding such plan or schedule.

In addition, the PC shall address the following issues specific to these Parties (check all that apply) (NOTE: BETTER PRACTICE IS TO DELETE EACH ITEM WHICH THE PC SHALL NOT ADDRESS, AND TO LIST ONLY THE ITEMS WHICH THE PC IS AUTHORIZED TO ADDRESS):

X recommend to the parents that one or both parents avail themselves of available and appropriate community resources, including, but not limited to, physical examinations, random drug screens, parenting classes, custody evaluation, and individual psychotherapy; and if such a recommendation is made, it shall be non-binding;

X write detailed guidelines or recommended rules to help the parents communicate with one another and practice implementing those guidelines or rules. If either parent lacks parenting skills, the PC shall work with that parent to teach the necessary skills or to refer the parent to an appropriate parenting skills course;

X recommend a means of compliance with any parenting plan or parenting schedule in the Court's Order (NOTE: THIS LANGUAGE IS IMPORTANT, AND CAN BE STRENGTHENED, BY SPECIFYING HOW MUCH DEVIATION FROM THE PARENTING SCHEDULE THE PC IS AUTHORIZED TO DETERMINE.);

X when the parents cannot agree on a resolution of conflicts, and when it is necessary to promote the child's best interests, recommend modification (ALTERNATE

LANGUAGE – MAKE A NON-BINDING RECOMMENDATION FOR A MODIFICATION) of a parenting plan or contact/parenting time schedule, reduce such recommendations to writing, and provide them to the parents and to any attorney who represents either parent;

X recommend a final decision on any parenting issue concerning which the parents reach an impasse (ALTERNATE LANGUAGE ; ON ANY ISSUE WHICH THE PARENTS, AS JOINT LEGAL CUSTODIANS, ARE REQUIRED TO AGREE UPON), by submitting a written recommendation to the parties and their counsel, and the same shall be binding until further Order (NOTE: THIS LAST PHRASE IS USUALLY INCLUDED IN PC APPOINTMENT ORDERS, DESPITE THE ADDITION OF GUIDELINE V. ALTERNATE LANGUAGE – AND EACH PARTY, BY HIS/HER SIGNATURE ON THIS ORDER, AGREES TO COMPLY WITH SUCH WRITTEN RECOMMENDATION, PENDING FURTHER ORDER OF THE COURT);

X facilitate communication between the parents by serving, if necessary, as a conduit for information;

X recommend, where appropriate, the institution or cessation of supervised parenting time;

X when the parents cannot agree on a resolution, make (NON-BINDING) recommendations regarding religion, religious training and church attendance, when in the best interests of the child(ren);

X recommend a final decision with regard to large changes in vacation and/or holiday time shares, when appropriate (THIS IS USUALLY IN PC APPOINTMENT ORDERS, BUT IN THE WRITER'S OPINION, IS RARELY APPROPRIATE);

(OPTIONAL ALTERNATE LANGUAGE – EXAMPLES ONLY):
WHEN APPROPRIATE OR NECESSARY, IN ORDER TO ACCOMMODATE TRAVEL OR OTHER FAMILY EVENTS, THE PARENTS' WORK SCHEDULES, AND THE CHILDREN'S SCHEDULES OF ACTIVITIES, RECOMMEND MINOR CHANGES TO THE PARENTING TIME SCHEDULE, WHICH RECOMMENDATION THE PARTIES SHALL COMPLY WITH, ABSENT COURT ORDER TO THE CONTARY.

WHEN THE PARENTS CANNOT AGREE ON A CHILD'S PARTICIPATION IN AN EXTRA-CURRICULAR ACTIVITY, RECOMMEND WHETHER OR NOT THE CHILD MAY PARTICIPATE IN THE ACTIVITY AND, IF SO, WHAT RESPONSIBILITIES EACH PARENT WILL HAVE TO PERMIT THE CHILD TO PARTICIPATE, AND TO TRANSPORT THE CHILD TO AND FROM THE ACTIVITY, DURING THE PARENT'S PARENTING TIME.

3. **The PC shall not:**

i. serve as a custody evaluator in the case;
ii. offer a binding recommendation for a change in the child(ren)'s primary physical residence, but MAY advise parties or their counsel for the need of a review of custody or a custody evaluation;
iii. address significant financial matters between the parents (NOTE: WHAT ARE SIGNIFICANT FINANCIAL MATTERS? A PC CAN BE A USEFUL PERSON TO DECIDE SUCH THINGS AS WHETHER MARCHING BAND IS A CURRICULAR OR EXTRACURRICULAR ACTIVITY, OR WHETHER THE CHILD'S CONTRIBUTION TO A GIFT FOR THE COACH IS AN EXPENSE TO BE SHARED.);
iv. attempt to exercise judicial authority;
v. be contacted by either parent outside normal working hours, unless the matter constitutes a genuine emergency;
vi. substantially alter the percentage of parenting time between parents.

4. **Meeting with the PC.**

i. In fulfilling his or her responsibilities, the PC shall be entitled to communicate with the parents and their child, separately or together, in person or by telephone; with the health care providers and mental health providers for the parents and the child (NOTE: IF IT IS NOT GOING TO BE NECESSARY FOR A PC TO COMMUNICATE WITH A PARENT'S HEALTHCARE PROVIDERS, THIS SHOULD BE DELETED); and with any other third parties reasonably deemed necessary by the PC. The parents shall cooperate with the PC and shall execute any releases which may be necessary to permit the above communication to occur.
ii. Each parent is responsible for contacting the PC to schedule and arrange initial appointments within five (5) days of this Order.
iii. The parents shall provide copies of all pleadings, orders, and correspondence that relate to the issues to be brought to the PC. These documents shall initially be provided within ten (10) days of the date of this Order.
iv. Each parent shall direct any disagreement with the other parent regarding the child to the PC (NOTE: EVERY DISAGREEMENT? ANY DISAGREEMENT WITH THE OTHER PARENT WHICH THE PARENTS HAVE BEEN UNABLE TO RESOLVE BETWEEN THEMSELVES? ANY DISAGREEMENT WITH THE OTHER PARENT ABOUT A JOINT LEGAL CUSTODY MATTER ON WHICH AGREEMENT IS REQUIRED? AN ORDER SHOULD NOT FACILITATE EITHER PARENT USING THE PC PROCESS TO CAUSE EXPENSE TO THE OTHER PARENT, OR TO INTERFERE WITH THE OTHER PARENT'S ROUTINE PARENTING CHOICES, NOR TO FACILITATE EITHER PARENT SIMPLY REFUSING TO MAKE ANY ATTEMPT TO CO-PARENT DIRECTLY WITH THE OTHER PARENT, AND PRECISE LANGUAGE CAN ASSIST.). The PC

shall work with both parents to resolve the conflict, and, if necessary, will recommend an appropriate resolution to the parents and their legal counsel.

v. The parents and all agencies (WHAT AGENCIES?) shall participate in good faith in the dispute resolution process.

5. **Written and Oral Report and Court Appearances.**

i. Any agreements reached in the PC process shall be reduced to writing and signed by both parties and the PC.

ii. The PC may submit written reports to the parents and/or their counsel, if the parent is represented by counsel, describing any conflicts and the PC's recommended resolutions. The PC may also report to the parents and/or their counsel, if the parent is represented by counsel, with regard to parental compliance and attitudes regarding any element of the parenting plan or parenting time schedule.

iii. When necessary, decisions of the PC shall be made orally and shall become binding when communicated to both parties orally (NOTE: THIS LANGUAGE SHOULD BE TAILORED TO APPLY ONLY TO DECISIONS WHICH THE PARTIES HAVE AGREED TO ABIDE BY, ONCE THE PC HAS MADE THE DECISION). However, such decisions shall be communicated in writing as soon as practicable.

6. **Terms of Appointment.**

i. The PC is appointed for two (2) years, or unless discharged prior to the expiration of one year.

ii. The court may terminate the service of the Parenting Coordinator at any time upon finding that there is no longer a need for the services or for other good cause. Good cause may include a finding that domestic violence issues or other circumstances exist that appear to compromise the safety of any person or the integrity of the process. The appointment may be terminated if further efforts by the Parenting Coordinator would be contrary to the best interests of the child; the child has reached the age of majority; or the child no longer lives with a party.

iii. The Parenting Coordinator may provide notice to the parties and the court of his or her intent to resign at any time. The court may approve the resignation and discharge the Parenting Coordinator without a hearing unless a party files a written objection within 10 days of the notice and requests a hearing.

iv. No party may terminate the services of a court appointed Parenting Coordinator without an order of the court. Absent egregious abuse of discretion or a substantial and unexpected change in circumstances, no party may request a judicial review of the appointment within the first six months of the appointment. Nevertheless, the court may terminate the appointment of a Parenting Coordinator at any time.

v. After the initial six-month period, a party may petition the court for termination of the appointment. Upon a finding that the Parenting Coordinator has

exceeded his or her mandate as set forth Section V of the Indiana Parenting Time Guidelines (effective 1/1/17); has acted in a manner inconsistent with this guideline; has demonstrated bias; or for other good cause the court may terminate the appointment.

vi. After the initial six-month period, the parties may jointly request the termination of the parenting coordination process or motion for the modification of the terms of the appointment. Modification or termination of the terms of the appointment may be entered by the court for good cause shown as long as the modification or termination is in the best interest of the child.

7. **Confidentiality.**

All medical records and any records relating to the present, past or future medical treatment of either Petitioner or Respondent, including but not limited to physical, mental or psychological issues, that are provided to the PC shall be and remain strictly confidential and the contents of such records shall not be divulged or communicated by the PC to the other party or any other third party. Provided, however, should the PC terminate, both parties reserve the right to seek a Court Order requiring release of the records held by the PC. For all other matters, there is <u>NO</u> privilege or right of confidentiality between the child, the Parties and the PC.

8. **Cooperation/Release of Information.**

The Parties are ordered to cooperate with the PC, provide all relevant documentation to the PC, and to sign any and all release of information forms, or otherwise provide all authority necessary for the PC to obtain all medical, education, counseling and treatment information of the Parties, the child or any other person as necessary to the role of the PC.

Further, the Parties, or their representatives are ordered to provide and gather all information necessary to the role of the PC, including but not limited to medical, education, counseling and treatment information of the Parties, the child, or any other person necessary to the recommendations of the PC.

9. **Incorporation of Agreed Matters into Enforceable Court Orders.**

Although one of the goals of the PC is to encourage parents to harmoniously resolve shared parenting issues without the need for a Court hearing, the negotiated or agreed matters shall be memorialized in writing, signed by the parties, copied to counsel if the parties are represented, and submitted to the Court for approval within twenty (20) days of the agreement being signed.

10. **Authority, Qualifications and Expertise.**

This appointment is based upon the expertise of the PC as a licensed mental health and/or legal professional. Further the Court finds that such PC is entitled to judicial immunity pursuant to Indiana Law.

11. **Service of Pleadings.**

Both parties and/or their respective counsel shall serve the PC with any and all pleadings which are filed with the Court in this matter as if the PC was a party to same.

12. **Adoption of Guidelines.**

Except as specifically modified herein, the parties and PC shall follow all other provisions of Section V of the Indiana Parenting Time Guidelines, which are adopted and incorporated herein by reference.

13. **The COURT FURTHER ORDERS THAT:**

____

____

____

(NOTE: IT IS BETTER PRACTICE TO OBTAIN SIGNATURES OF BOTH PARTIES AND BOTH COUNSEL, ESPECIALLY WHEN THE PC IS AUTHORIZED TO MAKE ANY DECISIONS WHICH THE PARTIES HAVE AGREED TO FOLLOW.)

SO ORDERED on ____.

____
Judge,

Distribution:

ORDER APPOINTING PARENTING COORDINATOR (SOLE LEGAL CUSTODY)

The Court, having considered the parties' agreement, enters the following Order appointing a Parenting Coordinator ("PC") and setting forth the PC's authority, rights and obligations. (NOTE: THE WORD AUTHORITY RARELY APPEARS IN PC APPOINTMENT ORDERS, BUT CAN BE USEFUL.)

IT IS, THEREFORE, ORDERED THAT:

1. Appointment. The Court hereby appoints ** as PC in this case, whose contact information is as follows: **; and the parties shall immediately contact said PC for scheduling purposes.

2. Expenses. ______ shall pay the initial $______ retainer fee. After the retainer has been exhausted, Mother shall pay ___% and Father shall pay __% of the PC's fees, including any additional retainer amount, for joint services. In addition, each parent shall reimburse the PC for the parent's pro rata share of the PC's expenses incurred, including, but not limited to, photocopies, messenger service, long distance telephone charges, express and/or certified mail costs, parking, mileage, and other travel expenses. The PC shall have the discretion to report to the Court that the PC desires to charge either party separately for individual contacts with that party or joint contacts made necessary by that party's behavior. The Court shall have the power to review, reallocate and enforce the payment of the fees of the PC. (ALTERNATE LANGUAGE: THE PC SHALL HAVE THE AUTHORITY TO CHARGE EITHER PARTY SEPARATELY FOR INDIVIDUAL CONTACTS WITH THAT PARTY, OR JOINT CONTACTS MADE NECESSARY BY THE PARTY'S BEHAVIOR.) In the event that the testimony and or written report of the PC is required for any hearing, settlement conference or court action by one or both parties, the PC's fees for such services shall be paid by both parties, in advance according to the estimate provided by the PC. (ALTERNATE LANGUAGE: IN THE EVENT EITHER PARTY SUBPOENAS THE PC TO APPEAR FOR ANY DEPOSITION, SETTLEMENT CONFERENCE, OR COURT OR FAMILY LAW ARBITRATION PROCEEDING, OR REQUESTS THAT THE PC PARTICIPATE IN MEDIATION, THE PARTY SHALL PAY THE PC'S FEES FOR APPEARANCE OR PARTICIPATION.)

1. **Role of the PC.**

   A. Role of the PC. The PC shall make recommendations and work to resolve conflicts between the parents regarding the children. **which do not conflict with the _______'s authority and responsibility, as legal custodian of the child(ren), to make major decisions concerning the child(ren)'s upbringing, including matters of religious training, education and health care.** (NOTE: MANY ORDERS SAY 'INVOLVING THE DESIGNATED ISSUES. WHAT DESIGNATED ISSUES? THIS LANGUAGE IS IN ALMOST ALL PC ORDERS, BUT ADDS LITTLE TO THE CLARIFY OF THE ORDER), Such recommendations, negotiations, and education shall include strategies for enforcing any shared parenting plan and contact/parenting time schedule,

for minimizing child-related conflicts between the parties, and for eliminating unproductive or harmful behavior patterns by one or both parents.

B. Authority of the PC. The PC's authority is **limited to the authority** set forth in this Agreement, and in Guideline V of the Indiana Parenting Time Guidelines ("IPTG"). The PC shall attempt to resolve conflicts between the Parties by recommendation, negotiation, education and discussion. A Parenting Coordinator's recommendations, which are not agreed to by the parties **and which do not conflict with or infringe upon the ______'s authority and responsibility to make major decisions concerning the child(ren)'s upbringing**, may be submitted by the Parenting Coordinator as a written report to the court for consideration. The written report shall include an explanation as to how the recommended change is expected to benefit the family as a whole. The Parenting Coordinator's written report must contain a certificate of service which indicates that the Parenting Coordinator has sent a copy of the report to each party and their counsel.

C. Written Objection. Any party may file with the court and serve on the Parenting Coordinator and all other parties an objection to the written report within ten (10) days after the report is filed with the court, or within another time as the court may direct.

D. Responses to Written Objections. Responses to the objections shall be filed with the court and served on the Parenting Coordinator and all other parties within ten (10) days after the objection is served.

E. The Court's Authority. The court, upon receipt of a report and recommendation may take any of the following three actions.

a. **Provided the recommendation does not conflict with, or infringe upon, the ____'s authority and responsibility, as sole legal custodian, to make major decisions concerning the child(ren)'s upbringing**, if the court finds that time is of the essence, the court may approve the recommendation and immediately adopt it as an interim order of the court. However, if a party files an objection to the recommendation, the court shall set an expedited hearing to consider the recommendation and arguments of the parties in favor of and opposing the recommendation.

b. The court may reject the recommendation in whole or in part. However, if a party files an objection to the recommendation or objects to the court's rejection of all or part of the recommendation, the court shall set a hearing to consider the recommendation and arguments of the parties in favor of and opposing the recommendation.

c. The court may take no immediate action upon the recommendation. Upon the court's own motion or upon the request of any party, the court may set a hearing regarding the recommendation on the court's calendar.

2. **Issues for the PC to address.**

The PC shall always address the basic co-parenting issues which include but are not limited to the following list (NOTE: LITTLE ATTENTION IS USUALLY PAID TO THIS LIST. CAREFUL ATTENTION TO THE LIST, AND TO TAILORING THE LIST TO THE SPECIFIC NEEDS OF THE PARTIES, CAN BE VERY USEFUL. ALSO, PC APPOINTMENT ORDERS COULD OFTEN BE BETTER AT DIFFERENTIATING BETWEEN ISSUES THE PC IS AUTHORIZED TO DECIDE, AND ISSUES THE PC IS AUTHORIZED TO ASSIST THE PARTIES TO RESOLVE.):

a. implementing any voluntary or court-ordered plan or schedule (ALTERNATE LANGUAGE, INCLUDING MAKING MINOR ADJUSTMENTS TO THE COURT-ORDERED PLAN OR SCHEDULE, AS APPROPRIATE UNDER THE CIRCUMSTANCES);
b. vacation and/or holiday schedules, **which do not significantly alter the parenting time schedule**;
c. transportation issues, **such as which persons, other than the parties, may transport the children, and occasional deviations from transportation responsibility according to the IPTG**;
d. methods of pick-up and delivery;
e. dates and times of pick-up and delivery, **which do not significant alter the parenting time schedule**;
f. childcare, daycare and babysitting issues;
g. extracurricular and enrichment activities;
h. bedtime issues;
i. diet issues;
j. clothing issues;
k. discipline issues;
l. healthcare management;
m. participation in parenting time by significant others, relatives, etc.;
n. educate parents on how to effectively;
    i. communicate and negotiate;
    ii. develop and apply parenting skills;
    iii. meet the developmental needs of their child(ren);
    iv. disengage from each other when engagement leads to conflict;
    v. keep their child(ren) out of the middle of their adult disagreements; and identify the sources of their conflict with one another and work jointly to minimize conflict and lessen its harmful effects on the child(ren);
o. monitor the safety issues on behalf of the child;
p. monitor safety issues in those cases involving domestic violence; and
q. monitor implementation of a voluntary or court-ordered parenting plan or contact/parenting time schedule and mediate the parents' disputes regarding such plan or schedule.

In addition, the PC shall address the following issues specific to these Parties (check all that apply) (NOTE: BETTER PRACTICE IS TO DELETE EACH ITEM WHICH THE PC SHALL

NOT ADDRESS, AND TO LIST ONLY THE ITEMS WHICH THE PC IS AUTHORIZED TO ADDRESS):

X recommend to the parents that one or both parents avail themselves of available and appropriate community resources, including, but not limited to, physical examinations, random drug screens, parenting classes, custody evaluation, and individual psychotherapy; and if such a recommendation is made, it shall be non-binding;

X write detailed guidelines or recommended rules to help the parents communicate with one another and practice implementing those guidelines or rules. If either parent lacks parenting skills, the PC shall work with that parent to teach the necessary skills or to refer the parent to an appropriate parenting skills course;

X recommend a **means of compliance with** any parenting plan or parenting schedule in the Court's Order (NOTE: THIS LANGUAGE IS IMPORTANT, AND CAN BE STRENGTHENED, BY SPECIFYING HOW MUCH DEVIATION FROM THE PARENTING SCHEDULE THE PC IS AUTHORIZED TO DETERMINE.);

X when the parents cannot agree on a resolution of conflicts, and when it is necessary to promote the child's best interests, recommend modification (ALTERNATE LANGUAGE – MAKE A NON-BINDING RECOMMENDATION FOR A MODIFICATION) of a parenting plan or contact/parenting time schedule, reduce such recommendations to writing, and provide them to the parents and to any attorney who represents either parent (NOTE: IF THE INTENTION IS FOR THE PC TO ASSIST THE PARTIES WITH COMMUNICATION AND COOPERATION, AND WITH MINOR ADJUSTMENTS TO THE PARENTING TIME SCHEDULE, THIS SHOULD LIKELY BE DELETED, OR LIMITED TO RECOMMENDATIONS TO THE PARTIES AND COUNSEL, BUT NOT TO THE COURT);

X recommend a final decision on any parenting issue concerning which the parents reach an impasse (ALTERNATE LANGUAGE ; ON ANY ISSUE WHICH THE PARENTS, AS JOINT LEGAL CUSTODIANS, ARE REQUIRED TO AGREE UPON), by submitting a written recommendation to the parties and their counsel, and the same shall be binding until further Order (NOTE: THIS LAST PHRASE IS USUALLY INCLUDED IN PC APPOINTMENT ORDERS, DESPITE THE ADDITION OF GUIDELINE V. ALTERNATE LANGUAGE – AND EACH PARTY, BY HIS/HER SIGNATURE ON THIS ORDER, AGREES TO COMPLY WITH SUCH WRITTEN RECOMMENDATION, PENDING FURTHER ORDER OF THE COURT);

X facilitate communication between the parents by serving, if necessary, as a conduit for information;

X recommend, where appropriate, the institution or cessation of supervised parenting time (NOTE: THIS SHOULD RARELY BE NECESSARY IN A PC APPOINTMENT ORDER);

X when the parents cannot agree on a resolution, make (NON-BINDING) recommendations regarding religion, religious training and church attendance, when in the best interests of the child(ren) (NOTE: THIS SHOULD RARELY BE NECESSARY IN A PC APPOINTMENT ORDER WHEN ONE PARENT HAS SOLE LEGAL CUSTODY);

X recommend a final decision with regard to large changes in vacation and/or holiday time shares, when appropriate (THIS IS USUALLY IN PC APPOINTMENT ORDERS, BUT IN THE WRITER'S OPINION, IS RARELY APPROPRIATE);

(OPTIONAL ALTERNATE LANGUAGE – EXAMPLES ONLY):
WHEN APPROPRIATE OR NECESSARY, IN ORDER TO ACCOMMODATE TRAVEL OR OTHER FAMILY EVENTS, THE PARENTS' WORK SCHEDULES, AND THE CHILDREN'S SCHEDULES OF ACTIVITIES, RECOMMEND MINOR CHANGES TO THE PARENTING TIME SCHEDULE, WHICH RECOMMENDATION THE PARTIES SHALL COMPLY WITH, ABSENT COURT ORDER TO THE CONTARY.

WHEN THE PARENTS CANNOT AGREE ON A CHILD'S PARTICIPATION IN AN EXTRA-CURRICULAR ACTIVITY, RECOMMEND WHETHER OR NOT THE CHILD MAY PARTICIPATE IN THE ACTIVITY AND, IF SO, WHAT RESPONSIBILITIES EACH PARENT WILL HAVE TO PERMIT THE CHILD TO PARTICIPATE, AND TO TRANSPORT THE CHILD TO AND FROM THE ACTIVITY, DURING THE PARENT'S PARENTING TIME.

HELP THE PARTIES TO COMPLY WITH PROVISIONS OF THE SETTLEMENT AGREEMENT/DECREE OF DISSOLUTION OF MARRIAGE, WITH RESPECT TO THE PAYMENT AND SHARING OF THE COSTS OF EXTRACURRICULAR ACTIVITIES.

HELP THE PARTIES TO COMPLY WITH PROVISIONS OF THE SETTLEMENT AGREEMENT/DECREE OF DISSOLUTION OF MARRIAGE, WITH RESPECT TO THE PAYMENT AND SHARING OF THE COSTS OF UNINSURED HEALTHCARE EXPENSES.

3. **The PC shall not:**

i. serve as a custody evaluator in the case;

ii. offer a binding recommendation for a change in the **court-ordered parenting plan or schedule,** but MAY advise parties or their counsel for the need of a

review of custody or a custody evaluation (NOTE: IT MAY NOT BE APPROPRIATE TO INCLUDE THIS SUBPARAGRAPH IN A SOLE LEGAL CUSTODY SITUATION, OR IN ANY ORDER BY WHICH THE PC DOES NOT HAVE AUTHORITY TO MAKE A BINDING RECOMMENDATION – THE USE OF THE PHRASE "BINDING RECOMMENDATION" HERE MAY IMPLY THAT THE PC **MAY** MAKE OTHER BINDING RECOMMENDATIONS) ;

iii. address significant financial matters between the parents (NOTE: WHAT ARE SIGNIFICANT FINANCIAL MATTERS? A PC CAN BE A USEFUL PERSON TO DECIDE SUCH THINGS AS WHETHER MARCHING BAND IS A CURRICULAR OR EXTRACURRICULAR ACTIVITY, OR WHETHER THE CHILD'S CONTRIBUTION TO A GIFT FOR THE COACH IS AN EXPENSE TO BE SHARED.);

iv. attempt to exercise judicial authority;

v. be contacted by either parent outside normal working hours, unless the matter constitutes a genuine emergency (NOTE: WHAT CAN THE PC REALLY DO IF THERE IS AN EMERGENCY WHEN THE COURTHOUSE IS CLOSED?);

vi. substantially alter the percentage of parenting time between parents (NOTE: WHAT IS SUBSTANTIALLY? IF THE PC IS GOING TO BE EMPOWERED TO MAKE MINOR ADJUSTMENTS TO THE PARENTING SCHEDULE, THIS IS THE PLACE TO SPECIFY HOW FAR THE PC MAY GO IN DOING SO).

4. **Meeting with the PC.**

i. In fulfilling his or her responsibilities, the PC shall be entitled to communicate with the parents and their child, separately or together, in person or by telephone; with the health care providers and mental health providers for the parents and the child (NOTE: IF IT IS NOT GOING TO BE NECESSARY FOR A PC TO COMMUNICATE WITH A PARENT'S HEALTHCARE PROVIDERS, THIS SHOULD BE DELETED); and with any other third parties reasonably deemed necessary by the PC. The parents shall cooperate with the PC and shall execute any releases which may be necessary to permit the above communication to occur.

ii. Each parent is responsible for contacting the PC to schedule and arrange initial appointments within five (5) days of this Order.

iii. The parents shall provide copies of all pleadings, orders, and correspondence that relate to the issues to be brought to the PC. These documents shall initially be provided within ten (10) days of the date of this Order.

iv. Each parent shall direct any disagreement with the other parent regarding the child to the PC (NOTE: EVERY DISAGREEMENT? ANY DISAGREEMENT WITH THE OTHER PARENT WHICH THE PARENTS HAVE BEEN UNABLE TO RESOLVE BETWEEN THEMSELVES? ANY DISAGREEMENT WITH THE OTHER PARENT ABOUT A JOINT LEGAL CUSTODY MATTER ON WHICH AGREEMENT IS REQUIRED? AN

ORDER SHOULD NOT FACILITATE EITHER PARENT USING THE PC PROCESS TO CAUSE EXPENSE TO THE OTHER PARENT, OR TO INTERFERE WITH THE OTHER PARENT'S ROUTINE PARENTING CHOICES, NOR TO FACILITATE EITHER PARENT SIMPLY REFUSING TO MAKE ANY ATTEMPT TO CO-PARENT DIRECTLY WITH THE OTHER PARENT, AND PRECISE LANGUAGE CAN ASSIST.). The PC shall work with both parents to resolve the conflict, and, if necessary, will recommend an appropriate resolution to the parents and their legal counsel.

v. The parents and all agencies (WHAT AGENCIES?) shall participate in good faith in the dispute resolution process.

5. **Written and Oral Report and Court Appearances.**

i. Any agreements reached in the PC process shall be reduced to writing and signed by both parties and the PC.

ii. The PC may submit written reports to the parents and/or their counsel, if the parent is represented by counsel, describing any conflicts and the PC's recommended resolutions. The PC may also report to the parents and/or their counsel, if the parent is represented by counsel, with regard to parental compliance and attitudes regarding any element of the parenting plan or parenting time schedule.

iii. When necessary, decisions of the PC shall be made orally and shall become binding when communicated to both parties orally (NOTE: THIS LANGUAGE SHOULD BE TAILORED TO APPLY ONLY TO DECISIONS WHICH THE PARTIES HAVE AGREED TO ABIDE BY, ONCE THE PC HAS MADE THE DECISION). However, such decisions shall be communicated in writing as soon as practicable.

6. **Terms of Appointment.**

i. The PC is appointed for two (2) years, or unless discharged prior to the expiration of one year.

ii. The court may terminate the service of the Parenting Coordinator at any time upon finding that there is no longer a need for the services or for other good cause. Good cause may include a finding that domestic violence issues or other circumstances exist that appear to compromise the safety of any person or the integrity of the process. The appointment may be terminated if further efforts by the Parenting Coordinator would be contrary to the best interests of the child; the child has reached the age of majority; or the child no longer lives with a party.

iii. The Parenting Coordinator may provide notice to the parties and the court of his or her intent to resign at any time. The court may approve the resignation and discharge the Parenting Coordinator without a hearing unless a party files a written objection within 10 days of the notice and requests a hearing.

iv. No party may terminate the services of a court appointed Parenting Coordinator without an order of the court. Absent egregious abuse of discretion or a

substantial and unexpected change in circumstances, no party may request a judicial review of the appointment within the first six months of the appointment. Nevertheless, the court may terminate the appointment of a Parenting Coordinator at any time.

v. After the initial six-month period, a party may petition the court for termination of the appointment. Upon a finding that the Parenting Coordinator has exceeded his or her mandate as set forth Section V of the Indiana Parenting Time Guidelines (effective 1/1/17); has acted in a manner inconsistent with this guideline; has demonstrated bias; or for other good cause the court may terminate the appointment.

vi. After the initial six-month period, the parties may jointly request the termination of the parenting coordination process or motion for the modification of the terms of the appointment. Modification or termination of the terms of the appointment may be entered by the court for good cause shown as long as the modification or termination is in the best interest of the child.

7. **Confidentiality.**

All medical records and any records relating to the present, past or future medical treatment of either Petitioner or Respondent, including but not limited to physical, mental or psychological issues, that are provided to the PC shall be and remain strictly confidential and the contents of such records shall not be divulged or communicated by the PC to the other party or any other third party. Provided, however, should the PC terminate, both parties reserve the right to seek a Court Order requiring release of the records held by the PC. For all other matters, there is NO privilege or right of confidentiality between the child, the Parties and the PC.

8. **Cooperation/Release of Information.**

The Parties are ordered to cooperate with the PC, provide all relevant documentation to the PC, and to sign any and all release of information forms, or otherwise provide all authority necessary for the PC to obtain all medical, education, counseling and treatment information of the Parties, the child or any other person as necessary to the role of the PC.

Further, the Parties, or their representatives are ordered to provide and gather all information necessary to the role of the PC, including but not limited to medical, education, counseling and treatment information of the Parties, the child, or any other person necessary to the recommendations of the PC.

9. **Incorporation of Agreed Matters into Enforceable Court Orders.**

Although one of the goals of the PC is to encourage parents to harmoniously resolve shared parenting issues without the need for a Court hearing, the negotiated or agreed matters shall be memorialized in writing, signed by the parties, copied to counsel if the parties are represented, and submitted to the Court for approval within twenty (20) days of the agreement being signed.

10. **Authority, Qualifications and Expertise.**

This appointment is based upon the expertise of the PC as a licensed mental health and/or legal professional. Further the Court finds that such PC is entitled to judicial immunity pursuant to Indiana Law.

11. **Service of Pleadings.**

Both parties and/or their respective counsel shall serve the PC with any and all pleadings which are filed with the Court in this matter as if the PC was a party to same.

12. **Adoption of Guidelines.**

Except as specifically modified herein, the parties and PC shall follow all other provisions of Section V of the Indiana Parenting Time Guidelines, which are adopted and incorporated herein by reference.

13. **The COURT FURTHER ORDERS THAT:**

____

____

____

(NOTE: IT IS BETTER PRACTICE TO OBTAIN SIGNATURES OF BOTH PARTIES AND BOTH COUNSEL, ESPECIALLY WHEN THE PC IS AUTHORIZED TO MAKE ANY DECISIONS WHICH THE PARTIES HAVE AGREED TO FOLLOW.)

SO ORDERED on ____________________________________.

____

Judge,

Distribution:

SETTLEMENT VALUE WORKSHEET

ASSESS THE FACTS	
STEP 1 After assessing the probable size of the Marital estate List the major factual issues upon which the trier's decision will probably turn on when deciding the division of property.	**STEP 2** Assign a percentage reflecting the probability that the issue will be resolved in your favor.
	%
	%
	%
	%

ASSESSING THE LEGAL ISSUES	
STEP 3 List the major legal issues: substantive, procedural and evidentiary on which the trier's decision will probably turn.	**STEP 4** Assign a percentage reflecting the probability that the issue will be resolved in your favor.
	%
	%
	%

ASSESSING DIVISION

STEP 5	STEP 6
List the most likely division that might result from trial. $_______________ $_______________ $_______________	Assign a percentage reflecting the probability of a particular amount being the trial result. $_______________ $_______________ $_______________

Section Five

Trial Preparation from A to Z

Brian K. Zoeller
Cohen & Malad, LLP
Indianapolis, Indiana

Section Five

Trial Preparation from A to Z……………………………….. Brian K. Zoeller

Introduction..2

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Summary of Galway Terrace Property 4

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Sample (Redacted) GAL Report..6

Trial Outline..36

Excerpts from Provisional Order 40

Sample Motion to Equally Divide Time...41

TRIAL PREPARATION FROM A TO Z

Brian K. Zoeller
Nicole Makris
Cohen & Malad, LLP

I. Conference with client
   a. Should you take the case?
   b. Assess compatibility with client
      Am I taking this case despite serious reservations because I'm not busy enough?
   c. Manage client expectations
      This will help with every aspect of trial preparation
   d. Prepare client for possible outcomes

II. Outline contested issues
   a. Property
      a. Marital residence
      b. Vehicles
      c. Bank accounts
      d. Retirement accounts
      e. Equalization payment
         1. QDRO
         2. Judgment
   b. Children
      a. Legal and physical custody
      b. Parenting time
      c. Child support
      d. Tax exemption

III. Develop theory of the case
   a. Simplify all the moving pieces
   b. Identify the most important themes
   c. Be strategic
   d. Diary every deadline for follow up

IV. Research relevant case law
   a. Keep up to date on most up to date cases pertinent to your case
   b. Have case citations accessible for the court

V. Gathering Evidence
   a. Real estate appraisals
   b. Pension valuations
   c. Depositions
   d. Will the child/children have necessary information and if so, what is the least harmful way to get that to the trier of fact
   e. Non-party requests/business record affidavits
   f. What experts/specialists needed
   g. Go through file again and notes from client meetings

VI. Witness preparation
   a. Determine who has valuable information

   b. What value will the testimony bring to the judge? Succinctness is your new favorite word folks, say it with me, succinctness!

VII. Exhibit preparation
   a. Requests for Relief
      i. A summary of requests helps the court by providing a road map for the case.
      ii. Also acts as a checklist to make sure testimony is provided on all issues.
      iii. Anticipate Objections!
   b. Marital Estate Balance Sheet
      i. Verify values
      ii. Have supporting documents
      iii. Stipulations to streamline presentation of evidence
   c. Summary exhibits
      i. Summarize voluminous exhibits, e.g. deposits into bank statements
      ii. Summarize witness testimony
      iii. Tax effect on party's income > 21.88% rate on taxes
   d. Attorney Fee Affidavit
      i. Separate out any fees incurred due to discovery disputes
      ii. Have time and expense report accessible if not attached to affidavit
   e. Demonstrative Exhibits
      i. Poster boards of important issues, dramatic photos, or key evidence
   f. What is your best evidence?
      i. Know how to highlight it and make sure it is not buried
   g. Simplify and streamline your presentation
   h. Know your judge, and tailor your presentation accordingly
      i. If you don't know your judges

VIII. Draft trial outline
   a. Visualize progression of trial
   b. Use outline as a tool, not a script
   c. Do you need a separation of witnesses

IX. Trial preparation with client
   a. Review line of questioning
   b. Prepare client on responding to cross-examination
   c. Put client at ease about the process

X. Review opposing counsel's exhibits
   a. Prepare objections
   b. Review with client

XI. Pre-trial motions
   a. Equally divide time
   b. Pre-trial brief for significant issues

XII. Arrive early for trial
   a. Meet with client prior to court
   b. Come equipped with any necessary technology
   c. Bring hard copies of exhibits as courtesy for the court

Example of successful trial preparation: https://youtu.be/1jQP0Y2T2OQ

SUMMARY OF GALWAY TERRACE PROPERTY[1]

Before 2017 Dismissal

- [redacted] (“Husband”) and [redacted] and [redacted] (“Husband’s Parents”) were on the deed for the Galway Terrace property, but only Husband was on the mortgage.

- Husband “always paid the mortgage, taxes, and insurance on [the Galway Terrace] property.” Husband’s Depo. Pg. 96, Line 15.

- While the Galway Terrace property was being rented out, Husband received the rent income. Husband’s Depo. Pg. 115, Line 4. The rent showed up in Husband’s accounts, and Husband and [redacted] (“Wife”), paid taxes on the rent.

After 2017 Dismissal

- Husband is transferring rent to Husband’s Parents and Husband is thus no longer receiving rent from the Galway Terrace property. Husband’s Depo. Pg. 118, Line 25.

- Husband transferred his interest in the Galway Terrace property to parents via Quitclaim Deed on January 16, 2018, explaining on the Deed that the “Transfer is a gift.”

- Husband paid off $300,000 mortgage–a mortgage solely in his name–on the Galway Terrace property.

[1]At all times referenced herein, Galway Terrace property refers to the property located at 149 Galway Terrace, Fremont, CA 94536.

In Re: *Cause No.*

FATHER'S INCOME SUMMARY OF EACH PARTY

Father income:

Father's gross income from January 1, 2011– May 1, 2011 = $147,321.00

Father's necessary business expenses from same period = $18,611.00
(see attached expense voucher and summary)

$147,321.00
($18,611.00)
$128,710.00

$128,710.00 divided by 17 weeks = $7,571.00

Father's adjusted gross weekly income = $7,571.00

Father's effective tax rate (state & federal) = 38.81%
Tax rate assumed in child support guidelines = 21.88%
Differential between Father's rate and assumed rate = 16.93%

Husband's adjusted gross weekly income when further adjusted for his effective tax rate = $6,289.00

Mother's weekly income:

Amount imputed by the Court = $615.38
Wife's part-time employment = $280.00
Alimony payments = $320.53

Mother's total weekly income = $1,216.00

STATE OF INDIANA) IN THE HAMILTON SUPERIOR COURT 3
)SS:
COUNTY OF HAMILTON) CAUSE NO.:

IN THE MATTER OF THE MARRIAGE OF:)
)
)
Petitioner,)
And)
,)
Respondent.)

GUARDIAN AD LITEM REPORT

Comes now, , the Guardian Ad Litem (hereinafter "GAL") in the above-captioned cause, and respectfully submits this Report on behalf of the minor Children.

AT ISSUE

This is a post-dissolution of marriage action where Mother has filed a *Verified Petition for Modification of Custody, Parenting Time and Child Support, Request for Supervised Parenting Time, Petition for the Appointment of a Parenting Coordinator and Request for Implementation of Our Family Wizard.*

ASSESSMENT

Procedural History of the Case.

The parties were married in and as a result of the marriage, two children were born, namely (DOB) and (DOB). That on or about , the parties were divorced pursuant to a Decree and Marital Settlement Agreement whereby the parties were awarded joint legal custody of the children, Mother received primary physical custody of the children and Father received parenting time in accordance with the Indiana Parenting Time Guidelines. Mother filed a *Petition to Modify Custody and Parenting Time* on alleging a continuing and substantial change in circumstances since the entry of the Decree including but not limited to Father threatening Mother and the children, Father exercising unstable behavior, Father returning the children to Mother at 3:00 a.m. in the morning, Father missing parenting time, Father disparaging Mother to the children and Father abusing alcohol. As a result of Mother's filing, the parties entered into an *Agreed Entry* on . Pursuant to the same, Father was required to participate in SoberLink for six months during his parenting time with the children, go to counseling with with and follow her treatment plan, have phased-in parenting time and

Father was not permitted to consume alcohol during or within 24 hours' prior to parenting time with the children. Further, the parties agreed to communicate only about the children and only via text message or email, except in case of emergency. On or about [redacted], the parties entered into an additional *Agreed Entry Regarding Dismissal of Mother's Petition to Modify Custody* whereby the parties agreed that Father had substantially complied with the previous Agreed Entry and Mother moved to dismiss her Petition to Modify Parenting Time and Custody. Further, the parties reiterated that the parties share joint legal custody and that Father should receive parenting time in accordance with the Indiana Parenting Time Guidelines.

The present Petition pending before the Court is Mother's *Verified Petition for Modification of Custody, Parenting Time and Child Support, Request for Supervised Parenting Time, Petition for the Appointment of Parenting Coordinator and Request for Implementation of Our Family Wizard* filed on [redacted]. In it, Mother alleges that the current agreement is no longer in the best interests of the minor children due to Father's documented history of alcohol abuse and treatment; history of anger management and domestic violence; Father's degrading communication to Mother; Father's inability to communicate appropriately with [redacted] school counselor and both boys' therapists; Father's difficulty in agreeing to [redacted] attending counseling; Father's uncooperative spirit; and Father's inability to be flexible for the minor children. Mother is requesting sole legal custody, that Father receive supervised parenting time, that a parenting coordinator be appointed, and that the parties be required to use Our Family Wizard for communication.

The Parties.

[redacted], Mother: [redacted]

Home Visit at Mother's Home.

, Father:

Home Visit at Father's Home.

.

, Children: The GAL met with at the GAL's office on

Additional Persons Interviewed:

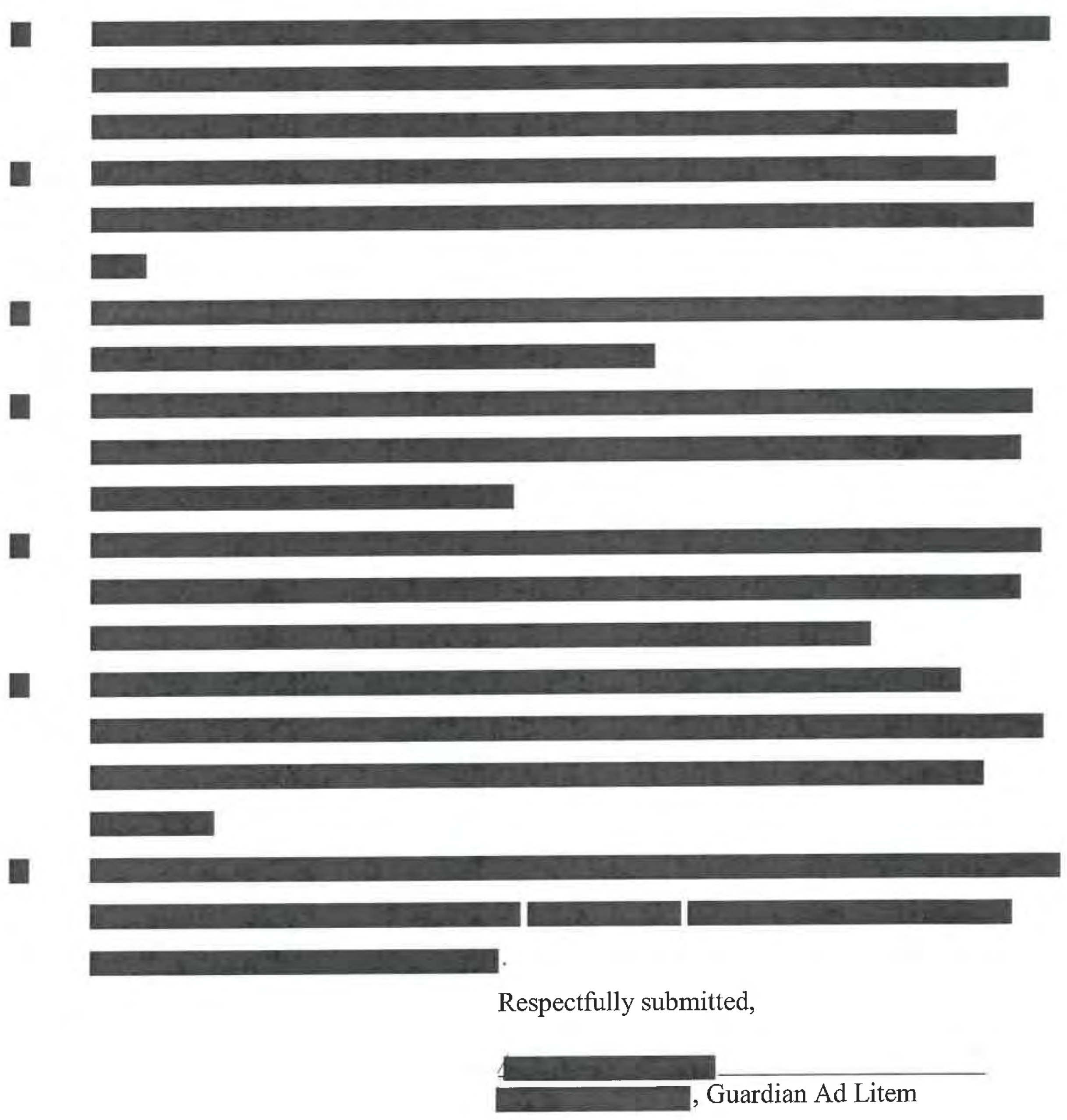
, Counselor:

, Maternal Uncle:

Documents Reviewed

SUMMARY

CONCLUSION

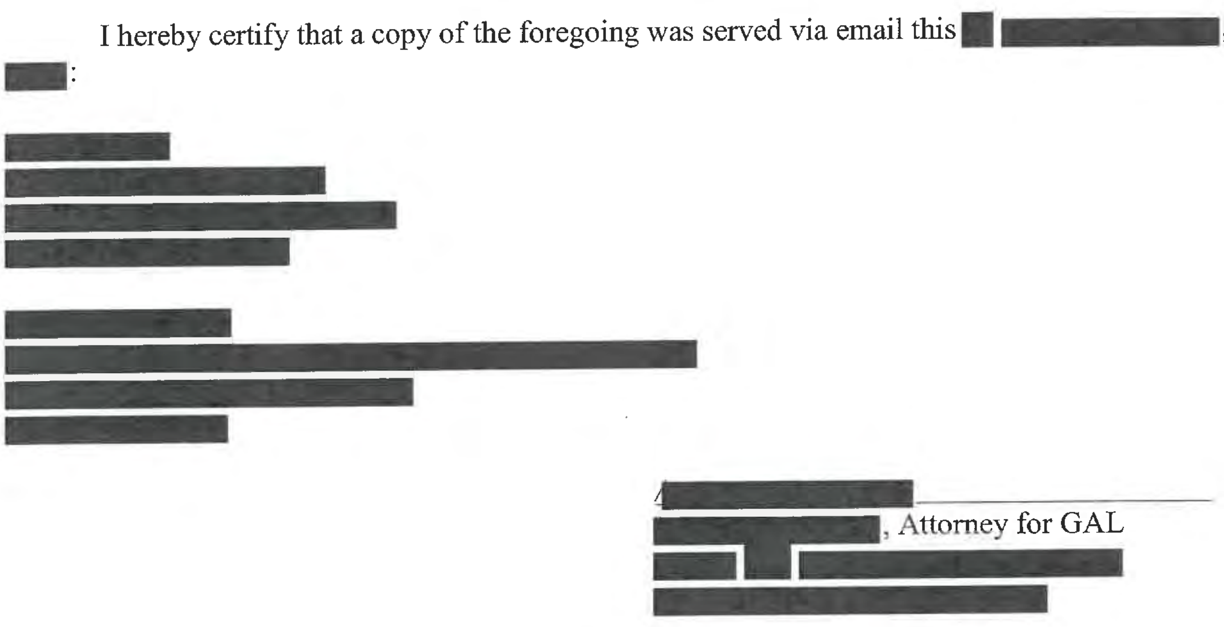


Respectfully submitted,

, Guardian Ad Litem

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via email this [redacted] [redacted], [redacted]:



, Attorney for GAL

APPENDIX A

I. OVERVIEW OF GAL'S INVESTIGATION:

a. Person's Interviewed:

Name	Relationship to Children	Interview	Dates
[redacted]	Mother	In GAL's Office Home Visit	[redacted] [redacted]
[redacted]	Father	In GAL's Office Home Visit	[redacted] [redacted]
[redacted]	Child	In GAL's office At Mother's home At Father's home	[redacted] [redacted] [redacted]
[redacted]	Child	In GAL's office At Mother's home At Father's home	[redacted] [redacted] [redacted]
[redacted]	Children's counselor	Telephone	[redacted]
[redacted]	Maternal grandmother	Telephone	[redacted]
[redacted]	Maternal uncle	Telephone	[redacted]

- When I asked you to describe your daughter [redacted] in your deposition you told me she had an incredible sense of humor
    - She's independent
    - She's fearless
    - Loves her friends
    - is very social
    - has a deep love for anything musical

And when I asked you to describe her relationship with her father you said "They have a great relationship - [redacted] is crazy about her father" p. 34 line 22

Who is pictured here on this posterboard

How old is [redacted]

Play Audio – So this little girl (posterboard) was called "a Retard"

Thank you for answering my question mam Was that so hard – it's demeaning for me to speak to you that way isn't it

So you tell your 8 year old daughter that if her father goes to New York "after school I will fucking murder you"

Then to emphasize your point you say "just wait Just wait

Mam this little girl went to school and had to wonder all day long if her mother was going to murder her after school

You psychologically abused your daughter didn't you

Now you claim you are in therapy and getting help right

But mam that recording we just played was in November of 2016 and you'd been in counseling for 6 months at that point, right

So 6 months of counseling and you still do something that horrible to your daughter

Let's talk about other horrible things you've said to your children:

You've told [REDACTED] that she is "not worth your time" p. 73 line 2

You've called [REDACTED] Stupid p. 73 line 6

Called her disgusting p 73 line 10

Called her a piece of shit p. 75 line 13

You didn't only tell [REDACTED] you would kill her, but you've said that to [REDACTED] pg. 77 line 17

You told [REDACTED] you'd kill him too didn't you p85 line 22 to next page

You've told ███ she's worthless haven't you

You've told ███ she was stupid

You've told ███ she's a piece of shit pg. 78 line 18

This little girl – (posterboard) was a piece of shit in your eyes mam

You told your husband you were going to drive off a bridge with ███ in the car

When I asked you in your deposition you weaknesses as a parent you said you can be too emotional and can react without thinking?

Based upon what you've testified here today that's probably the understatement of the century isn't it.

When I asked you about your husband's greatest strengths as a parent you said he is calm and patient with the kids, right?

And that's a very good thing for these kids to have a calming influence in their life

Mam would you agree with me that a good mother only allows people she knows will not harm her children to care for them when she is not able

Do you also agree that a good mother puts the safety of her children first

So a good mother only leaves her children in the care of someone they will be safe with.

Mam in your deposition we talked about all your travel over the past two years

You took 5 trips to New York – 2 weddings 2 drop offs for camp and 1 with ██ correct

For all of those trips some of the children were left with your husband

You took a trip by yourself to both Israel and Las Vegas and left the kids with your husband correct

And you're a good mom, right

So you knew they would be well taken care of by your husband or else you'd never have left your children with him.

Excerpts from Provisional Order

6. Upon hearing an audio tape of Mother berating [redacted], cursing at her, calling her names and threatening to murder her because she couldn't choose the right headband before school to go with her outfit, both the principal and the teacher had horrified expressions and began to tear up. In response to questions from Mr. Zoeller, both acknowledged that they considered Mother's behavior to be verbally and mentally abusive and had they heard that exchange in person they would have been required to report it to CPS.

16. Mother's anger and frustration results from the family dynamic of Father as the breadwinner and Mother as the stay at home parent and caregiver as well as the underlying issues which resulted in the breakup of the marriage. In addition to the audio clip of mother berating [redacted], there was both audio and video evidence of Mother striking Father as well as verbally abusing him in the presence of the children. One audio clip had Mother hitting herself and screaming "Stop hurting me" over and over while she is at the top of the stairs and Father is at the bottom of the stairs and the children were present. She also egged Father's car in the presence of the children. Father testified that other than defending against Mother's physical attacks, he has never hit her. Father did not deny that he called Mother names, questioned her mental stability and said she needed help.

18. It is clear that the exceptional [redacted] children should not witness nor be victims of Mother's angry tirades and verbal abuse and threats. The behavior displayed on the audio tape and described by both parents in their testimony is abusive and inappropriate. The Court finds that the children are at risk of physical and emotional harm if left in the custody of Mother or if she is permitted unsupervised parenting time. Both parents testified that Father never yells at the children, calls them names or threatens them.

STATE OF INDIANA) IN THE MARION SUPERIOR COURT
) SS
COUNTY OF MARION) CAUSE NO.

IN RE: THE MARRIAGE OF:)
)
)
Petitioner)
)
AND)
)
)
Respondent)

PETITIONER'S MOTION FOR AN ORDER EQUALLY DIVIDING HEARING TIME BETWEEN THE PARTIES

DRAFT

Comes now Petitioner, , by counsel, Brian K. Zoeller, and files Petitioner's Motion for an Order Equally Dividing Hearing Time Between the Parties. In support of said motion, Petitioner would show the Court as follows:

1. This matter is presently set for an all-day Provisional Hearing on XXXXXXXXXXXXX beginning at 9:00 a.m. on provisional issues regarding child related and financial matters.

2. Given the contentious nature of this matter, Petitioner respectfully requests that the Court enter an Order equally dividing the Court's time providing Petitioner and Respondent each with half (½) (three (3) hours) of the Court's time to include all direct examination of witnesses, cross examination of witnesses and to argue any objections the parties may have in their allotted time.

3. An equal division will allow each party the same amount of time to present their argument to the Court, will assist in the arguments being presented concisely, will prevent either party from inadvertently monopolizing the hearing time, and should allow the hearing to be completed in the time frame set by the Court.

4. Undersigned counsel contacted Respondents' counsels regarding the equal division of the hearing time as set forth above and at the time of the filing of this motion Respondent's position is unknown.

WHEREFORE, Petitioner, , by counsel, Brian K. Zoeller, respectfully requests the Court to enter an Order equally dividing the hearing time between the parties and for all other relief just and proper in the premises.

Respectfully Submitted,

COHEN & MALAD, LLP

____

Brian K. Zoeller, #19637-49
Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was electronically filed and served upon all parties of record, this ___________ day of March 20XX:

____

Brian K. Zoeller

COHEN & MALAD, LLP
One Indiana Square
Suite 1400
Indianapolis, Indiana 46204
317-636-6481 (Telephone)
317-636-2593 (Facsimile)

DRAFT

STATE OF INDIANA	)	IN THE MARION SUPERIOR COURT
	) SS	
COUNTY OF MARION	)	CAUSE NO.

IN RE: THE MARRIAGE OF:)
)
)
Petitioner)
)
AND)
)
)
Respondent)

ORDER ON MOTION FOR EQUAL DIVISION OF HEARING TIME

Comes now Petitioner, , by counsel, Brian K. Zoeller, and having filed *Petitioner's Motion for an Order Equally Dividing Hearing Time Between the Parties,*

And the Court having received and examined said motion and being duly advised in the premises now finds that said motion is meritorious and should be and is hereby GRANTED.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Petitioner and Respondent shall each have half (½) (three (3) hours) of the Court's time for presentation of his or her case, which includes direct examination, cross-examination and arguing objections.

SO ORDERED AND APPROVED this ___________________________, 20XX.

____
JUDGE, Marion Superior Court

Brian K. Zoeller
bzoeller@cohenandmalad.com

DRAFT

Section Six

Military Divorce

J. David Roellgen
Kolb Roellgen & Traylor LLP
Vincennes, Indiana

Steven F. Fillenwarth
Fillenwarth & Associates
Carmel, Indiana

Section Six

Military Divorce……………………………………………….. J. David Roellgen
Steven F. Fillenwarth

PowerPoint Presentation

MILITARY DIVORCE

J. DAVID ROELLGEN

KOLB ROELLGEN & TRAYLOR

STEVEN F. FILLENWARTH

FILLENWARTH & ASSOCIATES

CONTENTS

- Starting the case
- Division of military retirement as an asset upon divorce
- Effect of VA disability payments
- Tax issues
- Servicemembers Civil Relief Act

CONTENTS

- BAH
- TRICARE
- CUSTODY
- CHILD SUPPORT

STARTING THE CASE

- Military divorce is a specific type of divorce that arises when one or both partners are members of the military. Although typically an uncontested divorce, military divorces are different because they require additional requirements to be fulfilled. Divorces occur less frequently than within the civilian population. They present a special set of challenges that make military divorces more complicated than a typical divorce. For example, The Federal Service Members Civil Relief Act of 2003 requires any person seeking a divorce to state that their spouse is or is not currently a member of the United States armed forces. This is meant to prevent spouses from seeking divorces from service members who would be unable to attend divorce proceedings.

STARTING THE CASE

- Compliance with military regulations
- Protocols for service of process
- Domicile or residence

STARTING THE CASE

- Three venue options
- State where non-military spouse resides
- State where military spouse is stationed
- Military member's home of record

STARTING THE CASE

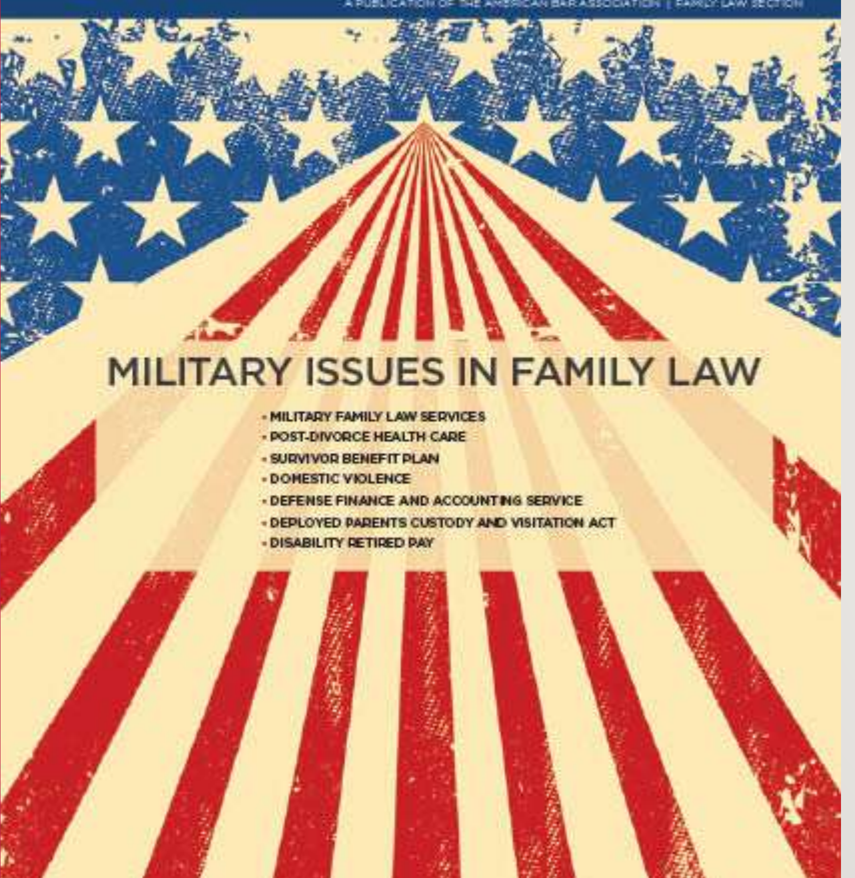
- The jurisdiction selected may impact division of assets, support, spousal maintenance and custody

CONSIDERATIONS

- Service Member's Civil Relief Act (SCRA)
- Uniformed Services Former Spouses' Protection Act (USFSPA)
- Hague Convention on Service abroad

CONSIDERATIONS

- The Servicemembers Civil Relief Act
- The Military Blended Retirement System
- Post-Divorce Health Care
- Survivor Benefit Plan
- Domestic Violence
- Deployed Parents Custody and Visitation Act
- Disability Retired Pay



Family Advocate • Volume 45, Number 2

DIVISION OF MILITARY RETIREMENT AS AN ASSET UPON DIVORCE

- It is well-established in Indiana that all marital property goes into the marital pot for division, whether it was owned by either spouse before the marriage, acquired by either spouse after the marriage and before final separation of the parties, or acquired by their joint efforts. *Ind. Code § 31-15-7-4(a)* (1997); *Webb v. Schleutker, 891 N.E.2d 1144, 1149 (Ind. Ct. App. 2008)*. The determinative date when identifying marital property subject to division is the date the dissolution petition was filed. *Webb, 891 N.E.2d at 1149*. While the trial court may ultimately determine **[*6]** that a particular asset should be awarded solely to one spouse, it must first include the asset in its consideration of the marital estate to be divided. *Id.*
-

DIVISION OF MILITARY RETIREMENT AS AN ASSET UPON DIVORCE

- The "coverture fraction" formula is one method a trial court may use to distribute pension or retirement plan benefits to the earning and non-earning spouses. Under this methodology, the value of the retirement plan is multiplied by a fraction, the numerator of which is the period of time during which the marriage existed (while pension rights were accruing) and the denominator is the total period of time during which pension rights accrued.

DIVISION OF MILITARY RETIREMENT AS AN ASSET UPON DIVORCE

- *In re Marriage of Fisher, 24 N.E.3d 429, 433 (Ind. Ct. App. 2014)* (quoting *Hardin v. Hardin, 964 N.E.2d 247, 250 (Ind. Ct. App. 2012)* (citation omitted) (emphasis omitted)). We apply the coverture fraction formula to determine what portion of a retirement asset is subject **[**6]** to division. *Barton v. Barton, No. 32A04-1412-DR-550, 2015 Ind. App. LEXIS 738, 47 N.E.3d 368, 2015 WL 7983011, at *7 (Ind. Ct. App. Dec. 7, 2015)*, *trans. denied*.
- *Ahls v. Ahls, 52 N.E.3d 797*

DIVISION OF MILITARY RETIREMENT AS AN ASSET UPON DIVORCE

- **What are the 10/10, 20/20/20 and 20/20/15 rules?**
- **The 10/10 Rule** states that if you were married at least 10 years and your spouse performed 10 years of military service, then you'll receive any awarded military retirement directly from DFAS. "This rule is often misunderstood," says Andrews. "It doesn't determine if you are *entitled* to a portion of military retirement benefits. It only impacts *how* you are paid *if* a portion is awarded to you through the divorce order."

DIVISION OF MILITARY RETIREMENT AS AN ASSET UPON DIVORCE

- **The 20/20/20 Rule** states that an un-remarried former spouse may be eligible for certain benefits and privileges, like health care, commissary and exchange access. To access these privileges, the former spouse must meet the following "20/20/20" criteria:
- **First 20**: The former spouse must have been married to the military member for at least 20 years at the time of divorce.
- **Second 20**: The military member performed at least 20 years of retirement-creditable service.
- **Third 20**: The former spouse was married to the military member during at least 20 years of the member's retirement-creditable service.

DIVISION OF MILITARY RETIREMENT AS AN ASSET UPON DIVORCE

- **The 20/20/15 Rule** states that if the marriage lasted at least 20 years, the service member has 20 years of creditable service, and the marriage overlapped the military member's period of service at least 15 years, then the former spouse is eligible only for TRICARE medical for one year, not the other privileges offered under the 20/20/20 rule.
- Note: In every case, the USFSPA recognizes the right of states to distribute military retirement in accordance with their laws.

DIVISION OF MILITARY RETIREMENT AS AN ASSET UPON DIVORCE

STATE OF INDIANA) IN THE ____________ COURT
) SS:
COUNTY OF KNOX) Case Number: _________________

____
Petitioner
v

____
Respondent

MILITARY RETIRED PAY DIVISION ORDER

This cause came before the undersigned Judge upon the Petitioner's claim for a distribution of the Respondent's military retired pay benefits. The court makes the following:

FINDINGS OF FACT:

The Petitioner's Social Security Number is ________________ and current address is ___________________________.

The Respondent's Social Security Number is __________________ and current address is _________________________.

The parties were married on __________. Their marital status was terminated on _________________ pursuant to a Dissolution Decree entered in ________ County, State of Indiana. This current order is entered incident to the aforementioned order.

DIVISION OF MILITARY RETIREMENT AS AN ASSET UPON DIVORCE

- The parties were married for a period of ten or more years during which time the Respondent performed at least ten years of service creditable for retirement eligibility purposes.
-
- If the military member was on active duty at the time of this order, Respondent's rights under the Servicemembers' Civil Relief Act, 50 U.S.C App. 501-548 and 560-591, have been observed and honored.
-
- This Court had jurisdiction over the Respondent by reason of his consent to the jurisdiction of the court.
- **CONCLUSIONS OF LAW:**

DIVISION OF MILITARY RETIREMENT AS AN ASSET UPON DIVORCE

- This Court has jurisdiction over the subject matter of this action and the parties hereto.
- Petitioner, ____________ is entitled to a portion of Respondent's United States military retired pay as set forth herein.
- **IT IS, THEREFORE, ORDERED THAT:**
- The former spouse is awarded 50 percent of the member's disposable military retired pay.
- On the date of the decree of divorce, dissolution, annulment, or legal separation ____________________, with an effective date of ______________, the member's military retired base pay was $_________________, and the member had ____ years and _________ months of credible service.
- On the date of the decree of divorce, dissolution, annulment, or legal separation ______________, with an effective date of _______________, the member's military retired base pay was $____________ and the member had 0 Reserve retirement points.
- Dated this __________________________.

____

Judge,

- DISTRIBUTION:

DIVISION OF MILITARY RETIREMENT AS AN ASSET UPON DIVORCE

- Fax to: Defense Financing Accounting Services
- 1-877-622-5930
- Re Military Pension Following Divorce

DIVISION OF MILITARY RETIREMENT AS AN ASSET UPON DIVORCE

- Survivor Benefit Plan
- May be negotiated in the divorce if not already selected.

THRIFT SAVINGS PLAN

- Your current or former spouse, or your dependents, could be awarded a portion of your TSP account if a valid Retirement Benefits Court Order (RBCO) to divide your account is issued. The RBCO can be issued at any time in the divorce, annulment, and separation proceedings.
- **The rules for qualified domestic relations orders (QDROs) that apply to private sector plans do not apply to the TSP.**
- A valid RBCO requires the TSP to freeze your account, preventing you from taking any new loans or withdrawals until the award is paid out or the order is otherwise resolved. However, a freeze will not prevent you from making contributions or changing your contribution allocation or investment choices, and you will still be required to make payments on existing loans.

POST -9/11 GI BILL

- This can be a very valuable asset
- The service member may transfer to spouse or children
- Federal law prohibits state courts from dividing

POST -9/11 GI BILL

- It has been estimated with the stipends and tuition it can amount to over $160,000 for a four-year degree

POST -9/11 GI BILL

- Can share by agreement
- GI bill benefits may partially count as income for maintenance and child support purposes
- Stipend, tuition, books

EFFECT OF VA DISABILITY PAYMENTS

- **VA Disability Payments Cannot Be Divided As Marital Property in a Divorce**

EFFECT OF VA DISABILITY PAYMENTS

- *Mansell v. Mansell, 490 U.S. 581 (1989)*, a landmark federal case, explicitly authorizes states to not treat VA disability payments as marital property, which means states do not have the power to take a portion of your monthly VA benefits payments and give to your spouse in equitable distribution but are able to use it to calculate one's earning capacity when calculation spousal and child support.

EFFECT OF VA DISABILITY PAYMENTS

- Rose v. Rose 155 B.R. 1993 Bankr. LEXIS 885
- In Mansell v. Mansell, 490 U.S. 581, 109 S.Ct. 2023, 104 L.Ed. 2d 675 (1989) the Supreme Court determined that state courts may not, based on the Uniformed Services Former Spouses' Protection Act, 10 U.S.C. § 1408, treat as divisible property after divorce military retirement pay waived by the retiree in order to receive disability benefits.

EFFECT OF VA DISABILITY PAYMENTS

- **VA Disability Counts as Income for Child Support & Alimony**
- Aside from your pension, VA benefits alone are not technically considered marital property. However, the income you receive from the VA can be counted towards your monthly income amounts.

EFFECT OF VA DISABILITY PAYMENTS

- In the case of Rose v. Rose, 481 U.S. 619 (1987), The Supreme Court ruled that VA disability payments are NOT solely for the veteran, citing that the payments should be used to "provide reasonable and adequate compensation for disabled veterans and their families."
- **The court concluded that veterans' benefits are to be used to support the veteran AND their dependents.**
- Disability payments will never be divided in a divorce. But if there are child support, maintenance, or alimony payments in the discussion, the amounts will likely be influenced by the veteran's compensation.

TAX ISSUES

- *Mitchell*, 131 T.C. No. 215 (2008)
- The taxpayer was awarded the interest in the military retirement pay in state-court divorce proceedings, and the taxpayer contended that the divorce decree specified that all taxes be withheld from the military retirement pay before it was divided and distributed. The court held, however, that the taxpayer's interest in the military retirement pay was taxable income to her. Regardless of the terms of the state-court order, the taxpayer was treated under community property law as having earned the distributions received, and the taxpayer was thus liable as the distributee for tax on those distributions.

SCRA

- The Servicemembers Civil Relief Act, or SCRA, provides some protections for military members who are going through a divorce.
- If the divorce occurs while the member is on active duty, SCRA includes stipulations on how retirement pay may be divided.
- SCRA provides protections for the military member to delay divorce proceedings when they can't attend due to their military service obligations. This also applies to National Guard and Reserve members called to active duty. SCRA provides military members with the ability to request a "stay" for up to 90 days if their military duties prevent them from attending court proceedings. The court can authorize additional "stays" but they aren't guaranteed.

SCRA

- **Service member must affirmatively invoke the protection of the SCRA.**

SCRA

- The Civil Rights Division of the Department of Justice, created in 1957 by the enactment of the Civil Rights Act of 1957, works to uphold the civil and constitutional rights of all Americans, particularly some of the most vulnerable members of our society. See Civil Rights Division. As part of this work, the Civil Rights Division is tasked with enforcing the Servicemembers Civil Relief Act ("SCRA"), 50 U.S.C. §§ 3901-4043. See id. at Housing and Civil Enforcement Section.
- The SCRA, enacted in 2003 and amended several times since then, revised and expanded the Soldiers' and Sailors' Civil Relief Act of 1940 (SSCRA), a law designed to ease financial burdens on servicemembers during periods of military service. See 50 U.S.C. §§ 3901-4043. The SCRA is a federal law that provides protections for military members as they enter active duty. See id. It covers issues such as rental agreements, security deposits, prepaid rent, evictions, installment contracts, credit card interest rates, mortgage interest rates, mortgage foreclosures, civil judicial proceedings, automobile leases, life insurance, health insurance and income tax payments. See id.
- The location of the SCRA within the United States Code changed in late 2015. Previously found at (codified and cited as) 50 U.S.C. App. §§ 501-597b, there was an editorial reclassification of the SCRA by the Office of the Law Revision Counsel of the United States House of Representatives that became effective on December 1, 2015. The SCRA is now found at (codified as) 50 U.S.C. §§ 3901-4043.

SCRA

- **Benefit and Protection No. 1 – The six percent interest rate cap. 50 U.S.C. § 3937**
- **Benefit and Protection No. 2 – Protections against default judgments. 50 U.S.C. § 3931**
- **Benefit and Protection No. 3 – Non-judicial foreclosures. 50 U.S.C. § 3953**
- **Benefit and Protection No. 4 – Installment contracts and repossessions – 50 U.S.C. § 3952**
- **Benefit and Protection No. 5 – Residential (apartment) lease terminations – 50 U.S.C. § 3955**

SCRA

- **Benefit and Protection No. 6 – Enforcement of Storage Liens – 50 U.S.C. § 3958**
- *http://www.justice.gov/crt/housing-and-civilenforcement-section-cases-1#sm*

HOW ARE MY BAH BENEFITS AFFECTED?

- In the midst of a military divorce, civilian spouses are often concerned about whether they'll have access to family housing after the divorce. Typically, the former spouse loses access to family housing 30 days after the service member moves out due to the divorce.
- If you are a civilian spouse who is separating from a military member, you should not expect to receive Basic Allowance for Housing (BAH).
- If you're the military member, prepare for the possibility that your BAH could change based on your individual situation. Here are two examples:

HOW ARE MY BAH BENEFITS AFFECTED?

1. **You're now single with no children**. When the divorce is final, you'll begin receiving single BAH. You may even lose BAH if your installation requires single individuals of your rank to live in military dorms.
2. **You're now single with dependent children.**

- If you have custody of your children, then you should continue to receive BAH with the dependent rate.
- If you don't have custody of your children but are required to pay child support, you should receive BAH-Differential. BAH-Diff is given to a military member who is assigned single-type quarters but must make child support payments. Note that there are scenarios in which you might not receive BAH-Diff. Talk with your military benefits personnel if you think you're entitled to BAH-Diff.

HOW ARE MY BAH BENEFITS AFFECTED?

1. **Former no member spouse typically loses military housing after 30 days.**

WHEN DO I LOSE TRICARE BENEFITS?

- Unless you qualify under the 20/20/20 or 20/20/15 rules, the civilian ex-spouse typically loses access to TRICARE when the divorce is finalized. However, you may be eligible to purchase up to 36 months of coverage through the Department of Defense Continued Health Care Benefit Program.

CHILD CUSTODY

- **All 50 state have provisions to protect the rights of servicemembers in child custody disputes.**
- 31-17-2-21.3. Parent's absence or relocation due to active duty service not factor in determining custody or modification of child custody order.

CHILD CUSTODY

- **31-14-13-6.3. Parent's absence or relocation due to active-duty service not factor in determining custody or modification of child custody order.**

CHILD SUPPORT

- Child support will be calculated on the pay and and some of the benefits on the member's LES.

CHILD SUPPORT

Fax to:

DFAS Garnishment Law Directorate

1-877-622-5930

Income withholding, include member name and social security number.

CASES CITED

Bacchus v. Deen-Bacchus ***(unpublished)***

Court of Appeals of Indiana
April 16, 2013, Decided; April 16, 2013, Filed
No. 02A03-1203-DR-119

Ahls v. Ahls

Court of Appeals of Indiana
March 11, 2016, Decided; March 11, 2016, Filed
Court of Appeals Case No. 34A02-1509-DR-1416

Severs v. Severs

Supreme Court of Indiana
November 22, 2005, Decided
No. 82S01-0511-CV-597

CASES CITED

- ***Myers v. Myers***
  - Supreme Court of Indiana
  - September 18, 1990, Filed
  - Supreme Court No. 79S04-9009-CV-611
- ***Kirkman v. Kirkman***
  - Supreme Court of Indiana
  - July 6, 1990, Filed
  - No. 53S04-9007-CV-451
- ***Bingley v. Bingley***
  - Supreme Court of Indiana
  - September 29, 2010, Decided; September 29, 2010, Filed
  - No. 02S03-1002-CV-122

CASES CITED

In re Marriage of Fisher, 24 N.E.3d 429, 433 (Ind. Ct. App. 2014) (quoting)

Hardin v. Hardin, 964 N.E.2d 247, 250 (Ind. Ct. App. 2012)

. *Barton v. Barton, No. 32A04-1412-DR-550, 2015 Ind. App. LEXIS 738, 47 N.E.3d 368, 2015 WL 7983011, at *7 (Ind. Ct. App. Dec. 7, 2015)*, *trans. denied*.

CASES CITED

Mitchell v. Comm'r

United States Tax Court
December 15, 2008, Filed
No. 2518-04

- *Mansell v. Mansell, 490 U.S. 581 (1989)*
- *Rose v. Rose 481 U.S. 619 (1987)*
- Rose v. Rose 155 B.R. 394, 1993 Bankr.
- LEXIS 885

Section Seven

The Art of Making Objections

Hon. William J. Hughes
Hamilton Superior Court #3
Noblesville, Indiana

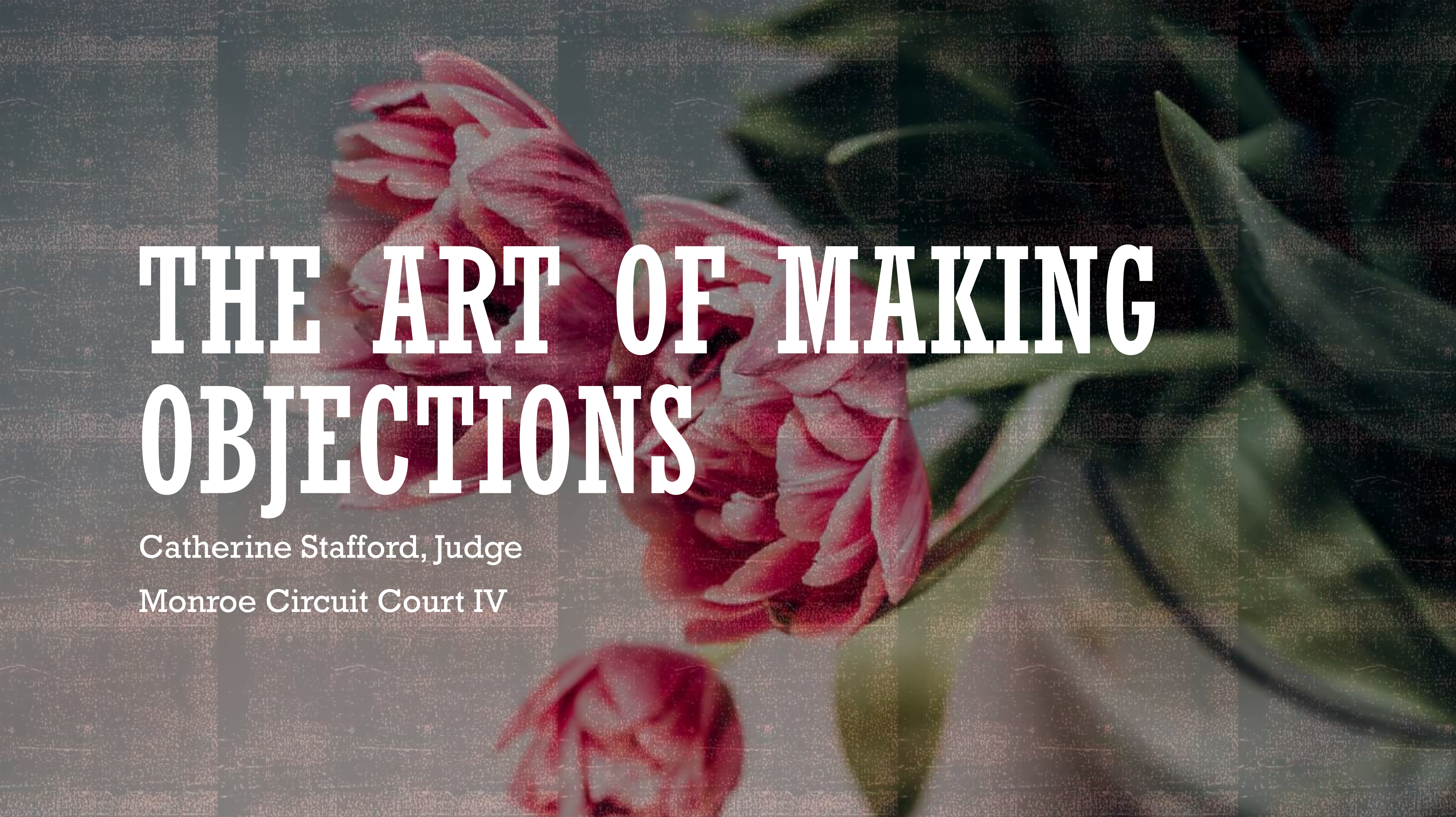
Kendra G. Gjerdingen
Mallor Grodner LLP
Bloomington, Indiana

Hon. Catherine Berg Stafford
Monroe County Circuit Court IV
Bloomington, Indiana

Section Seven

The Art of Making Objections………………………….... Hon. William J. Hughes
Kendra G. Gjerdingen
Hon. Catherine Berg Stafford

PowerPoint Presentation

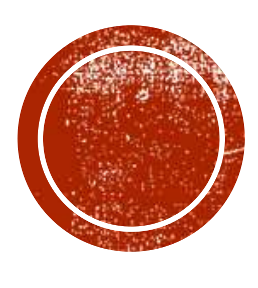

THE ART OF MAKING OBJECTIONS
Catherine Stafford, Judge
Monroe Circuit Court IV

William Hughes, Judge
Hamilton Superior III

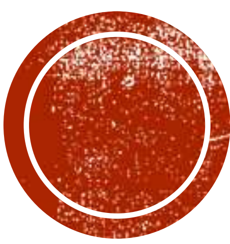
Kendra Gjerdingen,
Mallor Grodner LLP

Catherine Stafford, Judge
Monroe Circuit IV

STAFFORD'S RULES ON MAKING OBJECTIONS

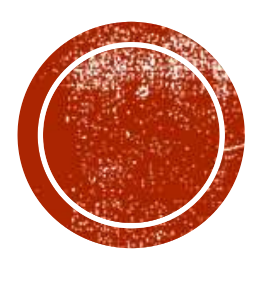


RULE 1: STIPULATE TO EXHIBITS IN ADVANCE

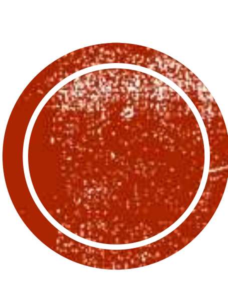


THE LOOK YOUR PARALEGAL GIVES WHEN YOU TELL THEM

WE NEED TO START TRIAL PREP



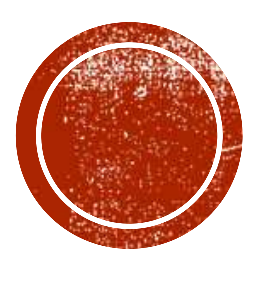
RULE 2: MAKE ONLY NECESSARY OBJECTIONS



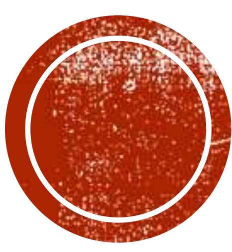
I DON'T ALWAYS OBJECT.

BUT WHEN I DO, IT'S SUSTAINED.

DIYLOL.COM



Rule 3: State your reasons at the outset



I HAVE AN OBJECTION

BUT IT'S A SECRET

RULE 4: DON'T BE A BULLY

OFFICIAL UNIFORM OF

YOU CAN'T ARREST ME MY DAD IS A LAWYER

RULE 5: LET THE JUDGE RULE

WHEN YOU ACT LIKE THE OBJECTION
NEVER EVEN EXISTED

meme-arsenal.ru

OBJECTIONS IN
DAILY USE

JUDICIAL NOTICE

Rule 201. Judicial Notice

(a) **Kinds of Facts That May Be Judicially Noticed.** The court may judicially notice:

(1) a fact that:

(A) is not subject to reasonable dispute because it is generally known within the trial court's territorial jurisdiction, or

(B) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

(2) the existence of:

(A) published regulations of governmental agencies;

(B) ordinances of municipalities; or

(C) records of a court of this state.

(b) **Kinds of Laws That May Be Judicially Noticed.** A court may judicially notice a law, which includes:

(1) the decisional, constitutional, and public statutory law;

(2) rules of court;

(3) published regulations of governmental agencies;

(4) codified ordinances of municipalities;

(5) records of a court of this state; and

(6) laws of other governmental subdivisions of the United States or any state, territory or other jurisdiction of the United States.

(c) **Taking Notice.** The court:

(1) may take judicial notice on its own; or

(2) must take judicial notice if a party requests it and the court is supplied with the necessary information.

(d) **Timing.** The court may take judicial notice at any stage of the proceeding.

(e) **Opportunity to Be Heard.** On timely request, a party is entitled to be heard on the propriety of taking judicial notice and the nature of the fact to be noticed. If the court takes judicial notice before notifying a party, the party, on request, is still entitled to be heard.

(f) **Instructing the Jury.** In a civil case, the court must instruct the jury to accept the noticed fact as conclusive. In a criminal case, the court must instruct the jury that it may or may not accept the noticed fact as conclusive.

JUDICIAL NOTICE

- Best: Make a pretrial motion for judicial notice with copies of supporting documents and notice to the other parties.
- Acceptable: Make an oral motion during the trial and have the supporting documents ready with copies for the court and all parties.
- Most common: Make an oral motion during the trial, without having the supporting documents, no clarification of what is requested to be noticed (the CCS? The probable cause affidavit? The order? Which order?).

RULE OF COMPLETENESS

Rule 106. Remainder of or Related Writing or Recorded Statements

If a party introduces all or part of a writing or recorded statement, an adverse party may require the introduction, at that time, of any other part—or any other writing or recorded statement—that in fairness ought to be considered at the same time.

RULE OF COMPLETENESS

- Best: Handle this in pretrial stipulations as to exhibits by working with other parties to capture the complete exhibit.
- Acceptable: Make an objection as to lack of completeness during the trial and have the rest of the supporting documents ready to avoid incomplete evidence that is misleading.
- Most common: Make an objection during the trial, without having the rest of the supporting documents, without argument as to why the incomplete documents are misleading.

CUMULATIVE EVIDENCE

Rule 403. Excluding Relevant Evidence for Prejudice, Confusion, or Other Reasons

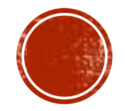
The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, or needlessly presenting cumulative evidence.

CUMULATIVE EVIDENCE

Best: Introduce <=5 exhibits of text conversations, showing dates and times of messages, with each speaker identified.

Acceptable: Introduce hundreds of pages of text messages, separated into exhibits by topic/date.

Most common: Introduce/Make no objection to reams of text messages in random order.



LAWYER AS WITNESS

Rule of Professional Conduct 3.7. Lawyer as Witness

(a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless:

(1) the testimony relates to an uncontested issue;

(2) the testimony relates to the nature and value of legal services rendered in the case; or

(3) disqualification of the lawyer would work substantial hardship on the client.

(b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by Rule 1.7 or Rule 1.9.

Rule of Evidence 408. Compromise Offers and Negotiations

(a) **Prohibited Uses.** Evidence of the following is not admissible on behalf of any party either to prove or disprove the validity or amount of a disputed claim or to impeach by a prior inconsistent statement or a contradiction:

(1) furnishing, promising, or offering, or accepting, promising to accept, or offering to accept a valuable consideration in order to compromise the claim; and

(2) conduct or a statement made during compromise negotiations about the claim. Compromise negotiations include alternative dispute resolution.

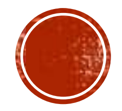
(b) **Exceptions.** The court may admit this evidence for another purpose, such as proving a witness's bias or prejudice, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

LAWYER AS WITNESS

Best: Reduce all agreements to signed writings and submit them to court for approval.

Acceptable: Introduce an email between counsel wherein both agree to an interim plan and stipulate in the email it can be used as an exhibit.

Most common: Try to testify about conversations with the other counsel about interim agreements.



RELIGION

Rule 610. Religious Beliefs or Opinions

Evidence of a witness's religious beliefs or opinions is not admissible to attack or support the witness's credibility.

RELIGION

- Best: Introduce evidence of the client's religious practices as differentiated from other parties as to the parents' ability to communicate and cooperate in legal custody decisions.
- Acceptable: Introduce evidence of the client's religious practices to show what they do as it relates to how they interact with the child (parenting practice).
- Most common: Introduce evidence of the client's religious practices to try to show they're a good person.

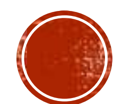
RELEVANCE

Rule 401. Test for Relevant Evidence

Evidence is relevant if:

(a) it has any tendency to make a fact more or less probable than it would be without the evidence; and

(b) the fact is of consequence in determining the action.

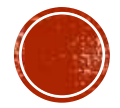


“. . . Father called Mother and her family a variety of profane names. In addition, he stated:

> And I'm not going to risk losing [A.S.] "cause I come over there and whip your a**. Because trust me, pal, that's what I want to do. I want to whip the hell out of you and your family right now.... It's time that you grow up and be a parent and be a mother. But you're not. You're always gonna be a biological mother "cause you gave birth, but you're never gonna be [A.S.'s] Mommy.... You want the attention, I'll give you attention. I'll give you attention when I come to your house and pull you out and whip your a**.... There's no apparent talking to a b****. That does not exist "cause the b**** don't understand. The b***** does what she wants.

Id. at 525, 527-28. Mother argues that the recordings are relevant because they are indicative of Father's attitude toward co-parenting. We agree. While the angry outbursts may have begun as Father's way of venting his frustration with Mother's interference with his parenting time, they continued after his parenting time resumed.”

B.M.S. v. E.M. (In re A.S.), 948 N.E.2d 380, 385-86 (Ind. Ct. App. 2011)

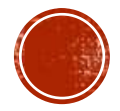


“Mother argues that the evidence would have shed light on whether the notice requirement in the dissolution decree was satisfied. However, we think that the trial court's statements simply reveal that it did not believe that Father's failure to provide exact times would excuse Mother's failure to provide him with any parenting time when she knew the dates he was visiting. Thus, the trial court did not think the evidence was relevant. We cannot say that the trial court abused its discretion or infringed upon Mother's due process rights by excluding evidence as to why Father waited to provide Mother with exact pick-up and drop-off times.”

Akiwumi v. Akiwumi, 23 N.E.3d 734, 739-40 (Ind. Ct. App. 2014)

“In family law matters, appellate review is conducted with "'a preference for granting latitude and deference to our trial judges.'" *Kicken v. Kicken*, 798 N.E.2d 529, 532 (Ind. Ct. App. 2003) (quoting *In re Marriage of Richardson*, 622 N.E.2d 178, 178 (Ind. 1993)). "The trial judge has wide latitude in ruling on the extent of cross-examination and only a clear abuse of discretion warrants a reversal." *St. Anthony Med. Ctr., Inc. v. Smith*, 592 N.E.2d 732, 738 (Ind. Ct. App. 1992), *trans. denied*. A trial court does not abuse its discretion by excluding irrelevant evidence. *Ledbetter v. Ball Mem'l Hosp*., 724 N.E.2d 1113, 1117 (Ind. Ct. App. 2000) (citing Ind. Evidence Rule 402), *trans. denied*. "Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action." Ind. Evidence Rule 401.”

Akiwumi v. Akiwumi, 23 N.E.3d 734, 739 (Ind. Ct. App. 2014)



RELEVANCE

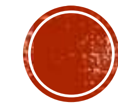
Best: Reach a settlement prior to court.

Acceptable: Object to testimony and exhibits that don't connect to the legal issues at stake in the case.

Most common: Object on the basis of relevance to testimony and exhibits you don't like.

BUT THEY DID IT . . .

Tit for tat is not a Rule of Evidence.



Rule 806. Attacking and Supporting the Declarant's Credibility

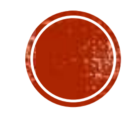
When a hearsay statement or a statement described in Rule 801 (d)(2)(C), (D), or (E) has been admitted in evidence, the declarant's credibility may be attacked, and then supported, by any evidence that would be admissible for those purposes if the declarant had testified as a witness. The court may admit evidence of the declarant's inconsistent statement or conduct, regardless of when it occurred or whether the declarant had an opportunity to explain or deny it. If the party against whom the statement was admitted calls the declarant as a witness, the party may examine the declarant on the statement as if on cross-examination.

BUT THEY DID IT

Best: Reach stipulations in advance about what testimony and exhibits are admissible. Get a GAL for child testimony.

Acceptable: Object to hearsay on its own grounds as you need to make objections.

Most common: After not objecting to the other party's witness's hearsay, take offense when the other attorney objects to your witness's hearsay.



QUESTIONS?

Section Eight

Utilizing Business Tax Returns and Financial Statements in Divorce

Andrew C. Mallor – Bret Brewer – Jordan Wright

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Special thanks to Elaina (Lainey) Sezer for her contributions.

Section Eight

Utilizing Business Tax Returns and
Financial Statements in Divorce……………………………..…Andrew C. Mallor
Bret G. Brewer
Jordan Wright

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Utilizing Business Tax Returns and Financial Statements in Divorce

Andrew C. Mallor – Bret Brewer – Jordan Wright

Business Financial Statements

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B. Financial Statement Basics

   a. Double Entry Bookkeeping System

   b. Matching Principle

   c. Cash Basis versus Accrual Basis

   d. Historical Cost versus Market Value

   e. Recording of Goodwill or Intangible Value

   f. Contingent or "Off-Balance Sheet" Liabilities

C. Construction of a Balance Sheet

D. Construction of an Income Statement

E. Cash Flow Statements

F. Business Tax Returns

   Types of Tax Returns

      a. Schedule C on Individual Return

      b. S-Corporation Return

      c. C-Corporation Return

      d. Partnership or LLC Return

   M-1 Adjustments

G. Special Financial Statement and Tax Return Issues in the Context of Divorce

  a. Shareholder Loans
  b. Unreported Income
  c. Salary versus Distributions
  d. Personal Expenses
  e. Leasing of Business Property from Related Parties
  f. Variability of Income and SIDS (Sudden Income Deficiency Syndrome)

Business Financial Statements

Types of Financial Statements and Levels of Assurance

There are varying levels of scrutiny, and therefore, reliability related to financial statements. The highest level of assurance occurs in an audited financial statement. The levels of financial statement assurance are as follows:

Audited Statements – in audited statements, the independent auditor expresses an opinion, or if the circumstances require, disclaims an opinion, regarding the fairness with which the financial statements present the financial position, the results of operations, and the changes in financial position, in accordance with generally accepted accounting principles (GAAP).

Reviewed Statements – In reviewed statements, the accountant expresses limited assurance that no material modifications should be made to the statements for them to be in conformity with GAAP. A review does not provide assurance that the accountant will become aware of all significant matters that would be disclosed in an audit.

Compiled Statements – Compiled statements are managements representations presented in the form of financial statements, but the accountant has not undertaken any efforts to express assurance on the statements. Often, statements are prepared internally by management without the services of an outside accountant.

Grocery Bag of Receipts – Some businesses (more prevalent among really small businesses) do not regularly produce financial statements. Very often, these businesses are run from a checkbook. In cases like these, the company's tax returns will provide a higher level of assurance, especially if preformed by an outside accountant.

Financial Statement Basics

Double Entry Bookkeeping – Any business transaction involves an exchange between two accounts. As an example, a sale of product affects both the amount of cash (or receivables) and the amount of inventory held. The double entry booking system was developed in the late 1400's by a Franciscan monk and mathematician, Luca Pacioli, quickly spread throughout Europe, and became the foundation for modern accounting.

Two characteristics of double-entry systems are that 1) each transaction is recorded in two accounts and 2) each account has two columns (debit and credit). The two entries keep the accounting equation (Assets = Liabilities plus Equity) in balance.

The principle of double entry is useful for identifying errors in the transaction recording process, as every transaction must have equal and balancing debit/credit entries.

Matching Principle – a widely accepted accounting principle that recognizes expenses in the same accounting period when the related revenues are recognized.

Cash Basis versus Accrual Basis – Some companies can choose whether to report on a cash basis or an accrual basis for tax purposes (while some cannot). On a cash basis system, revenues are recognized when cash is received, and expenses are recognized when they are paid. On an accrual system, revenues are recognized when a product or service is sold or invoiced, and expenses are recognized when they are incurred. Accrual based systems conform to the matching principle and are generally a better reflection of a company's financial position and performance.

Historical Cost versus Market Value – On a company's balance sheet, many items are recorded based on their original cost. Fixed assets, such as buildings, vehicles, equipment and leasehold improvements are depreciated based on their estimated useful lives. Often, the historical depreciated cost on the company's balance sheet is not reflective of current market value and may necessitate an adjustment for valuation purposes.

Recording of Goodwill or Intangible Value – For most small companies, there will be no line item on the balance sheet for goodwill or intangible value, though, depending on the business, it could represent a fairly large company asset. Goodwill will be recorded on a company balance sheet as a result of an acquisition. For development companies (like software) there may be capitalized development costs that are booked as an asset. In most other cases, there will not be an entry for those items.

Contingent or "Off-Balance Sheet" Liabilities – Similar to goodwill, contingent liabilities are often not reflected on a company's balance sheet but can in fact have a significant impact on a company's financial condition. Examples of contingent liabilities include lawsuits and pollution.

Cash Flow Statements

Cash Flow statements are used to reconcile a company's cash account. In other words, it is used to answer two questions: How did the company generate cash, and how did it use its cash? Many small companies do not generate cash flow statements; rather they only generate balance sheets and income statements. (In fact, many "Schedule C" businesses do not even generate a balance sheet). A cash flow statement can often provide much insight into the finances of a business.

Three components to Cash Flow Statements

a. **Operating Activities** – Starts with net income, (cash generated by operations), and adds back non-cash charges (i.e., depreciation), and adjusts for changes in current assets and liabilities, excluding cash, short-term investments, and short-term debt.
b. **Investing Activities** – Includes investments in, or sales of, fixed assets.
c. **Financing Activities –** Includes raising cash by selling short term investments or issuing short term debt, long term debt or stock. Also includes the use of cash to pay dividends, buy back stock, as well as the payment of debt principal.

Business Tax Returns

Types of Tax Returns – Based on legal structure of entity

The type of tax return that a company will file depends on its legal structure. A sole proprietorship will simply file a Schedule C along with the individual return. Partnerships and LLCs file a partnership return. S-Corporations file an S-Corporation return, and regular C corporations file a standard corporate return.

Partnerships, LLCs, and S-Corporations are all pass-through entities, meaning that the income from the company is passed through to the individual partner or shareholder. In other words, no tax is paid at the corporate level; rather, it is paid at the individual level. Each owner in a pass-through entity will be issued a K-1, which reports the pro rata income allocated to each individual based on percentage ownership.

Some of the unique features of the various tax returns are described below:

Schedule C (On individual return)

1. Provides income statement only – no balance sheet information
2. Can be reported on cash or accrual basis, but most Schedule C companies are on a cash basis

C- Corporation (Form 1120)

1. Provides information on officer compensation
2. Taxes paid at corporate level

S-Corporation (Form 1120S)

1. Does not provide specific information on officer compensation

2. Taxes not paid at corporate level, but income passed through pro rata based on ownership

Partnership and LLCs (Form 1065)

1. Partner's salary termed as guaranteed payments
2. Taxes pass through to Partners to be paid at individual level

M-1 Adjustments

M-1 adjustments provide a reconciliation between the taxable income and the "book" income, or what would be reported on a company's financial statements. Certain expenses are disallowed for tax purposes, such as 50% of meals and entertainment expenses. Also, there are often differences in the treatment of depreciation expenses.

Special Financial Statement and Business Tax Return Issues in the Divorce Context

Shareholder Loans

Shareholder loans are prevalent in small, privately held companies. There can be due from shareholders accounts (monies owed from the owners to the company) as well as due to shareholders accounts (monies owed to the owners from the company). These accounts can be easily missed when creating a property settlement schedule. New to the scene:

IN THE

COURT OF APPEALS OF INDIANA

Scott A. Bringle, *Appellant/Cross-Appellee-Respondent,* v. Traci A. Bringle, *Appellee/Cross-Appellant-Petitioner.*	June 30, 2020 Court of Appeals Case No. 19A-DN-3007 Appeal from the Decatur Circuit Court The Honorable Timothy B. Day, Judge Trial Court Cause No. 16C01-1710-DN-560

We have to identify the type of loans and who they are owed to/from. It may be reasonable to reclassify the loan to shareholder against equity to avoid this type of mess, but each situation is different.

Unreported Income

If a business has cash transactions (i.e., bars, restaurants), or provides services on a bartered basis, there is a possibility that not all of its income is reported. Unreported income, especially when in the form of cash, can be very difficult to prove. In cases like these, it may be beneficial to obtain bank statements and check registers, although the cash may never hit these accounts.

Salary versus Distributions

Owners can take monies out of a business in the form of a salary. Through distributions, or both. In many cases, business owners prefer to keep their salaries relatively modest, but will take distributions as well. One reason for this strategy is to keep FICA taxes lower. Distributions represent that portion of a company's profit that is paid out to the owners.

In addition, the type of entity also determines the type of income the owner can receive. For example, there are no salaries to the owner from a Schedule C. In addition, for a Form 1065 there are no salaries, however, the owner's receive guaranteed payments. In an S-Corp the owner can receive both salaries and distributions. In a C-Corp the owner normally received compensation and figures a different way to reduce the income of the business and shift the value to themselves.

Personal Expenses

It is not uncommon for a privately held business to mix personal and company expenses. For tax purposes, any personal expenses should be treated as distributions of company profit, and therefore taxed. Common expense line items that may contain personal expenditures include cost of goods sold, repairs and maintenance, meals, entertainment, travel, dues and subscriptions, car expenses, telephone and utilities.

Leasing of Business Property from Related parties

Often, a business will lease property from another entity that has common ownership. The rent that is paid may or may not reflect market lease rates, but in any event, this type of

structure can provide another cash stream to the owners. Whether or not rent is at market rates can have implications on the valuation of the business.

Variability of income and SIDS (Sudden Income Deficiency Syndrome)

Certain types of businesses are more subject to economic cycles (cyclicality) than others, and as a result will experience fluctuating income levels. When a business shows a high level of variability, especially when income has deteriorated since the filing of the divorce, additional analysis should be performed t determine if the decline is truly due to outside factors. Additional analysis that can be performed includes a review of industry and local economic conditions, as well as a closer scrutiny of claimed expenses and debts.

Difficult Discovery Cases

ALTERNATIVE DISCOVERY RESOURCES

- Bankers
- CPA's
  - CPA Confidentiality: Ind. Code Ann. § 25-2.1-14-1
  - Case Law:
    - *First Cmty. Bank & Tr. v. Kelley, Hardesty, Smith & Co.*, 663 N.E.2d 218 (Ind. Ct. App. 1996)
    - *Ernst & Ernst v. Underwriters Nat'l Assurance Co.*, 381 N.E.2d 897 (Ind. App. 2d Dist. 1978)
- Others to Consider:
  - Insurance Companies
  - Lessors
  - Consultants
  - Appraisers

(CPA)
Documents To Be Produced

I. History and Organization
Time frame: <u>January 2019</u> to <u>Date of Submission,</u> inclusive:

A. <u>Nature and History</u>

1) All documents summarizing or describing the history and organization of each of (the Companies).

B. <u>Related Entities</u>

1) All schedules, notes, memorandums, checklists, correspondence, and all other documents describing any related entities of each of (the Companies).

C. <u>Accounting Policies and Procedures</u>

1) All schedules, notes, memorandums, checklists, correspondence, and all other documents describing the accounting policies and procedures of each of (The Companies).

D. <u>Operating Policies & Procedures</u>

1) All schedules, notes, memorandums, checklists, correspondence, and all other documents describing the operating policies and procedures of each of (The Companies).

E. <u>Internal Controls</u>

1) All schedules, notes, memorandums, checklists, correspondence, and all other documents describing internal controls of each of (The Companies).

II. History and Organization
Time frame: <u>January 2019</u> to <u>Date of Submission,</u> inclusive:

A. <u>Engagement Planning</u>

1) All schedules, notes, memorandums, checklists correspondence, and all other documents relating to all engagement planning prior to, during, or subsequent to the preparation of the tax returns, financial statements, agreed upon procedures, consulting agreements or any other engagement.

B. <u>Supervision, Review & Approval</u>

1) All ledgers, journals, schedules, notes, memorandums, checklists, and all other documents memorializing the supervision, review and approval of anyone preparing the tax returns, financial statements, agreed upon procedures, consulting agreements or any other engagement.

C. <u>Analytical Procedures</u>

1) All budgets, schedules, notes, memorandums, checklists, and all other documents memorializing analytical procedures performed throughout the engagement (e.g. planning stage, substantive tests, and review stage).

D. <u>Tax Planning</u>

1) All ledgers, journals, schedules, proposals, notes, memorandums, projections, forecasts, and all other documents pertaining to income tax planning, estate tax planning, or any other tax planning.

E. <u>Research</u>

1) All ledgers, journals, schedules, notes, memorandums, texts, trade data, and all other documents memorializing any research, including, but not limited to, income tax research, financial research, estate tax research, industry research, and valuation research.

F. Checklists

1) All checklists relating to all tax returns, financial statements, agreed upon procedures, consulting agreements for any other purpose.

G. Going Concern

1) All schedules, notes, memorandums, checklists, correspondence, and all other documents pertaining to going concern analysis for each of (the Companies).

III. Working Papers

Time frame: January 2019 to Date of Submission, inclusive:

A. Financial Statements

1) All annual financial statements.
2) All interim financial statements.
3) Summaries of financial information that would not constitute a financial statement but nonetheless provide certain financial data to internal or third parties for any purpose.
4) All Consolidating work papers
5) All budgets, schedules, notes, memoranda, checklists, correspondence, and all other documents relating to the preparation, revision, and / or completion of financial statements created at any time.

B. Tax Returns

1) Any and all federal and state income tax returns.
2) Any and all federal and state estate and/or gift tax returns.
3) Any and all federal and state trust tax returns.
4) Any and all property and / or unsecured property tax returns.
5) Any and all sales and use tax returns.
6) Any and all excise tax returns.
7) All information provided for the preparation of (most current year) income tax return, including, but not limited to, preliminary financial statements, form 1099's, form w-2's, schedule k-l's, and form 1098's.

8) All budgets, schedules, notes, memoranda, checklists, correspondence, and all other documents relating to the preparation, revision, and / or completion of tax returns created at any time.

C. Budgets and Financial Forecasts

1) Any and all budgets and / or financial forecasts.

D. Cash Flows

1) All ledgers, journals, schedules, notes, memorandums, checklists, and all other documents memorializing cash flows.

E. Trial Balances

1) All documents containing working trial balances, including, but not limited to, book trial balances and income tax trial balances.

2) All work papers, schedules, notes or any other documents that show how the amounts on the trial balance are grouped for reporting on the financial statements.

3) All work papers, schedules, notes or any other documents that show how the amounts on the trial balance are grouped for reporting on the income tax return

F. Journal Entries

1) All journal entries, including, but not limited to, general journal entries, adjusting journal entries, reclassifying journal entries, cash to accrual entries, potential journal entries, or any other entries recorded.

G. Ledgers and Journals

1) All ledgers and journals, including, but not limited to, general ledgers, accounts receivable ledgers, accounts payable ledgers, fixed asset ledgers, inventory ledgers, construction in progress, deferred revenues, deferred gross profit, customer deposits, cash receipts journals, cash disbursement journals, payroll journals, sales journals, purchase journals, and general journals.

H. Assets

1) All ledgers, journals, schedules, notes, memorandums, checklists, correspondence, and all other documents pertaining in any way to cash, accounts receivable, notes receivable, prepaid expenses, inventory, intangibles, deferred charges, retains, securities, cash surrender value of life insurance, investments, advances to affiliates, property & equipment, and any other assets.

I. Liabilities

1) All ledgers, journals, schedules, notes, memorandums, checklists, correspondence, and all other documents pertaining in any way to accounts payable, notes payable, lines of credit, deferred compensation, accrued expenses, income tax liabilities, and any other liabilities.

J. Commitments and Contingencies

1) All ledgers, journals, schedules, notes, memorandums, checklists, and all other documents memorializing commitments and contingencies including, but not limited to, guarantee agreements, lease agreements, litigation, going concerns, and consulting agreements.

K. Equity

1) All ledgers, journals, schedules, notes, memorandums, checklists, correspondence, and all other documents pertaining in any way to the equity of the businesses, draws, contributions, dividends, adjustments to equity or other transactions affecting equity.

L. Income and Expenses

1) All ledgers, journals, schedules, notes, memoranda, checklists, and all other documents pertaining to income and expenses, including, but not limited to, gross revenue, cost of sales, operating expenses, general and administrative expenses, lease expense compensation, interest expense, and income.

M. Taxes on Earnings

1) All ledgers, journals, schedules, notes, memorandums, and all other documents supporting the calculation of taxes on earnings.

N. Depreciation Schedules

1) All depreciation schedules, including, but not limited to, book depreciation schedules, federal tax depreciation schedules (regular tax basis, AMT basis and ACE basis), and state tax depreciation schedules (regular tax basis, AMT basis and ACE basis).

O. Fixed Asset Acquisitions and Disposals

1) All schedules of fixed asset acquisitions and disposals, including, but not limited to, book basis, federal tax (regular tax, AMT and ACE basis), and state tax (regular tax, AMT and ACE basis).

P. Tax Basis

1) All ledgers, journals, schedules, notes, memorandums, and all other documents supporting the tax basis of all assets and liabilities.

Q. Like Kind Exchanges

1) All ledgers, journals, schedules, notes, memorandums, and any other documents relating to all like-kind exchanges.

R. Partner Draws

1) All ledgers, journals, schedules, reconciliations, adjustments, notes, memorandums, and any other documents relating to partner draws.

S. Risk Management

1) All schedules, notes, memorandums, checklists, correspondence, and all other documents pertaining to risk management of each of (the Companies).

T. Subsequent Events

1) All schedules, notes, memorandums, checklists, correspondence, and all other documents pertaining to subsequent events (as referenced in the Audited Financial Statements).

U. Related Party Transactions

1) All schedules, notes, memorandums, checklists, and all other documents memorializing related party transactions, including, but not limited to, intercompany loans, shareholder loans, management fees, rental fees, sales, and consulting agreements.

V. Submitted Documents

1) All ledgers, journals, schedules, notes, memorandums, correspondence, or any other documents submitted to (CPA).

W. Other Documents

1) All other work papers, notes, memorandums, and any other documents not discussed above, that are part of your work papers.
2) All other work papers, notes, memorandums, and any other documents not discussed above, that are part of your write-up file or any other bookkeeping files.
3) All agreements, schedules, notes, memoranda, checklists, correspondence, and all other documents not listed herein that are included in the client files.

X. Electronic Copies / Back-Ups

1) All electronic copies/back-ups of all accounting files (Quicken, QuickBooks, etc.) provided to you.

IV. Contracts and Agreements

Time frame: January 2019 to Date of Submission, inclusive:

A. Lease Agreements

1) Lease agreements, with all amendments, exhibits and attachments, for any and all leases of real and/or personal property.

B. Rental Agreements

1) Rental agreements, with all amendments, exhibits and attachments, for any and all rentals of real and/or personal property.

C. Loan Applications and Loan Agreements

1) Loan applications and loan agreements, with all amendments, exhibits and attachments, for any and all loans applied for and/or outstanding at any time.
2) All loan applications, correspondence, schedules, notes, memoranda, and all other documents pertaining to any and all attempts to obtain financing by (the Companies).

D. Operating Agreements

1) Any and all operating agreements, sales contracts, and other documents related to any customers accounting for greater than 10 percent of monthly revenues.
2) Any and all operating agreements, purchase contracts and other documents related to any vendors accounting for greater than 10 percent of monthly purchases.
3) Agreements and other documents detailing any vendor and/or buying group relationships.

E. Buy-Sell Agreements

1) All buy-sell agreements and related documents, including but not limited to appraisals, accountant's working papers, and correspondence, associated with all dissolutions and acquisitions for all business interests owned by (The Companies).

F. Employment, Management or Consulting Agreements

1) All employment, management or consulting agreements in effect at any time.
2) All budgets, schedules, notes, memoranda, checklists, correspondence, and all other documents relating to the preparation, revision, and / or completion of employment, management, and / or consulting agreements created at any time.

G. Covenants Not to Compete

1) Any and all covenants not to compete in effect at any time.

H. Patents, Copyrights, or Trademarks

1) Any and all patents, copyrights, or trademarks used by or referring to (The Companies).

I. Pension Plans

1) All schedules, notes, memorandums, checklists, and all other documents describing the pension plans, profit sharing plans, stock option plans, or any other deferred compensation plans.

J. Insurance Policies

1) Insurance policies, contracts, statements, and correspondence for all insurance, including but not limited to officer and/or owner's life insurance, which (NAME) have funded or are the primary beneficiary of, including cash-surrender value, monthly/quarterly/semi-annual/annual payment amount, and persons or property insured.

K. Other Contracts and Agreements

1) Any other contracts and agreements of any kind.

V. Contracts and Agreements
Time frame: <u>January 2019</u> to <u>Date of Submission,</u> inclusive:

A. Correspondence

1) All letters, e-mails, memoranda, and all other correspondence issued to, received from, or prepared by, (CPA), including, but not limited to:

   (a) Engagement letters;

   (b) Representation letters;

   (c) Management letters;

   (d) Attorney's letters (except those involving the parties' dissolution);

   (e) Taxing authority letters;

   (f) Interoffice correspondence pertaining in any way to (The Companies)

B. Notes and Memorandums

1) All notes or memoranda prepared by or provided to (CPA) pertaining in any way to (The Companies).

VI. Billings
Time frame: <u>January 2019</u> to <u>Date of Submission,</u> inclusive:

A. Billings

1) All billing records, including, but not limited to, time sheets, time summaries, billing invoices, and billing statements.

STATE OF INDIANA) IN THE MONROE CIRCUIT COURT
) SS:
COUNTY OF MONROE) CAUSE NO.: 53C01-1111-DC-111111

IN RE: THE MARRIAGE OF)
)
JANE SMITH,)
Petitioner,)
)
and)
)
JOHN SMITH,)
Respondent.)

REQUEST FOR PRODUCTION TO A NON-PARTY

To: Accountant & Accountant, LLC
123 Main Street
Bloomington, IN 47404

The Petitioner, Jane Smith, by counsel, pursuant to Rule 34 of the Indiana Rules of Trial Procedure, hereby requests that Accountant & Accountant, LLC produce the documents and things described herein for inspection and copying at the office of Mallor Grodner LLP, 511 Woodscrest Drive, Bloomington, IN 47401, within thirty (30) days from the date of service hereof.

YOUR RIGHTS

Pursuant to Indiana Trial Rule 34, you have the following rights:

1. You are entitled to security against damages or payment of damages resulting from this Request.

2. You may respond to this Request by submitting to its terms, by proposing different terms, by objecting specifically or generally to the Request by serving a written response to Petitioner, in care of the undersigned attorneys, within thirty (30) days of service hereof, or by moving to quash this Request as permitted by Indiana Trial Rule 45.

3. A Subpoena concerning this Request is attached and is being served

simultaneously with this Request.

4. Mailing all of the documents requested below to the undersigned counsel for Petitioner shall be deemed compliance with this Request and Subpoena.

5. Your failure to respond to this Request, to object to it, or to move to quash it as provided by the applicable Indiana Trial Rule on or before thirty (30) days from the date of service of this Request, may subject you to a Motion for Sanctions pursuant to Trial Rule 37.

DEFINITIONS AND INSTRUCTIONS

1. These requests for production of documents are continuing in nature and require supplemental answers if the responding party obtains further information after this request for production of documents has been answered. Demand for supplementation is hereby made.

2. When responding to any document request, set forth immediately before each answer or objection, the entire question with respect to which that answer or objection is given.

3. All responses to this document request shall include such documents as are in the custody, possession or control of the responding party including documents held by employees, agents, attorneys, accountants, or other representatives acting on the parties' behalf.

4. If any document requested herein is in the possession, custody, or control of another, identify the person having such document in his possession, custody, or control.

5. The use of the singular form of any word includes the plural and vice versa.

6. The terms "document" and "documents" include, but are not limited to, the definition contained in Indiana Trial Rule 34(A) as well as pleadings, correspondence, records, written communications of any kind, memoranda (including interoffice memos), notes and records reflecting or pertaining to oral communications of any kind, instructions, telegrams, and other typed or printed messages, writings of any kind, nature and description, handwritten notes, computer printouts, computer tapes, computer disks, computer e-mail, data sheets, data processing

tapes or cards, insurance policies, vouchers, expense account reports, photographs, motion pictures, graphics, illustrations, audio and videotape recordings and transcriptions thereof, and, where the original of any documents are not in the possession of any party responding to this request, a true and genuine copy thereof.

7. The term "communication" includes, but is not limited to, any communication however made, including, but not limited to, correspondence, contact, discussion, or any other kind of written or oral exchange between two or more persons, including, but not limited to, all telephone conversations, electronic mail messages (i.e., "e-mail messages" or "instant mail messages"), face-to-face conversations, meetings, visits, conferences, internal and external discussions, and documents however the same were transcribed, sent, or given.

8. The term "thing" as used herein refers to any tangible object other than a document, and includes objects of every kind and nature including, but not limited to, packages, goods, valves, prototypes, equipment, circuit cards, prototypes, models, specimens, software, computer disks and tapes, videotapes and audiotapes.

9. The conjunctive shall include the disjunctive and the disjunctive shall include the conjunctive.

10. The term "all" includes "any" and "every".

11. A masculine, feminine or neuter pronoun shall not exclude the other genders.

12. The terms "concerning" or "concerns" include, but are not limited to: containing, representing, showing, relating, referring, regarding, reflecting or pertaining in any way, directly or indirectly, to and what is meant to include, without limitation, all documents supporting, underlying, explaining or at any time attached, annexed or appended to or used in the preparation of, and all drafts of, any documents called for by any request in this Request for Production.

13. The terms "relate to", "relating to" and "pertaining to" include, but are not limited to: containing, concerning, showing, relating, referring, reflecting, evidencing, describing, constituting, supporting, or pertaining in any way, directly or indirectly, to the subject matter of the request, including, without limitation, all things supporting, underlying, explaining, or at any time attached. annexed or appended to or used in the preparation of, and all drafts of, any documents identified herein.

14. "Person" refers to both natural persons and to corporate or other business entities.

15. If you claim that the attorney-client privilege, or any other privilege, doctrine or reason for withholding a document is applicable, set forth in writing: (a) the date of the document; (b) the type of document; (c) the subject matter of the document; (d) the name, address, employment and title of each person who prepared or received the document, or any copy thereof; and (e) the basis for the claim of privilege or other grounds for withholding the document. If you claim that only part of the document is privileged or otherwise need not be produced, please produce the remaining part of the document.

16. If any document to be produced has been lost, discarded, transferred to another person or entity, destroyed, or otherwise disposed of, set forth in writing: (a) the date, name and subject matter of the document; (b) the name, address, employment and title of each person who prepared, received, reviewed, or had custody, possession or control of the documents; (c) all persons with knowledge of the contents or any portion of the contents of the document; (d) the previous location of the document; (e) the date of disposal or transfer of the document; (f) the reason for disposal or transfer of the document; and, if applicable, (g) the manner of disposal of the document; or, if applicable, (h) the names and addresses of the transferees of the document.

17. Unless otherwise indicated, please produce all documents within your possession,

custody or control regardless of date.

REQUEST

1. Please provide your ENTIRE FILE related to the rendering of tax advice and consulting, and the preparation of tax returns for the individuals John Smith and/or Jane Smith, for tax years 2019, 2020, 2021, and 2022. The scope of this request for your ENTIRE FILE includes but is not limited to:

   a. All final Form 1040 tax returns, with all schedules and other enclosures, as filed with the Internal Revenue Service, the Indiana Department of Revenue, or any other taxing authority;

   b. All draft tax returns that were prepared;

   c. All correspondence (including written, electronic, or otherwise) between you and either John Smith and/or Jane Smith, or any agent, attorney, or other representative thereof;

   d. All phone logs that concern or reference John Smith, Jane Smith, and/or the tax filings of either;

   e. All notes and internal Accountant & Accountant, LLC emails that concern or reference John Smith, Jane Smith, and/or the tax filings of either;

   f. All time sheets, invoices, or billings that either reference John Smith and/or Jane Smith, or were sent to either for payment (or to any third party for payment on their behalf);

   g. Copies all of correspondence between you and the Internal Revenue Service, the Indiana Department of Revenue, or any other taxing authority, that references John Smith and/or Jane Smith, or which pertains to the tax filings or taxation of either.

   h. Copies of every form that was filed with the Internal Revenue Service, the Indiana Department of Revenue, or any other taxing authority that pertains to John Smith and/or Jane Smith, other than the requests for Forms 1040 above (e.g., such as Form 4868 extension of time to file, 1040-ES estimated payments, etc.)

For each request above, the tax years in question pertain to tax years 2019, 2020, 2021, and 2022, or for file materials that have been generated since January 1, 2019, through the date of your response to this request. As part of your response, upon request Jane Smith will furnish a release and authorization as to all requested materials.

Respectfully submitted,

____
Andrew C. Mallor
Attorney for Petitioner, Jane Smith

Andrew C. Mallor
Mallor Grodner LLP
511 Woodscrest Drive
Bloomington, IN 47401

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was served upon the following counsel of record via electronic transmission on October ____, 2022:

____
Andrew C. Mallor

STATE OF INDIANA	)) SS:	IN THE MONROE CIRCUIT COURT
COUNTY OF MONROE	)	CAUSE NO.: 53C01-1111-DC-111111

IN RE: THE MARRIAGE OF)
)
JANE SMITH,)
Petitioner,)
)
and)
)
JOHN SMITH,)
Respondent.)

SUBPOENA DUCES TECUM

TO: Accountant & Accountant, LLC
123 Main Street
Bloomington, IN 47404

YOU ARE HEREBY COMMANDED to produce the documents and things requested in the Requests for Production to a Non-Party provided herewith within thirty (30) days from the date of this Subpoena Duces Tecum by delivering the documents and things to Mallor Grodner LLP, 511 Woodscrest Drive, Bloomington, IN 47404.

Dated this _____day of October, 2022.

Respectfully submitted,

____
Andrew C. Mallor
Attorney for Petitioner, Jane Smith

Andrew C. Mallor
Mallor Grodner LLP
511 Woodscrest Drive
Bloomington, IN 47401

STATE OF INDIANA) IN THE MONROE CIRCUIT COURT
) SS:
COUNTY OF MONROE) CAUSE NO.: 53C01-1111-DC-111111

IN RE: THE MARRIAGE OF)
)
JANE SMITH,)
Petitioner,)
)
and)
)
JOHN SMITH,)
Respondent.)

AFFIDAVIT OF CUSTODIAN OF RECORDS

I, _________________________________, of Accountant & Accountant, LLC, being first duly sworn upon my oath, state the following:

1. I am the custodian of the records attached hereto.

2. The copies of records for which this certification is made and which are attached hereto are true and accurate reproductions of the original records maintained in my files.

3. The number of pages of the attached records is _______.

4. The records reflect memoranda, reports, records, and data compilations that were made at or near the time of the occurrence of the matters set forth in each of the records, or from information transmitted by a person with knowledge of the matters set forth.

5. The memoranda, reports, records, and data compilations reflected are kept in the course of my regulated conducted business activity, and it is my regular practice to make the memoranda, report, record, or data compilation.

6. I am providing this Affidavit as the Custodian of Records, pursuant to Rule 803(6) of the Indiana Rules of Evidence.

I do hereby swear and affirm under the penalties for perjury that the attached documents are true and correct.

____
Signature Date

STATE OF INDIANA)
) SS:
COUNTY OF ___________)

Before me, a Notary Public in and for said County and State, personally appeared ___________________, who acknowledged the execution of the foregoing Affidavit, and who, having been duly sworn, stated that all representations herein contained are true.

WITNESS my hand and Notarial Seal on this ______________________________, 2022.

Commission No.:
____

County of Residence:
____

Commission No.:
____

____
Notary Public (Signature)

____
Printed Name

IC 25-2.1-14-1

25-2.1-14-1 Confidentiality preserved

Currentness

Sec. 1. A certified public accountant, a public accountant, an accounting practitioner, or any employee is not required to divulge information relative to and in connection with any professional service as a certified public accountant, a public accountant, or an accounting practitioner.

Credits

As added by P.L.30-1993, SEC.7, eff. Jan. 1, 1994.

Notes of Decisions (4)

I.C. 25-2.1-14-1, IN ST 25-2.1-14-1

The statutes and Constitution are current with all legislation of the 2022 Second Regular Session, the Second Regular Technical Session, and the Second Regular Special Session of the 122nd General Assembly effective through September 15, 2022.

End of Document

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178 Ind.App. 77
Court of Appeals of Indiana, Second District.

ERNST & ERNST, Appellant (Defendant Below),
v.
UNDERWRITERS NATIONAL ASSURANCE COMPANY et al., Appellee (Plaintiff Below),
and
Charles M. Beardsley, Booke and Company, et al., Appellees (Defendants Below).

No. 2-977A365.
|
Oct. 23, 1978.
|
Rehearing Denied Dec. 7, 1978.

Synopsis
Wholly owned subsidiary of corporation brought action to recover against partnership, which engaged in certified public accounting, on theory that it had breached contract and was negligent in connection with its audits of the subsidiary and the parent corporation. The Superior Court, Hamilton County, V. Sue Shields, J., entered order granting discovery of documents in possession of partnership, and partnership appealed. The Court of Appeals, Young, J., held that: (1) witness incompetency provision within Public Accountancy Act of 1969 creates a privilege which is personal to client rather than to accountant, and (2) the proviso that "nothing herein shall be construed as prohibiting a certified public accountant * * * from disclosing any data required to be disclosed * * * where * * * the professional services of the accountant pertaining thereto are contested" applies both to accountant's duty of confidentiality and to client's privilege.

Order affirmed.

Procedural Posture(s): On Appeal.

West Headnotes (8)

[1] **Statutes** Plain Language; Plain, Ordinary, or Common Meaning
Statutes Statute as a Whole; Relation of Parts to Whole and to One Another

Both rule that each part of statute must be considered with reference to all other parts and rule that words of a statute should be given their plain and ordinary meaning must be considered in construing a statute.

3 Cases that cite this headnote

[2] **Statutes** Provisos

Generally, office of a proviso is to qualify or limit plain meaning of another portion of a statute.

2 Cases that cite this headnote

[3] **Privileged Communications and Confidentiality** Accountant and client

Statute, which provides that "certified public accountant * * * shall not be required to disclose * * * information * * * possessed * * * in connection with * * * service as a certified public accountant * * *. The information * * * shall be deemed confidential and privileged," creates a privilege which is personal to client rather than to accountant. IC 25–2–1–23 (1976 Ed.).

5 Cases that cite this headnote

[4] **Privileged Communications and Confidentiality** Accountant and client

Proviso within statute, which states that "certified public accountant * * * shall not be required to disclose * * * information * * * possessed * * * in connection with * * * service as a certified public accountant * * *. The information * * * shall be deemed confidential and privileged: Provided, that nothing herein shall be construed as prohibiting a certified public accountant * * * from disclosing any data required to be disclosed * * * where * * * the professional services of the accountant pertaining thereto are contested," applies both

to accountant's duty of confidentiality and to client's privilege. IC 25–2–1–23 (1976 Ed.).

3 Cases that cite this headnote

[5] **Witnesses** Duty to testify in general

Generally, every person has duty to give the testimony he is capable of giving, but such rule is subject to rules of exclusion and rules of privilege.

[6] **Privileged Communications and Confidentiality** Accountant and client

Common-law recognizes no privilege for confidential communications between accountants and their clients.

5 Cases that cite this headnote

[7] **Privileged Communications and Confidentiality** Privileges not favored

Privileged Communications and Confidentiality Accountant and client

Generally, evidentiary privileges are looked on with disfavor, and certain privileges unknown at common law, such as accountant-client privilege, are particularly disfavored and are strictly construed in order to limit their application. IC 25–2–1–23 (1976 Ed.).

10 Cases that cite this headnote

[8] **Courts** Construction of state Constitutions and statutes

Federal court's interpretation of a state statute is not controlling.

2 Cases that cite this headnote

Attorneys and Law Firms

***78** ****898** James A. McDermott, James A. Strain, Michael R. Fruehwald, Barnes, Hickam, Pantzer & Boyd, Indianapolis, Christian, Waltz, White, Klotz & Free, Noblesville, for appellant.

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Opinion

YOUNG, Judge.

The issue presented for review is whether the order of the trial court granting discovery of documents in the possession of an accountant was proper in view of the provisions of I.C.1971, 25-2-1-23 (Burns Code Ed.) (Section 23).

Ernst & Ernst (E & E), appellant-defendant, is a partnership engaged in the practice of certified public accounting. E & E was engaged to audit ***79** financial statements of Underwriters National Assurance Company (UNAC) for the year ended December 31, 1969. As a consequence of this audit, E & E expressed an opinion in the conventional form of an auditor's report. The auditor's report was addressed to UNAC's Board of Directors. The auditor's report and the accompanying financial statements were subsequently printed and distributed by UNAC to its shareholders and were included in its annual report to the applicable federal regulatory agency.

On December 21, 1970, all of UNAC's outstanding shares were exchanged for shares of UNAC International Corporation (International) and UNAC thereupon became a wholly-owned subsidiary of International. UNAC's shareholders became the shareholders of International and International became the corporate parent of UNAC.

E & E was subsequently engaged to audit International's consolidated financial statements for the years ending

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December 31, 1970, 1971, 1972 and 1973. The same audit services were performed for International as for UNAC. As a consequence of the audits of International's consolidated financial statements for the years ending December 31, 1970 and 1971, E & E also expressed separate opinions with respect to the financial statements of UNAC for the same years. These opinions were contained in separate auditor's reports which were addressed to International, UNAC's sole shareholder.

E & E's professional services in connection with these audit engagements are contested in this litigation. UNAC has alleged that "E & E's audits were not proper, workmanlike, thorough or skillfull" and that E & E is in breach of contract and guilty of negligence in connection with its audits of UNAC and International.

The documents sought by UNAC and Charles M. Beardsley and Booke and Company (Beardsley and Booke), appellees and co-defendants, relate primarily to these audit engagements. As more specifically described in the requests for production, UNAC seeks production of:

Any and all documents produced, prepared, received, obtained, utilized or relied upon by E & E in the course of preparing:

a. The 1969 Financial Statement

b. The 1970 Financial Statement

***80** c. The 1971 Financial Statement

d. The 1972 Financial Statement

e. The 1973 Financial Statement

and Beardsley and Booke seek production of:

****899** All documents relating to audits of UNAC and the preparation (of) audited financial statements or other financial information for the following years:

a. 1969 d. 1972 b. 19701972 b. 1970 e. 1973 c. 19711973 c. 1971 f. 1974

UNAC and Beardsley and Booke have also requested documents evidencing any communications relating to UNAC which E & E had with various third parties. The documents, which E & E has not produced and to the production of which E & E has objected on the basis of Section 23, consist principally of its work papers relating to its audits of the financial statements of UNAC and International.

Rather than being contained as an amendment to I.C.1971, 34-1-14-5 (Burns Code Ed.) (Acts of 1881 (Spec.Sess.), ch. 38, s 275, p. 240), our witness incompetency statute, [1] Section 23 is one of twenty-six (26) sections of the "Public Accountancy Act of 1969," a legislative scheme designed to "regulate the practicing accountancy." The Act provides a broad range of control of accountants of every description; creates ***81** an "Indiana State Board of Accountancy" with enunciated powers and duties including the power to confer the approbation of state approved licensure upon various degrees of bookkeepers such as the appellant-defendant E & E.

Preferred professional standards are described with attendant limitations. The Act is particularly concerned with the certification of the various occupations within the accounting family. It is a statutory design to regulate those who deal in books and figures, profit and loss statements, balance sheets, audits and the entire prolithera of numbers.

Deep within the recesses of this comprehensive legislation lies the section which concerns us now. I.C.1971, 25-2-1-23 (Burns Code Ed.) states:

> A certified public accountant or a public accountant or an accounting practitioner, or any employee, shall not be required to disclose or divulge information of which he may have become possessed, relative to and in connection with any professional service as a certified public accountant or a public accountant or accounting practitioner. The information derived from or as the result of such professional services shall be deemed confidential and privileged: Provided, That nothing herein shall be construed as prohibiting a certified public accountant or a public accountant from disclosing any data required to be disclosed by the standards of the

> profession in rendering an opinion on the presentation of financial statements, or in making disclosure where said financial statements, or The professional services of the accountant pertaining thereto are contested. (Emphasis added.)

The trial court held that Section 23 creates a privilege personal to the client and the privilege has been waived by the client. Moreover, the court held that the statutory proviso applies to the privilege and therefore, irrespective of who holds the privilege, E & E cannot invoke the privilege because its professional services are contested. We agree and affirm the order of discovery.

E & E argues that Section 23 should not be read in its entirety, but rather as containing two separate and distinct rules: one dealing with compelled disclosure of information, ****900** and the other dealing with voluntary disclosure of information. E & E's interpretation, in fact, consists of reading the first sentence of Section 23 without reference to the remaining portion of the section. As properly construed by the trial court, ***82** however, all portions of Section 23 must be treated as an integrated whole. The trial court's construction of Section 23 is consistent not only with the underlying purpose of the accountant-client privilege and other analogous testimonial privileges, but is also compelled by the application of settled rules of statutory construction.

In Walgreen Co. v. Gross Income Tax Division (1947), 225 Ind. 418, 75 N.E.2d 784, 785, the Supreme Court of Indiana stated that "in arriving at the meaning of a statute it must be considered as an entirety, each part being considered with reference to all other parts." This principle was recognized and applied by the lower court in its construction of Section 23. Section 23 cannot be divided into separate watertight compartments.

Section 23 contains two sentences. The first sentence basically states that a "certified public accountant . . . shall not be required to disclose or divulge information of which he may have become possessed, relative to and in connection with any professional service as a certified public accountant . . . ." The second sentence then amplifies and expands upon the first sentence in two ways. First, it provides that the information which is the subject of the section shall be regarded as both "confidential and privileged." In this statement the General Assembly has recognized a most basic rule: granting a privilege to the source of information requires that a correlative duty of confidentiality be placed on the recipient. Second, it qualifies and limits the scope and application of the prohibition against compelled disclosure. The prohibition does not apply where, as here, the accountant's professional services are contested.

E & E argues that the meaning of the first sentence must be insulated and distinguished from the meaning of the second sentence. E & E thereby assumes that the first sentence must be read without reference to the second. This assumption, however, is directly contrary to the rule of statutory construction stated in Walgreen.

[1] **[2]** In making its argument, E & E urges that it is simply giving the words in Section 23 their plain and ordinary meaning. We agree that words of a statute should be given their plain and ordinary meaning. But Walgreen states an equally important rule of statutory construction. These two rules are by no means inconsistent and both must be considered in construing a statute. See ***83** Department of Treasury v. Reinking (1941), 109 Ind.App. 63, 32 N.E.2d 741. It is urged that the proviso does not qualify the plain meaning of the first sentence. We reject this argument for two reasons. First, the general office of a proviso is to qualify or limit the plain meaning of another portion of a statute. See State v. Shrode (1949), 119 Ind.App. 57, 83 N.E.2d 900, 902. Second, the case cited by E & E to support its assertion, State v. Shanks (1912), 178 Ind. 330, 99 N.E. 481, instead supports the statutory construction process which was adopted by the lower court. The Supreme Court of Indiana clearly stated in State v. Shanks that, in the first instance, an effort must be made "to harmonize all the provisions of the statute by construing All parts together . . . ." 99 N.E. at 482 (emphasis added).

[3] Thus, Section 23 contains several interrelated principles concerning the privileged and confidential status of certain accounting information, with the proviso in the second sentence qualifying and limiting the meaning of the first sentence. Section 23 cannot be properly construed as containing two separate and distinct rules.

Read in its entirety, Section 23 provides that certain accounting information is privileged and confidential. As the trial court correctly held, the accountant-client privilege created by Section 23 belongs to the client. This is the clear import of the language of Section 23.

****901** By using the phrase "nothing herein shall be construed as prohibiting a certified public accountant . . . from disclosing" in the proviso portion of Section 23, the General Assembly has clearly indicated that it intended a privilege personal to the client. If the General Assembly had intended a privilege personal to the accountant, it would have used words other than "prohibiting . . . from disclosing" since the person to whom a privilege belongs always has the right to voluntarily disclose privileged information.

[4] Whether, as argued by E & E, the proviso contained in Section 23 applies only to the accountant's duty of confidentiality, the use by the General Assembly of the word "herein," rather than a more restrictive phrase, indicates that the proviso applies both to the accountant's duty of confidentiality and to the client's privilege.

Thus, the words used by the General Assembly indicate that the accountant-client privilege created by Section 23 belongs to the client, not the accountant. In granting a privilege to the client, the General ***84** Assembly has placed the correlative duty of confidentiality on the accountant. These conclusions are supported not only by the existing case law concerning testimonial privileges in both Indiana and other jurisdictions, but also by the rules of professional conduct of the Indiana accounting profession.

[5] A fundamental principle of our system of adversary justice is that the public has a right to every person's evidence.[2] Every person has a general duty to give what testimony he is capable of giving and any exemptions from that obligation are distinct exceptions to the positive general rule. 8 J. Wigmore, Evidence s 2192, at 70 (McNaughton Rev. 1961); See Collins v. Bair (1971), 256 Ind. 230, 268 N.E.2d 95, 98.

This general principle, however, is subject to two broad exemptions: rules of exclusion and rules of privilege. A rule of exclusion, such as incompetency, facilitates the ascertainment of truth by excluding all evidence that is unreliable or is "calculated to prejudice or mislead." C. McCormick, Evidence s 74, at 152 (2d ed. 1972); Note, Testimonial Privilege and Competency in Indiana, 27 Ind.L.J. 256, 257 (1952).

Unlike rules of exclusion, rules of privilege, such as the accountant-client privilege, do not aid in the ascertainment of truth; instead, they frustrate the fact finding process by shutting out material and relevant information. Their sole justification is the "protection of interests and relationships which, rightly or wrongly, are regarded as of sufficient social importance to justify some incidental sacrifice of sources of facts needed in the administration of justice." C. McCormick, Supra; see Collins v. Bair, supra; see generally 8 J. Wigmore, Supra, s 2285.

[6] **[7]** The common law recognizes no privilege for confidential communications between accountants and their clients. Falsone v. United States (5th Cir. 1953), 205 F.2d 734, 739, Cert. denied (1953), 346 U.S. 864, 74 S.Ct. 103, 98 L.Ed. 375. No privilege exists under federal law, and no state created privilege has been recognized in the federal courts. Couch v. United States (1972), 409 U.S. 322, 335, 93 S.Ct. 611, 34 L.Ed.2d 548. Indiana, however, is one of 17 ***85** states that have enacted statutes creating a privilege for confidential communications between accountants and their clients. Note, Privileged Communications: The Federal Rules of Evidence and Indiana Law; Who's Got a Secret?, 9 Ind.L.Rev. 645, 667 (1976). Evidentiary privileges are generally looked upon with disfavor by the courts and commentators. Moreover, certain specific privileges such as the accountant-client privilege, which were unknown at common law, are particularly disfavored, and are therefore strictly construed in order to limit their application. United States v. Bowman (3rd Cir. 1966), 358 F.2d 421, 423; United States v. Jaskiewicz (E.D.Pa.1968), 278 F.Supp. 525, 530; and Rubin v. Katz (E.D.Pa.1972), 347 F.Supp. 322, 324. See also, ****902** Note, Privileged Communications Accountants and Accounting, 66 Mich.L.Rev. 1264, 1266 and 1268 (1968); Note, The Accountant-Client Privilege Under the New Federal Rules of Evidence New Stature and New Problems, 28 Okla.L.Rev. 637, 641 (1975); and Note, Privileged Communications, 9 Ind.L.Rev. 645, 668 (1975), Supra.

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It is generally recognized that Wigmore's four basic conditions of social policy must be satisfied before the burdens imposed on the judicial process by a privilege can be justified:
(1) The communications must originate in a confidence that they will not be disclosed.

(2) This element of confidentiality must be essential to the full and satisfactory maintenance of the relation between the parties.

(3) The relation must be one which in the opinion of the community ought to be sedulously fostered.

(4) The injury that would inure to the relation by the disclosure of the communications must be greater than the benefit thereby gained for the correct disposal of litigation.

8 J. Wigmore, Evidence, s 2285 (McNaughton rev. ed. 1961) (emphasis omitted).

An examination of the privilege urged by E & E demonstrates that it does not satisfy any of Wigmore's four basic conditions. The construction of Section 23 urged by E & E has nothing whatever to do with the confidentiality of communications or the fostering of any relationship. There is no showing to support a privilege belonging to the accountant.

The privilege urged by E & E would tend to insulate accountants from ***86** their responsibility to their clients. Such a privilege could only foster incompetence and irresponsibility on the part of the accounting profession. The General Assembly obviously did not intend such a result.

These rules of statutory construction have been followed by numerous Indiana decisions interpreting privileges created by statutes, and by other states that have enacted similar accountant-client privilege statutes. See, e. g., Collins v. Bair, supra, at 97; Stayner v. Nye (1949), 227 Ind. 231, 85 N.E.2d 496, 499; see Pattie Lea, Inc. v. District Court (1967), 161 Colo. 493, 423 P.2d 27.

Thus privileges do not exist in a vacuum. They are enacted to foster some relationship or protect some interest that is believed to be of sufficient social importance to justify the sacrifice of relevant evidence to the fact finding process. In analyzing the nature and scope of any statutorily created privilege, the first step is to determine the specific interest or relationship that the privilege seeks to foster. Only by doing this can a specific claim of privilege be evaluated against the principle that the public is entitled to every person's evidence.

The purpose of the accountant-client privilege was well stated by the Supreme Court of Georgia in Gearhart v. Etheridge (1974), 232 Ga. 638, 208 S.E.2d 460, 461:

> The purpose of the accountant-client privilege is to insure an atmosphere wherein the client will transmit all relevant information to his accountant without fear of any future disclosure in subsequent litigation. Without an atmosphere of confidentiality the client might withhold facts he considers unfavorable to this situation thus rendering the accountant powerless to adequately perform the services he renders.

Stated another way, the legislature has made a judgment that the welfare of the client will be best served if matters communicated between client and accountant are subject to a zone of privacy controlled by the client.

Thus, for the accountant-client privilege created by Section 23 to be consistent with its purpose, it must be personal to the client. The fundamental purpose of the privilege provides no basis for a contention that the privilege was designed to permit accountants to unilaterally suppress evidence to the detriment of their ***87** clients. Indeed, it is unreasonable to suggest that the General Assembly intended to give accountants special privileges over the clients they are paid to serve.

****903** E & E expressly offers no justification for permitting it to act contrary to its clients' interests. E & E does, however, appear to imply that the privilege created by Section 23 must belong to it because Section 23 covers information received not only from the client, but also from third parties. This argument is meritless. Any third-party communications an accountant receives in the course of an audit eminates from

and is directly concerned with the financial condition of the client.

The audit process has been described as follows. An audit begins with learning a client's accounting system, internal controls, accounting principles, operations, management policies and practices, business environment, and legal restraints. This information is gained through interviews with high level management, as well as the client personnel who are knowledgeable about the client's accounting systems and controls. Once an auditor understands a client, he will devise a preliminary evaluation program to determine the reliability of the client's systems, and thereby determine what the audit must check as well as what it need not check. Based on all this information gathered from the client, the auditor will draft an audit program detailing the steps to be performed during the audit examination.

Next, the auditor will normally conduct a number of functional tests to determine whether the client's internal controls are operating. For example, a functional test of the client's accounts payable system might involve determining whether only legitimate and appropriate transactions are processed. To determine this an auditor might test the client's authorization system to see if it would detect inappropriate transactions. Once these controls are verified, the auditor may revise the audit program and possibly make some constructive comments to management. Armed with all this information from the client, the auditor will then validate the balance sheet accounts, and perform any other substantive tests believed necessary. After this is completed, the financial statements are reviewed with management and ultimately an opinion is issued. See generally, R. Montgomery, Montgomery's Auditing (9th ed. 1975).

***88** The foregoing review of what might be called the audit cycle reveals the depth of the sensitive business information learned about a client's operations. This information must be provided By the client, not third parties. Any third-party information which an accountant receives in the course of an audit is generally just a validation or confirmation of the client's accounts. Plainly, the person or entity concerned with nondisclosure is the client, and as such the accountant-client privilege must belong to the client.

The provision of I.C.1971, 25-2-1-22 (Burns Code Ed.) (Section 22) requiring client consent prior to the transfer and sale of an accountant's working papers further supports and reinforces the fact that the privilege created by Section 23 belongs to the client. [3] By prohibiting the sale or transfer of working papers without the consent of the client, the General Assembly in Section 22 has indicated that the client has the predominant legal interest regarding the disclosure or non-disclosure of the accounting information contained in the accountant's working papers.

Finally, if Section 23 is given the construction argued by E & E, the result would be an all pervasive privilege personal to the ****904** accountant which could be used in derogation of his clients' best interests. This privilege would extend far beyond the scope of any other common law or statutory privilege. In the absence of a clear expression in Section 23 to this effect, it is difficult to believe that the General Assembly intended to create so dramatic a departure from prior law and to invest this class of citizens with such a unique super-privilege.

It is similarly difficult to believe that the General Assembly intended ***89** Section 23 to be a dramatic departure from the code of ethics of the American Institute of Certified Public Accountants (AICPA). [4] Rule 301 of the AICPA's code states: A member shall not disclose any confidential information obtained in the course of a professional engagement except with the consent of the client. Any refusal by E & E to disclose client information when the client has consented to disclosure would thus be in direct violation of the clear intent of Rule 301.

In summary, therefore, the purpose for which testimonial privileges exist, the factual setting of the accountant-client relationship, and the rules of professional conduct of the Indiana accounting profession all mandate the conclusion that the accountant-client privilege created by Section 23 be construed as belonging to the client, not to the accountant.

There are several decisions from other jurisdictions interpreting accountant-client privilege statutes, which we may look to in construing Section 23. See State ex rel. Murray v. Estate of Riggens (1975), Ind.App., 328 N.E.2d 248, 252. These decisions are consistent with the holding of the trial court that the privilege created by Section 23 belongs to the client, not the accountant.

E & E has urged that the case law from other states concerning accountant-client privilege statutes is divided into two categories: cases from states whose statutes have

"client consent" provisions and cases from states which do not. This characterization is erroneous. Other states have construed their accountant-client privilege statutes as creating a privilege personal to the client irrespective of whether the statute contained a client consent provision.

The most thoughtful analysis of any accountant-client statute is found in Gearhart v. Etheridge, supra, in which the Supreme Court of Georgia concluded that the state's statutory accountant-client privilege belonged solely to the client. The Georgia statute, analyzed by the court in Gearhart, Ga.Code Ann. s 84-216 (1975) now repealed and replaced with a statute Ga.Code Ann. s 84-220 (1975) more like the one we are now construing, states:

> ***90** Any communications to any practicing certified public accountant transmitted to such accountant in anticipation of, or pending, the employment of such accountant shall be treated as confidential and not disclosed nor divulged by said accountant in any proceedings of any nature whatsoever. This rule shall not exclude the accountant as a witness to any facts which may transpire in connection with his employment.

It contains no client consent provision. Nevertheless, after analyzing the purpose of the statute, the court held that one joint venturer could not prohibit the accountant of the joint account from testifying as to communications between himself and the other principal because, although all communications between the joint clients and their accountant are privileged as to all outside parties, the privilege does not exist between the principals.

The Illinois accountant-client privilege statute, which contains no client consent provision, was construed in Kunin v. Forman Realty Corp. (1959), 21 Ill.App.2d 221, 157 N.E.2d 785, Appeal dismissed (1959), 17 Ill.2d 543, 162 N.E.2d 401. The Illinois statute, Ill.Rev.Stat. ch. 1101/2, s 51 (1975), renumbered at Ill.Ann.Stat. ch. 111, s 5533 (Smith-Hurd) reads in its entirety:

> A public accountant shall not be required by any court to divulge information or ****905** evidence which has been obtained by him in his confidential capacity as a public accountant.

In Kunin the director of a corporation sued the corporation to obtain copies of the corporation's audit reports for two years. The plaintiff subpoenaed the corporation's auditor to produce the audit reports and to testify about them at trial. The trial court quashed the subpoena and refused to permit the auditor to testify at trial. The appellate court reversed, holding that a director of a corporation was entitled to a copy of the corporation's audit report and that the audit report was not protected by a privilege belonging to the accountant. In doing so, the court stated:

> It is argued that under the existing Illinois statute, a report is privileged. Privileged for whom? Not the accountant. It is privileged for his client.

157 N.E.2d at 788. (emphasis added).

In Savino v. Luciano (Fla.1957), 92 So.2d 817, the Supreme Court of ***91** Florida concluded that the Florida accountant-client privilege was personal to the client and therefore could be waived by the client. E & E implies that this decision is irrelevant to an interpretation of Section 23 because the Florida statute contains a consent provision. The fallacy of the argument is twofold. First, the court did not rely on the consent portion of the statute. And second, the court's holding was based on the nature of the privilege itself.
As in the case of all personal privileges, the accountant-client privilege may be waived by the client. And, as in all confidential and privileged communications, "(t)he justification for the privilege lies not in the fact of communication, but in the interest of the persons concerned that the subject matter should not become public."

92 So.2d at 819 (citation omitted). Savino thus supports our conclusion that, when analyzed from the perspective of its nature and purpose, the privilege created by Section 23 belongs to the client.

The Supreme Court of Colorado in Weck v. District Court (1966), 158 Colo. 521, 408 P.2d 987, construing a statute containing a client consent provision concluded that "(t)he privilege created by the Colorado statute is not the privilege of the accountant but that of the client . . .," 408 P.2d at 992, without specific reference to the statute's client consent provision. This conclusion is entirely consistent with the purpose of the privilege here.

Consistent with the conclusions reached by the courts in Gearhart; Kunin; Savino and Weck, commentators have uniformly concluded that the accountant-client privilege belongs to the client. Comment, Evidence: The Accountant-Client Privilege Under the New Federal Rules of Evidence New Stature and New Problems, 28 Okla.L.Rev. 637, 640 (1975); Jentz, Accountant Privileged Communications: Is It a Dying Concept Under the New Federal Rules of Evidence?, 11 Am.Bus.L.J. 149, 152-53 (1973); Note, Privileged Communications Accountants and Accounting, 66 Mich.L.Rev. 1264, 1269 (1968).

In summary, the majority of jurisdictions [5] that have considered the question have concluded that the accountant-client privilege is personal ***92** to the client. This conclusion is not based on artificial distinctions in the wording of particular statutes, but upon an analysis of the nature and purpose of the privilege itself.

[8] E & E relies on one New Mexico decision construing a later repealed statute and several federal decisions which refer to the Illinois statute in support of its position that Section 23 creates a privilege in its favor. [6] In none of the cases, however, was ****906** an accountant permitted to withhold information concerning the client when the client had requested disclosure of the information.

Indiana decisions interpreting the state's attorney-client and physician-patient privilege also support the conclusion that the privilege created by Section 23 belongs to the client. Both privileges are designed to encourage full disclosure to the physician or attorney in order that the fullest measure of professional services can be provided to the client or patient. Accordingly, our courts have held that each privilege is personal to the client or patient and can be waived only by that person. See, e. g., Collins v. Bair, supra; Key v. State (1956), 235 Ind. 172, 132 N.E.2d 143, 145.

In Collins v. Bair, supra, the Supreme Court of Indiana held that the ***93** physician-patient privilege is waived when a patient places his mental or physical condition in issue by way of claim or defense. In so holding, the Court explained the purpose of the physician-patient privilege as follows:

> The privilege has been justified on the basis that its recognition encourages free communications and frank disclosure between patient and physician which, in turn, provide assistance in proper diagnosis and appropriate treatment. To deny the privilege, it was thought, would destroy the confidential nature of the physician-patient relationship and possibly cause one suffering a particular ailment to withhold pertinent information of an embarrassing or otherwise confidential nature for fear of being publicly exposed.

268 N.E.2d at 98. The same justification applies to the accountant-client privilege. It has been created to encourage communications between an accountant and his client, and therefore must be deemed personal to the client.

In Key v. State, supra, the trial court's exclusion of testimony of an attorney was reversed by the Supreme Court of Indiana on the basis of its finding of an implied waiver of the attorney-client privilege. In reaching its conclusion, the Supreme Court stated:

> It is well settled, however, that the confidential relationship of attorney and client is not absolute for all purposes, but is a privilege which belongs to the client, and the client alone, to claim or

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> to waive; and where the client himself testifies concerning the privileged matter, he then waives the privilege.

132 N.E.2d at 145. This statement is entirely consistent with the universally recognized justification for the attorney-client privilege, "namely, that of encouraging full disclosure by the client for the furtherance of the administration of justice . . . ." C. McCormick, Supra, s 89, at 182. Again, the same justification applies to the accountant-client privilege.

Analogies to the attorney-client and physician-patient privilege also support the conclusion that the privilege created by Section 23 is unavailable when the services of the accountant are contested.

****907** It has long been established that the attorney-client privilege cannot be asserted in a suit which contests the attorney's professional services ***94** or otherwise attacks the professional competence of an attorney. Nave v. Baird (1859), 12 Ind. 318; Moore v. State (1953), 231 Ind. 690, 111 N.E.2d 47. Under similar circumstances, the physician-patient privilege is inapplicable. Lane v. Boicourt (1891), 128 Ind. 420, 27 N.E. 1111; Becknell v. Hosier (1894), 10 Ind.App. 5, 37 N.E. 580.

While the privilege created by Section 23 is closely analogous to the two most recognized personal privileges, attorney-privilege and physician-patient, E & E contends that the accountant-client privilege is more closely analogous to the Indiana newsman's privilege. Upon close examination of the nature and purpose of this privilege, however, it is clear that it is not analogous to the accountant-client privilege.

The Indiana newsman's privilege is personal to the newsman. This was recognized by the Supreme Court of Indiana in Hestand v. State (1971), 257 Ind. 191, 273 N.E.2d 282 and Lipps v. State (1970), 254 Ind. 141, 258 N.E.2d 622. In Branzburg v. Hayes (1972), 408 U.S. 665, 695, 726, 92 S.Ct. 2646, 33 L.Ed.2d 626, Justice Stewart, in dissent, employed reasoning applicable to our construction of the Indiana newsman's privilege saying:

As I see it, a reporter's right to protect his source is bottomed on the constitutional guarantee of a full flow of information to the public. A newsman's personal First Amendment rights or the associational rights of the newsman and the source are subsumed under that broad societal interest protected by the First Amendment. Obviously, we are not here concerned with the parochial personal concerns of particular newsmen or informants.

"The newsman-informer relationship is different from . . . other relationships whose confidentiality is protected by statute, such as the attorney-client and physician-patient relationships. In the case of other statutory privileges, the right of nondisclosure is granted to the person making the communication in order that he will be encouraged by strong assurances of confidentiality to seek such relationships which contribute to his personal well-being. The judgment is made that the interests of society will be served when individuals consult physicians and lawyers; the public interest is thus advanced by creating a zone of privacy that the individual can control. However, in the case of the reporter-informer relationship, society's interest is not in the welfare of the informant per se, but rather in creating conditions in which information possessed ***95** by news sources can reach public attention." Note, 80 Yale L.J. 317, 343 (1970).

408 U.S. at 726 n. 2, 92 S.Ct. at 2672.

Thus analyzed, the newsman's privilege is properly lodged in the reporter in order to protect society's interest in the free flow of information. But as Justice Stewart observed, the interests served by other personal privileges, such as the accountant-client privilege, are fundamentally different; they are designed to protect the personal interests of the patient or client by creating assurances of confidentiality.

Section 23 clearly creates a privilege personal to client. This conclusion is supported both by the fundamental purpose for which the accountant-client privilege was created and established rules of statutory construction. It is also consistent with decisions from other jurisdictions which have construed accountant-client privilege statutes.

Accordingly, we affirm the discovery order entered by the trial court on September 9, 1977.

Order affirmed.

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LYBROOK, P. J., and LOWDERMILK, J. (Sitting by designation), concur.

All Citations

178 Ind.App. 77, 381 N.E.2d 897

Footnotes

1 I.C.1971, 34-1-14-5 (Burns Code Ed.) (Acts 1881 (Spec.Sess.), ch. 38, s 275, p. 240.)

The following persons shall not be competent witnesses:

First. Persons insane at the time they are offered as witnesses, whether they have been so adjudged or not.

Second. Children under ten (10) years of age, unless it appears that they understand the nature and obligation of an oath.

Third. Attorneys, as to confidential communications made to them in the course of their professional business, and as to advice given in such cases.

Fourth. Physicians, as to matter communicated to them, as such, by patients, in the course of their professional business, or advice given in such cases.

Fifth. Clergymen, as to confessions or admissions made to them in course of discipline enjoined by their respective churches.

Sixth. Husband and wife, as to communications made to each other.

2 I.C.1971, 34-1-14-1 (Burns Code Ed.) (Acts 1881 (Spec.Sess.), ch. 38, s 265, p. 240).

3 All statements, records, schedules, working papers and memoranda made by a certified public accountant or public accountant or accounting practitioner incident to or in the course of professional service to clients by such accountant, except reports submitted by a certified public accountant or public accountant or accounting practitioner to a client, shall be and remain the property of such accountant, in the absence of an express agreement between such accountant and client to the contrary. No such statement, record, schedule, working paper or memorandum shall be sold, transferred, or bequeathed, Without the consent of the client or his personal representative or assignee, to anyone other than one or more surviving partners or new partners of such accountant. (emphasis added.)

I.C.1971, 25-2-1-22 (Burns Code Ed.)

4 The AICPA's Code has been adopted by the Indiana Board of Public Accountancy as the rules of professional conduct of the Indiana accounting profession. Ind.Admin.R. & Reg. s (25-2-1-13)-1 (Burns Code Ed.)

5 In addition to Georgia, Illinois, Florida, and Colorado, Louisiana has by implication concluded that the accountant-client privilege belongs to the client. Mercantile Credit Corp. v. Engstrom's of Alexandria, Inc. (La.App.1969), 223 So.2d 428.

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6 In United States v. Balistrieri (7th Cir. 1968), 403 F.2d 472, Vacated on other grounds (1969), 395 U.S. 710, 89 S.Ct. 2032, 23 L.Ed.2d 654 the court reasoned that in a federal criminal tax prosecution federal law applied and no accountant-client privilege exists in federal law. In F. T. C. v. St. Regis Paper Co. (7th Cir. 1962), 304 F.2d 731 the court stated the system of rules of evidence in force for trials by judges or in courts of equity is not applicable to inquiries of fact determined by administrative tribunals or officers. Therefore the privilege was not available. Such was the case in Dorfman v. Rombs (N.D.Ill.1963), 218 F.Supp. 905. In Baylor v. Mading-Dugan Drug Co. (N.D.Ill.1972), 57 F.R.D. 509, the court held the Illinois statutory privilege not applicable in a federal case. The statutory privilege was held waived by failing to raise any objection during testimony in Ash v. H. G. Reiter Co. (1967) 78 N.M. 194, 429 P.2d 653. In all of these cases then the statutory privilege, albeit discussed, was not a controlling factor. In both Palmer v. Fisher (7th Cir. 1955), 228 F.2d 603, Cert. denied (1956) 351 U.S. 965, 76 S.Ct. 1030, 100 L.Ed. 1485, Overruled on other grounds (1968), 360 F.2d 868, 872 and Radiant Burners, Inc. v. American Gas Ass'n. (N.D.Ill.1962), 209 F.Supp. 321, Rev'd. on other grounds (7th Cir. 1963), 320 F.2d 314, Cert. denied (1963), 375 U.S. 929, 84 S.Ct. 330, 11 L.Ed.2d 262, which relied on Palmer in discussing the accountant-client privilege, federal courts are interpreting a state statute. The state court in Kunin, supra, construes the statute as granting the client the privilege. In such a situation the federal court's interpretation is not controlling. See Tennessee Enamel Mfg. Co. v. Stoves, Inc. (6th Cir. 1951), 192 F.2d 863, Cert. denied (1952), 342 U.S. 946, 72 S.Ct. 561, 96 L.Ed. 704 and Chaffin v. Nicosia (1974), 261 Ind. 698, 310 N.E.2d 867.

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SEE PAGES 4 AND 5

KeyCite Yellow Flag - Negative Treatment
Distinguished by Rosby Corp. v. Townsend, Yosha, Cline & Price, Ind.App., December 23, 2003

663 N.E.2d 218
Court of Appeals of Indiana.

FIRST COMMUNITY BANK AND TRUST, as successor in interest to Bargersville Federal Savings Bank, Walter M. Umbarger, Merrill M. Wesemann, and Eugene W. Morris, Appellants–Plaintiffs,
v.
KELLEY, HARDESTY, SMITH AND COMPANY, INC., Larry D. Smith, and Garry Autry, Appellees–Defendants.

No. 41A04–9507–CV–261.
|
March 25, 1996.

Synopsis
Directors of bank who purchased bank's nonperforming loans brought malpractice action against accountants who audited bank, for failure to prevent or discover that bank employee was committing defalcations. The Circuit Court, Johnson County, K. Mark Loyd, J., granted partial summary judgment for accountants. Directors appealed. The Court of Appeals, Chezem, J., held that bank could assign accountant malpractice claims to directors.

Reversed and remanded.

Baker, J., concurred and filed opinion.

Procedural Posture(s): On Appeal; Motion for Summary Judgment.

West Headnotes (9)

[1] Appeal and Error Summary Judgment

In reviewing summary judgment motion, court must determine whether there is genuine issue of material fact and whether law has been correctly applied by trial court. Trial Procedure Rule 56(C).

1 Cases that cite this headnote

[2] Appeal and Error Review using standard applied below

When reviewing summary judgment motion, Court of Appeals applies same standard as trial court. Trial Procedure Rule 56(C).

[3] Judgment Presumptions and burden of proof

Party seeking summary judgment bears burden of establishing propriety of motion. Trial Procedure Rule 56(C).

[4] Judgment Presumptions and burden of proof

On summary judgment motion, all facts and inferences from designated evidentiary matter must be liberally construed in favor of nonmoving party. Trial Procedure Rule 56(C).

[5] Appeal and Error Summary Judgment

Trial court's grant of summary judgment is clothed with presumption of validity; however, reviewing court must carefully scrutinize trial court's decision to ensure that losing party is not improperly denied his day in court. Trial Procedure Rule 56(C).

[6] Assignments For Tort

Accountant malpractice claims may be assigned when party reasonably relies on statements of accountant who is serving as external auditor to purchase business or assets included in audit; accountant-client relationship does not prevent assignment, since duties of loyalty and confidentiality are not compromised in such a situation, threat of commercialization is absent,

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and accountant is not required to engage in "role reversal," or assert conflicting positions. West's A.I.C. 25–2.1–14–1.

9 Cases that cite this headnote

[7] **Assignments** For Tort

Bank could assign malpractice claims against accountants who audited bank, for failure to prevent or discover that bank employee was committing defalcations in connection with consumer loans, to directors who purchased bank's nonperforming loans.

1 Cases that cite this headnote

[8] **Privileged Communications and Confidentiality** Accountant and client

Accountant-client privilege is purely statutory, and therefore, is limited; evidentiary privileges generally are looked on with disfavor, and privileges such as accountant-client privilege, which were unknown at common law, are particularly disfavored, and strictly construed to limit their application. West's A.I.C. 25–2.1–14–1.

7 Cases that cite this headnote

[9] **Privileged Communications and Confidentiality** Accountant and client

When seller sells any asset that is not a claim for malpractice, he automatically waives his accountant-client privilege with regard to any matters affecting the value of the asset. West's A.I.C. 25–2.1–14–1.

8 Cases that cite this headnote

***219** Appeal from the Johnson Circuit Court; Honorable K. Mark Loyd, Judge, No. 41C01–9303–CT–0022.

Attorneys and Law Firms

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OPINION

CHEZEM, Judge.

Case Summary

Plaintiffs–Appellants, First Community Bank and Trust ("the Bank"), Walter Umbarger ("Umbarger"), Merrill Wesemann ("Wesemann"), and Eugene Morris ("Morris"), collectively "Appellants", appeal the trial court's partial grant of Defendants–Appellees', Kelly, Hardesty, Smith and Company, Inc. ("KHS"), Larry Smith ("Smith"), and Garry Autry ("Autry"), collectively, "Appellees", motion for summary judgment. We reverse and remand for trial on the merits.

Issue

Appellants present one issue for review, which we restate as: whether an accounting malpractice claim may be assigned by a client of the accountant to a successor of the client.

Facts and Procedural History

There are no genuine material issues of fact in dispute. [1] KHS served as the Bank's external auditors. Smith was a partner and Autry an employee of KHS. In 1988, the Bank changed from its traditional base of real estate lending and began making consumer loans. Because the Bank was undercapitalized, it came under the close scrutiny of federal regulators, including the Office of Thrift Supervision ("OTS") and the Federal Deposit Insurance Corporation ("FDIC").

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Eventually, the Bank entered into a Supervisory Agreement with the OTS to avoid liquidation. In addition, the OTS required the Bank to write off $94,649.00 in defaulted consumer loans which had been characterized as the Group "A" loans. At this time, the Directors were substantial owners of the Bank. They, Umbarger, Wesemann and Morris, purchased those non-performing loans from the Bank for $84,649.00 pursuant to a Loan Purchase Agreement executed on August 31, 1991. The Loan Purchase Agreement expressly assigned the Bank's interest in any causes of action related to the loans ***220** sold to the Directors. Hence, the Appellants brought suit against KHS for malpractice in the performance of its audit of the Bank.

The Bank claimed that the loans failed due to acts or omissions of its consumer loan officer, Kerry Davidson ("Davidson"). The Bank discovered that Davidson committed certain "defalcations" such as destruction of bankruptcy notices and post-dating of loan due dates so that non-performing loans would not show up on the "slow moving" loan list. The Bank alleged that because this information was hidden by Davidson, it was not able to take appropriate steps to collect those loans. Further, the Bank alleged that KHS breached its duties by failing to prevent or discover through its audit what Davidson was doing. The Directors argued that, pursuant to the assignment, they stood in the shoes of the Bank with respect to those consumer loan losses.

The trial court granted in part KHS's motion for summary judgment. Relying on our supreme court's decision in *Picadilly, Inc. v. Raikos,* 582 N.E.2d 338 (Ind.1991), the trial court found that, as a matter of law, the Bank's claim for malpractice against KHS could not be assigned to successive owners of the loans in question.

Discussion and Decision

I

[1] **[2]** Summary judgment is appropriate only if the designated evidentiary matter shows there is no genuine issues of material fact exist and the moving party is entitled to judgment as a matter of law. Ind.Trial Rule 56(C). In reviewing a motion for summary judgment, we must determine whether there is a genuine issue of material fact and whether the law has been correctly applied by the trial court. *Cloverleaf Apartments, Inc. v. Town of Eaton,* 641 N.E.2d 665, 667 (Ind.Ct.App.1994). We apply the same standard as the trial court. *City of Evansville v. Moore,* 563 N.E.2d 113, 114 (Ind.1990).

[3] **[4]** **[5]** The party seeking summary judgment bears the burden of establishing the propriety of the motion. *Miller v. Monsanto Co.,* 626 N.E.2d 538, 541 (Ind.Ct.App.1993). All facts and inferences from the designated evidentiary matter must be liberally construed in favor of the nonmoving party. *Terre Haute First Nat. Bank v. Pacific Employers Ins. Co.,* 634 N.E.2d 1336, 1337 (Ind.Ct.App.1993). A trial court's grant of summary judgment is "clothed with a presumption of validity." *Rosi v. Business Furniture Corp.,* 615 N.E.2d 431, 434 (Ind.1993). However, this court must carefully scrutinize the trial court's decision to ensure that the losing party is not improperly denied his day in court. *Oelling v. Rao,* 593 N.E.2d 189, 190 (Ind.1992).

II

[6] **[7]** The question we consider here is whether an accounting malpractice claim can be assigned by a client of an accountant to a purchaser of accounts audited by the accountant. We answer yes. When an accountant who is serving as an external auditor issues an opinion regarding financial statements, and accounts are audited to produce the financial statement, any malpractice claim associated with the production of the financial statement and opinion of the accountant may be assigned with the purchase of the business or the assets included in the audit.

1. Accountant–Client Relationship

KHS successfully argued to the trial court that claims for accountant malpractice are similar to claims for legal malpractice and, hence, our supreme court's holding in *Picadilly* applies. The Court in that case based its decision that legal malpractice claims should not be assigned on its concern about two issues: "the need to preserve the sanctity of the client-lawyer relationship, and the disreputable public role reversal that would result during the trial of assigned

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malpractice claims like this one." *Picadilly,* 582 N.E.2d at 342.

A. Duty of Loyalty

The Court held that assignment of legal malpractice claims would weaken two standards that define the lawyer's duty to the client: the duty to act loyally and the duty to maintain client confidentiality. *Id.* Specifically, an attorney's duty of loyalty would be undermined by the knowledge that a client ***221** could sell his malpractice claim to an adversary. This might chill attorneys' desires to be zealous advocates for their clients, something they are otherwise duty-bound to do. Additionally, assignments could become bargaining chips in negotiations of settlements: "An adversary might well make a favorable settlement offer to a judgment-proof or financially strapped client in exchange for the assignment of that client's right to bring a malpractice claim against his attorney." *Id.* at 343. Hence, the interest of the lawyer would be adverse to the interest of the client.

KHS argues that an accountant-client relationship is similar and that to allow assignment of such malpractice claims would create conflict between an accountant's self-interests and his duty of loyalty to his client. However, there is one crucial difference. An accountant, though imposed with a duty of loyalty to clients, is not an "advocate" for clients in an adversarial system. The facts in *Picadilly* arose purely because an adversary was able to gain assignment of a legal malpractice claim against a previous opponent's attorneys. The claim of malpractice arose from the adversary's original claim against his opponent. Such is not the case between the Directors and KHS.

Unlike the assignee in *Picadilly,* the Directors' interests were never adverse to the Bank's, from which they received their assignment. The assignee in *Picadilly* gained his assignment from a previously adverse party and, moreover, was never a successor in interest in anything except for the malpractice claim. The Directors were successors in interest to the Bank on the notes that they purchased from the Bank. When they bought the notes, they stood in the position of the Bank. Thus, the interest acquired with the notes included the claim for malpractice with regard to the audit of the notes.

KHS argues that a potential purchaser of an accountant's client's business might increase his offer for the business in exchange for the assignment of that client's right to bring a malpractice claim against the accountants. This assumes the Directors were aware of KHS's malpractice when they purchased the notes. No evidence has been presented nor arguments made which would indicate such was the case. Even if the Directors knew of KHS's malpractice before they purchased the notes, KHS has not demonstrated why compensating for a malpractice claim in a purchase agreement would be deleterious. The existence of a malpractice claim could affect the value of any asset. Accordingly, we reject the argument that accountant malpractice claims should not be assignable because of an accountant's duty of loyalty to his client.

B. Duty of Confidentiality

Secondly, the Court in *Picadilly* noted that a lawyer's duty to maintain confidentiality of the client would be compromised by assignment of legal malpractice claims. When a lawyer is sued by a client, the lawyer may reveal confidential information within reason to establish a defense. The client may drop the claim, thereby preserving the confidential information. The Court in *Picadilly* noted that if a client no longer controls the claim due to assignment, the attorney may still reveal client information in his defense but the client has no power to discontinue the claim. Thus, such assignments should not be allowed.

Likewise, KHS argues that the sanctity of the accountant-client relationship should be preserved because it is a fiduciary relationship and it is personal in nature. In the same vein, KHS notes the accountant-client privilege and an accountant's duty to maintain the confidentiality of a client. In contrast to the attorney-client privilege, the common law recognized no privilege for communications between accountants and their clients. *Ernst & Ernst v. Underwriters Nat'l Assurance Co.,* 178 Ind.App. 77, 381 N.E.2d 897 (1978). Instead, the accountant-client privilege is purely the creation of a statute passed in 1969. I.C. 25–2–1–23. (Recodified, effective January 1, 1994, as I.C. 25–2.1–14–1 and 2).

[8] The lack of any common law privilege limits the application of the statutory privilege. As explained in *Ernst,*

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evidentiary privileges generally are looked on with disfavor, and "certain specific privileges such as the accountant-client privilege, which were ***222** unknown at common law, are particularly disfavored, and are therefore strictly construed in order to limit their application." *Ernst,* 381 N.E.2d at 901.

KHS correctly states the accountant's duty of client confidentiality. However, unlike the attorney, the accountant's duty of confidentiality is not rooted in other duties of the accountant. In other words, the privilege is the client's and the client may waive the privilege in bringing an action of malpractice against the accountant or in assigning that claim of malpractice to another. To the contrary, the attorney-client privilege is rooted in not only the confidentiality of a client but also in an attorney's duty to be a zealous advocate for the client, which is an independent and equally important duty imposed on attorneys. An attorney cannot be a zealous advocate for his client if he reveals confidential information about the client. It is *only* when a attorney becomes an adversary of the client via a malpractice claim that the attorney may suspend his duty of zealous advocacy and may avoid his duty of confidentiality, and only to the extent necessary to reasonably defend himself in the action.

[9] The accountant, on the other hand, has no duty of confidentiality rooted in a duty to be a zealous advocate. The accountant's duty of confidentiality is based solely on the intrinsic value of confidentiality to the client. A client, in selling a business or asset of the business, should have disclosed the confidential information regarding that asset or business to the purchaser.[2] Moreover, it should be the case that when a seller sells an asset or business to a buyer, the buyer should have every opportunity to receive the full value for his purchase. Thus, a seller should be aware that with the asset goes any confidential information related to that asset, to the extent such information will enable the buyer to obtain maximum value for his purchase. There is a great difference when the claim for malpractice is merely incidental to the central asset being sold. In essence, when a seller sells any asset that is not a claim for malpractice (as was not the case in *Picadilly,* where the malpractice claim was itself the asset), he automatically waives his accountant-client privilege with regard to any matters affecting the value of that asset. This means that when there is a claim for accountant malpractice relating to the asset being sold, then the asset and the claim for malpractice may also be assigned to the buyer.

C. Commercialization

KHS argues that to allow that assignment of accountant malpractice claims would lead to commercialization of such malpractice claims, as disapproved in *Picadilly.* Commercialization of such a product is disastrous in a legal setting where adversaries could control the outcome of underlying litigation by purchasing malpractice claims against their opponents. In essence, it could render their opponents puppets on a string, which flies in the face of almost every attorney duty to a client. KHS does not demonstrate, in the case of an accountant malpractice claim, how harm would occur. The Directors received the assignment of the malpractice claim when they purchased the notes. There is no threat of commercialization when an assignment of an accountant malpractice claim is incidental to the purchase of assets which give rise to the claim, such as the notes purchased here.

D. Role Reversal

Our supreme court in *Picadilly* also examined how assignment of legal malpractice claims can have a disreputable effect of role reversal during the malpractice trial. For instance, the plaintiff in the *Picadilly* trial had to prove that the defendant caused his injuries. The same plaintiff, if allowed the ***223** assignment of the original defendant's legal malpractice claim, would have to prove that it was the defendant's attorneys, and not the defendant, who were responsible for the erroneous outcome in judgment. The plaintiff, as assignee, is in a precarious position of arguing conflicting positions at the same time. Not to mention that the plaintiff increased its chances of recovery two-fold, regardless, either in asserting the original tort action or, subsequently, in asserting the claim of malpractice. Potentially, such a plaintiff could recover two judgments relating to the same case. Fortunately, we are not presented with this unique circumstance when a claim for accountant malpractice is assigned.

2. Privity of Contract

KHS argues that Indiana law requires privity of contract to successfully maintain an action for accounting malpractice. Although KHS presented this question of law to the trial court in its motion for summary judgment, the trial court did not

reach that question because it held the Directors were not entitled to judgment as a matter of law for another reason. Because we stand in the shoes of the trial court in reviewing the grant or denial of a motion for summary judgment and because we reversed the trial court on its conclusions of law with regard to the accountant-client privilege, we must examine KHS's claim of no privity.

Contrary to what KHS asserts, the law of privity with regard to accountant malpractice claims is not well-settled in Indiana. Like legal malpractice claims, accountant malpractice claims resemble both a claim arising out of contract for personal services—which generally is not assignable—and a claim based on tortious injury to personal property—which generally is assignable. There have been no Indiana cases which hold that privity is required to bring an action for accountant malpractice.

In *Essex v. Ryan,* 446 N.E.2d 368 (Ind.Ct.App.1983), a purchaser of real estate filed suit against a surveyor who allegedly conducted an inaccurate survey for the prior owner. We held that because there was no personal injury to consumers, there should be no exception to the privity requirement. *Id.* at 372–73. In reaching that holding, we relied on Judge Cardozo's opinion concerning accountants in *Ultramares Corp. v. Touche,* 255 N.Y. 170, 174 N.E. 441 (1931). Judge Cardozo reasoned that the absence of any privity requirement would expose accountants to liability in an indeterminate amount for an indeterminate time to an indeterminate class. For those same reasons we declined to extend the exception to the privity requirement against surveyors in the *Essex* case. [3]

However, we decline to follow *Ultramares* and *Essex* because the facts of those cases are not comparable to the facts before us today. The facts before us today do not contain an issue of privity. There was a pure assignment of rights. The Directors stood in the shoes of the Bank after they completed the assignment. There was not an assignment of rights in *Toro, Ultramares* or *Essex.* Rather, those cases attempted to answer the question of when a third party may sue a professional when there has been no assignment by purchase.

Under the *Ultramares* standard, before accountants may be held liable for negligence to non-contractual parties who rely to their detriment on an inaccurate financial report, certain prerequisites must be satisfied. First, the accountant must have been aware that the financial reports were to be used for ***224** a particular purpose or purposes. Second, a known party or parties were intended to rely upon the financial report. Third, there must have been some conduct on the part of the accountants linking them to that party or parties, which evidences the accountant's understanding of that party or parties' reliance. *Credit Alliance Corp. v. Arthur Andersen & Co.,* 65 N.Y.2d 536, 493 N.Y.S.2d 435, 483 N.E.2d 110 (1985).

The *Ultramares* standard might be acceptable when noncontractual, non-assignee parties seek redress. However, it is important to note that Indiana courts have never adopted the *Ultramares* standard for accountants. We adapted the *Ultramares* standard in the *Essex* case when the liability of a surveyor to a third party was at issue. We specifically limited our holding in that case to the facts of that case. *Essex,* 446 N.E.2d at 373. We held in *Essex* that a third party's reliance on erroneous survey results is not a physical injury and therefore the surveyor is not liable. Additionally, because the surveyor had no knowledge that the third party would rely on the results, there was no privity between the surveyor and the third party. *Id.* at 374.

Thus, although somewhat dispositive of the issue of whether a third party who lacks privity may sue an accountant for malpractice, the case law to date has not addressed the question of whether an accountant malpractice claim may be assigned.

External auditors are hired to provide representations for the client and they are fully aware when they produce their opinions that potential buyers will rely on the audit results. It is imperative that reasonably foreseeable parties who rely on an accountant's opinion have confidence in the opinion of an external accountant. The rules of independence for auditors, to which surveyors are not subject, are rooted in the goal of enhancing credibility in the opinion that those accountants produce. Otherwise, there would be little use for external auditors. Accountants have a responsibility to accurately reflect the business they audit. An accountant's representations about the financial statements of a company may be relied on by a buyer to complete a purchase of an asset or business. We find that an assignment of claims is

permissible when a party reasonably relies on the statements to purchase the business or business asset included in the audit.

The assignment of claims of accountant malpractice should not be prohibited in instances where there is reasonably foreseen reliance on the accountant's opinion by the assignee.

Reverse and remand for trial on the merits.

DARDEN, J., concurs.

BAKER, J., concurs with separate opinion.

BAKER, Judge, concurring.

While I agree with the result reached by the majority, I want to make clear that my concurrence is based upon the unique facts of this case, namely that the third party Directors were in fact substantial owners of the Bank, who was the client of the accountant. Although I am not in favor of permitting the assignability of malpractice claims to third parties, *see* *Picadilly, Inc. v. Raikos,* 582 N.E.2d 338, 339 (Ind.1991), in light of these specific facts, I agree with the majority's ultimate conclusion that the assignment of the accountant malpractice claim should not be prohibited here as it was reasonably foreseeable that the third party Directors would rely on the accountant's opinion. Therefore, I concur in result.

All Citations

663 N.E.2d 218

Footnotes

1 Appellants, in their reply brief, assert that they are challenging the trial court's findings of fact nos. 7, 8, 11, and 12. However, each of these are conclusions of law entered by the trial court, and not findings of fact.

2 There may be a case in which the seller is not completely forthright with the buyer. For example, the seller may want the sale to proceed but on the seller's terms and not the buyers. Or, the seller is hostile to the buyer and does not want the sale to proceed, such as when there is a hostile takeover of a corporation. In both cases, the seller may withhold confidential information in an effort to control or even prevent the purchase. It would be the seller, and not the accountant, or maybe both parties who would be liable to the buyer. The seller, in defending an action of fraud, etc. against such a buyer, may assert the accountant's liability, thereby voluntarily suspending the seller's privilege.

3 The applicability of the privity requirement to accounting professionals was considered by the United States Court of Appeals for the Seventh Circuit in *Toro Co. v. Krouse, Kern & Co., Inc.,* 827 F.2d 155 (7th Cir.1987). In that case, the creditor of a client of an accounting firm brought an action against the firm and individual accountants, alleging that it relied upon erroneous audits in extending credit to the client. The District Court entered summary judgment in favor of defendant and the creditor appealed. The question for the Court of Appeals concerned the appropriate standard of care required for accountants under Indiana law.

The *Toro* court isolated three standards utilized by courts throughout the nation. These standards may be classified as: (1) the *Ultramares* standard; (2) the Restatement standard; and (3) the “reasonably foreseeable” standard. The *Toro* court noted that because the *Essex* court relied on *Ultramares,* then that standard should be applied to the facts in *Toro.*

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JLFA

Note dates are not calendar year, income from Company to owner will not match individual return.

Form **1120** Department of the Treasury Internal Revenue Service

U.S. Corporation Income Tax Return

For calendar year or tax year beginning 04/01/2021, ending 03/31/2022

▶ See separate instructions.

OMB No. 1545-0123 **2021**

A Check if:
1a Consolidated return (attach Form 851) ☐
b Life/nonlife consolidated return ☐
2 Personal holding co. (attach Sch. PH) ☐
3 Personal service corp. (see instructions) ☐
4 Schedule M-3 attached ☐

Use IRS label. Otherwise, print or type.

Name: HOOSIER CONSTRUCTION SERVICES, INC.
Number, street, and room or suite no. If a P.O. box, see instructions: 123 FAKE STREET
City or town, state, and ZIP code: INDIANAPOLIS IN 46205

B Employer identification number: 12-3456789
C Date incorporated: 9/21/1982
D Total assets (see instructions): $ 1,902,127

E Check if: (1) ☐ Initial return (2) ☐ Final return (3) ☐ Name change (4) ☐ Address change

	Line	Description		Amount
Income	1a	Gross receipts or sales 5,710,296 b Less returns and allowances ___ c Bal ▶	1c	5,710,296
	2	Cost of goods sold (Schedule A, line 8)	2	3,557,134
	3	Gross profit. Subtract line 2 from line 1c	3	2,153,162
	4	Dividends (Schedule C, line 19)	4	
	5	Interest	5	3,172
	6	Gross rents	6	
	7	Gross royalties	7	
	8	Capital gain net income (attach Schedule D (Form 1120))	8	
	9	Net gain or (loss) from Form 4797, Part II, line 17 (attach Form 4797)	9	5,500
	10	Other income (see instructions—attach schedule)	10	
	11	**Total income.** Add lines 3 through 10 ▶	11	2,161,834
Deductions (See instructions for limitations on deductions.)	12	Compensation of officers (Schedule E, line 4) — Usually has owners W-2 income	12	276,000
	13	Salaries and wages (less employment credits) — May have related party income	13	599,758
	14	Repairs and maintenance	14	15,308
	15	Bad debts	15	
	16	Rents — May be a source of income	16	106,315
	17	Taxes and licenses	17	116,895
	18	Interest — Any loans from the party?	18	74,922
	19	Charitable contributions SEE STMT 1	19	20,674
	20	Depreciation from Form 4562 not claimed on Schedule A or elsewhere on return (attach Form 4562)	20	110,618
	21	Depletion	21	
	22	Advertising	22	7,877
	23	Pension, profit-sharing, etc., plans — Normally owners are majority participants	23	32,030
	24	Employee benefit programs	24	
	25	Domestic production activities deduction (attach Form 8903)	25	12,017
	26	Other deductions (attach schedule) SEE STMT 2	26	601,153
	27	**Total deductions.** Add lines 12 through 26 ▶	27	1,973,567
	28	Taxable income before net operating loss deduction and special deductions. Subtract line 27 from line 11	28	188,267
	29	**Less:** a Net operating loss deduction (see instructions) 29a ___ b Special deductions (Schedule C, line 20) 29b ___	29c	
Tax, Refundable Credits, and Payments	30	**Taxable income.** Subtract line 29c from line 28 (see instructions)	30	188,267
	31	**Total tax** (Schedule J, line 10)	31	56,674
	32a	2007 overpayment credited to 2008 — 32a 71,240		
	b	2008 estimated tax payments — 32b		
	c	2008 refund applied for on Form 4466 — 32c ( ) d Bal ▶ 32d 71,240		
	e	Tax deposited with Form 7004 — 32e 50,000		
	f	Credits: (1) Form 2439 ___ (2) Form 4136 ___ — 32f		
	g	Refundable credits from Form 3800, line 19c, and Form 8827, line 8c — 32g	32h	121,240
	33	Estimated tax penalty (see instructions). Check if Form 2220 is attached ▶ ☐	33	
	34	**Amount owed.** If line 32h is smaller than the total of lines 31 and 33, enter amount owed	34	
	35	**Overpayment.** If line 32h is larger than the total of lines 31 and 33, enter amount overpaid	35	64,566
	36	Enter amount from line 35 you want: **Credited to 2009 estimated tax** ▶ Refunded ▶	36	64,566

Sign Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

May the IRS discuss this return with the preparer shown below (see instructions)? ☒ Yes ☐ No

▶ Signature of officer ___ Date ___ ▶ Title ___

Paid Preparer's Use Only

Preparer's signature ▶ ___ Date ___ Check if self-employed ☐ Preparer's SSN or PTIN ___

Firm's name (or yours if self-employed), address, and ZIP code ▶ ___ EIN ___ Phone no. ___

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions.

DAA

Form 1120 (2008) HOOSIER CONSTRUCTION SERVICES, INC 12-3456789 Page 2

Schedule A Cost of Goods Sold (see instructions)

1	Inventory at beginning of year	1	
2	Purchases	2	562,070
3	Cost of labor	3	766,125
4	Additional section 263A costs (attach schedule)	4	
5	Other costs (attach schedule) STMT 3	5	2,228,939
6	**Total.** Add lines 1 through 5	6	3,557,134
7	Inventory at end of year	7	
8	**Cost of goods sold.** Subtract line 7 from line 6. Enter here and on page 1, line 2	8	3,557,134

9a Check all methods used for valuing closing inventory:
(i) [ ] Cost
(ii) [X] Lower of cost or market
(iii) [ ] Other (Specify method used and attach explanation.) ▶

b Check if there was a writedown of subnormal goods ▶ [ ]
c Check if the LIFO inventory method was adopted this tax year for any goods (if checked, attach Form 970) ▶ [ ]
d If the LIFO inventory method was used for this tax year, enter percentage (or amounts) of closing inventory computed under LIFO 9d
e If property is produced or acquired for resale, do the rules of section 263A apply to the corporation? [X] Yes [ ] No
f Was there any change in determining quantities, cost, or valuations between opening and closing inventory? If "Yes," attach explanation [ ] Yes [X] No

Schedule C Dividends and Special Deductions (see instructions)

		(a) Dividends received	(b) %	(c) Special deductions (a) × (b)
1	Dividends from less-than-20%-owned domestic corporations (other than debt-financed stock)		70	
2	Dividends from 20%-or-more-owned domestic corporations (other than debt-financed stock)		80	
3	Dividends on debt-financed stock of domestic and foreign corporations		see instructions	
4	Dividends on certain preferred stock of less-than-20%-owned public utilities		42	
5	Dividends on certain preferred stock of 20%-or-more-owned public utilities		48	
6	Dividends from less-than-20%-owned foreign corporations and certain FSCs		70	
7	Dividends from 20%-or-more-owned foreign corporations and certain FSCs		80	
8	Dividends from wholly owned foreign subsidiaries		100	
9	**Total.** Add lines 1 through 8. See instructions for limitation			
10	Dividends from domestic corporations received by a small business investment company operating under the Small Business Investment Act of 1958		100	
11	Dividends from affiliated group members		100	
12	Dividends from certain FSCs		100	
13	Dividends from foreign corporations not included on lines 3, 6, 7, 8, 11, or 12			
14	Income from controlled foreign corporations under subpart F (attach Form(s) 5471)			
15	Foreign dividend gross-up			
16	IC-DISC and former DISC dividends not included on lines 1, 2, or 3			
17	Other dividends			
18	Deduction for dividends paid on certain preferred stock of public utilities			
19	**Total dividends.** Add lines 1 through 17. Enter here and on page 1, line 4 ▶			
20	**Total special deductions.** Add lines 9, 10, 11, 12, and 18. Enter here and on page 1, line 29b ▶			

Schedule E Compensation of Officers (see instructions for page 1, line 12)

Note: Complete Schedule E only if total receipts (line 1a plus lines 4 through 10 on page 1) are $500,000 or more.

	(a) Name of officer	(b) Social security number	(c) Percent of time devoted to business	Percent of corporation stock owned (d) Common	(e) Preferred	(f) Amount of compensation
1	JOHN ODINSON	123-45-6789	100.000%	50.000%	%	138,000
	CLAY REDMOND	987-65-4321	100.000%	50.000%	%	138,000
			%	%	%	
			%	%	%	
			%	%	%	

Owners, their percentage owned and their compensation

2	Total compensation of officers	276,000
3	Compensation of officers claimed on Schedule A and elsewhere on return	
4	Subtract line 3 from line 2. Enter the result here and on page 1, line 12	276,000

Form **1120** (2008)

DAA

Form 1120 (2008) HOOSIER CONSTRUCTION SERVICES, INC 12-3456789 Page 3

Schedule J Tax Computation (see instructions)

Line	Description		Ref	Amount
1	Check if the corporation is a member of a controlled group (attach Schedule O (Form 1120)) ▶ ☐			
2	Income tax. Check if a qualified personal service corporation (see instructions) ▶ ☐		2	56,674
3	Alternative minimum tax (attach Form 4626)		3	
4	Add lines 2 and 3		4	56,674
5a	Foreign tax credit (attach Form 1118)	5a		
b	Credit from Form 8834	5b		
c	General business credit (attach Form 3800)	5c		
d	Credit for prior year minimum tax (attach Form 8827)	5d		
e	Bond credits from Form 8912	5e		
6	**Total credits.** Add lines 5a through 5e		6	0
7	Subtract line 6 from line 4		7	56,674
8	Personal holding company tax (attach Schedule PH (Form 1120))		8	
9	Other taxes. Check if from: ☐ Form 4255 ☐ Form 8611 ☐ Form 8697 ☐ Form 8866 ☐ Form 8902 ☐ Other (attach schedule)		9	
10	**Total tax.** Add lines 7 through 9. Enter here and on page 1, line 31		10	56,674

Schedule K Other Information (see instructions)

		Yes	No
1	Check accounting method: a ☐ Cash b ☐ Accrual c ☒ Other (specify) ▶ COMP. CONTRACT		
2	See the instructions and enter the:		
a	Business activity code no. ▶ 238900		
b	Business activity ▶ GENERAL CONTRACTOR		
c	Product or service ▶ CONSTRUCTION		
3	Is the corporation a subsidiary in an affiliated group or a parent-subsidiary controlled group? If "Yes," enter name and EIN of the parent corporation ▶		X
4	At the end of the tax year:		
a	Did any foreign or domestic corporation, partnership (including any entity treated as a partnership), or trust own directly 20% or more, or own, directly or indirectly, 50% or more of the total voting power of all classes of the corporation's stock entitled to vote? For rules of constructive ownership, see instructions. If "Yes," complete (i) through (v).		X

(i) Name of Entity	(ii) Employer Identification Number (if any)	(iii) Type of Entity	(iv) Country of Organization	(v) Percentage Owned in Voting Stock

		Yes	No
b	Did any individual or estate own directly 20% or more, or own, directly or indirectly, 50% or more of the total voting power of all classes of the corporation's stock entitled to vote? For rules of constructive ownership, see instructions. If "Yes," complete (i) through (iv).	X	

(i) Name of Individual or Estate	(ii) Identifying Number (if any)	(iii) Country of Citizenship (see instructions)	(iv) Percentage Owned in Voting Stock
JOHN ODINSON	123-45-6789	USA	50.000
CLAY REDMOND	987-65-4321	USA	50.000

Form **1120** (2008)

DAA

Schedule K Continued

5 At the end of the tax year, did the corporation: | Yes | No

a Own directly 20% or more, or own, directly or indirectly, 50% or more of the total voting power of all classes of stock entitled to vote of any foreign or domestic corporation not included on **Form 851,** Affiliations Schedule? For rules of constructive ownership, see instructions — No: X
If "Yes," complete (i) through (iv).

(i) Name of Corporation	(ii) Employer Identification Number (if any)	(iii) Country of Incorporation	(iv) Percentage Owned in Voting Stock

b Own directly an interest of 20% or more, or own, directly or indirectly, an interest of 50% or more in any foreign or domestic partnership (including an entity treated as a partnership) or in the beneficial interest of a trust? For rules of constructive ownership, see instructions — No: X
If "Yes," complete (i) through (iv).

(i) Name of Entity	(ii) Employer Identification Number (if any)	(iii) Country of Organization	(iv) Maximum Percentage Owned in Profit, Loss, or Capital

6 During this tax year, did the corporation pay dividends (other than stock dividends and distributions in exchange for stock) in excess of the corporation's current and accumulated earnings and profits? (See sections 301 and 316.) — No: X
If "Yes," file **Form 5452,** Corporate Report of Nondividend Distributions.
If this is a consolidated return, answer here for the parent corporation and on Form 851 for each subsidiary.

7 At any time during the tax year, did one foreign person own, directly or indirectly, at least 25% of **(a)** the total voting power of all classes of the corporation's stock entitled to vote or **(b)** the total value of all classes of the corporation's stock? — No: X
For rules of attribution, see section 318. If "Yes," enter:
(i) Percentage owned ▶ .... and **(ii)** Owner's country ▶
(c) The corporation may have to file **Form 5472,** Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business. Enter the number of Forms 5472 attached ▶

8 Check this box if the corporation issued publicly offered debt instruments with original issue discount ▶ ☐
If checked, the corporation may have to file **Form 8281,** Information Return for Publicly Offered Original Issue Discount Instruments.

9 Enter the amount of tax-exempt interest received or accrued during the tax year ▶$ 0

10 Enter the number of shareholders at the end of the tax year (if 100 or fewer) ▶ 2

11 If the corporation has an NOL for the tax year and is electing to forego the carryback period, check here ▶ ☐
If the corporation is filing a consolidated return, the statement required by Regulations section 1.1502-21(b)(3) must be attached or the election will not be valid.

12 Enter the available NOL carryover from prior tax years (do not reduce it by any deduction on line 29a.) ▶

13 Are the corporation's total receipts (line 1a plus lines 4 through 10 on page 1) for the tax year and its total assets at the end of the tax year less than $250,000? — No: X
If "Yes," the corporation is not required to complete Schedules L, M-1, and M-2 on page 5. Instead, enter the total amount of cash distributions and the book value of property distributions (other than cash) made during the tax year. ▶

Form 1120 (2008) HOOSIER CONSTRUCTION SERVICES, INC 12-3456789 Page 5

Schedule L Balance Sheets per Books

Assets	Beginning of tax year (a)	Beginning of tax year (b)	End of tax year (c)	End of tax year (d)
1 Cash		161,233		453,139
2a Trade notes and accounts receivable	1,152,582		777,602	
b Less allowance for bad debts	(50,000)	1,102,582	(50,000)	727,602
3 Inventories				
4 U.S. government obligations				
5 Tax-exempt securities (see instructions)				
6 Other current assets (att. sch.) STMT 4		533,380		146,932
7 Loans to shareholders				
8 Mortgage and real estate loans				
9 Other investments (attach sch.)				
10a Buildings and other depreciable assets	1,338,175		1,332,216	
b Less accumulated depreciation	(761,627)	576,548	(799,990)	532,226
11a Depletable assets				
b Less accumulated depletion	( )		( )	
12 Land (net of any amortization)				
13a Intangible assets (amortizable only)				
b Less accumulated amortization	( )		( )	
14 Other assets (attach sch.) STMT 5		43,001		42,228
15 Total assets		2,416,744		1,902,127
Liabilities and Shareholders' Equity				
16 Accounts payable		148,422		90,866
17 Mortgages, notes, bonds payable in less than 1 year		392,215		312,228
18 Other current liabilities (att. sch.) STMT 6		367,575		348,773
19 Loans from shareholders		719,065		586,794
20 Mortgages, notes, bonds payable in 1 year or more		12,228		
21 Other liabilities (attach schedule) STMT 7		138,555		52,417
22 Capital stock: a Preferred stock				
b Common stock	1,000	1,000	1,000	1,000
23 Additional paid-in capital				
24 Retained earnings—Appropriated (att. sch.)				
25 Retained earnings—Unappropriated		637,684		510,049
26 Adjustments to SH equity (att.sch.)				
27 Less cost of treasury stock		( )		( )
28 Total liabilities and shareholders' equity		2,416,744		1,902,127

Get depreciation schedule to find any personal assets

Loans!

Schedule M-1 Reconciliation of Income (Loss) per Books With Income per Return

Note: Schedule M-3 required instead of Schedule M-1 if total assets are $10 million or more—see instructions

1 Net income (loss) per books	-127,635	7 Income recorded on books this year not included on this return (itemize): Tax-exempt interest $ STMT 10 146,270	146,270
2 Federal income tax per books	28,278		
3 Excess of capital losses over capital gains			
4 Income subject to tax not recorded on books this year (itemize): STMT 8	312,026	8 Deductions on this return not charged against book income this year (itemize): a Depreciation $ b Charitable contributions $ 15,126 STMT 11 19,323	34,449
5 Expenses recorded on books this year not deducted on this return (itemize): a Depreciation $ 27,574 b Charitable contributions $ c Travel and entertainment $ 68,334 STMT 9 60,409	156,317	9 Add lines 7 and 8	180,719
6 Add lines 1 through 5	368,986	10 Income (page 1, line 28)—line 6 less line 9	188,267

Schedule M-2 Analysis of Unappropriated Retained Earnings per Books (Line 25, Schedule L)

1 Balance at beginning of year	637,684	5 Distributions: a Cash	
2 Net income (loss) per books	-127,635	b Stock	
3 Other increases (itemize):		c Property	
		6 Other decreases (itemize):	
		7 Add lines 5 and 6	
4 Add lines 1, 2, and 3	510,049	8 Balance at end of year (line 4 less line 7)	510,049

Any dividends? Income source

Form 1120 (2008)

DAA

Form **4562** Department of the Treasury Internal Revenue Service (99)

Depreciation and Amortization
(Including Information on Listed Property)

STMT 13

▶ See separate instructions. ▶ Attach to your tax return.

OMB No. 1545-0172
2021
Attachment Sequence No. **67**

Name(s) shown on return	Identifying number
HOOSIER CONSTRUCTION SERVICES, INC.	12-3456789

Business or activity to which this form relates
REGULAR DEPRECIATION

Part I Election To Expense Certain Property Under Section 179
Note: If you have any listed property, complete Part V before you complete Part I.

1	Maximum amount. See the instructions for a higher limit for certain businesses	1	250,000
2	Total cost of section 179 property placed in service (see instructions)	2	
3	Threshold cost of section 179 property before reduction in limitation (see instructions)	3	800,000
4	Reduction in limitation. Subtract line 3 from line 2. If zero or less, enter -0-	4	
5	Dollar limitation for tax year. Subtract line 4 from line 1. If zero or less, enter -0-. If married filing separately, see instructions	5	

	(a) Description of property	(b) Cost (business use only)	(c) Elected cost
6			
7	Listed property. Enter the amount from line 29	7	

8	Total elected cost of section 179 property. Add amounts in column (c), lines 6 and 7	8	
9	Tentative deduction. Enter the **smaller** of line 5 or line 8	9	
10	Carryover of disallowed deduction from line 13 of your 2007 Form 4562	10	
11	Business income limitation. Enter the smaller of business income (not less than zero) or line 5 (see instructions)	11	
12	Section 179 expense deduction. Add lines 9 and 10, but do not enter more than line 11	12	
13	Carryover of disallowed deduction to 2009. Add lines 9 and 10, less line 12 ▶	13	

Note: Do not use Part II or Part III below for listed property. Instead, use Part V.

Part II Special Depreciation Allowance and Other Depreciation (Do not include listed property.) (See instructions.)

14	Special depreciation allowance for qualified property (other than listed property) placed in service during the tax year (see instructions)	14	46,491
15	Property subject to section 168(f)(1) election	15	
16	Other depreciation (including ACRS)	16	68

Part III MACRS Depreciation (Do not include listed property.) (See instructions.)

Section A

17	MACRS deductions for assets placed in service in tax years beginning before 2008	17	8,859
18	If you are electing to group any assets placed in service during the tax year into one or more general asset accounts, check here ▶		

Section B—Assets Placed in Service During 2008 Tax Year Using the General Depreciation System

(a) Classification of property	(b) Month and year placed in service	(c) Basis for depreciation (business/investment use only–see instructions)	(d) Recovery period	(e) Convention	(f) Method	(g) Depreciation deduction
19a 3-year property						
b 5-year property		45,206	5.0	HY	200DB	9,040
c 7-year property		1,281	7.0	HY	200DB	183
d 10-year property						
e 15-year property						
f 20-year property						
g 25-year property			25 yrs.		S/L	
h Residential rental property			27.5 yrs.	MM	S/L	
			27.5 yrs.	MM	S/L	
i Nonresidential real property			39 yrs.	MM	S/L	
				MM	S/L	

Section C—Assets Placed in Service During 2008 Tax Year Using the Alternative Depreciation System

(a) Classification of property	(b)	(c)	(d)	(e)	(f)	(g)
20a Class life					S/L	
b 12-year			12 yrs.		S/L	
c 40-year			40 yrs.	MM	S/L	

Part IV Summary (See instructions.)

21	Listed property. Enter amount from line 28	21	45,977
22	**Total.** Add amounts from line 12, lines 14 through 17, lines 19 and 20 in column (g), and line 21. Enter here and on the appropriate lines of your return. Partnerships and S corporations—see instr.	22	110,618
23	For assets shown above and placed in service during the current year, enter the portion of the basis attributable to section 263A costs	23	

For Paperwork Reduction Act Notice, see separate instructions. Form **4562** (2008)

DAA

HOOSIER CONSTRUCTION SERVICES, INC.12-3456789

Form 4562 (2008) Page 2

Part V Listed Property (Include automobiles, certain other vehicles, cellular telephones, certain computers, and property used for entertainment, recreation, or amusement.)

Note: For any vehicle for which you are using the standard mileage rate or deducting lease expense, complete **only** 24a, 24b, columns (a) through (c) of Section A, all of Section B, and Section C if applicable.

Section A—Depreciation and Other Information (Caution: See the instructions for limits for passenger automobiles.)

24a Do you have evidence to support the business/investment use claimed? [X] Yes [ ] No 24b If "Yes," is the evidence written? [X] Yes [ ] No

(a) Type of property (list vehicles first)	(b) Date placed in service	(c) Business/ investment use percentage	(d) Cost or other basis	(e) Basis for depreciation (business/investment use only)	(f) Recovery period	(g) Method/ Convention	(h) Depreciation deduction	(i) Elected section 179 cost
25 Special depreciation allowance for qualified listed property placed in service during the tax year and used more than 50% in a qualified business use (see instructions)						25	21,440	
26 Property used more than 50% in a qualified business use:								
SEE STATEMENT 14		%	197,898	152,394			24,537	
		%						
27 Property used 50% or less in a qualified business use:								
		%				S/L-		
		%				S/L-		
28 Add amounts in column (h), lines 25 through 27. Enter here and on line 21, page 1						28	45,977	
29 Add amounts in column (i), line 26. Enter here and on line 7, page 1							29	

Section B—Information on Use of Vehicles

Complete this section for vehicles used by a sole proprietor, partner, or other "more than 5% owner," or related person.
If you provided vehicles to your employees, first answer the questions in Section C to see if you meet an exception to completing this section for those vehicles.

	(a) Vehicle 1		(b) Vehicle 2		(c) Vehicle 3		(d) Vehicle 4		(e) Vehicle 5		(f) Vehicle 6	
30 Total business/investment miles driven during the year (**do not** include commuting miles)												
31 Total commuting miles driven during the year												
32 Total other personal (noncommuting) miles driven												
33 Total miles driven during the year. Add lines 30 through 32												
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
34 Was the vehicle available for personal use during off-duty hours?												
35 Was the vehicle used primarily by a more than 5% owner or related person?												
36 Is another vehicle available for personal use?												

Section C—Questions for Employers Who Provide Vehicles for Use by Their Employees

Answer these questions to determine if you meet an exception to completing Section B for vehicles used by employees who **are not** more than 5% owners or related persons (see instructions).

	Yes	No
37 Do you maintain a written policy statement that prohibits all personal use of vehicles, including commuting, by your employees?		
38 Do you maintain a written policy statement that prohibits personal use of vehicles, except commuting, by your employees? See the instructions for vehicles used by corporate officers, directors, or 1% or more owners		
39 Do you treat all use of vehicles by employees as personal use?		
40 Do you provide more than five vehicles to your employees, obtain information from your employees about the use of the vehicles, and retain the information received?		
41 Do you meet the requirements concerning qualified automobile demonstration use? (See instructions.)		

Note: If your answer to 37, 38, 39, 40, or 41 is "Yes," do not complete Section B for the covered vehicles.

Part VI Amortization

(a) Description of costs	(b) Date amortization begins	(c) Amortizable amount	(d) Code section	(e) Amortization period or percentage	(f) Amortization for this year
42 Amortization of costs that begins during your 2008 tax year (see instructions):					
43 Amortization of costs that began before your 2008 tax year				43	906
44 **Total.** Add amounts in column (f). See the instructions for where to report				44	906

Form **4562** (2008)

DAA

Form **4797**

Department of the Treasury
Internal Revenue Service (99)

Sales of Business Property
(Also Involuntary Conversions and Recapture Amounts Under Sections 179 and 280F(b)(2))

▶ Attach to your tax return.▶ See separate instructions.

OMB No. 1545-0184

2021

Attachment Sequence No. **27**

Name(s) shown on return: HOOSIER CONSTRUCTION SERVICES, INC.

Identifying number: 12-3456789

1	Enter the gross proceeds from sales or exchanges reported to you for 2008 on Form(s) 1099-B or 1099-S (or substitute statement) that you are including on line 2, 10, or 20 (see instructions)	1	

Part I Sales or Exchanges of Property Used in a Trade or Business and Involuntary Conversions From Other Than Casualty or Theft—Most Property Held More Than 1 Year (see instructions)

2 (a) Description of property	(b) Date acquired (mo., day, yr.)	(c) Date sold (mo., day, yr.)	(d) Gross sales price	(e) Depreciation allowed or allowable since acquisition	(f) Cost or other basis, plus improvements and expense of sale	(g) Gain or (loss) Subtract (f) from the sum of (d) and (e)

3	Gain, if any, from Form 4684, line 45	3	
4	Section 1231 gain from installment sales from Form 6252, line 26 or 37	4	
5	Section 1231 gain or (loss) from like-kind exchanges from Form 8824	5	
6	Gain, if any, from line 32, from other than casualty or theft	6	
7	Combine lines 2 through 6. Enter the gain or (loss) here and on the appropriate line as follows:	7	0
	Partnerships (except electing large partnerships) and S corporations. Report the gain or (loss) following the instructions for Form 1065, Schedule K, line 10, or Form 1120S, Schedule K, line 9. Skip lines 8, 9, 11, and 12 below.		
	Individuals, partners, S corporation shareholders, and all others. If line 7 is zero or a loss, enter the amount from line 7 on line 11 below and skip lines 8 and 9. If line 7 is a gain and you did not have any prior year section 1231 losses, or they were recaptured in an earlier year, enter the gain from line 7 as a long-term capital gain on the Schedule D filed with your return and skip lines 8, 9, 11, and 12 below.		
8	Nonrecaptured net section 1231 losses from prior years (see instructions)	8	
9	Subtract line 8 from line 7. If zero or less, enter -0-. If line 9 is zero, enter the gain from line 7 on line 12 below. If line 9 is more than zero, enter the amount from line 8 on line 12 below and enter the gain from line 9 as a long-term capital gain on the Schedule D filed with your return (see instructions)	9	

Part II Ordinary Gains and Losses (see instructions)

10 Ordinary gains and losses not included on lines 11 through 16 (include property held 1 year or less):

11	Loss, if any, from line 7	11	( )
12	Gain, if any, from line 7 or amount from line 8, if applicable	12	
13	Gain, if any, from line 31	13	5,500
14	Net gain or (loss) from Form 4684, lines 37 and 44a	14	
15	Ordinary gain from installment sales from Form 6252, line 25 or 36	15	
16	Ordinary gain or (loss) from like-kind exchanges from Form 8824	16	
17	Combine lines 10 through 16	17	5,500
18	For all except individual returns, enter the amount from line 17 on the appropriate line of your return and skip lines a and b below. For individual returns, complete lines a and b below:		
a	If the loss on line 11 includes a loss from Form 4684, line 41, column (b)(ii), enter that part of the loss here. Enter the part of the loss from income-producing property on Schedule A (Form 1040), line 28, and the part of the loss from property used as an employee on Schedule A (Form 1040), line 23. Identify as from "Form 4797, line 18a." See instructions	18a	
b	Redetermine the gain or (loss) on line 17 excluding the loss, if any, on line 18a. Enter here and on Form 1040, line	18b	

For Paperwork Reduction Act Notice, see separate instructions. Form **4797** (2008)

Form 4797 (2008) HOOSIER CONSTRUCTION SERVICES, INC.12-3456789 Page 2

Part III Gain From Disposition of Property Under Sections 1245, 1250, 1252, 1254, and 1255 (see instructions)

19	(a) Description of section 1245, 1250, 1252, 1254, or 1255 property:	(b) Date acquired (mo., day, yr.)	(c) Date sold (mo., day, yr.)
A	2003 CHEVY SUBURBAN		
B			
C			
D			

	These columns relate to the properties on lines 19A through 19D. ▶		Property A	Property B	Property C	Property D
20	Gross sales price (**Note:** See line 1 before completing.)	20	5,500			
21	Cost or other basis plus expense of sale	21	49,095			
22	Depreciation (or depletion) allowed or allowable	22	49,095			
23	Adjusted basis. Subtract line 22 from line 21	23	0			
24	Total gain. Subtract line 23 from line 20	24	5,500			
25	**If section 1245 property:**					
a	Depreciation allowed or allowable from line 22	25a	49,095			
b	Enter the **smaller** of line 24 or 25a	25b	5,500			
26	**If section 1250 property:** If straight line depreciation was used, enter -0- on line 26g, except for a corporation subject to section 291.					
a	Additional depreciation after 1975 (see instructions)	26a				
b	Applicable percentage multiplied by the **smaller** of line 24 or line 26a (see instructions)	26b				
c	Subtract line 26a from line 24. If residential rental property or line 24 is not more than line 26a, skip lines 26d and 26e	26c				
d	Additional depreciation after 1969 and before 1976	26d				
e	Enter the **smaller** of line 26c or 26d	26e				
f	Section 291 amount (corporations only)	26f				
g	Add lines 26b, 26e, and 26f	26g				
27	**If section 1252 property:** Skip this section if you did not dispose of farmland or if this form is being completed for a partnership (other than an electing large partnership).					
a	Soil, water, and land clearing expenses	27a				
b	Line 27a multiplied by applicable percentage (see instructions)	27b				
c	Enter the **smaller** of line 24 or 27b	27c				
28	**If section 1254 property:**					
a	Intangible drilling and development costs, expenditures for development of mines and other natural deposits, and mining exploration costs (see instructions)	28a				
b	Enter the **smaller** of line 24 or 28a	28b				
29	**If section 1255 property:**					
a	Applicable percentage of payments excluded from income under section 126 (see instructions)	29a				
b	Enter the **smaller** of line 24 or 29a (see instructions)	29b				

Summary of Part III Gains. Complete property columns A through D through line 29b before going to line 30.

30	Total gains for all properties. Add property columns A through D, line 24	30	5,500
31	Add property columns A through D, lines 25b, 26g, 27c, 28b, and 29b. Enter here and on line 13	31	5,500
32	Subtract line 31 from line 30. Enter the portion from casualty or theft on Form 4684, line 39. Enter the portion from other than casualty or theft on Form 4797, line 6	32	0

Part IV Recapture Amounts Under Sections 179 and 280F(b)(2) When Business Use Drops to 50% or Less (see instructions)

			(a) Section 179	(b) Section 280F(b)(2)
33	Section 179 expense deduction or depreciation allowable in prior years	33		
34	Recomputed depreciation (see instructions)	34		
35	Recapture amount. Subtract line 34 from line 33. See the instructions for where to report	35		

Form **8824**

Department of the Treasury
Internal Revenue Service

Like-Kind Exchanges

(and section 1043 conflict-of-interest sales)

▶ **Attach to your tax return.**

OMB No. 1545-1190

2021

Attachment Sequence No. **109**

Name(s) shown on tax return: HOOSIER CONSTRUCTION SERVICES, INC.

Identifying number: 12-3456789

Part I Information on the Like-Kind Exchange

Note: If the property described on line 1 or line 2 is real or personal property located outside the United States, indicate the country.

1 Description of like-kind property given up:
2003 CHEVY SILVERADO (SPARE)

2 Description of like-kind property received:
RECEIVED IN TRADE FOR ASSET # 156

		Line	
3	Date like-kind property given up was originally acquired (month, day, year)	3	5/21/03
4	Date you actually transferred your property to other party (month, day, year)	4	2/02/09
5	Date like-kind property you received was identified by written notice to another party (month, day, year). See instructions for 45-day written notice requirement	5	2/02/09
6	Date you actually received the like-kind property from other party (month, day, year). See instructions	6	2/02/09

7 Was the exchange of the property given up or received made with a related party, either directly or indirectly (such as through an intermediary)? See instructions. If "Yes," complete Part II. If "No," go to Part III ☐ Yes ☒ No

Part II Related Party Exchange Information

8 Name of related party	Relationship to you	Related party's identifying number

Address (no., street, and apt., room, or suite no., city or town, state, and ZIP code)

9 During this tax year (and before the date that is 2 years after the last transfer of property that was part of the exchange), did the related party sell or dispose of any part of the like-kind property received from you (or an intermediary) in the exchange or transfer property into the exchange, directly or indirectly (such as through an intermediary), that became your replacement property? ☐ Yes ☐ No

10 During this tax year (and before the date that is 2 years after the last transfer of property that was part of the exchange), did you sell or dispose of any part of the like-kind property you received? ☐ Yes ☐ No

If both lines 9 and 10 are "No" and this is the year of the exchange, go to Part III. If both lines 9 and 10 are "No" and this is **not** the year of the exchange, stop here. If either line 9 or line 10 is "Yes," complete Part III and report on this year's tax return the deferred gain or (loss) from line 24 **unless** one of the exceptions on line 11 applies.

11 If one of the exceptions below applies to the disposition, check the applicable box:

a ☐ The disposition was after the death of either of the related parties.

b ☐ The disposition was an involuntary conversion, and the threat of conversion occurred after the exchange.

c ☐ You can establish to the satisfaction of the IRS that neither the exchange nor the disposition had tax avoidance as one of its principal purposes. If this box is checked, attach an explanation (see instructions).

Name(s) shown on tax return. Do not enter name and social security number if shown on other side.

HOOSIER CONSTRUCTION SERVICES, INC.

Your social security number

12-3456789

Part III Realized Gain or (Loss), Recognized Gain, and Basis of Like-Kind Property Received

Caution: If you transferred **and** received **(a)** more than one group of like-kind properties or **(b)** cash or other (not like-kind) property, see **Reporting of multi-asset exchanges** in the instructions.

Note: Complete lines 12 through 14 **only** if you gave up property that was not like-kind. Otherwise, go to line 15.

Line	Description		Amount
12	Fair market value (FMV) of other property given up	12	
13	Adjusted basis of other property given up	13	
14	Gain or (loss) recognized on other property given up. Subtract line 13 from line 12. Report the gain or (loss) in the same manner as if the exchange had been a sale. **Caution:** If the property given up was used previously or partly as a home, see **Property used as home** in the instructions.	14	
15	Cash received, FMV of other property received, plus net liabilities assumed by other party, reduced (but not below zero) by any exchange expenses you incurred (see instructions)	15	
16	FMV of like-kind property you received	16	28,796
17	Add lines 15 and 16	17	28,796
18	Adjusted basis of like-kind property you gave up, net amounts paid to other party, plus any exchange expenses **not** used on line 15 (see instructions)	18	20,561
19	**Realized gain or (loss).** Subtract line 18 from line 17	19	8,235
20	Enter the smaller of line 15 or line 19, but not less than zero	20	0
21	Ordinary income under recapture rules. Enter here and on Form 4797, line 16 (see instructions)	21	
22	Subtract line 21 from line 20. If zero or less, enter -0-. If more than zero, enter here and on Schedule D or Form 4797, unless the installment method applies (see instructions)	22	0
23	**Recognized gain.** Add lines 21 and 22	23	
24	Deferred gain or (loss). Subtract line 23 from line 19. If a related party exchange, see instructions	24	8,235
25	**Basis of like-kind property received.** Subtract line 15 from the sum of lines 18 and 23	25	20,561

Part IV Deferral of Gain From Section 1043 Conflict-of-Interest Sales

Note: This part is to be used **only** by officers or employees of the executive branch of the Federal Government or judicial officers of the Federal Government (including certain spouses, minor or dependent children, and trustees as described in section 1043) for reporting nonrecognition of gain under section 1043 on the sale of property to comply with the conflict-of-interest requirements. This part can be used **only** if the cost of the replacement property is more than the basis of the divested property.

26 Enter the number from the upper right corner of your certificate of divestiture. (**Do not** attach a copy of your certificate. Keep the certificate with your records.) ▶

27 Description of divested property ▶

28 Description of replacement property ▶

Line	Description		Amount
29	Date divested property was sold (month, day, year)	29	
30	Sales price of divested property (see instructions)	30	
31	Basis of divested property	31	
32	**Realized gain.** Subtract line 31 from line 30	32	
33	Cost of replacement property purchased within 60 days after date of sale	33	
34	Subtract line 33 from line 30. If zero or less, enter -0-	34	
35	Ordinary income under recapture rules. Enter here and on Form 4797, line 10 (see instructions)	35	
36	Subtract line 35 from line 34. If zero or less, enter -0-. If more than zero, enter here and on Schedule D or Form 4797 (see instructions)	36	
37	**Deferred gain.** Subtract the sum of lines 35 and 36 from line 32	37	
38	**Basis of replacement property.** Subtract line 37 from line 33	38	

Form **8824**

Department of the Treasury
Internal Revenue Service

Like-Kind Exchanges

(and section 1043 conflict-of-interest sales)

▶ Attach to your tax return.

OMB No. 1545-1190

2021

Attachment Sequence No. **109**

Name(s) shown on tax return: HOOSIER CONSTRUCTION SERVICES, INC.

Identifying number: 12-3456789

Part I Information on the Like-Kind Exchange

Note: If the property described on line 1 or line 2 is real or personal property located outside the United States, indicate the country.

1 Description of like-kind property given up:
TRADE IN OF TOUREG

2 Description of like-kind property received:
2008 TOYOTA SEQUOIA

3	Date like-kind property given up was originally acquired (month, day, year)	3	VARIOUS
4	Date you actually transferred your property to other party (month, day, year)	4	09/26/2021
5	Date like-kind property you received was identified by written notice to another party (month, day, year). See instructions for 45-day written notice requirement	5	09/26/2021
6	Date you actually received the like-kind property from other party (month, day, year). See instructions	6	09/26/2021

7 Was the exchange of the property given up or received made with a related party, either directly or indirectly (such as through an intermediary)? See instructions. If "Yes," complete Part II. If "No," go to Part III ☐ Yes ☒ No

Part II Related Party Exchange Information

8 Name of related party	Relationship to you	Related party's identifying number

Address (no., street, and apt., room, or suite no., city or town, state, and ZIP code)

9 During this tax year (and before the date that is 2 years after the last transfer of property that was part of the exchange), did the related party sell or dispose of any part of the like-kind property received from you (or an intermediary) in the exchange or transfer property into the exchange, directly or indirectly (such as through an intermediary), that became your replacement property? ☐ Yes ☐ No

10 During this tax year (and before the date that is 2 years after the last transfer of property that was part of the exchange), did you sell or dispose of any part of the like-kind property you received? ☐ Yes ☐ No

If both lines 9 and 10 are "No" and this is the year of the exchange, go to Part III. If both lines 9 and 10 are "No" and this is **not** the year of the exchange, stop here. If either line 9 or line 10 is "Yes," complete Part III and report on this year's tax return the deferred gain or (loss) from line 24 **unless** one of the exceptions on line 11 applies.

11 If one of the exceptions below applies to the disposition, check the applicable box:

a ☐ The disposition was after the death of either of the related parties.

b ☐ The disposition was an involuntary conversion, and the threat of conversion occurred after the exchange.

c ☐ You can establish to the satisfaction of the IRS that neither the exchange nor the disposition had tax avoidance as one of its principal purposes. If this box is checked, attach an explanation (see instructions).

Name(s) shown on tax return. Do not enter name and social security number if shown on other side. | Your social security number

HOOSIER CONSTRUCTION SERVICES, INC. | 12-3456789

Part III Realized Gain or (Loss), Recognized Gain, and Basis of Like-Kind Property Received

Caution: If you transferred and received (a) more than one group of like-kind properties or (b) cash or other (not like-kind) property, see **Reporting of multi-asset exchanges** in the instructions.

Note: Complete lines 12 through 14 **only** if you gave up property that was not like-kind. Otherwise, go to line 15.

Line	Description	Sub-line	Sub-amount	Line	Amount
12	Fair market value (FMV) of other property given up	12			
13	Adjusted basis of other property given up	13			
14	Gain or (loss) recognized on other property given up. Subtract line 13 from line 12. Report the gain or (loss) in the same manner as if the exchange had been a sale			14	
	Caution: If the property given up was used previously or partly as a home, see **Property used as home** in the instructions.				
15	Cash received, FMV of other property received, plus net liabilities assumed by other party, reduced (but not below zero) by any exchange expenses you incurred (see instructions)			15	
16	FMV of like-kind property you received			16	48,507
17	Add lines 15 and 16			17	48,507
18	Adjusted basis of like-kind property you gave up, net amounts paid to other party, plus any exchange expenses **not** used on line 15 (see instructions)			18	69,895
19	**Realized gain or (loss).** Subtract line 18 from line 17			19	-21,388
20	Enter the smaller of line 15 or line 19, but not less than zero			20	0
21	Ordinary income under recapture rules. Enter here and on Form 4797, line 16 (see instructions)			21	
22	Subtract line 21 from line 20. If zero or less, enter -0-. If more than zero, enter here and on Schedule D or Form 4797, unless the installment method applies (see instructions)			22	0
23	**Recognized gain.** Add lines 21 and 22			23	
24	Deferred gain or (loss). Subtract line 23 from line 19. If a related party exchange, see instructions			24	-21,388
25	**Basis of like-kind property received.** Subtract line 15 from the sum of lines 18 and 23			25	69,895

Part IV Deferral of Gain From Section 1043 Conflict-of-Interest Sales

Note: This part is to be used **only** by officers or employees of the executive branch of the Federal Government or judicial officers of the Federal Government (including certain spouses, minor or dependent children, and trustees as described in section 1043) for reporting nonrecognition of gain under section 1043 on the sale of property to comply with the conflict-of-interest requirements. This part can be used **only** if the cost of the replacement property is more than the basis of the divested property.

26 Enter the number from the upper right corner of your certificate of divestiture. (**Do not** attach a copy of your certificate. Keep the certificate with your records.) ▶

27 Description of divested property ▶

28 Description of replacement property ▶

Line	Description	Sub-line	Sub-amount	Line	Amount
29	Date divested property was sold (month, day, year)			29	
30	Sales price of divested property (see instructions)	30			
31	Basis of divested property	31			
32	**Realized gain.** Subtract line 31 from line 30			32	
33	Cost of replacement property purchased within 60 days after date of sale	33			
34	Subtract line 33 from line 30. If zero or less, enter -0-			34	
35	Ordinary income under recapture rules. Enter here and on Form 4797, line 10 (see instructions)			35	
36	Subtract line 35 from line 34. If zero or less, enter -0-. If more than zero, enter here and on Schedule D or Form 4797 (see instructions)			36	
37	**Deferred gain.** Subtract the sum of lines 35 and 36 from line 32			37	
38	**Basis of replacement property.** Subtract line 37 from line 33			38	

Form **8903**

Department of the Treasury
Internal Revenue Service

Domestic Production Activities Deduction

▶ Attach to your tax return. ▶ See separate instructions.

OMB No. 1545-1984

2021

Attachment Sequence No. **143**

Name(s) as shown on return: HOOSIER CONSTRUCTION SERVICES, INC.

Identifying number: 12-3456789

Line	Description	Sub-line	Sub-amount	Line	Amount
1	Domestic production gross receipts (DPGR)			1	5,710,296
2	Allocable cost of goods sold. If you are using the small business simplified overall method, skip lines 2 and 3	2	3,557,134		
3	Enter deductions and losses allocable to DPGR (see instructions)	3	1,937,837		
4	If you are using the small business simplified overall method, enter the amount of cost of goods sold and other deductions or losses you ratably apportion to DPGR. All others, skip line 4	4			
5	Add lines 2 through 4			5	5,494,971
6	Subtract line 5 from line 1			6	215,325
7	Qualified production activities income from estates, trusts, and certain partnerships and S corporations (see instructions)			7	
8	Add lines 6 and 7. Estates and trusts, go to line 9, all others, skip line 9 and go to line 10			8	215,325
9	Amount allocated to beneficiaries of the estate or trust (see instructions)			9	
10	**Qualified production activities income.** Estates and trusts, subtract line 9 from line 8, all others, enter amount from line 8. If zero or less, enter -0- here, skip lines 11 through 19, and enter -0- on line 20			10	215,325
11	Income limitation (see instructions): • Individuals, estates, and trusts. Enter your adjusted gross income figured without the domestic production activities deduction • All others. Enter your taxable income figured without the domestic production activities deduction (tax-exempt organizations, see instructions)			11	200,284
12	Enter the smaller of line 10 or line 11. If zero or less, enter -0- here, skip lines 13 through 19, and enter -0- on line 20			12	200,284
13	Enter 6% of line 12			13	12,017
14	Form W-2 wages (see instructions)			14	1,531,086
15	Form W-2 wages from estates, trusts, and certain partnerships and S corporations (see instructions)			15	
16	Add lines 14 and 15. Estates and trusts, go to line 17, all others, skip line 17 and go to line 18			16	1,531,086
17	Amount allocated to beneficiaries of the estate or trust (see instructions)			17	
18	Estates and trusts, subtract line 17 from line 16, all others, enter amount from line 16			18	1,531,086
19	Form W-2 wage limitation. Enter 50% of line 18			19	765,543
20	Enter the smaller of line 13 or line 19			20	12,017
21	Domestic production activities deduction from cooperatives. Enter deduction from Form 1099-PATR, box 6			21	
22	Expanded affiliated group allocation (see instructions)			22	
23	**Domestic production activities deduction.** Combine lines 20 through 22 and enter the result here and on Form 1040, line 35; Form 1120, line 25; or the applicable line of your return			23	12,017

For Paperwork Reduction Act Notice, see separate instructions.

Form **8903** (2008)

DAA

Federal Statements

Statement 1 - Form 1120, Page 1, Line 19 - Charitable Contributions

Description	Amount
CURRENT YEAR CONTRIBUTIONS	$ 5,548
CARRYOVER FROM PRIOR YEARS	15,126
TOTAL CONTRIBUTIONS AVAILABLE	20,674
LESS CONTRIBUTIONS DISALLOWED	0
TOTAL DEDUCTION ALLOWED	$ 20,674

Are these necessary for business?

Statement 2 - Form 1120, Page 1, Line 26 - Other Deductions

Description	Amount
TELEPHONE	$ 29,937
INSURANCE	252,041
DUES & SUBSCRIPTIONS	10,186
LEGAL & ACCOUNTING	24,771
UTILITIES	12,741
SHOP SUPPLIES	55,696
OFFICE EXPENSE	27,253
POSTAGE	3,229
BANK CHARGES	2,548
AUTOMOBILE EXPENSE	75,587
GIFTS & PROMOTION	12,072
COMPUTER CONSULTING	10,751
COMPUTER SOFTWARE	13,478
MISCELLANEOUS	803
EDUCATION	819
AMORTIZATION	906
50% OF MEALS & ENTERTAINMENT	68,335
TOTAL	$ 601,153

Anything for personal use? Looks like the meals and entertainment are being utilized quite a bit!

Federal Statements

Statement 3 - Form 1120, Page 2, Schedule A, Line 5 - Other Costs

Description	Amount
SUBCONTRACT	$ 2,121,695
OTHER DIRECT COSTS	73,763
SMALL EQUIPMENT	33,481
TOTAL	$ 2,228,939

Federal Statements

Statement 4 - Form 1120, Page 5, Schedule L, Line 6 - Other Current Assets

Description	Beginning of Year	End of Year
EMPLOYEE RECEIVABLES	$ 14,540	$ 12,161
EXCESS COST ON UNCOMPL. JOBS	448,506	103,424
PREPAID TAXES	70,334	31,347
TOTAL	$ 533,380	$ 146,932

Statement 5 - Form 1120, Page 5, Schedule L, Line 14 - Other Assets

Description	Beginning of Year	End of Year
CSV - OFFICERS LIFE INSURANCE	$ 43,001	$ 42,228
TOTAL	$ 43,001	$ 42,228

Statement 6 - Form 1120, Page 5, Schedule L, Line 18 - Other Current Liabilities

Description	Beginning of Year	End of Year
ACCRUED WAGES	$ 49,853	$ 77,102
ACCRUED PROPERTY TAXES	4,400	4,400
ACCRUED PENSION EXPENSE		
ACCRUED INTEREST	62,554	85,399
EXCESS BILLINGS-UNCOMPL. JOBS	140,169	68,872
LOANS FROM RELATED ENTITIES	110,599	113,000
TOTAL	$ 367,575	$ 348,773

Is interest due the owners? Who are the related parties?

Statement 7 - Form 1120, Page 5, Schedule L, Line 21 - Other Liabilities

Description	Beginning of Year	End of Year
DEFERRED FEDERAL INCOME TAXES	$ 116,711	$ 52,770
DEFERRED STATE INCOME TAXES	21,844	-353
TOTAL	$ 138,555	$ 52,417

Statement 8 - Form 1120, Page 5, Schedule M-1, Line 4 - Taxable Income Not on Books

Description	Amount
PROFIT ON PRIOR YEAR OPEN JOB	$ 303,984
FORM 4797 BOOK/TAX DIFF	8,042
TOTAL	$ 312,026

Federal Statements

Statement 9 - Form 1120, Page 5, Schedule M-1, Line 5 - Expenses on Books Not on Return

Description	Amount
ACCRUED INTEREST - SHAREHOLDE	$ 22,845
NON-DEDUCTIBLE DUES	2,760
OFFICERS LIFE INS. PREMIUMS	34,804
TOTAL	$ 60,409

Benefits to the owners, the interest may not be on the individuals return.

Statement 10 - Form 1120, Page 5, Schedule M-1, Line 7 - Income on Books Not on Return

Description	Amount
DEFERRED PROFIT ON OPEN JOBS	$ 60,132
DEFERRED INCOME TAXES	86,138
TOTAL	$ 146,270

Statement 11 - Form 1120, Page 5, Schedule M-1, Line 8 - Deductions on Return Not on Books

Description	Amount
OFFICER WAGE ACCRUAL	$ 6,400
AMORTIZATION BOOK/TAX DIFF	906
DOMESTIC PRODUCTION DED	12,017
TOTAL	$ 19,323

Federal Statements

Statement 12 - Form 4626, Page 1, Line 2o, Other Adjustments

Description	Amount
CHARITABLE CONTRIBUTIONS	$ 20,674
DOMESTIC PRODUCTION DEDUCT	11,893
TOTAL	$ 32,567

Federal Statements

Regular Depreciation

Statement 13 - Form 4562 - Election Made Under Section 1.168(i)-6(i)

Property Given Up	Property Received
2003 CHEVY SILVERADO (SPARE)	RECEIVED IN TRADE FOR ASSET # 156
2007 VOLKSWAGON - BASIS FROM TRADE	2008 TOYOTA SEQUOIA
2007 VOLKSWAGON - BOOT	2008 TOYOTA SEQUOIA

Federal Statements

Regular Depreciation

Statement 14 - Form 4562, Part V, Line 26 - Property Used More Than 50% in Qualified Business

Property Type	Date in Service	Busn Use %	Cost or Basis	Basis For Depr	Per	Meth	Deduct	Sec 179
2008 TUNDRA (GREG)	8/06/08	100.00	$ 27,369	$ 16,209	5.0	200DBHY	$	$
TOYOTA HIGHLANDER (SHANE)	3/14/09	100.00	24,407	24,407	5.0	200DBHY	3,060	
2003 CHEVY SILVERADO (SPARE)	5/21/03	100.00	32,548	8,484	5.0	200DBMQ	102	
2006 CHEVY VAN	4/24/06	100.00	26,247	26,247	5.0	200DBMQ	4,095	
BMW X-5	3/23/07	100.00	66,766	66,766	5.0	200DBMQ	15,223	
2008 TOYOTA TUNDRA	2/02/09	100.00	20,561	10,281	5.0	200DBHY	2,057	
TOTAL			$ 197,898	$ 152,394			$ 24,537	$ 0

Any personal vehicles?

FORM IT-20
State Form 44275 (R7/ 8-08)
Indiana Department of Revenue
Indiana Corporate Adjusted Gross Income Tax Return
For Calendar Year Ending December 31, : or Other Tax Year
Beginning 04/01/2021 and Ending 03/31/2022

12-3456789

HOOSIER CONSTRUCTION SERVICES, INC.
123 FAKE STREET
INDIANAPOLIS IN 46205

MARION 238900

Check box if name changed. ☐

J. Check all boxes that apply: ☐ Initial Return ☐ Final Return ☐ In Bankruptcy ☐ Insurance Co. ☐ Farmer's Cooperative ☐ REMIC

K. Date of incorporation 9/21/1982 in the state of IN
L. State of commercial domicile INDIANA
M. Year of initial Indiana return 1982
N. Location of records if different from above address:
O. Check box if the corporation paid any quarterly estimated tax using different Federal Identification numbers ☐
P. Check box if you file federal Form 1120 on a consolidated basis. ☐
Q. If filing on a unitary basis, are there any material changes in circumstances since the last petition was filed? ☐ Y ☐ N

R. Is 80% or more of your gross income derived from making, acquiring, selling or servicing loans or extensions of credit? ☐ Y ☒ N
S. Is this a consolidated return for adjusted gross income tax? ☐ Y ☒ N
T. Is this return filed on a combined unitary basis? ☐ Y ☒ N
U. In determining taxable income did you deduct any intangible expenses or directly related intangible interest expenses paid to 50% owned affiliates? ☐ Y ☒ N
V. Do you have on file a valid extension of time (federal Form 7004 or an electronic extension of time) to file your return? ☒ Y ☐ N

Computation of Adjusted Gross Income Tax

	Description	Line	Amount
1.	Federal taxable income (before federal net operating loss deduction and special deductions)	1	188,267.00
2.	Net qualifying dividends deduction from federal Schedule C, Form 1120	2	.00
3.	**Subtract** line 2 from line 1	3	188,267.00
	Modifications for Adjusted Gross Income		
4.	Add back: All state income taxes based on or measured by income	4	4,377.00
5.	Add back: All charitable contributions (IRC Section 170)	5	20,674.00
6a.	Add back: Domestic production activities deduction (IRC Section 199)	6a	12,017.00
6b.	Add back: Intangible expenses and any directly related intangible interest expenses used to reduce IRC Section 63 taxable income to the extent that the deduction is not allowed under IC 6-3-2-20(b), from Part 3(b) of Schedule PIC. (Complete Schedule PIC on pg.4 to make a declaration if you meet any exceptions to the requirement to add back deductions for intangible expenses)	6b	.00
6c.	Add back: Deduction for dividends paid to shareholders of a captive real estate investment trust	6c	.00
7.	Add or subtract: (Explain on Schedule H)		
	(a) Net bonus depreciation allowance STMT 1	7a	-21,654.00
	(b) Excess IRC Section 179 deduction	7b	.00
8.	Deduct: Interest on U.S. government obligations less related expenses	8	.00
9.	Deduct: Foreign gross up (IRC Section 78). Attach federal Form 1118	9	.00
10.	Deduct: Qualified patents income	10	.00
11.	Subtotal (Add lines 3 through 6c, plus result from lines 7a and 7b, subtract lines 8 through 10)	11	203,681.00
	Other Adjustments		
12.	Foreign Source Dividends (from worksheet on page 4) and other adjustments. Enter deductions in <brackets>	12	.00
13.	Subtotal of income with adjustments (add lines 11 and 12)	13	203,681.00
14.	Deduct: All source nonbusiness income or (loss) and non-unitary partnership distributions from IT-20 Schedule F, column C, line (10)	14	.00
15.	Taxable business income: Subtract line 14 from line 13	15	203,681.00
	Apportionment of Income for Entity with Multi-state Activities		
16.	Check one of the following apportionment methods used, attach completed schedule and enter percentage on line 16d ☐ 16a Schedule E, from line 4c applicable for tax years beginning in 2007. ☐ 16b Schedule E-7, from line 30 (for interstate transportation) for tax years beginning in 2007. ☐ 16c Other approved method (including domestic insurance companies).		
16d.	Enter Indiana apportionment percentage, if applicable (round percent to two decimals)	16d	%
17.	Indiana apportioned business income: Multiply line 15 by percent on line 16d. If apportionment of income is not applicable, enter the total amount from line 15.	17	203,681.00
	Add Allocated and Previously Apportioned Income to Indiana		
18.	Enter Indiana nonbusiness income or (loss) and Indiana non-unitary partnership income or (loss) from IT-20 Schedule F, column D, line (11)	18	.00
19.	Indiana adjusted gross income before net operating loss deduction: Add lines 17 and 18	19	203,681.00
	Deduct from Indiana Adjusted Gross Income		
20.	Indiana net operating loss deduction. Enter as positive amount from column 4 of Schedule IT-20NOL(s) for each loss year	20	.00
21.	Taxable adjusted gross income. Subtract line 20 from line 19. (Carry positive result to line 22 on page 2 of the return)	21	203,681.00

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HOOSIER CONSTRUCTION SERVICES, INC 12-3456789

IT-20 **2021 Indiana Corporate Adjusted Gross Income Tax Return** Page 2

Tax Calculation

Line	Description	Box	Amount
22.	Enter amount of Indiana adjusted gross income subject to tax from line 21	22	203,681.00
23.	Indiana adjusted gross income tax: Multiply line 22 by 8.5% (0.085). Result may not be less than zero. Note: If using alternate tax rate calculation, attach completed Schedule M from page 16 and check box ☐	23	17,313.00
24.	Sales/use tax due from worksheet on page 4 of return	24b	0.00
	Nonrefundable Tax Liability Credits (Attach all supporting documentation)		
25.	College and University Contribution Credit (CC-20) page 4 of return 25a. 807	25b	.00
26.	Indiana Research Expense Credit (IT-20REC) 26a. 822	26b	.00
27.	Enterprise Zone Employment Expense Credit (EZ 2) 27a. 812	27b	.00
28.	Enterprise Zone Loan Interest Credit (LIC) 28a. 814	28b	.00
	Other Nonrefundable Credits (See instruction page xx)		
29.	Enter name of credit ________ Code No. 29a. ______	29b	.00
30.	Enter name of credit ________ Code No. 30a. ______	30b	.00
31.	Enter name of credit ________ Code No. 31a. ______	31b	.00
32.	Total of nonrefundable tax liability credits (Add lines 25b through 31b. Sum of credits applied may not exceed line 23. Other restrictions may apply)	32	0.00
33.	Total taxes due: Add lines 23 and 24, subtract line 32. (Cannot be less than zero)	33	17,313.00
	Credit for Estimated Tax and Other Payments		
34.	Total quarterly estimated income tax paid (Itemize quarterly IT-6/EFT payments below) Qtr 1 .00 Qtr 2 .00 Qtr 3 .00 Qtr 4 .00	34	.00
35.	Enter overpayment credit from tax year ending ________	35	34,094.00
36.	Enter this year's extension payment	36	.00
37.	Other Payments/EDGE credit (Attach supporting evidence)	37	.00
38.	Media production credit	38	.00
39.	Total payments and credits: Add lines 34 through 38	39	34,094.00
	Balance of Tax Due or Overpayment		
40.	**Balance of Tax Due:** If line 33 is greater than line 39, enter the difference as the net tax balance due	40	0.00
41.	Penalty for Underpayment of Income Tax from attached Schedule IT-2220 ☐ Check box if using annualization method	41	.00
42.	Interest: If payment is made after the original due date, compute interest. (Contact the Department for current interest rate)	42	.00
43.	Late Penalty: If paying late, enter 10% of line 40; see instructions. If lines 23 and 24 are zero, enter $10 per day filed past due date; see instructions	43	.00
44.	**Total Amount Owed:** Add lines 40 through 43. Make check payable to Indiana Department of Revenue. Pay in U.S. funds.	44	0.00
45.	Overpayment: If sum of lines 33, 41, and 43 is less than line 39, enter the difference as an overpayment	45	16,781.00
46.	Refund: Enter portion of line 45 to be refunded	46	16,781.00
47.	Overpayment Credit: Amount of line 45 less line 46 to be applied to the following year's estimated tax account	47	.00

Certification of Signatures and Authorization Section

Under penalties of perjury, I declare I have examined this return, including all accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct and complete.

I authorize the Department to discuss my return with my personal representative (see page 29) ☒ Yes ☐ No

Company's E-mail address EE

Paid Preparer: Firm's Name (or yours if self-employed.)

▶ Signature of Corporate Officer Date

Check One: ☒ Federal I.D. Number ☐ PTIN OR ☐ Social Security Number

Print or Type Name of Corporate Officer Title

Telephone number

Address

Personal Representative's Name (Print or Type)

Telephone number

Address

City

State Zip Code + 4

▶ Paid Preparer's Signature Date

City

State Zip Code + 4

Please mail forms to :
Indiana Department of Revenue,
POB 7231,
Indianapolis, IN 46207.

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HOOSIER CONSTRUCTION SERVICES, INC 12-3456789

IT-20

Indiana Corporate Adjusted Gross Income Tax Return

Schedule PIC - Disclosure of Intangible Expense and Directly Related Intangible Interest Expense

State Form 53126
(R3/8-08)

For Tax Year Beginning 04/01/2021 and Ending 03/31/2022

Enter name of corporation as shown on return HOOSIER CONSTRUCTION SERVICES, INC.

Part 1 - Exception to the Add Back of the Deduction

Check applicable box if any of these conditions applies:

a. ☐ The taxpayer and all intangible income recipients, for the purpose of the addback requirement for line 6b of the return, are included in the same consolidated or combined Indiana return.

b. ☐ An agreement is on file with the Department allowing an alternative method of allocation or apportionment under the adjusted gross income tax statute.

c. ☐ The Department has determined following taxpayer's petition that the adjustment of Part 3 (a) and (b) is unnecessary.

If a box is checked, you declare that the corporation is not required to finish this schedule beyond completing Part 2 and attaching federal Form 851 to the return.

Part 2 - Related Transactions of Intangible Property

List transactions made with every recipient. Add additional sheets as necessary.

Name of recipient	Federal ID number	State or county of domicile	Relationship or exception status with taxpayer and type of intangible expense deducted	Amount paid to recipient
1.				
2.				
3.				
4.				

Total of Part 2 - Add amounts paid to all recipients

Part 3 - Amount of Deduction to Add Back - See instructions for list of exceptions

(a) Total Amount of Exceptions - Enter an amount equal to all of the amounts that qualify under one or more of the above exceptions. You must explain on Schedule H or attach to the return specific supporting documentation for each transaction that relates to one or more of the designated exceptions 3(a)

(b) Net Amount to Add Back - Subtract 3(a) from Part 2 total. Enter net amount here. Carry this amount to line 6b of return 3(b)

Schedule H - Additional Explanation or Adjustment of Items Elsewhere on Return (Carry subtotals to respective schedules.)

Column A Reference to line number	Column B Explanation	Column C Amount
		.00
		.00
		.00
		.00

Foreign Source Dividends Deduction Worksheet (excluding Foreign Gross Up) for dividends reported on federal Schedule C included in taxable income

Percentage of Voting Stock Owned	Column A Remainder of Federal Taxable Dividends (after Schedule C special deductions) from Foreign Corporations	Column B Dividended Deduction Rate	Column C Dividend Deduction Column A x Column B (enter as negative value)
80% or more of stock owned:	$ .00	100%	(.00)
50% but less than 80%:	$ .00	85%	(.00)
Less than 50% owned:	$ .00	50%	(.00)
Foreign Source Dividends Deduction from Adjusted Gross Income Add column C and carry to Form IT-20, line 12			(.00)

Schedule CC-20 - College and University Contribution Credit for Line 25

Column A - Name of Indiana College or University (List charitable contributions)	Column B Date	Column C Amount Given
		.00
		.00
1. Total contributions to Indiana colleges and universities		.00
2. 50% of line 1 or $1,000, whichever is less		.00
3. Enter adjusted gross income tax for tax period from line 23		.00
4. 10% of your Indiana adjusted gross income tax (multiply line 3 by .10)		.00
5. Credit - Lesser of line 2 or line 4 (enter here and on line 25b on Form IT-20)		0 .00

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Indiana Statements

Statement 1 - Form IT-20, Page 1, Line 7(a) - Net Bonus Depreciation Allowance

Description	Amount
ADJUST FOR DEPR DIFFERENCE	$ -21,654
TOTAL	$ -21,654

ASSA

Pass-thru entity!

Form 1120S

Department of the Treasury
Internal Revenue Service

U.S. Income Tax Return for an S Corporation

▶ Do not file this form unless the corporation has filed or is attaching Form 2553 to elect to be an S corporation.
▶ See separate instructions.

OMB No. 1545-0130

2021

For calendar year 2008 or tax year beginning , ending

A S election effective date: 6/15/06	Name: DRYWALL PROFESSIONALS, INC.	D Employer identification number: 24-6810121
B Business activity code number (see instructions): 238100	Number, street, and room or suite no. If a P.O. box, see instructions.: 1123 INDUSTRIAL WAY	E Date incorporated: 6/15/2006
C Check if Sch. M-3 attached ☐	City or town, state, and ZIP code: INDIANAPOLIS IN 46218	F Total assets (see instructions): $ 5,983,096

Use IRS label. Otherwise, print or type.

G Is the corporation electing to be an S corporation beginning with this tax year? ☐ Yes ☒ No If "Yes," attach Form 2553 if not already filed

H Check if: (1) ☐ Final return (2) ☐ Name change (3) ☒ Address change (4) ☐ Amended return (5) ☐ S election termination or revocation

I Enter the number of shareholders who were shareholders during any part of the tax year ▶ 2

Caution. Include **only** trade or business income and expenses on lines 1a through 21. See the instructions for more information.

Section	Line	Description	Box	Amount
Income	1a	Gross receipts or sales 19,341,470 b Less returns and allowances c Bal ▶	1c	19,341,470
	2	Cost of goods sold (Schedule A, line 8)	2	15,252,888
	3	Gross profit. Subtract line 2 from line 1c	3	4,088,582
	4	Net gain (loss) from Form 4797, Part II, line 17 (attach Form 4797)	4	700
	5	Other income (loss) (see instructions—attach statement) SEE STMT 1	5	4,222
	6	**Total income (loss).** Add lines 3 through 5 ▶	6	4,093,504
Deductions (see instructions for limitations)	7	Compensation of officers	7	657,841
	8	Salaries and wages (less employment credits)	8	1,052,084
	9	Repairs and maintenance	9	26,348
	10	Bad debts	10	
	11	Rents	11	95,211
	12	Taxes and licenses	12	315,474
	13	Interest	13	189,422
	14	Depreciation not claimed on Schedule A or elsewhere on return (attach Form 4562)	14	49,062
	15	Depletion **(Do not deduct oil and gas depletion.)**	15	
	16	Advertising	16	5,100
	17	Pension, profit-sharing, etc., plans	17	
	18	Employee benefit programs	18	159,953
	19	Other deductions (attach statement) SEE STMT 2	19	975,609
	20	**Total deductions.** Add lines 7 through 19 ▶	20	3,526,104
	21	**Ordinary business income (loss).** Subtract line 20 from line 6	21	567,400
Tax and Payments	22a	Excess net passive income or LIFO recapture tax (see instructions) — 22a		
	b	Tax from Schedule D (Form 1120S) — 22b		
	c	Add lines 22a and 22b (see instructions for additional taxes)	22c	
	23a	2008 estimated tax payments and 2007 overpayment credited to 2008 — 23a		
	b	Tax deposited with Form 7004 — 23b		
	c	Credit for federal tax paid on fuels (attach Form 4136) — 23c		
	d	Add lines 23a through 23c	23d	
	24	Estimated tax penalty (see instructions). Check if Form 2220 is attached ▶ ☐	24	
	25	**Amount owed.** If line 23d is smaller than the total of lines 22c and 24, enter amount owed	25	
	26	**Overpayment.** If line 23d is larger than the total of lines 22c and 24, enter amount overpaid	26	
	27	Enter amount from line 26 **Credited to 2009 estimated tax** ▶ **Refunded** ▶	27	

Look for the same items as with the Corporation return (1120)

Sign Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

May the IRS discuss this return with the preparer shown below (see instructions)? ☒ Yes ☐ No

▶ Signature of officer — Date — ▶ Title

Paid Preparer's Use Only

Preparer's signature ▶ — Date — Check if self-employed ☐ — Preparer's SSN or PTIN

Firm's name (or yours if self-employed), address, and ZIP code ▶ — EIN — Phone no.

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions. Form **1120S** (2008)

Schedule A Cost of Goods Sold (see instructions)

1	Inventory at beginning of year	1	30,442
2	Purchases	2	3,382,077
3	Cost of labor	3	2,647,647
4	Additional section 263A costs (attach statement)	4	
5	Other costs (attach statement) STMT 3	5	9,239,852
6	**Total.** Add lines 1 through 5	6	15,300,018
7	Inventory at end of year	7	47,130
8	**Cost of goods sold.** Subtract line 7 from line 6. Enter here and on page 1, line 2	8	15,252,888

9a Check all methods used for valuing closing inventory: (i) [X] Cost as described in Regulations section 1.471-3

(ii) [ ] Lower of cost or market as described in Regulations section 1.471-4

(iii) [ ] Other (Specify method used and attach explanation.) ▶

b Check if there was a writedown of subnormal goods as described in Regulations section 1.471-2(c) ▶ [ ]

c Check if the LIFO inventory method was adopted this tax year for any goods (if checked, attach Form 970) ▶ [ ]

d If the LIFO inventory method was used for this tax year, enter percentage (or amounts) of closing inventory computed under LIFO 9d

e If property is produced or acquired for resale, do the rules of section 263A apply to the corporation? [X] Yes [ ] No

f Was there any change in determining quantities, cost, or valuations between opening and closing inventory? [ ] Yes [X] No
If "Yes," attach explanation.

Schedule B Other Information (see instructions)

		Yes	No
1	Check accounting method: a [ ] Cash b [ ] Accrual c [X] Other (specify) ▶ PERCENT OF COMPL.		
2	See the instructions and enter the: a Business activity ▶ CONSTRUCTION b Product or service ▶ DRYWALL		
3	At the end of the tax year, did the corporation own, directly or indirectly, 50% or more of the voting stock of a domestic corporation? (For rules of attribution, see section 267(c).) If "Yes," attach a statement showing: **(a)** name and employer identification number (EIN), **(b)** percentage owned, and **(c)** if 100% owned, was a QSub election made?		X
4	Has this corporation filed, or is it required to file, a return under section 6111 to provide information on any reportable transaction?		X
5	Check this box if the corporation issued publicly offered debt instruments with original issue discount ▶ [ ] If checked, the corporation may have to file **Form 8281,** Information Return for Publicly Offered Original Issue Discount Instruments.		
6	If the corporation: **(a)** was a C corporation before it elected to be an S corporation **or** the corporation acquired an asset with a basis determined by reference to its basis (or the basis of any other property) in the hands of a C corporation **and (b)** has net unrealized built-in gain (defined in section 1374(d)(1)) in excess of the net recognized built-in gain from prior years, enter the net unrealized built-in gain reduced by net recognized built-in gain from prior years ▶ $		
7	Enter the accumulated earnings and profits of the corporation at the end of the tax year. $		
8	Are the corporation's total receipts (see instructions) for the tax year **and** its total assets at the end of the tax year less than $250,000? If "Yes," the corporation is not required to complete Schedules L and M-1.		X

Schedule K Shareholders' Pro Rata Share Items

Income (Loss)

					Total amount
1	Ordinary business income (loss) (page 1, line 21)			1	567,400
2	Net rental real estate income (loss) (attach Form 8825)			2	
3a	Other gross rental income (loss)	3a			
b	Expenses from other rental activities (attach statement)	3b			
c	Other net rental income (loss). Subtract line 3b from line 3a			3c	
4	Interest income			4	
5	Dividends: a Ordinary dividends			5a	
	b Qualified dividends	5b			
6	Royalties			6	
7	Net short-term capital gain (loss) (attach Schedule D (Form 1120S))			7	
8a	Net long-term capital gain (loss) (attach Schedule D (Form 1120S))			8a	
b	Collectibles (28%) gain (loss)	8b			
c	Unrecaptured section 1250 gain (attach statement)	8c			
9	Net section 1231 gain (loss) (attach Form 4797)			9	
10	Other income (loss) (see instructions) Type ▶			10	

Form 1120S (2008) DRYWALL PROFESSIONALS, INC. 24-6810121 Page 3

Not an economic deduction

Section		Shareholders' Pro Rata Share Items (continued)		Total amount
Deductions	11	Section 179 deduction (attach Form 4562)	11	72,304
	12a	Contributions STMT 4	12a	1,358
	b	Investment interest expense	12b	
	c	Section 59(e)(2) expenditures (1) Type ▶ (2) Amount ▶	12c(2)	
	d	Other deductions (see instructions) Type ▶ SEE STMT 5	12d	
Credits	13a	Low-income housing credit (section 42(j)(5))	13a	
	b	Low-income housing credit (other)	13b	
	c	Qualified rehabilitation expenditures (rental real estate) (attach Form 3468)	13c	
	d	Other rental real estate credits (see instructions) Type ▶	13d	
	e	Other rental credits (see instructions) Type ▶	13e	
	f	Alcohol and cellulosic biofuel fuels credit (attach Form 6478)	13f	
	g	Other credits (see instructions) Type ▶	13g	
Foreign Transactions	14a	Name of country or U.S. possession ▶		
	b	Gross income from all sources	14b	
	c	Gross income sourced at shareholder level	14c	
		Foreign gross income sourced at corporate level		
	d	Passive category	14d	
	e	General category	14e	
	f	Other (attach statement)	14f	
		Deductions allocated and apportioned at shareholder level		
	g	Interest expense	14g	
	h	Other	14h	
		Deductions allocated and apportioned at corporate level to foreign source income		
	i	Passive category	14i	
	j	General category	14j	
	k	Other (attach statement)	14k	
		Other information		
	l	Total foreign taxes (check one): ▶ ☐ Paid ☐ Accrued	14l	
	m	Reduction in taxes available for credit (attach statement)	14m	
	n	Other foreign tax information (attach statement)		
Alternative Minimum Tax (AMT) Items	15a	Post-1986 depreciation adjustment	15a	6,394
	b	Adjusted gain or loss	15b	
	c	Depletion (other than oil and gas)	15c	
	d	Oil, gas, and geothermal properties-gross income	15d	
	e	Oil, gas, and geothermal properties-deductions	15e	
	f	Other AMT items (attach statement)	15f	
Items Affecting Shareholder Basis	16a	Tax-exempt interest income	16a	
	b	Other tax-exempt income	16b	
	c	Nondeductible expenses	16c	6,123
	d	Property distributions	16d	199,020
	e	Repayment of loans from shareholders	16e	
Other Information	17a	Investment income	17a	
	b	Investment expenses	17b	
	c	Dividend distributions paid from accumulated earnings and profits	17c	
	d	Other items and amounts (attach statement) SEE STATEMENT 6		
Reconciliation	18	**Income/loss reconciliation.** Combine the amounts on lines 1 through 10 in the far right column. From the result, subtract the sum of the amounts on lines 11 through 12d and 14l	18	493,738

Form **1120S** (2008)

Schedule L Balance Sheets per Books

Assets	Beginning of tax year (a)	(b)	End of tax year (c)	(d)
1 Cash		299,541		355,855
2a Trade notes and accounts receivable	1,716,538		3,421,647	
b Less allowance for bad debts	( )	1,716,538	( )	3,421,647
3 Inventories		30,442		47,130
4 U.S. government obligations				
5 Tax-exempt securities (see instructions)				
6 Other current assets (attach statement) STMT 7		868,935		960,314
7 Loans to shareholders				
8 Mortgage and real estate loans				
9 Other investments (attach statement) STMT 8		54,873		72,228
10a Buildings and other depreciable assets	994,218		1,094,176	
b Less accumulated depreciation	(654,172)	340,046	(806,158)	288,018
11a Depletable assets				
b Less accumulated depletion	( )		( )	
12 Land (net of any amortization)				
13a Intangible assets (amortizable only)	80,910		80,910	
b Less accumulated amortization	(1,385)	79,525	(18,006)	62,904
14 Other assets (attach statement) STMT 9		775,000		775,000
15 Total assets		4,164,900		5,983,096
Liabilities and Shareholders' Equity				
16 Accounts payable		1,064,038		1,499,587
17 Mortgages, notes, bonds payable in less than 1 year		1,171,297		2,270,825
18 Other current liabilities (attach statement) STMT 10		74,033		141,860
19 Loans from shareholders				25,000
20 Mortgages, notes, bonds payable in 1 year or more		884,375		766,831
21 Other liabilities (attach statement)				
22 Capital stock		1,000		1,000
23 Additional paid-in capital		551,688		551,688
24 Retained earnings		418,469		726,305
25 Adjustments to shareholders' equity (attach statement)				
26 Less cost of treasury stock		( )		( )
27 Total liabilities and shareholders' equity		4,164,900		5,983,096

Schedule M-1 Reconciliation of Income (Loss) per Books With Income (Loss) per Return

Note: Schedule M-3 required instead of Schedule M-1 if total assets are $10 million or more—see instructions

1 Net income (loss) per books	506,856	5 Income recorded on books this year not included on Schedule K, lines 1 through 10 (itemize): a Tax-exempt interest $ STMT 13 17,355	17,355
2 Income included on Schedule K, lines 1, 2, 3c, 4, 5a, 6, 7, 8a, 9, and 10, not recorded on books this year (itemize): STMT 11	778		
3 Expenses recorded on books this year not included on Schedule K, lines 1 through 12 and 14l (itemize): a Depreciation $ 30,548 b Travel and entertainment $ 3,855 STMT 12 11,556	45,959	6 Deductions included on Schedule K, lines 1 through 12 and 14l, not charged against book income this year (itemize): a Depreciation $ STMT 14 42,500	42,500
		7 Add lines 5 and 6	59,855
4 Add lines 1 through 3	553,593	8 Income (loss) (Schedule K, line 18). Line 4 less line 7	493,738

Schedule M-2 Analysis of Accumulated Adjustments Account, Other Adjustments Account, and Shareholders' Undistributed Taxable Income Previously Taxed (see instructions)

	(a) Accumulated adjustments account	(b) Other adjustments account	(c) Shareholders' undistributed taxable income previously taxed
1 Balance at beginning of tax year	593,276		
2 Ordinary income from page 1, line 21	567,400		
3 Other additions	0		
4 Loss from page 1, line 21	( )		
5 Other reductions STMT 15	(89,073)	( )	
6 Combine lines 1 through 5	1,071,603		
7 Distributions other than dividend distributions	199,020		
8 Balance at end of tax year. Subtract line 7 from line 6	872,583		

Form **4562** Department of the Treasury Internal Revenue Service (99)

Depreciation and Amortization

(Including Information on Listed Property)

▶ See separate instructions. ▶ Attach to your tax return.

OMB No. 1545-0172 **2021** Attachment Sequence No. **67**

Name(s) shown on return: DRYWALL PROFESSIONALS, INC.

Identifying number: 24-6810121

Business or activity to which this form relates: REGULAR DEPRECIATION

Part I Election To Expense Certain Property Under Section 179

Note: If you have any listed property, complete Part V before you complete Part I.

1	Maximum amount. See the instructions for a higher limit for certain businesses	1	250,000
2	Total cost of section 179 property placed in service (see instructions)	2	91,559
3	Threshold cost of section 179 property before reduction in limitation (see instructions)	3	800,000
4	Reduction in limitation. Subtract line 3 from line 2. If zero or less, enter -0-	4	0
5	Dollar limitation for tax year. Subtract line 4 from line 1. If zero or less, enter -0-. If married filing separately, see instructions	5	250,000

	(a) Description of property	(b) Cost (business use only)	(c) Elected cost
6	SEE STATEMENT 16	72,304	72,304
7	Listed property. Enter the amount from line 29	7	

8	Total elected cost of section 179 property. Add amounts in column (c), lines 6 and 7	8	72,304
9	Tentative deduction. Enter the **smaller** of line 5 or line 8	9	72,304
10	Carryover of disallowed deduction from line 13 of your 2007 Form 4562	10	
11	Business income limitation. Enter the smaller of business income (not less than zero) or line 5 (see instructions)	11	250,000
12	Section 179 expense deduction. Add lines 9 and 10, but do not enter more than line 11	12	72,304
13	Carryover of disallowed deduction to 2009. Add lines 9 and 10, less line 12 ▶	13	

Note: Do not use Part II or Part III below for listed property. Instead, use Part V.

Part II Special Depreciation Allowance and Other Depreciation (Do not include listed property.) (See instructions.)

14	Special depreciation allowance for qualified property (other than listed property) placed in service during the tax year (see instructions)	14	
15	Property subject to section 168(f)(1) election	15	
16	Other depreciation (including ACRS)	16	601

Part III MACRS Depreciation (Do not include listed property.) (See instructions.)

Section A

17	MACRS deductions for assets placed in service in tax years beginning before 2008	17	28,561
18	If you are electing to group any assets placed in service during the tax year into one or more general asset accounts, check here ▶ ☐		

Section B—Assets Placed in Service During 2008 Tax Year Using the General Depreciation System

(a) Classification of property	(b) Month and year placed in service	(c) Basis for depreciation (business/investment use only–see instructions)	(d) Recovery period	(e) Convention	(f) Method	(g) Depreciation deduction
19a 3-year property						
b 5-year property		10,165	5.0	MQ	200DB	1,525
c 7-year property						
d 10-year property						
e 15-year property						
f 20-year property						
g 25-year property			25 yrs.		S/L	
h Residential rental property			27.5 yrs.	MM	S/L	
			27.5 yrs.	MM	S/L	
i Nonresidential real property			39 yrs.	MM	S/L	
				MM	S/L	

Section C—Assets Placed in Service During 2008 Tax Year Using the Alternative Depreciation System

(a) Classification of property	(b) Month and year placed in service	(c) Basis for depreciation	(d) Recovery period	(e) Convention	(f) Method	(g) Depreciation deduction
20a Class life					S/L	
b 12-year			12 yrs.		S/L	
c 40-year			40 yrs.	MM	S/L	

Part IV Summary (See instructions.)

21	Listed property. Enter amount from line 28	21	18,375
22	**Total.** Add amounts from line 12, lines 14 through 17, lines 19 and 20 in column (g), and line 21. Enter here and on the appropriate lines of your return. Partnerships and S corporations—see instr.	22	49,062
23	For assets shown above and placed in service during the current year, enter the portion of the basis attributable to section 263A costs	23	

For Paperwork Reduction Act Notice, see separate instructions. Form **4562** (2008)

Part V **Listed Property** (Include automobiles, certain other vehicles, cellular telephones, certain computers, and property used for entertainment, recreation, or amusement.)
Note: For any vehicle for which you are using the standard mileage rate or deducting lease expense, complete **only** 24a, 24b, columns (a) through (c) of Section A, all of Section B, and Section C if applicable.

Section A—Depreciation and Other Information (Caution: See the instructions for limits for passenger automobiles.)

24a Do you have evidence to support the business/investment use claimed? [X] Yes [ ] No 24b If "Yes," is the evidence written? [X] Yes [ ] No

(a) Type of property (list vehicles first)	(b) Date placed in service	(c) Business/ investment use percentage	(d) Cost or other basis	(e) Basis for depreciation (business/investment use only)	(f) Recovery period	(g) Method/ Convention	(h) Depreciation deduction	(i) Elected section 179 cost
25 Special depreciation allowance for qualified listed property placed in service during the tax year and used more than 50% in a qualified business use (see instructions) 25								
26 Property used more than 50% in a qualified business use:								
SEE STATEMENT 17		%	187,032	123,462			18,375	
		%						
27 Property used 50% or less in a qualified business use:								
		%				S/L-		
		%				S/L-		
28 Add amounts in column (h), lines 25 through 27. Enter here and on line 21, page 1 28							18,375	
29 Add amounts in column (i), line 26. Enter here and on line 7, page 1 29								

Section B—Information on Use of Vehicles

Complete this section for vehicles used by a sole proprietor, partner, or other "more than 5% owner," or related person.
If you provided vehicles to your employees, first answer the questions in Section C to see if you meet an exception to completing this section for those vehicles.

	(a) Vehicle 1		(b) Vehicle 2		(c) Vehicle 3		(d) Vehicle 4		(e) Vehicle 5		(f) Vehicle 6	
30 Total business/investment miles driven during the year (**do not** include commuting miles)												
31 Total commuting miles driven during the year												
32 Total other personal (noncommuting) miles driven												
33 Total miles driven during the year. Add lines 30 through 32												
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
34 Was the vehicle available for personal use during off-duty hours?												
35 Was the vehicle used primarily by a more than 5% owner or related person?												
36 Is another vehicle available for personal use?												

Section C—Questions for Employers Who Provide Vehicles for Use by Their Employees

Answer these questions to determine if you meet an exception to completing Section B for vehicles used by employees who **are not** more than 5% owners or related persons (see instructions).

	Yes	No
37 Do you maintain a written policy statement that prohibits all personal use of vehicles, including commuting, by your employees?		
38 Do you maintain a written policy statement that prohibits personal use of vehicles, except commuting, by your employees? See the instructions for vehicles used by corporate officers, directors, or 1% or more owners		
39 Do you treat all use of vehicles by employees as personal use?		
40 Do you provide more than five vehicles to your employees, obtain information from your employees about the use of the vehicles, and retain the information received?		
41 Do you meet the requirements concerning qualified automobile demonstration use? (See instructions.)		

Note: If your answer to 37, 38, 39, 40, or 41 is "Yes," do not complete Section B for the covered vehicles.

Part VI **Amortization**

(a) Description of costs	(b) Date amortization begins	(c) Amortizable amount	(d) Code section	(e) Amortization period or percentage	(f) Amortization for this year
42 Amortization of costs that begins during your 2008 tax year (see instructions):					
SEE STATEMENT 18		12,898			2,830
43 Amortization of costs that began before your 2008 tax year 43					60,089
44 **Total.** Add amounts in column (f). See the instructions for where to report 44					62,919

Form **4797**

Department of the Treasury
Internal Revenue Service (99)

Sales of Business Property
(Also Involuntary Conversions and Recapture Amounts Under Sections 179 and 280F(b)(2))

▶ Attach to your tax return. ▶ See separate instructions.

OMB No. 1545-0184

2021
Attachment Sequence No. **27**

Name(s) shown on return: DRYWALL PROFESSIONALS, INC.

Identifying number:

1	Enter the gross proceeds from sales or exchanges reported to you for 2008 on Form(s) 1099-B or 1099-S (or substitute statement) that you are including on line 2, 10, or 20 (see instructions)	1	

Part I **Sales or Exchanges of Property Used in a Trade or Business and Involuntary Conversions From Other Than Casualty or Theft—Most Property Held More Than 1 Year** (see instructions)

2 (a) Description of property	(b) Date acquired (mo., day, yr.)	(c) Date sold (mo., day, yr.)	(d) Gross sales price	(e) Depreciation allowed or allowable since acquisition	(f) Cost or other basis, plus improvements and expense of sale	(g) Gain or (loss) Subtract (f) from the sum of (d) and (e)

3	Gain, if any, from Form 4684, line 45	3	
4	Section 1231 gain from installment sales from Form 6252, line 26 or 37	4	
5	Section 1231 gain or (loss) from like-kind exchanges from Form 8824	5	
6	Gain, if any, from line 32, from other than casualty or theft	6	
7	Combine lines 2 through 6. Enter the gain or (loss) here and on the appropriate line as follows:	7	0
	Partnerships (except electing large partnerships) and S corporations. Report the gain or (loss) following the instructions for Form 1065, Schedule K, line 10, or Form 1120S, Schedule K, line 9. Skip lines 8, 9, 11, and 12 below. **Individuals, partners, S corporation shareholders, and all others.** If line 7 is zero or a loss, enter the amount from line 7 on line 11 below and skip lines 8 and 9. If line 7 is a gain and you did not have any prior year section 1231 losses, or they were recaptured in an earlier year, enter the gain from line 7 as a long-term capital gain on the Schedule D filed with your return and skip lines 8, 9, 11, and 12 below.		
8	Nonrecaptured net section 1231 losses from prior years (see instructions)	8	
9	Subtract line 8 from line 7. If zero or less, enter -0-. If line 9 is zero, enter the gain from line 7 on line 12 below. If line 9 is more than zero, enter the amount from line 8 on line 12 below and enter the gain from line 9 as a long-term capital gain on the Schedule D filed with your return (see instructions)	9	

Part II **Ordinary Gains and Losses** (see instructions)

10 Ordinary gains and losses not included on lines 11 through 16 (include property held 1 year or less):

11	Loss, if any, from line 7	11	( )
12	Gain, if any, from line 7 or amount from line 8, if applicable	12	
13	Gain, if any, from line 31	13	700
14	Net gain or (loss) from Form 4684, lines 37 and 44a	14	
15	Ordinary gain from installment sales from Form 6252, line 25 or 36	15	
16	Ordinary gain or (loss) from like-kind exchanges from Form 8824	16	
17	Combine lines 10 through 16	17	700
18	For all except individual returns, enter the amount from line 17 on the appropriate line of your return and skip lines a and b below. For individual returns, complete lines a and b below:		
a	If the loss on line 11 includes a loss from Form 4684, line 41, column (b)(ii), enter that part of the loss here. Enter the part of the loss from income-producing property on Schedule A (Form 1040), line 28, and the part of the loss from property used as an employee on Schedule A (Form 1040), line 23. Identify as from "Form 4797, line 18a." See instructions	18a	
b	Redetermine the gain or (loss) on line 17 excluding the loss, if any, on line 18a. Enter here and on Form 1040, line 14	18b	

For Paperwork Reduction Act Notice, see separate instructions.

Form 4797 (2008) DRYWALL PROFESSIONALS, INC. 24-6810121 Page 2

Part III Gain From Disposition of Property Under Sections 1245, 1250, 1252, 1254, and 1255 (see instructions)

19	(a) Description of section 1245, 1250, 1252, 1254, or 1255 property:	(b) Date acquired (mo., day, yr.)	(c) Date sold (mo., day, yr.)
A	1999 DODGE 1500	10/19/05	12/31/08
B			
C			
D			

	These columns relate to the properties on lines 19A through 19D. ▶		Property A	Property B	Property C	Property D
20	Gross sales price (Note: See line 1 before completing.)	20	700			
21	Cost or other basis plus expense of sale	21	4,500			
22	Depreciation (or depletion) allowed or allowable	22	4,500			
23	Adjusted basis. Subtract line 22 from line 21	23	0			
24	Total gain. Subtract line 23 from line 20	24	700			
25	**If section 1245 property:**					
a	Depreciation allowed or allowable from line 22	25a	4,500			
b	Enter the **smaller** of line 24 or 25a	25b	700			
26	**If section 1250 property:** If straight line depreciation was used, enter -0- on line 26g, except for a corporation subject to section 291.					
a	Additional depreciation after 1975 (see instructions)	26a				
b	Applicable percentage multiplied by the **smaller** of line 24 or line 26a (see instructions)	26b				
c	Subtract line 26a from line 24. If residential rental property or line 24 is not more than line 26a, skip lines 26d and 26e	26c				
d	Additional depreciation after 1969 and before 1976	26d				
e	Enter the **smaller** of line 26c or 26d	26e				
f	Section 291 amount (corporations only)	26f				
g	Add lines 26b, 26e, and 26f	26g				
27	**If section 1252 property:** Skip this section if you did not dispose of farmland or if this form is being completed for a partnership (other than an electing large partnership).					
a	Soil, water, and land clearing expenses	27a				
b	Line 27a multiplied by applicable percentage (see instructions)	27b				
c	Enter the **smaller** of line 24 or 27b	27c				
28	**If section 1254 property:**					
a	Intangible drilling and development costs, expenditures for development of mines and other natural deposits, and mining exploration costs (see instructions)	28a				
b	Enter the **smaller** of line 24 or 28a	28b				
29	**If section 1255 property:**					
a	Applicable percentage of payments excluded from income under section 126 (see instructions)	29a				
b	Enter the **smaller** of line 24 or 29a (see instructions)	29b				

Summary of Part III Gains. Complete property columns A through D through line 29b before going to line 30.

30	Total gains for all properties. Add property columns A through D, line 24	30	700
31	Add property columns A through D, lines 25b, 26g, 27c, 28b, and 29b. Enter here and on line 13	31	700
32	Subtract line 31 from line 30. Enter the portion from casualty or theft on Form 4684, line 39. Enter the portion from other than casualty or theft on Form 4797, line 6	32	0

Part IV Recapture Amounts Under Sections 179 and 280F(b)(2) When Business Use Drops to 50% or Less (see instructions)

			(a) Section 179	(b) Section 280F(b)(2)
33	Section 179 expense deduction or depreciation allowable in prior years	33		
34	Recomputed depreciation (see instructions)	34		
35	Recapture amount. Subtract line 34 from line 33. See the instructions for where to report	35		

Federal Statements

Statement 1 - Form 1120S, Page 1, Line 5 - Other Income

Description	Amount
MISCELLANEOUS INCOME	$ 4,222
TOTAL	$ 4,222

Statement 2 - Form 1120S, Page 1, Line 19 - Other Deductions

Description	Amount
BANK SERVICE CHARGES	$ 4,854
AUTO EXPENSE	426,964
DUES AND SUBSCRIPTIONS	5,975
INSURANCE	141,020
LICENSES AND PERMITS	969
OFFICE EXPENSE	34,940
MISCELLANEOUS	24,442
TELEPHONE EXPENSE	55,313
TRAVEL	2,044
AIRPLANE EXPENSE	46,850
POSTAGE EXPENSE	9,326
TRASH SERVICE	10,099
UTILITIES	17,519
EDUCATION AND TRAINING	3,606
PROFESSIONAL FEES	54,226
GIFTS	3,239
SHOP EXPENSE	63,443
UNIFORMS	4,005
AMORTIZATION	62,919
50% OF MEALS & ENTERTAINMENT	3,856
TOTAL	$ 975,609

Really?

Not a cash item, only a deduction for tax purposes

Federal Statements

Statement 3 - Form 1120S, Page 2, Schedule A, Line 5 - Other Costs

Description	Amount
SUBCONTRACTORS	$ 7,601,510
SUPPLIES	1,209,092
TRAVEL AND LODGING	269,313
DUMP FEES	28,248
BACK CHARGES	28,077
EQUIPMENT RENTAL	103,612
TOTAL	$ 9,239,852

Federal Statements

Statement 4 - Form 1120S, Page 3, Schedule K, Line 12a - Contributions

Description	Cash Contrib 100% (Qualified)	Cash Contrib 50%	Cash Contrib 30%	Noncash Contrib 50%	Noncash Contrib 30%	Cap Gain Prop 30%	Cap Gain Prop 20%	Total
CONTRIBUTIONS	$	$ 1,358	$	$	$	$	$	$ 1,358
TOTAL	$ 0	$ 1,358	$ 0	$ 0	$ 0	$ 0	$ 0	$ 1,358

Federal Statements

Statement 5 - Form 1120S, Page 3, Sch K, Line 12d - Domestic Production Activity Information

Description	Amount
DOMESTIC PROD GROSS RECEIPTS	$ 19,341,470
GROSS RECEIPTS ALL SOURCES	19,345,692
COGS ALLOCABLE TO DPGR	15,252,888
COGS FROM ALL SOURCES	15,252,888
DIRECT DED ALLOCABLE TO DPGR	3,598,408
FORM W-2 WAGES	4,357,572

Statement 6 - Form 1120S, Page 3, Schedule K, Line 17d - Other Items and Amounts

Description	Amount
DISPOSAL OF SECTION 179 PROPERTY - SEE ATTACHED WRK	

Federal Statements

Statement 7 - Form 1120S, Page 4, Schedule L, Line 6 - Other Current Assets

Description	Beginning of Year	End of Year
STOCK SUBSCRIPTION RECEIVABLE	$ 1,000	$ 1,000
COSTS AND ESTIMATED EARNINGS	865,185	950,846
SECURITY DEPOSITS	2,100	2,100
EMPLOYEE LOANS	650	960
PREPAID STATE TAXES		5,408
TOTAL	$ 868,935	$ 960,314

Statement 8 - Form 1120S, Page 4, Schedule L , Line 9 - Other Investments

Description	Beginning of Year	End of Year
CASH SURRENDER VALUE OF LIFE	$ 54,873	$ 72,228
TOTAL	$ 54,873	$ 72,228

Income to owners from this investment?

Statement 9 - Form 1120S, Page 4, Schedule L, Line 14 - Other Assets

Description	Beginning of Year	End of Year
GOODWILL	$ 775,000	$ 775,000
TOTAL	$ 775,000	$ 775,000

Statement 10 - Form 1120S, Page 4, Schedule L, Line 18 - Other Current Liabilities

Description	Beginning of Year	End of Year
RELATED PARTY PAYABLE	$ 21,601	$ 53,088
BILLINGS IN EXCESS OF COSTS A	5,093	15,683
ACCRUED PAYROLL	47,339	73,089
TOTAL	$ 74,033	$ 141,860

Statement 11 - Form 1120S, Page 4, Schedule M-1, Line 2 - Taxable Income Not on Books

Description	Amount
FORM 4797 BOOK/TAX DIFF	$ 778
TOTAL	$ 778

Federal Statements

Statement 12 - Form 1120S, Page 4, Schedule M-1, Line 3 - Expenses on Books Not on Return

Description	Amount
ACCRUED WAGES AND PAYROLL TAX	$ 9,288
FINES AND PENALTIES	2,268
TOTAL	$ 11,556

Statement 13 - Form 1120S, Page 4, Schedule M-1, Line 5 - Income on Books Not on Return

Description	Amount
CASH VALUE OF INS CHANGE	$ 17,355
TOTAL	$ 17,355

Statement 14 - Form 1120S, Page 4, Schedule M-1, Line 6 - Deductions on Return Not on Books

Description	Amount
AMORTIZATION BOOK/TAX DIFF	$ 42,500
TOTAL	$ 42,500

Form 1120S, Page 4, Schedule M-2, Line 3(a) - Other Additions

Description	Amount
GAIN ON SALE SEC 179 ASSETS	$ 6
TOTAL	$ 6

Statement 15 - Form 1120S, Page 4, Schedule M-2, Line 5(a) - Other Reductions

Description	Amount
ACCRUED WAGES AND PAYROLL TAX	$ 9,288
FINES AND PENALTIES	2,268
DISALLOWED ENTERTAINMENT EXP	3,855
CHARITABLE CONTRIBUTIONS	1,358
SEC 179 EXPENSE	72,304
TOTAL	$ 89,073

Federal Statements

Regular Depreciation

Statement 16 - Form 4562, Part I, Line 6 - Section 179 Property Acquired This Year

Description of Property	Cost	Expense
TRAILER	$ 1,040	$ 1,040
DELL PC	986	986
DESKTOP PC FROM BUY.COM	599	599
DELL PC	750	750
MACMALL PLOTTER	2,218	2,218
UNDERLAYMENT PUMP	20,450	20,450
CATERPILLAR TH62 LIFT	35,000	35,000
BOBCAT	7,500	7,500
BOBCAT TRAILER	1,500	1,500
COVER FOR ROBERTS TRUCK	500	500
TOOL BOX AND RACK	1,761	1,761
TOTAL	$ 72,304	$ 72,304

Federal Statements

Regular Depreciation

Statement 17 - Form 4562, Part V, Line 26 - Property Used More Than 50% in Qualified Business

Property Type	Date in Service	Busn Use %	Cost or Basis	Basis For Depr	Per	Meth	Deduct	Sec 179
2001 DODGE DAKOTA	12/14/07	100.00	$ 12,000	$ 12,000	5.0	200DBMQ	$ 4,560	$
99 CHEVY TRUCK	3/15/99	100.00	30,258	30,258	5.0	200DBHY	7,844	
2000 FLATBED (RED)	11/29/00	100.00	20,732	20,732	5.0	200DBHY	442	
2001 S-10 EXTENDED CAB PICKUP	5/25/01	100.00	22,744	22,744	5.0	200DBHY	1,775	
2004 CHEVY PICKUP	1/22/04	100.00	18,350	7,740	5.0	200DBHY	892	
CHEVY VENTURE - USED	9/23/05	100.00	9,434	9,434	5.0	200DBHY	1,087	
1999 CHEVY FLATBED TRUCK - GROUP C	6/07/05	100.00	3,498	538	5.0	200DBHY	62	
2005 CHEVY TRUCK K2500	2/03/05	100.00	32,465	7,465	5.0	200DBHY	860	
2006 CHEVY TRUCK K2500	12/29/05	100.00	28,461	3,461	5.0	200DBHY	399	
2006 E150 CARGO VAN	10/15/08	100.00	9,090	9,090	5.0	200DBMQ	454	
TOTAL			$ 187,032	$ 123,462			$ 18,375	$ 0

Any personal vehicles?

Federal Statements

Regular Depreciation

Statement 18 - Form 4562, Part VI, Line 42 - Amortization

Description	Date Amortization Begins	Amortizable Amount	Code Section	Period/ Percent	Current Year Amortization
INTUIT SOFTWARE	2/11/08	$ 3,625	0	3.0	$ 1,108
ON CENTER SOFTWARE	4/03/08	6,587	0	3.0	1,647
QUICKBASE	12/31/08	2,686	0	3.0	75
TOTAL		$ 12,898			$ 2,830

Form **IT-20S**
State Form 10814
(R7/8-08)

Indiana Department of Revenue

Indiana S Corporation Income Tax Return

for Calendar Year Ending December 31,
or Other Tax Year Beginning ________ and
Ending ________

24-6810121

DRYWALL PROFESSIONALS, INC.
1123 INDUSTRIAL WAY
INDIANAPOLIS IN 46218

MARION 238100

Check box if amended. [ ]

Check box if name changed. [ ]

K. Date of incorporation 6/15/2006 in the State of IN
L. State of commercial domicile INDIANA
M. Year of initial Indiana return 2006
N. Accounting method: [ ] Cash [ ] Accrual [X] Other PERCENT OF COMPL.
O. Date of election as S corporation 6/15/2006

P. Check all that apply to entity: [ ] Initial Return [ ] Final Return [ ] In Bankruptcy [ ] Composite Return [ ] Schedule M
Q. Enter total number of shareholders: 2
Enter number of nonresident shareholders: 0
R. Do you have on file a valid extension of time to file your return? (federal Form 7004 or an electronic extension of time) [X] Y [ ] N
S. Did the corporation file as a C corporation for the prior tax period? [ ] Y [X] N
T. Is this corporation a member of any partnerships? [ ] Y [X] N

Schedule A - S Corporation Adjusted Gross Income

		Line	Amount
1.	Total net income (loss) from U.S. S corporation return, Form 1120S Schedule K, lines 1 through line 10, less line 11 and a portion of line 12 related to investment income (see instructions)	1	495,102.00
2.	Add backs: a) All state income taxes deducted on the federal return	2a	.00
	b) Net bonus depreciation allowance STMT 1	2b	-72,673.00
	c) Excess IRC Section 179 deduction	2c	47,304.00
	d) Do not use; for department use only.		
	Deduct: e) Interest on U.S. government obligations	2e	.00
	Deduct: f) Indiana lottery prize money	2f	.00
3.	Total state modifications (add lines 2a through 2d; subtract lines 2e and 2f)	3	-25,369.00
4.	Total S corporation income, as adjusted (add lines 1 and 3)	4	469,733.00
5.	Enter average percentage for Indiana apportioned adjusted gross income from IT-20S Schedule E line (4c)	5	%

Schedule B - Excess Net Passive Income & Built-In Gains

		Line	Amount
6.	Excessive net passive income or LIFO recapture tax as reported on federal Form 1120S, line 22a	6	.00
7.	Tax from federal Schedule D as reported on federal Form 1120S, line 22b	7	.00
8.	Excess net passive income from federal worksheet	8	.00
9.	Built-in gains from federal Schedule D (1120S)	9	.00
10.	Add the amounts on lines 8 and 9	10	.00
11.	Taxable income apportioned to Indiana (multiply line 10 by line 5) (if applicable)	11	.00
12.	Corporate adjusted gross income tax rate (*see instructions for line 13)	12	X 8.5%*
13.	Total income tax from Schedule B (multiply line 11 by percent on line 12 or enter amount from Schedule M)	13	.00

Summary of Calculations

		Line	Amount
14.	Sales/use tax on purchases subject to use tax from Sales/Use Tax Worksheet	14	0.00
15.	Total composite tax from completed Schedule IT-20COMP (D&E). Attach schedule	15	.00
16.	Total tax (add lines 13, 14, and 15). Enter here and carry total tax to page 2, line 16. **Caution:** If line 16 is zero, see line 21 late file penalty	16	.00

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Form IT-20S 2008 Indiana S Corporation Income Tax Return

Summary of Calculations continued

Line	Description	No.	Amount
16.	Enter total tax shown from front page of this return	16	.00
17.	Total composite tax return credits (attach schedule and WH-18 statement(s) for composite members)	17	0.00
18.	Other payments/credits belonging to the corporation (attach documentation)	18	.00
19.	Subtotal (line 16 minus lines 17 and 18). If total is greater than zero, proceed to lines 20, 21, and 22	19	0.00
20.	Interest: Enter total interest due; see instructions. (Contact the Department for current interest rate)	20	.00
21.	Penalty: If paying late enter 10% of line 19; see instructions. If line 16 is zero, enter $10 per day filed past due date	21	.00
22.	Penalty: If failing to include all nonresident shareholders on composite return, enter $500; see instructions	22	.00
23.	Total Amount Due: Add lines 19 - 22. If less than zero, enter on line 24. Make check payable to: **Indiana Department of Revenue.** Make payment in U.S. funds	23	0.00
24.	Overpayment: Line 17 plus line 18, minus lines 16, 20 through 22	24	.00
25.	Refund: Amount from line 24. No carry forward allowed. Enter as a positive figure	25	.00
	(Do not write below)		
		30	

Certification of Signatures and Authorization Section

Under penalties of perjury, I declare I have examined this return, including all accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete.

I authorize the Department to discuss my return with my personal representative (see page 11) [X] Y [ ] N

Corporation's E-mail Address EE

Paid Preparer: Firm's Name (or yours if self-employed.)

Signature of Corporate Officer Date

Check One: [X] Federal I.D. Number [ ] PTIN OR [ ] Social Security Number

Print or Type Name of Corporate Officer Title

Telephone number

Address

Personal Representative's Name (Print or Type)

Telephone number

Address

City

State Zip Code + 4

Paid Preparer's Signature Date

City

State Zip Code + 4

Please mail forms to :
Indiana Department of Revenue,
POB 7231,
Indianapolis, IN 46207.

1022

118081219

Indiana Statements

Statement 1 - Form IT-20S, Page 1, Line 2(b) - Net Bonus Depreciation Allowance

Description	Amount
ADJUST FOR DEPR DIFFERENCE	$ -72,673
TOTAL	$ -72,673

ASSA

671108

☐ Final K-1 ☐ Amended K-1 OMB No. 1545-0130

Schedule K-1 (Form 1120S) **2021**
Department of the Treasury
Internal Revenue Service

For calendar year 2008, or tax year beginning ________ ending ________

Shareholder's Share of Income, Deductions, Credits, etc.

▸ See back of form and separate instructions.

Part I Information About the Corporation

A Corporation's employer identification number
24-6810121

B Corporation's name, address, city, state, and ZIP code
DRYWALL PROFESSIONALS, INC.
1123 INDUSTRIAL WAY
INDIANAPOLIS IN 46218

C IRS Center where corporation filed return
CINCINNATI, OH 45999

Part II Information About the Shareholder

D Shareholder's identifying number
369-25-8147

E Shareholder's name, address, city, state, and ZIP code
FRANK REYNOLDS
321 PHILADELPHIA DRIVE
CICERO IN 46034

F Shareholder's percentage of stock ownership for tax year .... 50.000000 %

For IRS Use Only

Part III Shareholder's Share of Current Year Income, Deductions, Credits, and Other Items

Line	Item	Amount	Line	Item	Amount
1	Ordinary business income (loss)	283,700	13	Credits	
2	Net rental real estate income (loss)				
3	Other net rental income (loss)				
4	Interest income				
5a	Ordinary dividends				
5b	Qualified dividends		14	Foreign transactions	
6	Royalties				
7	Net short-term capital gain (loss)				
8a	Net long-term capital gain (loss)				
8b	Collectibles (28%) gain (loss)				
8c	Unrecaptured section 1250 gain				
9	Net section 1231 gain (loss)				
10	Other income (loss)		15	Alternative minimum tax (AMT) items	
			A		3,197
11	Section 179 deduction	36,152	16	Items affecting shareholder basis	
			C*		STMT
12	Other deductions		D		99,510
A		679			
P*		STMT			
			17	Other information	
			K*		STMT

* See attached statement for additional information.

Income to the owner to be reported in individual return

Non-cash deduction on personal return

Actual cash distributed to owner

For Paperwork Reduction Act Notice, see Instructions for Form 1120S. Schedule K-1 (Form 1120S) 2008

This list identifies the codes used on Schedule K-1 for all shareholders and provides summarized reporting information for shareholders who file Form 1040. For detailed reporting and filing information, see the separate Shareholder's Instructions for Schedule K-1 and the instructions for your income tax return.

1. Ordinary business income (loss). Determine whether the income (loss) is passive or nonpassive and enter on your return as follows:

	Report on
Passive loss	See the Shareholder's Instructions
Passive income	Schedule E, line 28, column (g)
Nonpassive loss	Schedule E, line 28, column (h)
Nonpassive income	Schedule E, line 28, column (j)

	Report on
2. Net rental real estate income (loss)	See the Shareholder's Instructions
3. Other net rental income (loss)	
Net income	Schedule E, line 28, column (g)
Net loss	See the Shareholder's Instructions
4. Interest income	Form 1040, line 8a
5a. Ordinary dividends	Form 1040, line 9a
5b. Qualified dividends	Form 1040, line 9b
6. Royalties	Schedule E, line 4
7. Net short-term capital gain (loss)	Schedule D, line 5, column (f)
8a. Net long-term capital gain (loss)	Schedule D, line 12, column (f)
8b. Collectibles (28%) gain (loss)	28% Rate Gain Worksheet, line 4 (Schedule D instructions)
8c. Unrecaptured section 1250 gain	See the Shareholder's Instructions
9. Net section 1231 gain (loss)	See the Shareholder's Instructions

10. Other income (loss)

Code		Report on
A	Other portfolio income (loss)	See the Shareholder's Instructions
B	Involuntary conversions	See the Shareholder's Instructions
C	Sec. 1256 contracts & straddles	Form 6781, line 1
D	Mining exploration costs recapture	See Pub. 535
E	Other income (loss)	See the Shareholder's Instructions

11. Section 179 deduction — See the Shareholder's Instructions

12. Other deductions

Code		Report on
A	Cash contributions (50%)	See the Shareholder's Instructions (A–G)
B	Cash contributions (30%)	
C	Noncash contributions (50%)	
D	Noncash contributions (30%)	
E	Capital gain property to a 50% organization (30%)	
F	Capital gain property (20%)	
G	Contributions (100%)	
H	Investment interest expense	Form 4952, line 1
I	Deductions—royalty income	Schedule E, line 18
J	Section 59(e)(2) expenditures	See the Shareholder's Instructions
K	Deductions—portfolio (2% floor)	Schedule A, line 23
L	Deductions—portfolio (other)	Schedule A, line 28
M	Preproductive period expenses	See the Shareholder's Instructions
N	Commercial revitalization deduction from rental real estate activities	See Form 8582 instructions
O	Reforestation expense deduction	See the Shareholder's Instructions
P	Domestic production activities information	See Form 8903 instructions
Q	Qualified production activities income	Form 8903, line 7
R	Employer's Form W-2 wages	Form 8903, line 15
S	Other deductions	See the Shareholder's Instructions

13. Credits

Code		Report on
A	Low-income housing credit (section 42(j)(5)) from pre-2008 buildings	See the Shareholder's Instructions
B	Low-income housing credit (other) from pre-2008 buildings	See the Shareholder's Instructions
C	Low-income housing credit (section 42(j)(5)) from post-2007 buildings	Form 8586, line 11
D	Low-income housing credit (other) from post-2007 buildings	Form 8586, line 11
E	Qualified rehabilitation expenditures (rental real estate)	See the Shareholder's Instructions (E–G)
F	Other rental real estate credits	
G	Other rental credits	
H	Undistributed capital gains credit	Form 1040, line 68, box a
I	Alcohol and cellulosic biofuel fuels credit	Form 6478, line 9
J	Work opportunity credit	Form 5884, line 3
K	Disabled access credit	See the Shareholder's Instructions
L	Empowerment zone and renewal community employment credit	Form 8844, line 3
M	Credit for increasing research activities	See the Shareholder's Instructions
N	Credit for employer social security and Medicare taxes	Form 8846, line 5
O	Backup withholding	Form 1040, line 62
P	Other credits	See the Shareholder's Instructions

14. Foreign transactions

Code		Report on
A	Name of country or U.S. possession	Form 1116, Part I (A–C)
B	Gross income from all sources	
C	Gross income sourced at shareholder level	
	Foreign gross income sourced at corporate level	
D	Passive category	Form 1116, Part I (D–F)
E	General category	
F	Other	
	Deductions allocated and apportioned at shareholder level	
G	Interest expense	Form 1116, Part I
H	Other	Form 1116, Part I
	Deductions allocated and apportioned at corporate level to foreign source income	
I	Passive category	Form 1116, Part I (I–K)
J	General category	
K	Other	
	Other information	
L	Total foreign taxes paid	Form 1116, Part II
M	Total foreign taxes accrued	Form 1116, Part II
N	Reduction in taxes available for credit	Form 1116, line 12
O	Foreign trading gross receipts	Form 8873
P	Extraterritorial income exclusion	Form 8873
Q	Other foreign transactions	See the Shareholder's Instructions

15. Alternative minimum tax (AMT) items

Code		Report on
A	Post-1986 depreciation adjustment	See the Shareholder's Instructions and the Instructions for Form 6251 (A–F)
B	Adjusted gain or loss	
C	Depletion (other than oil & gas)	
D	Oil, gas, & geothermal—gross income	
E	Oil, gas, & geothermal—deductions	
F	Other AMT items	

16. Items affecting shareholder basis

Code		Report on
A	Tax-exempt interest income	Form 1040, line 8b
B	Other tax-exempt income	See the Shareholder's Instructions (B–E)
C	Nondeductible expenses	
D	Property distributions	
E	Repayment of loans from shareholders	

17. Other information

Code		Report on
A	Investment income	Form 4952, line 4a
B	Investment expenses	Form 4952, line 5
C	Qualified rehabilitation expenditures (other than rental real estate)	See the Shareholder's Instructions
D	Basis of energy property	See the Shareholder's Instructions
E	Recapture of low-income housing credit (section 42(j)(5))	Form 8611, line 8
F	Recapture of low-income housing credit (other)	Form 8611, line 8
G	Recapture of investment credit	See Form 4255
H	Recapture of other credits	See the Shareholder's Instructions
I	Look-back interest—completed long-term contracts	See Form 8697
J	Look-back interest—income forecast method	See Form 8866
K	Dispositions of property with section 179 deductions	See the Shareholder's Instructions (K–T)
L	Recapture of section 179 deduction	
M	Section 453(l)(3) information	
N	Section 453A(c) information	
O	Section 1260(b) information	
P	Interest allocable to production expenditures	
Q	CCF nonqualified withdrawals	
R	Depletion information—oil and gas	
S	Amortization of reforestation costs	
T	Other information	

Federal Statements

Frank Reynolds
369-25-8147

Schedule K-1, Box 12, Code P - Domestic Production Activities Information

Description	Amount
DOMESTIC PROD GROSS RECEIPTS	$ 9,670,735
GROSS RECEIPTS ALL SOURCES	9,672,846
COGS ALLOCABLE TO DPGR	7,626,444
COGS FROM ALL SOURCES	7,626,444
DIRECT DED ALLOCABLE TO DPGR	1,799,204
FORM W-2 WAGES	2,178,786

Schedule K-1, Box 16, Code C - Nondeductible Expenses

Description	Amount
FINES AND PENALTIES	$ 1,133
PAGE 1 MEALS/ENTERTAINMENT	1,928
TOTAL	$ 3,061

IT-20S 2008 Schedule IN K-1

State Form 49193 (R7/8-08)

Indiana Department of Revenue

Shareholder's Share of Indiana Adjusted Gross Income, Deductions, Modifications and Credits

Tax Year Beginning 01/01/2021 **and Ending** 12/31/2021

Name of Corporation DRYWALL PROFESSIONALS, INC.

Federal Identification Number

Distributions - Provide IN K-1 to each shareholder. Attach IN K-1 to IT-20S return. For information on the acceptable electronic data file format, visit the Department's Web site at www.in.gov/dor/3772.htm Pro rata amounts for lines 1 through 14 of any nonresident shareholder must be multiplied by the Indiana apportionment percent, if applicable, from IT-20S, line 5.

Part 1 – Shareholder's Identification Section

(a) If Shareholder Is an Individual (please print clearly)

Last Name: a1 REYNOLDS	First Name: a2 FRANK	a3 Social Security Number:

(b) If Shareholder Is an Other Entity (please print clearly)

Name: b1	b2 Federal Identification Number:

(c) Shareholder's State of Residence or Commercial Domicile	c1	IN
(d) Indiana Tax Withheld for Nonresident Shareholder (on WH-18)	d	.00
(e) Shareholder's Federal Pro Rata Percentage	e	50.00 %

Part 2 – Distributive Share Amount (use apportioned figures for nonresident shareholders)

Line	Description	Amount
1.	Ordinary business income (loss)	283,700.00
2.	Net rental real estate income (loss)	.00
3.	Other net rental income (loss)	.00
4.	Interest income	.00
5a.	Ordinary dividends	.00
6.	Royalties	.00
7.	Net short-term capital gain (loss)	.00
8a.	Net long-term capital gain (loss)	.00
9.	Net IRC Section 1231 gain (loss) *	3.00
10.	Other income (loss)	.00
11.	IRC Section 179 expense deduction	36,152.00
12a.	Portion of expenses related to investment portfolio income, including investment interest expense and other (federal non-itemized) deductions	.00
12b.	Other information from line 20 of federal K-1 related to investment interest and expenses not listed elsewhere	.00
13.	**Total pro rata distributions** (Add lines 1 through 10; subtract lines 11, 12a, and 12b when applicable.)	247,551.00

14. **State modifications –** Designate the distributive share amount of each modification for Indiana adjusted gross income from line 2 on front of Form IT-20S (for nonresidents, apply apportioned figures):

Modification	Line	Amount
State income taxes deducted	2(a)	.00
Net bonus depreciation allowance	2(b)	-36,336.00
Excess IRC Section 179 deduction	2(c)	23,652.00
Do not use; for dept. use only.	2(d)	
Interest on U.S. obligations	2(e)	.00
Indiana lottery prize money	2(f)	.00
Total distributive share of modifications	14a	-12,684.00

Part 3 – Pro Rata Share of Indiana Pass-through Tax Credits from Corporation

15. Enter the name of the tax credit program, its three-digit ID code, and the dollar amount of the shareholder's distributive share for each allowable credit

Name of Credit	Code No.		Amount
15a	Code No. 15b	15c	.00
15d	Code No. 15e	15f	.00
15g	Code No. 15h	15i	.00

* INCLUDES $3 FROM SALES WITH SECTION 179 EXPENSE

1022

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☐ Final K-1 ☐ Amended K-1 OMB No. 1545-0130

Schedule K-1 (Form 1120S) **2021**
Department of the Treasury
Internal Revenue Service

For calendar year 2008, or tax year beginning ________ ending ________

Shareholder's Share of Income, Deductions, Credits, etc.

▶ See back of form and separate instructions.

Part I Information About the Corporation

A Corporation's employer identification number

B Corporation's name, address, city, state, and ZIP code
DRYWALL PROFESSIONALS, INC.

C IRS Center where corporation filed return
CINCINNATI, OH 45999

Part II Information About the Shareholder

D Shareholder's identifying number

E Shareholder's name, address, city, state, and ZIP code

F Shareholder's percentage of stock ownership for tax year .... 50.000000 %

For IRS Use Only

Part III Shareholder's Share of Current Year Income, Deductions, Credits, and Other Items

No.	Item	Amount	No.	Item	Amount
1	Ordinary business income (loss)	283,700	13	Credits	
2	Net rental real estate income (loss)				
3	Other net rental income (loss)				
4	Interest income				
5a	Ordinary dividends				
5b	Qualified dividends		14	Foreign transactions	
6	Royalties				
7	Net short-term capital gain (loss)				
8a	Net long-term capital gain (loss)				
8b	Collectibles (28%) gain (loss)				
8c	Unrecaptured section 1250 gain				
9	Net section 1231 gain (loss)				
10	Other income (loss)		15	Alternative minimum tax (AMT) items	
			A		3,197
11	Section 179 deduction	36,152	16	Items affecting shareholder basis	
			C*		STMT
12	Other deductions				
A		679	D		99,510
P*		STMT			
			17	Other information	
			K*		STMT

* See attached statement for additional information.

For Paperwork Reduction Act Notice, see Instructions for Form 1120S. Schedule K-1 (Form 1120S) 2008

This list identifies the codes used on Schedule K-1 for all shareholders and provides summarized reporting information for shareholders who file Form 1040. For detailed reporting and filing information, see the separate Shareholder's Instructions for Schedule K-1 and the instructions for your income tax return.

1. Ordinary business income (loss). Determine whether the income (loss) is passive or nonpassive and enter on your return as follows:

	Report on
Passive loss	See the Shareholder's Instructions
Passive income	Schedule E, line 28, column (g)
Nonpassive loss	Schedule E, line 28, column (h)
Nonpassive income	Schedule E, line 28, column (j)
2. Net rental real estate income (loss)	See the Shareholder's Instructions
3. Other net rental income (loss)	
Net income	Schedule E, line 28, column (g)
Net loss	See the Shareholder's Instructions
4. Interest income	Form 1040, line 8a
5a. Ordinary dividends	Form 1040, line 9a
5b. Qualified dividends	Form 1040, line 9b
6. Royalties	Schedule E, line 4
7. Net short-term capital gain (loss)	Schedule D, line 5, column (f)
8a. Net long-term capital gain (loss)	Schedule D, line 12, column (f)
8b. Collectibles (28%) gain (loss)	28% Rate Gain Worksheet, line 4 (Schedule D instructions)
8c. Unrecaptured section 1250 gain	See the Shareholder's Instructions
9. Net section 1231 gain (loss)	See the Shareholder's Instructions

10. Other income (loss)

Code		Report on
A	Other portfolio income (loss)	See the Shareholder's Instructions
B	Involuntary conversions	See the Shareholder's Instructions
C	Sec. 1256 contracts & straddles	Form 6781, line 1
D	Mining exploration costs recapture	See Pub. 535
E	Other income (loss)	See the Shareholder's Instructions

11. Section 179 deduction — See the Shareholder's Instructions

12. Other deductions

Code		Report on
A	Cash contributions (50%)	See the Shareholder's Instructions (A–G)
B	Cash contributions (30%)	
C	Noncash contributions (50%)	
D	Noncash contributions (30%)	
E	Capital gain property to a 50% organization (30%)	
F	Capital gain property (20%)	
G	Contributions (100%)	
H	Investment interest expense	Form 4952, line 1
I	Deductions—royalty income	Schedule E, line 18
J	Section 59(e)(2) expenditures	See the Shareholder's Instructions
K	Deductions—portfolio (2% floor)	Schedule A, line 23
L	Deductions—portfolio (other)	Schedule A, line 28
M	Preproductive period expenses	See the Shareholder's Instructions
N	Commercial revitalization deduction from rental real estate activities	See Form 8582 instructions
O	Reforestation expense deduction	See the Shareholder's Instructions
P	Domestic production activities information	See Form 8903 instructions
Q	Qualified production activities income	Form 8903, line 7
R	Employer's Form W-2 wages	Form 8903, line 15
S	Other deductions	See the Shareholder's Instructions

13. Credits

Code		Report on
A	Low-income housing credit (section 42(j)(5)) from pre-2008 buildings	See the Shareholder's Instructions
B	Low-income housing credit (other) from pre-2008 buildings	See the Shareholder's Instructions
C	Low-income housing credit (section 42(j)(5)) from post-2007 buildings	Form 8586, line 11
D	Low-income housing credit (other) from post-2007 buildings	Form 8586, line 11
E	Qualified rehabilitation expenditures (rental real estate)	See the Shareholder's Instructions (E–G)
F	Other rental real estate credits	
G	Other rental credits	
H	Undistributed capital gains credit	Form 1040, line 68, box a
I	Alcohol and cellulosic biofuel fuels credit	Form 6478, line 9
J	Work opportunity credit	Form 5884, line 3
K	Disabled access credit	See the Shareholder's Instructions
L	Empowerment zone and renewal community employment credit	Form 8844, line 3
M	Credit for increasing research activities	See the Shareholder's Instructions
N	Credit for employer social security and Medicare taxes	Form 8846, line 5
O	Backup withholding	Form 1040, line 62
P	Other credits	See the Shareholder's Instructions

14. Foreign transactions

Code		Report on
A	Name of country or U.S. possession	Form 1116, Part I (A–C)
B	Gross income from all sources	
C	Gross income sourced at shareholder level	
	Foreign gross income sourced at corporate level	
D	Passive category	Form 1116, Part I (D–F)
E	General category	
F	Other	
	Deductions allocated and apportioned at shareholder level	
G	Interest expense	Form 1116, Part I
H	Other	Form 1116, Part I
	Deductions allocated and apportioned at corporate level to foreign source income	
I	Passive category	Form 1116, Part I (I–K)
J	General category	
K	Other	
	Other information	
L	Total foreign taxes paid	Form 1116, Part II
M	Total foreign taxes accrued	Form 1116, Part II
N	Reduction in taxes available for credit	Form 1116, line 12
O	Foreign trading gross receipts	Form 8873
P	Extraterritorial income exclusion	Form 8873
Q	Other foreign transactions	See the Shareholder's Instructions

15. Alternative minimum tax (AMT) items

Code		Report on
A	Post-1986 depreciation adjustment	See the Shareholder's Instructions and the Instructions for Form 6251 (A–F)
B	Adjusted gain or loss	
C	Depletion (other than oil & gas)	
D	Oil, gas, & geothermal—gross income	
E	Oil, gas, & geothermal—deductions	
F	Other AMT items	

16. Items affecting shareholder basis

Code		Report on
A	Tax-exempt interest income	Form 1040, line 8b
B	Other tax-exempt income	See the Shareholder's Instructions (B–E)
C	Nondeductible expenses	
D	Property distributions	
E	Repayment of loans from shareholders	

17. Other information

Code		Report on
A	Investment income	Form 4952, line 4a
B	Investment expenses	Form 4952, line 5
C	Qualified rehabilitation expenditures (other than rental real estate)	See the Shareholder's Instructions
D	Basis of energy property	See the Shareholder's Instructions
E	Recapture of low-income housing credit (section 42(j)(5))	Form 8611, line 8
F	Recapture of low-income housing credit (other)	Form 8611, line 8
G	Recapture of investment credit	See Form 4255
H	Recapture of other credits	See the Shareholder's Instructions
I	Look-back interest—completed long-term contracts	See Form 8697
J	Look-back interest—income forecast method	See Form 8866
K	Dispositions of property with section 179 deductions	See the Shareholder's Instructions (K–T)
L	Recapture of section 179 deduction	
M	Section 453(l)(3) information	
N	Section 453A(c) information	
O	Section 1260(b) information	
P	Interest allocable to production expenditures	
Q	CCF nonqualified withdrawals	
R	Depletion information—oil and gas	
S	Amortization of reforestation costs	
T	Other information	

Federal Statements

Dennis Reynolds

Schedule K-1, Box 12, Code P - Domestic Production Activities Information

Description	Amount
DOMESTIC PROD GROSS RECEIPTS	$ 9,670,735
GROSS RECEIPTS ALL SOURCES	9,672,846
COGS ALLOCABLE TO DPGR	7,626,444
COGS FROM ALL SOURCES	7,626,444
DIRECT DED ALLOCABLE TO DPGR	1,799,204
FORM W-2 WAGES	2,178,786

Schedule K-1, Box 16, Code C - Nondeductible Expenses

Description	Amount
FINES AND PENALTIES	$ 1,135
PAGE 1 MEALS/ENTERTAINMENT	1,927
TOTAL	$ 3,062

IT-20S 2008 Schedule IN K-1

State Form 49193 (R7/8-08)

Indiana Department of Revenue

Shareholder's Share of Indiana Adjusted Gross Income, Deductions, Modifications and Credits

Tax Year Beginning 01/01/2021 and Ending 12/31/2021

Name of Corporation: DRYWALL PROFESSIONALS, INC.

Federal Identification Number:

Distributions - Provide IN K-1 to each shareholder. Attach IN K-1 to IT-20S return. For information on the acceptable electronic data file format, visit the Department's Web site at www.in.gov/dor/3772.htm Pro rata amounts for lines 1 through 14 of any nonresident shareholder must be multiplied by the Indiana apportionment percent, if applicable, from IT-20S, line 5.

Part 1 – Shareholder's Identification Section

(a) If Shareholder Is an Individual (please print clearly)
Last Name: a1 ____ First Name: a2 ____ a3 Social Security Number:

(b) If Shareholder Is an Other Entity (please print clearly)
Name: b1 ____ b2 Federal Identification Number:

Line	Description	Code	Amount
(c)	Shareholder's State of Residence or Commercial Domicile	c1	IN
(d)	Indiana Tax Withheld for Nonresident Shareholder (on WH-18)	d	.00
(e)	Shareholder's Federal Pro Rata Percentage	e	50.00 %

Part 2 – Distributive Share Amount (use apportioned figures for nonresident shareholders)

Line	Description	Amount
1.	Ordinary business income (loss)	283,700.00
2.	Net rental real estate income (loss)	.00
3.	Other net rental income (loss)	.00
4.	Interest income	.00
5a.	Ordinary dividends	.00
6.	Royalties	.00
7.	Net short-term capital gain (loss)	.00
8a.	Net long-term capital gain (loss)	.00
9.	Net IRC Section 1231 gain (loss) *	3.00
10.	Other income (loss)	.00
11.	IRC Section 179 expense deduction	36,152.00
12a.	Portion of expenses related to investment portfolio income, including investment interest expense and other (federal non-itemized) deductions	.00
12b.	Other information from line 20 of federal K-1 related to investment interest and expenses not listed elsewhere	.00
13.	**Total pro rata distributions** (Add lines 1 through 10; subtract lines 11, 12a, and 12b when applicable.)	247,551.00

14. **State modifications –** Designate the distributive share amount of each modification for Indiana adjusted gross income from line 2 on front of Form IT-20S (for nonresidents, apply apportioned figures):

Modification	Line	Amount
State income taxes deducted	2(a)	.00
Net bonus depreciation allowance	2(b)	-36,337.00
Excess IRC Section 179 deduction	2(c)	23,652.00
Do not use; for dept. use only.	2(d)	
Interest on U.S. obligations	2(e)	.00
Indiana lottery prize money	2(f)	.00
Total distributive share of modifications	14a	-12,685.00

Part 3 – Pro Rata Share of Indiana Pass-through Tax Credits from Corporation

15. Enter the name of the tax credit program, its three-digit ID code, and the dollar amount of the shareholder's distributive share for each allowable credit
Name of Credit:

Name	Code No.	Line	Amount
15a	15b	15c	.00
15d	15e	15f	.00
15g	15h	15i	.00

* INCLUDES $3 FROM SALES WITH SECTION 179 EXPENSE

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DRYWALL PROFESSIONALS, INC.
Indianapolis, Indiana

Financial Statements
and
Supplementary Information

December 31, 2021 and 2020

Drywall Professionals, Inc.

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Drywall Professionals, Inc.

REPORT OF INDEPENDENT AUDITORS

Board of Directors
Drywall Professionals, Inc.
Indianapolis, Indiana

We have audited the accompanying balance sheets of Drywall Professionals, Inc. (the "Company") as of December 31, 2008 and 2007, and the related statements of operations and retained earnings, and cash flows for the years then ended. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

As discussed in note 12, accounting principles generally accepted in the United States of America require that the Company prepare consolidated financial statements that include the assets, liabilities, equity, operations and cash flows of certain affiliated entities and certain disclosures thereto. Management has informed us that the accompanying financial statements are not consolidated to include the assets, liabilities, equity, operations and cash flows of these affiliated entities, that these financial statements include only the assets, liabilities, equity, operations and cash flows of the Company, and that the required disclosures are not made. The effect of these departures from generally accepted accounting principles on financial position, results of operations and cash flows has not been determined.

In our opinion, except for the effects of not including the accounts of certain affiliated entities in the accompanying financial statements along with required disclosures, as explained in the preceding paragraph, the financial statements referred to above present fairly, in all material respects, the financial position of Drywall Professionals, Inc. at December 31, 2008 and 2007 and the results of its operations and its cash flows for the years then ended, in conformity with accounting principles generally accepted in the Unites States of America.

Our audits were conducted for the purpose of forming an opinion on the basic financial statements taken as a whole. The supplementary information included on pages 13 through 15 is presented for the purposes of additional analysis and is not a required part of the basic financial statements. This supplementary information has been subjected to the auditing procedures applied in the audits of the basic financial statements and, in our opinion, except for the effects of the departure from accounting principles generally accepted in the Unites States of America, as explained in the third paragraph of this report, such information is fairly stated in all material respects in relation to the basic financial statements taken as a whole.

Accounting Firm Signature

April 15, 2009

Drywall Professionals, Inc.

BALANCE SHEETS

Assets	2021	2020
Current assets		
Cash and cash equivalents	$ 355,855	$ 299,541
Cash surrender value of life insurance	72,228	54,873
Contract receivables, net	3,421,647	1,716,538
Costs and estimated earnings in excess of billings on uncompleted contracts	950,846	865,185
Inventories	47,130	30,442
Other current assets	9,468	3,750
Total current assets	4,857,174	2,970,329
Property and equipment, net	288,018	340,046
Goodwill	775,000	775,000
Other assets	62,904	79,525
Total assets	$ 5,983,096	$ 4,164,900

Liabilities and Stockholders' Equity

	2021	2020
Current Liabilities		
Current maturities of long-term debt	$ 2,270,825	$ 1,171,297
Accounts payable	1,499,587	1,064,038
Billings in excess of costs and estimated earnings on uncompleted contracts	15,683	5,093
Accrued expenses	73,089	47,339
Accounts payable - related party, net	53,088	21,601
Accounts payable - shareholder, net	25,000	-
Total current liabilities	3,937,272	2,309,368
Long-term debt	766,831	884,375
Stockholders' Equity		
Common stock - $1 par value; 1,000 shares authorized; 1,000 shares issued and outstanding	1,000	1,000
Additional paid-in capital	551,688	551,688
Retained earnings (deficit)	726,305	418,469
Total stockholders' equity	1,278,993	971,157
Total liabilities and stockholders' equity	$ 5,983,096	$ 4,164,900

See accompanying notes to financial statements.

Drywall Professionals, Inc.

STATEMENTS OF OPERATIONS AND RETAINED EARNINGS
YEARS ENDED DECEMBER 31, 2021 AND 2020

	2021	2020
Contract revenues earned	$ 19,341,470	$ 8,269,989
Contract costs		
Labor and benefits	2,884,721	1,473,038
Material	3,365,389	1,726,585
Equipment	152,674	62,582
Subcontract	7,601,510	2,865,418
Other direct contract costs	1,265,417	695,364
Indirect contract costs	1,687,055	395,694
General and administrative expenses	1,709,925	641,927
Total contract costs	18,666,691	7,860,608
Contract profit (loss)	674,779	409,381
Other income (expense)		
Interest expense	(189,422)	(49,231)
Gain (loss) on disposition of equipment	(78)	-
Other	21,577	73,458
Other income (expense), net	(167,923)	24,227
Net income (loss)	506,856	433,608
Retained earnings, beginning of year	418,469	(15,139)
Distributions	(199,020)	-
Retained earnings, end of year	$ 726,305	$ 418,469

See accompanying notes to financial statements.

Drywall Professionals, Inc.

STATEMENTS OF CASH FLOWS
YEARS ENDED DECEMBER 31, 2021 and 2020

	2021	2020
Operating activities		
Net income (loss)	$ 506,856	$ 433,608
Adjustments to renconcile net income (loss) to net cash flows from operating activities:		
Depreciation	113,198	56,285
Amortization	42,500	42,500
Loss on disposition of equipment	78	-
Increase in premiums recoverable under life insurance agreement	(17,355)	(16,000)
Changes in operating assets and liabilities:		
Contract receivables	(1,705,109)	(143,521)
Costs and estimated earnings in excess of billings on uncompleted contracts	(85,661)	(12,354)
Other current assets and other assets	10,903	(2,581)
Inventories	(16,688)	1,252
Accounts payable	435,549	(126,853)
Billings in excess of costs and estimated earnings on uncompleted contracts	10,590	6,521
Accrued expenses	25,750	1,987
Net cash flows from operating activities	(679,389)	240,844
Investing activities		
Capital expenditures	(104,458)	(25,682)
Proceeds from sales of equipment	700	-
Advances to related parties, net	31,487	21,601
Advances to shareholder, net	25,000	-
Net cash flows from investing activities	(47,271)	(4,081)
Financing activities		
Principal payments on long-term debt	(117,544)	(124,653)
Change in short-term debt	1,099,528	61,980
Distributions paid	(199,020)	-
Net cash flows from financing activities	782,964	(62,673)
Net change in cash and cash equivalents	56,304	174,090
Cash and cash equivalents, beginning of year	299,541	125,451
Cash and cash equivalents, end of year	$ 355,845	$ 299,541

Good measure of Company's actual cash flow from operations

See accompanying notes to financial statements.

1. SIGNIFICANT ACCOUNTING POLICIES

Drywall Professionals, Inc. (the "Company") is a drywall contractor headquartered in Indianapolis, Indiana. The principal activities of the Company include internal drywall services. The Company performs these construction services for commercial and residential enterprises located primarily in central Indiana.

The significant accounting policies followed by the Company in the preparation of its financial statements are as follows:

Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect certain reported amounts and disclosures. Accordingly, actual results could differ from those estimates. Significant areas involving the use of estimates and assumptions include collectability of contract receivables, and amounts due from related parties, the depreciation of property and equipment, the gross profit recognized on uncompleted construction contracts, and the Company's liability under debt of related entities.

Revenue and Cost Recognition

Revenues from significant fixed-price and fixed unit price contracts are recognized on the percentage-of-completion method, measured generally by the percentage of costs incurred to date to total estimated contract costs. This method is used because management considers contract costs to be the best available measure of progress on these contracts. Because of the inherent uncertainties in estimating the percentage of contract revenues earned and final contract revenues being subject to customer approval (including change orders approved as to scope, but unapproved as to price), it is at least reasonably possible that the Company's estimates of costs and revenues may change significantly in the near term.

Revenues from small fixed-price contracts and time-and-materials are recognized as revenue when billed.

For financial reporting purposes, the Company customarily combines contracts in circumstances where multiple contracts require closely interrelated construction activities with substantial common costs that cannot be separately identified with, or reasonably allocated to, the individual contracts. Such contracts are generally performed concurrently or in a continuous sequence under similar project management in the same general vicinity.

Contract costs include all direct material, labor and benefits, subcontract costs, equipment costs, and other direct costs related to contract performance, plus an allocation for indirect and general and administrative costs.

Provisions for estimated losses on uncompleted contracts are made in the period in which such losses are determined. Changed in job performance, job conditions, and estimated profitability that may result in revisions to costs and revenues are recognized in the period in which the revisions are determined.

The asset “Costs and estimated earnings in excess of billings on uncompleted contracts” represents revenues recognized in excess of amounts billed. The liability “Billings in excess of costs and estimated earnings on uncompleted contracts” represents billings in excess of revenues recognized.

Receivables

Management estimates an allowance for doubtful contract receivables on an evaluation of historical losses, current economic conditions, and other factors unique to the Company’s customer base.

Inventory

The Company values its inventory utilizing the specific identification of cost method for valuing inventory.

Property and Equipment

Property and equipment are recorded at cost. Major repairs to property and equipment are capitalized while minor repairs are expensed as incurred. The Company depreciates property and equipment using the straight-line method over the estimated useful lives of the related assets as follows:

Description	Useful Lives
Marhinery and equipment	5 - 10 years
Transportation equipment	5 - 10 years
Office equipment	3 - 10 years
Leasehold improvements	7 - 40 years

2. CONTRACT RECEIVABLES

Contract receivables include the following:

	2008	2007
Completed contracts	$ 562,857	$ 299,541
Contracts in progress	2,421,029	547,916
Retainage	598,358	958,368
	3,582,244	1,805,825
Allowance for doubtful accounts	(160,597)	(89,287)
	$ 3,421,647	$ 1,716,538

3. CONTRACTS IN PROGRESS

Information relative to contracts in progress, earnings thereon and related billings are summarized below:

	2021	2020
Costs incurred on uncompleted contracts	$ 24,685,291	$ 15,628,635
Estimated earnings	4,158,628	2,628,567
	28,843,919	18,257,202
Billings to date	(27,908,756)	(17,397,110)
	$ 935,163	$ 860,092
Included in the accompanying balance sheets under the following captions:		
Costs and estimated earnings in excess of billings on uncompleted contracts	950,846	865,185
Billings in excess of costs and estimated earnings on uncompleted contracts	(15,683)	(5,093)
	$ 935,163	$ 860,092

4. PROPERTY AND EQUIPMENT

Property and equipment consist of the following:

	2008	2007
Machinery and equipment	$ 854,698	$ 778,066
Transportation equipment	165,222	145,268
Office equipment	21,628	18,256
Leasehold improvements	52,628	52,628
	1,094,176	994,218
Accumulated depreciation	(806,158)	(654,172)
	$ 288,018	$ 340,046

5. GOODWILL

The Company's goodwill assets at December 31, 2008 and 2007 respectively were $775,000 and $775,000. Substantially all goodwill relates to the excess of cost over the fair value of the net assets acquired in the Drywall Plastering, Inc. transaction which closed in 1997. In the quarters ended September 30, 2008 and September 30, 2007, the Company performed its annual impairment test of goodwill associated with this purchase. SFAS No. 142 requires that the impairment test be performed through the application of a two-step fair value test. The first step of the test compares the fair

values of the reporting units with the carrying amounts, including goodwill. An impairment of goodwill results when there is an excess of book value over the fair value of a reporting unit. The second step would then need to be performed to quantify the impairment charge, if any, which would be measured by comparing the implied value of goodwill to its carrying amount. The implied value of goodwill for each reporting unit is determined by assigning the fair value of the reporting unit to all of the assets and liabilities of that unit as if the reporting unit had been acquired in a business combination. Any excess fair value of the reporting unit over the amounts allocated to the assets and liabilities is the implied fair value of goodwill.

The results of the September 30, 2008 and September 30, 2007 annual impairment tests indicated that no impairment charge was required. For the purpose of testing for impairment of the goodwill recorded in the acquisition of Drywall Plastering, Inc., the related subsidiary was considered one separate reporting unit.

The Company uses an income approach to estimate the fair value of its reporting units for the purposes of this test. The method is generally based on a discounted cash flow valuation model that incorporates internal projections of expected future cash flows and operating results to estimate a fair value of each reporting unit. Determining fair value requires management to make a number of judgments about assumptions and estimates used in the model that are subjective and include unobservable inputs or assumptions. The use of alternate judgments and/or assumptions could have a material impact on the financial statements.

Certain key assumptions include the five-year plan operating results, discount rates and the long-term outlook for growth rates, among other items. The discount rate used, based on the weighted average cost of capital was 10.75% in the September 30, 2008 annual impairment test, which was a decrease from the prior year's rate of 11.5%, due primarily to a decrease in the risk-free rate and market risk premium. Operating income growth rates were 3.5% for the unit which were comparable to the growth rates used in the prior year.

The Company continually monitors potential indicators of impairment to determine if any triggering events are present that would require an impairment test more frequently than the annual test.

6. LINE OF CREDIT FACILITY

The Company has a revolving line of credit facility with a bank that provides for maximum borrowings of $1,000,000 ($500,000 at December 31, 2007), not to exceed a specified percentage of eligible contract receivables. The line is subject to renewal on December 21, 2009. Borrowings bear interest at the bank's prime rate and are secured by substantially all of the Company's assets and the assignment of the insurance policies on the lives of the Company's two shareholders. The credit agreement contains certain restrictive covenants, including maintenance of specified balance sheet and income statement ratios and amounts. The Company's line of credit facility is subject to cross-default provisions with the debt of this related entity (Note 10). At December 31, 2008 and 2007, the Company had no outstanding borrowings on this line of credit facility.

7. LONG-TERM DEBT

Long-term debt consists of the following:

	2021	2020
Notes payable to institutional lenders; 4.5% to 6.99%, payable in varying monthly installments through October 2012, secured by related equipment	$ 3,037,656	$ 1,931,090
Note payable to bank; repaid in 2008	-	124,582
	3,037,656	2,055,672
Current maturities	(2,270,825)	(1,171,297)
	$ 766,831	$ 884,375

Annual maturities of long-term debt at December 31, 2008 are as follows:

Year Ending December 31,	
2009	$ 2,270,825
2010	352,852
2011	245,682
2012	168,297
	$ 3,037,656

8. LEASES

The Company leases its office and shop facilities from a related entity (note 10). During 2007 and through January 2008, the Company made monthly lease payments of $3,542 under an informal lease arrangement with this related entity. Effective February 1, 2008, the Company signed a formal lease agreement which requires monthly payments of $8,334 through January 2011, and provides for a three year renewal option. The lease agreement requires the Company to pay utilities, taxes, insurance, repairs and maintenance.

Future minimum lease payments required under the non-cancelable lease with remaining terms in excess of one year at December 31, 2008 are as follows:

Year Ending December 31,	
2009	$ 100,008
2010	100,008
2011	8,334
	$ 208,350

The total rent expense for all operating leases for the years ended December 31, 2021 and 2020 was $95,211 and $42,506, respectively.

9. RETIREMENT PLANS

<u>Union Sponsored</u>

Substantially all of the Company's non-management employees are covered by collective bargaining agreements. The Company's contributions to union sponsored multi-employer pension plans were $5,208 and $125,953 for the years ended December 31, 2008 and 2007, respectively. Information on the Company's portion of the accumulated plan benefits and the plans' net assets is not determinable. Under the Employee Retirement Income Security Act of 1974, as amended in 1980, an employer in the construction industry, upon withdrawing from a multi-employer pension plan, may be obligated for its proportionate share of the plans unfunded vested benefits. The Company has no intention of withdrawing from the plans.

<u>401(k) Plan</u>

The Company has a safe-harbor 401(k) profit-sharing plan covering eligible non-union employees that provides for an employee elective contribution, with a Company matching contribution, and a discretionary profit sharing contribution. The Company's matching and profit sharing contributions for the years ended December 31, 2008 and 2007 were as follows:

Matching	$	21,457	$	12,700
Profit sharing		12,543		-
	$	34,000	$	12,700

10. RELATED PARTY TRANSACTIONS

The Company conducts business on a continuing basis with Realty Holding, LLC. This entity is 50% of more owned by the shareholders of the Company. The Company owed Realty Holding, LLC $53,088 and $21,601 as of December 31, 2008 and 2007, respectively.

The Company leases its office and shop facility from Realty Holding, LLC. Rent expense was $95,211 and $42,506 for the years ended December 31, 2008 and 2007, respectively.

The Company owes $25,000 and $0 to one of the shareholders as of December 31, 2008 and 2007, respectively.

The Company guarantees certain debts of one related entity and the two stockholders (Note 11). The Company's line of credit borrowings (Note 6) are guaranteed by Realty Holding, LLC.

11. GUARANTEES

The Company has guaranteed certain notes payable owed by its two stockholders and a related entity to a bank. The notes guaranteed have aggregate balances of approximately $250,000 at December 31, 2008 and mature at various dates through February 2020. Of this amount, approximately $200,000 is secured by real estate purchased by the related entity and is subject to cross-default provisions with the Company's line of credit facility (Note 6). The remaining $50,000 is unsecured. The estimated maximum potential of undiscounted future payments (including interest) that the Company could be required to make in the event of nonperformance by these related parties is approximately $275,000.

There are no recourse provisions for the Company to recover any payment that it might be required to make under these guarantees, and the Company does not hold any collateral for its guarantees. However, the Company does not believe that it will incur any liability as a result of these guarantees.

12. VARIABLE INTEREST ENTITIES

Financial Accounting Standards Board Interpretation 46R ("FIN 46R"), "Consolidation of Variable Interest Entities," requires that a company holding variable interests in an entity consolidate the entity if the company's interest in the variable interest entity ("VIE") is such that it will absorb a majority of the VIE's expected losses and/or receive a majority of the VIE's expected residual returns. In such cases, the company is the "primary beneficiary" of the VIE. FIN 46R also requires additional disclosures by primary beneficiaries and other significant variable interest holders.

The Company is primary beneficiary of Realty Holding, LLC and, therefore, such affiliated entities are required under accounting principles generally accepted in the United States of America to be included with the Company in consolidated financial statements. The Company has not adopted FIN 46R in the preparation of its financial statements, and the accompanying financial statements include only the assets, liabilities, equity, operations and cash flows of the Company. Additionally, the required disclosures relating to the VIEs have not been made. The Company has not determined the effect of these departures from accounting principles generally accepted in the United States of America on financial position, results of operations and cash flows.

13. CONCENTRATIONS

Financial instruments that potentially subject the Company to concentrations of credit risk consist principally of cash and cash equivalents, cash surrender value of life insurance, and contract receivables. The Company's cash and cash equivalents are primarily deposited with a single financial institution, and balances are generally in excess of the Federally insured limit or are invested in securities that are not Federally insured.

The Company primarily performs contracts and grants credit to industrial, commercial and residential customers primarily in central Indiana. The Company's policy related to theses customers is not to require collateral on contract receivables due to special rights afforded under contractual agreements.

At December 31, 2008, one customer accounted for 19% of the Company's contract receivables, and 10% of the Company's contract revenues for 2008. At December 31, 2007, two customers accounted for approximately 22% of the Company's contract receivables, and one of these customers accounted for 8% of the Company's contract revenues for 2007.

SUPPLEMENTARY INFORMATION

CAMA

Pass-thru entity!

Form **1065**
Department of the Treasury
Internal Revenue Service

U.S. Return of Partnership Income

For calendar year 2008, or tax year beginning ...., ending ....
▶ See separate instructions.

OMB No. 1545-0099

2021

A Principal business activity: DEVELOPMENT	Use the IRS label. Otherwise, print or type. Name of partnership: MMW ENTERPRISES, LLC	D Employer identification number
B Principal product or service: REAL ESTATE	Number, street, and room or suite no. If a P.O. box, see the instructions. P.O. BOX 3903	E Date business started: 4/15/1999
C Business code number: 237210	City or town, state, and ZIP ... CARMEL ... 82-3936	F Total assets (see the instructions) $ 2,060,356

How do you think this business is doing today?

G Check applicable boxes: (1) ☐ Initial return (2) ☐ ... hange (4) ☐ Address change (5) ☐ Amended return
(6) ☐ Technical termination - also check (1) or (2)

H Check accounting method: (1) ☐ Cash (2) ☒ Accrual (3) ☐ Other (specify) ▶

I Number of Schedules K-1. Attach one for each person who was a partner at any time during the tax year ▶ 3

J Check if Schedule M-3 attached ☐

Caution. Include only trade or business income and expenses on lines 1a through 22 below. See the instructions for more information.

Section	Line	Description				Amount
Income	1a	Gross receipts or sales	1a	2,704,439		
	b	Less returns and allowances	1b		1c	2,704,439
	2	Cost of goods sold (Schedule A, line 8)			2	2,192,200
	3	Gross profit. Subtract line 2 from line 1c			3	512,239
	4	Ordinary income (loss) from other partnerships, estates, and trusts (attach statement)			4	
	5	Net farm profit (loss) (attach Schedule F (Form 1040))			5	
	6	Net gain (loss) from Form 4797, Part II, line 17 (attach Form 4797)			6	
	7	Other income (loss) (attach statement)			7	
	8	**Total income (loss).** Combine lines 3 through 7			8	512,239
Deductions (see the instructions for limitations)	9	Salaries and wages (other than to partners) (less employment credits)			9	
	10	Guaranteed payments to partners			10	750
	11	Repairs and maintenance			11	187
	12	Bad debts			12	
	13	Rent			13	1,200
	14	Taxes and licenses SEE STATEMENT 1			14	180
	15	Interest			15	
	16a	Depreciation (if required, attach Form 4562)	16a			
	b	Less depreciation reported on Schedule A and elsewhere on return	16b		16c	
	17	Depletion **(Do not deduct oil and gas depletion.)**			17	
	18	Retirement plans, etc.			18	
	19	Employee benefit programs			19	
	20	Other deductions (attach statement) SEE STATEMENT 2			20	55,640
	21	**Total deductions.** Add the amounts shown in the far right column for lines 9 through 20			21	57,957
	22	**Ordinary business income (loss).** Subtract line 21 from line 8			22	454,282

Sign Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than general partner or limited liability company member manager) is based on all information of which preparer has any knowledge.

▶ Signature of general partner or limited liability company member manager ▶ Date

May the IRS discuss this return with the preparer shown below (see instructions)? ☒ Yes ☐ No

Paid Preparer's Use Only

Preparer's signature	Date	Check if self-employed ▶ ☐	Preparer's SSN or PTIN
Firm's name (or yours if self-employed), address, and ZIP code ▶			EIN ▶
			Phone no.

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions. Form **1065** (2008)

Schedule A Cost of Goods Sold (see the instructions)

		Line	Amount
1	Inventory at beginning of year	1	1,587,241
2	Purchases less cost of items withdrawn for personal use	2	2,498,857
3	Cost of labor	3	
4	Additional section 263A costs (attach statement)	4	
5	Other costs (attach statement)	5	
6	**Total.** Add lines 1 through 5	6	4,086,098
7	Inventory at end of year	7	1,893,898
8	**Cost of goods sold.** Subtract line 7 from line 6. Enter here and on page 1, line 2	8	2,192,200

9a Check all methods used for valuing closing inventory:

(i) [X] Cost as described in Regulations section 1.471-3

(ii) [ ] Lower of cost or market as described in Regulations section 1.471-4

(iii) [ ] Other (specify method used and attach explanation) ▶

b Check this box if there was a writedown of "subnormal" goods as described in Regulations section 1.471-2(c) ▶ [ ]

c Check this box if the LIFO inventory method was adopted this tax year for any goods (if checked, attach Form 970) ▶ [ ]

d Do the rules of section 263A (for property produced or acquired for resale) apply to the partnership? [X] Yes [ ] No

e Was there any change in determining quantities, cost, or valuations between opening and closing inventory? [ ] Yes [X] No

If "Yes," attach explanation.

Schedule B Other Information

		Yes	No
1	What type of entity is filing this return? Check the applicable box: a [ ] Domestic general partnership b [ ] Domestic limited partnership c [X] Domestic limited liability company d [ ] Domestic limited liability partnership e [ ] Foreign partnership f [ ] Other ▶		
2	At any time during the tax year, was any partner in the partnership a disregarded entity, a partnership (including an entity treated as a partnership), a trust, an S corporation, an estate (other than an estate of a deceased partner), or a nominee or similar person?		X
3	At the end of the tax year:		
a	Did any foreign or domestic corporation, partnership (including any entity treated as a partnership), or trust own, directly or indirectly, an interest of 50% or more in the profit, loss, or capital of the partnership? For rules of constructive ownership, see instructions. If "Yes," complete (i) through (v) below		X

(i) Name of Entity	(ii) Employer Identification Number (if any)	(iii) Type of Entity	(iv) Country of Organization	(v) Maximum Percentage Owned in Profit, Loss, or Capital

		Yes	No
b	Did any individual or estate own, directly or indirectly, an interest of 50% or more in the profit, loss, or capital of the partnership? For rules of constructive ownership, see instructions. If "Yes," complete (i) through (iv) below		X

(i) Name of Individual or Estate	(ii) Social Security Number or Employer Identification Number (if any)	(iii) Country of Citizenship (see instructions)	(iv) Maximum Percentage Owned in Profit, Loss, or Capital

		Yes	No
4	At the end of the tax year, did the partnership:		
a	Own directly 20% or more, or own, directly or indirectly, 50% or more of the total voting power of all classes of stock entitled to vote of any foreign or domestic corporation? For rules of constructive ownership, see instructions. If "Yes," complete (i) through (iv) below		X

(i) Name of Corporation	(ii) Employer Identification Number (if any)	(iii) Country of Incorporation	(iv) Percentage Owned in Voting Stock

		Yes	No
b	Own directly an interest of 20% or more, or own, directly or indirectly, an interest of 50% or more in the profit, loss, or capital in any foreign or domestic partnership (including an entity treated as a partnership) or in the beneficial interest of a trust? For rules of constructive ownership, see instructions. If "Yes," complete (i) through (v) below		X

(i) Name of Entity	(ii) Employer Identification Number (if any)	(iii) Type of Entity	(iv) Country of Organization	(v) Maximum Percentage Owned in Profit, Loss, or Capital

		Yes	No
5	Did the partnership file Form 8893, Election of Partnership Level Tax Treatment, or an election statement under section 6231(a)(1)(B)(ii) for partnership-level tax treatment, that is in effect for this tax year? See Form 8893 for more details		X
6	Does the partnership satisfy all four of the following conditions?		
a	The partnership's total receipts for the tax year were less than $250,000.		
b	The partnership's total assets at the end of the tax year were less than $1 million.		
c	Schedules K-1 are filed with the return and furnished to the partners on or before the due date (including extensions) for the partnership return.		
d	The partnership is not filing and is not required to file Schedule M-3	X	
	If "Yes," the partnership is not required to complete Schedules L, M-1, and M-2; Item F on page 1 of Form 1065; or Item L on Schedule K-1.		
7	Is this partnership a publicly traded partnership as defined in section 469(k)(2)?		X
8	During the tax year, did the partnership have any debt that was cancelled, was forgiven, or had the terms modified so as to reduce the principal amount of the debt?		X
9	Has this partnership filed, or is it required to file, Form 8918, Material Advisor Disclosure Statement, to provide information on any reportable transaction?		X
10	At any time during calendar year 2008, did the partnership have an interest in or a signature or other authority over a financial account in a foreign country (such as a bank account, securities account, or other financial account)? See the instructions for exceptions and filing requirements for Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts. If "Yes," enter the name of the foreign country. ▶		X
11	At any time during the tax year, did the partnership receive a distribution from , or was it the grantor of, or transferor to, a foreign trust? If "Yes," the partnership may have to file Form 3520, Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts. See instructions		X
12a	Is the partnership making, or had it previously made (and not revoked), a section 754 election? See instructions for details regarding a section 754 election.		X
b	Did the partnership make for this tax year an optional basis adjustment under section 743(b) or 734(b)? If "Yes," attach a statement showing the computation and allocation of the basis adjustment. See instructions		X
c	Is the partnership required to adjust the basis of partnership assets under section 743(b) or 734(b) because of a substantial built-in loss (as defined under section 743(d)) or substantial basis reduction (as defined under section 734(d))? If "Yes," attach a statement showing the computation and allocation of the basis adjustment. See instructions		X
13	Check this box if, during the current or prior tax year, the partnership distributed any property received in a like-kind exchange or contributed such property to another entity (including a disregarded entity) ▶ ☐		
14	At any time during the tax year, did the partnership distribute to any partner a tenancy-in-common or other undivided interest in partnership property?		X
15	If the partnership is required to file Form 8858, Information Return of U.S. Persons With Respect To Foreign Disregarded Entities, enter the number of Forms 8858 attached. See instructions ▶		
16	Does the partnership have any foreign partners? If "Yes," enter the number of Forms 8805, Foreign Partner's Information Statement of Section 1446 Withholding Tax, filed for this partnership. ▶		X
17	Enter the number of Forms 8865, Return of U.S. Persons With Respect to Certain Foreign Partnerships, attached to this return. ▶		

Designation of Tax Matters Partner (see the instructions)

Enter below the general partner designated as the tax matters partner (TMP) for the tax year of this return:

Name of designated TMP ▶	WILLIAM MARTIN	Identifying number of TMP ▶	123-45-6789
Address of designated TMP ▶	P.O. BOX 701 CARMEL IN 46082		

CAMA

Form 1065 (2008) MMW ENTERPRISES, LLC 98-7654321 Page 4

Schedule K Partners' Distributive Share Items

Section	Line	Description		Total amount
Income (Loss)	1	Ordinary business income (loss) (page 1, line 22)	1	454,282
	2	Net rental real estate income (loss) (attach Form 8825)	2	
	3a	Other gross rental income (loss) — 3a		
	b	Expenses from other rental activities (attach statement) — 3b		
	c	Other net rental income (loss). Subtract line 3b from line 3a	3c	
	4	Guaranteed payments	4	750
	5	Interest income	5	
	6	Dividends: a Ordinary dividends	6a	
		b Qualified dividends — 6b		
	7	Royalties	7	
	8	Net short-term capital gain (loss) (attach Schedule D (Form 1065))	8	
	9a	Net long-term capital gain (loss) (attach Schedule D (Form 1065))	9a	
	b	Collectibles (28%) gain (loss) — 9b		
	c	Unrecaptured section 1250 gain (attach statement) — 9c		
	10	Net section 1231 gain (loss) (attach Form 4797)	10	
	11	Other income (loss) (see instructions) Type ▶	11	
Deductions	12	Section 179 deduction (attach Form 4562)	12	
	13a	Contributions	13a	
	b	Investment interest expense	13b	
	c	Section 59(e)(2) expenditures: (1) Type ▶ (2) Amount ▶	13c(2)	
	d	Other deductions (see instructions) Type ▶ SEE STATEMENT 3	13d	
Self-Employment	14a	Net earnings (loss) from self-employment	14a	750
	b	Gross farming or fishing income	14b	
	c	Gross nonfarm income	14c	
Credits	15a	Low-income housing credit (section 42(j)(5))	15a	
	b	Low-income housing credit (other)	15b	
	c	Qualified rehabilitation expenditures (rental real estate) (attach Form 3468)	15c	
	d	Other rental real estate credits (see instructions) Type ▶	15d	
	e	Other rental credits (see instructions) Type ▶	15e	
	f	Other credits (see instructions) Type ▶	15f	
Foreign Transactions	16a	Name of country or U.S. possession ▶		
	b	Gross income from all sources	16b	
	c	Gross income sourced at partner level	16c	
		Foreign gross income sourced at partnership level		
	d	Passive category ▶ e General category ▶ f Other ▶	16f	
		Deductions allocated and apportioned at partner level		
	g	Interest expense ▶ h Other ▶	16h	
		Deductions allocated and apportioned at partnership level to foreign source income		
	i	Passive category ▶ j General category ▶ k Other ▶	16k	
	l	Total foreign taxes (check one): ▶ Paid ☐ Accrued ☐	16l	
	m	Reduction in taxes available for credit (attach statement)	16m	
	n	Other foreign tax information (attach statement)		
Alternative Minimum Tax (AMT) Items	17a	Post-1986 depreciation adjustment	17a	
	b	Adjusted gain or loss	17b	
	c	Depletion (other than oil and gas)	17c	
	d	Oil, gas, and geothermal properties-gross income	17d	
	e	Oil, gas, and geothermal properties-deductions	17e	
	f	Other AMT items (attach statement)	17f	
Other Information	18a	Tax-exempt interest income	18a	
	b	Other tax-exempt income	18b	
	c	Nondeductible expenses	18c	
	19a	Distributions of cash and marketable securities	19a	935,298
	b	Distributions of other property	19b	
	20a	Investment income	20a	
	b	Investment expenses	20b	
	c	Other items and amounts (attach statement)		

Analysis of Net Income (Loss)

1 Net income (loss). Combine Schedule K, lines 1 through 11. From the result, subtract the sum of Schedule K, lines 12 through 13d, and 16l 1 455,032

2 Analysis by partner type:	(i) Corporate	(ii) Individual (active)	(iii) Individual (passive)	(iv) Partnership	(v) Exempt organization	(vi) Nominee/Other
a General partners						
b Limited partners			455,032			

Schedule L Balance Sheets per Books

Assets	Beginning of tax year (a)	(b)	End of tax year (c)	(d)
1 Cash		940,418		166,458
2a Trade notes and accounts receivable	2,254			
b Less allowance for bad debts		2,254		
3 Inventories		1,587,241		1,893,898
4 U.S. government obligations				
5 Tax-exempt securities				
6 Other current assets (attach statement)				
7 Mortgage and real estate loans				
8 Other investments (attach statement)				
9a Buildings and other depreciable assets	42,931		42,931	
b Less accumulated depreciation	42,931	0	42,931	0
10a Depletable assets				
b Less accumulated depletion				
11 Land (net of any amortization)				
12a Intangible assets (amortizable only)	1,777		1,777	
b Less accumulated amortization	1,777	0	1,777	0
13 Other assets (attach statement)				
14 Total assets		2,529,913		2,060,356
Liabilities and Capital				
15 Accounts payable				5,459
16 Mortgages, notes, bonds payable in less than 1 year				
17 Other current liabilities (attach statement) SEE STMT 4		5,000		11,000
18 All nonrecourse loans				
19 Mortgages, notes, bonds payable in 1 year or more				
20 Other liabilities (attach statement)				
21 Partners' capital accounts		2,524,913		2,043,897
22 Total liabilities and capital		2,529,913		2,060,356

Schedule M-1 Reconciliation of Income (Loss) per Books With Income (Loss) per Return

Note. Schedule M-3 may be required instead of Schedule M-1 (see instructions).

1 Net income (loss) per books	454,282	6 Income recorded on books this year not included on Schedule K, lines 1 through 11 (itemize): a Tax-exempt interest $	
2 Income included on Schedule K, lines 1, 2, 3c, 5, 6a, 7, 8, 9a, 10, and 11, not recorded on books this year (itemize):			
3 Guaranteed payments (other than health insurance)	750	7 Deductions included on Schedule K, lines 1 through 13d, and 16l, not charged against book income this year (itemize): a Depreciation $	
4 Expenses recorded on books this year not included on Schedule K, lines 1 through 13d, and 16l (itemize): a Depreciation $ b Travel and entertainment $		8 Add lines 6 and 7	
		9 Income (loss) (Analysis of Net Income (Loss), line 1). Subtract line 8 from line 5	455,032
5 Add lines 1 through 4	455,032		

Schedule M-2 Analysis of Partners' Capital Accounts

1 Balance at beginning of year	2,524,913	6 Distributions: a Cash	935,298
2 Capital contributed: a Cash		b Property	
b Property		7 Other decreases (itemize):	
3 Net income (loss) per books	454,282		
4 Other increases (itemize):		8 Add lines 6 and 7	935,298
5 Add lines 1 through 4	2,979,195	9 Balance at end of year. Subtract line 8 from line 5	2,043,897

Federal Statements

Statement 1 - Form 1065, Page 1, Line 14 - Taxes

Description	Amount
PERSONAL PROPERTY TAXES	$ 180
TOTAL	$ 180

Statement 2 - Form 1065, Page 1, Line 20 - Other Deductions

Description	Amount
LEGAL AND ACCOUNTING	$ 11,906
INSURANCE	12,560
HOMEOWNERS ASSOCATION EXPENSE	30,000
OFFICE SUPPLIES & EXPENSE	457
TELEPHONE	331
ADVERTISING	386
TOTAL	$ 55,640

Federal Statements

Statement 3 - Form 1065, Schedule K, Line 13d - Domestic Production Activity Information

Description	Amount
QUAL PROD ACT INC (CODE U)	$ 398,829

Federal Statements

Statement 4 - Form 1065, Schedule L, Line 17 - Other Current Liabilities

Description	Beginning of Year	End of Year
DEPOSITS	$ 5,000	$ 11,000
TOTAL	$ 5,000	$ 11,000

Form IT-65

State Form 11800 (R7/8-08)

Indiana Department of Revenue

Indiana Partnership Return

for Calendar Year Ending December 31, 2021

or Other Tax Year Beginning and

Ending

98-7654321

MMW ENTERPRISES, LLC

HAMILTON 237210

Check box if amended. ☐

Check box if name changed. ☐

K. Date of organization 4/15/99

In the State of IN

L. State of commercial domicile INDIANA

M. Year of initial Indiana return 1999

N. Accounting method: ☐ Cash ☒ Accrual ☐ Other

O. Check all boxes that apply to entity: ☐ Initial Rtn. ☐ Final Rtn. ☐ In Bankruptcy ☐ Composite Rtn.

P. Enter total no. of partners: 3 Enter no. of nonresident partners: 0

Q. Do you have on file a valid extension of time to file your return (federal Form 7004 or an electronic extension of time)? ☒ Y ☐ N

R. Are you a limited liability company electing partnership treatment on your federal return? ☒ Y ☐ N

S. Is this partnership a member of any other partnership(s)? ☐ Y ☒ N

Aggregate Partnership Distributive Share Income (See worksheet)

		Line	Amount
1.	Total net income (loss) from U.S. Partnership return, Form 1065 Schedule K, lines 1 through 11 less line 12, and a portion of line 13 related to investment income (see instructions)	1	455,032.00
2.	Add backs: a) All state income taxes deducted on the federal return	2a	.00
	b) Net bonus depreciation allowance	2b	.00
	c) Excess IRC Section 179 deduction	2c	.00
	d) Do not use; for department use only.		
	Deduct: e) Interest on U.S. government obligations	2e	.00
	f) Indiana lottery prize money	2f	.00
2g.	Total state modifications to distributive share of partnership income (lines 2a through 2d minus lines 2e and 2f)	2g	.00
3.	Total partnership income, as adjusted (add lines 1 and 2g)	3	455,032.00
4.	Enter average percentage for Indiana apportioned adjusted gross income from IT-65 Schedule E line (4c), if applicable	4	%

Summary of Calculations

		Line	Amount
5.	Sales/use tax due on purchases subject to use tax from Sales/Use Tax worksheet (from page 22)	5	.00
6.	Total composite tax from completed Schedule IT-65COMP (D+E). Attach schedule	6	.00
7.	Total tax (add lines 5 and 6). Caution: If line 7 is zero, see line 12 late file penalty	7	.00
8.	Total composite tax return credits (attach schedule and WH-18 statement(s) for composite members)	8	.00
9.	Other payments/credits belonging to the partnership (attach documentation)	9	.00
10.	Subtotal (line 7 minus lines 8 and 9). If total is greater than zero, proceed to lines 11, 12, and 13	10	.00
11.	**Interest:** Enter total interest due; see instructions. (Contact the Department for current interest rate)	11	.00
12.	**Penalty:** If paying late, enter 10% of line 10. If line 7 is zero, enter $10 per day filed past the due date; see instructions	12	.00
13.	**Penalty:** If failing to include all nonresident partners on composite return, enter $500; see instructions	13	.00
14.	**Total Amount Due** (add lines 10 through 13). If less than zero, enter on line 15. Make payment in U.S. funds ▶	14	.00
15.	**Overpayment** (line 8 plus line 9, minus lines 7, 11, 12, and 13)	15	.00
16.	**Refund:** Amount from line 15. No carry forward allowed. Enter as a positive figure	16	.00
	Do not write in line 20. Reserved for Department's use only	20	

Certification of Signatures and Authorization Section

Under penalties of perjury, I declare I have examined this return, including all accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete.

I authorize the Department to discuss my return with my personal representative (see page 12) ☒ Y ☐ N

Partnership's E-mail address EE

▶

Signature of Partner Date

Print or Type Name of Partner Title

Personal Representative's Name (Print or Type)

Telephone number

Address

City

State ZIP Code + 4

Paid Preparer: Firm's Name (or yours if self-employed.)

Check One: ☒ Federal I.D. Number ☐ PTIN OR ☐ SSN

Telephone number

Address

City

State ZIP Code + 4

▶

Paid Preparer's Signature Date

▶ Please mail forms to: **Indiana Department of Revenue, 100 N. Senate Ave., Indianapolis, IN 46204-2253**

1022

122081119

651108

PARTNER# 3

☐ Final K-1 ☐ Amended K-1 OMB No. 1545-0099

Schedule K-1 (Form 1065) 2021

Department of the Treasury
Internal Revenue Service

For calendar year 2008, or tax year beginning ________ ending ________

Partner's Share of Income, Deductions, Credits, etc.

▶ See back of form and separate instructions.

Part I Information About the Partnership

A Partnership's employer identification number

B Partnership's name, address, city, state, and ZIP code
MMW ENTERPRISES, LLC

C IRS Center where partnership filed return
CINCINNATI, OH 45999-0011

D ☐ Check if this is a publicly traded partnership (PTP)

Part II Information About the Partner

E Partner's identifying number

F Partner's name, address, city, state, and ZIP code
CHRISTOPHER WOOD

G ☐ General partner or LLC member-manager ☒ Limited partner or other LLC member

H ☒ Domestic partner ☐ Foreign partner

I What type of entity is this partner? INDIVIDUAL

J Partner's share of profit, loss, and capital (see instructions):

	Beginning	Ending
Profit	33.333300 %	33.333300 %
Loss	33.333300 %	33.333300 %
Capital	33.333300 %	33.333300 %

K Partner's share of liabilities at year end:

Nonrecourse	$
Qualified nonrecourse financing	$
Recourse	$ 5,486

L Partner's capital account analysis:

Beginning capital account	$ 841,638
Capital contributed during the year	$
Current year increase (decrease)	$ 151,427
Withdrawals & distributions	$ (311,766)
Ending capital account	$ 681,299

☒ Tax basis ☐ GAAP ☐ Section 704(b) book
☐ Other (explain)

Part III Partner's Share of Current Year Income, Deductions, Credits, and Other Items

No.	Item	Amount
1	Ordinary business income (loss)	151,427
2	Net rental real estate income (loss)	
3	Other net rental income (loss)	
4	Guaranteed payments	250
5	Interest income	
6a	Ordinary dividends	
6b	Qualified dividends	
7	Royalties	
8	Net short-term capital gain (loss)	
9a	Net long-term capital gain (loss)	
9b	Collectibles (28%) gain (loss)	
9c	Unrecaptured section 1250 gain	
10	Net section 1231 gain (loss)	
11	Other income (loss)	
12	Section 179 deduction	
13	Other deductions	U 132,943
14	Self-employment earnings (loss)	A 250
15	Credits	
16	Foreign transactions	
17	Alternative minimum tax (AMT) items	
18	Tax-exempt income and nondeductible expenses	
19	Distributions	A 311,766
20	Other information	

A bit of disparity between income and distributions

Non-cash tax deduction on personal return

*See attached statement for additional information.

For IRS Use Only

For Paperwork Reduction Act Notice, see Instructions for Form 1065. Schedule K-1 (Form 1065) 2008

This list identifies the codes used on Schedule K-1 for all partners and provides summarized reporting information for partners who file Form 1040. For detailed reporting and filing information, see the separate Partner's Instructions for Schedule K-1 and the instructions for your income tax return.

1. Ordinary business income (loss). Determine whether the income (loss) is passive or nonpassive and enter on your return as follows.

	Report on
Passive loss	See the Partner's Instructions
Passive income	Schedule E, line 28, column (g)
Nonpassive loss	Schedule E, line 28, column (h)
Nonpassive income	Schedule E, line 28, column (j)
2. Net rental real estate income (loss)	See the Partner's Instructions
3. Other net rental income (loss)	
Net income	Schedule E, line 28, column (g)
Net loss	See the Partner's Instructions
4. Guaranteed payments	Schedule E, line 28, column (j)
5. Interest income	Form 1040, line 8a
6a. Ordinary dividends	Form 1040, line 9a
6b. Qualified dividends	Form 1040, line 9b
7. Royalties	Schedule E, line 4
8. Net short-term capital gain (loss)	Schedule D, line 5, column (f)
9a. Net long-term capital gain (loss)	Schedule D, line 12, column (f)
9b. Collectibles (28%) gain (loss)	28% Rate Gain Worksheet, line 4 (Schedule D instructions)
9c. Unrecaptured section 1250 gain	See the Partner's Instructions
10. Net section 1231 gain (loss)	See the Partner's Instructions

11. Other income (loss)

Code		
A	Other portfolio income (loss)	See the Partner's Instructions
B	Involuntary conversions	See the Partner's Instructions
C	Sec. 1256 contracts & straddles	Form 6781, line 1
D	Mining exploration costs recapture	See Pub. 535
E	Cancellation of debt	Form 1040, line 21 or Form 982
F	Other income (loss)	See the Partner's Instructions

12. Section 179 deduction — See the Partner's Instructions

13. Other deductions

Code		
A	Cash contributions (50%)	See the Partner's Instructions (A–F)
B	Cash contributions (30%)	
C	Noncash contributions (50%)	
D	Noncash contributions (30%)	
E	Capital gain property to a 50% organization (30%)	
F	Capital gain property (20%)	
G	Contributions (100%)	
H	Investment interest expense	Form 4952, line 1
I	Deductions—royalty income	Schedule E, line 18
J	Section 59(e)(2) expenditures	See the Partner's Instructions
K	Deductions—portfolio (2% floor)	Schedule A, line 23
L	Deductions—portfolio (other)	Schedule A, line 28
M	Amounts paid for medical insurance	Schedule A, line 1 or Form 1040, line 29
N	Educational assistance benefits	See the Partner's Instructions
O	Dependent care benefits	Form 2441, line 14
P	Preproductive period expenses	See the Partner's Instructions
Q	Commercial revitalization deduction from rental real estate activities	See Form 8582 instructions
R	Pensions and IRAs	See the Partner's Instructions
S	Reforestation expense deduction	See the Partner's Instructions
T	Domestic production activities information	See Form 8903 instructions
U	Qualified production activities income	Form 8903, line 7
V	Employer's Form W-2 wages	Form 8903, line 15
W	Other deductions	See the Partner's Instructions

14. Self-employment earnings (loss)

Note. If you have a section 179 deduction or any partner-level deductions, see the Partner's Instructions before completing Schedule SE.

A	Net earnings (loss) from self-employment	Schedule SE, Section A or B
B	Gross farming or fishing income	See the Partner's Instructions
C	Gross non-farm income	See the Partner's Instructions

15. Credits

A	Low-income housing credit (section 42(j)(5)) from pre-2008 buildings	See the Partner's Instructions
B	Low-income housing credit (other) from pre-2008 buildings	See the Partner's Instructions
C	Low-income housing credit (section 42(j)(5)) from post-2007 buildings	Form 8586, line 11
D	Low-income housing credit (other) from post-2007 buildings	Form 8586, line 11
E	Qualified rehabilitation expenditures (rental real estate)	See the Partner's Instructions (E–G)
F	Other rental real estate credits	
G	Other rental credits	
H	Undistributed capital gains credit	Form 1040, line 68; check box a
I	Alcohol and cellulosic biofuel fuels credit	Form 6478, line 9
J	Work opportunity credit	Form 5884, line 3
K	Disabled access credit	See the Partner's Instructions
L	Empowerment zone and renewal community employment credit	Form 8844, line 3
M	Credit for increasing research activities	See the Partner's Instructions
N	Credit for employer social security and Medicare taxes	Form 8846, line 5
O	Backup withholding	Form 1040, line 62
P	Other credits	See the Partner's Instructions

16. Foreign transactions

A	Name of country or U.S. possession	Form 1116, Part I (A–C)
B	Gross income from all sources	
C	Gross income sourced at partner level	
	Foreign gross income sourced at partnership level	
D	Passive category	Form 1116, Part I (D–F)
E	General category	
F	Other	
	Deductions allocated and apportioned at partner level	
G	Interest expense	Form 1116, Part I
H	Other	Form 1116, Part I
	Deductions allocated and apportioned at partnership level to foreign source income	
I	Passive category	Form 1116, Part I (I–K)
J	General category	
K	Other	
	Other information	
L	Total foreign taxes paid	Form 1116, Part II
M	Total foreign taxes accrued	Form 1116, Part II
N	Reduction in taxes available for credit	Form 1116, line 12
O	Foreign trading gross receipts	Form 8873
P	Extraterritorial income exclusion	Form 8873
Q	Other foreign transactions	See the Partner's Instructions

17. Alternative minimum tax (AMT) items

A	Post-1986 depreciation adjustment	See the Partner's Instructions and the Instructions for Form 6251 (A–F)
B	Adjusted gain or loss	
C	Depletion (other than oil & gas)	
D	Oil, gas, & geothermal—gross income	
E	Oil, gas, & geothermal—deductions	
F	Other AMT items	

18. Tax-exempt income and nondeductible expenses

A	Tax-exempt interest income	Form 1040, line 8b
B	Other tax-exempt income	See the Partner's Instructions
C	Nondeductible expenses	See the Partner's Instructions

19. Distributions

A	Cash and marketable securities	See the Partner's Instructions (A–C)
B	Other property	
C	Distribution subject to section 737	

20. Other information

A	Investment income	Form 4952, line 4a
B	Investment expenses	Form 4952, line 5
C	Fuel tax credit information	Form 4136
D	Qualified rehabilitation expenditures (other than rental real estate)	See the Partner's Instructions
E	Basis of energy property	See the Partner's Instructions
F	Recapture of low-income housing credit (section 42(j)(5))	Form 8611, line 8
G	Recapture of low-income housing credit (other)	Form 8611, line 8
H	Recapture of investment credit	See Form 4255
I	Recapture of other credits	See the Partner's Instructions
J	Look-back interest—completed long-term contracts	See Form 8697
K	Look-back interest—income forecast method	See Form 8866
L	Dispositions of property with section 179 deductions	See the Partner's Instructions (L–X)
M	Recapture of section 179 deduction	
N	Interest expense for corporate partners	
O	Section 453(l)(3) information	
P	Section 453A(c) information	
Q	Section 1260(b) information	
R	Interest allocable to production expenditures	
S	CCF nonqualified withdrawals	
T	Depletion information—oil and gas	
U	Amortization of reforestation costs	
V	Unrelated business taxable income	
W	Precontribution gain (loss)	
X	Other information	

CAMA

PARTNER# 3

IT-65 2008 Schedule IN K-1
State Form 49181 (R7/8-08)

Indiana Department of Revenue

Partner's Share of Indiana Adjusted Gross Income, Deductions, Modifications and Credits

Tax Year Beginning 01/01/2021 and Ending 12/31/2021

Name of Partnership: MMW ENTERPRISES, LLC

Federal Identification Number

Distributions - Provide IN K-1 to each partner. Attach IN K-1 to IT-65 return. For information on the acceptable electronic data file format, visit the Department's Web site at www.in.gov/dor/3772.htm Pro rata amounts for lines 1 through 15 of any nonresident partner must be multiplied by the Indiana apportionment percent, if applicable from IT-65, line 4.

Part 1 – Partner's Identification Section

(a) If Partner Is an Individual (please print clearly)

Last Name: a1 WOOD First Name: a2 CHRISTOPHER a3 Social Security Number:

(b) If Partner Is an Other Entity (please print clearly)

Name: b1 b2 Federal Identification Number:

(c) Partner's State of Residence or Commercial Domicile	c1	IN
(d) Indiana Tax Withheld for Nonresident Partner (on WH-18)	d	.00
(e) Partner's Federal Pro Rata Percentage	e	33.333300 %

Part 2 – Distributive Share Amount (use apportioned figures for nonresident partners).

1.	Ordinary business income (loss)	151,427 .00
2.	Net rental real estate income (loss)	.00
3.	Other net rental income (loss)	.00
4.	Guaranteed payments	250 .00
5.	Interest income	.00
6a.	Ordinary dividends	.00
7.	Royalties	.00
8.	Net short-term capital gain (loss)	.00
9a.	Net long-term capital gain (loss)	.00
10.	Net IRC Section 1231 gain (loss)	.00
11.	Other income (loss)	.00
12.	IRC Section 179 expense deduction	.00
13a.	Portion of expenses related to investment portfolio income, including investment interest expense and other (federal non-itemized) deductions	.00
13b.	Other information from line 20 of federal K-1 related to investment interest and expenses not listed elsewhere	.00
14.	**Total pro rata distributions** (Add lines 1 through 11; subtract lines 12, 13a, and 13b when applicable.)	151,677 .00

15. **State modifications -** Designate the distributive share amount of each modification for Indiana adjusted gross income from line 2 on front of Form IT-65 (for nonresidents, apply apportioned figures):

State income taxes deducted	2(a)	.00
Net bonus depreciation allowance	2(b)	.00
Excess IRC Section 179 deduction	2(c)	.00
Do not use; for department use only.	2(d)	
Interest on U.S. obligations	2(e)	.00
Indiana lottery prize money	2(f)	.00
Total distributive share of modifications	15a	.00

Part 3 – Pro Rata Share of Indiana Pass-through Tax Credits from Partnership

16. Enter the name of the tax credit program, its three-digit ID code, and the dollar amount of the partner's distributive share for each allowable credit

Name of Credit:

16a	Code No. 16b	16c	.00
16d	Code No. 16e	16f	.00
16g	Code No. 16h	16i	.00

1022

CAMA

651108

PARTNER# 1

☐ Final K-1 ☐ Amended K-1 OMB No. 1545-0099

Schedule K-1 (Form 1065) **2021**

Department of the Treasury
Internal Revenue Service

For calendar year 2008, or tax year beginning ______ ending ______

Partner's Share of Income, Deductions, Credits, etc.

▶ See back of form and separate instructions.

Part I Information About the Partnership

A Partnership's employer identification number

B Partnership's name, address, city, state, and ZIP code

MMW ENTERPRISES, LLC

P.O. BOX 3903
CARMEL IN 46082-3936

C IRS Center where partnership filed return

CINCINNATI, OH 45999-0011

D ☐ Check if this is a publicly traded partnership (PTP)

Part II Information About the Partner

E Partner's identifying number

F Partner's name, address, city, state, and ZIP code

WILLIAM MARTIN

P.O. BOX 701
CARMEL IN 46082

G ☐ General partner or LLC member-manager ☒ Limited partner or other LLC member

H ☒ Domestic partner ☐ Foreign partner

I What type of entity is this partner? INDIVIDUAL

J Partner's share of profit, loss, and capital (see instructions):

	Beginning	Ending
Profit	33.333400 %	33.333400 %
Loss	33.333400 %	33.333400 %
Capital	33.333400 %	33.333400 %

K Partner's share of liabilities at year end:

Nonrecourse	$
Qualified nonrecourse financing	$
Recourse	$ 5,487

L Partner's capital account analysis:

Beginning capital account	$ 841,637
Capital contributed during the year	$
Current year increase (decrease)	$ 151,428
Withdrawals & distributions	$ (311,766)
Ending capital account	$ 681,299

☒ Tax basis ☐ GAAP ☐ Section 704(b) book
☐ Other (explain)

Part III Partner's Share of Current Year Income, Deductions, Credits, and Other Items

No.	Item	Amount	No.	Item	Amount
1	Ordinary business income (loss)	151,428	15	Credits	
2	Net rental real estate income (loss)				
3	Other net rental income (loss)		16	Foreign transactions	
4	Guaranteed payments	250			
5	Interest income				
6a	Ordinary dividends				
6b	Qualified dividends				
7	Royalties				
8	Net short-term capital gain (loss)				
9a	Net long-term capital gain (loss)		17	Alternative minimum tax (AMT) items	
9b	Collectibles (28%) gain (loss)				
9c	Unrecaptured section 1250 gain				
10	Net section 1231 gain (loss)		18	Tax-exempt income and nondeductible expenses	
11	Other income (loss)				
			19	Distributions	
			A		311,766
12	Section 179 deduction				
13	Other deductions				
U		132,943	20	Other information	
14	Self-employment earnings (loss)				
A		250			

*See attached statement for additional information.

For IRS Use Only

This list identifies the codes used on Schedule K-1 for all partners and provides summarized reporting information for partners who file Form 1040. For detailed reporting and filing information, see the separate Partner's Instructions for Schedule K-1 and the instructions for your income tax return.

1. Ordinary business income (loss). Determine whether the income (loss) is passive or nonpassive and enter on your return as follows.

	Report on
Passive loss	See the Partner's Instructions
Passive income	Schedule E, line 28, column (g)
Nonpassive loss	Schedule E, line 28, column (h)
Nonpassive income	Schedule E, line 28, column (j)
2. Net rental real estate income (loss)	See the Partner's Instructions
3. Other net rental income (loss)	
Net income	Schedule E, line 28, column (g)
Net loss	See the Partner's Instructions
4. Guaranteed payments	Schedule E, line 28, column (j)
5. Interest income	Form 1040, line 8a
6a. Ordinary dividends	Form 1040, line 9a
6b. Qualified dividends	Form 1040, line 9b
7. Royalties	Schedule E, line 4
8. Net short-term capital gain (loss)	Schedule D, line 5, column (f)
9a. Net long-term capital gain (loss)	Schedule D, line 12, column (f)
9b. Collectibles (28%) gain (loss)	28% Rate Gain Worksheet, line 4 (Schedule D instructions)
9c. Unrecaptured section 1250 gain	See the Partner's Instructions
10. Net section 1231 gain (loss)	See the Partner's Instructions

11. Other income (loss)

Code		Report on
A	Other portfolio income (loss)	See the Partner's Instructions
B	Involuntary conversions	See the Partner's Instructions
C	Sec. 1256 contracts & straddles	Form 6781, line 1
D	Mining exploration costs recapture	See Pub. 535
E	Cancellation of debt	Form 1040, line 21 or Form 982
F	Other income (loss)	See the Partner's Instructions

12. Section 179 deduction — See the Partner's Instructions

13. Other deductions

Code		Report on
A	Cash contributions (50%)	See the Partner's Instructions (A–F)
B	Cash contributions (30%)	
C	Noncash contributions (50%)	
D	Noncash contributions (30%)	
E	Capital gain property to a 50% organization (30%)	
F	Capital gain property (20%)	
G	Contributions (100%)	
H	Investment interest expense	Form 4952, line 1
I	Deductions—royalty income	Schedule E, line 18
J	Section 59(e)(2) expenditures	See the Partner's Instructions
K	Deductions—portfolio (2% floor)	Schedule A, line 23
L	Deductions—portfolio (other)	Schedule A, line 28
M	Amounts paid for medical insurance	Schedule A, line 1 or Form 1040, line 29
N	Educational assistance benefits	See the Partner's Instructions
O	Dependent care benefits	Form 2441, line 14
P	Preproductive period expenses	See the Partner's Instructions
Q	Commercial revitalization deduction from rental real estate activities	See Form 8582 instructions
R	Pensions and IRAs	See the Partner's Instructions
S	Reforestation expense deduction	See the Partner's Instructions
T	Domestic production activities information	See Form 8903 instructions
U	Qualified production activities income	Form 8903, line 7
V	Employer's Form W-2 wages	Form 8903, line 15
W	Other deductions	See the Partner's Instructions

14. Self-employment earnings (loss)

Note. If you have a section 179 deduction or any partner-level deductions, see the Partner's Instructions before completing Schedule SE.

Code		Report on
A	Net earnings (loss) from self-employment	Schedule SE, Section A or B
B	Gross farming or fishing income	See the Partner's Instructions
C	Gross non-farm income	See the Partner's Instructions

15. Credits

Code		Report on
A	Low-income housing credit (section 42(j)(5)) from pre-2008 buildings	See the Partner's Instructions
B	Low-income housing credit (other) from pre-2008 buildings	See the Partner's Instructions
C	Low-income housing credit (section 42(j)(5)) from post-2007 buildings	Form 8586, line 11
D	Low-income housing credit (other) from post-2007 buildings	Form 8586, line 11
E	Qualified rehabilitation expenditures (rental real estate)	See the Partner's Instructions (E–G)
F	Other rental real estate credits	
G	Other rental credits	
H	Undistributed capital gains credit	Form 1040, line 68; check box a
I	Alcohol and cellulosic biofuel fuels credit	Form 6478, line 9
J	Work opportunity credit	Form 5884, line 3
K	Disabled access credit	See the Partner's Instructions
L	Empowerment zone and renewal community employment credit	Form 8844, line 3
M	Credit for increasing research activities	See the Partner's Instructions
N	Credit for employer social security and Medicare taxes	Form 8846, line 5
O	Backup withholding	Form 1040, line 62
P	Other credits	See the Partner's Instructions

16. Foreign transactions

Code		Report on
A	Name of country or U.S. possession	Form 1116, Part I (A–C)
B	Gross income from all sources	
C	Gross income sourced at partner level	
	Foreign gross income sourced at partnership level	
D	Passive category	Form 1116, Part I (D–F)
E	General category	
F	Other	
	Deductions allocated and apportioned at partner level	
G	Interest expense	Form 1116, Part I
H	Other	Form 1116, Part I
	Deductions allocated and apportioned at partnership level to foreign source income	
I	Passive category	Form 1116, Part I (I–K)
J	General category	
K	Other	
	Other information	
L	Total foreign taxes paid	Form 1116, Part II
M	Total foreign taxes accrued	Form 1116, Part II
N	Reduction in taxes available for credit	Form 1116, line 12
O	Foreign trading gross receipts	Form 8873
P	Extraterritorial income exclusion	Form 8873
Q	Other foreign transactions	See the Partner's Instructions

17. Alternative minimum tax (AMT) items

Code		Report on
A	Post-1986 depreciation adjustment	See the Partner's Instructions and the Instructions for Form 6251 (A–F)
B	Adjusted gain or loss	
C	Depletion (other than oil & gas)	
D	Oil, gas, & geothermal—gross income	
E	Oil, gas, & geothermal—deductions	
F	Other AMT items	

18. Tax-exempt income and nondeductible expenses

Code		Report on
A	Tax-exempt interest income	Form 1040, line 8b
B	Other tax-exempt income	See the Partner's Instructions
C	Nondeductible expenses	See the Partner's Instructions

19. Distributions

Code		Report on
A	Cash and marketable securities	See the Partner's Instructions (A–C)
B	Other property	
C	Distribution subject to section 737	

20. Other information

Code		Report on
A	Investment income	Form 4952, line 4a
B	Investment expenses	Form 4952, line 5
C	Fuel tax credit information	Form 4136
D	Qualified rehabilitation expenditures (other than rental real estate)	See the Partner's Instructions
E	Basis of energy property	See the Partner's Instructions
F	Recapture of low-income housing credit (section 42(j)(5))	Form 8611, line 8
G	Recapture of low-income housing credit (other)	Form 8611, line 8
H	Recapture of investment credit	See Form 4255
I	Recapture of other credits	See the Partner's Instructions
J	Look-back interest—completed long-term contracts	See Form 8697
K	Look-back interest—income forecast method	See Form 8866
L	Dispositions of property with section 179 deductions	See the Partner's Instructions (L–X)
M	Recapture of section 179 deduction	
N	Interest expense for corporate partners	
O	Section 453(l)(3) information	
P	Section 453A(c) information	
Q	Section 1260(b) information	
R	Interest allocable to production expenditures	
S	CCF nonqualified withdrawals	
T	Depletion information—oil and gas	
U	Amortization of reforestation costs	
V	Unrelated business taxable income	
W	Precontribution gain (loss)	
X	Other information	

PARTNER# 1

IT-65 2008 Schedule IN K-1
State Form 49181 (R7/8-08)

Indiana Department of Revenue

Partner's Share of Indiana Adjusted Gross Income, Deductions, Modifications and Credits

Tax Year Beginning 01/01/2021 **and Ending** 12/31/2021

Name of Partnership: MMW ENTERPRISES, LLC

Federal Identification Number:

Distributions - Provide IN K-1 to each partner. Attach IN K-1 to IT-65 return. For information on the acceptable electronic data file format, visit the Department's Web site at www.in.gov/dor/3772.htm Pro rata amounts for lines 1 through 15 of any nonresident partner must be multiplied by the Indiana apportionment percent, if applicable from IT-65, line 4.

Part 1 – Partner's Identification Section

			Line	Amount
(a)	If Partner Is an Individual (please print clearly) — Last Name: a1 MARTIN	First Name: a2 WILLIAM	a3	Social Security Number: 123-45-6789
(b)	If Partner Is an Other Entity (please print clearly) — Name: b1		b2	Federal Identification Number:
(c)	Partner's State of Residence or Commercial Domicile		c1	IN
(d)	Indiana Tax Withheld for Nonresident Partner (on WH-18)		d	.00
(e)	Partner's Federal Pro Rata Percentage		e	33.333400 %

Part 2 – Distributive Share Amount (use apportioned figures for nonresident partners).

Line	Description	Amount
1.	Ordinary business income (loss)	151,428 .00
2.	Net rental real estate income (loss)	.00
3.	Other net rental income (loss)	.00
4.	Guaranteed payments	250 .00
5.	Interest income	.00
6a.	Ordinary dividends	.00
7.	Royalties	.00
8.	Net short-term capital gain (loss)	.00
9a.	Net long-term capital gain (loss)	.00
10.	Net IRC Section 1231 gain (loss)	.00
11.	Other income (loss)	.00
12.	IRC Section 179 expense deduction	.00
13a.	Portion of expenses related to investment portfolio income, including investment interest expense and other (federal non-itemized) deductions	.00
13b.	Other information from line 20 of federal K-1 related to investment interest and expenses not listed elsewhere	.00
14.	**Total pro rata distributions** (Add lines 1 through 11; subtract lines 12, 13a, and 13b when applicable.)	151,678 .00

15. **State modifications** - Designate the distributive share amount of each modification for Indiana adjusted gross income from line 2 on front of Form IT-65 (for nonresidents, apply apportioned figures):

Modification	Line	Amount
State income taxes deducted	2(a)	.00
Net bonus depreciation allowance	2(b)	.00
Excess IRC Section 179 deduction	2(c)	.00
Do not use; for department use only.	2(d)	
Interest on U.S. obligations	2(e)	.00
Indiana lottery prize money	2(f)	.00
Total distributive share of modifications	15a	.00

Part 3 – Pro Rata Share of Indiana Pass-through Tax Credits from Partnership

16. Enter the name of the tax credit program, its three-digit ID code, and the dollar amount of the partner's distributive share for each allowable credit

Name of Credit	Code No.		Amount
16a	Code No. 16b	16c	.00
16d	Code No. 16e	16f	.00
16g	Code No. 16h	16i	.00

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PARTNER# 2

Schedule K-1 (Form 1065)

Department of the Treasury
Internal Revenue Service

2021

For calendar year 2008, or tax year beginning ______ ending ______

☐ Final K-1 ☐ Amended K-1

OMB No. 1545-0099

Partner's Share of Income, Deductions, Credits, etc.

▶ See back of form and separate instructions.

Part I Information About the Partnership

A Partnership's employer identification number
98-7654321

B Partnership's name, address, city, state, and ZIP code
MMW ENTERPRISES, LLC

P.O. BOX 3903
CARMEL IN 46082-3936

C IRS Center where partnership filed return
CINCINNATI, OH 45999-0011

D ☐ Check if this is a publicly traded partnership (PTP)

Part II Information About the Partner

E Partner's identifying number
234-56-7890

F Partner's name, address, city, state, and ZIP code

JOHN MEDESKI

1665 MAYFLOWER LANE
CARMEL IN 46032

G ☐ General partner or LLC member-manager ☒ Limited partner or other LLC member

H ☒ Domestic partner ☐ Foreign partner

I What type of entity is this partner? INDIVIDUAL

J Partner's share of profit, loss, and capital (see instructions):

	Beginning	Ending
Profit	33.333300 %	33.333300 %
Loss	33.333300 %	33.333300 %
Capital	33.333300 %	33.333300 %

K Partner's share of liabilities at year end:

Nonrecourse	$
Qualified nonrecourse financing	$
Recourse	$ 5,486

L Partner's capital account analysis:

Beginning capital account	$ 841,638
Capital contributed during the year	$
Current year increase (decrease)	$ 151,427
Withdrawals & distributions	$ (311,766)
Ending capital account	$ 681,299

☒ Tax basis ☐ GAAP ☐ Section 704(b) book
☐ Other (explain)

Part III Partner's Share of Current Year Income, Deductions, Credits, and Other Items

Line	Description	Amount
1	Ordinary business income (loss)	151,427
2	Net rental real estate income (loss)	
3	Other net rental income (loss)	
4	Guaranteed payments	250
5	Interest income	
6a	Ordinary dividends	
6b	Qualified dividends	
7	Royalties	
8	Net short-term capital gain (loss)	
9a	Net long-term capital gain (loss)	
9b	Collectibles (28%) gain (loss)	
9c	Unrecaptured section 1250 gain	
10	Net section 1231 gain (loss)	
11	Other income (loss)	
12	Section 179 deduction	
13	Other deductions	
U		132,943
14	Self-employment earnings (loss)	
A		250
15	Credits	
16	Foreign transactions	
17	Alternative minimum tax (AMT) items	
18	Tax-exempt income and nondeductible expenses	
19	Distributions	
A		311,766
20	Other information	

*See attached statement for additional information.

For IRS Use Only

For Paperwork Reduction Act Notice, see Instructions for Form 1065. Schedule K-1 (Form 1065) 2008

This list identifies the codes used on Schedule K-1 for all partners and provides summarized reporting information for partners who file Form 1040. For detailed reporting and filing information, see the separate Partner's Instructions for Schedule K-1 and the instructions for your income tax return.

1. Ordinary business income (loss). Determine whether the income (loss) is passive or nonpassive and enter on your return as follows.

	Report on
Passive loss	See the Partner's Instructions
Passive income	Schedule E, line 28, column (g)
Nonpassive loss	Schedule E, line 28, column (h)
Nonpassive income	Schedule E, line 28, column (j)
2. Net rental real estate income (loss)	See the Partner's Instructions
3. Other net rental income (loss)	
Net income	Schedule E, line 28, column (g)
Net loss	See the Partner's Instructions
4. Guaranteed payments	Schedule E, line 28, column (j)
5. Interest income	Form 1040, line 8a
6a. Ordinary dividends	Form 1040, line 9a
6b. Qualified dividends	Form 1040, line 9b
7. Royalties	Schedule E, line 4
8. Net short-term capital gain (loss)	Schedule D, line 5, column (f)
9a. Net long-term capital gain (loss)	Schedule D, line 12, column (f)
9b. Collectibles (28%) gain (loss)	28% Rate Gain Worksheet, line 4 (Schedule D instructions)
9c. Unrecaptured section 1250 gain	See the Partner's Instructions
10. Net section 1231 gain (loss)	See the Partner's Instructions
11. Other income (loss)	
Code	
A Other portfolio income (loss)	See the Partner's Instructions
B Involuntary conversions	See the Partner's Instructions
C Sec. 1256 contracts & straddles	Form 6781, line 1
D Mining exploration costs recapture	See Pub. 535
E Cancellation of debt	Form 1040, line 21 or Form 982
F Other income (loss)	See the Partner's Instructions
12. Section 179 deduction	See the Partner's Instructions
13. Other deductions	
A Cash contributions (50%)	See the Partner's Instructions (A–F)
B Cash contributions (30%)	
C Noncash contributions (50%)	
D Noncash contributions (30%)	
E Capital gain property to a 50% organization (30%)	
F Capital gain property (20%)	
G Contributions (100%)	
H Investment interest expense	Form 4952, line 1
I Deductions—royalty income	Schedule E, line 18
J Section 59(e)(2) expenditures	See the Partner's Instructions
K Deductions—portfolio (2% floor)	Schedule A, line 23
L Deductions—portfolio (other)	Schedule A, line 28
M Amounts paid for medical insurance	Schedule A, line 1 or Form 1040, line 29
N Educational assistance benefits	See the Partner's Instructions
O Dependent care benefits	Form 2441, line 14
P Preproductive period expenses	See the Partner's Instructions
Q Commercial revitalization deduction from rental real estate activities	See Form 8582 instructions
R Pensions and IRAs	See the Partner's Instructions
S Reforestation expense deduction	See the Partner's Instructions
T Domestic production activities information	See Form 8903 instructions
U Qualified production activities income	Form 8903, line 7
V Employer's Form W-2 wages	Form 8903, line 15
W Other deductions	See the Partner's Instructions
14. Self-employment earnings (loss)	

Note. If you have a section 179 deduction or any partner-level deductions, see the Partner's Instructions before completing Schedule SE.

A Net earnings (loss) from self-employment	Schedule SE, Section A or B
B Gross farming or fishing income	See the Partner's Instructions
C Gross non-farm income	See the Partner's Instructions
15. Credits	
A Low-income housing credit (section 42(j)(5)) from pre-2008 buildings	See the Partner's Instructions
B Low-income housing credit (other) from pre-2008 buildings	See the Partner's Instructions
C Low-income housing credit (section 42(j)(5)) from post-2007 buildings	Form 8586, line 11
D Low-income housing credit (other) from post-2007 buildings	Form 8586, line 11
E Qualified rehabilitation expenditures (rental real estate)	See the Partner's Instructions (E–G)
F Other rental real estate credits	
G Other rental credits	
H Undistributed capital gains credit	Form 1040, line 68; check box a
I Alcohol and cellulosic biofuel fuels credit	Form 6478, line 9
J Work opportunity credit	Form 5884, line 3
K Disabled access credit	See the Partner's Instructions
L Empowerment zone and renewal community employment credit	Form 8844, line 3
M Credit for increasing research activities	See the Partner's Instructions
N Credit for employer social security and Medicare taxes	Form 8846, line 5
O Backup withholding	Form 1040, line 62
P Other credits	See the Partner's Instructions
16. Foreign transactions	
A Name of country or U.S. possession	Form 1116, Part I (A–C)
B Gross income from all sources	
C Gross income sourced at partner level	
Foreign gross income sourced at partnership level	
D Passive category	Form 1116, Part I (D–F)
E General category	
F Other	
Deductions allocated and apportioned at partner level	
G Interest expense	Form 1116, Part I
H Other	Form 1116, Part I
Deductions allocated and apportioned at partnership level to foreign source income	
I Passive category	Form 1116, Part I (I–K)
J General category	
K Other	
Other information	
L Total foreign taxes paid	Form 1116, Part II
M Total foreign taxes accrued	Form 1116, Part II
N Reduction in taxes available for credit	Form 1116, line 12
O Foreign trading gross receipts	Form 8873
P Extraterritorial income exclusion	Form 8873
Q Other foreign transactions	See the Partner's Instructions
17. Alternative minimum tax (AMT) items	
A Post-1986 depreciation adjustment	See the Partner's Instructions and the Instructions for Form 6251 (A–F)
B Adjusted gain or loss	
C Depletion (other than oil & gas)	
D Oil, gas, & geothermal—gross income	
E Oil, gas, & geothermal—deductions	
F Other AMT items	
18. Tax-exempt income and nondeductible expenses	
A Tax-exempt interest income	Form 1040, line 8b
B Other tax-exempt income	See the Partner's Instructions
C Nondeductible expenses	See the Partner's Instructions
19. Distributions	
A Cash and marketable securities	See the Partner's Instructions (A–C)
B Other property	
C Distribution subject to section 737	
20. Other information	
A Investment income	Form 4952, line 4a
B Investment expenses	Form 4952, line 5
C Fuel tax credit information	Form 4136
D Qualified rehabilitation expenditures (other than rental real estate)	See the Partner's Instructions
E Basis of energy property	See the Partner's Instructions
F Recapture of low-income housing credit (section 42(j)(5))	Form 8611, line 8
G Recapture of low-income housing credit (other)	Form 8611, line 8
H Recapture of investment credit	See Form 4255
I Recapture of other credits	See the Partner's Instructions
J Look-back interest—completed long-term contracts	See Form 8697
K Look-back interest—income forecast method	See Form 8866
L Dispositions of property with section 179 deductions	See the Partner's Instructions (L–X)
M Recapture of section 179 deduction	
N Interest expense for corporate partners	
O Section 453(l)(3) information	
P Section 453A(c) information	
Q Section 1260(b) information	
R Interest allocable to production expenditures	
S CCF nonqualified withdrawals	
T Depletion information—oil and gas	
U Amortization of reforestation costs	
V Unrelated business taxable income	
W Precontribution gain (loss)	
X Other information	

PARTNER# 2

IT-65 2008 Schedule IN K-1
State Form 49181 (R7/8-08)

Indiana Department of Revenue

Partner's Share of Indiana Adjusted Gross Income, Deductions, Modifications and Credits

Tax Year Beginning 1/01/08 and Ending 12/31/08

Name of Partnership: MMW ENTERPRISES, LLC

Federal Identification Number: 98-7654321

Distributions - Provide IN K-1 to each partner. Attach IN K-1 to IT-65 return. For information on the acceptable electronic data file format, visit the Department's Web site at www.in.gov/dor/3772.htm Pro rata amounts for lines 1 through 15 of any nonresident partner must be multiplied by the Indiana apportionment percent, if applicable from IT-65, line 4.

Part 1 – Partner's Identification Section

(a)	If Partner Is an Individual (please print clearly)		Social Security Number:
	Last Name: a1 MEDESKI — First Name: a2 JOHN	a3	234-56-7890
(b)	If Partner Is an Other Entity (please print clearly)		Federal Identification Number:
	Name: b1	b2	
(c)	Partner's State of Residence or Commercial Domicile	c1	IN
(d)	Indiana Tax Withheld for Nonresident Partner (on WH-18)	d	.00
(e)	Partner's Federal Pro Rata Percentage	e	33.333300 %

Part 2 – Distributive Share Amount (use apportioned figures for nonresident partners).

1.	Ordinary business income (loss)	151,427 .00
2.	Net rental real estate income (loss)	.00
3.	Other net rental income (loss)	.00
4.	Guaranteed payments	250 .00
5.	Interest income	.00
6a.	Ordinary dividends	.00
7.	Royalties	.00
8.	Net short-term capital gain (loss)	.00
9a.	Net long-term capital gain (loss)	.00
10.	Net IRC Section 1231 gain (loss)	.00
11.	Other income (loss)	.00
12.	IRC Section 179 expense deduction	.00
13a.	Portion of expenses related to investment portfolio income, including investment interest expense and other (federal non-itemized) deductions	.00
13b.	Other information from line 20 of federal K-1 related to investment interest and expenses not listed elsewhere	.00
14.	**Total pro rata distributions** (Add lines 1 through 11; subtract lines 12, 13a, and 13b when applicable.)	151,677 .00

15. **State modifications** - Designate the distributive share amount of each modification for Indiana adjusted gross income from line 2 on front of Form IT-65 (for nonresidents, apply apportioned figures):

State income taxes deducted	2(a)	.00
Net bonus depreciation allowance	2(b)	.00
Excess IRC Section 179 deduction	2(c)	.00
Do not use; for department use only.	2(d)	
Interest on U.S. obligations	2(e)	.00
Indiana lottery prize money	2(f)	.00
Total distributive share of modifications	15a	.00

Part 3 – Pro Rata Share of Indiana Pass-through Tax Credits from Partnership

16. Enter the name of the tax credit program, its three-digit ID code, and the dollar amount of the partner's distributive share for each allowable credit

Name of Credit:

16a		Code No. 16b	16c	.00
16d		Code No. 16e	16f	.00
16g		Code No. 16h	16i	.00

1022

136081119

Form **1040** Department of the Treasury—Internal Revenue Service
U.S. Individual Income Tax Return 2021 (99) IRS Use Only–Do not write or staple in this space.

For the year Jan. 1-Dec. 31, 2008, or other tax year beginning , 2008, ending , 20 | OMB No. 1545-0074

Label (See instructions on page 14.) **Use the IRS label.** Otherwise, please print or type.

Your first name and initial	Last name	Your social security number
MICHAEL	BRADY	
If a joint return, spouse's first name and initial	Last name	Spouse's social security number
Home address (number and street). If you have a P.O. box, see page 14.	Apt. no.	▲ You must enter your SSN(s) above. ▲
896 MINOR BLVD		
City, town or post office, state, and ZIP code. If you have a foreign address, see page 14.		Checking a box below will not change your tax or refund.
INDIANAPOLIS IN 46240		

Presidential Election Campaign ▶ Check here if you, or your spouse if filing jointly, want $3 to go to this fund (see page 14) ▶ ☐ You ☐ Spouse

Filing Status

Check only one box.

1 ☐ Single
2 ☐ Married filing jointly (even if only one had income)
3 ☐ Married filing separately. Enter spouse's SSN above and full name here. ▶
4 ☒ Head of household (with qualifying person). (See page 15.) If the qualifying person is a child but not your dependent, enter this child's name here. ▶ MARSHA BRADY
5 ☐ Qualifying widow(er) with dependent child (see page 16)

Exemptions

6a ☒ **Yourself.** If someone can claim you as a dependent, **do not** check box 6a
b ☐ **Spouse**

Boxes checked on 6a and 6b: 1
No. of children on 6c who:
- lived with you: 1
- did not live with you due to divorce or separation (see page 18):

Dependents on 6c not entered above:

c Dependents:

(1) First name	Last name	(2) Dependent's social security number	(3) Dependent's relationship to you	(4) ✓ if qual. child for child tax cr. (see page 17)
GREG	BRADY	654-98-3216	SON	

If more than four dependents, see page 17.

d Total number of exemptions claimed — Add numbers on lines above ▶ 2

Income

Attach Form(s) W-2 here. Also attach Forms W-2G and 1099-R if tax was withheld.

If you did not get a W-2, see page 21.

Enclose, but do not attach, any payment. Also, please use Form 1040-V.

Line	Description		Amount	Line	Amount
7	Wages, salaries, tips, etc. Attach Form(s) W-2			7	405,481
8a	**Taxable** interest. Attach Schedule B if required			8a	9,978
b	**Tax-exempt** interest. **Do not** include on line 8a	8b	7,296		
9a	Ordinary dividends. Attach Schedule B if required			9a	3,778
b	Qualified dividends (see page 21)	9b	3,438		
10	Taxable refunds, credits, or offsets of state and local income taxes (see page 22)			10	15,688
11	Alimony received			11	
12	Business income or (loss). Attach Schedule C or C-EZ			12	603,921
13	Capital gain or (loss). Attach Schedule D if required. If not required, check here ▶ ☐			13	-3,000
14	Other gains or (losses). Attach Form 4797			14	
15a	IRA distributions	15a		15b	4,772
	b Taxable amount (see page 23)				
16a	Pensions and annuities	16a		16b	
	b Taxable amount (see page 24)				
17	Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E			17	157,521
18	Farm income or (loss). Attach Schedule F			18	
19	Unemployment compensation			19	
20a	Social security benefits	20a		20b	
	b Taxable amount (see page 26)				
21	Other income. List type and amount (see page 28) SEE STATEMENT 1			21	4,400
22	Add the amounts in the far right column for lines 7 through 21. This is your **total income** ▶			22	1,202,539

Look at supporting docs

Adjusted Gross Income

Line	Description	Line	Amount	Line	Amount
23	Educator expenses (see page 28)	23			
24	Certain business expenses of reservists, performing artists, and fee-basis government officials. Attach Form 2106 or 2106-EZ	24			
25	Health savings account deduction. Attach Form 8889	25	2,900		
26	Moving expenses. Attach Form 3903	26			
27	One-half of self-employment tax. Attach Schedule SE	27	8,146		
28	Self-employed SEP, SIMPLE, and qualified plans	28			
29	Self-employed health insurance deduction (see page 29)	29	3,120		
30	Penalty on early withdrawal of savings	30			
31a	Alimony paid b Recipient's SSN ▶	31a			
32	IRA deduction (see page 30)	32			
33	Student loan interest deduction (see page 33)	33			
34	Tuition and fees deduction. Attach Form 8917	34			
35	Domestic production activities deduction. Attach Form 8903	35	35,669		
36	Add lines 23 through 31a and 32 through 35			36	49,835
37	Subtract line 36 from line 22. This is your **adjusted gross income** ▶			37	1,152,704

How might the income situation have changed in the past 4 years? Get current information!!!

For Disclosure, Privacy Act, and Paperwork Reduction Act Notice, see page 88. Form **1040** (2008)
DAA

Form 1040 (2008) MICHAEL BRADY 7 Page 2

Tax and Credits

Line	Description			Amount
38	Amount from line 37 (adjusted gross income)		38	1,152,704
39a	Check if: ☐ You were born before January 2, 1944, ☐ Blind. ☐ Spouse was born before January 2, 1944, ☐ Blind. Total boxes checked ▶ 39a ☐			
b	If your spouse itemizes on a separate return or you were a dual-status alien, see page 34 and check here ▶ 39b ☐			
c	Check if standard deduction includes real estate taxes or disaster loss (see page 34) ▶ 39c ☐			
40	**Itemized deductions** (from Schedule A) **or** your **standard deduction** (see left margin)		40	65,184
41	Subtract line 40 from line 38		41	1,087,520
42	If line 38 is over $119,975, or you provided housing to a Midwestern displaced individual, see page 36. Otherwise, multiply $3,500 by the total number of exemptions claimed on line 6d		42	4,666
43	**Taxable income.** Subtract line 42 from line 41. If line 42 is more than line 41, enter -0-		43	1,082,854
44	Tax (see page 36). Check if any tax is from: a ☐ Form(s) 8814 b ☐ Form 4972		44	353,721
45	**Alternative minimum tax** (see page 39). Attach Form 6251		45	
46	Add lines 44 and 45 ▶		46	353,721
47	Foreign tax credit. Attach Form 1116 if required	47: 92		
48	Credit for child and dependent care expenses. Attach Form 2441	48		
49	Credit for the elderly or the disabled. Attach Schedule R	49		
50	Education credits. Attach Form 8863	50		
51	Retirement savings contributions credit. Attach Form 8880	51		
52	Child tax credit (see page 42). Attach Form 8901 if required	52		
53	Credits from Form: a ☐ 8396 b ☐ 8839 c ☐ 5695	53		
54	Other credits from Form: a ☒ 3800 b ☐ 8801 c ☐	54: 17		
55	Add lines 47 through 54. These are your **total credits**		55	109
56	Subtract line 55 from line 46. If line 55 is more than line 46, enter -0- ▶		56	353,612

Standard Deduction for—
- People who checked any box on line 39a, 39b, or 39c or who can be claimed as a dependent, see page 34.
- All others:

Single or Married filing separately, $5,450

Married filing jointly or Qualifying widow(er), $10,900

Head of household, $8,000

Other Taxes

Line	Description			Amount
57	Self-employment tax. Attach Schedule SE		57	16,292
58	Unreported social security and Medicare tax from Form: a ☐ 4137 b ☐ 8919		58	
59	Additional tax on IRAs, other qualified retirement plans, etc. Attach Form 5329 if required		59	
60	Additional taxes: a ☐ AEIC payments b ☐ Household employment taxes. Attach Schedule H		60	
61	Add lines 56 through 60. This is your **total tax** ▶		61	369,904

Payments

If you have a qualifying child, attach Schedule EIC

Line	Description			Amount
62	Federal income tax withheld from Forms W-2 and 1099	62: 303,209		
63	2008 estimated tax payments and amount applied from 2007 return	63		
64a	**Earned income credit (EIC)**	64a		
b	Nontaxable combat pay election 64b			
65	Excess social security and tier 1 RRTA tax withheld (see page 61)	65		
66	Additional child tax credit. Attach Form 8812	66		
67	Amount paid with request for extension to file (see page 61)	67: 67,000		
68	Credits from Form: a ☐ 2439 b ☐ 4136 c ☐ 8801 d ☐ 8885	68		
69	First-time homebuyer credit. Attach Form 5405	69		
70	Recovery rebate credit (see worksheet on pages 62 and 63)	70		
71	Add lines 62 through 70. These are your **total payments** ▶		71	370,209

Refund

Direct deposit? See page 63 and fill in 73b, 73c, and 73d, or Form 8888.

Line	Description		Amount
72	If line 71 is more than line 61, subtract line 61 from line 71. This is the amount you **overpaid**	72	305
73a	Amount of line 72 you want **refunded to you.** If Form 8888 is attached, check here ▶ ☐	73a	305
▶ b	Routing number XXXXXXXXX ▶ c Type: ☐ Checking ☐ Savings		
▶ d	Account number XXXXXXXXXXXXXXXXX		
74	Amount of line 72 you want **applied to your 2009 estimated tax** ▶ 74		

Amount You Owe

Line	Description		Amount
75	**Amount you owe.** Subtract line 71 from line 61. For details on how to pay, see page 65 ▶	75	
76	Estimated tax penalty (see page 65) 76		

Third Party Designee

Do you want to allow another person to discuss this return with the IRS (see page 66)? ☒ **Yes.** Complete the following. ☐ **No**

Designee's name ▶ PREPARER Phone no. ▶ Personal identification number (PIN) ▶

Sign Here

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Joint return? See page 15. Keep a copy for your records.

Your signature | Date | Your occupation: ARCHITECT | Daytime phone number

Spouse's signature. If a joint return, **both** must sign. | Date | Spouse's occupation

Paid Preparer's Use Only

Preparer's signature ▶ | Date | Check if self-employed ☐ | Preparer's SSN or PTIN

Firm's name (or yours if self-employed), address, and ZIP code ▶ | EIN | Phone no.

Form **1040** (2008)

DAA

SCHEDULES A&B (Form 1040)
Department of the Treasury Internal Revenue Service (99)

Schedule A—Itemized Deductions

(Schedule B is on back)

▶ Attach to Form 1040. ▶ See Instructions for Schedules A&B (Form 1040).

OMB No. 1545-0074
2021
Attachment Sequence No. **07**

Name(s) shown on Form 1040: MICHAEL BRADY

Your social security number

Section	Line	Description		Amount		Total
Medical and Dental Expenses		Caution. Do not include expenses reimbursed or paid by others.				
	1	Medical and dental expenses (see page A-1)	1			
	2	Enter amount from Form 1040, line 38 [2]				
	3	Multiply line 2 by 7.5% (.075)	3			
	4	Subtract line 3 from line 1. If line 3 is more than line 1, enter -0-			4	
Taxes You Paid (See page A-2.)	5	State and local (check only one box): a [X] Income taxes, or b [ ] General sales taxes	5	54,720		
	6	Real estate taxes (see page A-5)	6	2,044		
	7	Personal property taxes	7			
	8	Other taxes. List type and amount ▶ AUTO EXCISE TAXES	8	426		
	9	Add lines 5 through 8			9	57,190
Interest You Paid (See page A-5.)	10	Home mortgage interest and points reported to you on Form 1098	10	9,847		
	11	Home mortgage interest not reported to you on Form 1098. If paid to the person from whom you bought the home, see page A-6 and show that person's name, identifying no., and address ▶	11			
Note. Personal interest is not deductible.	12	Points not reported to you on Form 1098. See page A-6 for special rules	12			
	13	Qualified mortgage insurance premiums (see page A-6)	13			
	14	Investment interest. Attach Form 4952 if required. (See page A-6.)	14			
	15	Add lines 10 through 14			15	9,847
Gifts to Charity If you made a gift and got a benefit for it, see page A-7.	16	Gifts by cash or check. If you made any gift of $250 or more, see page A-7	16	5,208		
	17	Other than by cash or check. If any gift of $250 or more, see page A-8. You **must** attach Form 8283 if over $500	17	2,867		
	18	Carryover from prior year	18			
	19	Add lines 16 through 18			19	8,075
Casualty and Theft Losses	20	Casualty or theft loss(es). Attach Form 4684. (See page A-8.)			20	
Job Expenses and Certain Miscellaneous Deductions (See page A-9.)	21	Unreimbursed employee expenses—job travel, union dues, job education, etc. Attach Form 2106 or 2106-EZ if required. (See page A-9.) ▶	21			
	22	Tax preparation fees	22	582		
	23	Other expenses—investment, safe deposit box, etc. List type and amount ▶ SEE STATEMENT 2	23	3,244		
	24	Add lines 21 through 23	24	3,826		
	25	Enter amount from Form 1040, line 38 [25] 1,152,704				
	26	Multiply line 25 by 2% (.02)	26	23,054		
	27	Subtract line 26 from line 24. If line 26 is more than line 24, enter -0-			27	0
Other Miscellaneous Deductions	28	Other—from list on page A-10. List type and amount ▶			28	
Total Itemized Deductions	29	Is Form 1040, line 38, over $159,950 (over $79,975 if married filing separately)? * [ ] **No.** Your deduction is not limited. Add the amounts in the far right column for lines 4 through 28. Also, enter this amount on Form 1040, line 40. [X] **Yes.** Your deduction may be limited. See page A-10 for the amount to enter.			29	65,184
	30	If you elect to itemize deductions even though they are less than your standard deduction, check here * LIMITED BY AGI ▶ [ ]				

For Paperwork Reduction Act Notice, see Form 1040 instructions.

Schedule A (Form 1040) 2008

DAA

Name(s) shown on Form 1040. Do not enter name and social security number if shown on other side.
MICHAEL BRADY

Your social security number

Schedule B—Interest and Ordinary Dividends

Attachment Sequence No. 08

Part I Interest

(See page B-1 and the instructions for Form 1040, line 8a.)

Note. If you received a Form 1099-INT, Form 1099-OID, or substitute statement from a brokerage firm, list the firm's name as the payer and enter the total interest shown on that form.

1 List name of payer. If any interest is from a seller-financed mortgage and the buyer used the property as a personal residence, see page B-1 and list this interest first. Also, show that buyer's social security number and address ▶

Payer		Line	Amount
5/3 BANK		1	7,659
GROOVY INVESTORS, LLC	33-3333333		3
RENT THIS, LLC	44-4444444		1,797
GROOVY INVESTORS II, LLC	66-6666666		519
2 Add the amounts on line 1		2	9,978
3 Excludable interest on series EE and I U.S. savings bonds issued after 1989. Attach Form 8815		3	
4 Subtract line 3 from line 2. Enter the result here and on Form 1040, line 8a ▶		4	9,978

Note. If line 4 is over $1,500, you must complete Part III.

Part II Ordinary Dividends

(See page B-1 and the instructions for Form 1040, line 9a.)

Note. If you received a Form 1099-DIV or substitute statement from a brokerage firm, list the firm's name as the payer and enter the ordinary dividends shown on that form.

5 List name of payer ▶

Payer		Line	Amount
MASSMUTUAL		5	210
GROOVY INVESTORS, LLC	33-3333333		4
GROOVY INVESTORS II, LLC	66-6666666		3,564
6 Add the amounts on line 5. Enter the total here and on Form 1040, line 9a ▶		6	3,778

Note. If line 6 is over $1,500, you must complete Part III.

Part III Foreign Accounts and Trusts

(See page B-2.)

You must complete this part if you (a) had over $1,500 of taxable interest or ordinary dividends; or (b) had a foreign account; or (c) received a distribution from, or were a grantor of, or a transferor to, a foreign trust.

	Yes	No
7a At any time during 2008, did you have an interest in or a signature or other authority over a financial account in a foreign country, such as a bank account, securities account, or other financial account? See page B-2 for exceptions and filing requirements for Form TD F 90-22.1	☐	☒
b If "Yes," enter the name of the foreign country ▶		
8 During 2008, did you receive a distribution from, or were you the grantor of, or transferor to, a foreign trust? If "Yes," you may have to file Form 3520. See page B-2	☐	☒

SCHEDULE C (Form 1040)
Department of the Treasury Internal Revenue Service (99)

Profit or Loss From Business

(Sole Proprietorship)

▶ Partnerships, joint ventures, etc., generally must file Form 1065 or 1065-B.
▶ Attach to Form 1040, 1040NR, or 1041. ▶ See Instructions for Schedule C (Form 1040).

OMB No. 1545-0074
2021
Attachment Sequence No. **09**

Name of proprietor: MICHAEL BRADY
Social security number (SSN): ___ __ ____

A Principal business or profession, including product or service (see page C-3 of the instructions): ARCHITECT
B Enter code from pages C-9, 10, & 11 ▶ 541310

C Business name. If no separate business name, leave blank.: BRADY ARCHITECTURE, LLC
D Employer ID number (EIN), if any: 35-5533698

E Business address (including suite or room no.) ▶ 71 RETRO WAY
City, town or post office, state, and ZIP code: INDIANAPOLIS IN 46250

F Accounting method: (1) [X] Cash (2) [ ] Accrual (3) [ ] Other (specify) ▶
G Did you "materially participate" in the operation of this business during 2008? If "No," see page C-4 for limit on losses [X] Yes [ ] No
H If you started or acquired this business during 2008, check here ▶

Cash basis! need a balance sheet with accounts receivable and other assets and liabilities.

Part I Income

Line	Description		Amount
1	Gross receipts or sales. **Caution.** See page C-4 and check the box if: • This income was reported to you on Form W-2 and the "Statutory employee" box on that form was checked, or • You are a member of a qualified joint venture reporting only rental real estate income not subject to self-employment tax. Also see page C-4 for limit on losses. ▶ [ ]	1	2,396,518
2	Returns and allowances	2	
3	Subtract line 2 from line 1	3	2,396,518
4	Cost of goods sold (from line 42 on page 2)	4	732,607
5	**Gross profit.** Subtract line 4 from line 3	5	1,663,911
6	Other income, including federal and state gasoline or fuel tax credit or refund (see page C-4) SEE STMT 3	6	66,212
7	**Gross income.** Add lines 5 and 6 ▶	7	1,730,123

Part II Expenses. Enter expenses for business use of your home **only** on line 30.

Line	Description		Amount	Line	Description		Amount
8	Advertising	8	4,288	18	Office expense	18	5,465
9	Car and truck expenses (see page C-5)	9		19	Pension and profit-sharing plans	19	17,645
10	Commissions and fees	10		20	Rent or lease (see page C-6):		
11	Contract labor (see page C-5)	11		a	Vehicles, machinery, and equipment	20a	
12	Depletion	12		b	Other business property	20b	119,559
13	Depreciation and section 179 expense deduction (not included in Part III) (see page C-5)	13	14,686	21	Repairs and maintenance	21	20,562
14	Employee benefit programs (other than on line 19)	14	46,200	22	Supplies (not included in Part III)	22	3,433
15	Insurance (other than health)	15	44,189	23	Taxes and licenses	23	50,480
16	Interest:			24	Travel, meals, and entertainment:		
a	Mortgage (paid to banks, etc.)	16a		a	Travel	24a	
b	Other	16b		b	Deductible meals and entertainment (see page C-7)	24b	386
17	Legal and professional services	17	28,447	25	Utilities	25	18,158
				26	Wages (less employment credits)	26	688,866
				27	Other expenses (from line 48 on page 2)	27	63,838

Potential income to owner, depreciation is non-cash but would need capex allocation.

Line	Description		Amount
28	**Total expenses** before expenses for business use of home. Add lines 8 th[rough 27]	28	1,126,202
29	Tentative profit or (loss). Subtract line 28 from line 7	29	603,921
30	Expenses for business use of your home. Attach **Form 8829**	30	
31	**Net profit or (loss).** Subtract line 30 from line 29. • If a profit, enter on both **Form 1040, line 12,** and **Schedule SE, line 2,** or on **Form 1040NR, line 13** (if you checked the box on line 1, see page C-7). Estates and trusts, enter on **Form 1041, line 3.** • If a loss, you **must** go to line 32.	31	603,921

32 If you have a loss, check the box that describes your investment in this activity (see page C-8).
• If you checked 32a, enter the loss on both **Form 1040, line 12,** and **Schedule SE, line 2,** or on **Form 1040NR, line 13** (if you checked the box on line 1, see the line 31 instructions on page C-7). Estates and trusts, enter on **Form 1041, line 3.**
• If you checked 32b, you **must** attach **Form 6198.** Your loss may be limited.

32a [ ] All investment is at risk.
32b [ ] Some investment is not at risk.

MICHAEL BRADY

Schedule C (Form 1040) 2008 ARCHITECT Page 2

Part III Cost of Goods Sold (see page C-8)

33 Method(s) used to value closing inventory: a ☐ Cost b ☐ Lower of cost or market c ☐ Other (attach explanation)

34 Was there any change in determining quantities, costs, or valuations between opening and closing inventory? If "Yes," attach explanation ☐ Yes ☐ No

Line	Description		Amount
35	Inventory at beginning of year. If different from last year's closing inventory, attach explanation	35	0
36	Purchases less cost of items withdrawn for personal use	36	
37	Cost of labor. Do not include any amounts paid to yourself	37	435,503
38	Materials and supplies	38	
39	Other costs SEE STATEMENT 4	39	297,104
40	Add lines 35 through 39	40	732,607
41	Inventory at end of year	41	0
42	**Cost of goods sold.** Subtract line 41 from line 40. Enter the result here and on page 1, line 4	42	732,607

Part IV Information on Your Vehicle. Complete this part **only** if you are claiming car or truck expenses on line 9 and are not required to file Form 4562 for this business. See the instructions for line 13 on page C-5 to find out if you must file Form 4562.

43 When did you place your vehicle in service for business purposes? (month, day, year) ▶

44 Of the total number of miles you drove your vehicle during 2008, enter the number of miles you used your vehicle for:

a Business b Commuting (see instructions) c Other

45 Was your vehicle available for personal use during off-duty hours? ☐ Yes ☐ No

46 Do you (or your spouse) have another vehicle available for personal use? ☐ Yes ☐ No

47a Do you have evidence to support your deduction? ☐ Yes ☐ No

b If "Yes," is the evidence written? ☐ Yes ☐ No

Part V Other Expenses. List below business expenses not included on lines 8-26 or line 30.

Expense	Amount
REGISTRATIONS	7,253
EMPLOYEE EVENTS & PROVISIONS	9,753
DUES & SUBSCRIPTIONS	2,383
ARCHIVE EXPENSE	1,269
BANK SERVICE CHARGES	741
COMMUNICATIONS	15,006
COMPUTER SOFTWARE & SUPPORT	9,163
CONTINUING EDUCATION	1,417
HIRING EXPENSE	1,010
PAYROLL SERVICE	11,456
LIBRARY	2,080
POSTAGE	1,640
AMORTIZATION	667
48 **Total other expenses.** Enter here and on page 1, line 27 (48)	63,838

DAA Schedule C (Form 1040) 2008

SCHEDULE D (Form 1040)
Department of the Treasury Internal Revenue Service (99)

Capital Gains and Losses

▶ Attach to Form 1040 or Form 1040NR. See Instructions for Schedule D (Form 1040).
▶ Use Schedule D-1 to list additional transactions for lines 1 and 8.

OMB No. 1545-0074
2021
Attachment Sequence No. **12**

Name(s) shown on return: MICHAEL BRADY

Your social security number

Part I Short-Term Capital Gains and Losses—Assets Held One Year or Less

	(a) Description of property (Example: 100 sh. XYZ Co.)	(b) Date acquired (Mo., day, yr.)	(c) Date sold (Mo., day, yr.)	(d) Sales price (see page D-7 of the instructions)	(e) Cost or other basis (see page D-7 of the instructions)	(f) Gain or (loss) Subtract (e) from (d)
1						

Line	Description		Amount
2	Enter your short-term totals, if any, from Schedule D-1, line 2	2	
3	**Total short-term sales price amounts.** Add lines 1 and 2 in column (d)	3	
4	Short-term gain from Form 6252 and short-term gain or (loss) from Forms 4684, 6781, and 8824	4	
5	Net short-term gain or (loss) from partnerships, S corporations, estates, and trusts from Schedule(s) K-1	5	-12,810
6	Short-term capital loss carryover. Enter the amount, if any, from line 8 of your **Capital Loss Carryover Worksheet** on page D-7 of the instructions	6	( )
7	**Net short-term capital gain or (loss).** Combine lines 1 through 6 in column (f)	7	-12,810

Part II Long-Term Capital Gains and Losses—Assets Held More Than One Year

	(a) Description of property (Example: 100 sh. XYZ Co.)	(b) Date acquired (Mo., day, yr.)	(c) Date sold (Mo., day, yr.)	(d) Sales price (see page D-7 of the instructions)	(e) Cost or other basis (see page D-7 of the instructions)	(f) Gain or (loss) Subtract (e) from (d)
8						

Line	Description		Amount
9	Enter your long-term totals, if any, from Schedule D-1, line 9	9	
10	**Total long-term sales price amounts.** Add lines 8 and 9 in column (d)	10	
11	Gain from Form 4797, Part I; long-term gain from Forms 2439 and 6252; and long-term gain or (loss) from Forms 4684, 6781, and 8824	11	
12	Net long-term gain or (loss) from partnerships, S corporations, estates, and trusts from Schedule(s) K-1	12	8,473
13	Capital gain distributions. See page D-2 of the instructions	13	
14	Long-term capital loss carryover. Enter the amount, if any, from line 13 of your **Capital Loss Carryover Worksheet** on page D-7 of the instructions	14	(6,440)
15	**Net long-term capital gain or (loss).** Combine lines 8 through 14 in column (f). Then go to Part III on the back	15	2,033

For Paperwork Reduction Act Notice, see Form 1040 or Form 1040NR instructions. **Schedule D (Form 1040) 2008**

DAA

MICHAEL BRADY

Part III Summary

16 Combine lines 7 and 15 and enter the result .... **16** -10,777

If line 16 is:

- A **gain**, enter the amount from line 16 on Form 1040, line 13, or Form 1040NR, line 14. Then go to line 17 below.
- A **loss**, skip lines 17 through 20 below. Then go to line 21. Also be sure to complete line 22.
- **Zero,** skip lines 17 through 21 below and enter -0- on Form 1040, line 13, or Form 1040NR, line 14. Then go to line 22.

17 Are lines 15 and 16 **both** gains?

☐ **Yes.** Go to line 18.

☐ **No.** Skip lines 18 through 21, and go to line 22.

18 Enter the amount, if any, from line 7 of the **28% Rate Gain Worksheet** on page D-8 of the instructions .... ▶ **18**

19 Enter the amount, if any, from line 18 of the **Unrecaptured Section 1250 Gain Worksheet** on page D-9 of the instructions .... ▶ **19**

20 Are lines 18 and 19 **both** zero or blank?

☐ **Yes.** Complete Form 1040 through line 43, or Form 1040NR through line 40. Then complete the **Qualified Dividends and Capital Gain Tax Worksheet** on page 38 of the Instructions for Form 1040 (or in the Instructions for Form 1040NR). **Do not** complete lines 21 and 22 below.

☐ **No.** Complete Form 1040 through line 43, or Form 1040NR through line 40. Then complete the **Schedule D Tax Worksheet** on page D-10 of the instructions. **Do not** complete lines 21 and 22 below.

21 If line 16 is a loss, enter here and on Form 1040, line 13, or Form 1040NR, line 14, the **smaller** of:

- The loss on line 16 or
- ($3,000), or if married filing separately, ($1,500) **21** (3,000)

Note. When figuring which amount is smaller, treat both amounts as positive numbers.

22 Do you have qualified dividends on Form 1040, line 9b, or Form 1040NR, line 10b?

☒ **Yes.** Complete Form 1040 through line 43, or Form 1040NR through line 40. Then complete the **Qualified Dividends and Capital Gain Tax Worksheet** on page 38 of the Instructions for Form 1040 (or in the Instructions for Form 1040NR).

☐ **No.** Complete the rest of Form 1040 or Form 1040NR.

CHUA

SCHEDULE E (Form 1040)

Department of the Treasury Internal Revenue Service (99)

Supplemental Income and Loss

(From rental real estate, royalties, partnerships, S corporations, estates, trusts, REMICs, etc.)

▶ Attach to Form 1040, 1040NR, or Form 1041. ▶ See Instructions for Schedule E (Form 1040).

OMB No. 1545-0074

2021

Attachment Sequence No. **13**

Name(s) shown on return: MICHAEL BRADY

Your social security number

Part I **Income or Loss From Rental Real Estate and Royalties** **Note.** If you are in the business of renting personal property, use **Schedule C or C-EZ** (see page E-3). If you are an individual, report farm rental income or loss from **Form 4835** on page 2, line 40.

1	List the type and address of each rental real estate property:	2 For each rental real estate property listed on line 1, did you or your family use it during the tax year for personal purposes for more than the greater of: ● 14 days or ● 10% of the total days rented at fair rental value? (See page E-3)		Yes	No
A	COMMERCIAL SUBLEASE 800 CAROL WAY, INDIANAPOLIS		A		X
B			B		
C			C		

Income:		Properties A	Properties B	Properties C		Totals (Add columns A, B, and C.)
3 Rents received	3	61,245			3	61,245
4 Royalties received	4				4	
Expenses:						
5 Advertising	5					
6 Auto and travel (see page E-4)	6					
7 Cleaning and maintenance	7					
8 Commissions	8					
9 Insurance	9					
10 Legal and other professional fees	10					
11 Management fees	11					
12 Mortgage interest paid to banks, etc. (see page E-5)	12	← No debt			12	
13 Other interest	13					
14 Repairs	14					
15 Supplies	15					
16 Taxes	16					
17 Utilities	17					
18 Other (list) ▶	18					
19 Add lines 5 through 18	19				19	
20 Depreciation expense or depletion (see page E-5)	20				20	
21 Total expenses. Add lines 19 and 20	21					
22 Income or (loss) from rental real estate or royalty properties. Subtract line 21 from line 3 (rents) or line 4 (royalties). If the result is a (loss), see page E-5 to find out if you must file **Form 6198**	22	61,245				
23 Deductible rental real estate loss. **Caution.** Your rental real estate loss on line 22 may be limited. See page E-5 to find out if you must file **Form 8582.** Real estate professionals **must** complete line 43 on page 2	23	(0)	( )	( )		

24 **Income.** Add positive amounts shown on line 22. **Do not** include any losses	24	61,245
25 **Losses.** Add royalty losses from line 22 and rental real estate losses from line 23. Enter total losses here.	25	( )
26 **Total rental real estate and royalty income or (loss).** Combine lines 24 and 25. Enter the result here. If Parts II, III, IV, and line 40 on page 2 do not apply to you, also enter this amount on Form 1040, line 17, or Form 1040NR, line 18. Otherwise, include this amount in the total on line 41 on page 2	26	61,245

For Paperwork Reduction Act Notice, see page E-8 of the instructions. Schedule E (Form 1040) 2008

DAA

Name(s) shown on return. Do not enter name and social security number if shown on other side.

MICHAEL BRADY

Your social security number

Caution. The IRS compares amounts reported on your tax return with amounts shown on Schedule(s) K-1.

Part II Income or Loss From Partnerships and S Corporations

Note. If you report a loss from an at-risk activity for which any amount is **not** at risk, you **must** check the box in column **(e)** on line 28 and attach **Form 6198.** See page E-1.

27 Are you reporting any loss not allowed in a prior year due to the at-risk or basis limitations, a prior year unallowed loss from a passive activity (if that loss was not reported on Form 8582), or unreimbursed partnership expenses? ☐ Yes ☒ No
If you answered "Yes," see page E-7 before completing this section.

28	(a) Name	(b) Enter P for partnership; S for S corporation	(c) Check if foreign partnership	(d) Employer identification number	(e) Check if any amount is not at risk
A	SEE STATEMENT 5				
B					
C					
D					

	Passive Income and Loss		Nonpassive Income and Loss		
	(f) Passive loss allowed (attach Form 8582 if required)	(g) Passive income from Schedule K-1	(h) Nonpassive loss from Schedule K-1	(i) Section 179 expense deduction from Form 4562	(j) Nonpassive income from Schedule K-1
A					
B					
C					
D					
29a Totals		25,970			70,307
b Totals	1				

30	Add columns (g) and (j) of line 29a	30	96,277
31	Add columns (f), (h), and (i) of line 29b	31	(1)
32	**Total partnership and S corporation income or (loss).** Combine lines 30 and 31. Enter the result here and include in the total on line 41 below	32	96,276

Part III Income or Loss From Estates and Trusts

33	(a) Name	(b) Employer identification number
A		
B		

	Passive Income and Loss		Nonpassive Income and Loss	
	(c) Passive deduction or loss allowed (attach Form 8582 if required)	(d) Passive income from Schedule K-1	(e) Deduction or loss from Schedule K-1	(f) Other income from Schedule K-1
A				
B				
34a Totals				
b Totals				

35	Add columns (d) and (f) of line 34a	35	
36	Add columns (c) and (e) of line 34b	36	( )
37	**Total estate and trust income or (loss).** Combine lines 35 and 36. Enter the result here and include in the total on line 41 below	37	

Part IV Income or Loss From Real Estate Mortgage Investment Conduits (REMICs)—Residual Holder

38 (a) Name	(b) Employer identification number	(c) Excess inclusion from Schedules Q, line 2c (see page E-7)	(d) Taxable income (net loss) from Schedules Q, line 1b	(e) Income from Schedules Q, line 3b

39	Combine columns (d) and (e) only. Enter the result here and include in the total on line 41 below	39	

Part V Summary

40	Net farm rental income or (loss) from **Form 4835.** Also, complete line 42 below	40	
41	**Total income or (loss).** Combine lines 26, 32, 37, 39, & 40. Enter the result here & on Form 1040, line 17, or Form 1040NR, line 18	41	157,521
42	**Reconciliation of farming and fishing income.** Enter your **gross** farming and fishing income reported on Form 4835, line 7; Schedule K-1 (Form 1065), box 14, code B; Schedule K-1 (Form 1120S), box 17, code T; and Schedule K-1 (Form 1041), line 14, code F (see page E-8)	42	
43	**Reconciliation for real estate professionals.** If you were a real estate professional (see page E-2), enter the net income or (loss) you reported anywhere on Form 1040 or Form 1040NR from all rental real estate activities in which you materially participated under the passive activity loss rules	43	

Name of person with **self-employment** income (as shown on Form 1040)	Social security number of person with **self-employment** income ▶	
MICHAEL BRADY		

Section B—Long Schedule SE

Part I Self-Employment Tax

Note. If your only income subject to self-employment tax is **church employee income,** skip lines 1 through 4b. Enter -0- on line 4c and go to line 5a. Income from services you performed as a minister or a member of a religious order **is not** church employee income. See page SE-1.

A	If you are a minister, member of a religious order, or Christian Science practitioner **and** you filed Form 4361, but you had $400 or more of **other** net earnings from self-employment, check here and continue with Part I ▶ ☐			
1a	Net farm profit or (loss) from Schedule F, line 36, and farm partnerships, Schedule K-1 (Form 1065), box 14, code A. **Note.** Skip lines 1a and 1b if you use the farm optional method (see page SE-4)		1a	
b	If you received social security retirement or disability benefits, enter the amount of Conservation Reserve Program payments included on Schedule F, line 6b, or listed on Schedule K-1 (Form 1065), box 20, code X		1b	( )
2	Net profit or (loss) from Schedule C, **line 31**; Schedule C-EZ, line 3; Schedule K-1 (Form 1065), box 14, code A (other than farming); and Schedule K-1 (Form 1065-B), box 9, code J1. Ministers and members of religious orders, see page SE-1 for types of income to report on this line. See page SE-3 for other income to report. **Note.** Skip this line if you use the nonfarm optional method (see page SE-4)		2	608,321
3	Combine lines 1a, 1b, and 2		3	608,321
4a	If line 3 is more than zero, multiply line 3 by 92.35% (.9235). Otherwise, enter amount from line 3		4a	561,784
b	If you elect one or both of the optional methods, enter the total of lines 15 and 17 here		4b	
c	Combine lines 4a and 4b. If less than $400, **stop;** you do not owe self-employment tax. **Exception.** If less than $400 and you had **church employee income,** enter -0- and continue ▶		4c	561,784
5a	Enter your **church employee income** from Form W-2. See page SE-1 for definition of church employee income	5a		
b	Multiply line 5a by 92.35% (.9235). If less than $100, enter -0-		5b	0
6	**Net earnings from self-employment.** Add lines 4c and 5b		6	561,784
7	Maximum amount of combined wages and self-employment earnings subject to social security tax or the 6.2% portion of the 7.65% railroad retirement (tier 1) tax for 2008		7	102,000
8a	Total social security wages and tips (total of boxes 3 and 7 on Form(s) W-2) and railroad retirement (tier 1) compensation. If $102,000 or more, skip lines 8b through 10, and go to line 11	8a 102,000		
b	Unreported tips subject to social security tax (from Form 4137, line 10)	8b		
c	Wages subject to social security tax (from Form 8919, line 10)	8c		
d	Add lines 8a, 8b, and 8c		8d	
9	Subtract line 8d from line 7. If zero or less, enter -0- here and on line 10 and go to line 11 ▶		9	
10	Multiply the **smaller** of line 6 or line 9 by 12.4% (.124)		10	
11	Multiply line 6 by 2.9% (.029)		11	16,292
12	**Self-employment tax.** Add lines 10 and 11. Enter here and on **Form 1040, line 57**		12	16,292
13	**Deduction for one-half of self-employment tax.** Multiply line 12 by 50% (.5). Enter the result here and on **Form 1040, line 27**	13 8,146		

Part II Optional Methods To Figure Net Earnings (see page SE-4)

Farm Optional Method. You may use this method **only** if **(a)** your gross farm income[1] was not more than $6,300, **or (b)** your net farm profits[2] were less than $4,548.

14	Maximum income for optional methods	14	4,200
15	Enter the **smaller** of: two-thirds (2/3) of gross farm income[1] (not less than zero) **or** $4,200. Also include this amount on line 4b above	15	

Nonfarm Optional Method. You may use this method **only** if **(a)** your net nonfarm profits[3] were less than $4,548 and also less than 72.189% of your gross nonfarm income,[4] **and (b)** you had net earnings from self-employment of at least $400 in 2 of the prior 3 years.

Caution. You may use this method no more than five times.

16	Subtract line 15 from line 14	16	
17	Enter the **smaller** of: two-thirds (2/3) of gross nonfarm income[4] (not less than zero) **or** the amount on line 16. Also include this amount on line 4b above	17	

[1] From Sch. F, line 11, and Sch. K-1 (Form 1065), box 14, code B.

[2] From Sch. F, line 36, and Sch. K-1 (Form 1065), box 14, code A—minus the amount you would have entered on line 1b had you not used the optional method.

[3] From Sch. C, line 31; Sch. C-EZ, line 3; Sch. K-1 (Form 1065), box 14, code A; and Sch. K-1 (Form 1065-B), box 9, code J1.

[4] From Sch. C, line 7; Sch. C-EZ, line 1; Sch. K-1 (Form 1065), box 14, code C; and Sch. K-1 (Form 1065-B), box 9, code J2.

Form **3800**

Department of the Treasury
Internal Revenue Service (99)

General Business Credit

▶ See separate instructions.

▶ Attach to your tax return.

OMB No. 1545-0895

2021

Attachment Sequence No. **22**

Name(s) shown on return: MICHAEL BRADY

Identifying number:

Part I Current Year Credit

Important: You may not be required to complete and file a separate credit form (shown in parentheses below) to claim the credit. For details, see the instructions.

		Line	Amount
1a	Investment credit (Form 3468, Part II only) (attach Form 3468)	1a	
b	Welfare-to-work credit (Form 8861)	1b	
c	Credit for increasing research activities (Form 6765)	1c	
d	Low-income housing credit (Form 8586, Part I only) (enter EIN if claiming this credit from a pass-through entity: _ _ _ _ _ _)	1d	
e	Disabled access credit (Form 8826) (do not enter more than $5,000)	1e	
f	Renewable electricity production credit (Form 8835, Part I only)	1f	
g	Indian employment credit (Form 8845)	1g	
h	Orphan drug credit (Form 8820)	1h	
i	New markets credit (Form 8874) (enter EIN if claiming this credit from a pass-through entity: _ _ _ _ _ _)	1i	
j	Credit for small employer pension plan startup costs (Form 8881) (do not enter more than $500)	1j	
k	Credit for employer-provided child care facilities and services (Form 8882) (enter EIN if claiming this credit from a pass-through entity: _ _ _ _ _ _)	1k	
l	Biodiesel and renewable diesel fuels credit (attach Form 8864)	1l	17
m	Low sulfur diesel fuel production credit (Form 8896)	1m	
n	Distilled spirits credit (Form 8906)	1n	
o	Nonconventional source fuel credit (Form 8907)	1o	
p	Energy efficient home credit (Form 8908)	1p	
q	Energy efficient appliance credit (Form 8909)	1q	
r	Alternative motor vehicle credit (Form 8910) (enter EIN if claiming this credit from a pass-through entity: _ _ _ _ _ _)	1r	
s	Alternative fuel vehicle refueling property credit (Form 8911)	1s	
t	Credits for affected Midwestern disaster area employers (Form 5884-A)	1t	
u	Mine rescue team training credit (Form 8923)	1u	
v	Agricultural chemicals security credit (Form 8931)	1v	
w	Credit for employer differential wage payments (Form 8932)	1w	
x	Carbon dioxide sequestration credit (Form 8933)	1x	
y	Credit for contributions to selected community development corporations (Form 8847)	1y	
z	General credits from an electing large partnership (Schedule K-1 (Form 1065-B))	1z	
2	Add lines 1a through 1z	2	17
3	Passive activity credits included on line 2 (see instructions)	3	17
4	Subtract line 3 from line 2	4	
5	Passive activity credits allowed for 2008 (see instructions)	5	17
6	Carryforward of general business credit to 2008. See instructions for the schedule to attach	6	
7	Carryback of general business credit from 2009 (see instructions)	7	
8	**Current year credit.** Add lines 4 through 7	8	17

For Paperwork Reduction Act Notice, see separate instructions.

Form **3800** (2008)

Part II Allowable Credit

Line	Description	Sub-line	Sub-amount	Line	Amount
9	Regular tax before credits: ● Individuals. Enter the amount from Form 1040, line 44 or Form 1040NR, line 41 ● Corporations. Enter the amount from Form 1120, Schedule J, line 2; or the applicable line of your return ● Estates and trusts. Enter the sum of the amounts from Form 1041, Schedule G, lines 1a and 1b, or the amount from the applicable line of your return			9	353,721
10	Alternative minimum tax: ● Individuals. Enter the amount from Form 6251, line 36 ● Corporations. Enter the amount from Form 4626, line 14 ● Estates and trusts. Enter the amount from Schedule I (Form 1041), line 56			10	
11	Add lines 9 and 10			11	353,721
12a	Foreign tax credit	12a	92		
b	Personal credits from Form 1040, lines 48 through 54 (or Form 1040NR, lines 45 through 49)	12b			
c	Credit from Form 8834	12c			
d	Non-business alternative motor vehicle credit (Form 8910, line 18)	12d			
e	Non-business alternative fuel vehicle refueling property credit (Form 8911, line 19)	12e			
f	Add lines 12a through 12e			12f	92
13	**Net income tax.** Subtract line 12f from line 11. If zero, skip lines 14 through 17 and enter -0- on line 18a			13	353,629
14	**Net regular tax.** Subtract line 12f from line 9. If zero or less, enter -0-	14	353,629		
15	Enter 25% (.25) of the excess, if any, of line 14 over $25,000 (see instructions)	15	82,157		
16	Tentative minimum tax: ● Individuals. Enter the amount from Form 6251, line 34 ● Corporations. Enter the amount from Form 4626, line 12 ● Estates and trusts. Enter the amount from Schedule I (Form 1041), line 54	16	309,169		
17	Enter the greater of line 15 or line 16			17	309,169
18a	Subtract line 17 from line 13. If zero or less, enter -0-			18a	44,460
b	For a corporation electing to accelerate the research credit, enter the bonus depreciation amount attributable to the research credit. (see instructions)			18b	
c	Add lines 18a and 18b			18c	44,460
19a	Enter the **smaller** of line 8 or line 18c **Individuals, estates, and trusts:** See the instructions for line 19a if claiming the research credit. **C corporations:** See the line 19a instructions if there has been an ownership change, acquisition, or reorganization.			19a	17
b	Enter the smaller of line 8 or line 18a. If you made an entry on line 18b, go to line 19c; otherwise, skip line 19c			19b	17
c	Subtract line 19b from line 19a. This is the refundable amount for a corporation electing to accelerate the research credit. Include this amount on line 32g of Form 1120 (or the applicable line of your return)			19c	

Part II Allowable Credit (Continued)

Note. If you are not filing Form 8844, skip lines 20 through 24 and enter -0- on line 25.

Line	Description			Line	Amount
20	Multiply line 16 by 75%			20	
21	Enter the greater of line 15 or line 20			21	
22	Subtract line 21 from line 13. If zero or less, enter -0-			22	
23	Subtract line 19b from line 22. If zero or less, enter -0-			23	
24	Enter the amount from Form 8844, line 10 or line 12			24	
25	Empowerment zone and renewal community employment credit allowed. Enter the smaller of line 23 or line 24			25	0
26	Subtract line 15 from line 13. If zero or less, enter -0-			26	271,472
27	Add lines 19b and 25			27	17
28	Subtract line 27 from line 26. If zero or less, enter -0-			28	271,455
29a	Enter the investment credit from Form 3468, Part III, line 18 (attach Form 3468)	29a			
b	Enter the work opportunity credit from Form 5884, line 10 or line 12	29b			
c	Enter the alcohol and cellulosic biofuel fuels credit from Form 6478, line 15 or line 17	29c			
d	Enter the low-income housing credit from Form 8586, Part II, line 18 or line 20	29d			
e	Enter the renewable electricity, refined coal, and Indian coal production credit from Form 8835, Part II, line 36 or line 38	29e			
f	Enter the credit for employer social security and Medicare taxes paid on certain employee tips from Form 8846, line 12	29f			
g	Enter the qualified railroad track maintenance credit from Form 8900, line 12	29g			
30	Add lines 29a through 29g			30	
31	Enter the **smaller** of line 28 or line 30			31	
32	**Credit allowed for the current year.** Add lines 27 and 31. Report the amount from line 32 (if smaller than the sum of lines 8, 24, and 30, see instructions) as indicated below or on the applicable line of your return: • Individuals. Form 1040, line 54 or Form 1040NR, line 49 • Corporations. Form 1120, Schedule J, line 5c • Estates and trusts. Form 1041, Schedule G, line 2c			32	17

CHUA

Form **4797**

Department of the Treasury
Internal Revenue Service (99)

Sales of Business Property
(Also Involuntary Conversions and Recapture Amounts Under Sections 179 and 280F(b)(2))

▶ Attach to your tax return ▶ See separate instructions.

OMB No. 1545-0184
2021
Attachment Sequence No. **27**

Name(s) shown on return: MICHAEL BRADY

Identifying number:

1	Enter the gross proceeds from sales or exchanges reported to you for 2008 on Form(s) 1099-B or 1099-S (or substitute statement) that you are including on line 2, 10, or 20 (see instructions)	1	

Part I Sales or Exchanges of Property Used in a Trade or Business and Involuntary Conversions From Other Than Casualty or Theft—Most Property Held More Than 1 Year (see instructions)

2 (a) Description of property	(b) Date acquired (mo., day, yr.)	(c) Date sold (mo., day, yr.)	(d) Gross sales price	(e) Depreciation allowed or allowable since acquisition	(f) Cost or other basis, plus improvements and expense of sale	(g) Gain or (loss) Subtract (f) from the sum of (d) and (e)
DELL DIMENSION 2400 PROCESSOR	3/24/04	6/30/08		636	636	

3	Gain, if any, from Form 4684, line 45	3	
4	Section 1231 gain from installment sales from Form 6252, line 26 or 37	4	
5	Section 1231 gain or (loss) from like-kind exchanges from Form 8824	5	
6	Gain, if any, from line 32, from other than casualty or theft	6	
7	Combine lines 2 through 6. Enter the gain or (loss) here and on the appropriate line as follows:	7	0

Partnerships (except electing large partnerships) and S corporations. Report the gain or (loss) following the instructions for Form 1065, Schedule K, line 10, or Form 1120S, Schedule K, line 9. Skip lines 8, 9, 11, and 12 below.

Individuals, partners, S corporation shareholders, and all others. If line 7 is zero or a loss, enter the amount from line 7 on line 11 below and skip lines 8 and 9. If line 7 is a gain and you did not have any prior year section 1231 losses, or they were recaptured in an earlier year, enter the gain from line 7 as a long-term capital gain on the Schedule D filed with your return and skip lines 8, 9, 11, and 12 below.

8	Nonrecaptured net section 1231 losses from prior years (see instructions)	8	
9	Subtract line 8 from line 7. If zero or less, enter -0-. If line 9 is zero, enter the gain from line 7 on line 12 below. If line 9 is more than zero, enter the amount from line 8 on line 12 below and enter the gain from line 9 as a long-term capital gain on the Schedule D filed with your return (see instructions)	9	

Part II Ordinary Gains and Losses (see instructions)

10 Ordinary gains and losses not included on lines 11 through 16 (include property held 1 year or less):

Description	Date acquired	Date sold	Gross sales price	Depreciation	Cost or other basis	Gain or (loss)
FINANCIAL PROFILES SOFTWARE	12/29/07	6/30/08		1,000	1,000	

11	Loss, if any, from line 7	11	( )
12	Gain, if any, from line 7 or amount from line 8, if applicable	12	
13	Gain, if any, from line 31	13	
14	Net gain or (loss) from Form 4684, lines 37 and 44a	14	
15	Ordinary gain from installment sales from Form 6252, line 25 or 36	15	
16	Ordinary gain or (loss) from like-kind exchanges from Form 8824	16	
17	Combine lines 10 through 16	17	
18	For all except individual returns, enter the amount from line 17 on the appropriate line of your return and skip lines a and b below. For individual returns, complete lines a and b below:		
a	If the loss on line 11 includes a loss from Form 4684, line 41, column (b)(ii), enter that part of the loss here. Enter the part of the loss from income-producing property on Schedule A (Form 1040), line 28, and the part of the loss from property used as an employee on Schedule A (Form 1040), line 23. Identify as from "Form 4797, line 18a." See instructions	18a	
b	Redetermine the gain or (loss) on line 17 excluding the loss, if any, on line 18a. Enter here and on Form 1040, line 14	18b	

For Paperwork Reduction Act Notice, see separate instructions. Form **4797** (2008)

THERE ARE NO AMOUNTS FOR PAGE 2

DAA

Form **8889**

Department of the Treasury
Internal Revenue Service

Health Savings Accounts (HSAs)

▶ Attach to Form 1040 or Form 1040NR. ▶ See separate instructions.

OMB No. 1545-0074
2021
Attachment Sequence No. **53**

Name(s) shown on Form 1040 or Form 1040NR: MICHAEL BRADY

Social security number of HSA beneficiary. If both spouses have HSAs, see page 2 of the instructions ▶

Before you begin: Complete Form 8853, Archer MSAs and Long-Term Care Insurance Contracts, if required.

Part I HSA Contributions and Deduction.

See page 3 of the instructions before completing this part. If you are filing jointly and both you and your spouse each have separate HSAs, complete a separate Part I for each spouse.

		Line	Amount
1	Check the box to indicate your coverage under a high-deductible health plan (HDHP) during 2008 (see page 4 of the instructions) ▶	[X] Self-only [ ] Family	
2	HSA contributions you made for 2008 (or those made on your behalf), including direct deposits of economic stimulus payments and those made from January 1, 2009, through April 15, 2009, that were for 2008. **Do not** include employer contributions, contributions through a cafeteria plan, or rollovers (see page 4 of the instructions)	2	2,900
3	If you were under age 55 at the end of 2008, and on the first day of **every** month during 2008, you were, or were considered, an eligible individual with the **same** coverage, enter $2,900 ($5,800 for family coverage). All others, see page 4 of the instructions for the amount to enter	3	2,900
4	Enter the amount you and your employer contributed to your Archer MSAs for 2008 from Form 8853, lines 3 and 4. If you or your spouse had family coverage under an HDHP at any time during 2008, also include any amount contributed to your spouse's Archer MSAs	4	
5	Subtract line 4 from line 3. If zero or less, enter -0-	5	2,900
6	Enter the amount from line 5. But if you and your spouse each have separate HSAs and had family coverage under an HDHP at any time during 2008, see the instructions on page 4 for the amount to enter	6	2,900
7	If you were age 55 or older at the end of 2008, married, and you or your spouse had family coverage under an HDHP at any time during 2008, enter your additional contribution amount (see page 5 of the instructions)	7	
8	Add lines 6 and 7	8	2,900
9	Employer contributions made to your HSAs for 2008 — 9		
10	Qualified HSA funding distributions — 10		
11	Add lines 9 and 10	11	
12	Subtract line 11 from line 8. If zero or less, enter -0-	12	2,900
13	**HSA deduction.** Enter the **smaller** of line 2 or line 12 here and on Form 1040, line 25, or Form 1040NR, line 25	13	2,900
	Caution: If line 2 is more than line 13, you may have to pay an additional tax (see page 5 of the instructions).		

Part II HSA Distributions.

If you are filing jointly and both you and your spouse each have separate HSAs, complete a separate Part II for each spouse.

		Line	Amount
14a	Total distributions you received in 2008 from all HSAs (see page 6 of the instructions)	14a	
b	Distributions included on line 14a that you rolled over to another HSA. Also include any portion of a direct deposit of an economic stimulus payment and excess contributions (and the earnings on those excess contributions) included on line 14a that were withdrawn by the due date of your return (see page 6 of the instructions)	14b	
c	Subtract line 14b from line 14a	14c	
15	Unreimbursed qualified medical expenses (see page 6 of the instructions)	15	
16	**Taxable HSA distributions.** Subtract line 15 from line 14c. If zero or less, enter -0-. Also, include this amount in the total on Form 1040, line 21, or Form 1040NR, line 21. On the dotted line next to line 21, enter "HSA" and the amount	16	
17a	If any of the distributions included on line 16 meet any of the **Exceptions to the Additional 10% Tax** (see page 6 of the instructions), check here ▶ [ ]		
b	**Additional 10% tax** (see page 6 of the instructions). Enter 10% (.10) of the distributions included on line 16 that are subject to the additional 10% tax. Also include this amount in the total on Form 1040, line 61, or Form 1040NR, line 57. On the dotted line next to Form 1040, line 61, or Form 1040NR, line 57, enter "HSA" and the amount	17b	

For Paperwork Reduction Act Notice, see page 5 of the instructions. Form **8889** (2008)

DAA

MICHAEL BRADY

Part III **Income and Additional Tax for Failure To Maintain HDHP Coverage.** See page 6 of the instructions before completing this part. If you are filing jointly and both you and your spouse each have separate HSAs, complete a separate Part III for each spouse.

18	Qualified HSA distribution	18	
19	Last-month rule	19	
20	Qualified HSA funding distribution	20	
21	**Total income.** Add lines 18, 19, and 20. Include this amount on Form 1040, line 21, or Form 1040NR, line 21. On the dotted line next to Form 1040, line 21, or Form 1040NR, line 21, enter "HSA" and the amount	21	
22	**Additional tax.** Multiply line 21 by 10% (.10). Include this amount in the total on Form 1040, line 61, or Form 1040NR, line 57. On the dotted line next to Form 1040, line 61, or Form 1040NR, line 57, enter "HDHP" and the amount	22	

Form **4562** Department of the Treasury Internal Revenue Service (99)

Depreciation and Amortization
(Including Information on Listed Property)

▶ See separate instructions. ▶ Attach to your tax return.

OMB No. 1545-0172 **2021** Attachment Sequence No. **67**

Name(s) shown on return: MICHAEL BRADY | Identifying number:

Business or activity to which this form relates: ARCHITECT

Part I Election To Expense Certain Property Under Section 179
Note: If you have any listed property, complete Part V before you complete Part I.

1	Maximum amount. See the instructions for a higher limit for certain businesses	1	250,000
2	Total cost of section 179 property placed in service (see instructions)	2	14,686
3	Threshold cost of section 179 property before reduction in limitation (see instructions)	3	800,000
4	Reduction in limitation. Subtract line 3 from line 2. If zero or less, enter -0-	4	0
5	Dollar limitation for tax year. Subtract line 4 from line 1. If zero or less, enter -0-. If married filing separately, see instructions	5	250,000

	(a) Description of property	(b) Cost (business use only)	(c) Elected cost
6	SEE STATEMENT 6	14,686	14,686
7	Listed property. Enter the amount from line 29	7	

8	Total elected cost of section 179 property. Add amounts in column (c), lines 6 and 7	8	14,686
9	Tentative deduction. Enter the **smaller** of line 5 or line 8	9	14,686
10	Carryover of disallowed deduction from line 13 of your 2007 Form 4562	10	
11	Business income limitation. Enter the smaller of business income (not less than zero) or line 5 (see instructions)	11	250,000
12	Section 179 expense deduction. Add lines 9 and 10, but do not enter more than line 11	12	14,686
13	Carryover of disallowed deduction to 2009. Add lines 9 and 10, less line 12 ▶	13	

Note: Do not use Part II or Part III below for listed property. Instead, use Part V.

Part II Special Depreciation Allowance and Other Depreciation (Do not include listed property.) (See instructions.)

14	Special depreciation allowance for qualified property (other than listed property) placed in service during the tax year (see instructions)	14	
15	Property subject to section 168(f)(1) election	15	
16	Other depreciation (including ACRS)	16	

Part III MACRS Depreciation (Do not include listed property.) (See instructions.)

Section A

17	MACRS deductions for assets placed in service in tax years beginning before 2008	17	0
18	If you are electing to group any assets placed in service during the tax year into one or more general asset accounts, check here ▶		

Section B—Assets Placed in Service During 2008 Tax Year Using the General Depreciation System

(a) Classification of property	(b) Month and year placed in service	(c) Basis for depreciation (business/investment use only–see instructions)	(d) Recovery period	(e) Convention	(f) Method	(g) Depreciation deduction
19a 3-year property						
b 5-year property						
c 7-year property						
d 10-year property						
e 15-year property						
f 20-year property						
g 25-year property			25 yrs.		S/L	
h Residential rental property			27.5 yrs.	MM	S/L	
			27.5 yrs.	MM	S/L	
i Nonresidential real property			39 yrs.	MM	S/L	
				MM	S/L	

Section C—Assets Placed in Service During 2008 Tax Year Using the Alternative Depreciation System

20a Class life					S/L	
b 12-year			12 yrs.		S/L	
c 40-year			40 yrs.	MM	S/L	

Part IV Summary (See instructions.)

21	Listed property. Enter amount from line 28	21	
22	**Total.** Add amounts from line 12, lines 14 through 17, lines 19 and 20 in column (g), and line 21. Enter here and on the appropriate lines of your return. Partnerships and S corporations—see instr.	22	14,686
23	For assets shown above and placed in service during the current year, enter the portion of the basis attributable to section 263A costs	23	

For Paperwork Reduction Act Notice, see separate instructions. Form **4562** (2008)

DAA

MICHAEL BRADY

Form 4562 (2008) Page 2

Part V Listed Property (Include automobiles, certain other vehicles, cellular telephones, certain computers, and property used for entertainment, recreation, or amusement.)

Note: For any vehicle for which you are using the standard mileage rate or deducting lease expense, complete **only** 24a, 24b, columns (a) through (c) of Section A, all of Section B, and Section C if applicable.

Section A—Depreciation and Other Information (Caution: See the instructions for limits for passenger automobiles.)

24a Do you have evidence to support the business/investment use claimed? ☐ Yes ☐ No **24b** If "Yes," is the evidence written? ☐ Yes ☐ No

(a) Type of property (list vehicles first)	(b) Date placed in service	(c) Business/ investment use percentage	(d) Cost or other basis	(e) Basis for depreciation (business/investment use only)	(f) Recovery period	(g) Method/ Convention	(h) Depreciation deduction	(i) Elected section 179 cost
25 Special depreciation allowance for qualified listed property placed in service during the tax year and used more than 50% in a qualified business use (see instructions)						25		
26 Property used more than 50% in a qualified business use:								
		%						
		%						
27 Property used 50% or less in a qualified business use:								
		%				S/L-		
		%				S/L-		
28 Add amounts in column (h), lines 25 through 27. Enter here and on line 21, page 1						28		
29 Add amounts in column (i), line 26. Enter here and on line 7, page 1							29	

Section B—Information on Use of Vehicles

Complete this section for vehicles used by a sole proprietor, partner, or other "more than 5% owner," or related person.
If you provided vehicles to your employees, first answer the questions in Section C to see if you meet an exception to completing this section for those vehicles.

	(a) Vehicle 1		(b) Vehicle 2		(c) Vehicle 3		(d) Vehicle 4		(e) Vehicle 5		(f) Vehicle 6	
30 Total business/investment miles driven during the year (**do not** include commuting miles)												
31 Total commuting miles driven during the year												
32 Total other personal (noncommuting) miles driven												
33 Total miles driven during the year. Add lines 30 through 32												
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
34 Was the vehicle available for personal use during off-duty hours?												
35 Was the vehicle used primarily by a more than 5% owner or related person?												
36 Is another vehicle available for personal use?												

Section C—Questions for Employers Who Provide Vehicles for Use by Their Employees

Answer these questions to determine if you meet an exception to completing Section B for vehicles used by employees who are **not** more than 5% owners or related persons (see instructions).

	Yes	No
37 Do you maintain a written policy statement that prohibits all personal use of vehicles, including commuting, by your employees?		
38 Do you maintain a written policy statement that prohibits personal use of vehicles, except commuting, by your employees? See the instructions for vehicles used by corporate officers, directors, or 1% or more owners		
39 Do you treat all use of vehicles by employees as personal use?		
40 Do you provide more than five vehicles to your employees, obtain information from your employees about the use of the vehicles, and retain the information received?		
41 Do you meet the requirements concerning qualified automobile demonstration use? (See instructions.)		

Note: If your answer to 37, 38, 39, 40, or 41 is "Yes," do not complete Section B for the covered vehicles.

Part VI Amortization

(a) Description of costs	(b) Date amortization begins	(c) Amortizable amount	(d) Code section	(e) Amortization period or percentage	(f) Amortization for this year
42 Amortization of costs that begins during your 2008 tax year (see instructions):					
43 Amortization of costs that began before your 2008 tax year				43	667
44 **Total.** Add amounts in column (f). See the instructions for where to report				44	667

Form **4562** (2008)

DAA

Form 8582 Passive Activity Loss Limitations

Department of the Treasury
Internal Revenue Service (99)

▶ See separate instructions.
▶ Attach to Form 1040 or Form 1041.

OMB No. 1545-1008
2021
Attachment Sequence No. **88**

Name(s) shown on return: MICHAEL BRADY

Identifying number: ___ __ ____

Part I 2008 Passive Activity Loss

Caution: Complete Worksheets 1, 2, and 3 on page 2 before completing Part I.

Rental Real Estate Activities With Active Participation (For the definition of active participation, see **Special Allowance for Rental Real Estate Activities** on page 3 of the instructions.)

1a	Activities with net income (enter the amount from Worksheet 1, column (a))	1a	61,245		
b	Activities with net loss (enter the amount from Worksheet 1, column (b))	1b	( )		
c	Prior years unallowed losses (enter the amount from Worksheet 1, column (c))	1c	( )		
d	Combine lines 1a, 1b, and 1c			1d	61,245

Commercial Revitalization Deductions From Rental Real Estate Activities

2a	Commercial revitalization deductions from Worksheet 2, column (a)	2a	( )		
b	Prior year unallowed commercial revitalization deductions from Worksheet 2, column (b)	2b	( )		
c	Add lines 2a and 2b			2c	( )

All Other Passive Activities

3a	Activities with net income (enter the amount from Worksheet 3, column (a))	3a	25,970		
b	Activities with net loss (enter the amount from Worksheet 3, column (b))	3b	(1)		
c	Prior years unallowed losses (enter the amount from Worksheet 3, column (c))	3c	( )		
d	Combine lines 3a, 3b, and 3c			3d	25,969
4	Combine lines 1d, 2c, and 3d. If the result is net income or zero, all losses are allowed, including any prior year unallowed losses entered on line 1c, 2b, or 3c. **Do not** complete Form 8582. Report the losses on the forms and schedules normally used			4	87,214

If line 4 is a loss and:
- Line 1d is a loss, go to Part II.
- Line 2c is a loss (and line 1d is zero or more), skip Part II and go to Part III.
- Line 3d is a loss (and lines 1d and 2c are zero or more), skip Parts II and III and go to line 15.

Caution: If your filing status is married filing separately and you lived with your spouse at any time during the year, **do not** complete Part II or Part III. Instead, go to line 15.

Part II Special Allowance for Rental Real Estate Activities With Active Participation

Note: Enter all numbers in Part II as positive amounts. See page 8 of the instructions for an example.

5	Enter the **smaller** of the loss on line 1d or the loss on line 4			5	
6	Enter $150,000. If married filing separately, see page 8	6			
7	Enter modified adjusted gross income, but not less than zero (see page 8)	7			
	Note: If line 7 is greater than or equal to line 6, skip lines 8 and 9, enter -0- on line 10. Otherwise, go to line 8.				
8	Subtract line 7 from line 6	8			
9	Multiply line 8 by 50% (.5). **Do not** enter more than $25,000. If married filing separately, see page 8			9	
10	Enter the **smaller** of line 5 or line 9			10	0

If line 2c is a loss, go to Part III. Otherwise, go to line 15.

Part III Special Allowance for Commercial Revitalization Deductions From Rental Real Estate Activities

Note: Enter all numbers in Part III as positive amounts. See the example for Part II on page 8 of the instructions.

11	Enter $25,000 reduced by the amount, if any, on line 10. If married filing separately, see instructions	11	
12	Enter the loss from line 4	12	
13	Reduce line 12 by the amount on line 10	13	
14	Enter the **smallest** of line 2c (treated as a positive amount), line 11, or line 13	14	

Part IV Total Losses Allowed

15	Add the income, if any, on lines 1a and 3a and enter the total	15	
16	**Total losses allowed from all passive activities for 2008.** Add lines 10, 14, and 15. See page 10 of the instructions to find out how to report the losses on your tax return	16	0

For Paperwork Reduction Act Notice, see page 12 of the instructions. Form **8582** (2008)

MICHAEL BRADY

Caution: The worksheets must be filed with your tax return. Keep a copy for your records.

Worksheet 1—For Form 8582, Lines 1a, 1b, and 1c (See pages 7 and 8 of the instructions.)

Name of activity	Current year		Prior years	Overall gain or loss	
	(a) Net income (line 1a)	(b) Net loss (line 1b)	(c) Unallowed loss (line 1c)	(d) Gain	(e) Loss
COMMERCIAL SUBLEASE	61,245			61,245	
Total. Enter on Form 8582, lines 1a, 1b, and 1c ▶	61,245				

Worksheet 2—For Form 8582, Lines 2a and 2b (See page 8 of the instructions.)

Name of activity	(a) Current year deductions (line 2a)	(b) Prior year unallowed deductions (line 2b)	(c) Overall loss
Total. Enter on Form 8582, lines 2a and 2b ▶			

Worksheet 3—For Form 8582, Lines 3a, 3b, and 3c (See page 8 of the instructions.)

Name of activity	Current year		Prior years	Overall gain or loss	
	(a) Net income (line 3a)	(b) Net loss (line 3b)	(c) Unallowed loss (line 3c)	(d) Gain	(e) Loss
GROOVY INVESTORS, LLC		1			1
RENT THIS, LLC	25,970			25,970	
Total. Enter on Form 8582, lines 3a, 3b, and 3c ▶	25,970	1			

Worksheet 4—Use this worksheet if an amount is shown on Form 8582, line 10 or 14 (See page 9 of the instructions.)

Name of activity	Form or schedule and line number to be reported on (see instructions)	(a) Loss	(b) Ratio	(c) Special allowance	(d) Subtract column (c) from column (a)
Total ▶			1.00		

Worksheet 5—Allocation of Unallowed Losses (See page 9 of the instructions.)

Name of activity	Form or schedule and line number to be reported on (see instructions)	(a) Loss	(b) Ratio	(c) Unallowed loss
GROOVY INVESTORS, LLC	SCH E2	1	1.0000	
Total ▶		1	1.00	

Form **8903**

Department of the Treasury
Internal Revenue Service

Domestic Production Activities Deduction

▶ Attach to your tax return. ▶ See separate instructions.

OMB No. 1545-1984

2021

Attachment Sequence No. **143**

Name(s) as shown on return: MICHAEL BRADY

Identifying number:

Line	Description	Sub-line	Sub-amount	Line	Amount
1	Domestic production gross receipts (DPGR)			1	2,181,598
2	Allocable cost of goods sold. If you are using the small business simplified overall method, skip lines 2 and 3	2	648,977		
3	Enter deductions and losses allocable to DPGR (see instructions)	3	997,641		
4	If you are using the small business simplified overall method, enter the amount of cost of goods sold and other deductions or losses you ratably apportion to DPGR. All others, skip line 4	4			
5	Add lines 2 through 4			5	1,646,618
6	Subtract line 5 from line 1			6	534,980
7	Qualified production activities income from estates, trusts, and certain partnerships and S corporations (see instructions)			7	59,503
8	Add lines 6 and 7. Estates and trusts, go to line 9, all others, skip line 9 and go to line 10			8	594,483
9	Amount allocated to beneficiaries of the estate or trust (see instructions)			9	
10	**Qualified production activities income.** Estates and trusts, subtract line 9 from line 8, all others, enter amount from line 8. If zero or less, enter -0- here, skip lines 11 through 19, and enter -0- on line 20			10	594,483
11	Income limitation (see instructions): • Individuals, estates, and trusts. Enter your adjusted gross income figured without the domestic production activities deduction • All others. Enter your taxable income figured without the domestic production activities deduction (tax-exempt organizations, see instructions)			11	1,188,373
12	Enter the smaller of line 10 or line 11. If zero or less, enter -0- here, skip lines 13 through 19, and enter -0- on line 20			12	594,483
13	Enter 6% of line 12			13	35,669
14	Form W-2 wages (see instructions)			14	1,124,464
15	Form W-2 wages from estates, trusts, and certain partnerships and S corporations (see instructions)			15	
16	Add lines 14 and 15. Estates and trusts, go to line 17, all others, skip line 17 and go to line 18			16	1,124,464
17	Amount allocated to beneficiaries of the estate or trust (see instructions)			17	
18	Estates and trusts, subtract line 17 from line 16, all others, enter amount from line 16			18	1,124,464
19	Form W-2 wage limitation. Enter 50% of line 18			19	562,232
20	Enter the smaller of line 13 or line 19			20	35,669
21	Domestic production activities deduction from cooperatives. Enter deduction from Form 1099-PATR, box 6			21	
22	Expanded affiliated group allocation (see instructions)			22	
23	**Domestic production activities deduction.** Combine lines 20 through 22 and enter the result here and on Form 1040, line 35; Form 1120, line 25; or the applicable line of your return			23	35,669

For Paperwork Reduction Act Notice, see separate instructions.

Form **8903** (2008)

DAA

Form **8283** (Rev. December 2006) Department of the Treasury Internal Revenue Service

Noncash Charitable Contributions

▶ Attach to your tax return if you claimed a total deduction of over $500 for all contributed property.

▶ See separate instructions.

OMB No. 1545-0908

Attachment Sequence No. **155**

Name(s) shown on your income tax return: MICHAEL BRADY

Identifying number

Note. Figure the amount of your contribution deduction before completing this form. See your tax return instructions.

Section A. Donated Property of $5,000 or Less and Certain Publicly Traded Securities- List in this section **only** items (or groups of similar items) for which you claimed a deduction of $5,000 or less. Also, list certain publicly traded securities even if the deduction is more than $5,000 (see instructions).

Part I Information on Donated Property- If you need more space, attach a statement.

1	(a) Name and address of the donee organization	(b) Description of donated property (For a donated vehicle, enter the year, make, model, condition, and mileage, and attach Form 1098-C if required.)
A	GOODWILL 1635 W MICHIGAN ST INDIANAPOLIS IN 46222	CLOTHING AND MISC. HOUSEHOLD ITEMS
B	ST. PAUL'S EPISCOPAL CHURCH 6050 N. MERIDIAN STREET INDIANAPOLIS IN 46208	ELECTRONIC EQUIPMENT
C		
D		
E		

Note. If the amount you claimed as a deduction for an item is $500 or less, you do not have to complete columns (d), (e), and (f).

	(c) Date of the contribution	(d) Date acquired by donor (mo., yr.)	(e) How acquired by donor	(f) Donor's cost or adjusted basis	(g) Fair market value (see instructions)	(h) Method used to determine the fair market value
A	VARIOUS	VARIOUS	PURCHASE	8,000	2,457	THRIFT SHOP VALUE
B	8/01/08				410	THRIFT SHOP VALUE
C						
D						
E						

Part II Partial Interests and Restricted Use Property- Complete lines 2a through 2e if you gave less than an entire interest in a property listed in Part I. Complete lines 3a through 3c if conditions were placed on a contribution listed in Part I; also attach the required statement (see instructions).

2a Enter the letter from Part I that identifies the property for which you gave less than an entire interest ▶ ____________

If Part II applies to more than one property, attach a separate statement.

b Total amount claimed as a deduction for the property listed in Part I: **(1)** For this tax year ▶ ____________

(2) For any prior tax years ▶ ____________

c Name and address of each organization to which any such contribution was made in a prior year (complete only if different from the donee organization above):

Name of charitable organization (donee)

Address (number, street, and room or suite no.)

City or town, state, and ZIP code

d For tangible property, enter the place where the property is located or kept ▶

e Name of any person, other than the donee organization, having actual possession of the property ▶

	Yes	No
3a Is there a restriction, either temporary or permanent, on the donee's right to use or dispose of the donated property?		
b Did you give to anyone (other than the donee organization or another organization participating with the donee organization in cooperative fundraising) the right to the income from the donated property or to the possession of the property, including the right to vote donated securities, to acquire the property by purchase or otherwise, or to designate the person having such income, possession, or right to acquire?		
c Is there a restriction limiting the donated property for a particular use?		

For Paperwork Reduction Act Notice, see separate instructions. Form **8283** (Rev. 12-2006)

DAA

Federal Statements

Statement 1 - Form 1040, Line 21 - Other Income

Description	Amount
DIRECTOR'S FEE	$ 2,000
DIRECTOR'S FEE	2,400
TOTAL	$ 4,400

Federal Statements

Statement 2 - Schedule A, Line 23 - Other Expenses

Description	Amount
TRUST FEES	$ 375
PORTFOLIO INC DED (K-1S)	2,869
TOTAL	$ 3,244

Federal Statements

ARCHITECT

Statement 3 - Schedule C, Line 6 - Other Income

Description	Amount
REBATES	$ 20
REIMBURSEABLE EXPENSES	65,192
RENDERINGS	1,000
TOTAL	$ 66,212

Federal Statements

ARCHITECT

Statement 4 - Schedule C, Cost of Goods Sold, Line 39 - Other Costs

Description	Amount
CONSULTANTS	$ 201,008
PROJECT LEGAL EXPENSES	6,268
REIMBURSED EXPENSES	54,653
DIRECT WAGE PAYROLL TAXES	35,175
TOTAL	$ 297,104

Federal Statements

Statement 5 - Schedule E, Page 2, Line 28

P S	For Ptr	Name / EIN	Not at Risk	Passive Loss	Passive Income	Nonpass Loss	Sec 179 Deduct	Nonpass Income
DOCUMENT PRODUCTION SERVICES, INC.								
S		11-1111111		$	$	$	$	$ 10,804
MICHAEL BRADY ARCHITECT, PC								
S		22-2222222						59,503
GROOVY INVESTORS, LLC								
P		33-3333333		1				
RENT THIS, LLC								
P		44-4444444			25,970			
GROOVY INVESTORS II, LLC								
P		66-6666666						
TOTAL				$ 1	$ 25,970	$ 0	$ 0	$ 70,307

Federal Statements

ARCHITECT

Statement 6 - Form 4562, Line 6 - Section 179 Expense

Description of Property	Cost	Expense
DELL COMPUTERS-VOSTRO 400 MINI	$ 719	$ 719
DELL VOSTRO 400 MINI TOWER	1,028	1,028
HP STORAGEWORKS TAPE DRIVE	1,930	1,930
BUFFALO TERRSTATION PRO 2	1,277	1,277
DELL LATITUDE XT NOTEBOOK	2,782	2,782
VOSTRO NOTEBOOK 1400	795	795
VOSTRO 200 MINI TOWER	869	869
VOSTRO 200 MINI TOWER	869	869
VOSTRO 200 MINI TOWER	869	869
AUTOCAD REVIT ARCH SUITE 2009.1	2,935	2,935
CARDIOCHECK ST/PA TEST KIT	613	613
TOTAL	$ 14,686	$ 14,686

Federal Statements

Statement 7 - AMT Form 8582 Worksheet 3 - For AMT Form 8582 Lines 3a, 3b, and 3c

Description	Current Year Net Income	Current Year Net Loss	Prior Year Unallowed Loss	Overall Gain	Overall Loss
GROOVY INVESTORS, LLC	$	$ 1	$	$	$ 1
RENT THIS, LLC	26,371			26,371	
GROOVY INVESTORS II, LLC	24			24	
TOTAL	$ 26,395	$ 1	$ 0		

Form **IT-40** State Form 154 (R7 / 9-08)

2021

Indiana Full-Year Resident Individual Income Tax Return

Due April 15, 2009

If you are **not** filing for the calendar year January 1 through December 31, 2 , enter period from: to:

MICHAEL BRADY

896 MINOR BLVD
INDIANAPOLIS IN 46240

Enter the **2-digit county code** numbers (found on page 21 in the instruction booklet) for the county where you lived and worked on January 1, 2008.

Yourself — County where you lived: 49 — County where you worked: 49 — ☐ Check if you are applying for ITIN

Spouse — County where spouse lived: — County where spouse worked: — ☐ Check if your spouse is applying for ITIN

Check the box if you are married filing separately. ☐

School Corporation Number (see pages 38 and 39): 5370

Line	Description	Line	Amount
1.	Enter your federal adjusted gross income from your federal return (see instructions on page 8)	1	1,152,704.00
2.	Tax add-back: certain taxes deducted from federal Schedule C, C-EZ, E, and/or F	2	.00
3.	Net operating loss carryforward from federal Form 1040, 'Other income' line	3	.00
4.	Income taxed on federal Form 4972 (lump sum distribution) (attach Form 4972: see page 8)	4	.00
5.	Domestic production activities add-back (see page 8)	5	35,669.00
6.	Other (see instructions on page 8) SEE STMT 1	6	-4,522.00
7.	Add lines 1 through 6 **Total Indiana Income ▶**	7	1,183,851.00
8.	Indiana deductions: Enter amount from Schedule 1, line 12 and attach Schedule 1	8	16,661.00
9.	Line 7 minus line 8 **Indiana Adjusted Income ▶**	9	1,167,190.00
10.	Number of exemptions claimed on your federal return [2] x $1,000 (If no federal return was filed, enter $1,000 per qualifying person: see instructions on page 9)	10	2,000.00
11.	Additional exemption for certain dependent children (see instructions on page 9) Enter number [1] x $1,500	11	1,500.00
12.	Check box(es) below for additional exemptions if, by December 31, 2008: You were: ☐ 65 or older or ☐ blind. Spouse was: ☐ 65 or older or ☐ blind. Total the number of boxes checked [ ] x $1,000	12	.00
13.	Check box(es) below for additional exemptions if, by December 31, 2008: You were: ☐ 65 or older and line 1 above is less than $40,000. Spouse was: ☐ 65 or older and line 1 above is less than $40,000. Total the number of boxes checked [ ] x $500	13	.00
14.	Add lines 10, 11, 12 and 13 **Total Exemptions ▶**	14	3,500.00
15.	Line 9 minus line 14 (if answer is less than zero, leave blank) **State Taxable Income ▶**	15	1,163,690.00
16.	State adjusted gross income tax: multiply line 15 by 3.4% (.034)	16	39,565.00
17.	County income tax. See instructions on page 23	17	19,201.00
18.	Use tax due on out-of-state purchases. See instructions on page 9	18	.00
19.	Household employment taxes: attach Schedule IN-H (see instructions on page 10)	19	.00
20.	Indiana advance earned income credit payments from W-2(s) (see instructions on page 10)	20	.00
21.	Recapture of Indiana's CollegeChoice 529 credit. Attach Schedule IN-529R (see page 10)	21	.00
22.	Add lines 16 through 21. Enter here and on line 33 on the back **Total Tax ▶**	22	58,766.00
23.	Indiana state tax withheld (from box 17 of your W-2s or from 1099s)	23	46,055.00
24.	Indiana county tax withheld (from box 19 of your W-2s or from 1099s)	24	990.00
25.	Estimated tax paid for 2008: include any extension payment made with Form IT-9	25	4,100.00
26.	Unified tax credit for the elderly: see instructions on page 11	26	.00
27.	Earned income credit: attach Schedule IN-EIC and enter amount from Section A, line A-2	27	.00
28.	Lake County Residential income tax credit: see instructions on page 11	28	.00
29.	Economic development for a growing economy credit: see instructions on page 12	29	.00
30.	Media production expenditure credit: see instructions on page 12	30	.00
31.	Indiana credits: enter the total from Schedule 2, line 7 and attach Schedule 2	31	7,658.00
32.	Add lines 23 through 31. Enter here and on line 34 on the back **Total Credits ▶**	32	58,803.00

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MICHAEL BRADY

Line	Description		Amount
33.	Enter the Total Tax from line 22 on the front of this form ▶	33	58,766.00
34.	Enter the Total Credits from line 32 on the front of this form ▶	34	58,803.00
35.	If line 34 is more than line 33, subtract line 33 from line 34 (if smaller, skip to line 42)	35	37.00
36.	Amount of line 35 to be donated to the Indiana Nongame Wildlife Fund (see page 13)	36	.00
37.	Subtract line 36 from line 35 SUBTOTAL	37	37.00
38.	Amount from line 37 to be applied to your 2009 estimated tax account (see instructions on page 13) a. Your county ___ amount $ ___ b. Spouse's county ___ amount $ ___ c. Indiana adjusted gross income tax amount $ ___ Total to be applied (a+b+c)	38d	.00
39.	Penalty for underpayment of estimated tax for 2008: attach Schedule IT-2210 or IT-2210A	39	.00
40.	Refund: Line 37 minus lines 38d and 39 (if less than zero see line 42 instructions on page 15) YOUR REFUND ▶	40	37.00
41a.	Routing Number ___ c. Type: ☐ Checking ☐ Savings ☐ Hoosier Works MC		Direct Deposit (see page 15)
b.	Account Number ___		
42.	If line 33 is more than line 34, subtract line 34 from line 33. Add to this any amount on line 39, and enter total here (see instructions on page 15) SUBTOTAL	42	.00
43.	Penalty if filed after due date (see instructions on page 15)	43	.00
44.	Interest if filed after due date (see instructions on page 15)	44	.00
45.	Amount Due: Add lines 42, 43 and 44 AMOUNT YOU OWE ▶	45	.00

▶ No payment is due if you owe less than $1. **Do Not Send Cash.** Please make your check or money order payable to: **Indiana Department of Revenue.** Credit card payers must see page 15 for instructions.

Out-of-State Income Information

Enter any salary, wage, tip &/or commission received from Illinois, Kentucky, Michigan, Ohio, Pennsylvania and/or Wisconsin:

Yourself $ .00

Spouse $ .00

If two-thirds of your gross income was made from farming or fishing, please check here ☐
Important: If you checked the box, you must attach Schedule IT-2210 or IT-2210A.

Are you filing a federal income tax return for 2008? Yes ☒ No ☐

If any individual listed at the top of the IT-40 died during 2008, enter date of death below (MM/DD).

Taxpayer's date of death ____ 2008

Spouse's date of death ____ 2008

Authorization

Under penalty of perjury, I have examined this return and all attachments and to the best of my knowledge and belief, it is true, complete and correct. I understand that if this is a joint return, any refund will be made payable to us jointly and each of us is liable for all taxes due under this return. Also, my request for direct deposit of my refund includes my authorization to the Indiana Department of Revenue to furnish my financial institution with my routing number, account number, account type, and Social Security number to ensure my refund is properly deposited. I give permission to the Department to contact the Social Security Administration in order to confirm the Social Security number(s) used on this return are correct.

Your Signature ____ Date ____

Daytime telephone number ____

Spouse's Signature ____ Date ____

E-mail address where we can reach you ____

I authorize the Department to discuss my return with my personal representative (see page 16). ☒ Yes ☐ No
If yes, complete the information below.

Personal Representative's Name (please print)

Telephone number

Address

City

State Zip Code + 4

Paid Preparer: Firm's Name (or yours if self-employed)

☐ IN-OPT on file with paid preparer if not filing electronically

☒ Federal I.D. Number ☐ PTIN **OR** ☐ Social Security Number

Telephone number

Address

City

State Zip Code + 4

Signature Date

- **If enclosing payment mail to: Indiana Department of Revenue, P.O. Box 7231, Indianapolis, IN 46207-7231.**
- **Mail all other returns to: Indiana Department of Revenue, P.O. Box 7231, Indianapolis, IN 46207-7231.**

Keep a copy for your records.

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Schedules 1 & 2
Form IT-40, State Form 47908
(R5 / 9-08)

Schedule 1: Indiana Deductions

(Schedule 2 begins after line 12 below)

2021

Enclosure
Sequence No. 01

Enter your first name, middle initial and last name and spouse's full name if filing a joint return: MICHAEL BRADY

Your Social Security Number:

Instructions for Schedule 1 begin on page 17.

1. Renter's deduction: Address where rented if different from the one on the front page (enter below)
   Landlord's name and address (enter on next line)
   Amt. of rent paid $ .00
   Number of months rented ___ Enter the lesser of $3,000 or amount of rent paid .... | 1 | .00
2. Homeowner's residential property tax deduction: enter address where property tax was paid if different from front page SAME
   Number of months lived there 12
   Enter the lesser of $2,500 or the actual amount of property tax paid for 2008 Box A $ 941.00
   Note: Enter the amount of property taxes due in 2007 but paid **during** 2008 (if any) from step 5 of the worksheet on page 19 .... Box B $ .00
   Add Boxes A and B, enter the total here (**combined deduction cannot be more than $5,000**) .... | 2 | 941.00

	Line	Amount
3. State tax refund reported on federal return (see page 19)	3	15,688.00
4. Interest on U.S. government obligations (see page 19)	4	32.00
5. Taxable Social Security benefits (see page 20)	5	.00
6. Taxable railroad retirement benefits (see page 20)	6	.00
7. Military service deduction: $5,000 maximum for qualifying person (see page 20)	7	.00
8. Non-Indiana locality earnings deduction: $2,000 maximum per qualifying person (see page 20)	8	.00
9. Insulation deduction: $1,000 maximum: attach verification (see page 20)	9	.00
10. Nontaxable portion of unemployment compensation (see page 21)	10	.00
11. Other Deductions: See instructions beginning on page 21 (attach additional sheets if necessary)		
a. Enter ded. name ___ code no. ___	11a	.00
b. Enter ded. name ___ code no. ___	11b	.00
c. Enter ded. name ___ code no. ___	11c	.00
d. Enter ded. name ___ code no. ___	11d	.00
12. Add lines 1 through 11 and enter total on line 8 of Form IT-40 .... **Total Deductions ▶**	12	16,661.00

Schedule 2: Indiana Credits

	Line	Amount
1. Credit for local taxes paid outside Indiana (see page 28)	1	.00
2. County credit for the elderly: attach federal Schedule R (see page 30)	2	.00
3. Other Local Credits: See instructions on page 30 (attach additional sheets if necessary)		
a. Enter cr. name ___ code no. ___	3a	.00
b. Enter cr. name ___ code no. ___	3b	.00
Important: Lines 1 through 3 cannot be greater than the county tax due on IT-40 line 17 (see limitation on page 30)		
4. College credit: attach Schedule CC-40 (see page 31)	4	.00
5. Credit for taxes paid to other states: attach other state's return (see page 31)	5	6,658.00
6. Other Credits: See instructions on page 32 (attach additional sheets if necessary)		
a. Enter cr. name COLLEGECHOICE 529 EDUCATION SAVINGS code no. 837	6a	1,000.00
b. Enter cr. name ___ code no. ___	6b	.00
c. Enter cr. name ___ code no. ___	6c	.00
d. Enter cr. name ___ code no. ___	6d	.00
Important: Lines 4 through 6 added together cannot be greater than the state adjusted gross income tax due on IT-40 line 16 (see Additional Limitations on page 38)		
7. Add lines 1 through 6 and enter total on line 31 of Form IT-40 .... **Total Credits ▶**	7	7,658.00

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Schedule CT-40
Form IT-40, State Form 47907
(R7 / 9-08)

County Tax Schedule for Indiana Residents

Read instructions on page 24 to see if this schedule needs to be attached to your IT-40

Enclosure Sequence No. 02

2021

Enter your first name, middle initial and last name and spouse's full name if filing a joint return
MICHAEL BRADY

Your Social Security Number

Lake County Residents: Turn to the Special Instructions for Lake County residents on page 27 if you and/or your spouse lived and/or worked in Lake County on Jan. 1, 2008.

If you determine that Lake County tax is due, find your 4-digit code number (see page 28) and enter it here. If you are married filing jointly, and your spouse also lived and/or worked in Lake County on Jan. 1, 2008, enter the 4-digit number for your spouse.

Your Lake County 4-digit number. ____ Spouse's Lake County 4-digit number ____

SECTION 1: To be completed by those taxpayers who were residents of a county that had adopted a county income tax.

Line		Column A - Yourself		Column B - Spouse's
1. **Enter the amount from IT-40, line 15.** Note: If both you and your spouse lived in the same county on January 1 (or lived in the same Lake County location on January 1), enter the entire amount from Form IT-40, line 15 on line 1A only. See instructions on page 24	1A	1,163,690.00	1B	.00
2. If you claimed a non-Indiana locality earnings deduction on Schedule 1, line 8, enter the amount here. If not, leave blank	2A	.00	2B	.00
3. Add lines 1 and 2	3A	1,163,690.00	3B	.00
4. Enter the resident rate from the county tax chart on page 40 for the county where you lived on Jan. 1, 2008	4A	• 0.016500	4B	•
5. Multiply line 3 by the rate on line 4	5A	19,201.00	5B	.00

Line		Amount
6. Add lines 5A and 5B. Enter the total here. **Note: Perry County residents: If you live in Perry County and worked in the Kentucky counties of Breckinridge, Hancock or Meade, you must complete lines 7 and 8.** Otherwise, enter the total here and on line 9 below (see page 26)	6	19,201.00
7. Enter the amount of income that was taxed by any of the Kentucky counties listed on line 6 above	7	.00
8. Multiply line 7 by .0056 and enter total here	8	.00
9. Line 6 minus line 8. Enter the total here and on line 17 of Form IT-40	9	19,201.00

SECTION 2: To be completed by those taxpayers who, on Jan. 1, 2008, were residents of a county that had not adopted a county income tax, but worked in an Indiana county that had adopted a county income tax.

Line		Column A - Yourself		Column B - Spouse's
1. Enter your principal employment income by entering the total income from your W-2s and/or net self-employment income (from federal Schedule C/C-EZ; federal Form 1065, Schedule K-1 and/or farm income from federal Schedule F). See page 26 for further Section 2 instructions	1A	.00	1B	.00
2. Enter any amounts for payments made to self-employed retirement plans, IRA's, etc. See page 27 for the complete list of allowable deductions and further instructions	2A	.00	2B	.00
3. Subtract line 2 from line 1	3A	.00	3B	.00
4. Enter some or all of the exemptions from line 14 of Form IT-40 (see instructions on page 25)	4A	.00	4B	.00
5. Subtract line 4 from line 3	5A	.00	5B	.00
6. Enter the nonresident rate from the county tax rate chart on page 40 for the county where you worked on Jan. 1, 2008	6A	•	6B	•
7. Multiply the income on line 5 by the rate on line 6	7A	.00	7B	.00

Line		Amount
8. Enter total of 7A plus 7B. Add to any Section 1, line 9 amount, and carry to line 17 of Form IT-40	8	.00

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Schedule IN-529
Form IT-40/IT-40PNR
State Form 53385 (R2 / 9-08)

Schedule IN-529: Indiana's CollegeChoice 529 Education Savings Plan Credit

2021

Enclosure Sequence No. 18

Enter your first and last name and spouse's first and last name if filing a joint return.
MICHAEL BRADY

Your Social Security Number

Enter information about contributions made by you and/or your spouse during 2008 to Indiana's CollegeChoice 529 Education Savings Plan(s).

Column A	Column B	Column C		Column D
Check box if you (and/or spouse) do not own the account.	Enter Account #	Enter smaller of total annual contribution(s) from you (and/or spouse) per account during 2008 or $5,000.		Lines 1 - 4: Multiply Column C by .20
☐	5291010841	2500.00	1	500.00
☐	5291010845	2500.00	2	500.00
☐		.00	3	.00
☐		.00	4	.00
Add total from lines 1 through 4 (attach additional sheets if necessary)			5	1,000.00
LIMITATION			6	1,000
Enter the smaller amount from Column D, lines 5 or 6			7	1000.00
Enter the amount from IT-40 line 16 or IT-40PNR line 12			8	39,565.00
Allowable credit: Enter the smaller amount from Column D, lines 7 or 8. Also enter under line 6 of Schedule 2 or, if filing IT-40PNR, under line 6 of Schedule E			9	1000.00

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Indiana Statements

Statement 1 - Depreciation, Disposition, and Other Adjustments

Description	Taxpayer	Spouse	Total
DEPRECIATION ADJUSTMENT	$ -4,522	$	$ -4,522
TOTAL	$ -4,522	$ 0	$ -4,522

59-60, Inc.
Business Valuation Consultants
205 N. Main Street
Zionsville, IN 46077
317-873-5960
317-873-5965 (fax)
bbrewer@appraisal.cpa.pro
www.59-60.com

59·60 Inc.®

Date Mailed or Delivered____
Date Returned ___________________________

Company Name_____________________________________

VALUATION QUESTIONNAIRE

Prepared for 59-60, Inc.

Instructions

The purpose of this questionnaire is to allow you (or your Chief Financial Officer, who may complete the questionnaire, if you wish) to provide information that we need to consider in the business valuation assignment. The questions have been grouped into sections some of which may not apply. Please complete the information as completely as possible. Attach additional sheets if necessary or provide documents that provide the information. This is part of our necessary due diligence, and from experience, makes best use of your time and ours if we begin the assignment of a Company such as yours in this way. Some of the topics may be covered in more depth when we meet with you. Some guidelines:

1. The applicable date for all questions is the valuation date, unless indicated otherwise.
2. Although all questions do not apply to your Company, please answer all questions. For questions not applicable to your business, please answer with an "N/A."
3. The final section of this questionnaire requests copies of documents and other information. Please indicate whether the information is available or not, or whether it does not apply to your business. Please read the introductory note in this section.

This questionnaire has been completed by _____________________________________
Name and Title

59-60, Inc.

BUSINESS VALUATION QUESTIONNAIRE

A. Information about the Company

1. The Valuation Assignment

a) Name of Company ____

b) Address of Company ____
____

c) Telephone number ____

d) Fax number____

e) Principal contact at the Company
____

f) Valuation date ____

g) Use/Purpose of valuation ____
____

2. Have any valuations of this Company been prepared in the five years prior to the valuation date, and up to the date of the completion of this questionnaire? Yes____No____

3. Structure and ownership

a) Is the business a

____ Regular (C) corporation
____ Partnership
____ Other (describe)____________________
____ "S" corporation
____ Proprietorship
____ Limited Liability Company

b) Business history

Years in business ____________
Date of Incorporation ____________
State of Incorporation ____________
Corporate changes (C to S, etc.,) Attach schedules

c) Who are the owners, and what is their ownership at the valuation date, and their relationship to each other. Please provide a separate schedule for each class of stock or other equity interest.

Owner	Position/Title	Date of Birth	Shares Owned	% Owned	Years of Service/ Involvement	Relationship

d) Has the ownership changed since the valuation date? Yes____ No____ (If yes, please complete Schedule A.3.d).)

e) As of the valuation date, please list the members of the board of directors.

Name	Title	Relationship to the business	Years of service on the Board

f) Is the present Board different from the Board at the valuation date? Yes____ No____ If yes, please indicate changes and effective dates on a separate schedule.

g) What are the Company's applicable SIC Codes? ________________________________

h) Are the officers and key management people in good health? Yes____ No ____. (If No, please explain.)

4. Equity structure and transactions

a) If the Company is a corporation, is there more than one class of stock? Yes____ No____
If Yes, please provide rights and structure of each class. ___________________________
____
____

b) If the Company is a partnership, is there a partnership agreement? Yes____ No____

c) Is there a buy/sell or stock redemption agreement? Yes____ No____

d) Are there stock options, rights, warrants or similar instruments outstanding? Yes____
No____

e) If not a corporation, are there any options or similar agreements to sell, trade or offer equity interests? Yes____ No____ If Yes, please explain __________________________
____

f) Are there any restrictions on the sale or transfer of shares or other equity interests in the business? Yes____ No____ if Yes, please explain. ________________________________
____
____

g) Is there a legend on the Company's stock certificates? Yes____No____

h) Have there been any purchases, sales, or tax-free or other exchanges of equity interests or major assets of the business in the past five years? Yes____No____

I) Have there been any negotiations, inquiries and/or offers to purchase or sell equity interest or major assets of the business in the past five years? Yes____No____

j) Has the Company entered into any negotiations and/or offers to purchase equity in another business? Yes____ No____

k) Are there any restrictions in The Articles of Incorporation, By-Laws, Operating Agreements or other such agreements? Yes____ No____ if Yes, please explain.

5. Please list the Company's CPA firm, Corporate counsel and primary banking relationships.
____
____
____

B. Sales and Customers

1. Are sales seasonal? Yes____No____ If Yes, please explain ______________________________
____
____

2. Sales and Marketing.
   a) How does the Company sell and/or market its products/services? ____________________
   ____
   ____
   ____

   b) Does the Company sell through salesmen or manufacturer's representatives, distributors or other means?
   ____
   ____
   ____
   ____

3. Have there been any current profit plans developed? Yes____No____

4. What are the Company's advertising methods?_______________________________________
____
____

5. Detail sales by major five customers/branch locations/product line on a separate Schedule.

6. Detail standard sales terms, discounts offered, returns and allowances policy. ___________
____
____

7. Are there consignment sales? Yes____No____

8. Does the business use outside warehouses for its inventory? Yes____No____

9. Are maintenance agreements included in the sales terms? Yes____No____ If Yes, please explain ____
____

10. Are express or implied warranties offered in the sales terms? Yes____No____

If so, please detail the terms of the agreements. ____
____
____

11. Regarding your customers:

a) Describe your typical customer. ____
____
____

b) Why do you feel your customers buy from you? ______________________________
____
____

c) Describe your current customer relationships - good, bad or fair? Please explain. ______
____
____
____

d) List the names of the Company's five (5) largest customers and their location, sales volume and the number of years they have been customers on the following schedule:

	Name	**Location - City, State**	**Annual Sales Volume**	**No. of years as a customer**
1				
2				
3				
4				
5				

e) Has the Company lost business from a principal customer in the last five years?
Yes____No____

f) If yes, please complete the following schedule:

Name	**Year Lost**	**Annual Sales Volume**	**Why was business lost?**

g) Have you recently lost any customers, the loss of which will affect future operations?
Yes____No____ If Yes explain____
____
____

h) Has the Company gained principal new customers in the past five years?
Yes____No____ If Yes, provide details.

Name	Year Acquired as Customer	Annual Sales Volume

12. Describe the credit rating of the Company's principal customers.

Strong ____ Fair ____ Weak ____

a) Detail the historical bad debt and Sales returns and allowances experience of the Company for the past five years:

Year Ended	Bad debt expense	Sales returns/allowances

13. In the last five years, has the Company experienced product liability problems? Yes____No____
Explain Yes ____
____
____

14. Does the Company lease products to its customers? Yes____No____

15. Does the Company export? Yes____No____ If Yes, % sales exported_________.

16. Are new products planned or anticipated? Yes____No____

17. Is the Company planning to discontinue any existing products or product lines? Yes____No____
Explain Yes answers to 16. and 17.____
____
____

C. Industry Information

1. Provide a detailed description of the industry in which the Company operates. ______________
____
____

2. What are the Company's SIC (Standard Industrial Classification) Codes? __________________
____

3. List the industry organizations to which the Company belongs:

Name	Location - City, State	Phone no.	Contact (If known)	Is the Co. an Active Member?

4. List the industry publications that the Company receives?

Name	Publisher	Location - City, State

5. What substitute products are available for the Company's products? _______________________
____
____

6. Describe important business relationships that significantly affect sales - customers, suppliers, agents, attorneys, accountants, engineers, consultants, etc. ______________________________
____
____

D. Information about Personnel

1. Number of Company Employees:

	Non-union	Union
Full time		
Part time		
Seasonal		
Total		

2. Briefly describe past and current employee relations. ______________________________
____
____
____

3. Executive compensation

a) For each of the last five years prior to or ending on the valuation date, please list the information requested on the following schedule for all officers, shareholders and/or equity owners.

Executive Compensation						
Name	**Position/Title**	**Date of Birth**	**Salary**	**Bonus**	**Other Compensation**	**Total Compensation**

Year 1

Year 2

Year 3

Year 4

Year 5

b) Is compensation paid to any related party who is not an officer or shareholder (e.g. spouse, child, parent, etc.)? Yes____No____ If Yes, provide details on a separate schedule in similar format to the above.

c) Explain bonus determination procedures. ____
____
____

d) Are there deferred compensation arrangements between the Company and owners, employees, or independent contractors? Yes____No____

e) List fringe benefits and perquisites received by owners and officers. ________________
____
____

f) Do the Company's employees have employment contracts? Yes____No____

g) Does the Company carry life insurance on officers, directors or equity owners? Yes____No____

4. List the ten highest paid non-officer employees, their annual compensation, and their position in the Company.

Name	Position	Annual Compensation

5. List all retirement plans (Keough, 401k, corporate pension/profit-sharing, etc. ______________
____
____

a) If there is a retirement plan, is it a defined benefit plan? Yes____No____

b) If Yes, is it Overfunded____ Underfunded____ By what amount? ___________

6. Please list any other pertinent information related to this category.
____
____
____

E. Related Party information

1. Does the Company lease from/to related parties? Yes____No____

2. Has any person or entity guaranteed any liability of the Company? Yes____No____

3. Has the Company guaranteed any liability of another person or entity? Yes____No____

4. Detail any other related party transactions (e.g. PORCs), contracts, etc., and whether the transactions are at fair market value, arm's length terms. ________________________________
____
____

5. Provide details of any loans from/to the Company to/from its shareholders, directors, officers, employees and related parties.

Loans from (to) the Company	Loan to (from) whom?	Amount	Interest Rate	Maturity Date

F. The Economy

1. What is the economic climate in your market area(s)? ___________________________________
____
____

2. What is the economic climate in your industry? __________________________________
____
____

3. Compare the strengths and weaknesses of your industry currently vs. five years ago.

Strengths today____
____
____

Strengths five years ago ____
____
____

Weaknesses today____
____
____

Weaknesses five years ago ____
____
____

4. Compare the strengths and weaknesses of your Company currently vs. five years ago.

Strengths today____
____
____

Strengths five years ago ____
____
____

Weaknesses today____
____
____

Weaknesses five years ago ____
____
____

G. Competitors

1. List the Company's major competitors:

Name	Location - City, State	Market Share

If any of these competitors' products or services renders yours obsolete or less competitive, please explain.

____
____
____

2. List the largest similar businesses within your industry.

____
____
____
____

3. List the largest similar businesses within your market region(s).

____
____
____
____

4. List up to six (6) publicly held businesses which you consider comparable to the Company.

1. ____
2. ____
3. ____
4. ____
5. ____
6. ____

H. Financial Statements

1. Were there any material unusual or non-recurring items of income or expense during the five years preceding the valuation date? Yes____No____

2. a) List business locations of the Company (offices, plants, etc.) ________________________
____
____
____

   b) Have any of the Company's assets (real estate, equipment, intangibles, etc.) been appraised in the last five years? Yes____No____

   c) List subsidiaries, operating investments, affiliated companies, joint ventures, etc. _______
____
____

3. List any assets or liabilities not recorded on the Company's books:

Description	Fair Market Value	Appraisal? Yes/No

4. Describe all non-operating assets such as, but not limited to, aircraft, boats, art, real estate, and any other assets not primarily used in the Company's operations

Description	Cost	Net Book Value	Estimated Fair Market Value	Debt Outstanding	Annual Net Income/(Loss)

5. Does the Company own the rights to patents, copyrights, trademarks, or other intellectual property? Yes____No____

6. List other facilities owned or leased by the Company:

Location	Land Value	Building Value	Appraisal? Yes/No	If leased, leased at Market Value?

7. Regarding Capital Assets

a) List the annual capital spending needs of the Company for the next five years. ____

____

____

____

b) List current critical and/or substantial capital needs.

____

____

____

____

8. What is the overall condition of the Company's capital assets? ______________________________

____

____

a) Is there inefficient, obsolete or unusable equipment? Yes____No____ Explain Yes ____

____

____

b) What is the likelihood of major repairs to the above mentioned capital assets? __________

____

____

9. List dividends paid during the last five years.

Date declared	Date paid	Amount

10. List deferred charges information as follows:

Nature of deferral	Amount	Fair Market Value

11. Detail insurance coverage (liability, property, etc.) ___________________________________
____
____

12. Discuss future expansion plans. ____
____
____

13. Are there any current strategic plans, long-range plans or business plans? Yes____No____

14. Are there any current projections or forecasts? Yes____No____

I. Contingencies.

1. Has the Company been audited by the IRS, OSHA, or any other federal or state agency in the last five years? Yes____No____

2. Has the Company had any environmental or hazardous waste studies, audits, investigations, etc. in the last five years? Yes____No____

3. Does the Company have difficulty complying with environmental regulations? Yes____No____

4. Is there any material litigation pending against the Company? Yes____No____

5. Is there any legislation pending or recently enacted which could have a material adverse effect on the operations of the Company? Yes____No____

Please explain Yes answers to questions 1. through 5. above ______________________________
____
____
____

J. Other Information

Indicate any other information you feel might be useful in valuing your Company. __________
____
____
____

K. Cash Basis and Balance Sheet items

1. Please provide the following information

a) Accounts receivable as of the valuation date $________________________

b) Accounts receivable as of _______________, the most current date. $_______________

i) Uncollectible percentage

At the valuation date ___________%
At the current date ___________%

ii) What additional work is required to be done before these receivables are fully collectible? ____
____
____

c) Inventory (LIFO)

i) Book value $___________________________________
ii) Fair market value $___________________________________
iii) LIFO reserve $___________________________________

d) Furniture, fixtures and equipment

i) Net book value $___________________________________
ii) Fair market value $___________________________________

e) Liabilities

i) Accounts payable $____________________________________

ii) Other current liabilities $____________________________________

iii) Current portion - L-T debt $____________________________________

iv) Long-term debt $____________________________________

f) Escrow amounts. Explain ____
____

g) Work on contingent fee basis. Explain ____
____

Anything else you think the business appraiser needs to know about the business?

____
____
____
____
____

59-60, Inc.

DOCUMENT AND INFORMATION CHECKLIST

This is a preliminary list. Some of these documents may not be prepared regularly or the data may not yet be compiled. Additional documents may be required and will be requested later. Copies of some documents may be necessary for substantiation and permanent retention in formal appraisals; inspection/review of others will suffice. Any extremely large documents will be inspected before copying. The Company Owner, Chief Financial Officer and other appropriate Officers should be prepared to discuss the operating, sales and financial history of the Company in conjunction with the documents requested.

Please have available or include copies of:

1. Audited, reviewed, compiled financial statements for the last five years. Yes ___ No___ N/A___
2. Tax returns (including Forms 3115 and 481a adjustments) and dealership statements (13th) for the last five years. Yes___ No___ N/A___
3. Detailed balance sheet and statement of operations at the date of valuation. Yes___ No___ N/A___
4. Detailed fixed asset and depreciation schedule as of the last year end date. Yes___ No___ N/A___
5. Detailed fixed asset and depreciation schedule as of the valuation date. Yes___ No___ N/A___
6. Detailed list of capital assets purchased but not recorded on the fixed asset list (written off) for the past 5 years. Yes___ No___ N/A___
7. Copies of recent NADA (or other) 20-Group reports. Yes___ No___ N/A___
8. Details of any off-balance sheet or off-income statement items (e.g. PORC's). Yes___ No___ N/A___
9. Details of any reserve accounts (e.g. chargebacks). Yes___ No___ N/A___
10. Articles of incorporation and by-laws (for review). Yes___ No___ N/A___

11. Corporate shareholder, board of directors and executive committee meeting minutes (or minutes of partnership meetings, etc.) for the past five years through the valuation date (for review). Yes___ No___ N/A___

12. Details of rights and structure for each class of stock and equity (for review). Yes___ No___ N/A___

13. Partnership agreement. Yes___ No___ N/A___

14. Buy/sell or stock redemption agreement. Yes___ No___ N/A___

15. Details of stock options, rights, warrants and similar instruments. Yes___ No___ N/A___

16. Legend on stock certificates. Yes___ No___ N/A___

17. Details of purchases, sales, equity issued as compensation and tax-free exchanges of equity interests and major assets for the last five years through the valuation date, including copies of contracts (for review). Yes___ No___ N/A___

18. Details of negotiations and/or offers to purchase or sell equity interests or major assets of the Company in the past five years through the valuation date, including letters of interest, letters of intent, etc. Yes___ No___ N/A___

19. Details of gifts or estate transfers of equity interests and major assets of the Company during the last five years through the valuation date, including gift tax returns (for review), valuations and appraisals. Yes___ No___ N/A___

20. Details of deferred compensation arrangements between the Company and its owners, directors, officers, employees, and independent contractors, including documents (for review). Yes___ No___ N/A___

21. Copies of employment contracts (for review). Yes___ No___ N/A___

22. Details of life insurance carried on owners, directors and officers (for review). Yes___ No___ N/A___

23. Job descriptions of owners, directors, and officers. Yes___ No___ N/A___

24. Curriculum vitae for each stockholder, owner, and officer. Yes___ No___ N/A___

25. Details of leases to/from related parties, including analysis of whether the leases are each at fair market value. Yes___ No___ N/A___

26. Details of guarantees -- personal and corporate -- given to the Company. Yes___ No___ N/A___

27. Details of guarantees -- personal and corporate -- given by the Company Yes___ No___ N/A___

28. A complete description and history of the business operations, including the nature of the Company's products, product lines, and/or services. Yes___ No___ N/A___

29. An organization chart or an outline of the organizational structure. Yes___ No___ N/A___

30. Explain the seasonal and/or cyclical aspects of the Company's business. Yes___ No___ N/A___

31. Copies of land, building and equipment appraisals prepared within the last five years through the date of valuation. Yes___ No___ N/A___

32. Copies of business appraisals of the Company prepared within the last five years through the date of valuation. Yes___ No___ N/A___

33. Details of any material unusual and non-recurring items of income or expense included in the results of operations over the last five years, through the valuation date. Indicate the nature of each item, the year of occurrence and the amount. Yes___ No___ N/A___

34. Copies (for review) of documentation of business-owned patents, trademarks, franchise agreements or other intangible assets and intellectual property (including secret formulas). Yes___ No___ N/A___

35. Copies of current strategic plans, business plans, profit plans, forecasts and projections. Yes___ No___ N/A___

36. Detail of any audits performed on the Company by the IRS, OSHA, or other federal and state agencies, including copies of the reports (for review). Yes___ No___ N/A___

37. Details of environmental, hazardous waste and other studies, audits, investigations, etc. (for review). Yes___ No___ N/A___

38. Schedule of transactions in the Company's stock during the last five years through the date of valuation. Yes___ No___ N/A___

39. Details of contingent liabilities (guarantees, warrantees, environmental concerns, etc.) or "off-balance sheet" financing (such as letters of credit). Yes___ No___ N/A___

Thank you for spending your valuable time completing this questionnaire.

Weekly Income Calculation for Child Support Purposes - Case:			
Year 2014	Husband	Wife	Total
Income:			
Salaries/wages	$ 400,000.00	$ 100,000.00	$ 500,000.00
Taxable interest	2,500.00	7,000.00	9,500.00
Ordinary dividends	-	10,500.00	10,500.00
Taxable refunds			-
Alimony received			-
Business income			-
Capital gains	-	7,500.00	7,500.00
Other gains			-
IRA Distributions			-
Pensions and annuities			-
Rental, royalties, partnerships, S Corps, trusts, etc.	420,900.00	66,500.00	487,400.00
Farm income			-
Unemployment compensation			-
Social security benefits			-
Other income	10,000.00		10,000.00
Total taxable income	$ 833,400.00	$ 191,500.00	**$ 1,024,900.00**
Adjusted Gross Income per return			$ 1,024,900.00
Federal taxes			326,612.00
State taxes			37,056.00
Effective tax rate on TI Federal			31.9%
Effective tax rate on TI State			3.6%
Total effective tax rate			**35.5%**
Total taxable income	$ 833,400.00	$ 191,500.00	$ 1,024,900.00
Difference from effective rate to guideline rate of 21.88%:			**13.60%**
Enter passthrough income for tax calculation here (not included in total below):			
S Corp income	420,900.00	-	420,900.00
Partnership income		-	-
Adjustments:			
Additions:			
Tax exempt interest	750.00	2,500.00	3,250.00
Tax exempt dividends			-
Tax exempt IRA distributions			-
Tax exempt Pensions and annuities			-
Non-taxed Social security benefits			-
S Corp distributions	62,000.00	-	62,000.00
Partnership distributions			-
Depreciation on rental properties	-		-
Disability insurance benefits			-
Gifts			-
Inheritance			-
Prizes			-
Maintenance			-
Business write-offs that reduce personal living expenses			-
Company increases in cash, investments and other assets in order to avoid distributions			-
Other additions			-
			-
Total income before deductions for child support purposes	896,150.00	194,000.00	1,090,150.00
Deductions:			
Self-employment tax	-	-	-
Tax on phantom income	(127,349.44)	-	(127,349.44)
Tax on all other taxable income at excess rate	(56,113.47)	(26,050.26)	(82,163.73)
Less passthrough income included in taxable income	(420,900.00)	-	(420,900.00)
Other deductions	-	-	-
Total annual income	291,787.08	167,949.74	459,736.83
Adjusted Weekly Gross Income including variance:	**$ 5,611.29**	**$ 3,229.80**	**$ 8,841.09**

Please note this formula does not account for any increases in value or assets inside any Company holdings

This template was prepared for assistance only.

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Version 5-5-14

Section Nine

2022 INDIANA FAMILY LAW UPDATE

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Section Nine

2022 Indiana Family Law Update.............................Andrew Z. Soshnick

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2022 INDIANA FAMILY LAW UPDATE

I. INTRODUCTION

Summarized below are the published family law opinions from the Indiana Court of Appeals and Indiana Supreme Court from August 2021 to August 2022. As has been the case for many years, "Memorandum Decisions" constituted the majority of family law decisions. "For Publication" opinions addressed many important substantive areas, with a broader range of property issues considered than in recent years. Additionally, more directives on remand occurred with fewer divided panels.

II. CASE LAW

A. PROPERTY DIVISION

1. *Haggarty v. Haggarty*, 176 N.E.3d 234 (Ind. Ct. App. 2021). On June 30, 2000, the parties entered into a premarital agreement that defined separate property and rights upon dissolution of marriage. On July 15, 2000, the parties married. Wife had a son from a prior marriage who lived with the parties during their marriage. On January 13, 2004, the parties had a daughter. On March 22, 2018, wife filed a petition for dissolution of marriage. On November 21, 2018, wife filed a motion for partial summary judgment in which she argued that husband breached their premarital agreement by failing to maintain a joint checking account for "ordinary living expenses," as contemplated by the premarital agreement. On September 27, 2019, the trial court denied wife's motion. The trial occurred on October 8, 9, and 10, 2019. Wife filed a motion for special findings of fact and conclusions of law pursuant to Ind. Trial Rule 52. Following the final hearing, the trial court magistrate took the case under advisement and ordered the parties to submit proposed findings and conclusions. The trial court magistrate did not timely issue an order and wife filed a praecipe with the Indiana Supreme Court, pursuant to Ind. Trial Rule 53. The Supreme Court removed the magistrate and remanded the case to the trial court judge. On May 22, 2020, the trial court entered a decree of dissolution of marriage. The decree defined "ordinary living expenses" as including "all" expenses or "everything," as testified to by the parties and supported by statutory and case authority. In total, husband was ordered to pay $498,997.49, pursuant to the premarital agreement, $1,183.50 for tax refunds, and $10,000.00 for attorneys' fees. On April 27, 2020, husband's counsel sent three checks and releases to wife's counsel to cover the judgments against husband. On May 6, 2020, wife signed three releases composed by her counsel. On May 13, 2020, the releases prepared by wife's counsel were filed with the trial court. On May 27, 2020, wife filed objections to her own releases, alleging that the judgments did not include accrued interest. That same day, husband filed objections to wife's objections. Wife appealed, husband cross-appealed, and the Indiana Court of Appeals, in a majority opinion with a partial dissent, affirmed. Wife first insisted that the trial court judge's judgment did not include any credibility determinations. However, when the Supreme Court entered its order remanding jurisdiction to the trial court judge, that order directed that the trial court judge would listen to the recording of the case and review all exhibits. That order also gave the parties until February 15, 2020, to object and request a new hearing. Neither party objected to the trial court judge's ruling based on the recording of the hearing and the admitted exhibits. Therefore, wife waived the due process requirement that the

factfinder observe the witnesses at hearing. The Court of Appeals noted that premarital agreements are construed under standard principles regarding contract formation and interpretation. Each party raised separate arguments alleging the trial court erred in its interpretation of the premarital agreement's requirement that husband maintain a checking account titled jointly with wife with an average balance sufficient to pay "ordinary living expenses" for a month. Wife argued that the trial court erred by concluding that husband's obligation to maintain the checking account began when the account was established in 2014 rather than in July 2000 when the parties married. According to wife, the trial court's decision improperly limited her breach of contract claim. Contrary to wife's argument, the Court of Appeals found no explicit or implicit finding that the trial court's order suggesting a duty to "maintain" the checking account did not also include an obligation to "create" the checking account. Rather, the trial court found that "the parties had to physically go into the bank" together to open the account, which did not happen until January 31, 2014. The record contained conflicting evidence, and the Court of Appeals denied wife's invitation to reweigh the evidence or assess the credibility of the witnesses. As to the meaning of "ordinary living expenses," the Court of Appeals noted that if a contract's terms are unambiguous "the intent of the parties must be determined from the four corners of the document." The Court of Appeals held that "ordinary living expenses" as used in the premarital agreement was an ambiguous term and the trial court did not err by considering parol evidence to determine its meaning. Wife also argued that the trial court erred by denying her request for prejudgment interest on the contract damages awarded for husband's failure to maintain the joint checking account. While the premarital agreement indicated husband was to keep sufficient funds in the account to cover "ordinary living expenses," the contract neither specified the amount he was to deposit each month nor defined which expenses were "ordinary living expenses." The trial court was required to exercise its discretion, making wife ineligible for prejudgment interest. As to the trial court's denial of wife's objections to her own releases and the trial court's finding that the releases were "unambiguous," wife's argument relied on a tortured reading of Ind. Trial Rule 58(D) because that rule does not invite an inference that a creditor's release is partial if interest and court costs were not included in the debtor's payment of the judgment. Wife's claim for post-judgment interest was not a claim that arose separate from the trial court's initial judgment. It was part of the very judgment that wife released, and the trial court did not err when it denied her objection. Finally, wife asserted that the trial court erred when it awarded attorneys' fees to husband in its order denying wife's motions to withdraw her releases. A trial court may award attorneys' fees in a marital dissolution action. *See* Ind. Code § 31-15-10-1. Whether such fees are awarded or left to the "broad discretion" of the trial court. *See Eads v. Eads*, 114 N.E.3d 868, 879 (Ind. Ct. App. 2018). The attorneys' fees provision in the premarital agreement did not relate to wife's entitlement to keep her separate property. The request arose because wife filed multiple objections to her own releases and husband's counsel was required to attend multiple hearings to respond to her meritless objections. The trial court did not abuse its discretion in awarding attorneys' fees to husband. Judge Robb concurred in part and dissented in part. Judge Robb agreed with the majority that the premarital agreement did not prohibit the award of attorneys' fees to husband in these circumstances but concluded that the fees were not warranted. The releases prepared by husband's counsel said that the judgments had been "fully"

paid and satisfied. Wife signed releases prepared by her counsel that said the judgment had been paid and satisfied, omitting the word "fully." Judge Robb reasoned that the word "fully" had been omitted because the issue of interest remained open. Accordingly, Judge Robb did not believe that wife's request to withdraw the releases was meritless. Judge Robb also noted the overall financial disparity between the parties and would have reversed the trial court's order that wife pay husband's attorneys' fees.

2. *Hudson v. Hudson*, 176 N.E.3d 464 (Ind. Ct. App. 2021). On January 19, 1990, 40-year-old husband and 38-year-old wife married. During the marriage, husband was primarily employed as a farmer, but also ran an excavating business with his brother for several years. Wife was employed at a factory for the majority of the marriage. Prior to the marriage, husband owned three separate tracts of land in Fayette County, Indiana totaling approximately 403 acres. Wife brought a home into the marriage and eventually sold it, netting approximately $30,000.00. During the marriage, husband inherited and was gifted approximately 196 acres of land from his parents. During the marriage, husband contracted to purchase 87 acres and the marital home from his parents. On April 19, 2017, husband filed a petition for dissolution of marriage. On February 24 and 25, 2020, the trial court held a final hearing. On October 20, 2020, the trial court entered its decree of dissolution of marriage dividing the marital estate equally, ordering the harvesting and sale of matured timber in the event the parties could not negotiate a division of its value with the proceeds to be divided equally, and ordering husband to pay wife half of the 2020 fair market rent for the tillable acreage. Husband appealed and the Indiana Court of Appeals affirmed. As to the equal division of the marital estate, the Court of Appeals noted that husband had the burden to establish that an unequal division was warranted in appealing from a negative judgment. Husband did not challenge any of the trial court's findings. Rather, he argued that the findings did not support the trial court's conclusion regarding an equal division of the marital estate. Husband contended that wife essentially made no contribution to the marital estate, dissipated assets, and had a higher income-earning potential. Even if the Court of Appeals were to assume that wife made no contributions toward acquiring the real estate, there was evidence that she made many other contributions over the years, financial and otherwise. Wife worked full-time throughout the 27-year marriage, had several part-time jobs, and contributed labor to husband's farming and excavating businesses. During the marriage Wife earned approximately $646,000.00 in W-2 income, cashed in $136,100.00 in retirement savings, and received approximately $35,500.00 in unemployment benefits. Conversely, husband's farming operation lost over $275,000.00 during the marriage, while the excavating business generated $68,500.00 in profit. Wife deposited all of her income into a joint account which paid household and children's expenses. Wife also made substantial improvements to the marital residence during the marriage. Husband further argued that his economic circumstances would be dire as a result of the division of the marital estate. The record as a whole did not establish that the trial court abused its discretion in failing to find that wife engaged in dissipation of marital assets. Likewise, husband failed to establish that a disparity in earning potential favored an unequal division of the marital estate. As to the harvest of timber, Ind. Code § 31-15-7-4(b)(3) provides that a trial court may order the sale of property under such conditions as the Court prescribes and divide the proceeds of the sale in divorce cases. The Court of Appeals rejected husband's argument that the harvested sale of mature

timber on the marital real estate was an improper "transformation of real property" not allowed by Ind. Code § 31-15-7-4. The parties did not include the value of the timber on their marital estate balance sheets and stipulated that the harvestable timber on the marital real estate had its own value separate from that of the land. As the timber was valued separately, the order to harvest and sell it, neither transformed the real estate nor indicated that the trial court valued the real estate without regard to the effect that the sale would have on its value. Husband also contended that the trial court abused its discretion in ordering him to pay half of the 2020 $20,575.03 fair market rent for the 211.34 acres of tillable land. On the one hand, the real estate produced income in 2020 entirely through husband's efforts and investment without wife's participation, so it seemed inappropriate to divide the income evenly. However, wife did not argue that she was entitled to any of the proceeds of husband's farming. On the other hand, the Court of Appeals found it just as inappropriate to allow husband to use wife's share of the tillable acreage for free, when it was undisputed that it would have earned her almost $21,000.00 had it been rented to a third party. Under the circumstances, allowing husband to keep all of the 2020 proceeds of his farming operations while paying wife fair market rent for use of her half of the farmland was a just and reasonable solution and not an abuse of discretion.

3. *Kearney v. Claywell*, 181 N.E.3d 336 (Ind. Ct. App. 2021). In October 2016, husband and wife married. Each party previously was married to others and entered their marriage with significant assets. Entering the marriage, husband had assets of $841,361.48 and wife had assets of $394,951.60. The parties did not comingle their assets after marriage. When they married, wife sold her residence in Tennessee, quit her job in administrative nursing, and moved to Indiana. Husband wanted to stay in Indiana because he had worked for the same company for 20 years and was closer to retirement than wife. Husband told wife that she "didn't have to work," and wife allowed her Tennessee nursing license to lapse. According to husband, he paid the majority of the parties' living expenses during the marriage. At some point during the marriage, wife obtained an Indiana nursing license and unsuccessfully attempted to find employment. In April 2018, wife filed a petition for dissolution of marriage. Wife lived with her sister and a friend for 1 ½ years before purchasing a home in Tennessee. Wife regained her Tennessee nursing license but struggled to find employment comparable to her previous employment. At the time of the final hearing, wife was 59 years old and husband was 61 years old. In January 2021, the final hearing occurred. In March 2021, the trial court entered a decree of dissolution of marriage. The trial court found that husband contributed 68% to the marital estate through premarital assets and wife contributed 32% to the marital estate through premarital assets. The trial court further found that the parties did not acquire any other assets besides the premarital assets during their three-year marriage. The trial court awarded wife 40% of the marital estate and husband 60% of the marital estate. Husband filed a motion to correct error which the trial court denied. Husband appealed and the Indiana Court of Appeals affirmed. The Court of Appeals noted that the division of marital assets is within the trial court's discretion, which will only be disturbed for an abuse of discretion. The division of marital property is a two-step process. First, trial courts must ascertain the property to be included in the marital estate. Second, the trial courts must fashion a "just and reasonable" division of the marital estate. Trial courts presume an equal division of the marital estate is just and reasonable, but that presumption may be rebutted. The trial court determined that the presumption of an

equal division of marital property was rebutted. During the short marriage, the parties did not comingle their assets, had similar earning ability, and did not dissipate assets. The trial court considered the parties' "economic circumstances" at the date of final hearing and determined that wife was financially disadvantaged by the divorce. The Court of Appeals rejected husband's contention that wife was "far from economically harmed" as an invitation to reweigh the evidence and judge the credibility of witnesses.

4. *Johnson v. Johnson*, 181 N.E.3d 364 (Ind. Ct. App. 2021). In June 1990, husband and wife married. At that time, they both worked for the United States Postal Service ("USPS"). Shortly after marriage, they agreed that wife would resign her position with the USPS to be a full-time homemaker. The parties had a daughter born in 1994 and a son born in 1997. Husband and wife bought, sold, and managed real estate with the hope that the income would fund their children's post-secondary education and their retirement. In 2002, wife was diagnosed with cancer at the breast and lymph nodes. Between 2002 and 2013 she received chemotherapy, suffered multiple complications, and underwent multiple surgeries. In June 2013, husband moved out of the marital residence. Daughter was 19 years old and enrolled in Ball State University. Son was 16 years old and remained in wife's care. Husband was still employed with the USPS but stopped contributing any of his salary to the joint marital estate and did not contribute financially to wife or to son's care. Wife obtained part-time employment as a school bus driver at a minimal wage. Husband provided money and gifts directly to the children. Husband co-signed loans for daughter's college expenses and for son when he started college in 2016. Wife objected to co-signing the children's loans because she did not want to incur that debt and told husband that she did not want him to co-sign the loans. Husband did not ask wife to co-sign any college loans, and he made his decision independently to co-sign the loans. When husband moved out in 2013, the parties divided expenses as to their real estate. On January 30, 2017, husband filed his petition for dissolution of marriage. Husband's gross income for 2016 was $90,841.72. Wife's gross income for 2016 was $29,163.00. At the time of filing, husband had a Federal Employee Retirement Services ("FERS") pension valued at $643,060.58 with a survivor benefit, and a FERS supplement valued at $69,587.00. Husband also had a Thrift Savings Account ("TSP"). At the date of filing, husband had accumulated leave of 3,369 hours. Based on husband's hourly wage, his accumulated leave reflected a value of $142,912.79. For much of 2017, husband voluntarily took paid leave to assist his elderly parents. At the end of 2017, husband retired to care for his parents. At the date of filing, the loan debt for the children's college education was $57,000.00 for daughter and $23,977.00 for son. After the date of filing, husband co-signed additional college loans for daughter and son. Between August 2020 and February 2021, the trial court conducted a four-day final hearing. At trial, husband argued that he and wife had an oral agreement that he would keep the TSP and pay for the children's college loans out of that fund. Husband asked the trial court to include the entire college loan debt of $165,068.02 in the marital estate and allow his TSP to be used to pay that debt. The trial court included husband's accumulated leave in the marital estate and college loans on obligations incurred both before and after the date of filing. The trial court calculated that the total value of the marital estate was $1,724,456.35, and awarded husband 41.63% and wife 58.37% of the marital estate. Husband appealed and the Indiana Court of Appeals affirmed in part, reversed in part, and remanded. As to husband's accumulated leave,

the Court of Appeals determined that it was not a marital asset since it was not vested. *See Akers v. Akers*, 729 N.E.2d 1029 (Ind. Ct. App. 2000). As of the date of filing, husband had not present right to convert his unused sick days to cash or right to convert any unused sick days to cash, even upon retirement. The Court of Appeals determined that the trial court properly excluded from the marital estate college loans that he incurred after the date of filing. The Court of Appeals also affirmed the trial court's unequal distribution of the parties' marital estate in favor of wife, noting that the trial court did not err in considering husband's failure to contribute financially to wife for their son's support as a father in determining the just and reasonable division of the parties' marital estate. As to claims of dissipation, the Court of Appeals determined that the trial court abused its discretion in finding that husband dissipated marital assets. The trial court did not identify any particular transaction that constituted dissipation of assets. That determination, however, did not cause the Court of Appeals to adjust the unequal distribution of marital property in favor of wife, since other findings supported that conclusion. However, the Court of Appeals did not address specifically whether the 41.63% division to wife and 58.37% division to husband was just and reasonable. It indicated that such an evaluation would be premature given that, on remand, the trial court may need to reconsider its division of the marital estate to achieve a just and reasonable result. The parties agreed that two issues required remand: (1) the inconsistency in the division of husband's FERS pension survivor benefit and (2) wife's request for attorneys' fees. The Court of Appeals remanded to the trial court to revise the marital estate balance sheet to conform to a finding and award wife the full value of the survivor benefit. The Court of Appeals also remanded to the trial court with instructions to clarify whether it was awarding attorneys' fees to wife and the reasons for its ruling.

5. *Holland v. Ketcham*, 181 N.E.3d 1030 (Ind. Ct. App. 2021). Holland and Ketcham were married in 1997 and owned real property in Owensburg, Indiana. In 2015, Ketcham filed a petition for dissolution of marriage. On January 24, 2018, the divorce court entered a decree of dissolution of marriage, awarding the Owensburg, Indiana real property to Ketcham, allocated $131,692.50 as an asset to Tammy (which amount represented her inappropriate use of the joint business account to pay for personal expenses throughout the pendency of the divorce case), allocated a $250,000.00 life insurance death benefit to Ketcham, and ordered Ketcham to make an equalization payment to Holland in the amount of $205,098.75 within ninety days of the date of the decree. On the date the equalization payment was due, Ketcham sold the Owensburg, Indiana property for a net profit of $101,236.98 and she and her boyfriend (future husband) purchased, as joint tenants, real property in Bedford, Indiana. They purchased the Bedford, Indiana property for $200,000.00 in cash, and the boyfriend did not contribute to the cost of purchase of this property. The purchase money consisted entirely of the proceeds from Ketcham's sale of the Owensburg, Indiana property and the proceeds from the $250,000.00 life insurance death benefit she had received during the marriage from her brother's death. Holland filed a contempt petition in the divorce court. The divorce court ordered Ketcham to pay a total amended judgment to Holland in the amount of $200,478.96 and found her in contempt. Thereafter, Ketcham and her boyfriend married. They deeded the Bedford, Indiana real property from themselves as joint tenants to themselves as husband and wife. Between November 2018 and December 2020, Ketcham paid $5,526.87 toward the total

judgment. In May 2019, Holland filed his complaint in the trial court alleging that the Ketchams had fraudulently transferred $200,000.00 in cash into the Bedford, Indiana real property in violation of Indiana's Uniform Fraudulent Transfer Act (the "Act"). The parties agreed to a bench trial by way of evidentiary submissions rather than a hearing before a special judge. The trial court concluded that Holland had "failed to meet his burden of establishing sufficient indicia of intent to defraud." Holland appealed and the Indiana Court of Appeals reversed and remanded. Under Ind. Code § 31-18-2-14, there were non-exhaustive factors related to a fraudulent transfer. The force and effect of several of the statutory and common law factors were strongly in Holland's favor against Ketcham. The transfer between Ketcham and her then-boyfriend was effectively a transfer between family members. Ketcham had an established history of inappropriately using financial assets to which Holland had a claim. The statutory factors established that Ketcham had an actual intent to hinder, delay, or defraud Holland as her judgment creditor under the divorce decree. As to Holland's claim against Ketcham's husband, the evidentiary submission showed that he engaged in a concerted action with Ketcham in the commission of the tort of intent to defraud. Ketcham's husband knew that Ketcham was purchasing the Bedford, Indiana real property using $200,000.00 of her own cash without any contribution from him. Ketcham's husband acted in concert with Ketcham in the commission of a fraudulent transfer. The Court of Appeals agreed that the immediate issuance of an injunction prohibiting Ketcham and her husband from transferring the Bedford, Indiana real property was appropriate while the trial court on remand determined Holland's remedy. However, the Court of Appeals expressed no opinion as to Holland's ultimately remedy. The Act did not direct that a specific remedy be entered and gives trial courts discretion in fashioning an appropriate remedy based on the facts and circumstances of a case.

6. *Roetter v. Roetter*, 182 N.E.3d 221 (Ind. 2022). On May 9, 2014, husband and wife married. Husband had significantly more assets than wife at the date of marriage, but the couple did not execute a premarital agreement. Husband's premarital assets included a State Farm Whole Life IRA with a value of $82,364.00, a 401K account with a value of $383,000.00, and two Tri-Vest life insurance policies. Wife entered the marriage with over $100,000.00 in student loan debt for a college degree that she did not complete. The parties had two children, ages 5 and 2. Wife was the children's primary caregiver, and husband worked outside the home and earned a salary over $100,000.00 per year. The parties agreed that wife would leave her $10.50/hour job at a daycare center before their first child's birth to devote herself full-time to childcare responsibilities. The parties' older child was diagnosed with Autism Spectrum Disorder at age three, had a speech delay, and an "imminent diagnosis of ADHD." Wife was responsible for transporting that child to therapies and attending to online therapy during the pandemic. On October 11, 2019, the parties separated. On November 8, 2019, wife filed a petition for dissolution of marriage. On September 9 and 11, 2020, the trial court held a final hearing. Wife sought $100.00 per week in spousal maintenance payments for a period of three years, explaining that she could not work outside the home because she had to devote practically all of her time to caring for the parties' children. Wife also requested 55% of the marital estate, and that the full value of the husband's IRA and 401K be divided as part of the marital estate. Wife also asked that 50% of her student loan debt be attributed to husband. Husband asked for the premarital values of his IRA and 401K to be individually afforded to him. He also

disputed wife's characterization of the level of childcare required and objected to wife's request for spousal maintenance. In October 2020, the trial court entered its decree. The trial court awarded husband the values of his 401K, IRA, and two Tri-Vest life insurance policies as of the date of the marriage. The trial court also assigned to wife her student loan debt she brought into the marriage. The trial court then calculated the value of the remaining marital assets as $748,504.00, the value of the remaining marital debts as $174,665.00, and awarded wife 55% of that marital estate. The trial court also included a $49,576.00 cash payment from husband to wife as an asset of wife and a debt of husband. Finally, the trial court granted wife's request for spousal maintenance for a period of eighteen months and ordered that wife retain the $12,000.00 "advance" toward her anticipated share of the division of the marital estate in lieu of additional "monthly maintenance" payments. Wife appealed and the Indiana Court of Appeals affirmed in part, reversed in part, and remanded. As to spousal maintenance, the Court of Appeals noted that Ind. Code § 31-15-7-2 governs the award of spousal maintenance. Wife argued that the trial court's maintenance award was inadequate because she could not both care for the parties' children and maintain a part-time job until their youngest child would begin school, which would not happen for three years. The trial court did not abuse its discretion in ordering husband to pay spousal maintenance for only eighteen months. Wife also argued that the trial court erroneously excluded husband's prior-owned assets from the marital estate and awarded her less property than she was entitled to receive. The Court of Appeals recognized that the parties did not execute a premarital agreement detailing how their assets and liabilities would be divided in the event of divorce. In the absence of a premarital agreement, trial courts are left to divide marital estates according to the general laws governing the division of marital property. In Indiana, trial courts divide marital property using a two-step process. First, trial courts determine what property is included in the marital estate. Second, the trial court effect a just and reasonable division of marital estates. Ind. Code § 31-15-7-5 anticipates that an equal division of marital property is just and reasonable, but that presumption may be rebutted. The trial court listed husband's premarital assets in the decree, but pursuant to Ind. Code § 31-15-7-5 the trial court set those assets aside and awarded them to husband. The trial court also listed wife's student loans as a marital debt in the decree but set that debt aside and assigned it wife. These individual allocations skewed the trial court's ultimate division of the marital estate heavily in husband's favor, with husband awarded essentially 75% of the net gross marital estate. The Court of Appeals cited *Wallace v. Wallace*, 714 N.E.2d 774 (Ind. Ct. App. 1999), which case found that an 86%/14% division of a marital estate was reversible error. While trial courts are not required to explicitly address each of the five statutory factors listed in Ind. Code § 31-15-7-5, it cannot unequally divide marital estates based solely on one factor. The Court of Appeals considered all five factors and determined that wife was entitled to more than 25% of the parties' marital estate, with instructions for the trial court to fashion a remedy closer to the 55%/45% division that wife requested. Additionally, on remand, the trial court was to consider the $12,000.00 payment husband made to wife as a payment made in lieu of spousal maintenance and not consider it as part of the 55%/45% division of the parties' marital estate. Husband petitioned to transfer and the Indiana Supreme Court granted transfer and vacated the Court of Appeals opinion. As to the spousal maintenance order, the Supreme Court affirmed the trial court. The Supreme Court noted that there are "three, quite limited options" for spousal maintenance awards in Indiana

under Ind. Code § 31-15-7-2(1)-(3). Wife challenged the trial court's eighteen-month award of rehabilitative maintenance and contended that the trial court should have awarded her maintenance for the full three-year period permitted by statute. The trial court considered wife's role as the children's primary caregiver, the interruption in employment she incurred, and husband's substantially greater earnings and earning capability, but wife insisted that one child's ongoing special needs made it nearly impossible for her to secure employment. While the facts wife relied on might be relevant to an analysis of custodial maintenance, wife challenged only the trial court's award of rehabilitative maintenance, which aims to remedy a spouse's earning capacity following an interruption in education and employment "during the marriage." Wife offered no evidence and raised no arguments on whether her future employment required any education or training. The trial court's total maintenance award of $19,800.00 ($7,800.00 in monthly payments plus the $12,000.00 advance), exceeded the amount wife requested by $4,200.00. The trial court did not abuse its discretion in its award of spousal maintenance. The trial court also did not abuse its discretion in its division of the parties' marital estate. The trial court properly identified the property to be included in the marital estate and then distributed the property in a "just and reasonable" manner. Ind. Code § 31-15-7-5 calls for a presumptive equal division between the parties, which may be rebutted with "relevant evidence." This statutory list is not exclusive and no single factor controls the division of marital property. For example, trial courts may consider the length of parties' marriages in dividing the marital pot. A short-lived marriage may rebut the presumption favoring equal division, especially if one party brought substantially more property into the marriage. Still, when ordering an unequal division of a marital estate, a trial court must consider all relevant factors under Ind. Code § 31-15-7-5. The Supreme Court distinguished *Wallace* and noted that here the trial court expressly found that the parties had a short-term marriage, wife "brought very few assets to the marriage," wife failed to advise husband of the student loan debt she incurred prior to the marriage, husband "received no benefit" from wife's education, and wife "is capable of earning income" of up to $30,000.00. While certain facts may have supported a distribution more favorable to wife, at the end of the day the standard of review precluded the Supreme Court from substituting its judgment for that of the trial court. As to wife's argument that the trial court erred by excluding husband's premarital assets from the marital estate, husband noted the "unartful" and "somewhat confusing" language of the trial court's decree. The Supreme Court noted that the better approach would have been for the trial court to include all assets and liabilities in the divisible marital pot rather than setting aside those assets and liabilities before dividing the remainder of the marital estate. That approach offers greater transparency to the parties, potentially avoiding further litigation. But in the end, a trial court's judgment is "tested by its substance rather than by its form" and that is what happened in this case.

7. *Reibel v. Kavensky*, 184 N.E.3d 642 (Ind. Ct. App. 2022). On November 23, 1996, the parties married. They had three children. On April 20, 2016, the trial court approved the parties' *pro se* settlement agreement, which, in relevant portions, indicated that (a) husband's SEP retirement account would be used by husband for needed maintenance to the marital residence, with the remaining amount divided equally between husband and wife, (b) husband was to pay the Lowe's credit card from the proceeds of the SEP account, with husband assuming minimum payments on the Lowe's card once wife vacated the marital residence, (c)

wife would pay the first $1,744.00 if uninsured medical expenses annually for the children, with any residual divided 77% to husband and 23% to wife, and (d) the tax exemptions and deductions for the children would be equally divided between husband and wife on the state and federal tax returns. On May 17, 2021, wife filed her contempt petition. The trial court conducted a hearing and, on July 6, 2021, entered an order holding husband in contempt. The order in relevant part stated that (a) husband was to divide the SEP account within fourteen days of the order and effectuate a transfer to wife of her one-half portion of the funds from the account, (b) husband was to pay wife's bankruptcy trustee $2,816.59 for the Lowe's credit card balance that husband failed to pay, plus $1,130.96 in interest, for a total of $3,947.55, (c) husband was to pay wife $6,564.40 for husband's portion of healthcare expenses that he had failed to pay from 2016 through 2020, plus $1,374.93 of interest (which was at the rate of 8% *per annum*), (d) wife was to claim the parties' children as tax exemptions for the years 2021 through 2024 due to husband's failure to pay his portion of children's medical expenses, and (e) husband was to pay $3,000.00 of attorneys' fees to wife. Husband appealed and the Indiana Court of Appeals affirmed in part, reversed in part, and remanded with instructions. The provisions of the settlement agreement regarding husband's SEP account did not specify a time by which husband was required to use the SEP funds to complete needed maintenance on the marital residence and transfer half of the remaining SEP funds to wife. Because that provision was silent regarding a time frame, the trial court interpreted it as requiring that husband act within a reasonable time. The trial court found that giving husband more than five years to act was unreasonable. The Court of Appeals determined that the trial court did not modify the settlement agreement but engaged in a permissible interpretation and enforcement of it. The Court of Appeals also found that there was sufficient evidence to support the amounts that the trial court awarded for his contempt of the orders to pay the Lowe's credit card debt and the children's healthcare expenses. Additionally, the Court of Appeals affirmed the award of interest at the statutory rate of 8%. As to the allocation of tax exemptions and deductions, the Court of Appeals concluded that the trial court engaged in a permissible interpretation and enforcement of the settlement agreement and did not abuse its discretion. Finally, as to the award of attorney's fees, wife presented no evidence to support that amount, such as an attorney's fee affidavit and documentation of her attorney's hourly rate and hours billed. Wife also did not present testimony as to the exact amount she was billed for attorney's fees. The Court of Appeals reversed the trial court's order that husband pay $3,000.00 toward wife's attorney's fees and remanded to the trial court for determination of the amount of reasonable attorney's fees wife incurred in pursuing her contempt petition.

8. *Tyagi v. Tyagi*, 184 N.E.3d 1159 (Ind. Ct. App. 2022). This opinion is the second appeal in this case. On September 21, 2007, husband and wife married. In October 2016, wife filed for divorce. In September 2017, husband's parents filed a motion to intervene on the grounds that husband's mother owned Hoosier Broadband, LLC and husband's father owned a Zionsville residence. Husband and wife then jointly moved to bifurcate the divorce case and requested that the trial court determine, apart from the rest of the proceedings, whether the business and real estate should be included in the marital estate. The trial court found that the business and the real estate were not marital assets and not within the marital estate. Wife appealed and the Indiana Court of Appeals affirmed. *See Tyagi v. Tyagi*, 142 N.E.3d 960 (Ind.

Ct. App. 2020). Thereafter, the trial court held the second phase of the bifurcated case. Business balance sheets showed that, beginning in 2005 and continuing for seven years, there was a note payable owed to the business to husband. As to husband's income, at a 2018 preliminary hearing, husband had verified to the trial court that he had income of $5,000.00 per week. Over the ensuing several years, husband reported continuously decreasing income on his tax returns, culminating in a 2020 income of $94,499.00. Husband reported an average income between 2018 and 2020 of $136,8101.00, and at the final hearing, requested that the trial court set his weekly income for child support purposes at $2,413.14, based on the most recent three-year average of his reported income. At the final hearing, husband introduced no evidence that the business had lost any profits over that same time frame and acknowledged that he had not changed his lifestyle, including taking vacations to the Bahamas, Disney World, Alaska, and twice to Europe. Wife introduced evidence that husband, as CEO of the business, had the ability to manipulate his income and access additional funds simply by sending an e-mail. Also at the final hearing, the parties agreed that wife had made numerous financial transfers to her brother in India using marital assets. The parties disputed the proper exchange rate to use in converting United States Dollars to Indian Rupees. Wife submitted evidence that, as of the date of the parties' separation, which was the date stipulated by the parties as the date for valuing all other marital assets, the conversion rate was 1 Indian Rupee per 0.014969 United States Dollars. Husband opined that a different conversion rate should apply but offered no evidence in his support of that position. Finally, husband argued at the final hearing that he should receive 58% of the marital estate and wife should receive 42% of the marital estate. Wife argued that she should receive 55% of the marital estate and husband should receive 45% of the marital estate. In its decree of dissolution of marriage, the trial court found that the business owed a debt to the husband on the note payable in the amount of $183,031.38, which the trial court identified as an asset to husband and part of his share of the marital estate. The trial court also found that husband's weekly income for child support purposes should remain at $5,000.00 based on his ability to manipulate his income for tax purposes and ease-of-access to additional funds from his role as CEO of the business and son of the owner. The trial court also adopted the wife's evidence that the conversion rate for the United States Dollars to Indian Rupees. Finally, the trial court divided the marital estate 55% to wife and 45% to husband. Husband appealed and the Court of Appeals affirmed. As to the note payable, husband asserted that the trial court erred when it found that the note payable existed. Husband argued that wife's counsel stated to the trial court "there is no note payable formal here" but "[w]e definitely have other documents." Husband misconstrued the stipulation of wife's counsel. Wife only stipulated that there is no formal writing of the note payable owed by the business to husband, but there were other documents to prove the existence of the note payable. The trial court did not err when it found that the note payable existed and allocated it as an asset to husband. The trial court also properly maintained husband's weekly income at $5,000.00, and the Court of Appeals rejected husband's request for it to reweigh the evidence. As to the Dollar-to-Rupee conversion rate, husband did not introduce evidence as to an alternate conversation rate. The trial court relied on wife's evidence and did not err. Finally, the trial court did not err in ordering that wife receive 55% of the marital estate. On appeal, husband argued that the trial court erred when it did not equally divide the marital estate, but husband never argued in the trial court that the trial court

should equally divide the marital estate. Rather, husband argued that the trial court should award him 58% of the marital estate. Husband never placed the issue of equally dividing the marital estate before the trial court and husband could not argue, for the first time on appeal, that the trial court erred when it unequally divided the marital estate.

9. *Rambo v. Rambo*, 187 N.E.3d 301 (Ind. Ct. App. 2022). In 2012, husband and wife married. By 2021, they had two young children and were living in a house in Decatur, Indiana. Husband quit his job so he could work from home as a mechanic, and wife was the primary family earner. At some point, concerns about mold prompted the parties to move out of the marital residence and in with wife's parents. In August 2021, husband petitioned for dissolution of marriage and moved for provisional orders regarding child support, custody, possession of certain property, payment of debt, spousal maintenance, and attorneys' fees. Husband asked for "temporary, exclusive" possession of the marital residence, a tractor, and a camper. The next month, wife filed a cross-petition for dissolution of marriage and her own motion for provisional orders. In her motion, wife asked the trial court to order the marital residence "be listed for sale 'as is' due to the mold infestation." At the provisional hearing, husband claimed he "spent his entire 401K redoing their shop so that he could work from home" and had "not had any detriment from the alleged mold while living in the house." Wife suggested that selling the house would help pay for attorneys' fees, a mediator, and a Guardian *Ad Litem*. After the hearing, the trial court entered a provisional order that, among other things, required the parties to auction the marital residence in ninety days and to use the ninety days "to rehabilitate the property to maximize its value to marital estate." The trial court also ordered the parties to auction the tractor and the camper. Husband brought an interlocutory appeal and the Indiana Court of Appeals reversed. Husband contended that the provisional order statute (Ind. Code § 31-15-4-8) does not allow courts to order the sale of property. Husband argued that the statutory provision authorizing "an order for possession of property" does not allow for an order for sale of property. The Court of Appeals agreed. Provisional orders are "temporary," in place during the pendency of a divorce proceeding and terminating when the final divorce decree is entered. The sale of property is not a "temporary" action and cannot be changed as relevant information is developed. Moreover, Ind. Code § 31-15-7-4, which governs the division of marital property in a divorce case, provides for the sale of property. The wording of that statute indicates that, when the Indiana General Assembly wants to authorize an order for sale of marital property, it says so. If the legislature wished to give courts the power to order the sale of property in a provisional order, it could have done so explicitly by using the word "sale" in the statute. The provisional order statute must be applied as currently written, and that statute allows only for an order of possession of property and not the sale of property. The Court of Appeals pointed out that parties are free to enter into an agreed provisional order for the sale of marital property.

10. *Israel v. Israel*, 189 N.E.3d 170 (Ind. Ct. App. 2022). On July 1, 2012, the parties married. They had one child, born on June 29, 2013. On January 4, 2019, wife filed a petition for dissolution of marriage and request for provisional orders. Wife subsequently requested a child custody and psychological evaluation pursuant to Ind. Trial Rule 35 and the trial court granted that request. On May 9, 2019, husband filed his counter-petition for

provisional orders. On May 10, 2019, the trial court held a hearing on the parties' respective motions for provisional orders. On May 13, 2019, the trial court issued its preliminary orders, which included orders that the parties had joint legal and physical custody of child and that wife had exclusive temporary possession of the marital residence. On January 22, 2021, the parties filed their "Stipulations as to Assets and Liabilities and Child Support Components." On January 25, February 1, and March 29, 2021, the trial court conducted the final divorce hearing. Husband requested specific findings of fact and conclusions of law pursuant to Ind. Trial Rule 52. On May 12, 2021, the trial court entered its Findings of Fact, Conclusions of Law, and Decree of Dissolution of Marriage that had an attached "Marital Balance Sheet." Husband was awarded 56% of the marital estate ($332,108.36) while wife was awarded 44% of the marital estate ($261,238.36). The trial court referenced a custody evaluation by Dr. Kevin Byrd and ordered a 5-5-2-2 shared physical custody arrangement with wife having sole legal custody of child. The trial court also ordered that each party pay his and her own attorneys' fees. The decree also contained a "Non-Disparagement" clause which ordered that "the parties refrain from making disparaging comments about the other in writing or conversation in the presence of child, friends, family members, doctors, teachers, associated parties, co-workers, employers, the parenting coordinator, media, the press, or anyone." Husband appealed and the Indiana Court of Appeals affirmed in part, reversed in part, and remanded. The Court of Appeals affirmed the unequal division of marital property and valuation of the marital residence, reviewing statutory factors and finding evidence in the record for the $313,500.00 valuation of the marital residence. The trial court also affirmed the parties' division of personal property. As to tax consequences, when assessing the value of husband's three Fidelity retirement accounts, husband had waived that issue by not presenting it at trial. The trial court also affirmed the award of legal custody to wife. As to attorneys' fees, the Court of Appeals affirmed the trial court and refused re-weigh the evidence. Related to the non-disparagement clause, the Court of Appeals reversed, finding that a portion of that clause was an unconstitutional prior restraint of speech, contrary to the First Amendment to the United States Constitution. To the extent the non-disparagement clause at issue prohibited the parents from disparaging the other in the child's presence, that order furthered the compelling state interest in protecting the best interests of child and did not violate the First Amendment. However, the non-disparagement clause prohibiting a parent from "making disparaging comments" about the other in the presence "anyone" even when child was not present was an unconstitutional prior restraint on speech and overbroad.

11. *Dennis v. Dennis*, 189 N.E.3d 1115 (Ind. Ct. App. 2022). On August 13, 2007, the marriage between husband and wife was dissolved. The settlement agreement provided that wife would have sole possession of the marital residence and required wife to pay husband $19,921.50. Upon payment of that amount, husband was to execute a quitclaim deed transferring his interest in the marital residence to wife. Sometime before 2010, wife made the required payment to husband, but husband, for reasons that were not revealed in the record, failed to execute a quitclaim deed. In July 2021, husband died. On January 7, 2022, wife filed in the trial court, a Petition to Appoint Commissioner or to Declare Lien Satisfied and Released, seeking to enforce the terms of the settlement agreement with respect to the marital residence. On February 7, 2022, the trial court denied wife's petition, finding that it lacked jurisdiction "to address the petition within this cause" because husband had died and that,

generally, a divorce court's jurisdiction terminates with the death of one of the parties. Wife appealed and the Indiana Court of Appeals reversed. Generally, divorce proceedings "terminate entirely with the death of one of the parties to the dissolution." *Edwards v. Edwards*, 80 N.E.2d 939, 943 (Ind. Ct. App. 2017). The Indiana Supreme Court identified in cases three exceptions to this general rule: (1) pursuant to statute, a party may seek to modify a property disposition based on fraud even if one spouse has died so long as the modification is sought within the statutory deadline, (2) a deceased spouse's attorney may seek attorneys' fees for work performed before the spouse's death because the fees are not part of the judgment and because denying counsel the opportunity to recover fees would create "a gross miscarriage of justice," and (3) based on the observation that the general rule "seems to have been honored more in the breach," there is an exception when a party seeks to reduce child support arrearages to a judgment. *Edwards* provided for an additional exception, holding that divorce courts retain "continuing jurisdiction to re-examine the property settlement where the nature of the examination is to seek clarification of a prior order." This continuing jurisdiction included the "authority to complete the implementation of the division of property as ordered in the final decree." The petition in this case was analogous to the proceedings in *Edwards* because wife merely sought to enforce the agreed-upon property settlement, which fell within the trial court's continuing jurisdiction "to complete the implementation of the division of property as ordered in the decree of dissolution of marriage."

12. *Alifimoff v. Stuart*, 21A-DN-2320, 2022 WL 3008929 (Ind. Ct. App. July 29, 2022). Husband and wife met in January 1987 and married in June 1991. Also in 1991, the parties, each of whom were physicians, moved to Kansas to pursue employment opportunities. In 2005, husband became unhappy with his job and husband, wife, and the parties' three children moved to Fort Wayne, Indiana. In June 2006, husband and wife purchased a home in St. Croix. At some point in 2007, husband and wife purchased tracts of real estate in Osborne County, Kansas. In November 2007, husband entered into an installment sales agreement with Stephen and Vicki Hutchings to purchase a tract of real estate in Smith County, Kansas. Pursuant to the terms of the installment sales agreement, husband agreed to pay the Hutchings $92,000.00 with interest over the course of twenty years. Husband was entitled to an immediate possession of the Smith County tract. Husband did not have "the right to assign or transfer [the installment sales agreement] or any interest therein, or interest in and to said real estate" without the Hutchings' written consent. The installment sales agreement contained the entire agreement of the parties. In December 2007, title insurance identified husband as both the insured and purchaser of the Smith County tract. In March 2017, wife filed a petition for dissolution of marriage and husband filed a counter-petition for dissolution of marriage. In March and April 2021, the trial court held a three-day final hearing. At that hearing, wife testified that the St. Croix house was rented and that she hoped to be able to keep it and put it into a trust for her children to inherit. There had been suspended passive activity losses on the St. Croix real estate of unknown value. At trial, the trial court admitted into evidence the installment sales agreement related to the Smith County tract. Each party provided appraisals of the three Osborne County tracts. Husband testified that his friend, Russ Heinen, wanted to purchase the Smith County tract from the Hutchings and that husband made the purchase as a favor to Heinen. Heinen testified that he had paid all payments on the installment sales

agreement as well as all taxes on the Smith County tract. Also at the final hearing, Gregory Green, CPA testified as to potential values of the suspended activity losses but conceded that they might not be used in the future. In June 2021, the trial court entered a decree of dissolution of marriage determining that the installment sales agreement for the Smith County tract was a marital asset, averaged the values of the two appraisals of the three Osborne County tracts, and determined that the suspended passive activity losses were too remote and speculative to be marital property. Husband filed a motion to correct error which was denied. Husband appealed as to the suspended passive activity losses and the Smith County tract and wife cross-appealed as to the Osborne County tracts. The Indiana Court of Appeals affirmed. Suspended passive activity losses are too remote and speculative and do not meet the definition of marital property under Ind. Code § 31-9-2-98. Green acknowledged the possibility that the requirements to take the deductions for the suspended passive activity losses might never be met. Additionally, there were no inherent necessarily incurred tax consequences resulting from the trial court's property distribution order and no taxable event had occurred as a direct result of the trial court-ordered disposition of the marital estate. As to the Smith County tract, this case was substantially similar to *Henderson v. Henderson*, 139 N.E.3d 227 (Ind. Ct. App. 2019) in that husband had a vested property interest in the installment sales agreement. Finally, as to the Osborne County tracts, the trial court acted within its discretion in averaging the values of each of the parties' appraisals.

13. *Smith v. Smith*, 21A-DC-2820, 2022 WL 3206126 (Ind. Ct. App. August 9, 2022). In 1992, the parties married. They had three children, two of whom were emancipated and one of whom was in college. Husband was employed as a teacher for one and one-half years before the parties' marriage and throughout the marriage, eventually becoming a superintendent. Wife had a master's degree in Business Administration. In 2016, husband and wife separated. On July 20, 2020, husband filed a petition for dissolution of marriage. Husband participated in the Indiana Public Retirement System ("IMPRS") Pension plan throughout his employment. The parties stipulated the values of assets and liabilities, and the distribution of assets, with the exception of husband's IMPRS Pension, which was the marital estate's largest asset. At hearings in May and August 2021, husband presented evidence concerning the present value of his IMPRS Pension, which could not be divided by a court order and was not subject to a Qualified Domestic Relations Order. Dan Andrews, an expert on pension valuations hired by husband, provided valuations of husband's pension on the date of filing based on three payout age options: (1) husband's age at the time of the filing of the petition for dissolution (which would be an early retirement with reduced benefits), (2) the age of 55, based up on the Rule of 85 (when years of service and the age of the participant equals 85, the participant could receive an unreduced benefit at the age of 55), and (3) the age of 62. Andrews also calculated a coverture fraction of 95.24%. Samuel Pollom, a CPA with BGBC Partners hired by husband, testified regarding the tax consequences of husband's IMPRS Pension. Pollom estimated the marginal and effective tax rates for the various payout options. Following the final hearing, the trial court divided the marital estate, ordering that husband's IMPRS Pension benefits be divided at the time he retires, with each party receiving one-half of the net, after-tax monthly benefit that was earned during the marriage with the coverture fraction applied. The trial court then calculated a discount to what benefit wife would receive based on an assumed tax rate for husband. Wife appealed and the Indiana Court of Appeals affirmed in part, reversed in part, and

remanded. Husband requested that the trial court use the present value of the pension based on a retirement age of 62 while wife requested that the trial court use the present value based upon a retirement age of 55. Husband testified that he had no plan to retire at the age of 55. The trial court was presented with three options to value husband's IMPRS Pension and chose the option that most closely represented the evidence presented regarding husband's actual retirement plans, and that was not an abuse of discretion. The trial court ordered husband to pay wife a portion of his IMPRS benefits when he retired. There were three methods that the trial court could have applied to distribute the pension interests: (1) an immediate offset method, (2) a deferred distribution method, or (3) a variation or combination of those methods. The trial court was not required to use an immediate offset. Husband was not required to make immediate payments to wife rather than beginning payments after he retired and started receiving his pension benefit. This case was distinguishable from *Kendrick v. Kendrick*, 44 N.E.3d 721 (Ind. Ct. App. 2015). In this case, the parties' assets were not liquid and without the IMPRS Pension (valued at $1,189,924.53) the marital estate was valued at only $116,996.88. Overall, the circumstances weighed in favor of the deferred distribution method. Although the trial court could have chosen other methods, the trial court acted within its discretion. Wife requested both survivor's benefits and life insurance to protect her in the event of husband's death, but the trial court awarded neither. Under these circumstances, wife's access to a marital asset awarded to her in the dissolution was contingent upon husband's lifespan. The trial court erred by failing to award either survivor's benefits or protection of wife's portion of the pension benefits through another means such as life insurance. The Court of Appeals reversed in part and remanded for the trial court to hear evidence on that issue. The trial court did not err by taking into account the tax consequences related to the IMPRS Pension and, since it was being paid to husband. The trial court acted within its discretion in considering the tax burden on husband when crafting the distribution of the marital assets. The trial court relied upon expert testimony as to the likely tax rate at the time of husband's retirement.

B. PROCEDURAL ISSUES

1. *Rotert v. Stiles*, 174 N.E.3d 1067 (Ind. 2021). In 2019, Marcille Borcherding executed a revocable living trust that divided her property between her son, Roger Rotert, her daughter, Connie Stiles, and her four stepchildren. The trust contained a sub-trust for Rotert's share (which included cash assets and real property) and appointed Stiles as trustee. The trust contained a provision that said that in the event Rotert was married at the time of Borcherding's death, the trust would become effective. Rotert had been married to his third wife for at least eight years when Borcherding executed the trust. Before the trust's execution, that wife filed for divorce. The couple later reconciled and were married when Borcherding died in 2016. After Borcherding's death, Stiles and Rotert disagreed about whether his interest must be held in trust. Attempting compromise, Stiles, as trustee, distributed the sub-trust cash assets and Rotert agreed that his real property would stay in sub-trust. Rotert later sued, alleging the challenge provision in the revocable trust was a void restraint against marriage. In the trial court, both parties moved for summary judgment. The trial court found that the trust terms were not void for public policy, denied Rotert's motion for summary judgment, and granted Stiles' motion for summary judgment. Rotert appealed and the Indiana Court of Appeals reversed and held that

the challenged provision was an impermissible restraint against marriage. *Rotert v. Stiles*, 159 N.E.3d 46 (Ind. Ct. App. 2020). The Court of Appeals declined to address his due process claim that he was deprived of an opportunity to respond to Stiles' summary judgment motion. On transfer, the Indiana Supreme Court reversed. With regard to Rotert's due process claim, the Fourteenth Amendment to the United States Constitution bars states from depriving persons of their property without due process of law. Due process of law requires reasonable notice and a meaningful opportunity to be heard. Rotert had both notice and multiple opportunities to be heard. Rotert asked only for leave to file a status report with the trial court if he felt like he needed to file a response. Despite his request, Rotert did not file a status report. He had both notice and multiple opportunities to be heard after Stiles filed her motion for summary judgment. Rotert could not claim to be deprived of an opportunity to be heard after he voluntarily chose not to speak. As to the disputed trust provision being void as an unlawful restraint on marriage, Ind. Code § 29-1-6-3 prohibits restraints against marriage only if the restraint is in a "devise to a spouse." This prohibition applies only to gifts made by will and to a spouse. Here, there was neither a testamentary devise nor a devise to a spouse, but rather a disposition by a revocable trust to a child. As a result, the statutory prohibition did not apply. Likewise, the Indiana Trust Code did not prohibit the challenged provision. What the trust code prohibits is ignoring the settlor's intent as manifested in a trust's plain terms. The Supreme Court disapproved of *In re Estate of Roberts*, 859 N.E.2d 772 (Ind. Ct. App. 2007). Although the parties disputed whether the challenged provision was a condition or limitation, that question was not answered because the decision rested on other grounds. The Supreme Court wondered, though, whether the historic distinction between a condition (impermissible) and a limitation (permissible) would survive when squarely before it. Justice Goff concurred in result but found that the Indiana Trust Code prohibited conditions in restraint of marriage as a violation of public policy. The concurrence looked at the Trust Code Study Commission editor's note and found that the plain language of Ind. Code § 30-4-1-7 permitted the Supreme Court to consult the comments, not just for construction and application of the trust Ccde, but for the broader purpose of determining the reasons, purpose, and policies behind it. The concurrence was concerned that, absent legislative intervention, the Supreme Court's decision, as written, could open a Pandora's Box of unintended and harmful consequences to others regarding conditions. The concurrence concluded that the prohibition against restraints on marriage should apply to testamentary trusts and not just to wills. Turning to the merits of the parties' claims, the concurrence reasoned that Rotert's property interested vested at the time of Borcherding's death and the trust imposed permissible conditions of acquisition rather than impermissible conditions of retention. Once Rotert's share of the estate vested, no trust conditions operated to divest him of that share upon the happening of some subsequent event – whether divorce or continuation of the marriage. The trust did not grant Rotert the property interest that could later be altered or restricted by his marital status. Rather, the trust determined the property interest Rotert would receive upon Borcherding's death and did not later change that property interest regardless of Rotert's marital status.

2. *In re Adoption of C.M.L.*, 175 N.E.3d 325 (Ind. Ct. App. 2021). On June 26, 2020, paternal aunt and uncle filed a verified petition for kinship adoption of two minor children in the trial court. The minor children's father consented to the adoption. In their

petition, paternal aunt and uncle alleged, among other things, that mother had moved to Alabama and had abandoned the children for six months prior to the filing of the petition, and that for the past year failed to communicate with and support the children. Paternal aunt and uncle also alleged that the Indiana Department of Child Services ("DCS") had wardship of the children and that the maternal grandparents were the minor children's nearest kin. At the time of paternal aunt and uncle's filing of the adoption petition, DCS had filed a CHINS petition for each of the children in another court. On July 28, 2020, mother, appearing *pro se*, filed a pleading contesting the adoption in the trial court. On July 30, 2020, DCS filed a motion to intervene, which the trial court later granted. DCS objected to the children's adoption by paternal aunt and uncle. That same day, DCS informed the trial court that on May 2, 2019, the other court had adjudicated the children as CHINS and that, on May 27, 2020, DCS had placed the children with maternal grandparents. DCS contested the adoption as not being in the best interest of the children because the children had been placed with maternal grandparents for two months, had established a bond with them, and had special needs that were being addressed. DCS further contested the adoption because paternal aunt and uncle lived in New York and had met the children only a "handful of times," and that the adoption would remove the children from the community and the services that were in place for them. On August 5, 2020, paternal aunt and uncle filed their response to DCS's motion to contest adoption in the trial court. On August 28, 2020, maternal grandparents filed a motion to intervene in the adoption case and requested that the trial court dismiss paternal aunt and uncle's petition for adoption. On September 1, 2020, the trial court granted maternal grandparents' motion to intervene. That same day, paternal aunt and uncle filed a motion to strike maternal grandparents' pleadings. On September 22, 2020, paternal aunt and uncle filed a motion requesting that the trial court reconsider its order granting maternal grandparents' motion to intervene. On November 12, 2020, DCS filed a motion to transfer the case to the other court where the CHINS and termination of parental rights cases were pending. On November 13, 2020, the trial court granted the transfer of the adoption case to the other court. On November 16, 2020, paternal aunt and uncle filed a motion for relief from judgment pursuant to Ind. Trial Rule 60(B). The trial court did not rule on paternal aunt and uncle's Ind. Trial Rule 60(B) motion. On January 19, 2021, paternal aunt and uncle filed an application for removal of judge under Ind. Trial Rule 53.1, arguing that the trial court failed to hold a hearing on their Ind. Trial Rule 60(B) motion in excess of thirty days in violation of Ind. Trial Rule 60(D) and that conducting the hearing was mandatory before the trial court could rule on an Ind. Trial Rule 60(B) motion. On February 4, 2021, the Madison County Clerk forwarded the application for removal to the Chief Administrative Office of the Indiana Office of Judicial Administration. On February 26, 2021, the Chief Administrative Officer issued a notice warranting the removal of the trial court judge. However, on March 2, 2021, the Indiana Supreme Court issued an order remanding jurisdiction to the trial court judge. On April 12, 2021, the other court denied paternal aunt and uncle's motion and specifically stated it would retain jurisdiction over the adoption proceedings. Paternal aunt and uncle appealed and the Indiana Court of Appeals affirmed. Paternal aunt and uncle contended that the other court abused its discretion when it denied their Ind. Trial Rule 60(B) motion for relief from judgment. The propriety of relief under Ind. Trial Rule 60(B) is a matter entrusted to a court's equitable discretion. Paternal aunt and uncle's main contention of error focused on the trial

court's transfer of their adoption petition to the other court, a juvenile court, whereas the trial court carried a probate docket. Paternal aunt and uncle failed to point to any rule requiring them to respond to DCS's motion to transfer. As no response was required, the grant of DCS's motion was not erroneous. Even if a response was required and the trial court prematurely transferred the case without awaiting paternal aunt and uncle's objections to DCS's motion, the transfer was not erroneous as Madison Circuit Courts were courts of general jurisdiction without a separate, designated probate court. The other court already had accumulated information about the children's situation, well-being, and best interest. The evidence that was submitted in the CHINS and termination cases was similar to that needed to decide the adoption petition. Accordingly, as the adoption case was just initiated and to avoid contradictory results, a transfer of the case promoted efficiency, fair distribution, and timely resolution of the petitions. Transfer was appropriate, was not made by mistake, and was not void, and the other court did not abuse its discretion by denying paternal aunt and uncle's Ind. Trial Rule 60(B) motion.

3. *In re Change of Name and Gender of H.S.*, 175 N.E.3d 1184 (Ind. Ct. App. 2021). On September 16, 2020, mother filed her verified petition for change of name and gender marker of a minor child. Mother alleged that the petition was made in good faith and not for fraudulent purposes, but rather for purposes of having "the child's legal gender…accurately reflect the child's gender identity and presentation." Mother averred that father consented to the change and attached a parental consent. On March 24, 2021, the trial court conducted a hearing on the petition. At that hearing, mother submitted in evidence two documents. The first document was described as a letter from H.S.'s physician. The second document was described as a letter from H.S.'s "counselor." At the conclusion of the hearing, the trial court ordered that the case be sealed from public access and took the petition for changes under advisement. On April 16, 2021, the trial court entered an order granting the petition for a name change and denying the petition for a gender marker change. The order indicated that the trial court had applied a best interest analysis under Ind. Code § 31-7-17-2-8 as the standard for deciding cases involving a request for a gender marker change for minor child. The trial court considered the "mental and physical health of the child" statutory factor to be "likely the most significant factor." Pointing to the absence of expert testimony or authenticated documents, the trial court found "the lack of competent evidence with regard to this factor to be dispositive." The trial court concluded that mother had failed to establish that it was in the best interest of the child to have the gender marker changed. Mother appealed, arguing that a parent's uncontested request to change a child's gender marker is presumptively in the child's best interest and that entitlement to a gender marker change is not dependent upon a specific medical intervention. In a 2-1 decision, with a separate concurrence, the Indiana Court of Appeals affirmed. The trial court applied a *de novo* standard of review to matters of law, including the construction of statutes and rules. The Court of Appeals noted a line of cases clearly stating that an adult seeking a gender marker change bears only the burden of showing good faith, and that the Court of Appeals recently was presented with a consolidated appeal brought by parents who each had been denied a change of gender marker. *See Matter of A.B.*, 164 N.E.3d 167 (Ind. Ct. App. 2021). The threshold question in that case was "whether a parent had the authority to ask a court to amend the gender marker on a minor child's birth certificate." That case indicated the answer

to that question was "yes," observing that "[t]he fundamental right of parents to make important decisions for their minor children is reflected in a variety of statutes" and that the language of Ind. Code § 16-37-2-10(b) is "broad." In that case, the Court of Appeals next addressed the matter of the appropriate standard to be applied when considering a parental petition for gender marker change, rejecting the parents' contention that the standard was that applicable to an adult petition – "whether the petition was filed in good faith." The Court of Appeals concluded that the appropriate standard was whether the change was in the child's best interest and directed that a trial court "may consider the same factors as for a name change." The factors for a name change are set forth in Ind. Code § 31-17-2-8. The Indiana General Assembly has not spoken to this issue. In this case, the parents did not offer expert testimony or proffer any relevant medical records in favor of their conclusory testimony prompted by their teenage child's relatively recent disclosure. The trial court pointed out that there was no authenticated document of any sort admitted into evidence. A best interest analysis must occur. The trial court did not err by denying mother's petition for a gender marker change for child. Judge Pyle concurred but reiterated his dissent in *Matter of A.B.* and stated that he did not believe statutory authority existed for the judiciary to invent a procedure for changing a minor child's gender marker to reflect gender identity and presentation. Judge Crone dissented, agreeing that any application of Ind. Code § 16-37-2-10 to a child "must be accompanied by a best interest analysis" as set forth in Ind. Code § 31-17-2-8 and that "the totality of the child's medical history is highly relevant," but disagreeing with the assertion that the parents proffered no relevant medical records and that their testimony was too conclusory to sustain their burden. Judge Crone reasoned that the parents, who have known child since his birth, were infinitely more capable than the trial court in judging what "happiness" means to their child and what is in his "long-term best interest with respect to his gender identity." The dissent noted that recent history offered plenty of unfortunate examples of legal, governmental, and social intolerance (including violence) towards transgender persons. The dissent concluded that trial court erred in discounting the importance of legal documents to child's gender identity. The dissent found that the record was more than sufficient to grant mother's petition to change the gender marker on child's birth certificate, and the trial court blatantly abused its discretion.

4. *Haggarty v. Haggarty*, 176 N.E.3d 234 (Ind. Ct. App. 2021). On June 30, 2000, the parties entered into a premarital agreement that defined separate property and rights upon dissolution of marriage. On July 15, 2000, the parties married. Wife had a son from a prior marriage who lived with the parties during their marriage. On January 13, 2004, the parties had a daughter. On March 22, 2018, wife filed a petition for dissolution of marriage. On November 21, 2018, wife filed a motion for partial summary judgment in which she argued that husband breached their premarital agreement by failing to maintain a joint checking account for "ordinary living expenses," as contemplated by the premarital agreement. On September 27, 2019, the trial court denied wife's motion. The trial occurred on October 8, 9, and 10, 2019. Wife filed a motion for special findings of fact and conclusions of law pursuant to Ind. Trial Rule 52. Following the final hearing, the trial court magistrate took the case under advisement and ordered the parties to submit proposed findings and conclusions. The trial court magistrate did not timely issue an order and wife filed a praecipe with the Indiana Supreme Court, pursuant to Ind. Trial Rule 53. The Supreme Court removed the magistrate and remanded

the case to the trial court judge. On May 22, 2020, the trial court entered a decree of dissolution of marriage. The decree defined "ordinary living expenses" as including "all" expenses or "everything," as testified to by the parties and supported by statutory and case authority. In total, husband was ordered to pay $498,997.49, pursuant to the premarital agreement, $1,183.50 for tax refunds, and $10,000.00 for attorneys' fees. On April 27, 2020, husband's counsel sent three checks and releases to wife's counsel to cover the judgments against husband. On May 6, 2020, wife signed three releases composed by her counsel. On May 13, 2020, the releases prepared by wife's counsel were filed with the trial court. On May 27, 2020, wife filed objections to her own releases, alleging that the judgments did not include accrued interest. That same day, husband filed objections to wife's objections. Wife appealed, husband cross-appealed, and the Indiana Court of Appeals, in a majority opinion, affirmed. Wife first insisted that the trial court judge's judgment did not include any credibility determinations. However, when the Supreme Court entered its order remanding jurisdiction to the trial court judge, that order directed that the trial court judge would listen to the recording of the case and review all exhibits. That order also gave the parties until February 15, 2020, to object and request a new hearing. Neither party objected to the trial court judge's ruling based on the recording of the hearing and the admitted exhibits. Therefore, wife waived the due process requirement that the factfinder observe the witnesses at hearing. The Court of Appeals noted that premarital agreements are construed under standard principles regarding contract formation and interpretation. Each party raised separate arguments alleging the trial court erred in its interpretation of the premarital agreement's requirement that husband maintain a checking account titled jointly with wife with an average balance sufficient to pay "ordinary living expenses" for a month. Wife argued that the trial court erred by concluding that husband's obligation to maintain the checking account began when the account was established in 2014 rather than in July 2000 when the parties married. According to wife, the trial court's decision improperly limited her breach of contract claim. Contrary to wife's argument, the Court of Appeals found no explicit or implicit finding that the trial court's order suggesting a duty to "maintain" the checking account did not also include an obligation to "create" the checking account. Rather, the trial court found that "the parties had to physically go into the bank" together to open the account, which did not happen until January 31, 2014. The record contained conflicting evidence, and the Court of Appeals denied wife's invitation to reweigh the evidence or assess the credibility of the witnesses. As to the meaning of "ordinary living expenses," the Court of Appeals noted that if a contract's terms are unambiguous "the intent of the parties must be determined from the four corners of the document." The Court of Appeals held that "ordinary living expenses" as used in the premarital agreement was an ambiguous term and the trial court did not err by considering parol evidence to determine its meaning. Wife also argued that the trial court erred by denying her request for prejudgment interest on the contract damages awarded for husband's failure to maintain the joint checking account. While the premarital agreement indicated husband was to keep sufficient funds in the account to cover "ordinary living expenses," the contract neither specified the amount he was to deposit each month nor defined which expenses were "ordinary living expenses." The trial court was required to exercise its discretion, making wife ineligible for prejudgment interest. As to the trial court's denial of wife's objections to her own releases and the trial court's finding that the releases were "unambiguous," wife's argument relied on a

tortured reading of Ind. Trial Rule 58(D) because that rule does not invite an inference that a creditor's release is partial if interest and court costs were not included in the debtor's payment of the judgment. Wife's claim for post-judgment interest was not a claim that arose separate from the trial court's initial judgment. Rather, it was part of the very judgment that wife released, and the trial court did not err when it denied her objection. Finally, wife asserted that the trial court erred when it awarded attorneys' fees to husband in its order denying wife's motions to withdraw her releases. A trial court may award attorneys' fees in a marital dissolution action. *See* Ind. Code § 31-15-10-1. Whether such fees are awarded or left to the "broad discretion" of the trial court. *See Eads v. Eads*, 114 N.E.3d 868, 879 (Ind. Ct. App. 2018). The attorneys' fees provision in the premarital agreement did not relate to wife's entitlement to keep her separate property. The request arose because wife filed multiple objections to her own releases and husband's counsel was required to attend multiple hearings to respond to her meritless objections. The trial court did not abuse its discretion in awarding attorneys' fees to husband. Judge Robb concurred in part and dissented in part. Judge Robb agreed with the majority that the premarital agreement did not prohibit the award of attorneys' fees to husband in these circumstances but concluded that the fees were not warranted. The releases prepared by husband's counsel said that the judgments had been "fully" paid and satisfied. Wife signed releases prepared by her counsel that said the judgment had been paid and satisfied, omitting the word "fully." Judge Robb reasoned that the word "fully" had been omitted because the issue of interest remained open. Accordingly, Judge Robb did not believe that wife's request to withdraw the releases was meritless. Judge Robb also noted the overall financial disparity between the parties and would have reversed the trial court's order that wife pay husband's attorneys' fees.

5. *State v. Barnett*, 176 N.E.3d 542 (Ind. Ct. App. 2021). In 2008, a New Hampshire couple adopted child from a Ukrainian orphanage. Child was born with a form of dwarfism called diastrophic dysplasia which resulted in musculoskeletal issues. The New Hampshire couple placed child for re-adoption and, in 2010, the Barnetts agreed to adopt child. On November 3, 2010, the Hamilton Superior Court granted the adoption and listed child's birth year as 2003. In March 2012, the Hamilton County Department of Child Services ("DCS") received a report regarding the Barnetts and child. While the investigation was pending, the Barnetts informed DCS's staff that they were seeking to change child's birth year. In June 2012, the Barnetts filed a petition in the Marion Superior Court to have child's birth year changed from 2003 to 1989, based on age estimates provided by a primary care physician and a social worker. The Marion Superior Court changed child's birth year to 1989. In July 2013, the Barnetts moved child to an apartment in Tippecanoe County, Indiana. Soon thereafter, the Barnetts moved to Canada with their biological children. Around that time, child met the Manses and moved in with them. In March 2016, the Manses filed a petition in the Tippecanoe Circuit Court seeking guardianship of child. Mr. Barnett objected, asserting that child was an adult, pursuant to the Marion Superior Court's 2012 age-change order. On April 26, 2016, the Tippecanoe Circuit Court issued an order finding that the proceeding appeared to be a collateral attack on the age-change order. In August 2016, the Manses filed in the Marion Superior Court a combined motion to vacate the age-change order and motion for relief from judgment. Immediately after a March 7, 2017, hearing, the Marion

Superior Court reaffirmed its 2012 age-change order. In September 2019, the state of Indiana, in separate Tippecanoe County, Indiana cases, charged each of the Barnetts with six counts of neglect of a dependent and two counts of conspiracy to commit neglect of a dependent. On August 7, 2020, Mr. Barnett filed a motion *in limine*, arguing that the state should be precluded from presenting evidence at trial which would be inconsistent with the Marion Superior Court's 2012 age-change order. The trial court granted in part Mr. Barnett's motion to dismiss. The trial court also granted in part Ms. Barnett's motion to dismiss. The trial court certified both orders for interlocutory appeal and the Indiana Court of Appeals affirmed. The state first argued that the trial court erred by finding that the age-change order was entitled to preclusive effect. Neither the Hamilton Superior Court nor the Marion Superior Court lacked authority to provide the relief order. The Hamilton Superior Court that granted the adoption was not required to determine child's birth year, *per se*. While the matters addressed in the Hamilton Superior Court and the Marion Superior Court may have required consideration of facts relevant to both cases, there was no overlap of claims between the two cases. The adoption action and the age-change action were two different claims. As such, the age-change action was not an impermissible collateral attack on the adoption action, and the 2012 age-change order was not void *ab initio*. The state next argued that, notwithstanding the finding that the age-change order was not void, the trial court still erred in applying issue preclusion to exclude evidence that child was a minor when the Barnetts adopted her. The state's argument involved the doctrine of *res judicata*, which encompasses the principles of issue preclusion and claim preclusion. Issue preclusion, also referred to as collateral estoppel, requires (1) a final judgment on the merits in a court of competent jurisdiction, (2) identity of the issues, and (3) that the party to be estopped was a party or the privity of a party in the prior action. Regarding the first requirement, the Marion Superior Court was a court of competent jurisdiction. Regarding the second requirement, the issue of child's actual age was litigated and determined in the Marion Superior Court and the "identity of issues" requirement of the collateral estoppel doctrine was met. Regarding the third issue, the Tippecanoe County Prosecutor's Office was in privity with Marion County Adult Protective Services as represented by the Marion County Prosecutor's Office. The three requirements for collateral estoppel were met, and the Tippecanoe County Prosecutor's Office had a full and fair opportunity to litigate child's age through its privy, the Marion County Adult Protective Services. There was no error in the application of defensive collateral estoppel.

6. *Jones v. G.H. by next friend, K.H.*, 176 N.E.3d 972 (Ind. Ct. App. 2021). On October 24, 2020, mother was exercising parenting time with six-year-old G.H. K.H. was G.H.'s father. Mother had G.H.'s half-brother, W.J., with Jones. Jones had known G.H. since he was age one and considered himself "almost like a stepfather." During this parenting time, the Rochester Police Department was dispatched to a domestic disturbance at mother's residence. G.H.'s nose was bleeding and there was "blood throughout the bathroom." G.H. also had a red mark on his face. According to Jones, G.H. and W.J. were arguing, Jones separated the boys, and G.H. received a bloody nose during the incident. Jones later testified that G.H. told mother that Jones "hit him." As a result of the incident, the state of Indiana charged Jones with battery. On October 26, 2020, G.H.'s father, as next friend, filed a petition for an order of protection against Jones. G.H.'s father alleged that Jones had "committed repeated acts of

harassment against the child," but G.H.'s father did not identify the relationship between Jones and G.H. in the petition. That same day, the trial court issued an *ex parte* order of protection. Jones requested a hearing. The trial court held a hearing on March 4, 2021, and extended the order of protection. Jones appealed and the Indiana Court of Appeals affirmed. Jones argued that he was not a "family or household member" of G.H. as defined by Ind. Code § 34-6-2-44.8. The trial court found that Jones had a legal relationship with G.H. similar to that of a guardian, ward, or custodian, and Jones did not challenge that finding. Jones also ignored the fact that G.H. was at the time of the incident a minor child, mother had dated Jones, mother had engaged in a sexual relationship with Jones, and mother had a child in common with Jones. G.H. clearly qualified as a "family or household member of Jones." Jones also argued that he did not commit domestic or family violence, as defined under Ind. Code § 34-6-2-34.5. Jones's argument was merely a request to re-weigh the evidence and judge the credibility of witnesses, which the Court of Appeals could not do. The evidence was sufficient to support the trial court's entry of an order of protection against Jones.

7. *Calvert v. State*, 177 N.E.3d 107 (Ind. Ct. App. 2021). Calvert was charged with a Level 6 Felony assisting a criminal and being a habitual offender, and a warrant was issued for his arrest in connection with a May 28, 2019, shooting. On June 5, 2019, the U.S. Marshals apprehended Calvert and seized a Samsung cell phone at a house in Indianapolis, Indiana. Search warrants were obtained for this Samsung cell phone and an accomplice's cell phone. Based on data extracted from these phones and records obtained from the cell phone companies, including cell site locations, it was determined that (1) the accomplice's phone had a contact for a person named "K.J." – Calvert's nickname – with the same number as the Samsung cell phone, (2) both phones called each other several times before the shooting, and (3) both phones were near the scene of the shooting at the time of the shooting. In April 2021, a jury trial was held. Calvert's defense counsel objected to the admission of the Samsung cell phone and related records due to the cell phone not being in Calvert's possession. The trial court admitted the evidence, finding that there was a "connection," albeit "pretty thin," between Calvert and the Samsung cell phone and that Calvert's defense counsel's objection went to the weight of the evidence and not its admissibility. The jury found Calvert guilty of a Level 6 Felony assisting a criminal, and Calvert admitted to being an habitual offender. The trial court sentenced Calvert to two years, enhanced by three years for being an habitual offender, for a total sentence of five years. Calvert appealed and the Indiana Court of Appeals affirmed. Calvert argued that the state failed to show through a witness with personal knowledge that the Samsung cell phone ever was in his possession. Calvert relied on Ind. Evidence Rule 901, which provides that to satisfy the requirement of authenticating or identifying an item of evidence, the proponent "must produce evidence sufficient to support a finding of the item is what the proponent claims it is." That evidence can be authenticated by testimony by a witness with knowledge and also through "[t]he appearance, contents, substance, internal patterns, or other distinctive characteristics of the item, taken together with all the circumstances." The proponent need establish only a reasonable probability that the evidence is what it is claimed to be. *Rogers v. State*, 130 N.E.3d 626, 629 (Ind. Ct. App. 2019). Authenticity can be established by direct or circumstantial evidence. Once a reasonable probability is shown, any inconclusiveness goes to the exhibit's weight and not its admissibility. The Court of Appeals determined that the state established a reasonable

probability that the Samsung cell phone belonged to Calvert. The trial court did not abuse its discretion in admitting the Samsung cell phone and related records.

8. *Nail v. Smith*, 178 N.E.3d 801 (Ind. Ct. App. 2021). This case arose from a civil lawsuit alleging that Smith acted negligently when his vehicle hit Nail's vehicle. Smith was represented in the lawsuit by an attorney who was in-house counsel for his insurance company. On December 6, 2018, Smith served upon Nail discovery requests, which included interrogatories and requests for production of documents. Nail objected to several interrogatories and referenced, in response to an interrogatory which sought information about Nail's injuries, that such information "is detailed in the medical records previously provided." On April 15, 2019, Smith filed a motion to compel Nail's complete discovery responses. On April 23, 2019, the trial court granted the motion and, in an order of the same date, ordered Nail to provide complete and signed responses by April 30, 2019, or suffer sanctions. After an order granting additional time to respond to discovery, on June 12, 2019, Nail provided revised answers to Smith's discovery requests. In response to portions of an interrogatory that sought answers about the nature, location, and duration of Nail's alleged injuries from the accident, Nail again stated that they were "detailed in the medical records previously provided." Nail failed to fully answer other discovery requests. On October 21, 2019, Smith's counsel sent a letter to Nail's counsel under Ind. Trial Rule 26(F) in an attempt to informally resolve the parties' continuing discovery dispute. On July 8, 2020, Smith filed a motion to show cause why the lawsuit should not be dismissed due to Nail's failure to comply with the trial court's April 15, 2019, order compelling discovery responses. Following a hearing, on September 4, 2020, the trial court held that Nail was in violation of the order to compel and that sanctions for the violation were appropriate. Following other hearings, on March 5, 2021, the trial court denied Nail's motion to reconsider the September 4, 2020, order and found that an attorneys' fee award of $3,295.00 was appropriate as a sanction for Nail's discovery violations. Nail requested, and the trial court certified, an interlocutory appeal. The Indiana Court of Appeals affirmed. In its analysis, the Court of Appeals noted that Indiana has liberal discovery procedures under Ind. Trial Rule 26(B)(1). The purpose of the liberal discovery rules is to provide litigants with information essential to the litigation of all relevant issues, eliminate surprise, and promote settlement. In accord with those principles, Ind. Trial Rule 33 requires that answers to interrogatories "must be responsive, full, complete[,] and un-evasive." Simply directing the proponent to rummage through other discovery materials falls short of the obligations imposed by Ind. Trial Rule 33. A discovery response is insufficient if it merely states that the answering party does not have possession of information that is within his control. A party has a duty to supplement his discovery responses regarding "the identity and location of persons having knowledge of discoverable matters." Nail did not timely provide discovery responses, and when he did they were vague, general responses that were incomplete. Further, Nail did not show why the information was not available through his current counsel, prior counsel, and/or medical providers. Additionally, Nail showed no reason why he could not timely supplement his discovery responses as required under Ind. Trial Rule 26(E). The trial court did not abuse its discretion when it held Nail in violation of its order compelling him to provide complete discovery responses. The Court of Appeals also affirmed the attorneys' fees sanction for Nail's discovery violations. The award of attorneys' fees to Smith served a purpose of discovery

sanctions and punished Nail for his violation of a discovery order and was designed to deter such conduct in the future. The fact that Smith's lawyer was an in-house lawyer did not make the attorneys' fees award unjust because that ignores the primary purposes of discovery sanctions. The trial court did not abuse its discretion when it sanctioned Nail for his discovery violations by awarding Smith his reasonable attorneys' fees.

9. *Smith v. State*, 179 N.E.3d 1074 (Ind. Ct. App. 2022). On June 30, 2022, a detective initiated a traffic stop of a moped after he observed the driver disregarding a stop sign. Smith, the driver, answered a question that he had no illegal narcotics. However, his behavior indicated to the detective that Smith was hiding something in a compartment underneath the moped's handlebars. The detective found two small Ziploc baggies of a crystal-like substance in the compartment underneath the moped's handlebars. In other compartments the detective found digital scales and cell phone that Smith identified as his. Subsequent testing of the crystal-like substance identified it as methamphetamine. Smith was charged with dealing in methamphetamine as a Level 5 Felony. After taking Smith's cell phone into evidence, detectives performed an extraction of information from Smith's cell phone. Using Cellebrite, a computer software program that extracts content from cell phones, there was a report generated of Smith's text messages from June 2, 2020, to June 3, 2020. Those reports could not be modified. The state of Indiana redacted the report of Smith's text messages because it believed many of the text messages were not relevant to the case. On April 7, 2021, a jury trial occurred. Smith objected to the admission of the Cellebrite report on the basis that the text messages had not been properly authenticated. The trial court overruled the objection and admitted the report into evidence. At the conclusion of the jury trial, Smith was found guilty and sentenced to 2,190 days of imprisonment with the possibility of serving 730 days in a community correction program, if eligible and accepted into the program. Smith appealed and the Indiana Court of Appeals affirmed. Smith contended that the trial court abused its discretion by admitting the Cellebrite report into evidence because the report contained text messages that were not properly authenticated as having been written by Smith. Under I.R.E. 901(a), there must be a reasonable probability that the item is what the proponent claims it is in order to satisfy the requirement of authenticating or identifying an item of evidence. Once that reasonable probability is shown, any inconclusiveness regarding the item's connection with the events at issue goes to weight and not admissibility. Authentication of an exhibit can be established by either direct or circumstantial evidence. I.R.E. 901(d) provides examples of evidence that satisfy the authentication requirement, including testimony *and* distinctive characteristics and the like. Distinctive characteristics and the like are one of the most frequently used means to authenticate electronic data, including text messages and e-mails. There was ample evidence to support the admission of Smith's text messages. The detectives identified Smith's cell phone and the method by which Smith's text messages were recovered was standard. There was also testimony to authenticate that the text messages were Smith's test messages, and independent authentication that the cell phone was his. Taken together, the testimony describing Smith's cell phone and how it was collected and placed into evidence, and the text messages, were enough to authenticate both the cell phone and, independently, the text messages as being authored by Smith. Even if the trial court erred by admitting Smith's text messages, that would constitute

harmless error. Smith also failed to object to the Cellebrite report's redactions, so he waived his challenge on that issue.

10. *In re Paternity of W.M.T.*, 180 N.E.3d 290 (Ind. Ct. App. 2021). On September 11, 2008, mother gave birth to child out-of-wedlock. In 2009, father filed a paternity action. At the conclusion of that action, father was awarded primary physical custody of child and mother was awarded parenting time. On October 19, 2019, father passed away. Child had resided with paternal grandmother for the majority, if not all, of his life. Paternal grandmother had been child's primary caregiver and made medical, educational, and religious choices for child and engaged in "any other type of care that a parent would ordinarily give to their child." On December 3, 2019, paternal grandmother filed a verified *ex parte* emergency petition for custody. On December 5, 2019, the trial court held a hearing without mother present. On December 6, 2019, the trial court issued an *ex parte* order granting paternal grandmother custody of child. On January 7, 2020, paternal grandmother filed a motion to intervene. On March 6, 2020, mother filed a motion for relief from judgment, pursuant to Ind. Trial Rule 60(B), arguing that she was not given notice of paternal grandmother's filing. On March 27, 2020, the trial court entered an order granting mother's motion for relief from judgment. On March 31, 2020, paternal grandmother filed a renewed motion to intervene, which the trial court granted on April 1, 2020. On April 28, 2020, mother filed a motion for attorneys' fees. On June 1 and June 16, 2020, the trial court held hearings on paternal grandmother's petition for non-party custody. On July 7, 2020, the trial court entered its order granting paternal grandmother sole legal and primary physical custody of child, with mother having parenting time pursuant to the Indiana Parenting Time Guidelines. The trial court ordered mother to submit income information for the determination of child support and took the matter of attorneys' fees under advisement. On July 27, 2020, mother filed an appeal. On August 10, 2020, paternal grandmother filed a motion to establish child support. On October 22, 2020, the Indiana Court of Appeals dismissed mother's appeal because it was not a final appealable judgment pursuant to Ind. Appellate Rule 2(A), based on the remaining issue of child support. On December 29, 2020, the trial court held a hearing on paternal grandmother's motion to establish child support. On December 30, 2020, the trial court ordered mother to pay paternal grandmother $46.00 per week in child support retroactive to August 10, 2020. On appeal, mother argued that a significant amount of evidence and testimony before the trial court should not have been admitted. While mother objected to each piece of evidence and testimony at trial that she appealed, mother cited no case law, statute, or rule to support why any of those pieces of evidence or testimony should not have been admitted. Accordingly, the Court of Appeals found that mother had waived the issue for review by failing to make a cogent argument. The Court of Appeals concluded that the trial court did not abuse its discretion in the admission of any of the challenged evidence. In its order, the trial court determined paternal grandmother was child's *de facto* custodian for the purposes of child custody modification. The Court of Appeals concluded that the trial court did not err when it found paternal grandmother to be a *de facto* custodian. As to the best interests of child, the trial court considered detailed evidence that related to the statutory factors. Noting that the standard of proof regarding "best interests" is clear and convincing evidence for a third party and is higher for a third party than a natural parent, the Court of Appeals noted there is no requirement that the trial court make a special finding using specific language to that effect. The Court of Appeals

held that the trial court made multiple findings and conclusions that indicated paternal grandmother's custody of child gave child a "substantial and significant advantage." Regarding child support, mother argued that the trial court's order requiring her to pay paternal grandmother $46.00 per week in child support was erroneous because the calculation did not take into account the survivor benefits child received as a result of his father's death. In addressing a similar set of facts in *Martinez v. Deeter*, 968 N.E.2d 799 (Ind. Ct. App. 2012), the Court of Appeals recognized that there are discrepancies between the language of Indiana Child Support Guideline 3(A)(1) and the Commentary to Guideline (3)(A). The Guideline includes survivor benefits paid to or for the benefit of children as part of gross income for child support purposes while the Commentary does not. When considering paternal grandmother as the custodial parent, child receives $729.00 per month in survivor benefits as a result of father's death. The trial court imputed income to paternal grandmother based on the income sources listed in the Guidelines. As in *Martinez*, the inclusion of child survivors benefits in paternal grandmother's weekly gross income would result in a windfall for mother, since mother would be deriving a benefit from child's survivor benefits meant for child in the form of a reduction in her child support obligation. The trial court did not err when it excluded the child survivor benefits from the child support calculation. Finally, the trial court did not abuse its discretion when it denied mother's request for attorneys' fees under Ind. Code § 34-52-1-1. Mother had the burden of proving such fees were warranted and did not demonstrate that paternal grandmother acted in bad faith. Moreover, considering the ultimate outcome of the case, the Court of Appeals could not say that paternal grandmother acted in bad faith. Mother's argument was an invitation for the Court of Appeals to reweigh the evidence and judge the credibility of witnesses, which it could not do.

11. *Duff v. Rockey*, 180 N.E.3d 954 (Ind. Ct. App. 2022). In 2010, mother and father divorced. About a decade later, mother filed a contempt petition against father alleging that he denied her parenting time. Father filed a petition to modify parenting time. A Guardian Ad Litem ("GAL") was appointed and the case was set for hearing in October 2020. In September 2020, Duff entered an appearance as attorney for mother. Mother was married to Duff from 2013 to 2019 and was then pregnant with his child. Father moved to disqualify Duff from representing mother on the grounds that "his representation violates the Rules of Professional Conduct Rule 3.7." Father alleged Duff had spoken to the GAL on mother's behalf about parenting time and would likely be a "necessary" witness at the parenting time hearing. The hearing was held and the trial court took the matter under advisement. On October 5, 2020, the trial court entered an order disqualifying Duff. A few days later, father, represented by counsel, and mother, pro se, reached an agreement about mother's parenting time. A parenting time hearing never was held. In June 2021, father filed a verified motion to reduce order to civil judgment. Specifically, father sought reimbursement for his alleged overpayment of child support. Duff entered an appearance for mother, following which father filed a motion to disqualify Duff on the sole basis that he had been "previously disqualified from representing" mother in 2020. Father did not raise any new grounds for disqualification or alleged Duff likely would be a necessary witness regarding the child support issue. At a hearing, Duff argued that he should no longer be disqualified because "the basis for the previous disqualification no longer exists." In August 2021, the trial court entered an order disqualifying Duff and certifying the

issue for interlocutory appeal. Duff appealed and the Indiana Court of Appeals reversed and remanded. The purpose of Indiana Rule of Professional Conduct 3.7 is to avoid confusion at trial created by the dual role of an attorney as an advocate and witness. Father argued that, because the trial court had disqualified Duff in 2020, that disqualification was "continued" and "unqualified." However, father cited no authority for the proposition that an attorney's disqualification under Rule 3.7 is permanent. After the parties' divorce, post-dissolution issues can crop up at different times, even years apart. These issues can be vastly different, requiring different evidence and witnesses. Given this reality, an attorney disqualified for one post-dissolution matter is not automatically disqualified from a second, later-arising post-dissolution matter if the basis for the first disqualification no longer exists. That is especially so considering motions to disqualify under Rule 3.7 are viewed with caution, given the potential for abuse. The trial court was addressing a different issue and father did not raise any new grounds for disqualification or allege Duff would likely be a necessary witness at the hearing on child support. The second post-dissolution matter was different from the first post-dissolution matter, the basis for their first disqualification no longer existed, and the trial court abused its discretion in disqualifying Duff from representing mother in the second post-dissolution matter.

12. *Bixler v. Delano*, 185 N.E.3d 875 (Ind. Ct. App. 2022). On July 8, 2021, mother filed a letter with the trial court expressing concern for her and father's child. The trial court, in its order and the Chronological Case Summary, stated that it construed the letter as a motion to modify custody, parenting time, and child support and set the matter for hearing. On August 16, 2021, the trial court held a hearing at which mother appeared *pro se* and father did not appear. The trial court stated that it had attempted to notify father of the proceedings, but that the correspondence had been returned as undeliverable because father had not provided an updated address. The trial court continued with the hearing and mother testified that she had not spoken to father in eight months and had "pictures of where he, where everyone says he's lived," but did not know where father currently lived. Mother indicated that no one could find father. Mother alleged neglect of child by father, poor living conditions, and an inability to locate and exercise her parenting time with child. Mother ultimately requested custody. The trial court ordered that mother have legal and physical custody of child. On August 25, 2021, father's new attorney filed an appearance because father's previous attorney had withdrawn from the case on February 4, 2019. On August 26, 2021, father filed an Ind. Trial Rule 60(B) motion for relief from judgment. On September 7, 2021, the trial court held a hearing. Father testified that he had been at a new address for seven or eight months after a hectic eviction and never received a copy of mother's July 8, 2021, filing. Father also testified mother knew of his relocation and the new address, would have contested mother's motion, and had not learned about the trial court's modification order. When asked if he had filed a notice of relocation with the trial court, father said that he had not immediately. Mother testified that she had tried to send her initial letter to father. On September 8, 2021, the trial court entered an order denying father's motion for relief from judgment, stating that attempts were made to provide father with notice. Father appealed and the Indiana Court of Appeals reversed. Mother did not file an appellee's brief. Relief from judgment under Ind. Trial Rule 60(B) is an equitable remedy within the trial court's discretion. Due process requires notice of certain proceedings after the initiation of a lawsuit. Notice is part of due process and the means employed to provide notice must be

desirous of actually informing the party to whom notice should be served. If notice is not achieved, then the absence of the party to be noticed would be inevitable, and due process not achieved. *See Mullane v. Cent. Hanover Bank & Trust Co.,* 339 U.S. 306 (1950). Unclaimed service is insufficient to establish a reasonable probability that a party received adequate notice and to confer personal jurisdiction. Additionally, Ind. Trial Rule 4.1(A)(1), which allows for service by certified mail, requires that a return receipt is required in order for service to be effected. At the hearing on father's motion for relief from judgment, father's attorney argued that mother had omitted crucial information at the previous hearing, which the trial court would have considered in making the determination, and father testified that he would have contested the request to change custody. Under the circumstances, and in light of the record, the Court of Appeals concluded that father had demonstrated *prima facie* error and reversed and remanded to the trial court for an evidentiary hearing on mother's request to modify custody, parenting time, and child support.

13. *Cruz v. Cruz,* 186 N.E.3d 152 (Ind. Ct. App. 2022). In 2005, husband and wife married. At the end of 2018, they separated. Husband and wife both were living in Goshen, Indiana at the time of their separation. After separation, Husband did not seek or speak to wife before she petitioned for divorce in April 2019. Wife served the divorce petition by publication, alleging husband was living at an unknown location in Guadalajara, Mexico. Wife amended her divorce petition in July 2019, again serving husband by publication. However, in the time between the published notices, wife received a hint that husband may have returned from Mexico when she received husband's new license plates that were mailed to the marital residence where wife continued to live. In August 2019, wife discovered information suggesting she never was legally married to husband. Wife then filed a petition for annulment in the divorce case, alleging husband had "defrauded" her by representing himself as single when he was married to another woman from whom his divorce was not final. Wife claimed her marriage to husband was "voidable" under Indiana law due to fraud. Wife never served the annulment petition on husband. At the annulment hearing, wife presented Mexican documents in Spanish that were not translated. Presumably, based on this evidence, the trial court found husband married wife seven months before he finalized his divorce to his prior spouse. Finding the marriage void rather than voidable, (*see* Ind. Code § 31-11-8-2), the trial court entered a decree of annulment and ordered husband to pay wife $3,000.00 in attorneys' fees. Nine months later, husband moved to set aside the annulment order under Ind. Trial Rule 60(B)(6) because he never had been served with the petition for annulment. Husband objected to an annulment, but not a divorce, because he feared the fraud allegations from the annulment could adversely impact his immigration status. Husband argued that a dissolution of marriage and annulment are different causes of action requiring separate service by summons under Ind. Trial Rules 4 and 5. Wife acknowledged husband was never served by summons with the annulment petition, but she claimed the annulment petition was merely an amendment of divorce petition and she was not required to serve husband by summons. After an evidentiary hearing, the trial court agreed with wife and denied husband's request to set aside the decree of annulment. Husband appealed and the Indiana Court of Appeals reversed. Ind. Trial Rules 4(B) and (D) requires service by summons of an initial complaint in an action. That summons triggers a court's acquisition of jurisdiction over the served party. The Indiana General Assembly, by creating distinct statutes

for annulment of marriage and dissolution of marriage, already has signified that each is a separate cause of action. Not only do those causes of action arise under different Articles of the Indiana Code; the Indiana General Assembly requires the pleading of different grounds for each. The disparate relief granted in a divorce action and an annulment action also stands as convincing proof that an annulment is a distinct action from a dissolution of marriage action. If an annulment is granted, the marriage is voided, meaning treated as if it never legally existed. Unlike an annulment, a divorce decree only ends the marriage as of the date the decree is entered. Wife alleged an irretrievable breakdown of the marriage but did not attribute fault to either party. Yet, fault was the focus of her annulment petition. The factual circumstances giving rise to a divorce differ from those of an annulment: an irretrievable breakdown of a marriage versus a misrepresentation of marital status. The general injuries sustained in each action also vary. Given the clear legislative intent to create separate causes of action for annulment and divorce and the varying proof required and remedies available for each, the trial court erred in finding wife's annulment petition was a mere amendment of her divorce petition. The Court of Appeals also rejected the trial court's finding, adopted by wife on appeal, that even if service were inadequate to confer personal jurisdiction over husband, the trial court had *in rem* jurisdiction sufficient to allow it to enter the order of annulment. The changing of parties' status from married to unmarried is treated as an *in rem* proceeding. A trial court, therefore, may dissolve a marriage at the sole request of a spouse who meets the residential requirements for divorce and when personal jurisdiction over the other party cannot be obtained. This theory has been applied only in divorce actions, and wife did not support applying it in an annulment action. The trial court never obtained personal jurisdiction over husband as to the annulment petition because he was not served with it, as required by Ind. Trial Rules 4 and 5. Given this lack of jurisdiction, the trial court erred in entering a decree of annulment.

14. *B.M. and R.M. v. A.J.*, 186 N.E.3d 1194 (Ind. Ct. App. 2022). On September 13, 2021, A.J., by next friend, R.J., filed for a petition for an order of protection against B.M. and a petition for an order of protection against R.M. in separate actions. On September 24, 2021, the trial court held a hearing on both petitions. At the start of the hearing, the trial court asked B.M. if he was who he was and stated that he should turn around, scoot up to the table, and sit like he was in the courtroom. The trial court judge warned everyone before starting that he was not in a good mood because he was up all night dealing with a child abuse case, and was in the courtroom that morning at 8:30 a.m. "on this nonsense." A.J. testified that she was 17 years old and a junior in high school, and that she had been in school with B.M. since sixth grade. A.J. testified that she noticed B.M.'s "stalking activity" in sixth grade. A.J.'s testimony recounted several incidents with B.M. Following direct examination, the trial court judge told B.M. that he was an adult and asked if he had any questions for A.J. A.J.'s counsel called R.J. as a witness. R.J. was A.J.'s father. Following direct examination, the trial court judge asked if B.M. had any questions for R.J. B.M.'s father asked questions. During an objection, the trial court indicated that it didn't need any further witnesses. The trial court asked B.M. questions about his behaviors. After a long discussion, the trial court stated that it had heard enough and it was ready to rule. The trial court granted both petitions for order of protection and noted that "when a woman tells you no, that's it." The trial court also said that "it

would have went a hell a lot further than it did" if that were his daughter. The trial court also had a long discussion about courtroom procedures, evidence, and ancillary matters. B.M. and R.M. appealed and the Indiana Court of Appeals reversed in a unanimous decision, with Judge May concurring in result without opinion. The Court of Appeals opined that trial court made comments throughout the hearing that were improper and brought into question its impartiality. B.M. and R.M. made a *prima facie* showing that the trial court failed to preside over the hearing as a neutral, impartial decisionmaker, in violation of B.M.'s and R.M.'s due process rights. While mindful of the pressure and stresses on trial courts, judges are expected to adhere to the Judicial Canons and treat litigants and their counsel with civility. While the trial court may have ultimately reached the proper result, it must have reached that decision in the correct way. The Court of Appeals reversed and remanded for a new hearing before a different judicial officer and ordered that, pending the hearing, there be no contact between A.J. and B.M. and between A.J. and R.M.

15. *Estate of Estridge v. Taylor*, 187 N.E.3d 275 (Ind. Ct. App. 2022). In 2011, Estridge and Taylor, both firefighters and EMT/paramedics, met while employed at the same fire station. Estridge was diagnosed with cancer in 2015, and Taylor was informed of this diagnosis together with other co-workers and mutual friends. In Fall 2016, Estridge and Taylor started dating and, near the end of that year, Estridge first broached the subject of marriage. At the beginning of 2017, their relationship became sexual and, toward the end of the year, Estridge proposed to Taylor but she was hesitant to commit. After another marriage proposal in early-2018, Taylor agreed and accepted Estridge's ring. No wedding date was set due to Estridge's upcoming cancer surgery. The couple's friends and coworkers at the fire department were informed of the marriage plans, but Estridge and Taylor decided not to tell their family because they were afraid that, given the 36-year age difference between them, the families would not be accepting of the intended marriage. In April 2018, Estridge, accompanied by Taylor, traveled to the University of Chicago Hospital where he underwent an additional surgery. From early on in Estridge's cancer diagnosis, Taylor assisted Estridge with his medical care and appointments. Following Estridge's 2018 surgery, Taylor assumed further caregiver duties. By May 1, 2019, Estridge was informed that his cancer was terminal and that his best option was palliative care at home. On May 2, 2019, Estridge was taking medication and was dismissed from the University of Chicago Hospital. Estridge's son requested that Taylor take his father home from the University of Chicago Hospital together with the assistance of some Estridge's friends who were firefighters/EMTs. After being discharged at 1:00 p.m., Estridge rode with Taylor and two firefighter friends from Indianapolis, Indiana. Estridge did not take any medication on the ride home. At a certain point during the ride, Taylor asked Estridge if he still wanted to get married. Estridge replied affirmatively. Taylor and the others began calling people to assemble at the City-County Building in Indianapolis where the wedding would take place. Arriving in Indianapolis, Estridge and Taylor stopped at the Firefighters Credit Union, where a notary witnessed Estridge signing the application for a marriage license. Estridge had always intended Taylor to have his firefighter's pension because, if he died unmarried, it would go "back into the till" and he "didn't want to work that long for nothing." Some time after 4:00 p.m. that day, Estridge and Taylor arrived at the City-County Building where a marriage ceremony occurred. Reacting to this news, Estridge's son suggested to Taylor to get the

marriage annulled without telling Estridge and allow him to pass away happy thinking he was married. Taylor refused and Estridge passed away on May 6, 2019. On May 14, 2019, Estridge's Estate filed a petition to annul the marriage between Estridge and Taylor, alleging fraud and Estridge's mental incapacity. On May 5, 2021, the trial court denied the estate's petition to annul the marriage. On June 4, 2021, the trial court denied Taylor's request for attorneys' fees. Both the estate and Taylor appealed and the Indiana Court of Appeals affirmed. Estridge was capable of understanding the nature of the marriage contract he was about to enter in and was mentally competent at the time the marriage was solemnized. Accordingly, under Ind. Code § 31-11-8-4, the trial court properly declined to void the marriage between Estridge and Taylor. The trial court also did not abuse its discretion in denying Taylor's request for attorneys' fees.

16. *Rambo v. Rambo*, 187 N.E.3d 301 (Ind. Ct. App. 2022). In 2012, husband and wife married. By 2021, they had two young children and were living in a house in Decatur, Indiana. Husband quit his job so he could work from home as a mechanic, and wife was the primary family earner. At some point, concerns about mold prompted the parties to move out of the marital residence and in with wife's parents. In August 2021, husband petitioned for dissolution of marriage and moved for provisional orders regarding child support, custody, possession of certain property, payment of debt, spousal maintenance, and attorneys' fees. Husband asked for "temporary, exclusive" possession of the marital residence, a tractor, and a camper. The next month, wife filed a cross-petition for dissolution of marriage and her own motion for provisional orders. In her motion, wife asked the trial court to order the marital residence "be listed for sale 'as is' due to the mold infestation." At the provisional hearing, husband claimed he "spent his entire 401K redoing their shop so that he could work from home" and had "not had any detriment from the alleged mold while living in the house." Wife suggested that selling the house would help pay for attorneys' fees, a mediator, and a Guardian *Ad Litem*. After the hearing, the trial court entered a provisional order that, among other things, required the parties to auction the marital residence in ninety days and to use the ninety days "to rehabilitate the property to maximize its value to marital estate." The trial court also ordered the parties to auction the tractor and the camper. Husband brought an interlocutory appeal and the Indiana Court of Appeals reversed. Husband contended that the provisional order statute (Ind. Code § 31-15-4-8) does not allow courts to order the sale of property. Husband argued that the statutory provision authorizing "an order for possession of property" does not allow for an order for sale of property. The Court of Appeals agreed. Provisional orders are "temporary," in place during the pendency of a divorce proceeding and terminating when the final divorce decree is entered. The sale of property is not a "temporary" action and cannot be changed as relevant information is developed. Moreover, Ind. Code § 31-15-7-4, which governs the division of marital property in a divorce case, provides for the sale of property. The wording of that statute indicates that, when the Indiana General Assembly wants to authorize an order for sale of marital property, it says so. If the legislature wished to give courts the power to order the sale of property in a provisional order, it could have done so explicitly by using the word "sale" in the statute. The provisional order statute must be applied as currently written, and that statute allows only for an order of possession of property and not the sale of property. The Court of Appeals

pointed out that parties are free to enter into an agreed provisional order for the sale of marital property.

17. *In re Change of Gender of O.J.G.S.*, 187 N.E.3d 324 (Ind. Ct. App. 2022). In February 2013, child was born and assigned male at birth. Child was blessed with a loving, well-intentioned intact family, which included five siblings and both parents. Mother and father began noticing, before the age of two, that child preferred toys and dressed typically associated with girls. After developing speech, child became increasingly adamant that child was a girl and was dressed and treated as a boy. By the age of four, child expressed to her long-time speech and language pathologist that, although she was born with boy parts, she was a girl inside. When child started kindergarten, child was recognized as a girl at home, but still presented and treated as a boy at school. Child often avoided using the bathroom at school because child did not feel comfortable in the boys' bathroom. This resulted in child having nearly daily accidents at school. Parents eventually sought medical advice to figure out how to address child's gender identity issue with physicians and psychologists at Riley Hospital for Children and the Riley Hospital for Children Gender Health Program. In consultation with the psychologist and the treatment team, parents decided, during child's first grade year, to allow child to present as female at all times and use female pronouns in every aspect of child's life. On March 4, 2020, mother filed a petition to change child's birth certificate. On June 24, 2020, the first evidentiary was held on the petition. Thereafter, the trial court denied the petition without explanation. Mother successfully appealed, and the case was remanded for consideration of child's best interest. On July 13, 2021, at an evidentiary hearing before a new judge, the trial court agreed to take the testimony from the 2020 hearing into evidence as well as letters submitted from three medical and mental health professionals. Mother also testified at the second hearing. At the conclusion of the hearing, the trial court acknowledged that child "presents like a girl" and that "I would have otherwise thought that she was a girl." While the trial court believed mother to be "a really good parent," the trial court queried how a gender marker change for an eight-year-old who had not yet reached puberty would be in the child's best interest. Further, the trial court observed that child had not been the victim of any hate crimes and that the issues child had encountered, though "difficult" had not been "showstoppers right now." The trial court took the matter under advisement and on July 19, 2021, denied the petition. After an unsuccessful motion to correct error, mother appealed and a divided Indiana Court of Appeals affirmed. In the lead opinion, Judge Altice reviewed Ind. Code § 16-37-2-10, while recognizing that the mother's best interest arguments were compelling. The lead opinion referenced Judge Pyle's dissent in *Matter of A.B.*, 164 N.E.3d 167 (Ind. Ct. App. 2021) and Judge Bailey's plurality opinion in *In re H.S.*, 175 N.E.3d 1184 (Ind. Ct. App. 2021) in noting that the applicable statute did not provide for a gender marker change. The Indiana Supreme Court denied transfer in *In re H.S.*, and the Court of Appeals noted, again, that only the Indiana General Assembly can make the law. Judge Altice's opinion affirmed the trial court and urged that, in light of the second plurality of opinion in less than a year, the Supreme Court speak on the matter. Judge Bailey concurred in the result but wrote separately because he concluded that an equitable action could not accomplish the desired objective where the best interest of a child must be demonstrated. There was no statutory framework giving context to that requirement. Once a parent exercises parental authority to request a gender marker change –

something not prohibited by statute – trial courts have no statutory framework for granting or denying the request. A parent has the right to ask, but no right to order the registrar, to effect a gender marker change, absent an error in the designated sex of the child at the time of birth. Judge Mathias dissented, citing statistics regarding the LGBTQIA+ population and that indicated there were a sizable number of Hoosier transgender children. Judge Mathias did not agree that Indiana's judiciary is unable to act without a statutory framework in child's case. He found that Indiana's judiciary had the power in equity to hear petitions such as mother's petition, and that equitable relief in any number of circumstances is appropriate in the absence of statutory authority to the contrary. While Indiana citizens would be well-served by having statutory authority that addressed petitions such as mother's petition, the absence of a statutory framework did not render the judiciary incapable of hearing those petitions or granting relief. Judge Mathias added that the trial court's judgment was unsupported by the record and clearly erroneous. He noted that unequivocable and uncontradicted evidence from medical professionals supported the gender marker change, yet the trial court denied mother's petition and made comments that found no support in the record. Equity jurisprudence provided the remedy to consider mother's request on child's behalf. Judge Mathias would have reversed and remanded with instructions for the trial court to grant mother's petition.

18. *Mason v. Mares*, 188 N.E.3d 42 (Ind. Ct. App. 2022). In April 2018, after several acts of domestic violence against her, Mares filed a petition for order for protection against Mason. In May 2019, the trial court held an evidentiary hearing on Mares's petition. Following that hearing, the trial court found that Mason "represents a credible threat to the safety" of Mares and that the order for protection was "necessary to bring about a cessation of the violence or the threat of violence." The order for protection allowed for Our Family Wizard parenting app communication regarding the parties' two children. The order for protection further clarified that was not to be construed to be in conflict with any existing and valid custody orders. The order for protection was set to expire automatically on May 22, 2021. Following the issuance of the order for protection, Mason sent Mares messages, stating in part that Mares had not held up her end of the agreement to drop the "bogus order of protection" and that the order for protection was necessary "to keep [him] silent, and not ever speak to anyone." The messages also inquired as to whether Mares was at home with the parties' children. On February 13, 2020, Mason attempted to add Mares's husband to the Our Family Wizard parenting app. Mares sent Mason a message saying that her husband declined the invitation. In April 2021, Mares filed her petition to extend the order for protection. Mason followed with an additional message to Mares calling the order for protection "a joke" and indicating that the parties' children would grow to resent Mares "for all of this ridiculousness." The trial court held an evidentiary hearing on Mares's petition to extend the order for protection. Following the evidentiary hearing, the trial court granted Mares' petition and entered a second order for protection against Mason. Mason appealed and the Indiana Court of Appeals affirmed. Mason repeatedly communicated with Mares about matters unrelated to their children, including complaining about the order for protection, asking Mares about her occupation and when she was home, and asking Mares about her relationship with her husband. The trial court expressly premised the issuance of the second order for protection on Mason's violation of the terms of the first order for protection. The Court of Appeals declined

Mason's invitation to reweigh the evidence and found that Mares, a victim of domestic violence perpetrated on her by Mason, was reasonable in her reactions to Mason's repeated violation of the first order for protection.

19. *Israel v. Israel*, 189 N.E.3d 170 (Ind. Ct. App. 2022). On July 1, 2012, the parties married. They had one child, born on June 29, 2013. On January 4, 2019, wife filed a petition for dissolution of marriage and request for provisional orders. Wife subsequently requested a child custody and psychological evaluation pursuant to Ind. Trial Rule 35 and the trial court granted that request. On May 9, 2019, husband filed his counter-petition for provisional orders. On May 10, 2019, the trial court held a hearing on the parties' respective motions for provisional orders. On May 13, 2019, the trial court issued its preliminary orders, which included orders that the parties had joint legal and physical custody of child and that wife had exclusive temporary possession of the marital residence. On January 22, 2021, the parties filed their "Stipulations as to Assets and Liabilities and Child Support Components." On January 25, February 1, and March 29, 2021, the trial court conducted the final divorce hearing. Husband requested specific findings of fact and conclusions of law pursuant to Ind. Trial Rule 52. On May 12, 2021, the trial court entered its Findings of Fact, Conclusions of Law, and Decree of Dissolution of Marriage that had an attached "Marital Balance Sheet." Husband was awarded 56% of the marital estate ($332,108.36) while wife was awarded 44% of the marital estate ($261,238.36). The trial court referenced a custody evaluation by Dr. Kevin Byrd and ordered a 5-5-2-2 shared physical custody arrangement with wife having sole legal custody of child. The trial court also ordered that each party pay his and her own attorneys' fees. The decree also contained a "Non-Disparagement" clause which ordered that "the parties refrain from making disparaging comments about the other in writing or conversation in the presence of child, friends, family members, doctors, teachers, associated parties, co-workers, employers, the parenting coordinator, media, the press, or anyone." Husband appealed and the Indiana Court of Appeals affirmed in part, reversed in part, and remanded. The Court of Appeals affirmed the unequal division of marital property and valuation of the marital residence, reviewing statutory factors and finding evidence in the record for the $313,500.00 valuation of the marital residence. The trial court also affirmed the parties' division of personal property. As to tax consequences, when assessing the value of husband's three Fidelity retirement accounts, husband had waived that issue by not presenting it at trial. The trial court also affirmed the award of legal custody to wife. As to attorneys' fees, the Court of Appeals affirmed the trial court and refused re-weigh the evidence. Related to the non-disparagement clause, the Court of Appeals reversed, finding that a portion of that clause was an unconstitutional prior restraint of speech, contrary to the First Amendment to the United States Constitution. To the extent the non-disparagement clause at issue prohibited the parents from disparaging the other in the child's presence, that order furthered the compelling state interest in protecting the best interests of child and did not violate the First Amendment. However, the non-disparagement clause prohibiting a parent from "making disparaging comments" about the other in the presence "anyone" even when child was not present was an unconstitutional prior restraint on speech and overbroad.

20. *In re Paternity of A.M.*, 189 N.E.3d 619 (Ind. Ct. App. 2022). On August 2, 2012, mother gave birth to child. Shortly after child was born, mother and father executed a

paternity affidavit acknowledging father was the biological father of child. The parties did not pursue a formal custody or support order until the instant proceedings. Child lived with mother, and father exercised parenting time every Friday, Saturday, and Sunday, when child began first or second grade. In early-April 2021, mother informed father she intended to relocate to Dallas, Texas with stepfather and child. On April 13, 2021, father filed an emergency petition to prevent relocation and establish paternity, custody, support, and parenting time. Father alleged that stepfather had a history of domestic abuse against mother, sometimes in the presence of child. On April 19, 2021, mother filed a counter-petition to establish paternity, custody, and child support. That same day, she also filed a response to father's petition and a motion to vacate. On April 20, 2021, the trial court converted the scheduled April 21, 2021, hearing on father's petition to an attorneys' conference. On April 21, 2021, the trial court set a provisional hearing for June 22, 2021. On May 27, 2021, father filed a motion for the appointment of a Guardian *Ad Litem*. On June 2, 2021, the trial court approved that request. On June 22, 2021, the parties filed an agreed entry that allowed child to remain in mother's primary physical custody until the final hearing and granted father summer parenting time. The trial court scheduled the final hearing on the parties' petitions for September 8, 2021. On August 31, 2021, mother filed a motion to continue the September 8, 2021, hearing, arguing that she just found out that her lawyer resigned. On September 1, 2021, mother's attorneys filed a motion to withdraw their appearance on mother's behalf. They attached a letter sent to mother on August 16, 2021, in which counsel indicated their intention to withdraw. On September 8, 2021, the trial court held a final hearing. The trial court denied mother's motion to continue and mother acted *pro se*. During the hearing, mother was able to cross-examine witnesses, sometimes with the aid of the judge, object to exhibits, and make a closing argument and a reply to father's closing argument. On September 9, 2021, the trial court entered a paternity order in which the trial court granted father primary physical custody and mother parenting time pursuant to the Indiana Parenting Time Guidelines. The trial court also ordered mother to pay father $38.00 per week in child support. Mother filed a motion to correct error that the trial court denied on October 14, 2021. In a 2-1 decision, the Indiana Court of Appeals affirmed. The Court of Appeals distinguished this case from other precedent, citing mother's counsel withdrew because of "a breakdown of the attorney-client relationship" and a "misrepresentation of material facts" by mother. The trial court gave mother substantial leeway in terms of inserting narrative and mother's participation in the proceeding. The trial court did not abuse its discretion when it denied mother's motion to continue because, even if mother was not at fault for a lack of counsel at the final hearing, she did not demonstrate that she was prejudiced by the denial. Judge Brown dissented, concluding that the trial court abused its discretion by denying mother's motion for continuance. Noting that the Fourteenth Amendment to the United States Constitution "protects the traditional right of parents to establish a home and raise their children," the dissent found that the denial of a continuance based on the withdrawal of counsel at a crucial stage in the proceedings, prejudiced mother. Mother presented no case-in-chief. The dissent also found that the trial court's September 2, 2021, grant of the request to withdraw was premature under Marion County Local Rule LR49-TR3.1-201 and Ind. Trial Rule 3.1(H), which required ten days' advance notice. Under the circumstances, the dissent concluded that mother demonstrated good cause for a continuance of the hearing because the case involved at least some complexity

as well as a fundamental right of mother. Mother was prejudiced by the denial of her motion for continuance and a delay would not have prejudiced father to an extent to justify denial of the continuance. In light of the fundamental parent-child relationship involved, the dissent would hold that the trial court abused its discretion in denying mother's motion to continue.

21. *Dennis v. Dennis*, 189 N.E.3d 1115 (Ind. Ct. App. 2022). On August 13, 2007, the marriage between husband and wife was dissolved. The settlement agreement provided that wife would have sole possession of the marital residence and required wife to pay husband $19,921.50. Upon payment of that amount, husband was to execute a quitclaim deed transferring his interest in the marital residence to wife. Sometime before 2010, wife made the required payment to husband, but husband, for reasons that were not revealed in the record, failed to execute a quitclaim deed. In July 2021, husband died. On January 7, 2022, wife filed in the trial court, a Petition to Appoint Commissioner or to Declare Lien Satisfied and Released, seeking to enforce the terms of the settlement agreement with respect to the marital residence. On February 7, 2022, the trial court denied wife's petition, finding that it lacked jurisdiction "to address the petition within this cause" because husband had died and that, generally, a divorce court's jurisdiction terminates with the death of one of the parties. Wife appealed and the Indiana Court of Appeals reversed. Generally, divorce proceedings "terminate entirely with the death of one of the parties to the dissolution." *Edwards v. Edwards*, 80 N.E.2d 939, 943 (Ind. Ct. App. 2017). The Indiana Supreme Court identified in cases three exceptions to this general rule: (1) pursuant to statute, a party may seek to modify a property disposition based on fraud even if one spouse has died so long as the modification is sought within the statutory deadline, (2) a deceased spouse's attorney may seek attorneys' fees for work performed before the spouse's death because the fees are not part of the judgment and because denying counsel the opportunity to recover fees would create "a gross miscarriage of justice," and (3) based on the observation that the general rule "seems to have been honored more in the breach," there is an exception when a party seeks to reduce child support arrearages to a judgment. *Edwards* provided for an additional exception, holding that divorce courts retain "continuing jurisdiction to re-examine the property settlement where the nature of the examination is to seek clarification of a prior order." This continuing jurisdiction included the "authority to complete the implementation of the division of property as ordered in the final decree." The petition in this case was analogous to the proceedings in *Edwards* because wife merely sought to enforce the agreed-upon property settlement, which fell within the trial court's continuing jurisdiction "to complete the implementation of the division of property as ordered in the decree of dissolution of marriage."

22. *Ramey and McHenry v. Ping*, 190 N.E.3d 392 (Ind. Ct. App. 2022). This case involves the Indiana False Reporting Statute (Ind. Code § 31-33-22-3) related to child abuse or neglect. Under subpart (b) of that statute, a person who makes a report of child abuse or neglect, knowing the report to be false, is liable to the person accused of child abuse or neglect for actual damages. The Indiana Court of Appeals determined that the statute allows for either direct or indirect communication of a report, and that there is no limitation to the report requiring direct communication. Additionally, when a therapist and a parent collaborate to make a report that a child has been abused or neglected with the parent coaching the child to report, both the

therapist and the parent can be liable for actual damages. In this case, the therapist and the parent acted intentionally when they made a false claim of child abuse. Even though the therapist and parent did not expressly accuse the other parent in their report, there was no dispute that the Indiana Department of Child Services accused the other parent of abuse as a direct result of the false report. The trial court in this case also properly instructed the jury that the accused parent was not required to prove the amount by which her reputation was damaged. The jury was free to infer from the evidence that the other parent's reputation was damaged. The Court of Appeals also noted that the therapist did not have qualified immunity. The Court of Appeals upheld an award of punitive damages because the therapist and the parent had motive and took steps to make a false report in bad faith. Finally, settlement of a federal complaint did not preclude the state claim based on the principle of *res judicata*. Neither claim preclusion or issue preclusion barred the state claim, nor did the release of the federal claim bar the state claim.

23. *Goston v. State,* 191 N.E.3d 251 (Ind. Ct. App. 2022). In this case, the primary issue was whether Ind. Code § 31-33-18-4, which requires the Indiana Department of Child Services ("DCS") to notify parents of an assessment into the abuse or neglect of their children, confers a private right of action. That statute requires DCS to give verbal and written notice to each parent, guardian, or custodian of a child of a child abuse or neglect investigation. The Indiana Court of Appeals followed Chief Justice Rush's concurring opinion in *F.D. v. Indiana Dep't of Child Servs.*, 1 N.E.3d 131, 143 (Ind. 2013) in holding that the statute did not confer a private right of action. While the Court of Appeals did not condone the way the matter was handled by DCS, sympathized with Goston, and understood his frustration of not being timely notified, the Indiana General Assembly had not afforded a private right of action in these situations and the Court of Appeals was compelled to hold accordingly.

C. SPOUSAL MAINTENANCE

1. *Roetter v. Roetter*, 182 N.E.3d 221 (Ind. 2022). On May 9, 2014, husband and wife married. Husband had significantly more assets than wife at the date of marriage, but the couple did not execute a premarital agreement. Husband's premarital assets included a State Farm Whole Life IRA with a value of $82,364.00, a 401K account with a value of $383,000.00, and two Tri-Vest life insurance policies. Wife entered the marriage with over $100,000.00 in student loan debt for a college degree that she did not complete. The parties had two children, ages 5 and 2. Wife was the children's primary caregiver, and husband worked outside the home and earned a salary over $100,000.00 per year. The parties agreed that wife would leave her $10.50/hour job at a daycare center before their first child's birth to devote herself full-time to childcare responsibilities. The parties' older child was diagnosed with Autism Spectrum Disorder at age three, had a speech delay, and an "imminent diagnosis of ADHD." Wife was responsible for transporting that child to therapies and attending to online therapy during the pandemic. On October 11, 2019, the parties separated. On November 8, 2019, wife filed a petition for dissolution of marriage. On September 9 and 11, 2020, the trial court held a final hearing. Wife sought $100.00 per week in spousal maintenance payments for a period of three years, explaining that she could not work outside the home because she had to devote practically all of her time to caring for the parties' children. Wife also requested 55% of the marital estate,

and that the full value of the husband's IRA and 401K be divided as part of the marital estate. Wife also asked that 50% of her student loan debt be attributed to husband. Husband asked for the premarital values of his IRA and 401K to be individually afforded to him. He also disputed wife's characterization of the level of childcare required and objected to wife's request for spousal maintenance. On October 2020, the trial court entered its decree. The trial court awarded husband the values of his 401K, IRA, and two Tri-Vest life insurance policies as of the date of the marriage. The trial court also assigned to wife her student loan debt she brought into the marriage. The trial court then calculated the value of the remaining marital assets as $748,504.00, the value of the remaining marital debts as $174,665.00, and awarded wife 55% of that marital estate. The trial court also included a $49,576.00 cash payment from husband to wife as an asset of wife and a debt of husband. Finally, the trial court granted wife's request for spousal maintenance for a period of eighteen months and ordered that wife retain the $12,000.00 "advance" toward her anticipated share of the division of the marital estate in lieu of additional "monthly maintenance" payments. Wife appealed and the Indiana Court of Appeals affirmed in part, reversed in part, and remanded. As to spousal maintenance, the Court of Appeals noted that Ind. Code § 31-15-7-2 governs the award of spousal maintenance. Wife argued that the trial court's maintenance award was inadequate because she could not both care for the parties' children and maintain a part-time job until their youngest child would begin school, which would not happen for three years. The trial court did not abuse its discretion in ordering husband to pay spousal maintenance for only eighteen months. Wife also argued that the trial court erroneously excluded husband's prior-owned assets from the marital estate and awarded her less property than she was entitled to receive. The Court of Appeals recognized that the parties did not execute a premarital agreement detailing how their assets and liabilities would be divided in the event of divorce. In the absence of a premarital agreement, trial courts are left to divide marital estates according to the general laws governing the division of marital property. In Indiana, trial courts divide marital property using a two-step process. First, trial courts determine what property is included in the marital estate. Second, the trial court effect a just and reasonable division of marital estates. Ind. Code § 31-15-7-5 anticipates that an equal division of marital property is just and reasonable, but that presumption may be rebutted. The trial court listed husband's premarital assets in the decree, but pursuant to Ind. Code § 31-15-7-5 the trial court set those assets aside and awarded them to husband. The trial court also listed wife's student loans as a marital debt in the decree, but set that debt aside and assigned it wife. These individual allocations skewed the trial court's ultimate division of the marital estate heavily in husband's favor, with husband awarded essentially 75% of the net gross marital estate. The Court of Appeals cited *Wallace v. Wallace*, 714 N.E.2d 774 (Ind. Ct. App. 1999), which case found that an 86%/14% division of a marital estate was reversible error. While trial courts are not required to explicitly address each of the five statutory factors listed in Ind. Code § 31-15-7-5, it cannot unequally divide marital estates based solely on one factor. The Court of Appeals considered all five factors and determined that wife was entitled to more than 25% of the parties' marital estate, with instructions for the trial court to fashion a remedy closer to the 55%/45% division that wife requested. Additionally, on remand, the trial court was to consider the $12,000.00 payment husband made to wife as a payment made in lieu of spousal maintenance and not consider it as part of the 55%/45% division of the parties' marital estate. Husband

petition to transfer and the Supreme Court granted transfer and vacated the Court of Appeals opinion. As to the spousal maintenance order, the Supreme Court affirmed the trial court. The Supreme Court noted that there are “three, quite limited options” for spousal maintenance awards in Indiana under Ind. Code § 31-15-7-2(1)-(3). Wife challenged the trial court’s eighteen-month award of rehabilitative maintenance and contended that the trial court should have awarded her maintenance for the full three-year period permitted by statute. The trial court considered wife’s role as the children’s primary caregiver, the interruption in employment she incurred, and husband’s substantially greater earnings and earning capability, but wife insisted that one child’s ongoing special needs made it nearly impossible for her to secure employment. While the facts wife relied on might be relevant to an analysis of custodial maintenance, wife challenged only the trial court’s award of rehabilitative maintenance, which aims to remedy a spouse’s earning capacity following an interruption in education and employment “during the marriage.” Wife offered no evidence and raised no arguments on whether her future employment required any education or training. The trial court’s total maintenance award of $19,800.00 ($7,800.00 in monthly payments plus the $12,000.00 advance), exceeded the amount wife requested by $4,200.00. The trial court did not abuse its discretion in its award of spousal maintenance. The trial court also did not abuse its discretion in its division of the parties’ marital estate. The trial court properly identified the property to be included in the marital estate and then distributed the property in a “just and reasonable” manner. Ind. Code § 31-15-7-5 calls for a presumptive equal division between the parties, which may be rebutted with “relevant evidence.” This statutory list is not exclusive and no single factor controls the division of marital property. For example, trial courts may consider the length of parties’ marriages in dividing the marital pot. A short-lived marriage may rebut the presumption favoring equal division, especially if one party brought substantially more property into the marriage. Still, when ordering an unequal division of a marital estate, a trial court must consider all relevant factors under Ind. Code § 31-15-7-5. The Supreme Court distinguished *Wallace* and noted that here the trial court expressly found that the parties had a short-term marriage, wife “brought very few assets to the marriage,” wife failed to advise husband of the student loan debt she incurred prior to the marriage, husband “received no benefit” from wife’s education, and wife “is capable of earning income” of up to $30,000.00. While certain facts may have supported a distribution more favorable to wife, at the end of the day the standard of review precluded the Supreme Court from substituting its judgment for that of the trial court. As to wife’s argument that the trial court erred by excluding husband’s premarital assets from the marital estate, husband noted the “unartful” and “somewhat confusing” language of the trial court’s decree. The Supreme Court noted that the better approach would have been for the trial court to include all assets and liabilities in the divisible marital pot rather than setting aside those assets and liabilities before dividing the remainder of the marital estate. That approach offers greater transparency to the parties, potentially avoiding further litigation. But in the end, a trial court’s judgment is “tested by its substance rather than by its form” and that is what happened in this case.

D. CHILD SUPPORT

1. *In re Paternity of W.M.T.*, 180 N.E.3d 290 (Ind. Ct. App. 2021). On September 11, 2008, mother gave birth to child out-of-wedlock. In 2009, father filed a paternity

action. At the conclusion of that action, father was awarded primary physical custody of child and mother was awarded parenting time. On October 19, 2019, father passed away. Child had resided with paternal grandmother for the majority, if not all, of his life. Paternal grandmother had been child's primary caregiver and made medical, educational, and religious choices for child and engaged in "any other type of care that a parent would ordinarily give to their child." On December 3, 2019, paternal grandmother filed a verified *ex parte* emergency petition for custody. On December 5, 2019, the trial court held a hearing without mother present. On December 6, 2019, the trial court issued an *ex parte* order granting paternal grandmother custody of child. On January 7, 2020, paternal grandmother filed a motion to intervene. On March 6, 2020, mother filed a motion for relief from judgment, pursuant to Ind. Trial Rule 60(B), arguing that she was not given notice of paternal grandmother's filing. On March 27, 2020, the trial court entered an order granting mother's motion for relief from judgment. On March 31, 2020, paternal grandmother filed a renewed motion to intervene, which the trial court granted on April 1, 2020. On April 28, 2020, mother filed a motion for attorneys' fees. On June 1 and June 16, 2020, the trial court held hearings on paternal grandmother's petition for non-party custody. On July 7, 2020, the trial court entered its order granting paternal grandmother sole legal and primary physical custody of child, with mother having parenting time pursuant to the Indiana Parenting Time Guidelines. The trial court ordered mother to submit income information for the determination of child support and took the matter of attorneys' fees under advisement. On July 27, 2020, mother filed an appeal. On August 10, 2020, paternal grandmother filed a motion to establish child support. On October 22, 2020, the Indiana Court of Appeals dismissed mother's appeal because it was not a final appealable judgment pursuant to Ind. Appellate Rule 2(A), based on the remaining issue of child support. On December 29, 2020, the trial court held a hearing on paternal grandmother's motion to establish child support. On December 30, 2020, the trial court ordered mother to pay paternal grandmother $46.00 per week in child support retroactive to August 10, 2020. On appeal, mother argued that a significant amount of evidence and testimony before the trial court should not have been admitted. While mother objected to each piece of evidence and testimony at trial that she appealed, mother cited no case law, statute, or rule to support why any of those pieces of evidence or testimony should not have been admitted. Accordingly, the Court of Appeals found that mother had waived the issue for review by failing to make a cogent argument. The Court of Appeals concluded that the trial court did not abuse its discretion in the admission of any of the challenged evidence. In its order, the trial court determined paternal grandmother was child's *de facto* custodian for the purposes of child custody modification. The Court of Appeals concluded that the trial court did not err when it found paternal grandmother to be a *de facto* custodian. As to the best interests of child, the trial court considered detailed evidence that related to the statutory factors. Noting that the standard of proof regarding "best interests" is clear and convincing evidence for a third party and is higher for a third party than a natural parent, the Court of Appeals noted there is no requirement that the trial court make a special finding using specific language to that effect. The Court of Appeals held that the trial court made multiple findings and conclusions that indicated paternal grandmother's custody of child gave child a "substantial and significant advantage." Regarding child support, mother argued that the trial court's order requiring her to pay paternal grandmother $46.00 per week in child support was erroneous because the calculation did not

take into account the survivor benefits child received as a result of his father's death. In addressing a similar set of facts in *Martinez v. Deeter*, 968 N.E.2d 799 (Ind. Ct. App. 2012), the Court of Appeals recognized that there are discrepancies between the language of Indiana Child Support Guideline 3(A)(1) and the Commentary to Guideline (3)(A). The Guideline includes survivor benefits paid to or for the benefit of children as part of gross income for child support purposes while the Commentary does not. When considering paternal grandmother as the custodial parent, child receives $729.00 per month in survivor benefits as a result of father's death. The trial court imputed income to paternal grandmother based on the income sources listed in the Guidelines. As in *Martinez*, the inclusion of child survivors benefits in paternal grandmother's weekly gross income would result in a windfall for mother, since mother would be deriving a benefit from child's survivor benefits meant for child in the form of a reduction in her child support obligation. The trial court did not err when it excluded the child survivor benefits from the child support calculation. Finally, the trial court did not abuse its discretion when it denied mother's request for attorneys' fees under Ind. Code § 34-52-1-1. Mother had the burden of proving such fees were warranted and did not demonstrate that paternal grandmother acted in bad faith. Moreover, considering the ultimate outcome of the case, the Court of Appeals could not say that paternal grandmother acted in bad faith. Mother's argument was an invitation for the Court of Appeals to reweigh the evidence and judge the credibility of witnesses, which it could not do.

2. *Reibel v. Kavensky*, 184 N.E.3d 642 (Ind. Ct. App. 2022). On November 23, 1996, the parties married. They had three children. On April 20, 2016, the trial court approved the parties' *pro se* settlement agreement, which, in relevant portions, indicated that (a) husband's SEP retirement account would be used by husband for needed maintenance to the marital residence, with the remaining amount divided equally between husband and wife, (b) husband was to pay the Lowe's credit card from the proceeds of the SEP account, with husband assuming minimum payments on the Lowe's card once wife vacated the marital residence, (c) wife would pay the first $1,744.00 if uninsured medical expenses annually for the children, with any residual divided 77% to husband and 23% to wife, and (d) the tax exemptions and deductions for the children would be equally divided between husband and wife on the state and federal tax returns. On May 17, 2021, wife filed her contempt petition. The trial court conducted a hearing and, on July 6, 2021, entered an order holding husband in contempt. The order in relevant part stated that (a) husband was to divide the SEP account within fourteen days of the order and effectuate a transfer to wife of her one-half portion of the funds from the account, (b) husband was to pay wife's bankruptcy trustee $2,816.59 for the Lowe's credit card balance that husband failed to pay, plus $1,130.96 in interest, for a total of $3,947.55, (c) husband was to pay wife $6,564.40 for husband's portion of healthcare expenses that he had failed to pay from 2016 through 2020, plus $1,374.93 of interest (which was at the rate of 8% *per annum*), (d) wife was to claim the parties' children as tax exemptions for the years 2021 through 2024 due to husband's failure to pay his portion of children's medical expenses, and (e) husband was to pay $3,000.00 of attorneys' fees to wife. Husband appealed and the Indiana Court of Appeals affirmed in part, reversed in part, and remanded with instructions. The provisions of the settlement agreement regarding husband's SEP account did not specify a time by which husband was required to use the SEP funds to complete needed maintenance on the

marital residence and transfer half of the remaining SEP funds to wife. Because that provision was silent regarding a time frame, the trial court interpreted it as requiring that husband act within a reasonable time. The trial court found that giving husband more than five years to act was unreasonable. The Court of Appeals determined that the trial court did not modify the settlement agreement but engaged in a permissible interpretation and enforcement of it. The Court of Appeals also found that there was sufficient evidence to support the amounts that the trial court awarded for his contempt of the orders to pay the Lowe's credit card debt and the children's healthcare expenses. Additionally, the Court of Appeals affirmed the award of interest at the statutory rate of 8%. As to the allocation of tax exemptions and deductions, the Court of Appeals concluded that the trial court engaged in a permissible interpretation and enforcement of the settlement agreement and did not abuse its discretion. Finally, as to the award of attorney's fees, wife presented no evidence to support that amount, such as an attorney's fee affidavit and documentation of her attorney's hourly rate and hours billed. Wife also did not present testimony as to the exact amount she was billed for attorney's fees. The Court of Appeals reversed the trial court's order that husband pay $3,000.00 toward wife's attorney's fees and remanded to the trial court for determination of the amount of reasonable attorney's fees wife incurred in pursuing her contempt petition.

3. *Tyagi v. Tyagi*, 184 N.E.3d 1159 (Ind. Ct. App. 2022). This opinion is the second appeal in this case. On September 21, 2007, husband and wife married. In October 2016, wife filed for divorce. In September 2017, husband's parents filed a motion to intervene on the grounds that husband's mother owned Hoosier Broadband, LLC and husband's father owned a Zionsville residence. Husband and wife then jointly moved to bifurcate the divorce case and requested that the trial court determine, apart from the rest of the proceedings, whether the business and real estate should be included in the marital estate. The trial court found that the business and the real estate were not marital assets and not within the marital estate. Wife appealed and the Indiana Court of Appeals affirmed. *See Tyagi v. Tyagi*, 142 N.E.3d 960 (Ind. Ct. App. 2020). Thereafter, the trial court held the second phase of the bifurcated case. Business balance sheets showed that, beginning in 2005 and continuing for seven years, there was a note payable owed to the business to husband. As to husband's income, at a 2018 preliminary hearing, husband had verified to the trial court that he had income of $5,000.00 per week. Over the ensuing several years, husband reported continuously decreasing income on his tax returns, culminating in a 2020 income of $94,499.00. Husband reported an average income between 2018 and 2020 of $136,8101.00, and at the final hearing, requested that the trial court set his weekly income for child support purposes at $2,413.14, based on the most recent three-year average of his reported income. At the final hearing, husband introduced no evidence that the business had lost any profits over that same time frame and acknowledged that he had not changed his lifestyle, including taking vacations to the Bahamas, Disney World, Alaska, and twice to Europe. Wife introduced evidence that husband, as CEO of the business, had the ability to manipulate his income and access additional funds simply by sending an e-mail. Also at the final hearing, the parties agreed that wife had made numerous financial transfers to her brother in India using marital assets. The parties disputed the proper exchange rate to use in converting United States Dollars to Indian Rupees. Wife submitted evidence that, as of the date of the parties' separation, which was the date stipulated by the parties as the date for valuing all other

marital assets, the conversion rate was 1 Indian Rupee per 0.014969 United States Dollars. Husband opined that a different conversion rate should apply but offered no evidence in his support of that position. Finally, husband argued at the final hearing that he should receive 58% of the marital estate and wife should receive 42% of the marital estate. Wife argued that she should receive 55% of the marital estate and husband should receive 45% of the marital estate. In its decree of dissolution of marriage, the trial court found that the business owed a debt to the husband on the note payable in the amount of $183,031.38, which the trial court identified as an asset to husband and part of his share of the marital estate. The trial court also found that husband's weekly income for child support purposes should remain at $5,000.00 based on his ability to manipulate his income for tax purposes and ease-of-access to additional funds from his role as CEO of the business and son of the owner. The trial court also adopted the wife's evidence that the conversion rate for the United States Dollars to Indian Rupees. Finally, the trial court divided the marital estate 55% to wife and 45% to husband. Husband appealed and the Court of Appeals affirmed. As to the note payable, husband asserted that the trial court erred when it found that the note payable existed. Husband argued that wife's counsel stated to the trial court "there is no note payable formal here" but "[w]e definitely have other documents." Husband misconstrued the stipulation of wife's counsel. Wife only stipulated that there is no formal writing of the note payable owed by the business to husband, but there were other documents to prove the existence of the note payable. The trial court did not err when it found that the note payable existed and allocated it as an asset to husband. The trial court also properly maintained husband's weekly income at $5,000.00, and the Court of Appeals rejected husband's request for it to reweigh the evidence. As to the Dollar-to-Rupee conversion rate, husband did not introduce evidence as to an alternate conversation rate. The trial court relied on wife's evidence and did not err. Finally, the trial court did not err in ordering that wife receive 55% of the marital estate. On appeal, husband argued that the trial court erred when it did not equally divide the marital estate, but husband never argued in the trial court that the trial court should equally divide the marital estate. Rather, he argued that the trial court should award him 58% of the marital estate. Husband never placed the issue of equally dividing the marital estate before the trial court and husband could not argue, for the first time on appeal, that the trial court erred when it unequally divided the marital estate.

4. *Sanford v. Wilburn*, 185 N.E.3d 451 (Ind. Ct. App. 2022). In October 2007, child was born to mother and father. In January 2011, mother and father divorced. Pursuant to their agreement, the parties shared joint legal custody, with mother having primary physical custody of child. Mother, child, and child's half-sibling, lived in Greencastle, Indiana in mother's parents' home. Father and his wife lived in Brownsburg, Indiana. In February 2020, father filed a motion to change custody for primary physical custody of child. On July 27, 2020, the trial court granted father's motion, concluding there was a substantial change in circumstances while child was in mother's custody, including (a) struggling in and missing school because mother failed to take child to school, (b) mother moving child from one school to another school without telling father and without considering how the move would impact child, and (c) mother sending child to a therapist and not telling father who the therapist was. The trial court also found that mother denied parenting time to father, allegedly because of the COVID-19 pandemic, until "lawyers got involved." The trial court found that

father would provide a more stable environment and had a more "structured plan" for child. The trial court acknowledged that its conclusion to change primary physical custody would not be easy, but, ultimately, was the best course of action for the long-term mental health of the child. Mother did not appeal that ruling. On August 11, 2020, mother filed two reports with the Indiana Department of Child Services ("DCS") alleging that father and his wife were neglecting child. Specifically, mother alleged father's wife had driven a vehicle while intoxicated with child as a passenger, beat up father in front of child, and called child vulgar names. Mother alleged father criticized child for her appearance and for not understanding her homework. DCS investigated these allegations and found them to be unsubstantiated. One week later, on August 18, 2020, mother petitioned for a protective order on child's behalf against father's wife. Roughly a week after that, mother and child were in a Walmart parking lot and each one of them keyed the same car. A bystander caught them on video, and that video was widely circulated on social media. As a result, father asked the trial court, on the same day, to require supervision of mother's parenting time. Both mother and child were charged for the keying incident. Mother's case was resolved through pretrial diversion, and child was adjudicated a CHINS and was placed on probation. Father paid child's probation fees and asked the trial court to order mother to reimburse him. On September 4, 2020, mother filed a motion for change of judge without stating any basis. On September 8, 2020, that motion was granted without explanation. That same day, mother dismissed her petition for protective order. Two days later, and only 42 days after the trial court changed primary physical custody to father, mother filed a motion to change primary physical custody of child. On February 15, 2021, the trial court conducted a hearing on mother's motion. Following the conclusion of the hearing, the trial court interviewed child *in camera*. On May 27, 2021, the trial court granted mother's motion to change physical custody and father's motion to find mother in contempt. In its findings of fact and conclusions of law, the trial court divulged the contents of the *in camera* interview with child and noted that child was depressed living with her father. Child missed her family and friends and was overall unhappy. Child was struggling with the adjustment to father's home and child wished to "go home." The trial court granted mother's motion to modify custody and also found mother in contempt based on her failure to follow the prior custody order and ordered mother to pay father's attorneys' fees. Father appealed and the Indiana Court of Appeals reversed in part and affirmed in part. Father contended that the trial court erred in granting mother's motion to change primary physical custody. The Court of Appeals noted that the polestar for child custody determinations is what is in the best interest of the child, but that in a modification setting there must be a substantial change in circumstances in the statutory best interest considerations. *See* Ind. Code § 31-17-2-21(a)(2). When the prior judge found that there was a substantial change warranting a change of physical custody from mother to father, it was because child was struggling at home and at school. Child was stressed and anxious, she was missing school, and her grades were suffering. Mother enrolled child in mental health therapy, but for some inexplicable rational reason, refused to tell father with whom. Notwithstanding child's wish for physical custody to remain with mother, the trial court concluded that the substantial changes in circumstances warranted changing custody to father and that the change in child's best interest, in part, because father would provide more structure and the best environment for child to thrive. The trial court acknowledged "this change will not be easy," but

it was best "for the long-term health of the child." Mother did not appeal that order and only twelve days after the custody modification appeal deadline had run filed her petition for modification in front of a new trial court judge. The Court of Appeals defers to trial courts to make child custody determinations, but that is not what the trial court's findings reflected in this case. The trial court foreshadowed that it was "alarming" that mother did not appeal the order modifying custody to the father and that, at least initially, seemed "to be judge shopping for a different opinion." There must be substantially changed circumstances related to statutory considerations for child custody when compared to those reflected in the previous modification order, and the second trial court judge's findings did not support such a conclusion. The Court of Appeals reversed the portion of the trial court's order modifying primary physical custody to mother. Father also argued that the trial court erred by failing to rule on his request that mother reimburse him for child's probation fees. Father framed that as an "extraordinary expense" as described in Indiana's Child Support Guideline 8. The trial court did not rule on father's child support request, stating that any request to recalculate child support was denied due to a lack of evidence. Father did not explain to the Court of Appeals how the trial court's order was mistaken in that regard and no error occurred. The Court of Appeals affirmed that part of the trial court's order.

5. *Walters v. Walters*, 186 N.E.3d 1186 (Ind. Ct. App. 2022). Husband and wife had three children. On April 4, 2014, the parties married. On July 27, 2019, wife filed a petition for dissolution of marriage. In mediation, the parties resolved issues related to the division of their marital estate, but were not able to resolve custody, parenting time, and child support issues. On May 21, 2021, and June 28, 2021, the trial court held a final hearing. Husband had approximately twenty years of experience in the pipeline industry as a boom operator and supervisor. Prior to 2019, husband had never been unemployed for more than one month of time. From 2016 to 2018, husband was the sole breadwinner of the family and worked primarily in West Virginia. This working arrangement required husband to live apart from wife and the parties' children for months at a time. Husband's adjusted gross income was $215,050.00 for 2016, $185,866.00 for 2017, and $210,480.00 for 2018. Husband was an active member of two unions during the marriage and, at the date of final hearing, continued to pay his union dues. During the marriage, husband told wife on occasions, "too many to count," that they should get a divorce, he would not pay child support, he would become a "deadbeat" and a "bum," and that he refused to allow anyone to dictate his access to the parties' children. Husband last said that to wife sometime in 2019. During the pendency of the divorce case, husband did not return to work in the pipeline industry. Husband was unemployed until May 24, 2021, when he began work as a car salesman at a dealership in Tilton, Illinois making $2,500.00 per month. Husband never told wife that he had been laid off in the Fall 2019 from his pipeline job. At the final hearing, wife requested that the trial court impute gross weekly income of $3,920.00 per week to husband. That figure was derived by averaging husband's 2016-18 income. Husband requested that his child support obligation be based on his $577.00 per week gross weekly income from the car dealership. On September 13, 2021, the trial court entered its order granting primary physical custody of the parties' children to wife and imputing $3,875.06 as husband's weekly income based on his average weekly income from 2016-18. Husband appealed and the Indiana Court of Appeals affirmed in part, reversed in part, and

remanded. Husband challenged the trial court's determination that he was voluntarily underemployed. Husband remained unemployed until after the first evidentiary hearing took place in the divorce case, only then taking work as a car salesman, a field in which he had no previous experience, earning approximately 15% of what he had earned in his union employment. Husband continued to maintain his membership in two unions. In light of the totality of the evidence and the reasonable inferences it provided, the trial court's determination that husband was voluntarily underemployed was supported by the evidence and not clearly erroneous. The Indiana Child Support Guidelines provide for the imputation of potential income to parents who are underemployed, and a parent making such a claim must necessarily argue that the other parent could be earning more. The trial court considered husband's employment and income history as part of its determination and affirming the trial court would not unnecessarily promote litigation in Indiana courts. As to the imputation of husband's weekly gross income, husband relied on *Miller v. Miller*, 72 N.E.3d 952 (Ind. Ct. App. 2017). In arguing that there was no evidence in the record regarding prevailing job opportunities and earnings level in the community. The trial court entered a finding that it was not ordering husband to return to work in West Virginia and be apart from the parties' children. Thus, the trial court implicitly recognized that the relevant area of inquiry regarding job opportunities and earnings levels encompassed husband's current location in the Midwest. The trial court's order was clearly erroneous, and the Court of Appeals remanded for additional evidence to be presented on job opportunities and earnings levels in the relevant community. The Court of Appeals also directed that, on remand, the trial court should hear additional evidence on the enumerated factors but was not required to enter findings of fact and conclusions thereon as to each.

6. *Hurst v. Smith*, 21A-JP-1719, 2022 WL 3008608 (Ind. Ct. App. July 29, 2022). In September 2015, child was born out-of-wedlock. Father signed a paternity affidavit at the time of child's birth. Following child's birth, mother and child stayed with maternal grandparents in Brownsburg, Indiana, for a few weeks and then moved in with father in Indianapolis, Indiana. Maternal grandparents, paternal grandmother, and paternal great-grandparents provided childcare for child while parents worked. In June 2016, father lost his house in foreclosure after he lost his job. In April 2018, parents' relationship ended. In August 2019, maternal grandparents filed a petition for appointment as temporary co-guardians of child so they could enroll her in preschool. The trial court immediately entered an order of emergency temporary guardianship and appointed a Guardian *Ad Litem* ("GAL"). In October 2019, maternal grandparents filed a petition asking the trial court to appoint them as child's permanent guardians. In December 2019, the GAL filed her report recommending that the trial court grant maternal grandparents permanent guardianship and that father have supervised parenting time with child. In January 2020, father filed a petition to establish his paternity of child. In February 2020, maternal grandparents filed a motion to intervene in the paternity action which the trial court granted. In August 2020, maternal grandparents asked the paternity court to grant them custody of child. In October 2020, the GAL filed a supplemental report noting that father had acquiesced to child residing with maternal grandparents and that child was intertwined with maternal grandparents. The GAL recommended that maternal grandparents be granted third-party custody of child and that the guardianship be terminated, with father having alternate weekend and holiday and special day parenting time. In March and June 2021, the trial court

held a two-day hearing on father's paternity petition. At the end of the first day of the hearing, the trial court awarded father unsupervised parenting time with child. In July 2021, the trial court entered an order finding it in the best interests of child that maternal grandparents have physical and legal custody and father pay $141.00 per week in child support. Father appealed and the Indiana Court of Appeals affirmed in part, reversed in part, and remanded with instructions. The trial court determined, pursuant to Ind. Code § 31-14-13-2(8), that *de facto* custodians had cared for child and acted within its discretion in awarding custody of child to maternal grandparents. The trial court erred in ordering father to have less parenting time than that contemplated by the Indiana Parenting Time Guidelines ("IPTG"), as it did not provide a written explanation for the deviation. The Court of Appeals remanded with instructions for the trial court to either issue a written explanation for its deviation or award father parenting time consistent with the IPTG. The Court of Appeals also reversed the child support order, noting that no party submitted a Child Support Obligation Worksheet or testified regarding gross incomes. The trial court based its income calculation for maternal grandparents' weekly expenses for child's preschool and medical insurance, and that was an abuse of discretion. The Court of Appeals remanded with instructions for the trial court to obtain Child Support Obligation Worksheets signed by all parties and to recalculate father's child support obligation.

E. CUSTODY/PARENTING TIME

1. *Day-Ping v. Ramey*, 175 N.E.3d 844 (Ind. Ct. App. 2021). On April 25, 2014, mother and father married. On November 13, 2014, child was born. On July 18, 2016, mother filed for divorce. On September 28, 2016, the Indiana Department of Child Services ("DCS") received a report that mother was neglecting child by allowing him to wander around mother's hair salon and play with a bottle of hair dye. DCS investigated and found the report to be unsubstantiated. On January 17, 2017, the trial court accepted the parties' settlement agreement and dissolved their marriage. The settlement agreement provided that mother would have sole legal and physical custody of child, with father having parenting time pursuant to the Indiana Parenting Time Guidelines after a phase-in period. The parties also agreed that father would pay mother $119.00 per week in child support. On July 27, 2017, mother reported to DCS that father had physically abused her and child on multiple occasions in the past. That same day, mother reported to DCS that child had returned from father's care with injuries to his genitals. On August 5, 2017, mother reported to DCS that she suspected father had molested child based on alleged injuries on child's genital area. On August 6, 2017, mother had contacted DCS to report additional injuries in genital area that she discovered after father's parenting time the previous day. On August 21, 2017, mother contacted DCS to again report that child returned from father's care with injuries to his genital area. On August 28, 2017, DCS received a report that mother was abusing child based on a blister found in his genital area that was allegedly not present during father's last exercise of parenting time. Following that report, DCS removed child from mother's care on an emergency basis and placed him with father. DCS filed a petition alleging child was a CHINS. On October 3 and 7, 2017, the trial court held fact-finding hearings and ultimately denied the CHINS petition and ordered child be returned to mother's care. Subsequently, mother filed an action in federal court pursuant to 42 U.S.C. § 1983 claiming that two DCS family case managers who investigated the CHINS allegations violated

her civil rights. The claim settled out of court and mother received a $988,000.00 settlement. Mother also filed a civil case against father and father's girlfriend alleging malicious prosecution and intentional infliction of emotional distress. That court ultimately awarded mother damages based on father and girlfriend's violation of Ind. Code § 31-33-22-3(b) which prohibits false reporting of neglect or abuse to DCS, and the trial court took judicial notice of that case as permitted under Ind. Evid. Rule 201. On August 20, 2019, mother filed a motion requesting modification of father's parenting time and supervision. On December 11, 2019, the trial court held a hearing on mother's motion. On December 14, 2019, father filed a motion to, in relevant part, modify custody, parenting time, and child support. On December 26, 2019, the trial court ordered father's parenting time, which consisted of two mid-week visits lasting two hours each and one four-hour visit on alternating weekends, supervised by Youth Connections. The trial court's order also required mother, father, and child to submit to mental health and custody evaluations. On July 10, 2020, father filed a motion to modify the parenting time supervisor because Youth Connections was "unable to accommodate the requested visitation schedule." The trial court granted father's request and changed the parenting time supervisor to Mending Fences. The trial court further ordered mother and father to contact Mending Fences within 24 hours to schedule their intake and complete the intake within two business days. Mother never completed the intake with Mending Fences. On June 23, 2020, father filed a contempt petition alleging that mother had failed to complete the intake. On July 29 and August 3, 2020, the trial court held hearings on father's contempt petition. On August 4, 2020, the trial court found mother in contempt, sentenced her to thirty days in jail, and stayed the imposition of the sentence to allow mother to purge her contempt. The trial court further ordered father to have parenting time pursuant to the Indiana Parenting Time Guidelines, with mother arranging transportation to and from father's residence for the first ninety days. The trial court also ordered mother to pay $1,000.00 of father's attorneys' fees and ordered mother to refrain from sending child to father's house with a smart watch or any other GPS device capable of tracking child during father's parenting time. On December 1, 2020, the custody evaluation was submitted to the trial court. On February 15, 2021, the trial court entered its order which modified legal and primary physical custody of child from mother to father, ordered mother to pay $137.00 per week in child support, ordered mother to pay $9,000.00 of father's attorneys' fees, and appointed father's girlfriend as child's temporary custodian in the event of father's death. Mother appealed and the Indiana Court of Appeals reversed. To modify a child custody order, a trial court must find modification is in the best interest of the child and that there is a substantial change in one or more of the factors the trial court may consider under Ind. Code § 31-17-2-8. *See* Ind. Code § 31-17-2-21. Prior to, during, and subsequent to the appeal, mother, father, and father's girlfriend, were involved in two cases that called into question the veracity of the information given to the custody evaluator and the trial court by father and father's girlfriend. Mother had two experts review and critique the custody evaluation. In light of father and father's girlfriend's fraudulent behavior and related matters, the Court of Appeals encouraged the trial court to re-examine the evidence in this case. The Court of Appeals emphasized that it is not its role to reweigh evidence or judge the credibility of witnesses. However, this situation warranted reversal. The Court of Appeals asked the trial court to re-examine the evidence and consider the entirety of the circumstances. The Court of

Appeals added that, absent exigent circumstances, the trial court shall order the parties to revert to the terms of the original settlement agreement pending the outcome of a new hearing within thirty days of date of the opinion.

2. *Ellenburg v. Kropp,* 175 N.E.3d 1208 (Ind. Ct. App. 2021). Mother and father had two children together. Parents shared legal custody and mother had physical custody, while father exercised parenting time according to the Indiana Parenting Time Guidelines with additional Sunday overnights and alternating Monday and Wednesday nights. In 2020, mother was convicted twice and arrested once for conduct involving alcohol in the operation of a motor vehicle. In July 2020, father filed a petition for modification of custody, parenting time, and child support. On August 6, 2020, mother filed a petition to modify, alleging that there had been a substantial change in circumstances due to issues between father's wife and the children. On March 26, 2021, the trial court held a hearing on the petition. On April 1, 2021, the trial court issued an order modifying physical custody of the children from mother to father and granted father sole legal custody. Mother appealed and the Indiana Court of Appeals affirmed. Mother argued that the trial court abused its discretion when modifying physical custody of the children when it determined that there had been a substantial change in circumstances. Mother contended that it was not in the children's best interest for father to have physical custody because the children would prefer to stay with her due to their strained relationship with father and his wife. The Court of Appeals was unpersuaded and noted that mother's argument that the findings did not establish a nexus of harm to the children so that there could not be a substantial change in circumstances was incorrect. Mother committed three criminal acts involving alcohol and/or driving in only a few months, and also violated the terms of her probation. While she had taken steps to remedy those mistakes, there were other troubling signs which gave the trial court reason to modify custody. The trial court also was concerned for the children that mother would let a repeat criminal offender stay with her and the children and planned to cohabit with a convicted felon. Given the considerable deference accorded to trial courts, no error occurred. Father asked the trial court to make a modification of "current custody" and "make appropriate orders" with respect to custody and parenting time. While trial courts may not *sua sponte* order a change of custody, father's petition was not too vague to present the issue of modification of custody. Ind. Code § 31-17-2-15 lists the factors to consider when addressing legal custody. Despite the fact that the parties might have agreed previously on joint legal custody, the Court of Appeals believed that father's pleadings sufficiently placed the issue of legal custody before the trial court. The trial court was tasked with, above all, determining the "best interests of the child" despite any evidence of an agreement by the parties as to legal custody. Therefore, the Court of Appeals could not say that the trial court erred by awarding sole legal custody to father.

3. *In re Paternity of W.M.T.*, 180 N.E.3d 290 (Ind. Ct. App. 2021). On September 11, 2008, mother gave birth to child out-of-wedlock. In 2009, father filed a paternity action. At the conclusion of that action, father was awarded primary physical custody of child and mother was awarded parenting time. On October 19, 2019, father passed away. Child had resided with paternal grandmother for the majority, if not all, of his life. Paternal grandmother had been child's primary caregiver and made medical, educational, and religious choices for child and engaged in "any other type of care that a parent would ordinarily give to their

child." On December 3, 2019, paternal grandmother filed a verified *ex parte* emergency petition for custody. On December 5, 2019, the trial court held a hearing without mother present. On December 6, 2019, the trial court issued an *ex parte* order granting paternal grandmother custody of child. On January 7, 2020, paternal grandmother filed a motion to intervene. On March 6, 2020, mother filed a motion for relief from judgment, pursuant to Ind. Trial Rule 60(B), arguing that she was not given notice of paternal grandmother's filing. On March 27, 2020, the trial court entered an order granting mother's motion for relief from judgment. On March 31, 2020, paternal grandmother filed a renewed motion to intervene, which the trial court granted on April 1, 2020. On April 28, 2020, mother filed a motion for attorneys' fees. On June 1 and June 16, 2020, the trial court held hearings on paternal grandmother's petition for non-party custody. On July 7, 2020, the trial court entered its order granting paternal grandmother sole legal and primary physical custody of child, with mother having parenting time pursuant to the Indiana Parenting Time Guidelines. The trial court ordered mother to submit income information for the determination of child support and took the matter of attorneys' fees under advisement. On July 27, 2020, mother filed an appeal. On August 10, 2020, paternal grandmother filed a motion to establish child support. On October 22, 2020, the Indiana Court of Appeals dismissed mother's appeal because it was not a final appealable judgment pursuant to Ind. Appellate Rule 2(A), based on the remaining issue of child support. On December 29, 2020, the trial court held a hearing on paternal grandmother's motion to establish child support. On December 30, 2020, the trial court ordered mother to pay paternal grandmother $46.00 per week in child support retroactive to August 10, 2020. On appeal, mother argued that a significant amount of evidence and testimony before the trial court should not have been admitted. While mother objected to each piece of evidence and testimony at trial that she appealed, mother cited no case law, statute, or rule to support why any of those pieces of evidence or testimony should not have been admitted. Accordingly, the Court of Appeals found that mother had waived the issue for review by failing to make a cogent argument. The Court of Appeals concluded that the trial court did not abuse its discretion in the admission of any of the challenged evidence. In its order, the trial court determined paternal grandmother was child's *de facto* custodian for the purposes of child custody modification. The Court of Appeals concluded that the trial court did not err when it found paternal grandmother to be a *de facto* custodian. As to the best interests of child, the trial court considered detailed evidence that related to the statutory factors. Noting that the standard of proof regarding "best interests" is clear and convincing evidence for a third party and is higher for a third party than a natural parent, the Court of Appeals noted there is no requirement that the trial court make a special finding using specific language to that effect. The Court of Appeals held that the trial court made multiple findings and conclusions that indicated paternal grandmother's custody of child gave child a "substantial and significant advantage." Regarding child support, mother argued that the trial court's order requiring her to pay paternal grandmother $46.00 per week in child support was erroneous because the calculation did not take into account the survivor benefits child received as a result of his father's death. In addressing a similar set of facts in *Martinez v. Deeter*, 968 N.E.2d 799 (Ind. Ct. App. 2012), the Court of Appeals recognized that there are discrepancies between the language of Indiana Child Support Guideline 3(A)(1) and the Commentary to Guideline (3)(A). The Guideline includes survivor benefits paid to or for the benefit of children as part of gross income for child support

purposes while the Commentary does not. When considering paternal grandmother as the custodial parent, child receives $729.00 per month in survivor benefits as a result of father's death. The trial court imputed income to paternal grandmother based on the income sources listed in the Guidelines. As in *Martinez*, the inclusion of child survivors benefits in paternal grandmother's weekly gross income would result in a windfall for mother, since mother would be deriving a benefit from child's survivor benefits meant for child in the form of a reduction in her child support obligation. The trial court did not err when it excluded the child survivor benefits from the child support calculation. Finally, the trial court did not abuse its discretion when it denied mother's request for attorneys' fees under Ind. Code § 34-52-1-1. Mother had the burden of proving such fees were warranted and did not demonstrate that paternal grandmother acted in bad faith. Moreover, considering the ultimate outcome of the case, the Court of Appeals could not say that paternal grandmother acted in bad faith. Mother's argument was an invitation for the Court of Appeals to reweigh the evidence and judge the credibility of witnesses, which it could not do.

4. *G.S., Jr. v. H.L.*, 181 N.E.3d 1040 (Ind. Ct. App. 2022). Mother and stepfather were married and had a child, D.L. They divorced and mother moved in with father. In 2012, child was born and father executed a paternity affidavit acknowledging that he was child's biological father. Shortly thereafter, mother and father ended their relationship and father moved out of their shared residence. Father saw child on a few occasions within a "couple of weeks" in 2012 and also exercised parenting time for approximately 1½ months in 2014. Meanwhile, stepfather met child when stepfather came to mother's residence to pick up D.L. for parenting time. Stepfather soon decided to "take [child] under his wing" and bring child along with D.L. for parenting time. When mother moved out in 2017, child and D.L. remained with stepfather. Child lived with stepfather continuously since later-2012, with the exception of eight weeks, when child was in his maternal grandmother's home. In 2019, the Indiana Department of Child Services ("DCS") investigated mother upon allegations that she had provided marijuana to D.L. and personally used illegal substances. As part of an informal adjustment, mother agreed that stepfather would retain custody of child. DCS contacted father. Paternity testing was conducted confirming father's parentage, and father began to exercise regular parenting time with child. On August 26, 2019, mother petitioned the trial court for an order to "Maintain Status Quo" with respect to child's custody. On November 13, 2019, a Guardian *Ad Litem* ("GAL") was appointed. The trial court entered orders regarding interim parenting time for mother and father while child remained in stepfather's custody. On May 18, 2021, the trial court conducted a final hearing to determine custody, parenting time, and child support. Father and stepfather each sought custody of child and mother did not. The GAL recommended custody be awarded to stepfather. On June 9, 2021, the trial court entered an order awarding stepfather legal and physical custody of child, with mother and father each having substantial, unsupervised parenting time. Mother and father were each ordered to begin providing child support for child's benefit. Father appealed and the Indiana Court of Appeals affirmed. Clear and convincing evidence existed that the best interests of child required placement with stepfather. Stepfather had been the stabilizing force in child's life for many years during father's absence and mother's struggles. By all accounts, those years of stability permitted child to force a strong bond with D.L. and stepfather. There was sufficient evidence to

overcome the presumption in favor of father. The trial court found father to be child's *de facto* custodian, pursuant to Ind. Code § 31-14-13-2.5(d). Applicable statutes contain no requirement that the trial court articulate its reasoning with respect to each factor. The trial court's findings were replete with references to child's age, adjustment to home and community, relationship with the parents and siblings, wishes of the parents, circumstances surrounding mother's placement of child with stepfather, and stepfather's historical provision of care and support to child, relevant under Ind. Code § 31-14-13-2 and 34-14-13-2.5(b). There was no indication that the trial court failed to engage in an appropriate best interests analysis. The trial court did not abuse its discretion by awarding custody of child to stepfather.

5. *In re Paternity of J.K.*, 184 N.E.3d 658 (Ind. Ct. App. 2022). Mother and father had a fourteen-year-old son, J.K. Mother resided in Noblesville, Indiana while father resided in Texas. J.K. was active in sports and aspired to play Division I college basketball. In Fall 2021, J.K. matriculated to Noblesville High School, which observed a "balanced school calendar." Mother desired for J.K. to remain in Indiana during Summer 2021 so that J.K. could participate in summer basketball training for Noblesville High School and compete in AAU basketball. That desire, however, ran contrary to the April 29, 2019, trial court order regarding parenting time which entitled father to seven weeks of summer parenting time. On February 2, 2021, mother filed a petition to modify parenting time. On April 29, 2021, father filed a petition to modify Spring Break and Fall Break parenting time, as well as a contempt petition. On May 25, 2021, the trial court conducted a hearing. Mother testified that, as of the date of the hearing, J.K. had practices every day and that once summer practice began it would be "very important" for J.K. to acclimate to the new coaches and system in place so as not to be behind in October. Father testified that he felt bad that he moved away from J.K. but did so in order to provide for him. Father testified that he had another son that lived in Bloomington, Indiana and an infant child in Texas. Father expressed a willingness to modify the summer parenting time schedule, but recognized that some of J.K.'s grades were suffering due to, what he perceived as, an extensive focus on basketball. Father expressed frustration about being physically separated from J.K. and testified that he believed an altered parenting time schedule would adversely affect his relationship with J.K. On June 14, 2021, the trial court ordered, in pertinent part, that father would have summer parenting time in the state of Texas during any IHSAA moratorium week, any other week Noblesville High School was in moratorium, two weeks of Fall Break in odd-numbered years and the first week of Fall Break in even-numbered years, Thanksgiving holiday in the state of Indiana in even-numbered years, parenting time in Texas over each Christmas break during windows of time that it did not impact games or required practices, the first week of Spring Break every year, and one weekend per month, locally. Father appealed and the Indiana Court of Appeals affirmed. Noting that some of the greatest challenges a trial court will likely face are challenges in parenting time cases, the Court of Appeals noted that trial courts are faced with a subtle balancing, as expressed, for example, in the Indiana Parenting Time Guidelines Preamble. The Court of Appeals looked at Ind. Code §§ 31-14-14-1 and 31-14-14-2, which provide that a non-custodial parent in a paternity case is entitled to reasonable parenting time unless that parenting time might endanger the child's physical health and well-being or significantly impair the child's emotional development *and* that trial courts may modify an order granting or denying parenting time whenever the modification would serve the best interest of

the child. Referring to the Indiana Parenting Time Guidelines ("Guidelines"), this case involved an overlap between significant distance and the complexities of parenting time with respect to teenagers and extracurricular activities. Since father did not argue that the trial court's order was out of sync with the best interest of J.K. and merely claimed that the trial court improperly "restricted" his parenting time by limiting the number of overnights to which he was entitled in the state of Texas, Ind. Code § 31-14-14-2 and the best interest of J.K. was not at issue. The primary question was whether the trial court's parenting time order was "reasonable" within the meaning of Ind. Code § 31-14-14-1. The Court of Appeals rejected father's contention that the parenting time order fell below the minimum under the Guidelines. The parties seemed to agree that father was entitled to 65 days of parenting time per year, an amount consistent with the Guidelines. Father's calculations of the trial court's parenting time order only included the parenting time that would constitute overnight parenting time in the state of Texas. Father cited no authority justifying this constraint on his calculations. Accordingly, the parenting time order was consistent with the Guidelines and reasonable under Ind. Code § 31-14-14-1. Even if the parenting time order was inconsistent with the minimums established by the Guidelines, it was not so unreasonable such that a finding of endangerment or impairment under Ind. Code § 31-14-14-1 would be required. The Court of Appeals disagreed with *Walker v. Nelson*, 911 N.E.2d 124 (Ind. Ct. App. 2009) and noted that it surely cannot be the case, as *Walker* implied, that any alteration in parenting time amount or conditions imposed upon how parenting time is to be spent constitutes an unreasonable restriction of parenting time rights under Ind. Code § 31-14-14-1. The subtleties of the balance act faced by the trial court was manifest in the record. Children's needs evolve as they become adolescents. The Court of Appeals recognized father's desire to spend time with J.K. and the importance of a relationship between a father and a maturing son but, considering the totality of circumstances and uniqueness of this family's situation, the Court of Appeals concluded that the parenting time order was consistent with the Guidelines and reasonable. The trial court considered all relevant factors and fashioned a parenting plan based on the specific circumstances of the case. To the extent that the parenting time order deviated from the Guidelines, the trial court explained in writing why the deviation was appropriate. Father's parenting time order was reasonable and the trial court was not required to make the factual finding contemplated by Ind. Code § 31-14-14-1. The trial court did not abuse its discretion.

6. *McClendon v. Triplett*, 184 N.E.3d 1202 (Ind. Ct. App. 2022). In May 2005, K.T. was born. In February 2013, mother and father married and D.T. was born. Father adopted K.T. Mother and father later separated. In August 2016, the parties divorced. In their settlement agreement, the parties agreed to have "joint legal custody and joint possession custody" over both children. Father lived in Bluffton, Indiana. Mother had moved repeatedly since the parties' separation. In February 2016, shortly after the parties' separation, mother and the children moved to South Carolina for six months. Mother and the children then moved to Cameron, North Carolina. Mother and the children then moved to an apartment in Apex, North Carolina. Mother and the children later moved into a house in Whitsett, North Carolina. In December 2020, mother remarried. The moves required K.T. to attend at least six different schools and D.T. to attend three different schools. Although father's relationship with K.T. was strained after the divorce, K.T. and father later became closer. In September 2020, K.T. and

mother argued and then mother's husband grabbed K.T.'s phone out of her hand. K.T. alleged that mother's husband scratched her arm when he took the phone. The next morning, mother took K.T. to the airport, wheeled one of K.T.'s suitcases into the airport, and left without saying goodbye. When K.T. arrived in Indiana, father texted mother to inform her that K.T. had arrived. Mother did not respond and did not contact father or K.T. for approximately six weeks. Mother did not send K.T.'s box of belongings until a couple of months after K.T. arrived in Indiana. When K.T. was living with father, mother blocked father from calling or texting mother's phone, and father was unable to contact D.T. for four months. In October 2020, father filed a petition for modification of custody and requested sole custody of the children. In December 2020, mother filed a contempt petition and alleged that father had failed to return K.T. to her care. On April 30, 2021, father filed a motion for an appointment of a Guardian *Ad Litem* ("GAL"), which the trial court granted on May 3, 2021. Although the trial court did not order the GAL to submit a report, the GAL filed a report two days before a July 23, 2021, hearing. The GAL noted that 16-year-old K.T. wished to live with father and 8-year-old D.T. wished to live with mother. The GAL, however, believed that D.T's wishes were based primarily on baseball and his friends. Ultimately, the GAL recommended that father have primary physical custody of both children and that mother have parenting time pursuant to the Indiana Parenting Time Guidelines where distance is a major factor. On July 22, 2021, mother filed a motion to continue the evidentiary hearing due to the late filing of the GAL report. The trial court denied the continuance motion and noted that school would be starting soon. The trial court also found that, even if the GAL's report was "coming in a little late," having the report ten days before the hearing would not have made any difference. At the evidentiary hearing, the trial court ordered a separation of witnesses at mother's request. On August 16, 2021, the trial court entered an order granting father's petition for modification of custody, finding multiple substantial changes in circumstances and that modification of custody was in the children's best interests. The trial court also found no violation of its separation of witnesses order related to conversations between K.T., Christina Affolder (D.T.'s babysitter), and Shannon Camden (the mother of father's 17-year-old daughter). Mother appealed and the Indiana Court of Appeals affirmed. Mother challenged the trial court's denial of her motion for continuance. The Court of Appeals noted that the trial court did not require the GAL to file a written report with the trial court. The Court of Appeals determined that Ind. Code § 31-17-2-12, providing for filing of a report at least ten days before a hearing, was inapplicable since the trial court did not order a GAL to prepare a report. Mother also challenged the trial court's decision to allow 16-year-old K.T.'s testimony outside of the presence of mother and father. Counsel for both mother and father were allowed to remain in the courtroom to question and cross-examine K.T. The Court of Appeals noted that it frowned upon parents calling their minor children as witnesses in custody proceedings that "pit" a child against the other parent. The process allowed by the trial court to protect K.T. was similar to that allowed by Ind. Code § 31-17-2-9, which governs *in camera* interviews of children. Mother's due process rights were not violated and the trial court did not abuse its discretion. Mother also argued that the trial court abused its discretion when it denied mother's motion to strike the testimony of K.T., Affolder, and Camden for violation of the trial court's separation of witnesses order. While waiting in the hallway to testify, K.T., Affolder, and Camden engaged in a brief conversation about various subjects. The trial court

correctly noted that the conversations occurred prior to the testimony of K.T., Affolder, or Camden. The purpose of a separation of witnesses order under Ind. Evid. Rule 611 is to prevent witnesses from gaining knowledge of the testimony of other witnesses. Even if a violation occurred, mother was not prejudiced by the denial of her motion to exclude the witnesses. Any violation of the separation of witnesses order was harmless. Finally, mother challenged the trial court's modification of custody. Under Ind. Code § 31-17-2-21 and the factors under Ind. Code § 31-17-2-8, the trial court found substantial changes in multiple factors. The evidence demonstrated substantial changes in addition to K.T.'s wishes. The trial court's findings were extensive and were supported by the evidence, and were more than sufficient to support the finding of a substantial change. The trial court also found that a modification of custody was in children's best interests due to father's ability to provide stability and promote contact between children and extended family, mother's multiple moves and the impact on children's education, mother's failure to support necessary communication with father between father and D.T., and mother's concerning statements and actions toward K.T. The trial court's findings regarding the children's best interests were supported by the evidence and were not clearly erroneous.

7. *Sanford v. Wilburn*, 185 N.E.3d 451 (Ind. Ct. App. 2022). In October 2007, child was born to mother and father. In January 2011, mother and father divorced. Pursuant to their agreement, the parties shared joint legal custody, with mother having primary physical custody of child. Mother, child, and child's half-sibling, lived in Greencastle, Indiana in mother's parents' home. Father and his wife lived in Brownsburg, Indiana. In February 2020, father filed a motion to change custody for primary physical custody of child. On July 27, 2020, the trial court granted father's motion, concluding there was a substantial change in circumstances while child was in mother's custody, including (a) struggling in and missing school because mother failed to take child to school, (b) mother moving child from one school to another school without telling father and without considering how the move would impact child, and (c) mother sending child to a therapist and not telling father who the therapist was. The trial court also found that mother denied parenting time to father, allegedly because of the COVID-19 pandemic, until "lawyers got involved." The trial court found that father would provide a more stable environment and had a more "structured plan" for child. The trial court acknowledged that its conclusion to change primary physical custody would not be easy, but, ultimately, was the best course of action for the long-term mental health of the child. Mother did not appeal that ruling. On August 11, 2020, mother filed two reports with the Indiana Department of Child Services ("DCS") alleging that father and his wife were neglecting child. Specifically, mother alleged father's wife had driven a vehicle while intoxicated with child as a passenger, beat up father in front of child, and called child vulgar names. Mother alleged father criticized child for her appearance and for not understanding her homework. DCS investigated these allegations and found them to be unsubstantiated. One week later, on August 18, 2020, mother petitioned for a protective order on child's behalf against father's wife. Roughly a week after that, mother and child were in a Walmart parking lot and each one of them keyed the same car. A bystander caught them on video, and that video was widely circulated on social media. As a result, father asked the trial court, on the same day, to require supervision of mother's parenting time. Both mother and child were charged for the keying incident. Mother's case was resolved through pretrial diversion, and child was adjudicated a

CHINS and was placed on probation. Father paid child's probation fees and asked the trial court to order mother to reimburse him. On September 4, 2020, mother filed a motion for change of judge without stating any basis. On September 8, 2020, that motion was granted without explanation. That same day, mother dismissed her petition for protective order. Two days later, and only 42 days after the trial court changed primary physical custody to father, mother filed a motion to change primary physical custody of child. On February 15, 2021, the trial court conducted a hearing on mother's motion. Following the conclusion of the hearing, the trial court interviewed child *in camera*. On May 27, 2021, the trial court granted mother's motion to change physical custody and father's motion to find mother in contempt. In its findings of fact and conclusions of law, the trial court divulged the contents of the *in camera* interview with child and noted that child was depressed living with her father. Child missed her family and friends and was overall unhappy. Child was struggling with the adjustment to father's home and child wished to "go home." The trial court granted mother's motion to modify custody and also found mother in contempt based on her failure to follow the prior custody order and ordered mother to pay father's attorneys' fees. Father appealed and the Indiana Court of Appeals reversed in part and affirmed in part. Father contended that the trial court erred in granting mother's motion to change primary physical custody. The Court of Appeals noted that the polestar for child custody determinations is what is in the best interest of the child, but that in a modification setting there must be a substantial change in circumstances in the statutory best interest considerations. *See* Ind. Code § 31-17-2-21(a)(2). When the prior judge found that there was a substantial change warranting a change of physical custody from mother to father, it was because child was struggling at home and at school. Child was stressed and anxious, she was missing school, and her grades were suffering. Mother enrolled child in mental health therapy, but for some inexplicable rational reason, refused to tell father with whom. Notwithstanding child's wish for physical custody to remain with mother, the trial court concluded that the substantial changes in circumstances warranted changing custody to father and that the change in child's best interest, in part, because father would provide more structure and the best environment for child to thrive. The trial court acknowledged "this change will not be easy," but it was best "for the long-term health of the child." Mother did not appeal that order and only twelve days after the custody modification appeal deadline had run filed her petition for modification in front of a new trial court judge. The Court of Appeals defers to trial courts to make child custody determinations, but that is not what the trial court's findings reflected in this case. The trial court foreshadowed that it was "alarming" that mother did not appeal the order modifying custody to the father and that, at least initially, seemed "to be judge shopping for a different opinion." There must be substantially changed circumstances related to statutory considerations for child custody when compared to those reflected in the previous modification order, and the second trial court judge's findings did not support such a conclusion. The Court of Appeals reversed the portion of the trial court's order modifying primary physical custody to mother. Father also argued that the trial court erred by failing to rule on his request that mother reimburse him for child's probation fees. Father framed that as an "extraordinary expense" as described in Indiana's Child Support Guideline 8. The trial court did not rule on father's child support request, stating that any request to recalculate child support was denied due to a lack of evidence. Father did not explain to the Court of Appeals how the trial court's order was

mistaken in that regard, and no error occurred. The Court of Appeals affirmed that part of the trial court's order.

8. *Bixler v. Delano*, 185 N.E.3d 875 (Ind. Ct. App. 2022). On July 8, 2021, mother filed a letter with the trial court expressing concern for her and father's child. The trial court, in its order and the Chronological Case Summary, stated that it construed the letter as a motion to modify custody, parenting time, and child support and set the matter for hearing. On August 16, 2021, the trial court held a hearing at which mother appeared *pro se* and father did not appear. The trial court stated that it had attempted to notify father of the proceedings, but that the correspondence had been returned as undeliverable because father had not provided an updated address. The trial court continued with the hearing and mother testified that she had not spoken to father in eight months and had "pictures of where he, where everyone says he's lived," but did not know where father currently lived. Mother indicated that no one could find father. Mother alleged neglect of child by father, poor living conditions, and an inability to locate and exercise her parenting time with child. Mother ultimately requested custody. The trial court ordered that mother have legal and physical custody of child. On August 25, 2021, father's new attorney filed an appearance because father's previous attorney had withdrawn from the case on February 4, 2019. On August 26, 2021, father filed an Ind. Trial Rule 60(B) motion for relief from judgment. On September 7, 2021, the trial court held a hearing. Father testified that he had been at a new address for seven or eight months after a hectic eviction and never received a copy of mother's July 8, 2021, filing. Father also testified mother knew of his relocation and the new address, would have contested mother's motion, and had not learned about the trial court's modification order. When asked if he had filed a notice of relocation with the trial court, father said that he had not immediately. Mother testified that she had tried to send her initial letter to father. On September 8, 2021, the trial court entered an order denying father's motion for relief from judgment, stating that attempts were made to provide father with notice. Father appealed and the Indiana Court of Appeals reversed. Mother did not file an appellee's brief. Relief from judgment under Ind. Trial Rule 60(B) is an equitable remedy within the trial court's discretion. Due process requires notice of certain proceedings after the initiation of a lawsuit. Notice is part of due process and the means employed to provide notice must be desirous of actually informing the party to whom notice should be served. If notice is not achieved, then the absence of the party to be noticed would be inevitable, and due process not achieved. *See Mullane v. Cent. Hanover Bank & Trust Co.,* 339 U.S. 306 (1950). Unclaimed service is insufficient to establish a reasonable probability that a party received adequate notice and to confer personal jurisdiction. Additionally, Ind. Trial Rule 4.1(A)(1), which allows for service by certified mail, requires that a return receipt is required in order for service to be effected. At the hearing on father's motion for relief from judgment, father's attorney argued that mother had omitted crucial information at the previous hearing, which the trial court would have considered in making the determination, and father testified that he would have contested the request to change custody. Under the circumstances, and in light of the record, the Court of Appeals concluded that father had demonstrated *prima facie* error and reversed and remanded to the trial court for an evidentiary hearing on mother's request to modify custody, parenting time, and child support.

9. *Cole v. Cole*, 187 N.E.3d 957 (Ind. Ct. App. 2022). The facts before the trial court were based only on a paper record. According to the parties' submissions, father was a citizen of the United Kingdom. Mother was a citizen of the United States. In 2016, the parties married. In August 2017, mother gave birth to a child. In January 2019, mother gave birth to a second child. The children were both citizens of the United States. From 2017 to December 2020, the family lived together in an apartment in Germany. According to father, in 2019 and 2020 he and mother had conversations about traveling to the United States and even possibly living there. Father "agreed" with mother that the family would take an indefinite, "'extended' vacation" to the United States "to get a better idea about whether an actual move to the United States was something that might work." Mother and father agreed they would live with mother's mother in South Bend, Indiana, at least when they initially came to the United States. In Summer 2019, father began the application process for a United States Permanent Resident Card. In late October 2020, father obtained his Permanent Residence Card. Mother and father then began to implement their agreement to move in with mother's mother in South Bend. Specifically, approximately one week after receiving his Permanent Resident Card, father terminated the lease for the family's apartment in Germany. Mother and father liquidated numerous assets and arranged to have a significant portion, if not all, of their remaining personal property shipped from Germany to South Bend. In late-November 2020, mother and father agreed to transfer more than $94,000.00, the entirety of their financial savings less $20,000.00 in cash, to an account in mother's name at a bank in South Bend. In mid-December 2020, the family moved to South Bend. Prior to leaving Germany, mother and father purchased eight weeks' worth of travel insurance to cover any medical needs the family might have upon initially coming to the United States. After moving to the United States, father encountered difficulties with obtaining a Social Security Card and, relatedly, employment. Near the end of January 2021, father stated that he wanted to return the family to Germany. Mother disagreed and asked father "to give this relocation a real chance." In mid-February 2021, father returned to Germany. In early-April 2021, father returned to the United States and rented his own apartment in South Bend. Father again was unable to obtain a new Social Security Card and employment in the United States, and returned to Germany in late-May 2021. Meanwhile, mother obtained employment in South Bend teaching third grade. One child was enrolled in full-day preschool where mother taught and another child attended a daycare near where mother taught. In June 2021, father petitioned for divorce in a German court and mother petitioned for divorce in an Indiana court. On July 15, 2021, more than seven months after the children had moved to South Bend, father filed his complaint and petition for the return of the children to Germany under the Hague Convention and the International Child Abduction Remedies Act ("ICARA"). After receiving the parties' evidentiary submissions, the trial court concluded that the children's place of "habitual residence" was Germany and that mother had wrongfully retained the children in the United States. In reaching its conclusion, the trial court relied significantly on father's return to Germany in February 2021. The trial court stayed its judgment pending appeal. Mother appealed and the Indiana Court of Appeals reversed. Under the Hague Convention, "a child wrongfully removed from her country of 'habitual residence' ordinarily must be returned to that country." *Monasky v. Taglieri*, 140 S. Ct. 719, 723 (2020). The Hague Convention, as implemented in the United States through ICARA, seeks to address "the problem of international

child abduction during domestic disputes." It operates on the "core premise that the interests of children in matters related to their custody are best served when custody decisions are made in the child's country of habitual residence." The United States Supreme Court recently clarified the standard used in determining a child's place of habitual residence in *Monasky*. The parties' evidentiary submissions demonstrated that, by the time of father's July 15, 2021, petition under the Hague Convention and ICARA, the children's place of habitual residence was South Bend. Mother and father made substantial investments in moving to the United States and had no definite plan to ever return the family to Germany when they left for the United States. The facts supported that Indiana was the place of the children's habitual residence and mother had demonstrated *prima facie* error in the trial court's judgment.

10. *Fergason v. Brooks*, 189 N.E.3d 1102 (Ind. Ct. App. 2022). Child was the biological son of father and mother. In 2016, mother left child, then 10-years-old, with his maternal grandparents and did not return. Mother's whereabouts remained unknown. Father petitioned for, and was granted, custody of child. In the custody order, the trial court granted grandparents' visitation, which consisted of alternate weekends, a week in the summer, and time during Christmas and grandparents' birthdays. In February 2021, stepmother received her "dream job" offer. The job required a move to Oregon but offered a pay raise and benefits, as well as opportunities for advancement. Father was legally blind, making it "difficult [for him] to earn an income." Father told grandmother of the intended move and she filed a motion objecting. That same month, father, stepmother, and child relocated to Oregon. Father then filed a belated notice of intent to relocate and motion to modify grandparent visitation. Following a hearing in October 2021, the trial court issued an order modifying grandparent visitation. The trial court found that father's relocation "was for legitimate reasons." The trial court made one finding related to child's interests – that he "has enjoyed a relationship with his grandmother for the past 15 years." Most of the findings related to the difficulty the relocation imposed on grandmother. Other findings related to father's perceived inadequacies. The trial court awarded grandmother the following visitation: (1) two weeks in the summer to take place in Indiana, (2) one week at Christmas in Indiana, (3) every other year during child's spring break, to take place in Indiana, and (4) another week at a time of grandmother's choosing, to take place in Oregon. The trial court ordered father to pay for all child's travel and also to provide grandmother all updated school records and grades, documentation of child's band practices, performances, and activities and schedules, and a monthly video of a band performance. Finally, the trial court ordered father to pay $800.00 of grandmother's attorneys' fees. Father appealed and the Indiana Court of Appeals reversed. The Court of Appeals pointed out that grandparent visitation is not to be confused with the rights of a custodial parent. *See In re Visitation of L-A.D.W.*, 38 N.E.3d 993, 998 (Ind. 2015). Grandparents are not afforded the same legal rights as parents and do not have a constitutional liberty interest with their grandchildren. Father first contended that reversal was necessary because the trial court did not conduct a best interests analysis. The Court of Appeals agreed and noted that there was no explicit finding of best interests nor were there other findings that showed a consideration of child's best interests. Given that much of the evidence suggested so much cross-country visitation was not in child's best interests, and that the trial court's order did not appear to have considered child's best interests, the Court of Appeals agreed that father had shown a *prima facie* case of reversible

error. Although finding father's argument dispositive, for instruction on remand, the Court of Appeals noted that the Grandparent Visitation Act did not address contact between grandparents and grandchildren other than visitation and that grandmother was not entitled to school records or information relating to extracurricular activities. As to the attorneys' fee award, there was no agreement between the parties and the trial court did not identify a statutory authority to rule under which it was awarding fees. The Court of Appeals could not find any statutory authority, as the grandparent visitation statute does not allow an award of attorneys' fees. The trial court did not find father's claims to be frivolous, unreasonable, or groundless under Ind. Code § 34-52-1-1(b). There was no statutory authority for an award of attorneys' fees and father made a *prima facie* showing that the trial court erred in ordering him to pay grandmother's attorneys' fees.

11. *Hahn-Weisz v. Johnson*, 189 N.E.3d 1136 (Ind. Ct. App. 2022). In 2012, father and mother married and child was born. In November 2015, the parties separated and child was left in father's care. In December 2016, child reported to mother that she was being molested by her two older half-brothers in father's home and criminal charges were filed against the half-brothers. Child went to mother and was not returned to father's care. In February 2019, child began residing with grandmother. In July 2019, mother signed informal guardianship and custody documents which purported to give grandmother custody of child, but the documents were never filed in any court. Since the signing of that document, grandmother provided care for child. Neither mother nor father provided financial support for child. In July 2019, father filed a petition for dissolution of marriage. In December 2019, the parties divorced. The parties did not agree on custody, parenting time, and support issues at that time, and the trial court appointed a Court-Appointed Special Advocate ("CASA"). In February 2020, the CASA requested that the trial court schedule a hearing to address parenting time. In March 2020, grandmother filed a motion to intervene and petition for third-party custody. In May 2020, the CASA recommended that child continue living with grandmother, continue therapy, and participate in reunification therapy with father when recommended by the therapist. In September 2020, the CASA submitted another report to the trial court. The CASA noted that child had "made much progress in the last three months, but there is still work to be done." The CASA also did not recommend a custody or placement change. In March 2021, the CASA informed the trial court that child's relationship with father continued to improve. In June 2021, father filed a motion to modify the June 2020 temporary custody order. On August 30, 2021, without reappointing the CASA, the trial court held a hearing. In December 2021, the trial court granted father's petition for modification of custody. Grandmother appealed and the Indiana Court of Appeals reversed. The record was silent as to whether the trial court found that grandmother was a *de facto* custodian. The trial court, although specific findings and conclusions under Ind. Trial Rule 52 were not requested, did not mention the applicable statutes and factors and failed to make any specific findings regarding the child's best interests. Whether or not the trial court determined that grandmother was a *de facto* custodian, the trial court was required to determine the best interests of child. The Court of Appeals assessed the evidence and determined that grandmother had demonstrated *prima facie* error in the trial court's granting father's petition for modification of custody.

12. *Golan v. Saada*, No. 20-1034, __ S. Ct. __, 2022 WL 2135489 (June 15, 2022). The Hague Convention ("Convention") was adopted in 1980 in response to the problem of international child abduction during domestic disputes. The Convention's "core premise" is that the interests of children in matters relating to their custody are best served when custody decisions are made in the child's country of "habitual residence." Accordingly, the Convention generally requires the "prompt return" of a child to the child's country of habitual residence when the child has been wrongfully removed to or retained in another country. Return of a child is, however, a general rule with exceptions. Return is not required if there is grave risk that the return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation. Because return is merely a provisional remedy that fixes the forum for custody proceedings, the Convention requires that determination as to order return should be made using the most expeditious procedures available. The United States Congress implemented the Convention in the International Child Abduction Remedies Act ("ICARA") which permits a parent seeking relief under the Convention to file a petition for return of a child in state or federal court in accordance with the Convention. Consistent with the Convention, ICARA empowers U.S. courts to determine only rights under the Convention and not the merits of any underlying child custody claim. Under ICARA, the party petitioning for the child's return bears the burden of establishing by a preponderance of the evidence that the child was wrongfully removed or retained. A respondent arguing that return would expose a child to a grave risk of harm must establish that this exception applies by clear and convincing evidence. Absent a finding that an exception applies, a child determined to be wrongfully removed or retained must be "promptly returned" to the child's country of habitual residence. Golan was a citizen of the United States. She met Saada, an Italian citizen, while attending a wedding in Milan, Italy, in 2014. In August 2015, Golan moved to Milan and the parties wed in August 2015. Their child was born the next summer in Milan, where the family lived for the first two years of child's life. The parties' relationship was characterized by violence from the beginning. Saada would sometimes push, slap, and grab Golan and pull her hair. Saada also yelled and swore at Golan frequently, insulted her, and called her names, often in front of other people. Saada once told Golan's family that he would kill her. Much of Saada's abuse of Golan occurred in front of child. In July 2018, Golan flew with child to the United States to attend her brother's wedding. Rather than return in August, as scheduled, in August 2018, Golan moved into a domestic violence shelter with child. In September, Saada filed in Italy a criminal complaint for kidnapping and initiated a civil proceeding seeking sole custody of child. Saada also filed a petition under the Convention and ICARA in the U.S. District Court for the Eastern District of New York, seeking an order for child to return to Italy. The District Court granted Saada's petition after a nine-day bench trial. The District Court concluded that returning child to Italy would expose child to a grave risk of harm and that Saada had demonstrated no capacity to change his behavior. The District Court, nonetheless, ordered child to return to Italy based on Second Circuit precedent. In Golan's appeal of this return order, the Second Circuit vacated the order, finding the District Court measures insufficient to mitigate the risk of harm to child. To comply with the Second Circuit's directive, over the course of nine months, the District Court conducted an extensive examination of the measures available to ensure child's safe return to Italy. The District Court concluded that the measures were sufficient to ameliorate the harm to child and, again, granted

Saada's petition for child's return. The Second Circuit affirmed. The U.S. Supreme Court granted certiorari to decide whether the Second Circuit properly required the District Court, after making a grave-risk finding, to examine the full range of possible ameliorative measures before reaching a decision as to whether to deny return and to resolve a division in the lower courts whether ameliorative measures must be considered after a grave-risk finding. The question whether there is a grave risk is separate from the question of whether there are ameliorative measures that could mitigate the risk. The question whether ameliorative measures would be appropriate or effective will often overlap considerably with the inquiry into whether a grave risk exists. Under the Convention and ICARA trial courts' discretion to determine whether to return a child or doing so would pose a grave risk to the child includes the discretion whether to consider ameliorative measures that could ensure a child's safe return. While consideration of ameliorative measures is within a trial court's discretion, discretion is not a whim. In addition, a trial court's consideration of ameliorative measures must be guided by the legal principles and other requirements set forth in the Convention and ICARA. First, any consideration of ameliorative measures must prioritize a child's physical and psychological safety. Second, consideration of ameliorative measures should abide by the Convention's requirement that courts addressing return petitions not adjudicate the underlying custody dispute. Third, any consideration of ameliorative measures must accord with the Convention's requirement that courts act expeditiously in proceedings for the return of children. Consideration of ameliorative measures should not cause undue delay in resolution of return petitions. Although nothing in the Convention prohibits a court from considering ameliorative measures, and such consideration often may be appropriate, a court may reasonably decline to consider ameliorative measures that have not been raised by the parties, are unworkable, draw the court into determinations properly resolved in custodial proceedings, or risk overly prolonged return proceedings. Courts may also find a grave risk so unequivocal, or the potential harm so severe, that ameliorative measures would be inappropriate. Courts must exercise its discretion to consider ameliorative measures in a manner consistent with its general obligation to address the parties' substantive arguments and its specific obligations under the Convention and is subject to review under an abuse of discretion standard. In this case, remand was appropriate. The Convention requires courts to make a discretionary determination as to whether to order return after making a finding of grave risk. The District Court made a finding of grave risk, but never had the opportunity to engage in the discretionary inquiry as to whether to order or deny return under the correct legal standard. The Supreme Court could not know whether the District Court would have exercised its discretion to order child's return absent the Second Circuit's rule, which improperly weighted the scales in favor of return. It is appropriate to follow the ordinary course and allow the District Court to apply the proper legal standard in the first instance.

13. *Shelton v. Hayes*, 190 N.E.3d 951 (Ind. Ct. App. 2022). Shelton was married to Hayes. Beginning in 2013, Shelton and Hayes lived with grandfather in grandfather's home. On October 14, 2015, Shelton gave birth to child. Shelton, Hayes, and child continued to live with grandfather. On January 6, 2019, Hayes passed away. Thereafter, Shelton began a relationship with adoptive father. In August, Shelton and child moved out of grandfather's house and moved in with adoptive father. On June 25, 2020, Shelton married adoptive father. On September 6, 2020, after grandfather had filed a petition for joint custody of child, Shelton and

grandfather entered into a mediated agreement that provided for grandparent visitation. On March 25, 2021, adoptive father adopted child. On April 15, 2021, grandfather filed a petition for contempt and a motion to enforce the mediated agreement. Grandfather also filed a motion for appointment of Guardian *Ad Litem* ("GAL"). Parents objected and asserted that "grandparents do not have standing to petition a trial court for a visitation evaluation under the Grandparent Visitation Statute." Following a hearing, the trial court granted grandfather's motion and appointed a GAL. On November 10, 2021, the trial court held a hearing on the pending motions. The GAL testified that child "very much enjoyed" the visits with grandfather and that seeing grandfather is "a positive thing" for child. As to grandfather's contempt petition, grandfather testified that, through no fault of his own, his visits with child had not been "consistent." The trial court denied mother's motion to modify and found mother in contempt. Mother appealed and the Indiana Court of Appeals affirmed in part, reversed in part, and remanded with instructions. The Grandparents Visitation Statute (Ind. Code § 31-17-6-1, *et seq.*) is not included among the proceedings in which courts may appointed GALs. Had the Indiana General Assembly intended to provide courts with the ability to appoint a GAL during a grandparent visitation proceeding, it would have said so. The trial court erred when it granted grandfather's motion and appointed a GAL. On remand, the Court of Appeals instructed the trial court to disregard the GAL's report and testimony. The trial court could then consider the other evidence previously presented by the parties and, in the trial court's discretion, interview the child in chambers to determine whether a modification of the mediation agreement was in child's best interest. Although the fundamental rights of parents are considered by trial courts when fashioning an initial order on grandparent visitation, in this case there was a mediated agreement. According to *In J.B. v. R.C. (In re Adoption of A.A.)*, 51 N.E.3d 380, 384 (Ind. Ct. App. 2016), *trans. denied* and *D.G. v. W.M.*, 118 N.E.3d 26, 28 (Ind. Ct. App. 2019), *trans. denied*, parties seeking a modification of custody and visitation under the Grandparent Visitation Act bear the burden of proof. The Court of Appeals also affirmed the sanction for parents being in contempt and the award of ten make-up visits to grandfather as a contempt sanction.

14. *Shoemaker v. Shoemaker*, 22A-DC-50, 2022 WL 2196528 (Ind. Ct. App. June 20, 2022). In July 2019, child was born in Alabama. The parties moved to Indiana and married in December 2019. Later in 2019, husband was arrested in Henry County, Indiana, upon allegations of domestic violence against wife. Criminal prosecution was not pursued after wife executed an affidavit to the effect that husband had not intended to harm her and did not remember doing so due to the ingestion of sedatives. On March 24, 2021, wife left Indiana, taking child with her. The following day, wife filed a petition for protection from abuse in Montgomery County, Alabama. The petition was granted on an *ex parte* and temporary basis and set for hearing with notice to husband. On March 28, 2021, husband filed a petition for dissolution of marriage and application for emergency custody in the Henry Circuit Court. On April 5, 2021, the Henry Circuit Court issued an *ex parte* order granting husband temporary custody of child and ordering wife to produce child in Indiana. On April 6, 2021, wife filed a petition for order of protection in the Henry Circuit Court. The petition was assigned a cause number but not acted upon. On March 6, 2021, the Henry Circuit Court conducted a hearing at husband's request at which husband appeared and reaffirmed the prior temporary custody order. On June 9, 2021, the Alabama court conducted a hearing. Husband appeared with

counsel who informed the Alabama court of the pending proceeding in Indiana. On July 27, 2021, the judges of the two courts, in a telephonic conference, agreed that Indiana was the home state of child. The Alabama court exercised emergency jurisdiction to allow litigation of the Alabama petition for protective order. On August 3, 2021, the parties appeared for a hearing in Alabama and husband consented to the entry of a protective order. Husband's counsel advised husband to assert his rights under the Fifth Amendment to the United States Constitution if questioned upon the factual basis for the protective order. The Alabama court entered an order prohibiting husband from contacting wife and granting wife temporary custody of child until September 17, 2021. The order was forwarded to the Henry Circuit Court, where the matter was set for hearing. On August 16, 2021, wife filed in the Henry Circuit Court a motion to set aside the *ex parte* emergency custody order and a motion that the court decline jurisdiction on the basis of *forum non conveniens*. On September 14 and October 20, 2021, the Henry Circuit Court conducted hearings and withdrew its temporary custody order in deference to the Alabama court order on temporary custody. On December 28, 2021, the Henry Circuit Court entered its order finding that it was an inconvenient forum. Husband appealed and the Indiana Court of Appeals affirmed. Uniform child custody laws were enacted with one of its purposes to be to prevent parents from seeking custody in different jurisdictions in an attempt to obtain a favorable result. Indiana adopted the Uniform Child Custody Jurisdiction and Enforcement Act (referred to in Indiana as the Uniform Child Custody and Jurisdiction Act) ("UCCJA"), which had added provisions for the protection of domestic violence. The UCCJA inconvenient forum statute, Ind. Code § 31-21-5-8, contains a non-exclusive list of factors that trial courts may consider. The Henry Circuit Court found that the domestic violence had occurred and was likely to continue, and concluded that Alabama was the best state to be able to protect wife and child. The record was replete with evidence of husband's domestic violence against wife. Husband's insistence that the decision lacked evidentiary support was a request to reweigh the evidence that the Court of Appeals declined. The trial court properly exercised its authority to decline jurisdiction "at any time" that the court makes the requisite statutory determination as to an inconvenient or more appropriate forum.

15. *Hurst v. Smith*, 21A-JP-1719, 2022 WL 3008608 (Ind. Ct. App. July 29, 2022). In September 2015, child was born out-of-wedlock. Father signed a paternity affidavit at the time of child's birth. Following child's birth, mother and child stayed with maternal grandparents in Brownsburg, Indiana, for a few weeks and then moved in with father in Indianapolis, Indiana. Maternal grandparents, paternal grandmother, and paternal great-grandparents provided childcare for child while parents worked. In June 2016, father lost his house in foreclosure after he lost his job. In April 2018, parents' relationship ended. In August 2019, maternal grandparents filed a petition for appointment as temporary co-guardians of child so they could enroll her in preschool. The trial court immediately entered an order of emergency temporary guardianship and appointed a Guardian *Ad Litem* ("GAL"). In October 2019, maternal grandparents filed a petition asking the trial court to appoint them as child's permanent guardians. In December 2019, the GAL filed her report recommending that the trial court grant maternal grandparents permanent guardianship and that father have supervised parenting time with child. In January 2020, father filed a petition to establish his paternity of child. In February 2020, maternal grandparents filed a motion to intervene in the paternity action which the trial

court granted. In August 2020, maternal grandparents asked the paternity court to grant them custody of child. In October 2020, the GAL filed a supplemental report noting that father had acquiesced to child residing with maternal grandparents and that child was intertwined with maternal grandparents. The GAL recommended that maternal grandparents be granted third-party custody of child and that the guardianship be terminated, with father having alternate weekend and holiday and special day parenting time. In March and June 2021, the trial court held a two-day hearing on father's paternity petition. At the end of the first day of the hearing, the trial court awarded father unsupervised parenting time with child. In July 2021, the trial court entered an order finding it in the best interests of child that maternal grandparents have physical and legal custody and father pay $141.00 per week in child support. Father appealed and the Indiana Court of Appeals affirmed in part, reversed in part, and remanded with instructions. The trial court determined, pursuant to Ind. Code § 31-14-13-2(8), that *de facto* custodians had cared for child and acted within its discretion in awarding custody of child to maternal grandparents. The trial court erred in ordering father to have less parenting time than that contemplated by the Indiana Parenting Time Guidelines ("IPTG"), as it did not provide a written explanation for the deviation. The Court of Appeals remanded with instructions for the trial court to either issue a written explanation for its deviation or award father parenting time consistent with the IPTG. The Court of Appeals also reversed the child support order, noting that no party submitted a Child Support Obligation Worksheet or testified regarding gross incomes. The trial court based its income calculation for maternal grandparents' weekly expenses for child's preschool and medical insurance, and that was an abuse of discretion. The Court of Appeals remanded with instructions for the trial court to obtain Child Support Obligation Worksheets signed by all parties and to recalculate father's child support obligation.

F. ADOPTION/PATERNITY

1. *In re Paternity of W.M.T.*, 180 N.E.3d 290 (Ind. Ct. App. 2021). On September 11, 2008, mother gave birth to child out-of-wedlock. In 2009, father filed a paternity action. At the conclusion of that action, father was awarded primary physical custody of child and mother was awarded parenting time. On October 19, 2019, father passed away. Child had resided with paternal grandmother for the majority, if not all, of his life. Paternal grandmother had been child's primary caregiver and made medical, educational, and religious choices for child and engaged in "any other type of care that a parent would ordinarily give to their child." On December 3, 2019, paternal grandmother filed a verified *ex parte* emergency petition for custody. On December 5, 2019, the trial court held a hearing without mother present. On December 6, 2019, the trial court issued an *ex parte* order granting paternal grandmother custody of child. On January 7, 2020, paternal grandmother filed a motion to intervene. On March 6, 2020, mother filed a motion for relief from judgment, pursuant to Ind. Trial Rule 60(B), arguing that she was not given notice of paternal grandmother's filing. On March 27, 2020, the trial court entered an order granting mother's motion for relief from judgment. On March 31, 2020, paternal grandmother filed a renewed motion to intervene, which the trial court granted on April 1, 2020. On April 28, 2020, mother filed a motion for attorneys' fees. On June 1 and June 16, 2020, the trial court held hearings on paternal grandmother's petition for non-party custody. On July 7, 2020, the trial court entered its order granting paternal grandmother sole legal and

primary physical custody of child, with mother having parenting time pursuant to the Indiana Parenting Time Guidelines. The trial court ordered mother to submit income information for the determination of child support and took the matter of attorneys' fees under advisement. On July 27, 2020, mother filed an appeal. On August 10, 2020, paternal grandmother filed a motion to establish child support. On October 22, 2020, the Indiana Court of Appeals dismissed mother's appeal because it was not a final appealable judgment pursuant to Ind. Appellate Rule 2(A), based on the remaining issue of child support. On December 29, 2020, the trial court held a hearing on paternal grandmother's motion to establish child support. On December 30, 2020, the trial court ordered mother to pay paternal grandmother $46.00 per week in child support retroactive to August 10, 2020. On appeal, mother argued that a significant amount of evidence and testimony before the trial court should not have been admitted. While mother objected to each piece of evidence and testimony at trial that she appealed, mother cited no case law, statute, or rule to support why any of those pieces of evidence or testimony should not have been admitted. Accordingly, the Court of Appeals found that mother had waived the issue for review by failing to make a cogent argument. The Court of Appeals concluded that the trial court did not abuse its discretion in the admission of any of the challenged evidence. In its order, the trial court determined paternal grandmother was child's *de facto* custodian for the purposes of child custody modification. The Court of Appeals concluded that the trial court did not err when it found paternal grandmother to be a *de facto* custodian. As to the best interests of child, the trial court considered detailed evidence that related to the statutory factors. Noting that the standard of proof regarding "best interests" is clear and convincing evidence for a third party and is higher for a third party than a natural parent, the Court of Appeals noted there is no requirement that the trial court make a special finding using specific language to that effect. The Court of Appeals held that the trial court made multiple findings and conclusions that indicated paternal grandmother's custody of child gave child a "substantial and significant advantage." Regarding child support, mother argued that the trial court's order requiring her to pay paternal grandmother $46.00 per week in child support was erroneous because the calculation did not take into account the survivor benefits child received as a result of his father's death. In addressing a similar set of facts in *Martinez v. Deeter*, 968 N.E.2d 799 (Ind. Ct. App. 2012), the Court of Appeals recognized that there are discrepancies between the language of Indiana Child Support Guideline 3(A)(1) and the Commentary to Guideline (3)(A). The Guideline includes survivor benefits paid to or for the benefit of children as part of gross income for child support purposes while the Commentary does not. When considering paternal grandmother as the custodial parent, child receives $729.00 per month in survivor benefits as a result of father's death. The trial court imputed income to paternal grandmother based on the income sources listed in the Guidelines. As in *Martinez*, the inclusion of child survivors benefits in paternal grandmother's weekly gross income would result in a windfall for mother, since mother would be deriving a benefit from child's survivor benefits meant for child in the form of a reduction in her child support obligation. The trial court did not err when it excluded the child survivor benefits from the child support calculation. Finally, the trial court did not abuse its discretion when it denied mother's request for attorneys' fees under Ind. Code § 34-52-1-1. Mother had the burden of proving such fees were warranted and did not demonstrate that paternal grandmother acted in bad faith. Moreover, considering the ultimate outcome of the case, the Court of Appeals

could not say that paternal grandmother acted in bad faith. Mother's argument was an invitation for the Court of Appeals to reweigh the evidence and judge the credibility of witnesses, which it could not do.

2. *In the Matter of the Adoption of R.D.H. and R.K.H.*, 181 N.E.3d 983 (Ind. Ct. App. 2021). Father and birth mother never married. In 2014, father obtained custody of the parties' two-year-old twin daughters as part of a CHINS proceeding due to birth mother's drug addiction. Father and adoptive mother married two years later, and adoptive mother filed a petition to adopt the children. Father consented to the step-parent adoption. Birth mother did not. However, birth mother had not contacted the children for more than one year and never paid court-ordered child support. Birth mother was a long-time illegal drug user who faced multiple drug-related criminal charges and had outstanding warrants at the time of the final adoption hearing. Birth mother failed to appear at the step-parent adoption hearing, but her mother, her grandfather, and her counsel were present. At the beginning of the adoption hearing, the parties discussed post-adoption contact between the children and maternal grandmother and maternal great-grandfather (the latter of whom had custody of the children's half-sibling). Adoptive mother was not keen on the idea and father never specifically consented on the record to post-adoption contact. On March 8, 2017, the trial court granted the adoption without mentioning any of birth mother's extended family or alleged post-adoption contact agreement. Fourteen months after the adoptions were finalized, birth mother filed a "motion to establish a post-adoption contract." On November 1, 2018, the trial court ordered the parties to reach an agreement on post-adoption contact within thirty days. No one acted for more than one year. In January 2020, maternal grandmother and maternal great-grandfather again asked the trial court to aid their attempts to establish contact with the children. The trial court found that a post-adoption contact agreement for visitation had been formed based on an exchange at the adoption hearing. On May 3, 2021, the trial court ordered monthly contact with maternal grandmother, excluding birth mother, but stayed the exercise of that visitation pending appeal. Father and adoptive mother appealed and the Indiana Court of Appeals reversed. Indiana has three narrow avenues for post-adoption contact by (1) births parents who had consented to an adoption or voluntarily terminated the parental-child relationship (Ind. Code § 31-19-16-1 *et seq*.), (2) birth siblings (Ind. Code § 31-19-16-5-1 *et seq*.), and (3) certain grandparents who had established a visitation order prior to the adoption (Ind. Code § 31-17-5-1 *et seq*.). Each of these three sets of statutes has unique requirements. Those requirements were not met in this case. Maternal grandmother, in seeking visitation with the children, could not use the post-adoption agreement statutes because that law applies only to a birth parent. Likewise, concerns about contact with the children's half-siblings did not apply because maternal grandmother did not have custody of the half-siblings and the motions to establish contact were filed by birth mother, maternal grandmother, and maternal great-grandfather who were not among the people who could enforce a sibling post-adoption contact agreement. Finally, the Grandparents' Visitation Act did not apply because grandparents' visitation rights must be established before the entry of an adoption decree. The trial court abused its discretion in purporting to re-open the adoption and order post-adoption visitation of any type. The Court of Appeals remanded with instructions to vacate the order of post-adoption visitation.

3. *D.G. v. D.H.*, 182 N.E.3d 247 (Ind. Ct. App. 2022). In July 2009, mother gave birth to child. Father petitioned to establish paternity shortly thereafter. Later that year, the trial court granted father joint legal custody of child and parenting time according to the Indiana Parenting Time Guidelines. The trial court also ordered father to pay $55.00 per week for child support. Thereafter, father consistently exercised parenting time with child. Father also satisfied his child support obligation for many years until he lost his long-time job sometime in 2015. In 2015, after father began to fall behind on child support, mother filed a contempt petition. On September 9, 2015, the parties agreed that father's child support obligation was reduced to $25.00 per week. That agreement was approved by the trial court, provided that upon commencing other full-time employment father would notify mother and his child support obligation would be recalculated. Father also acknowledged a "small arrearage" of $640.00 toward which he would begin paying $10.00 per week upon obtaining employment. In June 2016, mother filed another contempt petition and motion to modify parenting time, alleging, in part, that father had again become unemployed, had been evicted from his home, and was acting erratically and abusing alcohol. The next day, the parties entered into a temporary agreed order, providing that father's parenting time would be held at his mother and stepfather's home. On September 28, 2016, the trial court approved the parties' agreement, which provided that father had a child support arrearage of $580.00 and owed extracurricular fees of about $150.00. Father agreed to pay the arrearage and fees within thirty days, confirmed that he would pay child support at least once per month, and agreed that he would perform ten job searches per week. In November 2016, the trial court dismissed mother's contempt petition, noting that father was employed and had complied with all provisions of the previous court order. In August 2018, mother filed a motion to modify parenting time. She claimed father was abusing alcohol, had been kicked out of his mother and stepfather's home, and had been refusing to communicate with mother. Mother also alleged that father had not provided her with a notice of a change of residence, but the child had been staying with father at his new apartment during parenting time. Mother asked the trial court to require supervised parenting time. Father was suffering from "severe depression" and anxiety after having lost several family members, including his father, and had begun to experience agoraphobia. Father's speech impediment worsened to a severe stutter. Father lost his job and struggled with paying his bills in 2018 and 2019, relying on family to help keep him afloat. Father did not pay his court-ordered child support but continued to buy birthday and Christmas gifts for child, as well as food, some clothing, and entertainment while in his care. At a review hearing in June 2019, the parties were reportedly "working well together in child's best interest." On November 22, 2019, stepfather, who had been in child's life since infancy, filed a petition to adopt child. Mother consented. Stepfather alleged that father's consent was not required based on his failure to pay child support since November 19, 2018. On December 12, 2019, father was served with the adoption petition. Five days later, father made a $1,000.00 payment toward his child support arrearage and then another $1,000.00 the following day. He obtained these funds from his family. Additionally, on December 18, 2019, father filed a written objection to the adoption petition and requested the appointment of a public defender. After a delay of nearly 18 months due to the COVID-19 pandemic and the death of his initial appointed counsel, the contested consent hearing was held on May 18, 2021. The trial court took the matter under advisement and, later that same day,

issued an order indicating that father's consent was required for stepfather to adopt the child. Stepfather appealed and the Indiana Court of Appeals affirmed. Natural parents enjoy special protection in adoption proceedings and courts strictly construe Indiana adoption statutes to preserve the fundamentally important parent-child relationship. A natural parent's consent to an adoption may be dispensed with only under carefully enumerated circumstances set out in the adoption statutes. The only statutory circumstance at issue in this case was Ind. Code § 31-19-9-8(2)(B), which provides that parental consent is not required if a parent, for a period of at least one year, knowingly fails to provide for the care and support of a child when able to do so as required by law or judicial decree. While father went thirteen months without paying his modest child support obligation, the trial court determined, based on the totality of the circumstances, that father's consent still was required. Specifically, the trial court noted father's mental illness and limited income during the 13-month period in question and that father was no longer in arrears at the time of the consent hearing. Stepfather's argument required the Court of Appeals to reweigh the evidence and judge father's credibility, which it could not do. The trial court clearly found father's testimony regarding his mental health and financial struggles credible and determined, based on the totality of the circumstances, that stepfather had failed to prove by clear and convincing evidence that father had the ability to pay child support but failed without justifiable cause to do so for more than one year. The trial court's decision was supported by the evidence in the record and not clearly erroneous.

4. *In re I.B.*, 185 N.E.3d 428 (Ind. Ct. App. 2022). On August 25, 2009, child was born. Mother and father never were married, but the trial court entered an order confirming father's paternity on January 20, 2010. Mother was awarded primary custody of child and father was granted parenting time in order to pay child support. On April 27, 2017, the trial court entered, "[b]y agreement of the parties" an order reducing father's parenting time with child to exclude overnights and requiring father to "submit to an anger/psychological parenting time assessment and follow all recommendations." On July 24, 2017, the trial court entered an order requiring father's parenting time to be supervised because father had not followed the trial court's order to submit to anger management and parenting assessments. Additionally, the trial court ordered father to "submit to a hair follicle test." On September 30, 2017, mother married stepfather. On July 18, 2018, the trial court suspended father's parenting time, noting pending criminal charges against father and "Father's non-compliance regarding anger management and drug screens." Father's parenting time never was reinstated. On August 14, 2019, stepfather filed a petition to adopt child. That same day, mother filed a consent to stepfather's adoption of child. On August 30, 2019, father filed a motion to contest child's adoption by stepfather. On June 30, 2020, the trial court held an evidentiary hearing on the issue of father's consent. Father presented evidence that from July 2018 until approximately June 2019, father sent mother multiple text messages asking to speak to child. Father also testified he attempted to call child and his calls would go "straight to voicemail." Mother did not respond to the text messages and testified child did not call father because "[s]he would have refused the call. She does not want to talk to her father." In July 2019, mother and stepfather relocated to a new residence without filing a Notice of Intent to Relocate. Mother did not tell father her new address because "it's too scary for him to know where I live." Father sent gifts for child to maternal grandmother's address in 2019, but they were returned unopened. Father also provided evidence that he had

paid $49,502.96 in child support from October 29, 2009, to June 1, 2020. Father maintained health insurance for child during that time, as well. On October 19, 2020, the trial court entered an order finding father's consent to child's adoption by stepfather was not required because father did not significantly communicate with child for one year prior to the date stepfather filed his petition for adoption. The trial court heard evidence regarding child's adoption on May 10 and May 27, 2021, and granted stepfather's petition to adopt child on July 28, 2021. Father appealed and the Indiana Court of Appeals reversed. Generally, trial courts may not grant a petition for adoption without the consent of the child's biological parents. Ind. Code § 31-19-9-1(a). However, Ind. Code § 31-19-9-8(a) provides in relevant part a consent is not required if for a period of at least one year a parent fails without justifiable cause to communicate significantly with a child when able to do so or knowingly fails to provide for the care and support of a child when able to do so as required by law or judicial decree. Father argued that the trial court erred when it determined his consent was unnecessary because he attempted to communicate significantly with child, but mother and stepfather thwarted his efforts. The Court of Appeals cited *J.W. v. D.F.*, 93 N.E.3d 759 (Ind. 2019), where the Indiana Supreme Court rejected a stepmother's argument that "she and Father did not thwart Mother's ability to communicate because it was Child, not her or Father, who did not want to communicate." The same was true here. Mother relocated without filing a request to relocate in the paternity action, as required by Ind. Code § 31-17-2.2-1 and without informing father of her and child's new home address. Mother did not take reasonable steps to encourage communication between child and father, regardless of her feelings about father or child's alleged wishes. The trial court erred when it determined father had failed without justifiable cause to communicate significantly with child for at least one year prior to when stepfather's adoption was filed. Father's consent was required for stepfather to adopt child.

5. *B.A. v. D.D. and C.D.*, 189 N.E.3d 611 (Ind. Ct. App. 2022). On February 27, 2018, T.M. gave birth to child. According to father, on March 12, 2018, he executed a paternity affidavit in which he identified himself as child's father. Thereafter, the Indiana Department of Child Services filed a petition alleging child to be a CHINS and placed child with adoptive parents. Since April 7, 2019, adoptive parents had physical custody of child. On July 8, 2021, adoptive parents filed an amended petition to adopt child. In their petition, adoptive parents acknowledged that father was child's "legal father," but alleged that his consent to the adoption was not required because he was not child's "biological father." Father filed an objection and motion to dismiss the petition, which the trial court denied. Adoptive parents then filed a "Motion for Trial Rule 35 Order" that father submit to DNA testing. The results of the DNA test demonstrated that father was not child's biological father. As a result, on September 29, 2018, adoptive parents filed a motion for summary judgment in which they asserted that, because father was not child's biological father, his consent to the adoption was not required. Father did not timely respond to adoptive parents' motion for summary judgment. On October 5, 2018, the trial court issued an order in which it stated that father "shall have the period set forth in Ind. Trial Rule 56 to file any response." On November 8, 2018, father filed a motion for leave to file a response. Father asserted that the trial court's October 5, 2018, order "was not issued to counsel for [Father] by the Odyssey e-filing system." Adoptive parents objected. Father later filed a response and adoptive parents filed a motion to strike father's

response because it was "untimely." Thereafter, the trial court denied father's request for additional time, granted adoptive parents' motion to strike father's response, and granted adoptive parents' motion for summary judgment. The trial court also denied father's motion to set aside the order for DNA testing. Father then filed a motion to correct error and attached a copy of his paternity affidavit. The trial court denied that motion. Father appealed and the Indiana Court of Appeals affirmed in part, reversed in part, and remanded. As to DNA testing, father first challenged adoptive parents' authority to request an order that he submit to the test. Father did not object when adoptive parents' filed their motion for DNA testing and did not meet his burden on appeal to demonstrate that the trial court erred when it ordered him to submit to DNA testing. As to summary judgment, the Court of Appeals noted that the parties disputed whether the alleged paternity affidavit executed by father meant that his consent to the adoption was required under the adoption statute. At the time the trial court ruled on adoptive parents' motion for summary judgment, the trial court did not have any evidence before it that father had executed a paternity affidavit. Consent to an adoption is regard for a child born-out-of-wedlock by a father who has established his paternity either through a court proceeding or a paternity affidavit. Ind Code §31-19-9-1(a)(2). In order to be entitled to summary judgment on the ground that father's consent was not required, adoptive parents were required to designate evidence that father had not established his paternity. Adoptive parents did not designate any such evidence. Under Ind. Code § 16-37-2-2.1, it is clear that, if a man executes a paternity affidavit and does not rescind it, he is by all accounts the father of the child. Ind. Code § 19-9-1(a)(2) requires consent from a man whose paternity has been established through the execution of a paternity affidavit, subject to the other provisions of the Indiana Code that may apply, including the best interests of the child. While father was not a "parent" for the purposes of the adoption statute as defined in Ind. Code § 31-9-2-88(a) ("a biological or an adoptive parent"), the word "father" was used in the relevant statute. The Court of Appeals held that Ind. Code § 31-19-9-1(a)(2) requires the consent of any man who has established his paternity in one of two methods before an adoption can occur, including through the execution of a paternity affidavit. Accordingly, the Court of Appeals reversed the trial court's entry of summary judgment in favor of adoptive parents and remanded with instructions for the trial court to determine whether father was, in fact, child's legal father and for further proceedings not inconsistent with the opinion.

6. *In re Paternity of A.M.*, 189 N.E.3d 619 (Ind. Ct. App. 2022). On August 2, 2012, mother gave birth to child. Shortly after child was born, mother and father executed a paternity affidavit acknowledging father was the biological father of child. The parties did not pursue a formal custody or support order until the instant proceedings. Child lived with mother, and father exercised parenting time every Friday, Saturday, and Sunday, when child began first or second grade. In early-April 2021, mother informed father she intended to relocate to Dallas, Texas with stepfather and child. On April 13, 2021, father filed an emergency petition to prevent relocation and establish paternity, custody, support, and parenting time. Father alleged that stepfather had a history of domestic abuse against mother, sometimes in the presence of child. On April 19, 2021, mother filed a counter-petition to establish paternity, custody, and child support. That same day, she also filed a response to father's petition and a motion to vacate. On April 20, 2021, the trial court converted the scheduled April 21, 2021, hearing on

father's petition to an attorneys' conference. On April 21, 2021, the trial court set a provisional hearing for June 22, 2021. On May 27, 2021, father filed a motion for the appointment of a Guardian *Ad Litem*. On June 2, 2021, the trial court approved that request. On June 22, 2021, the parties filed an agreed entry that allowed child to remain in mother's primary physical custody until the final hearing and granted father summer parenting time. The trial court scheduled the final hearing on the parties' petitions for September 8, 2021. On August 31, 2021, mother filed a motion to continue the September 8, 2021, hearing, arguing that she just found out that her lawyer resigned. On September 1, 2021, mother's attorneys filed a motion to withdraw their appearance on mother's behalf. They attached a letter sent to mother on August 16, 2021, in which counsel indicated their intention to withdraw. On September 8, 2021, the trial court held a final hearing. The trial court denied mother's motion to continue and mother acted *pro se*. During the hearing, mother was able to cross-examine witnesses, sometimes with the aid of the judge, object to exhibits, and make a closing argument and a reply to father's closing argument. On September 9, 2021, the trial court entered a paternity order in which the trial court granted father primary physical custody and mother parenting time pursuant to the Indiana Parenting Time Guidelines. The trial court also ordered mother to pay father $38.00 per week in child support. Mother filed a motion to correct error that the trial court denied on October 14, 2021. In a 2-1 decision, the Indiana Court of Appeals affirmed. The Court of Appeals distinguished this case from other precedent, citing mother's counsel withdrew because of "a breakdown of the attorney-client relationship" and a "misrepresentation of material facts" by mother. The trial court gave mother substantial leeway in terms of inserting narrative and mother's participation in the proceeding. The trial court did not abuse its discretion when it denied mother's motion to continue because, even if mother was not at fault for a lack of counsel at the final hearing, she did not demonstrate that she was prejudiced by the denial. Judge Brown dissented, concluding that the trial court abused its discretion by denying mother's motion for continuance. Noting that the Fourteenth Amendment to the United States Constitution "protects the traditional right of parents to establish a home and raise their children," the dissent found that the denial of a continuance based on the withdrawal of counsel at a crucial stage in the proceedings, prejudiced mother. Mother presented no case-in-chief. The dissent also found that the trial court's September 2, 2021, grant of the request to withdraw was premature under Marion County Local Rule LR49-TR3.1-201 and Ind. Trial Rule 3.1(H), which required ten days' advance notice. Under the circumstances, the dissent concluded that mother demonstrated good cause for a continuance of the hearing because the case involved at least some complexity as well as a fundamental right of mother. Mother was prejudiced by the denial of her motion for continuance and a delay would not have prejudiced father to an extent to justify denial of the continuance. In light of the fundamental parent-child relationship involved, the dissent would hold that the trial court abused its discretion in denying mother's motion to continue.

7. *In re Adoption of A.F. and N.F.*, 22A-AD-288, 2022 WL 252513 (Ind. Ct. App. July 7, 2022). Adoptive mother and adoptive father filed petitions to adopt their great-grandchildren. After both parties had completed the necessary steps prior to the final hearing, adoptive father died. Following the final hearing, the trial court granted the petitions as to adoptive mother but denied the petitions as to adoptive father. Adoptive mother, individually, and on behalf of adoptive father, appealed, claiming that the trial court erred when it determined

that it could not grant the petitions as to adoptive father because he was deceased. The Indiana Court of Appeals affirmed. Ind. Code § 31-19-11-1(a)(2) requires that the petitioners or petitioners for adoption are of sufficient ability to rear the child and furnish suitable support and education. Since adoptive father died prior to the final hearing, he could not rear the child or provide suitable support and education, as required by the statute. The Court of Appeals also rejected adoptive mother's contention that the trial court should have granted the adoptions as to adoptive father so that the children "could receive Social Security Benefits" as surviving dependents. The Court of Appeals stated that trial courts should not grant and otherwise improper adoption just to ensure that children receive certain benefits.

8. *In re Adoption of A.E.*, 21A-AD-2766, 2022 WL 2659464 (Ind. Ct. App. July 11, 2022). On April 21, 2015, child was born. On April 22, 2015, the Harrison County Department of Child Services ("DCS") received a report that child and her siblings were victims of neglect because mother tested positive for drugs throughout her pregnancy with child and because child's urine tested positive for opiates at birth. On January 7, 2016, child was removed from the care of mother and father under a dispositional decree. Grandmother, who resided in Harrison County, Indiana, took care of child and her older half-sister off-and-on after removal. On January 2, 2020, child and her half-sister were placed with adoptive parents. Two months later, the half-sister had to be removed from their care and placed with grandmother because of her behavior. Child remained in the care of adoptive parents from January 2020 throughout the proceedings, and after removal from adoptive parents' home half-sister remained in grandmother's care throughout the proceedings. Adoptive parents lived in Jackson County, Indiana. On February 2, 2020, grandmother filed a petition to adopt both children in the Harrison Circuit Court. On July 9, 2020, adoptive parents filed a petition to adopt child in the Hamilton Superior Court. On January 5, 2021, the Harrison Circuit Court terminated mother's and father's parental rights to child. On October 27, 2020, the Hamilton Superior Court conducted a hearing on adoptive parents' petition to adopt. That same day, it issued a decree of adoption, finding that the parent-child relationship between child and mother and father had been terminated. The Hamilton Superior Court also noted that DCS had consented to the adoption and that the adoption was in the best interest of the child. On November 15, 2021, grandmother filed a motion to intervene and a motion to correct error in the Hamilton Superior Court. Adoptive parents objected and, on December 10, 2021, the trial court denied grandmother's motions. Grandmother timely appealed and adoptive parents filed a motion to dismiss grandmother's appeal, arguing that the order denying grandmother's motion to intervene was a non-appealable interlocutory order. The Indiana Court of Appeals affirmed. Grandmother first argued that the Hamilton Superior Court abused its discretion by denying her motions to intervene and correct error. The Court of Appeals indicated that the Hamilton Superior Court had jurisdiction, as the order was a final appealable order. As to the motion to intervene, the Hamilton Superior Court had discretion that it did not abuse. The Harrison Circuit Court had already terminated the parental rights of mother and father before the Hamilton Superior Court issued the decree of adoption. Additionally, grandmother filed her motion to intervene after the trial court had already issued its adoption decree. Finally, the Court of Appeals declared that non-custodial grandparents are not entitled to intervene in adoption proceedings.

G. TERMINATION OF PARENTAL RIGHTS/CHINS

1. *In the Matter of A.A.D., A.D., and J.D.*, 172 N.E.3d 714 (Ind. Ct. App. 2021). In December 2020, the Indiana Department of Child Services ("DCS") filed a petition alleging that three children were CHINS. Specifically, the petition alleged that father was the custodial parent of the children and "was found unconscious on [the] kitchen floor with the front door wide open." The DCS family case manager believed that father was under the influence of drugs due to his erratic behaviors. In March 2021, the trial court held a fact-finding hearing. Following the hearing, the trial court concluded that DCS had not proven the allegations of the CHINS petition by a preponderance of the evidence. Accordingly, the trial court denied the CHINS petition and ordered children returned to father's care. However, determining that "greater protection needs to be in place" due to the "concerning" facts presented, the trial court further ordered the parties to "prepare and institute a plan for an informal adjustment to address the unique needs evidence by the facts of this case." Father appealed, contending that the trial court was without statutory authority to order him to participate in an informal adjustment without his consent, and that once the trial court determined that there was insufficient evidence to support a CHINS adjudication it was required to discharge the children from its jurisdiction. DCS agreed that Indiana statutory law did not support the trial court's order and that reversal was appropriate. Accordingly, the Indiana Court of Appeals reversed.

2. *In re To.R.*, 177 N.E.3d 478 (Ind. Ct. App. 2021). On December 9, 2016, child was born at 27 weeks gestation. Child had Down Syndrome and was critically ill with respiratory failure due to chronic lung disease, pulmonary hypertension, and upper airway obstruction due to severe distal tracheomalcia. Child also suffered from acute kidney failure and cardiac issues due to both defects. Child spent his first month of life at Methodist Hospital in Indianapolis, Indiana and was subsequently transferred to Riley Hospital for Children in Indianapolis, Indiana. Child required a ventilator to breathe, a tracheotomy to keep his airway from collapsing, and a feeding tube for nutrition. On February 24, 2020, the Indiana Department of Child Services ("DCS") received a report of medical neglect involving mother and her disputes with medical professionals. Mother and father both acknowledged mother's mental health issues, and mother indicated she was pursuing treatment for those issues. Mother and father agreed to a safety plan. On March 1, 2020, the parties, who had been staying at the Ronald McDonald House at Riley Hospital, "went out drinking which led to a verbal altercation and [Father] ended up falling." Mother attempted to help father up after he fell and he pushed her away. On March 4, 2020, DCS filed a petition alleging child was a CHINS because mother continued to fail to comply with medical professionals and had been tampering with medical equipment. The petition also alleged that the parents were homeless and noted that they were kicked out of Ronald McDonald House after becoming intoxicated and engaged in an altercation. On March 5, 2020, the trial court held an initial hearing and the parties requested appointed counsel. In mid-April 2020, Riley Hospital banned mother from their campus based on a number of incidents during which mother was abusive to staff. On April 21, 2020, DCS filed a motion to authorize general anesthesia for child which the trial court granted. During a May 6, 2020, hearing, mother requested child be moved to a different hospital, as Riley Hospital

did not allow her to advocate for child. On June 3, 2020, the trial court held a hearing on child's placement. Mother requested that child be transferred to either Peyton Manning Children's Hospital or "a hospital in South Bend, Indiana." On June 30, 2020, child was transferred to Peyton Manning Children's Hospital. On July 1, 2020, mother filed a motion for unsupervised parenting time with child. Following several motions regarding parenting time, placement of child, and medical care for child, the trial court set a fact-finding hearing regarding the CHINS petition for August 28, 2020. That hearing was continued. On September 1, 2020, mother was charged with three misdemeanors. Following several continuances and other motions, on December 18, 2020, the trial court held a fact-finding hearing. That hearing continued to January 8, 2021. On March 1, 2021, father filed a motion to transfer the CHINS case to St. Joseph County, Indiana. On March 3, 2021, the trial court held its dispositional hearing and issued its dispositional decree, which ordered parents to participate in certain services. On March 4, 2021, the trial court granted father's motion to transfer the CHINS case to St. Joseph County, Indiana. The parties appealed and the Indiana Court of Appeals affirmed. As to the CHINS adjudication, the Court of Appeals reminded that a CHINS adjudication focuses on the needs and condition of the child and not on the culpability of the parent. Sufficient evidence existed to support the CHINS adjudication. Father challenged two specific findings regarding the parents' engagement in services and ability to care for child. It was undisputed that the parties would need extensive medical training should child be placed with them. While it was true that father had not been properly trained to care for child, any error in assigning fault to father for his failure to do so was harmless, as other circumstances prevented child from leaving the care center. Father was an amputee with one arm and one leg. The trial court made multiple findings regarding father's inability to care for child that were entirely unrelated to his disability. The parties also argued that state course of intervention was not required because all of the child's needs were met by various medical providers. The Court of Appeals detailed facts that supported the trial court's adjudication of child as a CHINS. Father also challenged the timing of the motion to transfer case to St. Joseph County, Indiana. When father filed his motion to transfer venue, child resided at Camelot Care Center in Logansport, Indiana in Cass County, Indiana. Child was not in St. Joseph County, Indiana, where father requested the case be transferred. Accordingly, father's motion to transfer was not properly a motion to transfer governed by Ind. Code § 31-32-7-3 because he did not request that the case be transferred to the county in which child resided. The trial court did not abuse its discretion when it waited three days to transfer the case after it entered its dispositional order.

3. *In re K.W. and R.W.*, 178 N.E.3d 1199 (Ind. Ct. App. 2021). Father and mother had two children. Father and mother divorced in 2011 and were parties to a tumultuous divorce case in Monroe Circuit Court. Both father and mother struggled with substance abuse. Multiple Indiana Department of Child Services' ("DCS") assessments were performed over the years. Father had a history of failing to cooperate with DCS and refusing to participate in drug screens. In 2016, a CHINS action was initiated but was closed in 2017. In November 2019, the Monroe Circuit Court granted father legal and physical custody of the children and suspended mother's parenting time in the domestic relations case. In January 2020, the trial court found father in contempt for failure to cooperate with DCS. Father continued thereafter to be uncooperative with DCS and refused to submit to drug screens. Kaitlyn Williams, her

boyfriend, and her children lived with father for a short time and slept downstairs in father's house, where father's children each had their own bedrooms. Father would sleep in K.W.'s bed. One night, Williams heard a repeating knocking noise that sounded like "the bed hitting the wall," and Williams went upstairs to investigate. Williams saw K.W. with blood dripping from her nightgown. K.W. had tears in her eyes and told Williams, "I need to tell you something." Father pulled K.W. away. That night, Williams, fearful of the situation in the home, took her children and moved out of father's house. Williams also observed that father barely got the children to school and was using methamphetamine. Williams described father as "just a weird individual all around." On February 1, 2020, a family case management made contact with K.W. at mother's residence. The family case manager took K.W. to Riley Hospital for an examination where there was some redness near the interior portion of K.W.'s vagina and some edema to her labia minora and majora. On February 4, 2020, DCS filed a petition alleging that the children were CHINS. Specifically, the petition alleged that father failed to provide the children with "a safe and appropriate living environment free from substance abuse and sexual abuse." On March 9, 2020, at a pre-trial conference, the trial court noted that the parties did not waive a sixty-day deadline for conducting a fact-finding hearing and set the fact-finding hearing for March 20, 2020. Due to the COVID-19 emergency, the Indiana Supreme Court entered a series of orders tolling time limits. The matter was reset for a fact-finding hearing on August 14, 2020, but DCS filed a motion to convert that hearing to a pre-trial conference, which the trial court granted. Father did not appear for the pre-trial conference and father's counsel informed the trial court that father did not wish counsel to represent him any longer. The trial court noted that the sixty-day time period had not waived and set the matter for an additional pre-trial conference in September 2020. Father appeared at the September 2020 pre-trial conference, and the trial court appointed a public defender to represent father. Counsel requested that the matter be set for in-person fact-finding and the trial court noted that the sixty-day time limit was waived for good cause. On October 23, 2020, father filed a motion to dismiss the CHINS proceedings, claiming father did not waive the statutory requirement to conduct the fact-finding hearing within sixty days. On October 30, 2020, the trial court held a fact-finding hearing. On January 29, 2021, the trial court found the children were CHINS. On March 10, 2021, father filed a second motion to dismiss the CHINS proceeding, arguing that the trial court was statutorily required to complete a dispositional hearing within thirty days after finding the children to be CHINS. On March 12, 2021, the trial court entered a written order finding the children were CHINS. The trial court noted that the presiding judicial officer had surgery on February 3, 2021, and was out for a couple of weeks, so it added good cause in denying the motion to dismiss. On April 5, 2021, the trial court entered a dispositional decree. Father appealed and the Indiana Court of Appeals affirmed. Ind. Code § 31-34-11-1 provides that a fact-finding hearing is to occur not more than sixty days after a CHINS petition is filed. DCS filed its CHINS petition on February 4, 2020, and the matter was set for a fact-finding hearing on March 20, 2020. Then, the intervening Indiana Supreme Court orders related to the COVID-19 pandemic occurred. The trial court's written orders noted that it found good cause for the continuance. Upon the record, the Court of Appeals could not find that the trial court abused its discretion by finding good cause for continuing the fact-finding hearing. Ind. Code § 31-34-19-1 provides that a dispositional hearing shall be completed not more than thirty days after the date a court finds that

a child is a CHINS. At a January 29, 2021, hearing, the trial court found that the children were CHINS and noted that an order regarding the fact-finding hearing would follow. The trial court advised of a medical procedure that the presiding judicial officer would be undergoing. Ind. Trial Rule 53.5 allows an extension of the statutory deadline to conduct a CHINS dispositional hearing where "good cause" is shown. Ind. Trial Rule 53.5 trumps Ind. Code § 31-34-19-1 on matters of procedure. The Court of Appeals also concluded there was sufficient evidence and that the findings of fact supported the evidence in affirming the trial court's order.

4. *In re I.L.*, 181 N.E.3d 974 (Ind. 2022). In March 2022, in response to the COVID-19 public health emergency, the Indiana Supreme Court granted emergency relief to Indiana trial courts under Ind. Admin. Rule 17. The relief included authorization for courts in civil cases to "allow parties to appear remotely via CourtCall or conference call to the extent a party's constitutional rights would not be violated." In January 2021, the trial court terminated mother's parental rights to her four children after holding a remote video hearing. Mother appealed, claiming that holding the hearing over a remote videoconferencing platform violated her constitutional due process rights and that the evidence was insufficient to support termination. The Indiana Court of Appeals affirmed the trial court in all respects in *In re I.L.*, 177 N.E.3d 864 (Ind. Ct. App. 2021). The facts were as follows: Mother was the biological mother of four children. D.L. was the biological father of two of the children and M.N. was the biological father of two of the children. Both fathers' parental rights were terminated, and neither were involved in this appeal. Mother was also the non-custodial parent to two teenage sons. In 2014, mother entered into an informal adjustment with the Indiana Department of Child Services ("DCS") to address "her ongoing substance abuse and her acts of domestic violence." The case was closed in 2015, but in February 2017, mother entered into another informal adjustment with DCS to address her substance abuse. Over the next two years, mother complied on-and-off with the case plan. Mother began individual therapy for her mental health and substance abuse after the children were removed but was discharged a few months later for poor attendance. Mother continued to struggle with alcohol and substance abuse. Mother began an alcohol monitoring program but tested positive several times and discontinued the program. Mother gave birth to another child in February 2018, and a few months later a court found that child to be a CHINS. In April 2019, DCS removed the children from mother's care due to "ongoing substance abuse, [her] failure to regularly participate in substance abuse treatment and related services, and the ongoing domestic violence in the home." Mother made some progress in participation in DCS services, but then her attendance waned. In January 2021, a termination of parental rights hearing occurred remotely. Mother objected to the hearing being conducted remotely. A month after the hearing, the trial court issued an order terminating the parents', including mother's, rights to all four children. Mother appealed and Court of Appeals affirmed. The Court of Appeals began by stating that parents do not have a constitutional right to be physically present at a final termination hearing. *See In re C.G.*, 954 N.E.2d 910, 921 (Ind. 2011). However, under Ind. Code § 31-35-2-6.5(e), a parent shall have an opportunity to be heard and make recommendations at a hearing. Additionally, Ind. Code § 31-32-2-3(b) provides that a parent is entitled to cross-examine and provide witnesses, and to introduce evidence. In addition, the due process clause of the Fourteenth Amendment to the United States Constitution prohibits state action that deprives a person of life, liberty, or property without a fair

proceeding. Mother first contended that a portion of her testimony was cut off due to a technical issue. The trial court noted the technical issue, stated the last portion of the testimony it heard, and had mother continue from that point once the technical issue was resolved. This brief interruption did not deny mother an opportunity to be heard. Mother also argued that some witnesses referenced personal notes during their testimony. The trial court instructed the witnesses to testify only from memory and that remedied that issue. Additionally, two witnesses appeared on Zoom in the presence of another person, but the trial court instructed the other person to leave and did not permit testimony to occur until it confirmed the witnesses were alone. Finally, mother pointed to an instance during the witness' testimony where the state of Indiana attempted to object, but could not be heard due to the Zoom software only picking up one voice at a time. The trial court noticed and stopped the witness from answering the challenged question so the state had an opportunity to object. While there were errors in the proceedings, they were minor and quickly remedied so the risk of an inaccurate result was low. These errors, standing alone or together, did not deprive mother of an opportunity to be heard in a meaningful time and manner. Mother also had the opportunity to present witness testimony, cross-examine witnesses, and introduce evidence. The remote termination hearing did not violate mother's due process rights. The evidence presented at the hearing was sufficient to lead the trial court to conclude that there was a reasonable probability that the conditions leading to the children's removal would not be remedied. Likewise, the totality of the evidence supported the trial court's determination that the termination of mother's parental rights were in the children's best interests. On transfer, the Supreme Court noted that the Court of Appeals weighed the serious safety concerns regarding in-person hearings during the COVID-19 pandemic and the state's interest in prompt adjudication of trial and welfare matters against the risk of error created by the remote nature of hearings. It found that any errors in the trial proceedings did not deprive mother of an opportunity to be heard in a meaningful time and matter, noting that each error mother identified on appeal was promptly addressed by the trial court. In a *per curiam* opinion, the Supreme Court granted transfer and expressly adopted and incorporated by reference Part I of the Court of Appeals' opinion as Supreme Court precedent.

5. *In re J.S.*, 183 N.E.3d 362 (Ind. Ct. App. 2022). In February 2018, child was born to mother. At the time of child's birth, child tested positive for marijuana and mother admitted she had smoked marijuana while pregnant. In addition, child was born with a volvulus (a twisted intestine). Specifically, child's small intestine had twisted, the blood supply to the intestine had been cut off, and the intestinal tissue had died. Shortly after birth, child had surgery to remove 90% of his small intestine. As a result of this surgery, child's body was not able to break down food and absorb nutrients, a condition known as "short bowel syndrome." As a result of this medical condition, child would require the administration of Total Parenteral Nutrition ("TPN") for the rest of his life. The administration of TPN is a delicate and detailed daily process that runs over a period of hours and takes place in the home under the supervision of a parent. The risk associated with TPN is very high and the margin for error is very low. A parent administering TPN must strictly adhere to the daily schedule because a delay in the TPN administration could result in electrolyte or hydration issues. During the administration of TPN, a parent must connect the nutrition to the central line that penetrates the child's chest wall near the clavicle. The parent also must monitor the TPN administration. If there is an occlusion in

the catheter or a pump malfunction, a child might need to be taken to the emergency room. The ramifications of improper care are serious. A child who suffers from short bowel syndrome also requires frequent medical follow-up appointments with a team of medical professionals. In March 2018, the Indiana Department of Child Services ("DCS") reported the child had been hospitalized with a life-threatening condition. Mother had recently been incarcerated for possession of marijuana and a separate probation violation, and there was no one available to care for child and his three-year-old sibling. On March 27, 2018, DCS filed a CHINS petition. In early-April 2018, mother and DCS entered into an informal adjustment of the CHINS matter, which resolved. Pursuant to the terms of the informal adjustment, mother agreed to abstain of the use of any illegal substances, complete a substance abuse assessment, and follow all of the assessor's treatment recommendations. In August 2018, DCS filed a second CHINS petition alleging that mother had repeatedly tested positive for marijuana and that child had recently been hospitalized. DCS removed child from mother's home. Mother and child eventually created a safety plan for child. In December 2018, following the implementation of the safety plan, DCS dismissed the second CHINS petition. In January 2019, DCS received a report that child was living in a home with no electricity. The report also alleged that mother had failed to take child to scheduled medical appointments, failed to provide child with necessary medication, and left child in the care of a person who had not been trained to care for him. DCS contacted mother, who explained that child was staying with maternal grandmother for the week. However, maternal grandmother had not been trained to administer child's medication. A DCS case worker removed child from maternal grandparent and from mother's care and took him to the DCS office. Mother went to the DCS office and "took off with" child and took child to Riley Hospital. A Riley Hospital physician examined child and determined that child was suffering from dehydration, severe diaper rash, low iron levels, and granulation around his gastrointestinal tube. While child was at Riley Hospital, DCS obtained a court order to detain child. DCS then removed child from mother's care and placed him in foster care. The following day, DCS filed a third CHINS petition. At the end of January 2019, mother admitted that child was a CHINS. In addition, mother agreed to multiple dispositional goals. During the following year, mother was only partially compliant with the CHINS dispositional goals. Specifically, mother consistently tested positive for marijuana and occasionally tested positive for cocaine. Although mother attended a substance abuse assessment, she did not begin the recommended program. In September 2019, the trial court told mother at a case review hearing that her consistent use of marijuana was a cause of great concern. At a June 2020, case review hearing, the trial court noted that mother had begun attending child's medical appointments and had been attending supervised visits with child. However, the trial court also noted that mother was still using marijuana and had failed to participate in a recommended intensive outpatient substance abuse program. In November 2020, mother had successfully completed a substance abuse treatment program and had tested negative on nineteen out of twenty drug tests. By early-January 2021, mother had tested positive for marijuana on fifteen different occasions. In addition, mother's attendance at supervised visits with child had diminished and mother was less engaged with child during the supervised visits that she attended. In January 2021, DCS filed a petition to terminate mother's parental rights. In June 2021, the trial court held a two-day hearing on the termination petition. Following the hearing, the trial court issued a detailed 38-

page order terminating mother's parental relationship with child. Mother appealed and the Indiana Court of Appeals affirmed. Mother's sole argument was that there was insufficient evidence to support the termination of her parental rights. When reviewing the termination of parental rights, the Court of Appeals will not reweigh the evidence or judge the credibility of witnesses. Mother argued that DCS failed to prove by clear and convincing evidence that (1) there was a reasonable probability that the conditions that resulted in child's removal or the reasons for placement outside the home would not be remedied, and (2) a continuation of the parent-child relationship posed a threat to child's well-being. Ind. Code § 31-35-2-4(b)(2)(B) is disjunctive and DCS was only required to establish by clear and convincing evidence only one of the three requirements for termination of parental rights (the third requirement being that a child has, on two separate occasions, been adjudicated a CHINS). The Court of Appeals discussed only whether there was a reasonable probability that the conditions that resulted in child's removal or the reasons for his placement outside the home would not be remedied. In its analysis, the Court of Appeals first identified the conditions that led to the removal and placement outside the home and then determined whether there is a reasonable probability that those conditions would not be remedied. The second step requires trial courts to judge a parents' fitness at the time of the termination proceeding, taking into consideration evidence of change conditions and balancing any recent improvements against habitual patterns of conduct to determine whether there was a substantial probability of future neglect or deprivation. A review of the evidence and any reasonable inference is to be drawn supported the judgment and revealed that the trial court was correct in its conclusion that there was a reasonable probability that the conditions that resulted in child's removal would not be remedied. No error occurred. Additionally, there was no clear error in terminating mother's parental rights.

6. *In re K.T. and B.T.*, 188 N.E.3d 479 (Ind. Ct. App. 2022). On April 23, 2021, the Indiana Department of Child Services ("DCS") filed a CHINS petition alleging mother failed to provide children with a home free from substance abuse and domestic violence. The parties unsuccessfully attempted mediation twice, but were unable to reach an agreement before a fact-finding hearing scheduled for July 29, 2021. DCS filed a motion to continue the hearing, advising the trial court that "negotiations are ongoing and may yet be fruitful." Mother did not object to the continuance, but she explicitly reserved her right under Ind. Code § 31-34-11-1 to a fact-finding hearing within 120 days of the petition date. Accordingly, DCS requested that the fact-finding hearing be re-set for a date prior to the August 23, 2021, deadline. The trial court granted DCS's motion for a continuance and rescheduled the fact-finding hearing for August 19, 2021. At a July 29, 2021, pretrial conference, according to mother, "DCS stated that an agreement in the instant matter was likely and that it is likely that a fact-finding hearing would not be required." In reliance of DCS's assertion, again according to mother, the trial court set a fact-finding hearing for August 19, 2021, for twenty minutes. At the commencement of the August 19, 2021, hearing, there was an exchange between the trial court and the parties' attorneys at which counsel indicated that a half day was needed for the hearing. The trial court re-set the hearing over everyone's objection to August 26, 2021, at 9:00 a.m., a date that was 123 days after the filing of the CHINS petition. On August 24, 2021, mother filed a motion to dismiss the CHINS petition for failure to hold a fact-finding hearing within 120 days of the petition date. The trial court denied the motion, conducted the fact-finding hearing, and

determined that the children were CHINS. At the dispositional hearing the following month, the trial court placed children with mother on temporary trial parenting time. The trial court also ordered mother to participate in home-based therapy, random drug screens, substance abuse treatment, and domestic violence services. Mother appealed, arguing only that the CHINS case should have been dismissed because the trial court failed to hold a fact-finding hearing within the required 120 days, and the Indiana Court of Appeals affirmed. The trial court made specific findings on the record of good cause for continuing the fact-finding hearing to occur after the 120-day deadline. Those reasons included COVID-19 restrictions, trial court congestion, a case management computer system conversion from Quest to Odyssey, a new configuration of courts with the dissolution of the juvenile court and the creation of the family law division, the trial court's reliance upon the parties indicating that a resolution was imminent and the trial court only scheduling a minimal amount of time, and mother's failure to appear at a trial court hearing at which she was to have hired private counsel. The trial court had good cause to continue the fact-finding hearing past the 120-day deadline based on (1) the parties' representations to the trial court that a settlement was likely, and (2) the trial court's reliance on those representations in scheduling a minimal amount of time for the August 19, 2021, hearing. Mother had an opportunity to contest DCS's representations and did not.

7. *In re R.A.M.O.*, 190 N.E.3d 385 (Ind. Ct. App. 2022). On September 4, 2020, child was born. Soon after child was born, the Indiana Department of Child Services ("DCS") opened an informal adjustment (which is a lesser intervention than a CHINS case) due to mother's untreated mental health issues and inability to care for child. A couple of months later, while the informal adjustment was ongoing, DCS received a report alleging neglect of child. Child was an in-patient at Riley Hospital for Children, and hospital staff reported that mother did not engage with child and refused to feed child. The hospital staff also reported that they were concerned by child's weight and that child could become malnourished and ultimately die due to her feeding issues. The family case manager visited the hospital to investigate the report and noticed that the child had been left in her hospital room unattended. She observed that child, who was roughly six months old, needed assistance to sit upright and had a recognizable flat spot on her head. At the time, mother reported to the family case manager that there was domestic violence within their household. DCS removed child from mother's care and filed a petition alleging that child was a CHINS. DCS also closed the informal adjustment because it had failed. The trial court set a fact-finding date of April 22, 2021, but the fact-finding date was later reset to June 2021 upon the parties' request. Specifically, the parties asked that the matter be continued and reset for its additional facilitation because they were unable to resolve their issues. The parties agreed to waive the sixty-day statutory time frame set forth in Ind. Code § 31-34-11-1(a) that requires a fact-finding hearing to be completed no later than sixty days after the CHINS petition is filed. On the date of the fact-finding hearing, DCS requested a continuance which the trial court granted. The day before the new fact-finding hearing date, DCS filed a motion for continuance. The DCS attorney for the matter was admitted to the hospital for labor induction and was unable to find a substitute because all DCS attorney in the region were at a mandatory out-of-town training. The trial court held a hearing on DCS's motion and granted DCS's motion over mother's objection, and the fact-finding hearing was reset to June 28, 2021 – a day within the 120-day statutory deadline. After the hearing that allowed for

the continuance, DCS filed another motion for continuance, asserting that two of its "essential witnesses" were unable to testify on June 28, 2021. The trial court again granted the continuance motion over mother's objection and reset the fact-finding date to July 14, 2021 – past the 120-day statutory deadline. The trial court held the fact-finding hearing on July 14, 2021. In August 2021, the trial court entered an order determining that child was a CHINS. Mother appealed and the Indiana Court of Appeals affirmed. Mother did not challenge the trial court's findings and conclusions or the evidence supporting the trial court's finding. Instead, she argued that the trial court abused its discretion in continuing the fact-finding hearing beyond the 120-day time frame set forth in Ind. Code § 31-34-11-1(b), which she argued also violated her due process rights. Mother could have filed a motion to dismiss to enforce her rights. *See In re J.S.,* 133 N.E.3d 707, 713 (Ind. Ct. App. 2019). She did not. Because mother did not file a motion to dismiss, her argument was waived. The trial court had good cause for granting each of DCS's continuance requests. Mother did not show how the fact-finding hearing, although delayed, was unfair or how she was denied the opportunity to be heard at a meaningful time. Mother also was represented by counsel at the hearing. The trial court did not abuse its discretion when it continued the fact-finding hearing beyond the 120-day time frame and mother did not show a violation of her due process rights.

8. *In re C.S.*, 190 N.E.3d 434 (Ind. Ct. App. 2022). In April 2019, child tested positive for methamphetamine at his birth. Indiana Department of Child Services ("DCS") filed a petition alleging H.S. was a CHINS, but DCS closed the case when it was unable to locate the family. Seven months later, DCS found the family and filed a new petition alleging child was a CHINS. Mother and her husband had been using methamphetamine and neither child nor his brother had received adequate medical care. The trial court ordered mother to engage in various services, including a mental health and substance abuse evaluation, random drug screens, parenting education class, and visitation services. Evidence presented at two termination hearings over the course of almost two months showed that mother was only partially compliant. Mother did not show progress in areas other than the child's bond, most concerningly addiction treatment. Mother was unreliable in other ways. Mother missed the first termination hearing date because she overslept and was thirty minutes late for the second termination hearing. Between the two hearing dates, mother was evicted from her home. Following the two hearings, the trial court terminated the parent-child relationship. Mother appealed and the Indiana Court of Appeals affirmed. Mother first claimed that she was denied due process when the trial court admitted a Court-Appointed Special Advocate's ("CASA") unsworn report without cross-examination. The Court of Appeals found that mother had not alleged a cognizable due process violation. Though cross-examination did not occur, mother made no assertion that the trial court denied her the opportunity to cross-examine. The CASA's report was admitted in evidence at the first hearing date with no objection from mother's counsel. Mother also claimed that the evidence was insufficient to support the termination. Specifically, mother argued that the evidence was insufficient to show that both the conditions leading to removal were unlikely to be remedied and that her continued relationship with child posed a threat to his well-being. It was evidenced from the record that mother's drug use was the reason for continued placement outside the home and there was also sufficient evidence to support the trial court's finding that continuation of the parent-child relationship

posed a threat to child's well-being. Finally, mother argued that termination was not in child's best interest but the totality of the evidence supported the termination.

9. *In re B.P.*, 190 N.E.3d 995 (Ind. Ct. App. 2022). Mother had five children. Mother had a history of PTSD, anxiety, and depression, and before she became pregnant with twins mother managed her mental illness through therapy and medication. Mother took Klonopin, but during her pregnancy with the twins stopped taking the prescription medication because of concern that it might have a negative impact on the twins' health. As a result, mother's mental health suffered. A few months after the twins were born, the COVID-19 pandemic hit and in-person therapy sessions were unavailable to mother. Mother attempted virtual therapy sessions but could not get a prescription for Klonopin. In May 2021, mother was at her home with the children when the electricity was shut off. Mother left the house and "was headed to the bank to pay" her electric bill when she was involved in an accident. A short time later, mother was arrested for leaving the scene of an accident and reckless driving and placed in jail. Mother's eldest child, who was fifteen years old, was left in charge of the younger children. When none of the children attended school the next day, a school resource officer went to mother's house and found the children there without electricity and without adult supervision. Accordingly, the school resource officer contacted the Indiana Department of Child Services ("DCS"). A DCS family case manager contacted mother. Subsequently, the electricity was turned back on in mother's home. DCS filed a CHINS petition. During a detention hearing on May 13, 2021, mother used profane language with the trial court and the DCS attorney stated that her conduct during the hearing led him to believe that mother had some untreated mental health problem. On July 26, 2021, the trial court held a fact-finding hearing on the CHINS petition. Mother was present and agitated and used a lot of profane language. Mother interrupted the trial court on several occasions and told the judge to "shut up" at one point. Mother had three pending criminal matters which DCS asked the trial court to take note of. On August 23, 2021, the trial court held a dispositional hearing. Mother's counsel advised the trial court that DCS had just handed them the pre-dispositional report and mother's counsel requested a continuance for time to review. The trial court rescheduled the hearing for November 22, 2021. Grandmother was present at the hearing and requested that the trial court order supervised parenting time for mother with the children. The trial court determined that the children were CHINS and that mother's parenting time would "continue to be suspended pending the evaluation." Mother appealed and the Indiana Court of Appeals reversed. Mother contended that DCS failed to present sufficient evidence to determine that the children were CHINS. Ind. Code § 31-34-1-1, as explained in *J.B v. Ind. Dept of Child Servs. (In re S.D.)*, 2 N.E.3d 1283 (Ind. 2014),, has three elements required to prove that a child is a CHINS. Mother contended that the trial court erred in adjudicating the children to be a CHINS because there was no evidence that the children were seriously endangered as a result of mother's mental illness or that the children's needs were unmet. Indiana law is clear that a parent's mental illness, without more, is insufficient to support a CHINS determination. While mother's conduct in the courtroom was inappropriate, DCS had the burden to prove that the children were actually and seriously endangered as a result of mother's mental illness. The Court of Appeals also noted that the impact of the COVID-19 pandemic on the mental health of many Hoosiers could not be ignored – especially those already suffering from mental illness at its onset. While mother

suffered from PTSD, anxiety, and depression, there was no evidence that the children's physical or mental health were seriously impaired or seriously endangered as a result of mother's mental illness. The trial court clearly erred when it found the children to be CHINS. Chief Judge Bradford dissented, finding that the record was more than sufficient to support the trial court's judgment that the children were CHINS and that mother's tendency to resort to violence and threats of violence was troubling. The dissent reasoned that, even though there was no evidence of direct harm as of yet, the record supported the trial court's determination that the children were CHINS.

III. LEGISLATION

See attached legislation.

IV. REVISIONS TO INDIANA PARENTING TIME GUIDELINES

See attached revisions to the Indiana Parenting Time Guidelines, effective January 1, 2022.

V. CONCLUSION

The Indiana Court of Appeals and Indiana Supreme Court continued their important work in addressing important family law issues and providing clear instruction and remand to trial courts. Those directives are helpful to both Indiana citizens and practitioners.

Second Regular Session of the 122nd General Assembly (2022)

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Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2021 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1045

AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 6-3-3-12, AS AMENDED BY P.L.154-2020, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 12. (a) As used in this section, "account" has the meaning set forth in IC 21-9-2-2.

(b) As used in this section, "account beneficiary" has the meaning set forth in IC 21-9-2-3.

(c) As used in this section, "account owner" has the meaning set forth in IC 21-9-2-4.

(d) As used in this section, "college choice 529 education savings plan" refers to a college choice 529 plan established under IC 21-9.

(e) As used in this section, "contribution" means the amount of money directly provided to a college choice 529 education savings plan account by a taxpayer. A contribution does not include any of the following:

(1) Money credited to an account as a result of bonus points or other forms of consideration earned by the taxpayer that result in a transfer of money to the account.

(2) Money transferred from any other qualified tuition program under Section 529 of the Internal Revenue Code or from any other similar plan.

(3) Money that is credited to an account and that will be transferred to an ABLE account (as defined in Section 529A of

the Internal Revenue Code).

(f) As used in this section, "nonqualified withdrawal" means a withdrawal or distribution from a college choice 529 education savings plan that is not a qualified withdrawal.

(g) As used in this section, "qualified higher education expenses" has the meaning set forth in IC 21-9-2-19.5, except that the term does not include qualified education loan repayments under Section 529(c)(9) of the Internal Revenue Code.

(h) As used in this section, "qualified K-12 education expenses" means expenses that are for tuition in connection with enrollment or attendance at an elementary or secondary public, private, or religious school located in Indiana and are permitted under Section 529 of the Internal Revenue Code.

(i) As used in this section, "qualified withdrawal" means a withdrawal or distribution from a college choice 529 education savings plan that is made:

(1) to pay for qualified higher education expenses, excluding any withdrawals or distributions used to pay for qualified higher education expenses, if the withdrawals or distributions are made from an account of a college choice 529 education savings plan that is terminated within twelve (12) months after the account is opened;

(2) as a result of the death or disability of an account beneficiary;

(3) because an account beneficiary received a scholarship that paid for all or part of the qualified higher education expenses of the account beneficiary, to the extent that the withdrawal or distribution does not exceed the amount of the scholarship; or

(4) by a college choice 529 education savings plan as the result of a transfer of funds by a college choice 529 education savings plan from one (1) third party custodian to another.

However, a qualified withdrawal does not include a withdrawal or distribution that will be used for expenses that are for tuition in connection with enrollment or attendance at an elementary or secondary public, private, or religious school unless the school is located in Indiana. A qualified withdrawal does not include a rollover distribution or transfer of assets from a college choice 529 education savings plan to any other qualified tuition program under Section 529 of the Internal Revenue Code or to any other similar plan.

(j) As used in this section, "taxpayer" means:

(1) an individual filing a single return;

(2) a married couple filing a joint return; or

(3) for taxable years beginning after December 31, 2019, a

married individual filing a separate return.

(k) A taxpayer is entitled to a credit against the taxpayer's adjusted gross income tax imposed by IC 6-3-1 through IC 6-3-7 for a taxable year equal to the least of the following:

(1) The following amount:

(A) For taxable years beginning before January 1, 2019, the sum of twenty percent (20%) multiplied by the amount of the total contributions that are made by the taxpayer to an account or accounts of a college choice 529 education savings plan during the taxable year and that will be used to pay for qualified higher education expenses that are not qualified K-12 education expenses, plus the lesser of:

(i) five hundred dollars ($500); or

(ii) ten percent (10%) multiplied by the amount of the total contributions that are made by the taxpayer to an account or accounts of a college choice 529 education savings plan during the taxable year and that will be used to pay for qualified K-12 education expenses.

(B) For taxable years beginning after December 31, 2018, the sum of:

(i) twenty percent (20%) multiplied by the amount of the total contributions that are made by the taxpayer to an account or accounts of a college choice 529 education savings plan during the taxable year and that are designated to pay for qualified higher education expenses that are not qualified K-12 education expenses; plus

(ii) twenty percent (20%) multiplied by the amount of the total contributions that are made by the taxpayer to an account or accounts of a college choice 529 education savings plan during the taxable year and that are designated to pay for qualified K-12 education expenses.

(2) One thousand **five hundred** dollars ~~($1,000),~~ **($1,500),** or ~~five~~ **seven** hundred **fifty** dollars ~~($500)~~ **($750)** in the case of a married individual filing a separate return.

(3) The amount of the taxpayer's adjusted gross income tax imposed by IC 6-3-1 through IC 6-3-7 for the taxable year, reduced by the sum of all credits (as determined without regard to this section) allowed by IC 6-3-1 through IC 6-3-7.

(l) This subsection applies after December 31, 2018. At the time a contribution is made to or a withdrawal is made from an account or accounts of a college choice 529 education savings plan, the person making the contribution or withdrawal shall designate whether the

contribution is made for or the withdrawal will be used for:

(1) qualified higher education expenses that are not qualified K-12 education expenses; or

(2) qualified K-12 education expenses.

The Indiana education savings authority (IC 21-9-3) shall use subaccounting to track the designations.

(m) A taxpayer who makes a contribution to a college choice 529 education savings plan is considered to have made the contribution on the date that:

(1) the taxpayer's contribution is postmarked or accepted by a delivery service, for contributions that are submitted to a college choice 529 education savings plan by mail or delivery service; or

(2) the taxpayer's electronic funds transfer is initiated, for contributions that are submitted to a college choice 529 education savings plan by electronic funds transfer.

(n) A taxpayer is not entitled to a carryback, carryover, or refund of an unused credit.

(o) A taxpayer may not sell, assign, convey, or otherwise transfer the tax credit provided by this section.

(p) To receive the credit provided by this section, a taxpayer must claim the credit on the taxpayer's annual state tax return or returns in the manner prescribed by the department. The taxpayer shall submit to the department all information that the department determines is necessary for the calculation of the credit provided by this section.

(q) An account owner of an account of a college choice 529 education savings plan must repay all or a part of the credit in a taxable year in which any nonqualified withdrawal is made from the account. The amount the taxpayer must repay is equal to the lesser of:

(1) twenty percent (20%) of the total amount of nonqualified withdrawals made during the taxable year from the account; or

(2) the excess of:

(A) the cumulative amount of all credits provided by this section that are claimed by any taxpayer with respect to the taxpayer's contributions to the account for all prior taxable years beginning on or after January 1, 2007; over

(B) the cumulative amount of repayments paid by the account owner under this subsection for all prior taxable years beginning on or after January 1, 2008.

(r) Any required repayment under subsection (q) shall be reported by the account owner on the account owner's annual state income tax return for any taxable year in which a nonqualified withdrawal is made.

(s) A nonresident account owner who is not required to file an

annual income tax return for a taxable year in which a nonqualified withdrawal is made shall make any required repayment on the form required under IC 6-3-4-1(2). If the nonresident account owner does not make the required repayment, the department shall issue a demand notice in accordance with IC 6-8.1-5-1.

(t) The executive director of the Indiana education savings authority shall submit or cause to be submitted to the department a copy of all information returns or statements issued to account owners, account beneficiaries, and other taxpayers for each taxable year with respect to:

(1) nonqualified withdrawals made from accounts, including subaccounts of a college choice 529 education savings plan for the taxable year; or

(2) account closings for the taxable year.

SECTION 2. [EFFECTIVE JULY 1, 2022] **(a) IC 6-3-3-12, as amended by this act, applies to taxable years beginning after December 31, 2022.**

(b) This SECTION expires July 1, 2025.

Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: ____________ Time: ____________

Second Regular Session of the 122nd General Assembly (2022)

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Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2021 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1137

AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 34-26-5-6, AS AMENDED BY P.L.266-2019, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 6. The following rules apply to an order for protection issued under this chapter:

(1) An order for protection is in addition to, and not instead of, another available civil or criminal proceeding.

(2) A petitioner is not barred from seeking an order because of another pending proceeding.

(3) A court may not delay granting relief because of the existence of a pending action between the petitioner and respondent.

(4) If a person who petitions for an ex parte order for protection also has a pending case involving:

(A) the respondent; or

(B) a child of the petitioner and respondent;

the court that has been petitioned for relief shall immediately consider the ex parte petition and then transfer that matter to the court in which the other case is pending.

(5) If a person files a petition for an order of protection requesting relief that:

(A) does not require a hearing under sections 9(c) and 10(a) **through 10(b)** of this chapter; and

(B) requires a hearing under sections 9(d) and ~~10(b)~~ **10(c)** of this chapter;

the court may issue an ex parte order for protection providing relief under clause (A) at any time before the required hearing under clause (B).

SECTION 2. IC 34-26-5-9, AS AMENDED BY P.L.266-2019, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 9. (a) If it appears from a petition for an order for protection or from a petition to modify an order for protection that domestic or family violence has occurred or that a modification of an order for protection is required, a court may:

(1) without notice or hearing, immediately issue an order for protection ex parte or modify an order for protection ex parte; or

(2) upon notice and after a hearing, whether or not a respondent appears, issue or modify an order for protection.

(b) If it appears from a petition for an order for protection or from a petition to modify an order for protection that harassment has occurred, a court:

(1) may not, without notice and a hearing, issue an order for protection ex parte or modify an order for protection ex parte; but

(2) may, upon notice and after a hearing, whether or not a respondent appears, issue or modify an order for protection.

A court must hold a hearing under this subsection not later than thirty (30) days after the petition for an order for protection or the petition to modify an order for protection is filed.

(c) A court may grant the following relief without notice and hearing in an ex parte order for protection or in an ex parte order for protection modification under subsection (a):

(1) Enjoin a respondent from threatening to commit or committing acts of domestic or family violence against a petitioner and each designated family or household member.

(2) Prohibit a respondent from harassing, annoying, telephoning, contacting, or directly or indirectly communicating with a petitioner.

(3) Remove and exclude a respondent from the residence of a petitioner, regardless of ownership of the residence.

(4) Order a respondent to stay away from the residence, school, or place of employment of a petitioner or a specified place frequented by a petitioner and each designated family or household member.

(5) Order that a petitioner has the exclusive possession, care, custody, or control of any animal owned, possessed, kept, or cared

for by the petitioner, respondent, minor child of either the petitioner or respondent, or any other family or household member.

(6) Prohibit a respondent from removing, transferring, injuring, concealing, harming, attacking, mistreating, threatening to harm, or otherwise disposing of an animal described in subdivision (5).

(7) Order possession and use of the residence, an automobile, and other essential personal effects, regardless of the ownership of the residence, automobile, and essential personal effects. If possession is ordered under this subdivision or subdivision (5), the court may direct a law enforcement officer to accompany a petitioner to the residence of the parties to:

(A) ensure that a petitioner is safely restored to possession of the residence, automobile, animal, and other essential personal effects; or

(B) supervise a petitioner's or respondent's removal of personal belongings and animal.

(8) Order other relief necessary to provide for the safety and welfare of a petitioner and each designated family or household member.

(d) A court may grant the following relief after notice and a hearing, whether or not a respondent appears, in an order for protection or in a modification of an order for protection:

(1) Grant the relief under subsection (c).

(2) Specify arrangements for parenting time of a minor child by a respondent and:

(A) require supervision by a third party; or

(B) deny parenting time;

if necessary to protect the safety of a petitioner or child.

(3) Order a respondent to:

(A) pay attorney's fees;

(B) pay rent or make payment on a mortgage on a petitioner's residence;

(C) if the respondent is found to have a duty of support, pay for the support of a petitioner and each minor child;

(D) reimburse a petitioner or other person for expenses related to the domestic or family violence or harassment, including:

(i) medical expenses;

(ii) counseling;

(iii) shelter; and

(iv) repair or replacement of damaged property;

(E) pay the costs and expenses incurred in connection with the

use of a GPS tracking device under ~~subsection (j);~~ **subsection (k);** or

(F) pay the costs and fees incurred by a petitioner in bringing the action.

(4) Prohibit a respondent from using or possessing a firearm, ammunition, or a deadly weapon specified by the court, and direct the respondent to surrender to a specified law enforcement agency the firearm, ammunition, or deadly weapon for the duration of the order for protection unless another date is ordered by the court.

(5) Permit the respondent and petitioner to occupy the same location for any purpose that the court determines is legitimate or necessary. The court may impose terms and conditions upon a respondent when granting permission under this subdivision.

An order issued under subdivision (4) does not apply to a person who is exempt under 18 U.S.C. 925.

(e) The court shall:

(1) cause the order for protection to be delivered to the county sheriff for service;

(2) make reasonable efforts to ensure that the order for protection is understood by a petitioner and a respondent if present;

(3) electronically notify each law enforcement agency:

(A) required to receive notification under IC 5-2-9-6; or

(B) designated by the petitioner;

(4) transmit a copy of the order to the clerk for processing under IC 5-2-9;

(5) indicate in the order if the order and the parties meet the criteria under 18 U.S.C. 922(g)(8); and

(6) require the clerk of court to enter or provide a copy of the order to the Indiana protective order registry established by IC 5-2-9-5.5.

(f) **Except as provided in subsection (g),** an order for protection issued ex parte or upon notice and a hearing, or a modification of an order for protection issued ex parte or upon notice and a hearing, is effective for two (2) years after the date of issuance unless another date is ordered by the court. The sheriff of each county shall provide expedited service for an order for protection.

(g) This subsection applies to an order for protection issued ex parte or upon notice and a hearing, or to a modification of an order for protection issued ex parte or upon notice and a hearing, if:

(1) the respondent named in the order is a sex or violent offender (as defined in IC 11-8-8-5) and is required to register

as a lifetime sex or violent offender under IC 11-8-8-19; and
(2) the petitioner was the victim of the crime that resulted in the requirement that the respondent register as a lifetime sex or violent offender under IC 11-8-8-19.

An order for protection to which this subsection applies is effective indefinitely after the date of issuance unless another date is ordered by the court. The sheriff of each county shall provide expedited service for an order for protection.

~~(g)~~ **(h)** A finding that domestic or family violence or harassment has occurred sufficient to justify the issuance of an order under this section means that a respondent represents a credible threat to the safety of a petitioner or a member of a petitioner's household. Upon a showing of domestic or family violence or harassment by a preponderance of the evidence, the court shall grant relief necessary to bring about a cessation of the violence or the threat of violence. The relief may include an order directing a respondent to surrender to a law enforcement officer or agency all firearms, ammunition, and deadly weapons:

(1) in the control, ownership, or possession of a respondent; or
(2) in the control or possession of another person on behalf of a respondent;

for the duration of the order for protection unless another date is ordered by the court.

~~(h)~~ **(i)** An order for custody, parenting time, or possession or control of property issued under this chapter is superseded by an order issued from a court exercising dissolution, legal separation, paternity, or guardianship jurisdiction over the parties.

~~(i)~~ **(j)** The fact that an order for protection is issued under this chapter does not raise an inference or presumption in a subsequent case or hearings between the parties.

~~(j)~~ **(k)** Upon a finding of a violation of an order for protection, the court may:

(1) require a respondent to wear a GPS tracking device; and
(2) prohibit the respondent from approaching or entering certain locations where the petitioner may be found.

If the court requires a respondent to wear a GPS tracking device under subdivision (1), the court shall, if available, require the respondent to wear a GPS tracking device with victim notification capabilities.

~~(k)~~ **(l)** The court may permit a victim, a petitioner, another person, an organization, or an agency to pay the costs and expenses incurred in connection with the use of a GPS tracking device under ~~subsection (j).~~ **subsection (k).**

SECTION 3. IC 34-26-5-10, AS AMENDED BY P.L.266-2019, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 10. (a) Except as provided in subsection (b), if a court issues:

(1) an order for protection ex parte **effective for a period described under section 9(f) of this chapter;** or

(2) a modification of an order for protection ex parte **effective for a period described under section 9(f) of this chapter;**

and provides relief under section 9(c) of this chapter, upon a request by either party ~~not more than thirty (30) days~~ **at any time** after service of the order or modification, the court shall set a date for a hearing on the petition. **Except as provided in subsection (c),** the hearing must be held not more than thirty (30) days after the request for a hearing is filed unless continued by the court for good cause shown. The court shall notify both parties by first class mail of the date and time of the hearing. **A party may only request one (1) hearing on a petition under this subsection.**

(b) If a court issues:

(1) an order for protection ex parte effective for a period described under section 9(g) of this chapter; or

(2) a modification of an order for protection ex parte effective for a period described under section 9(g) of this chapter;

and provides relief under section 9(c) of this chapter, upon a request by either party not more than thirty (30) days after service of the order or modification, the court shall set a date for a hearing on the petition. Except as provided in subsection (c), the hearing must be held not more than thirty (30) days after the request for a hearing is filed unless continued by the court for good cause shown. The court shall notify both parties by first class mail of the date and time of the hearing. A party may only request one (1) hearing on a petition under this subsection.

~~(b)~~ **(c)** A court shall set a date for a hearing on the petition not more than thirty (30) days after the filing of the petition if a court issues an order for protection ex parte or a modification of an order of protection ex parte and:

(1) a petitioner requests or the court provides relief under section 9(c)(3), 9(c)(5), 9(c)(6), 9(c)(7), or 9(c)(8) of this chapter; or

(2) a petitioner requests relief under section 9(d)(2), 9(d)(3), or 9(d)(4) of this chapter.

The hearing must be given precedence over all matters pending in the court except older matters of the same character.

~~(c)~~ **(d)** In a hearing under ~~subsection (a) or (b):~~ **this section:**

(1) relief under section 9 of this chapter is available; and
(2) if a respondent seeks relief concerning an issue not raised by a petitioner, the court may continue the hearing at the petitioner's request.

____
Speaker of the House of Representatives

____
President of the Senate

____
President Pro Tempore

____
Governor of the State of Indiana

Date: ____________________ Time: ____________________

Second Regular Session of the 122nd General Assembly (2022)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2021 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1205

AN ACT to amend the Indiana Code concerning trusts and fiduciaries.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 30-4-3-29.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: **Sec. 29.3. (a) The power to appoint a successor trustee under a governing instrument or under section 33 of this chapter includes:**

(1) the power to appoint multiple successor trustees; and

(2) the power to allocate trustee powers to one (1) or more trustees.

(b) A trustee to whom powers:

(1) have been exclusively allocated under subsection (a) must be a fiduciary only with respect to the powers allocated; and

(2) have not been allocated under subsection (a) is not liable for the actions of a trustee to whom the powers, duties, and responsibilities are allocated.

(c) The rules governing the rights, powers, duties, and liabilities of a governing instrument under this chapter apply to a trustee appointed under this section unless expressly limited by the terms of a governing instrument.

SECTION 2. IC 30-4-3-36 IS REPEALED [EFFECTIVE JULY 1, 2022]. ~~Sec. 36. (a) Unless a trust expressly provides otherwise, a trustee who has discretion under the terms of a trust (referred to in this~~

~~section as the "first trust") to invade the principal of the trust to make distributions to or for the benefit of one (1) or more persons may instead exercise the power by appointing all or part of the principal of the first trust in favor of a trustee of another trust (referred to in this section as the "second trust") for the benefit of one (1) or more persons under the same trust instrument or under a different trust instrument as long as:~~

~~(1) the beneficiaries of the second trust are the same as the beneficiaries of the first trust;~~

~~(2) the second trust does not reduce any income, annuity, or unitrust interest in the assets of the first trust; and~~

~~(3) if any contributions to the first trust qualified for a marital or charitable deduction for purposes of the federal income, gift, or estate taxes, the second trust does not contain any provision that, if included in the first trust, would have prevented the first trust from qualifying for a deduction or reduced the amount of a deduction.~~

~~(b) The exercise of a power to invade principal under subsection (a) must be by an instrument that is:~~

~~(1) in writing;~~

~~(2) signed and acknowledged by the trustee; and~~

~~(3) filed with the records of the first trust.~~

~~(c) The exercise of a power to invade principal under subsection (a) is considered the exercise of a power of appointment, other than a power to appoint to the trustee, the trustee's creditors, the trustee's estate, or the creditors of the trustee's estate. The exercise of the power does not extend the time at which the permissible period of the rule against perpetuities begins and the law that determines the permissible period of the rule against perpetuities of the first trust.~~

~~(d) The trustee shall notify in writing all qualified beneficiaries of the first trust at least sixty (60) days before the effective date of the trustee's exercise of the power to invade principal under subsection (a) of the manner in which the trustee intends to exercise the power. A copy of the proposed instrument exercising the power satisfies the trustee's notice obligation under this subsection. If all qualified beneficiaries waive the notice period by signed written instrument delivered to the trustee, the trustee's power to invade principal may be exercised immediately. The trustee's notice under this subsection does not limit the right of any beneficiary to object to the exercise of the trustee's power to invade principal, except as otherwise provided by this article.~~

~~(e) The exercise of the power to invade principal under subsection~~

~~(a) is not prohibited by a spendthrift clause or by a provision in the trust instrument that prohibits amending or revoking the trust.~~

~~(f) This section is not intended to create or imply a duty to exercise a power to invade principal. No inference of impropriety may be made as a result of a trustee not exercising the power to invade principal conferred under subsection (a).~~

~~(g) This section may not be construed to abridge the right of any trustee who has a power of invasion to appoint property in further trust that arises under the terms of the first trust, under any other provision of this article or any other statute, or under common law.~~

SECTION 3. IC 30-4-10 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]:

Chapter 10. Uniform Trust Decanting Act

Sec. 1. (a) This chapter applies to a trust created before, on, or after July 1, 2022, that:

(1) has its principal place of administration in this state, including a trust whose principal place of administration has been changed to this state; or

(2) provides by its trust instrument that it is governed by the law of this state or is governed by the law of this state for the purpose of:

(A) administration, including administration of a trust whose governing law for purposes of administration has been changed to the law of this state;

(B) construction of terms of the trust; or

(C) determining the meaning or effect of terms of the trust.

(b) Except as provided in subsections (c) and (d), this chapter applies to an express trust that is irrevocable or revocable by the settlor only with the consent of the trustee or a person holding an adverse interest.

(c) This chapter does not:

(1) apply to a trust held solely for charitable purposes;

(2) limit the power of a trustee, powerholder, or other person to distribute or appoint property in further trust;

(3) limit the power to modify a trust under the trust instrument, law of this state other than this chapter, common law, a court order, or a nonjudicial settlement agreement; or

(4) affect the ability of a settlor to provide in a trust instrument for the distribution of the trust property or appointment in further trust of the trust property or for modification of the trust instrument. Such provisions in the

trust instrument shall control over any applicable provision of this chapter.

(d) Subject to section 45 of this chapter, a trust instrument may restrict or prohibit exercise of the decanting power.

Sec. 2. As used in this chapter, "appointive property" means the property or property interest subject to a power of appointment.

Sec. 3. As used in this chapter, "ascertainable standard" means a standard relating to an individual's health, education, support, or maintenance as defined by 26 U.S.C. 2041(b)(1)(A) or 26 U.S.C. 2514(c)(1) and applicable regulations.

Sec. 4. As used in this chapter, "authorized fiduciary" means:

(1) a trustee, trust director, or other fiduciary, other than a settlor, that has discretion to distribute or direct a trustee to distribute part or all of the principal of the first trust to one (1) or more current beneficiaries;

(2) a special fiduciary appointed under section 39 of this chapter; or

(3) a special-needs fiduciary under section 43 of this chapter.

Sec. 5. As used in this chapter, "beneficiary" means a person that:

(1) has a present or future, vested or contingent, beneficial interest in a trust;

(2) holds a power of appointment over trust property; or

(3) is an identified charitable organization that may receive distributions under the terms of the trust.

Sec. 6. As used in this chapter, "beneficiary with disability" means a beneficiary who is determined, in the exercise of an authorized fiduciary's discretion, to have one (1) of the following conditions:

(1) Dementia, memory loss, Parkinson's disease, or other progressive condition that, currently or in the future, may impair the ability of the beneficiary to provide self care or manage the beneficiary's assets.

(2) A physical or mental condition or infirmity due to age, cognitive impairment, addiction, or disease that impairs the beneficiary's ability to provide self care or manage the beneficiary's assets.

(3) The susceptibility of the beneficiary, at any age, to financial exploitation, as defined in IC 23-19-4.1, IC 30-5-5-6.5, or FINRA Rule 2165 approved by the United States Securities and Exchange Commission.

(4) A condition requiring essential medical treatment or

prescription medication that the beneficiary cannot reasonably provide for from the beneficiary's resources outside the trust assets.

(5) A condition related directly or indirectly to the disability of a beneficiary described in subdivisions (1) through (4) with respect to which the settlor of the trust has expressed the settlor's intent.

Sec. 7. As used in this chapter, "charitable interest" means an interest in a trust that:

(1) is held by an identified charitable organization and makes the organization a qualified beneficiary;

(2) benefits only a charitable organization and, if the interest were held by an identified charitable organization, would make the organization a qualified beneficiary; or

(3) is held solely for a charitable purpose and, if the interest were held by an identified charitable organization, would make the organization a qualified beneficiary.

Sec. 8. As used in this chapter, "charitable organization" means:

(1) a person, other than an individual, organized and operated exclusively for a charitable purpose; or

(2) a government or governmental subdivision, agency, or instrumentality to the extent it holds funds exclusively for a charitable purpose.

Sec. 9. As used in this chapter, "charitable purpose" means the relief of poverty, the advancement of education or religion, the promotion of health, a municipal or other governmental purpose, or a purpose that is beneficial to the community.

Sec. 10. As used in this chapter, "court" has the meaning set forth in IC 30-4-1-2(6).

Sec. 11. As used in this chapter, "current beneficiary" means a beneficiary who, on the date that the beneficiary's qualification is determined, is a distributee or permissible distributee of trust income or principal. The term includes the holder of a presently exercisable general power of appointment but does not include a person that is a beneficiary only because the person holds any other power of appointment.

Sec. 12. As used in this chapter, "decanting power" means the power of an authorized fiduciary under this chapter to:

(1) distribute property of a first trust to one (1) or more second trusts; or

(2) to modify the terms of the first trust.

Sec. 13. As used in this chapter, "designated representative" has

the meaning set forth in IC 30-4-1-2(8).

Sec. 14. As used in this chapter, "expanded distributive discretion" means a discretionary power of distribution that is not limited to an ascertainable standard or a reasonably definite standard.

Sec. 15. As used in this chapter, "first trust" means a trust over which an authorized fiduciary may exercise the decanting power.

Sec. 16. As used in this chapter, "first-trust instrument" means the trust instrument for a first trust.

Sec. 17. As used in this chapter, "general power of appointment" means a power of appointment exercisable in favor of:

(1) a powerholder;
(2) a powerholder's estate;
(3) a creditor of the powerholder; or
(4) a creditor of the powerholder's estate.

Sec. 18. As used in this chapter, "jurisdiction" means a geographic area, including a state or country.

Sec. 19. As used in this chapter, "person" means:

(1) an individual;
(2) a corporation;
(3) a business trust;
(4) an estate;
(5) a trust;
(6) a partnership;
(7) a limited liability company;
(8) an association;
(9) a joint venture;
(10) a government;
(11) a governmental subdivision;
(12) an agency or instrumentality;
(13) a public corporation; or
(14) any other legal or commercial entity.

Sec. 20. As used in this chapter, "power of appointment" means a power that enables a powerholder acting in a nonfiduciary capacity to designate a recipient of an ownership interest in or another power of appointment over the appointive property. The term does not include a power of attorney.

Sec. 21. As used in this chapter, "powerholder" means a person in which a donor creates a power of appointment.

Sec. 22. (a) As used in this chapter, "presently exercisable power of appointment" means a power of appointment exercisable by the

powerholder at the relevant time.

(b) The term includes a power of appointment exercisable only after the occurrence of a specified event, the satisfaction of an ascertainable standard, or the passage of a specified time.

(c) The term does not include a power exercisable only at the powerholder's death.

Sec. 23. As used in this chapter, "qualified beneficiary" has the meaning set forth in IC 30-4-1-2(19).

Sec. 24. As used in this chapter, "reasonably definite standard" means a clearly measurable standard under which a holder of a power of distribution is legally accountable within the meaning of 26 U.S.C. 674(b)(5)(A) and applicable regulations.

Sec. 25. As used in this chapter, "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

Sec. 26. As used in this chapter, "second trust" means:

(1) a first trust after modification under this chapter; or

(2) a trust to which a distribution of property from a first trust is or may be made under this chapter.

Sec. 27. As used in this chapter, "second-trust instrument" means the trust instrument for a second trust.

Sec. 28. (a) As used in this chapter, except as provided in section 55 of this chapter, "settlor" has the meaning set forth in IC 30-4-1-2(21).

(b) If more than one (1) person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to the person's contribution except to the extent another person has power to revoke or withdraw that portion.

Sec. 29. As used in this chapter, "sign" means with present intent to authenticate or adopt a record to:

(1) execute or adopt a tangible symbol; or

(2) attach to or logically associate with the record of an electronic symbol, sound, or process.

Sec. 30. As used in this chapter, "state" means:

(1) a state of the United States;

(2) the District of Columbia;

(3) Puerto Rico;

(4) the United States Virgin Islands; or

(5) a territory or insular possession subject to the jurisdiction of the United States.

Sec. 31. As used in this chapter, "terms of the trust" has the

meaning set forth in IC 30-4-1-2(22).

Sec. 32. As used in this chapter, "trust instrument" has the meaning set forth in IC 30-4-1-2(25). The term includes a written document executed by the settlor to create a trust or by a person to create a second trust that contains some or all of the terms of the trust, including any amendments.

Sec. 33. (a) Except as provided in this chapter, an authorized fiduciary may exercise the decanting power without the consent of any person and without court approval.

(b) An authorized fiduciary shall act in accordance with its fiduciary duties, including the duty to act in accordance with the purposes of the first trust in exercising the decanting power.

(c) This chapter does not create or imply a duty to exercise the decanting power or to inform beneficiaries about the applicability of this chapter.

(d) Except as provided in a first-trust instrument, the terms of the first trust are deemed to include the decanting power.

Sec. 34. A trustee or person that reasonably relies on:

(1) the validity of a distribution of the property of a trust to another trust; or

(2) a modification of a trust under this chapter, law of this state other than this article, or the law of another jurisdiction;

is not liable to any person for any action or failure to act as a result of the reliance.

Sec. 35. (a) Except as provided in subsection (c), an authorized fiduciary shall give notice in a record of the intended exercise of the decanting power not later than sixty (60) days before the exercise of the decanting power to:

(1) each settlor of the first trust, if living or then in existence;

(2) each qualified beneficiary of the first trust, including the designated representative, if any, or other representative under IC 30-4-6-10.5 of a qualified beneficiary who:

(A) is a minor or an incapacitated person;

(B) is unborn;

(C) is unknown; or

(D) cannot be located after a reasonably diligent search;

(3) each holder of a presently exercisable power of appointment in the first trust;

(4) each person that currently has the right to remove or replace the authorized fiduciary;

(5) each fiduciary of the first trust;

(6) each fiduciary of the second trust; and

(7) the attorney general, if section 44(c) of this chapter applies.

(b) A notice period under subsection (a) begins on the day that the notice is given and ends fifty-nine (59) days later.

(c) An authorized fiduciary is not required to give notice under subsection (a) to a person that:

(1) is not known to the fiduciary;

(2) is known to the fiduciary but cannot be located by the fiduciary after a reasonably diligent search; or

(3) has no representative under IC 30-4-6-10.5.

(d) The decanting power may be exercised before expiration of the notice period under subsection (a) if all persons entitled to receive notice waive the notice period in a signed record.

Sec. 36. A notice under section 35 of this chapter must:

(1) specify the manner in which the authorized fiduciary intends to exercise the decanting power;

(2) specify the proposed effective date for the exercise of the decanting power;

(3) include a copy of the first-trust instrument; and

(4) include a copy of the second-trust instrument.

Sec. 37. (a) The receipt of notice, waiver of the notice period, or expiration of the notice period does not affect the right of a person to file a petition under section 39 of this chapter asserting that:

(1) an exercise of the decanting power:

(A) is ineffective because it did not comply with this chapter;

(B) was an abuse of discretion; or

(C) was a breach of a fiduciary duty; or

(2) section 52 of this chapter applies to the exercise of the decanting power.

(b) An exercise of the decanting power is not ineffective because of the failure to give notice to one (1) or more persons under section 35 of this chapter if the authorized fiduciary acted with reasonable care to comply with section 35 of this chapter.

Sec. 38. (a) Notice to a person with authority to represent and bind another person under a first-trust instrument or this article has the same effect as notice given directly to the person represented.

(b) Consent of or waiver by a person with authority to represent and bind another person under a first-trust instrument or this article is binding on the person represented unless the person represented objects to the representation before the consent or

waiver otherwise would become effective.

(c) A person with authority to represent and bind another person under a first-trust instrument or this article may file a petition under section 39 of this chapter on behalf of the person represented.

(d) A settlor may not represent or bind a beneficiary under this chapter.

Sec. 39. (a) Upon a petition by an authorized fiduciary, a beneficiary, or a person entitled to notice under section 35 of this chapter or with respect to a charitable interest by the attorney general or other person that has standing to enforce the charitable interest, the court may:

(1) provide instructions to the authorized fiduciary about whether a proposed exercise of the decanting power is permitted under this chapter and consistent with the fiduciary duties of the authorized fiduciary;

(2) appoint a special fiduciary and authorize the special fiduciary to determine whether the exercise of the decanting power is proper under this chapter and to exercise the decanting power;

(3) approve an exercise of the decanting power;

(4) determine that a proposed or attempted exercise of the decanting power is ineffective because:

(A) after applying section 52 of this chapter, the proposed or attempted exercise does not comply with this chapter; or

(B) the proposed or attempted exercise is an abuse of the fiduciary's discretion or a breach of a fiduciary duty;

(5) determine the extent section 52 of this chapter applies to a prior exercise of the decanting power;

(6) provide instructions to the trustee regarding the application of section 52 of this chapter to a prior exercise of the decanting power; or

(7) order relief to carry out the purposes of this chapter.

(b) Upon a petition by an authorized fiduciary, the court may approve:

(1) an increase in the fiduciary's compensation under section 46 of this chapter; or

(2) a modification under section 48 of this chapter of a provision granting a person the right to remove or replace the fiduciary.

Sec. 40. An exercise of the decanting power must be made in a

record signed by an authorized fiduciary. The signed record must:

(1) directly or indirectly reference the notice required by section 35 of this chapter;

(2) identify the first trust and the second trust;

(3) identify and state the property of the first trust being distributed to each second trust; and

(4) identify the property that remains in the first trust.

Sec. 41. (a) As used in this section, "noncontingent right" means a right that is not subject to the:

(1) exercise of discretion; or

(2) occurrence of a specified event that is not certain to occur.

The term does not include a right held by a beneficiary if any person has discretion to distribute property subject to the right of any person other than the beneficiary or the beneficiary's estate.

(b) As used in this section, "presumptive remainder beneficiary" means a qualified beneficiary other than a current beneficiary.

(c) As used in this section, "successor beneficiary" means a beneficiary that is not a qualified beneficiary on the date the beneficiary's qualification is determined. The term does not include a person that is a beneficiary only because the person holds a nongeneral power of appointment.

(d) As used in this section, "vested interest" means a:

(1) right to a mandatory distribution that is a noncontingent right as of the date of the exercise of the decanting power;

(2) current and noncontingent right, annually or more frequently, to a mandatory distribution of income, a specified dollar amount, or a percentage of value of some or all of the trust property;

(3) current and noncontingent right, annually or more frequently, to withdraw income, a specified dollar amount, or a percentage of value of some or all of the trust property;

(4) presently exercisable general power of appointment; or

(5) right to receive an ascertainable part of the trust property on the trust's termination that is not subject to the exercise of discretion or to the occurrence of a specified event that is not certain to occur.

(e) Subject to subsection (f) and section 44 of this chapter, an authorized fiduciary that has expanded distributive discretion over the principal of a first trust for the benefit of one (1) or more current beneficiaries may exercise the decanting power over the principal of the first trust.

(f) Subject to section 43 of this chapter, an exercise of the decanting power under this section must not:

(1) except as provided in subsection (g), include as a current beneficiary a person that is not a current beneficiary of the first trust;

(2) except as provided in subsection (g), include as a presumptive remainder beneficiary or successor beneficiary a person that is not a current beneficiary, presumptive remainder beneficiary, or successor beneficiary of the first trust; or

(3) reduce or eliminate a vested interest.

(g) Subject to subsection (f)(3) and section 44 of this chapter, in an exercise of the decanting power under this subsection, a second trust may be a trust created or administered under the law of any jurisdiction and may:

(1) retain a power of appointment granted in the first trust;

(2) omit a power of appointment granted in the first trust, other than a presently exercisable general power of appointment;

(3) create or modify a power of appointment if the powerholder is a current beneficiary of the first trust and the authorized fiduciary has expanded distributive discretion to distribute principal to the beneficiary; and

(4) create or modify a power of appointment if the powerholder is a presumptive remainder beneficiary or successor beneficiary of the first trust, but the exercise of the power may take effect only after the powerholder becomes, or would have become a current beneficiary.

(h) A power of appointment described in subsections (g)(1) through (g)(4) may be general or nongeneral. The class of permissible appointees in favor of which the power may be exercised may be broader than or different from the beneficiaries of the first trust.

(i) If an authorized fiduciary has expanded distributive discretion over part of the principal of a first trust, the fiduciary may exercise the decanting power under this section over the principal that the authorized fiduciary has expanded distributive discretion.

Sec. 42. (a) As used in this section, "limited distributive discretion" means a discretionary power of distribution that is limited to an ascertainable standard or a reasonably definite standard.

(b) An authorized fiduciary that has limited distributive discretion over the principal of the first trust for the benefit of one (1) or more current beneficiaries may exercise the decanting power over the principal of the first trust.

(c) Under this section and subject to section 44 of this chapter, a second trust may be created or administered under the law of any jurisdiction. A second trust must grant each beneficiary of the first trust beneficial interests that are substantially similar to the beneficial interests of the beneficiary in the first trust.

(d) A power to make a distribution under a second trust for the benefit of a beneficiary who is an individual is substantially similar to a power under the first trust to make a distribution directly to the beneficiary. A distribution is for the benefit of a beneficiary if:

(1) the distribution is applied for the benefit of the beneficiary;

(2) the beneficiary is under a legal disability or the trustee reasonably believes the beneficiary is incapacitated and the distribution is made as permitted under this article; or

(3) the distribution is made as permitted under the terms of the first-trust instrument and the second-trust instrument for the benefit of the beneficiary.

(e) If an authorized fiduciary has limited distributive discretion of the principal of a first trust, the fiduciary may only exercise the decanting power under this section over the principal that the authorized fiduciary has limited distributive discretion.

Sec. 43. (a) This section applies to any trust that has a beneficiary with a disability, without limitation, whenever a special-needs fiduciary for the trust determines that the beneficiary with a disability may qualify for governmental benefits based on a disability, whether the beneficiary currently receives those benefits or has been adjudicated to be an incapacitated person under IC 29-3.

(b) As used in this section, "governmental benefits" means financial aid or services from a state, federal, or other public agency.

(c) As used in this section, "special-needs fiduciary" means:

(1) a trustee or other fiduciary, other than a settlor, that has discretion to distribute part or all of the principal of a first trust to one or more current beneficiaries;

(2) if no trustee or fiduciary has discretion under subdivision (1), a trustee or other fiduciary, other than a settlor, that has discretion to distribute part or all of the income of the first

trust to one (1) or more current beneficiaries; or

(3) if no trustee or fiduciary has discretion under subdivisions (1) and (2), a trustee or other fiduciary, other than a settlor, that is required to distribute part or all of the income or principal of the first trust to one (1) or more current beneficiaries;

with respect to a trust that has a beneficiary with a disability.

(d) As used in this section, "special-needs trust" means a trust that the trustee reasonably believes would not be considered a resource for purposes of determining whether a beneficiary with a disability is eligible for governmental benefits.

(e) A special-needs fiduciary may exercise the decanting power under section 41 of this chapter over the principal of a first trust as if the fiduciary had authority to distribute principal to a beneficiary with a disability subject to expanded distributive discretion if:

(1) a second trust is a special-needs trust or other trust that benefits the beneficiary with a disability; and

(2) the special-needs fiduciary determines that an exercise of the decanting power will further the purposes of the first trust.

(f) In an exercise of the decanting power under this section, the following rules apply:

(1) Except as provided in section 41(f)(2) of this chapter, the interest in the second trust of a beneficiary with a disability may:

(A) be a pooled trust as defined by Medicaid law for the benefit of the beneficiary with a disability under 42 U.S.C. 1396p(d)(4)(C), as amended and in effect on July 1, 2022; or

(B) contain payback provisions complying with reimbursement requirements of Medicaid law under 42 U.S.C. 1396p(d)(4)(A), as amended and in effect on July 1, 2022.

(2) Section 41(f)(3) of this chapter does not apply to the interests of the beneficiary with a disability.

(3) Except as affected by a change to the interests of the beneficiary with a disability, the second trust, or if there are two (2) or more second trusts, the second trusts in the aggregate, must grant each other beneficiary of the first trust beneficial interests in the second trusts which are substantially similar to the beneficiary's beneficial interests in

the first trust.

Sec. 44. (a) As used in this section, "determinable charitable interest" means a charitable interest that is a right to a mandatory distribution currently, periodically, on the occurrence of a specified event, or after the passage of a specified time and that is unconditional or will be held solely for charitable purposes.

(b) As used in this section, "unconditional" means not subject to the occurrence of a specified event that is not certain to occur, other than a requirement in a trust instrument that a charitable organization be in existence or qualify under a particular provision of the United States Internal Revenue Code of 1986, as amended and in effect on July 1, 2022, on the date of the distribution, if the charitable organization meets the requirement on the date of determination.

(c) If a first trust contains a determinable charitable interest, the attorney general has the rights of a qualified beneficiary and may represent and bind the charitable interest.

(d) If a first trust contains a charitable interest, the second trust must not:

(1) diminish the charitable interest;

(2) diminish the interest of an identified charitable organization that holds the charitable interest;

(3) alter any charitable purpose stated in the first-trust instrument; or

(4) alter any condition or restriction related to the charitable interest.

(e) If there are two (2) or more second trusts, the second trusts shall be treated as one (1) trust for purposes of determining whether the exercise of the decanting power diminishes the charitable interest or diminishes the interest of an identified charitable organization for purposes of subsection (d).

(f) If a first trust contains a determinable charitable interest, the second trust that includes a charitable interest pursuant to subsection (c) must be administered under the law of this state unless:

(1) the attorney general, after receiving notice under section 35 of this chapter, fails to object in a signed record delivered to the authorized fiduciary within the notice period;

(2) the attorney general consents in a signed record to the second trust being administered under the law of another jurisdiction; or

(3) the court approves the exercise of the decanting power.

(g) This chapter does not limit the powers and duties of the attorney general under the laws of this state other than this chapter.

Sec. 45. (a) An authorized fiduciary may not exercise the decanting power to the extent the first-trust instrument expressly prohibits exercise of:

(1) the decanting power; or

(2) a power granted by state law to the fiduciary to distribute part or all of the principal of the trust to another trust or to modify the trust.

(b) Exercise of the decanting power is subject to a restriction in the first-trust instrument that expressly applies to exercise of:

(1) the decanting power; or

(2) a power granted by state law to a fiduciary to distribute the principal of the trust to another trust or to modify the trust.

(c) The decanting power of an authorized fiduciary is not precluded by:

(1) a general prohibition of the amendment or revocation of a first trust;

(2) a spendthrift clause; or

(3) a clause restraining the voluntary or involuntary transfer of a beneficiary's interest.

(d) Subject to subsections (a) and (b), an authorized fiduciary may exercise the decanting power under this chapter even if the first-trust instrument permits the authorized fiduciary or another person to modify the first-trust instrument or to distribute the principal of the first trust to another trust.

(e) If a first-trust instrument contains an express prohibition described in subsection (a) or an express restriction described in subsection (b), the provision must be included in the second-trust instrument.

Sec. 46. (a) If a first-trust instrument specifies an authorized fiduciary's compensation, the fiduciary may not exercise the decanting power to increase the fiduciary's compensation above the specified compensation unless:

(1) all qualified beneficiaries of the second trust consent to the increase in a signed record; or

(2) the increase is approved by the court.

(b) If a first-trust instrument does not specify an authorized fiduciary's compensation, the fiduciary may not exercise the decanting power to increase the fiduciary's compensation above

the compensation permitted by this article unless:

> **(1) all qualified beneficiaries of the second trust consent to the increase in a signed record; or**
>
> **(2) the increase is approved by the court.**

(c) A change in an authorized fiduciary's compensation that is incidental to other changes made by the exercise of the decanting power is not an increase in the fiduciary's compensation for purposes of subsections (a) and (b).

Sec. 47. (a) Except as otherwise provided in this section, a second-trust instrument must not relieve an authorized fiduciary from liability for breach of trust to a greater extent than the first-trust instrument.

(b) A second trust instrument may provide for indemnification of an authorized fiduciary of the first trust or another person acting in a fiduciary capacity under the first trust for any liability or claim that would have been payable from the first trust if the decanting power had not been exercised.

(c) A second-trust instrument must not reduce fiduciary liability in the aggregate.

(d) Subject to subsection (c), a second-trust instrument may divide and reallocate fiduciary powers among fiduciaries, including one (1) or more trustees, distribution advisors, investment advisors, trust protectors, or other persons, and relieve a fiduciary from liability for an act or failure to act of another fiduciary as permitted by the laws of this state other than this chapter.

Sec. 48. An authorized fiduciary must not exercise the decanting power to modify a provision in a first-trust instrument granting another person power to remove or replace the fiduciary unless:

> **(1) the person holding the power consents to the modification in a signed record and the modification applies only to the person;**
>
> **(2) the person holding the power and the qualified beneficiaries of the second trust consent to the modification in a signed record and the modification grants a substantially similar power to another person; or**
>
> **(3) the court approves the modification and the modification grants a substantially similar power to another person.**

Sec. 49. (a) As used in this section, "grantor trust" means a trust as to which a settlor of a first trust is considered the owner under 26 U.S.C. 671 through 677, as amended and in effect on July 1, 2022, or 26 U.S.C. 679, as amended and in effect on July 1, 2022.

(b) As used in this section, "Internal Revenue Code" means the

United States Internal Revenue Code of 1986, as amended and in effect on July 1, 2022.

(c) As used in this section "nongrantor trust" means a trust that is not a grantor trust.

(d) As used in this section, "qualified benefits property" means property subject to the minimum distribution requirements of 26 U.S.C. 401(a)(9), as amended and in effect on July 1, 2022, and any applicable regulations, or to any similar requirements that refer to 26 U.S.C. 401(a)(9) or the regulations.

(e) An exercise of the decanting power is subject to the following limitations:

(1) If a first trust contains property that qualified, or would have qualified but for provisions of this chapter other than this section, for a marital deduction for purposes of the gift or estate tax under the Internal Revenue Code or a state gift, estate, or inheritance tax, the second-trust instrument must not include or omit any term that, if included in or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying for the deduction, or would have reduced the amount of the deduction, under the same provisions of the Internal Revenue Code or state law under which the transfer qualified.

(2) If the first trust contains property that qualified, or would have qualified but for provisions of this chapter other than this section, for a charitable deduction for purposes of the income, gift, or estate tax under the Internal Revenue Code or a state income, gift, estate, or inheritance tax, the second-trust instrument must not include or omit any term that, if included in or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying for the deduction, or would have reduced the amount of the deduction, under the same provisions of the Internal Revenue Code or state law under which the transfer qualified.

(3) If the first trust contains property that qualified, or would have qualified but for provisions of this chapter other than this section, for the exclusion from the gift tax described in 26 U.S.C. 2503(b), as amended and in effect on July 1, 2022, the second-trust instrument must not include or omit a term that, if included in or omitted from the trust instrument for the trust to which the property was transferred, would have

prevented the transfer from qualifying under 26 U.S.C. 2503(b), as amended and in effect on July 1, 2022. If the first trust contains property that qualified, or would have qualified but for provisions of this chapter other than this section, for the exclusion from the gift tax described in 26 U.S.C. 2503(b), as amended and in effect on July 1, 2022, by application of 26 U.S.C. 2503(c), as amended and in effect on July 1, 2022, the second-trust instrument must not include or omit a term that, if included in or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying under 26 U.S.C. 2503(c), as amended and in effect on July 1, 2022.

(4) If the property of the first trust includes shares of stock in an S corporation, as defined in 26 U.S.C. 1361, as amended and in effect on July 1, 2022, and the first trust is, or but for provisions of this chapter other than this section would be, a permitted shareholder under any provision of 26 U.S.C. 1361, as amended and in effect on July 1, 2022, an authorized fiduciary may exercise the power with respect to part or all of the S corporation stock only if any second trust receiving the stock is a permitted shareholder under 26 U.S.C. 1361(c)(2), as amended and in effect on July 1, 2022. If the property of the first trust includes shares of stock in an S corporation and the first trust is or, but for provisions of this chapter other than this section, would be a qualified subchapter S trust within the meaning of 26 U.S.C. 1361(d), as amended and in effect on July 1, 2022, the second-trust instrument must not include or omit a term that prevents the second trust from qualifying as a qualified subchapter S trust.

(5) If the first trust contains property that qualified, or would have qualified but for provisions of this chapter other than this section, for a zero (0) inclusion ratio for purposes of the generation skipping transfer tax under 26 U.S.C. 2642(c), as amended and in effect on July 1, 2022, the second-trust instrument must not include or omit a term that, if included in or omitted from the first-trust instrument, would have prevented the transfer to the first trust from qualifying for a zero (0) inclusion ratio under 26 U.S.C. 2642(c), as amended and in effect on July 1, 2022.

(6) If the first trust is directly or indirectly the beneficiary of qualified benefits property, the second-trust instrument may not include or omit any term that, if included in or omitted

from the first-trust instrument, would have increased the minimum distributions required with respect to the qualified benefits property under 26 U.S.C. 401(a)(9), as amended and in effect on July 1, 2022, and any applicable regulations, or any similar requirements that refer to 26 U.S.C. 401(a)(9), as amended and in effect on July 1, 2022, or the regulations. If an attempted exercise of the decanting power violates this subdivision, the trustee is deemed to have held the qualified benefits property and any reinvested distributions of the property as a separate share from the date of the exercise of the power and section 52 of this chapter applies to the separate share.

(7) If the first trust qualifies as a grantor trust because of the application of 26 U.S.C. 672(f)(2)(A), as amended and in effect on July 1, 2022, the second trust may not include or omit a term that, if included in or omitted from the first-trust instrument, would have prevented the first trust from qualifying under 26 U.S.C. 672(f)(2)(A), as amended and in effect on July 1, 2022.

(8) As used in this subdivision, "tax benefit" means a federal or state tax deduction, exemption, exclusion, or other benefit not otherwise listed in this section, except for a benefit arising from being a grantor trust. Subject to subdivision (9), a second-trust instrument may not include or omit a term that, if included in or omitted from the first-trust instrument, would have prevented qualification for a tax benefit if:

(A) the first-trust instrument expressly indicates an intent to qualify for the benefit or the first-trust instrument is clearly designed to enable the first trust to qualify for the benefit; and

(B) the transfer of property held by the first trust or the first trust qualified or, but for provisions of this chapter other than this section, would have qualified for the tax benefit.

(9) Subject to subdivision (4):

(A) except as provided in subdivision (7), the second trust may be a nongrantor trust, even if the first trust is a grantor trust; and

(B) except as otherwise provided in subdivision (10), the second trust may be a grantor trust, even if the first trust is a nongrantor trust.

(10) An authorized fiduciary may not exercise the decanting

power if a settlor objects in a signed record delivered to the fiduciary within the notice period and:

(A) the first trust and a second trust are both grantor trusts, in whole or in part, the first trust grants the settlor or another person the power to cause the first trust to cease to be a grantor trust, and the second trust does not grant an equivalent power to the settlor or other person; or

(B) the first trust is a nongrantor trust and a second trust is a grantor trust, in whole or in part, with respect to the settlor, unless:

(i) the settlor has the power at all times to cause the second trust to cease to be a grantor trust; or

(ii) the first-trust instrument contains a provision granting the settlor or another person a power that would cause the first trust to cease to be a grantor trust and the second-trust instrument contains the same provision.

Sec. 50. (a) Subject to subsection (b), a second trust may have a duration that is the same as or different from the duration of the first trust.

(b) To the extent that property of a second trust is attributable to property of the first trust, the property of the second trust is subject to any rules governing maximum perpetuity, accumulation, or suspension of the power of alienation that apply to property of the first trust.

Sec. 51. An authorized fiduciary may exercise the decanting power whether under the first trust's discretionary distribution standard the fiduciary would have made or could have been compelled to make a discretionary distribution of principal at the time of the exercise.

Sec. 52. (a) If exercise of the decanting power would be effective under this chapter except that the second-trust instrument in part does not comply with this chapter, the exercise of the power is effective and the following rules apply with respect to the principal of the second trust attributable to the exercise of the power:

(1) A provision in the second-trust instrument that is not permitted under this chapter is void to the extent necessary to comply with this chapter.

(2) A provision required by this chapter to be in the second-trust instrument that is not contained in the instrument is deemed to be included in the instrument to the

extent necessary to comply with this chapter.

(b) If a trustee or other fiduciary of a second trust determines that subsection (a) applies to a prior exercise of the decanting power, the fiduciary shall take corrective action consistent with the fiduciary's duties.

Sec. 53. (a) As used in this section, "animal trust" means a trust or an interest in a trust created to provide for the care of one (1) or more animals.

(b) As used in this section, "protector" means a person appointed in an animal trust to enforce the trust on behalf of the animal or, if no such person is appointed in the trust, a person appointed by the court for that purpose.

(c) The decanting power may be exercised over an animal trust that has a protector to the extent the trust could be decanted under this chapter if each animal that benefits from the trust were an individual, if the protector consents in a signed record to the exercise of the power.

(d) A protector for an animal has the rights under this chapter of a qualified beneficiary.

(e) If a first trust is an animal trust, in an exercise of the decanting power, the second trust must provide that trust property may be applied only to its intended purpose for the period the first trust benefitted the animal.

Sec. 54. A reference in this article to a trust instrument or terms of the trust includes a second-trust instrument and the terms of the second trust.

Sec. 55. (a) For purposes of law of this state other than this chapter and subject to subsection (b), a settlor of a first trust is deemed to be the settlor of the second trust with respect to the portion of the principal of the first trust subject to the exercise of the decanting power.

(b) In determining settlor intent with respect to a second trust, a settlor of the first trust, a settlor of the second trust, and the authorized fiduciary may be considered.

Sec. 56. (a) Except as provided in subsection (c), if exercise of the decanting power was intended to distribute all of the principal of the first trust to one (1) or more second trusts, later discovered property belonging to the first trust and property paid to or acquired by the first trust after the exercise of the power is part of the trust estate of the second trust.

(b) Except as provided in subsection (c), if exercise of the decanting power was intended to distribute less than all of the

principal of the first trust to one (1) or more second trusts, later discovered property belonging to the first trust or property paid to or acquired by the first trust after exercise of the power remains part of the trust estate of the first trust.

(c) An authorized fiduciary may provide in an exercise of the decanting power or by the terms of a second trust for disposition of later discovered property belonging to the first trust or property paid to or acquired by the first trust after exercise of the power.

Sec. 57. A debt, liability, or other obligation enforceable against property of a first trust is enforceable to the same extent against the property when held by the second trust after exercise of the decanting power.

Sec. 58. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Sec. 59. This chapter modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 as amended and in effect on July 1, 2022, but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. 7001(c) as amended and in effect on July 1, 2022, or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. 7003(b) as amended and in effect on July 1, 2022.

Sec. 60. If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

SECTION 4. IC 34-30-2-132.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: **Sec. 132.7. IC 30-4-10-34 (Concerning a trustee who reasonably relies on a distribution or modification of a trust that transfers property to a second trust and does not act).**

Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: ____________ Time: ____________

Second Regular Session of the 122nd General Assembly (2022)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2021 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1247

AN ACT to amend the Indiana Code concerning health.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 16-49-5-2, AS ADDED BY P.L.119-2013, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 2. (a) The state child fatality review coordinator shall develop a data collection form that includes:

(1) identifying and nonidentifying information;

(2) information regarding the circumstances surrounding a death;

(3) factors contributing to a death; and

(4) findings and recommendations that include the following information:

(A) Whether similar future deaths could be prevented.

(B) A list of:

(i) agencies and entities that should be involved; and

(ii) any other resources that should be used;

to adequately prevent future child deaths in the area.

(b) The state child fatality review coordinator shall develop a confidentiality form for use by the statewide child fatality review committee and local child fatality review teams.

(c) The data collection form developed under this section must mirror the information contained in the most recent version of the National Fatality Review Case Reporting System CDR Report Form.

(d) The state child fatality review coordinator shall provide the

data collection form described in this section to each local child fatality review team.

SECTION 2. IC 31-25-2-24, AS AMENDED BY P.L.148-2021, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 24. (a) Before December 31 of each year, the department shall annually prepare a report concerning all child fatalities in Indiana that are the result of child abuse or neglect in the preceding calendar year. The report must include the following information:

(1) A summary of the information gathered concerning child fatalities resulting from abuse or neglect.
(2) Demographic information regarding victims, perpetrators, and households involved in child fatalities resulting from abuse or neglect.
(3) An analysis of the primary risk factors involved in child fatalities resulting from abuse or neglect.
(4) A summary of the most frequent causes of child fatalities resulting from abuse or neglect.
(5) A description of the manner in which the information was assembled.

The department shall post the report prepared under this section on the department's Internet web site.

(b) As part of the summary of information described in subsection (a)(1), the report must include: ~~whether any of the following apply:~~

~~(1) The child's death occurred while the child was placed in foster care.~~
~~(2) The child's death occurred after the child, who was once placed in foster care, was returned to a natural parent.~~
~~(3) The child was a ward of the department at the time of the event that led to the child's death.~~
(1) whether the child was alleged or adjudicated to be a child in need of services under IC 31-34-1 in a child in need of services proceeding that had not been closed at the time of the event that led to the child's death; and
(2) whether, at the time of the event that led to the child's death, the child:
(A) had been ordered to remain in the child's home;
(B) was on a trial home visit;
(C) was placed in foster care;
(D) was residing in a residential treatment; or
(E) was the subject of a program of informal adjustment.

(c) As part of the annual report required by subsection (a),

before December 31 of each year, the department shall report the following:

(1) The number of children who died in Indiana in the preceding calendar year for whom abuse or neglect was suspected to be a factor in the child's death.

(2) The:

(A) number of children described in subdivision (1) whose cause of death was determined to be related to abuse or neglect; and

(B) number of children described in subdivision (1) whose cause of death was determined to be unrelated to abuse or neglect.

(3) The number of children described in subdivision (2)(A) who were the subject of a department assessment based on an allegation of abuse or neglect.

(4) The number of children described in subdivision (3) who were the subject of a department assessment based on an allegation of abuse or neglect that was determined to be substantiated.

(5) The number of children described in subdivision (3) who were the subject of a department assessment based on an allegation of abuse or neglect that was determined to be unsubstantiated.

(6) For each child described in subdivision (3), the following information:

(A) The cause and manner of the child's death.

(B) The:

(i) number of department assessments of the child that were based on an allegation of abuse or neglect that was determined to be substantiated; and

(ii) number of department assessments of the child that were based on an allegation of abuse or neglect that was determined to be unsubstantiated.

(C) The child's relationship to the perpetrator or perpetrators of the abuse or neglect to which the child's death was determined to be related.

(D) For each perpetrator described in clause (C):

(i) whether, prior to the allegation of abuse or neglect to which the death of the child described in subdivision (3) was related, a substantiated allegation of abuse or neglect resulted in the perpetrator being determined to have abused or neglected the child or another child; and

(ii) the number of substantiated reports of abuse or neglect described in item (i).

~~(c)~~ **(d)** Not later than January 31 of each year, the department shall provide to the executive director of the legislative services agency, for distribution to the interim study committee on child services, a copy of the most recent annual report prepared by the department under this section. The report provided to the executive director of the legislative services agency under this subsection must be in an electronic format under IC 5-14-6.

Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: ____________________ Time: ____________________

Second Regular Session of the 122nd General Assembly (2022)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2021 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1359

AN ACT to amend the Indiana Code concerning family law and juvenile law and to make an appropriation.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 2-5-36-9, AS AMENDED BY P.L.103-2019, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9. The commission shall do the following:

(1) Study and evaluate the following:

(A) Access to services for vulnerable youth.

(B) Availability of services for vulnerable youth.

(C) Duplication of services for vulnerable youth.

(D) Funding of services available for vulnerable youth.

(E) Barriers to service for vulnerable youth.

(F) Communication and cooperation by agencies concerning vulnerable youth.

(G) Implementation of programs or laws concerning vulnerable youth.

(H) The consolidation of existing entities that serve vulnerable youth.

(I) Data from state agencies relevant to evaluating progress, targeting efforts, and demonstrating outcomes.

(J) Crimes of sexual violence against children.

(K) The impact of social networking web sites, cellular telephones and wireless communications devices, digital media, and new technology on crimes against children.

(2) Review and make recommendations concerning pending

legislation.
(3) Promote information sharing concerning vulnerable youth across the state.
(4) Promote best practices, policies, and programs.
(5) Cooperate with:
(A) other child focused commissions;
(B) the judicial branch of government;
(C) the executive branch of government;
(D) stakeholders; and
(E) members of the community.
(6) Create a statewide juvenile justice oversight body to carry out the following duties described in section 9.3 of this chapter:
(A) Develop a plan to collect and report statewide juvenile justice data.
(B) Establish procedures and policies related to the use of:
(i) a validated risk screening tool and a validated risk and needs assessment tool;
(ii) a detention tool to inform the use of secure detention;
(iii) a plan to determine how information from the tools described in this clause is compiled and shared and with whom the information will be shared; and
(iv) a plan to provide training to judicial officers on the implementation of the tools described in this clause.
(C) Develop criteria for the use of diagnostic assessments as described in IC 31-37-19-11.7.
(D) Develop a statewide plan to address the provision of broader behavioral health services to children in the juvenile justice system.
(E) Develop a plan for the provision of transitional services for a child who is a ward of the department of correction as described in IC 31-37-19-11.5.
(F) Develop a plan for grant programs described in section 9.3 of this chapter.
The initial appointments and designations to the statewide juvenile justice oversight body described in this subdivision shall be made not later than May 31, 2022. The chief justice of the supreme court shall designate the chair of the statewide juvenile justice oversight body and shall make the initial appointments and designations to the statewide juvenile justice oversight body, which may incorporate members of an existing committee or subcommittee formed under the commission. The initial meeting of the oversight body shall be held not later than July 1, 2022.
~~(6)~~ **(7)** Submit a report not later than September 1 of each year

regarding the commission's work during the previous year. The report shall be submitted to the legislative council, the governor, and the chief justice of Indiana. The report to the legislative council must be in an electronic format under IC 5-14-6.

SECTION 2. IC 2-5-36-9.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: **Sec. 9.3. (a) In addition to the duties prescribed to the commission under section 9 of this chapter, the commission shall form and establish a statewide juvenile justice oversight body that will oversee implementation of the assigned duties described in this section.**

(b) Not later than July 1, 2023, the statewide juvenile justice oversight body shall develop a plan to collect and report statewide juvenile justice data. The plan shall be submitted to the commission and the legislative council in an electronic format under IC 5-14-6. The plan shall include the following:

(1) Provide goals for the collection of juvenile justice data.

(2) Create shared definitions concerning juvenile justice data.

(3) Set standard protocols and procedures for data collection and quality assurance, including a plan to track data across the juvenile justice continuum.

(4) Establish a minimum set of performance and data measures that counties shall collect and report annually, including equity measures.

(5) Establish how data should be reported and to whom.

(6) Establish a research agenda to evaluate the effectiveness of interventions.

(7) Determine the costs of collecting and reporting data described in this subsection.

(c) Not later than July 1, 2023, the statewide juvenile justice oversight body shall do the following:

(1) Review and establish statewide procedures, policies, and an implementation plan related to the use of:

(A) a validated risk screening tool to inform statewide diversion decisions;

(B) a validated risk and needs assessment tool to inform statewide dispositional decisions, especially the use of out-of-home placement; and

(C) a detention tool to inform the initial and ongoing use of secure detention, while considering factors related to public safety and failure to appear for court.

(2) Develop criteria for the use of diagnostic assessments as described in IC 31-37-19-11.7.

(3) Develop a statewide plan to address the provision of broader behavioral health services to a child in the juvenile

justice system.

(4) Develop policies, protocols, and a statewide implementation plan to guide the provision of transitional services for a child who is the ward of the department of correction as described in IC 31-37-19-11.5.

(5) Establish policies and protocols for research based pretrial diversion and informal adjustment programs and practices.

(6) Any other activities as identified by the oversight body.

(d) Not later than January 1, 2023, the statewide juvenile justice oversight body shall develop and submit a plan for grant programs described in IC 31-40-5 to the commission and the legislative council in an electronic format under IC 5-14-6. The oversight body shall determine:

(1) the amount of money dedicated to each grant;

(2) the funding formula, accounting for the needs of both more rural and more populated communities;

(3) the required set of performance measures that counties receiving the grants must collect and report; and

(4) the process to streamline and manage the entire grant life cycle for all programs described in IC 31-40-5.

The planning process shall define the parameters of using the funds, with allowance for a proportion of the funding to be used for staffing, training, and administrative expenses to support the needs of rural communities with limited service capacity.

SECTION 3. IC 5-2-6-3, AS AMENDED BY P.L.217-2021, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 3. The institute is established to do the following:

(1) Evaluate state and local programs associated with:

(A) the prevention, detection, and solution of criminal offenses;

(B) law enforcement; and

(C) the administration of criminal and juvenile justice.

(2) Participate in statewide collaborative efforts to improve all aspects of law enforcement, juvenile justice, and criminal justice in this state.

(3) Stimulate criminal and juvenile justice research.

(4) Develop new methods for the prevention and reduction of crime.

(5) Prepare applications for funds under the Omnibus Act and the Juvenile Justice Act.

(6) Administer victim and witness assistance funds.

(7) Administer the traffic safety functions assigned to the institute under IC 9-27-2.

(8) Compile and analyze information and disseminate the information to persons who make criminal justice decisions in this

state.
(9) Serve as the criminal justice statistical analysis center for this state.
(10) Identify grants and other funds that can be used by the department of correction to carry out its responsibilities concerning sex or violent offender registration under IC 11-8-8.
(11) Administer the application and approval process for designating an area of a consolidated or second class city as a public safety improvement area under IC 36-8-19.5.
(12) Administer funds for the support of any sexual offense services.
(13) Administer funds for the support of domestic violence programs.
(14) Administer funds to support assistance to victims of human sexual trafficking offenses as provided in IC 35-42-3.5-4.
(15) Administer the domestic violence prevention and treatment fund under IC 5-2-6.7.
(16) Administer the family violence and victim assistance fund under IC 5-2-6.8.
(17) Monitor and evaluate criminal code reform under IC 5-2-6-24.
~~(18) Administer the enhanced enforcement drug mitigation area fund and pilot program established under IC 5-2-11.5.~~
~~(19)~~ **(18)** Administer the ignition interlock inspection account established under IC 9-30-8-7.
~~(20)~~ **(19)** Identify any federal, state, or local grants that can be used to assist in the funding and operation of regional holding facilities under IC 11-12-6.5.
~~(21)~~ **(20)** Coordinate with state and local criminal justice agencies for the collection and transfer of data from sheriffs concerning jail:
(A) populations; and
(B) statistics;
for the purpose of providing jail data to the management performance hub established by IC 4-3-26-8.
~~(22)~~ **(21)** Establish and administer the Indiana crime guns task force fund under IC 36-8-25.5-8.
(22) Establish and administer:
(A) the juvenile diversion and community alternatives grant program fund under IC 31-40-5; and
(B) the juvenile behavioral health competitive grant pilot program fund under IC 31-40-6.

SECTION 4. IC 11-13-1-9, AS AMENDED BY P.L.24-2014, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

JULY 1, 2022]: Sec. 9. (a) The judicial conference of Indiana shall:
(1) keep informed of the work of all probation departments;
(2) compile and publish statistical and other information that may be of value to the probation service;
(3) inform courts and probation departments of legislation concerning probation and of other developments in probation;
(4) submit to the general assembly before January 15 of each year a report in an electronic format under IC 5-14-6 compiling the statistics provided to the judicial conference by probation departments under section 4(b) of this chapter; and
(5) require probation departments to submit a community supervision collaboration plan as described in IC 11-12-2-4.

(b) In consultation with the oversight body described in IC 2-5-36-9(6), the conference shall develop statewide juvenile probation standards for juvenile probation supervision and services that are aligned with research based practices and based on a child's risk of reoffending as measured by a validated risk and needs assessment tool. The board shall approve the standards, as described in section 8 of this chapter, not later than July 1, 2023. The standards must include the following:
(1) Guidelines for establishing consistent use of a validated risk and needs assessment tool and a validated risk screening tool.
(2) Guidelines for establishing conditions of probation supervision for informal adjustment and formal probation that are tailored to a child's individual risk and needs, including standards for case contacts.
(3) Common case planning elements based on risk principles and guidelines for engaging youth, families, and providers in case planning.
(4) Common criteria for recommending the use of out-of-home placement and commitment to the department of correction.
(5) A system of graduated responses and incentives to reward and motivate positive behavior and address violations of supervision.

The conference shall also ensure that adequate training is provided to all juvenile probation officers on the use of a risk and needs assessment tool, the use of a risk screening tool, and the updated juvenile probation standards.

~~(b)~~ **(c)** The conference may:
(1) visit and inspect any probation department and confer with probation officers and judges administering probation; and
(2) require probation departments to submit periodic reports of their work on forms furnished by the conference.

SECTION 5. IC 31-9-2-39.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: **Sec. 39.7. "Detention tool" means a validated instrument that assesses a child's risk for rearrest in order to inform a decision on the use of secure detention.**

SECTION 6. IC 31-9-2-39.8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: **Sec. 39.8. "Diagnostic assessment" means a clinical evaluation provided by a certified professional in order to gather information to determine appropriate behavioral health treatment for a child.**

SECTION 7. IC 31-9-2-71.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: **Sec. 71.5. "Juvenile diversion" has the meaning set forth in IC 31-37-8.5-1.**

SECTION 8. IC 31-9-2-112.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: **Sec. 112.3. "Restorative justice services" has the meaning set forth in IC 31-37-8.5-1.**

SECTION 9. IC 31-9-2-112.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: **Sec. 112.5. "Risk and needs assessment tool" means a validated instrument approved by the judicial conference of Indiana for use at appropriate stages in the juvenile justice system to identify specific risk factors and needs shown to be statistically related to a child's risk of reoffending, and that when properly addressed may reduce a child's risk of reoffending.**

SECTION 10. IC 31-9-2-112.8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: **Sec. 112.8. "Risk screening tool" means a validated screening instrument approved by the judicial conference of Indiana that:**

(1) measures a child's risk to reoffend; and

(2) is used to inform a child's eligibility to participate in juvenile diversion and informal adjustment.

SECTION 11. IC 31-37-5-5, AS AMENDED BY P.L.28-2016, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 5. (a) If the child was not taken into custody under an order of the court, an intake officer shall investigate the reasons for the child's detention **and use a validated detention tool prior to a decision being made. The results of the detention tool shall be used by the intake officer to inform decisions around the use of secure detention and release conditions.** The intake officer may release the

child to the child's parent, guardian, or custodian upon the person's written promise to bring the child before the juvenile court at a time specified and may impose additional conditions upon the child, including:

(1) home detention;
(2) electronic monitoring;
(3) a curfew restriction;
(4) a directive to avoid contact with specified individuals until the child's return to the juvenile court at a specified time;
(5) a directive to comply with Indiana law; or
(6) any other reasonable conditions on the child's actions or behavior.

(b) **After considering the detention tool results,** if the intake officer imposes additional conditions upon the child under subsection (a), the court shall hold a detention hearing under IC 31-37-6 within forty-eight (48) hours of the imposition of the additional conditions, excluding Saturdays, Sundays, and legal holidays.

(c) The intake officer may place the child in detention if the intake officer reasonably believes that the child is a delinquent child and ~~that:~~ **only:**

(1) after a detention tool has been administered; and
(2) if there are grounds to support the use of secure detention if the child does not score as high risk on the detention tool.

(d) The intake officer shall use the results of the detention tool to inform the use of secure detention. If, after considering the results of the detention tool and other information determined by local policy, the intake officer believes that the child needs to be detained under subsection (c)(2), the intake officer shall document the reason for the use of detention, including:

(1) the child is unlikely to appear before the juvenile court for subsequent proceedings;
(2) the child has committed an act that would be murder or a Level 1 felony, Level 2 felony, Level 3 felony, or Level 4 felony if committed by an adult;
(3) detention is essential to protect the child or the community;
(4) the parent, guardian, or custodian:
  (A) cannot be located; or
  (B) is unable or unwilling to take custody of the child; or
(5) the child has a reasonable basis for requesting that the child not be released.

~~(d)~~ **(e)** If a child is detained for a reason specified in subsection ~~(c)(4)~~ **(d)(4)** or ~~(c)(5),~~ **(d)(5),** the child shall be detained under IC 31-37-7-1.

(f) Results of the detention tool shall be made available to the

court and any legal party to the case prior to the detention hearing.

(g) Evidence of a child's statements and evidence derived from those statements made for use in preparing an authorized evidence based detention tool, for purposes of making a recommendation to the court regarding continued detention of a child, are not admissible against the child in any other court proceeding.

SECTION 12. IC 31-37-6-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 1. **(a)** This chapter applies only to a child alleged to be a delinquent child.

(b) This chapter does not apply to a child less than twelve (12) years of age unless:

(1) the child poses an imminent risk of harm to the community; or

(2) the court makes a written finding that detention is essential to protect the community and no reasonable alternatives exist to reduce the risk.

SECTION 13. IC 31-37-6-6, AS AMENDED BY P.L.146-2008, SECTION 624, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 6. **(a) The juvenile court shall use the results of the detention tool to inform decisions regarding the detention or temporary detention of a child taken into custody under IC 31-37-5.**

~~(a)~~ **(b)** The juvenile court shall release the child on the child's own recognizance or to the child's parent, guardian, or custodian upon the person's written promise to bring the child before the court at a time specified. However, the court may order the child detained if the court finds probable cause to believe the child is a delinquent child and that:

(1) the child is unlikely to appear for subsequent proceedings;

(2) detention is essential to protect the child or the community;

(3) the parent, guardian, or custodian:

(A) cannot be located; or

(B) is unable or unwilling to take custody of the child;

(4) return of the child to the child's home is or would be:

(A) contrary to the best interests and welfare of the child; and

(B) harmful to the safety or health of the child; or

(5) the child has a reasonable basis for requesting that the child not be released.

However, the findings under this subsection are not required if the child is ordered to be detained in the home of the child's parent, guardian, or custodian or is released subject to any condition listed in subsection ~~(d).~~ **(e).**

~~(b)~~ **(c)** If a child is detained for a reason specified in subsection ~~(a)(3),~~ **(b)(3),** ~~(a)(4),~~ **(b)(4),** or ~~(a)(5),~~ **(b)(5),** the child shall be detained under IC 31-37-7-1.

~~(c)~~ **(d)** If a child is detained for a reason specified in subsection ~~(a)(4),~~ **(b)(4),** the court shall make written findings and conclusions that include the following:

(1) The factual basis for the finding specified in subsection ~~(a)(4).~~ **(b)(4).**

(2) A description of the family services available and efforts made to provide family services before removal of the child.

(3) The reasons why efforts made to provide family services did not prevent removal of the child.

(4) Whether efforts made to prevent removal of the child were reasonable.

~~(d)~~ **(e)** Whenever the court releases a child under this section, the court may impose conditions upon the child, including:

(1) home detention;

(2) electronic monitoring;

(3) a curfew restriction;

(4) a protective order;

(5) a no contact order;

(6) an order to comply with Indiana law; or

(7) an order placing any other reasonable conditions on the child's actions or behavior.

~~(e)~~ **(f)** If the juvenile court releases a child to the child's parent, guardian, or custodian under this section, the court may impose conditions on the child's parent, guardian, or custodian to ensure:

(1) the safety of the child's physical or mental health;

(2) the public's physical safety; or

(3) that any combination of subdivisions (1) and (2) is satisfied.

~~(f)~~ **(g)** The juvenile court shall include in any order approving or requiring detention of a child or approving temporary detention of a child taken into custody under IC 31-37-5 all findings and conclusions required under:

(1) the applicable provisions of Title IV-E of the federal Social Security Act (42 U.S.C. 670 et seq.); or

(2) any applicable federal regulation, including 45 CFR 1356.21;

as a condition of eligibility of a delinquent child for assistance under Title IV-E or any other federal law.

~~(g)~~ **(h)** Inclusion in a juvenile court order of language approved and recommended by the judicial conference of Indiana, in relation to:

(1) removal from the child's home; or

(2) detention;

of a child who is alleged to be, or adjudicated as, a delinquent child constitutes compliance with subsection ~~(f).~~ **(g).**

(i) The order described in subsection (g) shall also include:

(1) the rationale and reasoning for approving or requiring

detention of a child if the child did not score as high risk on the detention tool; and

(2) the child's detention screening results.

(j) The juvenile court shall send information related to:

(1) local policies and procedures regarding the use of secure detention; and

(2) the detention tool results and justification of overrides of the tool;

to the office of judicial administration on an annual basis.

(k) The office of judicial administration shall develop an annual report that includes the information described in subsection (j). The report shall be provided to the governor, the chief justice, and the legislative council before December 1 of each year. The report provided to the legislative council must be in an electronic format under IC 5-14-6.

SECTION 14. IC 31-37-8-1, AS AMENDED BY P.L.66-2015, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 1. (a) A person may give an intake officer or a prosecuting attorney written information indicating that a child is a delinquent child.

(b) If the information is given to the intake officer, the intake officer shall:

(1) immediately forward the information to the prosecuting attorney; ~~and~~

(2) complete a dual status screening tool on the child, as described in IC 31-41-1-3; **and**

(3) complete a risk screening tool on the child.

(c) If the prosecuting attorney has reason to believe the child has committed a delinquent act, the prosecuting attorney shall instruct the intake officer to make a preliminary inquiry, **which includes the use of a risk screening tool,** to determine whether the interests of the public or of the child require further action.

SECTION 15. IC 31-37-8-2, AS AMENDED BY P.L.66-2015, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 2. A preliminary inquiry is an informal investigation into the facts and circumstances reported to the court. Whenever practicable, the preliminary inquiry should include the following information:

(1) The child's background.

(2) The child's current status.

(3) The child's school performance.

(4) If the child has been detained:

(A) efforts made to prevent removal of the child from the child's home, including the identification of any emergency

situation that prevented reasonable efforts to avoid removal;
(B) whether it is in the best interests of the child to be removed from the home environment; and
(C) whether remaining in the home would be contrary to the health and welfare of the child.
(5) The results of a dual status screening tool to determine whether the child is a dual status child, as described in IC 31-41-1-2.
(6) The results of a risk screening tool conducted on the child to inform diversion decisions.

SECTION 16. IC 31-37-8-4, AS AMENDED BY P.L.66-2015, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 4. If a child interview occurs, the intake officer shall advise the child and the child's parent, guardian, or custodian of the following:
(1) The nature of the allegations against the child.
(2) That the intake officer is conducting a preliminary inquiry to assist the prosecuting attorney in determining whether a petition should be filed alleging that the child is a delinquent child.
(3) That the intake officer will recommend whether to:
(A) file a petition;
(B) file a petition and recommend that the child be referred for an assessment by a dual status assessment team as described in IC 31-41;
(C) refer the child to juvenile diversion as described in IC 31-37-8.5;
(D) refer the child to juvenile diversion as described in IC 31-37-8.5 and recommend that the child be referred for an assessment by the dual status assessment team as described in IC 31-41-1-5;
~~(C)~~ **(E)** informally adjust the case;
~~(D)~~ **(F)** informally adjust the case and recommend that the child be referred for an assessment by the dual status assessment team as described in IC 31-41-1-5;
~~(E)~~ **(G)** refer the child to another agency; or
~~(F)~~ **(H)** dismiss the case.
(4) That the child has a right to remain silent.
(5) That anything the child says may be used against the child in subsequent judicial proceedings.
(6) That the child has a right to consult with an attorney before the child talks with the intake officer.
(7) That the child has a right to stop at any time and consult with an attorney.
(8) That the child has a right to stop talking with the intake officer

at any time.

(9) That if the child cannot afford an attorney, the court will appoint an attorney for the child.

SECTION 17. IC 31-37-8-5, AS AMENDED BY P.L.66-2015, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 5. (a) The intake officer shall do the following:

(1) Send the prosecuting attorney a copy of the preliminary inquiry.

(2) Recommend whether to:

(A) file a petition;

(B) file a petition and recommend that the child be referred for an assessment by a dual status assessment team as described in IC 31-41-1-5;

(C) refer the child to juvenile diversion;

(D) refer the child to juvenile diversion as described in IC 31-37-8.5 and recommend that the child be referred for an assessment by the dual status assessment team as described in IC 31-41-1-5;

~~(C)~~ **(E)** informally adjust the case;

~~(D)~~ **(F)** informally adjust the case and recommend that the child be referred for an assessment by a dual status assessment team as described in IC 31-41-1-5;

~~(E)~~ **(G)** refer the child to another agency; or

~~(F)~~ **(H)** dismiss the case.

(b) The prosecuting attorney and the court may agree to alter the procedure described in subsection (a).

SECTION 18. IC 31-37-8.5 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]:

Chapter 8.5. Juvenile Diversion

Sec. 1. (a) As used in this chapter, under the policies on juvenile diversion established by the statewide juvenile justice oversight body described in IC 2-5-36-9.3, "juvenile diversion" means:

(1) a decision made by the prosecutor that results in legal action not being taken against a child, and instead provides or refers a child to juvenile probation or a community based organization for supervision and services, as necessary; and

(2) an effort to prevent further involvement of the child in the formal legal system.

(b) As used in this chapter, "restorative justice services" means services focused on repairing the harm caused to victims and the community as a result of a child's behavior.

(c) As part of the preliminary inquiry described in IC 31-37-8, the intake officer shall use a validated risk screening tool to inform

its recommendation to the prosecutor.

(d) Results from the risk screening tool and the intake officer's recommendation described in subsection (c) shall be made available to the prosecutor to inform a recommendation for participation in juvenile diversion.

(e) After the preliminary inquiry, which includes use of a risk screening tool, and prior to a petition being filed, the intake officer may recommend to the prosecuting attorney that the child participate in juvenile diversion if the intake officer has probable cause to believe that the child is a delinquent child.

(f) Information obtained:

(1) from the risk screening tool described in subsection (c); and

(2) in the course of any screening, including any admission, confession, or incriminating evidence;

from a child in the course of any screening or assessment in conjunction with the proceedings under this chapter is not admissible into evidence in any factfinding hearing in which the child is accused. The child is not subject to subpoena, any other court proceeding, or any other purpose described in this section.

(g) If the prosecuting attorney approves a child's participation in juvenile diversion described in subsection (a), juvenile probation, as part of a child's juvenile diversion program, may:

(1) refer a child to community based programs or service providers, if necessary;

(2) provide case management and service coordination;

(3) provide assistance with barriers to completion; and

(4) monitor progress;

so the child can complete the terms of juvenile diversion offered to the child.

Sec. 2. The child and the child's parent, guardian, custodian, or attorney must consent to the child's participation in juvenile diversion.

Sec. 3. Juvenile diversion may not exceed six (6) months.

Sec. 4. Juvenile diversion may include restorative justice services.

Sec. 5. (a) If the child successfully completes the terms of diversion, a petition shall not be filed with the court and no further action shall be taken.

(b) If the child fails to complete the terms of diversion or commits a new offense, juvenile probation shall inform the prosecuting attorney at least fourteen (14) days prior to the end of the child's juvenile diversion.

(c) If the child fails to complete the terms of the juvenile diversion described in this chapter, the prosecuting attorney may

petition the juvenile court for authorization to file a delinquency petition.

(d) Unless a delinquency petition is filed as described in subsection (c), the prosecuting attorney shall close the child's file in regard to the diverted matter not later than six (6) months after the date the diversion is initiated.

Sec. 6. (a) A local probation department shall collect individual data on any child diverted through juvenile diversion described in this chapter, including:

(1) demographic data on age, race, ethnicity, and gender;
(2) risk screening information;
(3) offense;
(4) service participation; and
(5) outcome and completion data;

and report the information to the office of judicial administration on an annual basis.

(b) The office of judicial administration shall provide an annual report that includes the information described in subsection (a). The report shall be provided to the governor, the chief justice, and the legislative council before December 1 of each year. The report provided to the legislative council must be in an electronic format under IC 5-14-6.

SECTION 19. IC 31-37-9-1, AS AMENDED BY P.L.46-2016, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 1. ~~(a)~~ After the preliminary inquiry and upon approval by the juvenile court, the intake officer may implement a program of informal adjustment if the officer has probable cause to believe that the child is a delinquent child. **Results of a risk screening tool shall be used to inform recommendations for the use of informal adjustment.**

~~(b) If the program of informal adjustment includes services requiring payment by the department under IC 31-40-1, the intake officer shall submit a copy of the proposed program to the department before submitting it to the juvenile court for approval. Upon receipt of the proposed program, the department may submit its comments and recommendations, if any, to the intake officer and the juvenile court.~~

SECTION 20. IC 31-37-9-7, AS AMENDED BY P.L.146-2008, SECTION 632, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 7. A program of informal adjustment may not exceed six (6) months. ~~except by approval of the juvenile court. The juvenile court may extend a program of informal adjustment an additional three (3) months.~~

SECTION 21. IC 31-37-9-9 IS REPEALED [EFFECTIVE JULY 1, 2023]. ~~Sec. 9. The juvenile court may order each child who participates in a program of informal adjustment or the child's parents to pay an~~

~~informal adjustment program fee of:~~

~~(1) at least five dollars ($5); but~~

~~(2) not more than fifteen dollars ($15);~~

~~for each month that the child participates in the program instead of the court cost fees prescribed by IC 33-37-4-3.~~

SECTION 22. IC 31-37-9-10 IS REPEALED [EFFECTIVE JULY 1, 2023]. ~~Sec. 10. (a) The probation department for the juvenile court shall do the following:~~

~~(1) Collect the informal adjustment program fee set under section 9 of this chapter; and~~

~~(2) Transfer the collected informal adjustment program fees to the county auditor not later than thirty (30) days after the fees are collected.~~

~~(b) The county auditor shall deposit the fees in the county user fee fund established by IC 33-37-8-5.~~

SECTION 23. IC 31-37-17-1, AS AMENDED BY P.L.1-2010, SECTION 127, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 1. (a) Upon finding that a child is a delinquent child, the juvenile court shall order a probation officer to prepare a predispositional report that contains:

(1) a statement of the needs of the child for care, treatment, rehabilitation, or placement;

(2) a recommendation for the care, treatment, rehabilitation, or placement of the child;

(3) if the recommendation includes an out-of-home placement other than a secure detention facility, information that the department requires to determine whether the child is eligible for assistance under Title IV-E of the federal Social Security Act (42 U.S.C. 670 et seq.);

(4) a statement of the department's concurrence with or its alternative proposal to the probation officer's predispositional report, as provided in section 1.4 of this chapter; ~~and~~

(5) a statement of whether the child receives Medicaid; **and**

(6) the results of the validated risk and needs assessment tool the probation officer conducted on the child.

If the juvenile court waives the preparation of a predispositional report under this section, the results of the validated risk and needs assessment tool shall still be provided to the juvenile court and any legal party to the case.

(b) Any of the following may prepare an alternative report for consideration by the court:

(1) The child.

(2) The child's:

(A) parent;

(B) guardian;
(C) guardian ad litem;
(D) court appointed special advocate; or
(E) custodian.

(c) The results of the predispositional report compiled under subsection (a) shall, as soon as practicable, be shared with:
(1) the juvenile court;
(2) the prosecuting attorney;
(3) the defense attorney; and
(4) any other party to the case;
to ensure that the safety and best interest of the child and the community are addressed.

(d) The juvenile court shall make a written finding that includes the results of the risk and needs assessment if the court orders an out-of-home placement.

SECTION 24. IC 31-37-17-4, AS AMENDED BY P.L.161-2018, SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 4. (a) If consistent with the safety and best interest of the child and the community, the probation officer preparing the report shall recommend care, treatment, rehabilitation, or placement that:
(1) **is based on the results of a validated risk and needs assessment tool;**
(2) is:
(A) in the least restrictive (most family like) and most appropriate setting available; and
(B) close to the parents' home, consistent with the best interest and special needs of the child;
~~(2)~~ **(3)** least interferes with family autonomy;
~~(3)~~ **(4)** is least disruptive of family life;
~~(4)~~ **(5)** imposes the least restraint on the freedom of the child and the child's parent, guardian, or custodian; and
~~(5)~~ **(6)** provides a reasonable opportunity for participation by the child's parent, guardian, or custodian.

(b) If the report recommends a placement or services for which the department will be responsible for payment under IC 31-40-1, the report must include a risk assessment and needs assessment for the child. The probation officer shall submit to the department a copy of the report and the financial report prepared by the probation officer.

(c) If the report does not include the:
(1) risk assessment and needs assessment required in subsection (b); or
(2) information required to be provided under section 1(a)(3) of this chapter;

the department shall file a notice with the office of judicial administration.

SECTION 25. IC 31-37-17-6.1, AS AMENDED BY P.L.66-2015, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 6.1. (a) The predispositional report prepared by a probation officer must include the following information:

(1) **A validated risk and needs assessment as described in section 1 of this chapter.**

(2) A description of all dispositional options considered in preparing the report.

~~(2)~~ **(3)** An evaluation of each of the options considered in relation to the plan of care, treatment, rehabilitation, or placement recommended under the guidelines described in section 4 of this chapter.

~~(3)~~ **(4)** The name, occupation and position, and any relationship to the child of each person with whom the preparer of the report conferred as provided in section 1.1 of this chapter.

~~(4)~~ **(5)** The items required under section 1 of this chapter.

~~(5)~~ **(6)** The results of a dual status screening tool to determine whether the child is a dual status child as described in IC 31-41-1-2.

(b) If a probation officer is considering an out-of-home placement, including placement with a relative, the probation officer must conduct a criminal history check (as defined in IC 31-9-2-22.5) for each person who is currently residing in the location designated as the out-of-home placement. The results of the criminal history check must be included in the predispositional report.

(c) A probation officer is not required to conduct a criminal history check under this section if:

(1) the probation officer is considering only an out-of-home placement to an entity or a facility that:

(A) is not a residence (as defined in IC 3-5-2-42.5); or

(B) is licensed by the state; or

(2) placement under this section is undetermined at the time the predispositional report is prepared.

SECTION 26. IC 31-37-19-1, AS AMENDED BY P.L.85-2017, SECTION 105, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 1. (a) Subject to section 6.5 of this chapter, if a child is a delinquent child under IC 31-37-2, the juvenile court may enter one (1) or more of the following dispositional decrees:

(1) Order supervision of the child by the probation department.

(2) Order the child to receive outpatient treatment:

(A) at a social service agency or a psychological, a psychiatric, a medical, or an educational facility; or

(B) from an individual practitioner.
(3) Remove the child from the child's home and place the child in another home or a shelter care facility, child caring institution, group home, or secure private facility. Placement under this subdivision includes authorization to control and discipline the child.
(4) Award wardship to a:
(A) person, other than the department; or
(B) shelter care facility.
(5) Partially or completely emancipate the child under section 27 of this chapter.
(6) Order:
(A) the child; or
(B) the child's parent, guardian, or custodian;
to receive family services.
(7) Order a person who is a party to refrain from direct or indirect contact with the child.

(b) If the child is removed from the child's home and placed in a foster family home or another facility, the juvenile court shall:
(1) approve a permanency plan for the child;
(2) find whether or not reasonable efforts were made to prevent or eliminate the need for the removal;
(3) designate responsibility for the placement and care of the child with the probation department; and
(4) find whether it:
(A) serves the best interests of the child to be removed; and
(B) would be contrary to the health and welfare of the child for the child to remain in the home.

(c) If a dispositional decree under this section:
(1) orders or approves removal of a child from the child's home or awards wardship of the child to a:
(A) person other than the department; or
(B) shelter care facility; and
(2) is the first court order in the delinquent child proceeding that authorizes or approves removal of the child from the child's parent, guardian, or custodian;
the court shall include in the decree the appropriate findings and conclusions described in ~~IC 31-37-6-6(f)~~ **IC 31-37-6-6(g)** and ~~IC 31-37-6-6(g).~~ **IC 31-37-6-6(h).**

(d) If the juvenile court orders supervision of the child by the probation department under subsection (a)(1), the child or the child's parent, guardian, or custodian is responsible for any costs resulting from the participation in a rehabilitative service or educational class provided by the probation department. Any costs collected for services

provided by the probation department shall be deposited in the county supplemental juvenile probation services fund.

SECTION 27. IC 31-37-19-6, AS AMENDED BY P.L.146-2008, SECTION 651, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 6. (a) This section applies if a child is a delinquent child under IC 31-37-1.

(b) Except as provided in section 10 of this chapter and subject to section 6.5 of this chapter, the juvenile court may:

(1) enter any dispositional decree specified in section 5 of this chapter; and

(2) take any of the following actions:

(A) Award wardship to:

(i) the department of correction for housing in a correctional facility for children; or

(ii) a community based correctional facility for children.

Wardship under this subdivision does not include the right to consent to the child's adoption.

(B) If the child is less than seventeen (17) years of age, order confinement in a juvenile detention facility for not more than the lesser of:

(i) ninety (90) days; or

(ii) the maximum term of imprisonment that could have been imposed on the child if the child had been convicted as an adult offender for the act that the child committed under IC 31-37-1 (or IC 31-6-4-1(b)(1) before its repeal).

(C) If the child is at least seventeen (17) years of age, order confinement in a juvenile detention facility for not more than the lesser of:

(i) one hundred twenty (120) days; or

(ii) the maximum term of imprisonment that could have been imposed on the child if the child had been convicted as an adult offender for the act that the child committed under IC 31-37-1 (or IC 31-6-4-1(b)(1) before its repeal).

(D) Remove the child from the child's home and place the child in another home or shelter care facility. Placement under this subdivision includes authorization to control and discipline the child.

(E) Award wardship to a:

(i) person, other than the department; or

(ii) shelter care facility.

Wardship under this subdivision does not include the right to consent to the child's adoption.

(F) Place the child in a secure private facility for children licensed under the laws of a state. Placement under this

subdivision includes authorization to control and discipline the child.

(G) Order a person who is a respondent in a proceeding under IC 31-37-16 (before its repeal) or IC 34-26-5 to refrain from direct or indirect contact with the child.

(c) If a dispositional decree under this section:

(1) orders or approves removal of a child from the child's home, or awards wardship of the child to a:

(A) person, other than the department; or

(B) shelter care facility; and

(2) is the first court order in the delinquent child proceeding that authorizes or approves removal of the child from the child's parent, guardian, or custodian;

the juvenile court shall include in the decree the appropriate findings and conclusions described in ~~IC 31-37-6-6(f)~~ **IC 31-37-6-6(g)** and ~~IC 31-37-6-6(g).~~ **IC 31-37-6-6(h).**

SECTION 28. IC 31-37-19-11.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: **Sec. 11.5. (a) Under the policies established by the statewide juvenile justice oversight body described in IC 2-5-36-9.3, a child who is a ward of the department of correction may receive at least three (3) months of transitional services to support reintegration back into the community and to reduce recidivism.**

(b) The department of correction shall provide an annual report that includes data collected under this section that will help assess the impact of reintegration improvements, including tracking recidivism beyond reincarceration and into the adult system. The report shall be provided to the governor, the chief justice, and the legislative council before December 1 of each year. The report provided to the legislative council must be in an electronic format under IC 5-14-6.

(c) The expense of administering the transitional services may be paid, subject to available funding, from the division of youth services transitional services fund established by IC 11-10-2-11.

SECTION 29. IC 31-37-19-11.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: **Sec. 11.7. A juvenile court may recommend telehealth services (as defined in IC 25-1-9.5-6) as an alternative to a child receiving a diagnostic assessment under this section.**

SECTION 30. IC 31-40-1-3, AS AMENDED BY P.L.182-2009(ss), SECTION 388, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 3. (a) A parent or guardian of the

estate of

~~(1)~~ a child adjudicated a delinquent child or a child in need of services ~~or~~

~~(2) a participant in a program of informal adjustment approved by a juvenile court under IC 31-34-8 or IC 31-37-9;~~

is financially responsible as provided in this chapter (or IC 31-6-4-18(e) before its repeal) for any services provided by or through the department.

(b) Each person described in subsection (a) shall, before a hearing under subsection (c) concerning payment or reimbursement of costs, furnish the court and the department with an accurately completed and current child support obligation worksheet on the same form that is prescribed by the Indiana supreme court for child support orders.

(c) At:

(1) a detention hearing;

(2) a hearing that is held after the payment of costs by the department under section 2 of this chapter (or IC 31-6-4-18(b) before its repeal);

(3) the dispositional hearing; or

(4) any other hearing to consider modification of a dispositional decree;

the juvenile court shall order the child's parents or the guardian of the child's estate to pay for, or reimburse the department for the cost of services provided to the child or the parent or guardian unless the court makes a specific finding that the parent or guardian is unable to pay or that justice would not be served by ordering payment from the parent or guardian.

(d) Any parental reimbursement obligation under this section shall be paid directly to the department and not to the local court clerk so long as the child in need of services case **or** juvenile delinquency case ~~or juvenile status offense case~~ is open. The department shall keep track of all payments made by each parent and shall provide a receipt for each payment received. At the end of the child in need of services **or** juvenile delinquency ~~or juvenile status~~ action, the department shall provide an accounting of payments received, and the court may consider additional evidence of payment activity and determine the amount of parental reimbursement obligation that remains unpaid. The court shall reduce the unpaid balance to a final judgment that may be enforced in any court having jurisdiction over such matters.

(e) After a judgment for unpaid parental reimbursement obligation is rendered, payments made toward satisfaction of the judgment shall be made to the clerk of the court in the county where the enforcement action is filed and shall be promptly forwarded to the department in the same manner as any other judgment payment.

SECTION 31. IC 31-40-5 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]:

Chapter 5. Juvenile Diversion and Community Alternatives Grant Programs

Sec. 1. As used in this chapter, "program" refers to:
(1) the juvenile diversion grant program; and
(2) the juvenile community alternatives grant program;
established by section 2 of this chapter.

Sec. 2. (a) The juvenile diversion grant program and the juvenile community alternatives grant program may be established, subject to available funding.

(b) The Indiana criminal justice institute (as described in IC 5-2-6) shall administer the programs described in this chapter.

Sec. 3. (a) The purpose of the juvenile diversion grant program is as follows:
(1) Prevent further involvement of the child in the formal legal system.
(2) Provide eligible children with alternatives to adjudication that require the least amount of supervision and conditions necessary consistent with the protection of the community and the child's risk of reoffending, as determined by a risk screening tool.
(3) Emphasize the use of restorative justice practices.
(4) Reduce recidivism and improve positive outcomes for a child through the provision of research based services, if warranted, that address the child's needs.

(b) The purpose of the juvenile community alternatives grant program is as follows:
(1) Provide cost effective, research based alternatives in lieu of the use of secure detention, out-of-home placement, and department of correction facilities in the community.
(2) Reduce the use of secure confinement and out-of-home placement.
(3) Reduce recidivism and improve positive outcomes for children.

Sec. 4. (a) The Indiana criminal justice institute (as described in IC 5-2-6) may use available funds to strengthen the agency's grant management capacity to:
(1) serve as an efficient pass through to counties;
(2) provide quality assurance and technical assistance to counties; and
(3) support and coordinate data collection.

(b) The Indiana criminal justice institute shall prepare an annual report that details the performance measures collected and

reported under IC 2-5-36-9.3(b)(4), including an analysis of the performance measures by race, ethnicity, gender, and other demographic factors. The report shall be provided to the governor, the chief justice, and the legislative council before December 1 of each year. The report provided to the legislative council must be in an electronic format under IC 5-14-6.

Sec. 5. A county participating in any program described in this chapter is required to have its local or regional justice reinvestment advisory council (as described in IC 33-38-9.5-4), or another local collaborative body that includes stakeholders across the juvenile justice system, oversee each grant awarded to the county and engage in collaborative service planning for the county.

Sec. 6. (a) The juvenile diversion and community alternatives grant program fund is established to provide grants under this chapter. The fund shall be administered by the Indiana criminal justice institute (as described in IC 5-2-6).

(b) The fund consists of:

(1) money appropriated to the fund by the general assembly;

(2) money received from state or federal grants or programs that concern alternative detention and recidivism reduction for juveniles; and

(3) donations, gifts, and money received from any other source, including transfers from other funds or accounts.

(c) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public funds may be invested.

(d) Money in the fund at the end of a state fiscal year does not revert to the state general fund but remains in the fund to be used exclusively for purposes of this chapter.

(e) Money in the fund is continuously appropriated for the purposes of this chapter.

SECTION 32. IC 31-40-6 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]:

Chapter 6. Juvenile Behavioral Health Competitive Grant Pilot Program

Sec. 1. As used in this chapter, "program" refers to the juvenile behavioral health competitive grant pilot program established by section 2 of this chapter.

Sec. 2. (a) The juvenile behavioral health competitive grant pilot program may be established, subject to available funding.

(b) The program shall be administered by the Indiana criminal justice institute (as described in IC 5-2-6).

Sec. 3. (a) The purpose of the juvenile behavioral health competitive grant pilot program is to support jurisdictions,

particularly in rural areas, to evaluate a child's behavioral health needs and divert the child from formal court involvement and out-of-home placement into community or school based mental health treatment.

(b) Grant recipients shall use a validated mental health screening tool, and a full mental health assessment tool, if necessary, and may use the funds to conduct the following activities:

(1) Partnering with law enforcement to implement a program to divert a child from formal court proceedings.

(2) Creating crisis stabilization services and a mobile crisis unit.

(3) Providing comprehensive case management for a child or family in crisis.

(4) Identifying and strengthening community based intensive treatment and management services.

(5) Establishing telehealth services (as defined in IC 25-1-9.5-6) and programs.

(6) Supporting mental health evaluations, which include the use of telehealth services (as defined in IC 25-1-9.5-6).

Sec. 4. The local or regional justice reinvestment advisory council (as described in IC 33-38-9.5-4), or another local collaborative body that includes stakeholders across the juvenile justice system, shall:

(1) manage grant solicitation, with support for rural communities as a required funding priority; and

(2) determine how funding and programming could be used more effectively.

Sec. 5. (a) The juvenile behavioral health competitive grant pilot program fund is established to provide grants under this chapter. The fund shall be administered by the Indiana criminal justice institute (as described in IC 5-2-6).

(b) The fund consists of:

(1) money appropriated to the fund by the general assembly;

(2) money received from state or federal grants or programs that concern alternative detention and recidivism reduction for juveniles; and

(3) donations, gifts, and money received from any other source, including transfers from other funds or accounts.

(c) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public funds may be invested.

(d) Money in the fund at the end of a state fiscal year does not revert to the state general fund but remains in the fund to be used exclusively for purposes of this chapter.

(e) Money in the fund is continuously appropriated for the purposes of this chapter.

SECTION 33. IC 33-24-6-3, AS AMENDED BY P.L.115-2021, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 3. (a) The office of judicial administration shall do the following:

(1) Examine the administrative and business methods and systems employed in the offices of the clerks of court and other offices related to and serving the courts and make recommendations for necessary improvement.

(2) Collect and compile statistical data and other information on the judicial work of the courts in Indiana. All justices of the supreme court, judges of the court of appeals, judges of all trial courts, and any city or town courts, whether having general or special jurisdiction, court clerks, court reporters, and other officers and employees of the courts shall, upon notice by the chief administrative officer and in compliance with procedures prescribed by the chief administrative officer, furnish the chief administrative officer the information as is requested concerning the nature and volume of judicial business. The information must include the following:

(A) The volume, condition, and type of business conducted by the courts.

(B) The methods of procedure in the courts.

(C) The work accomplished by the courts.

(D) The receipt and expenditure of public money by and for the operation of the courts.

(E) The methods of disposition or termination of cases.

(3) Prepare and publish reports, not less than one (1) or more than two (2) times per year, on the nature and volume of judicial work performed by the courts as determined by the information required in subdivision (2).

(4) Serve the judicial nominating commission and the judicial qualifications commission in the performance by the commissions of their statutory and constitutional functions.

(5) Administer the civil legal aid fund as required by IC 33-24-12.

(6) Administer the court technology fund established by section 12 of this chapter.

(7) By December 31, 2013, develop and implement a standard protocol for sending and receiving court data:

(A) between the protective order registry, established by IC 5-2-9-5.5, and county court case management systems;

(B) at the option of the county prosecuting attorney, for:

(i) a prosecuting attorney's case management system;

(ii) a county court case management system; and
(iii) a county court case management system developed and operated by the office of judicial administration;
to interface with the electronic traffic tickets, as defined by IC 9-30-3-2.5; and
(C) between county court case management systems and the case management system developed and operated by the office of judicial administration.
The standard protocol developed and implemented under this subdivision shall permit private sector vendors, including vendors providing service to a local system and vendors accessing the system for information, to send and receive court information on an equitable basis and at an equitable cost.
(8) Establish and administer an electronic system for receiving information that relates to certain individuals who may be prohibited from possessing a firearm for the purpose of:
(A) transmitting this information to the Federal Bureau of Investigation for inclusion in the NICS; and
(B) beginning July 1, 2021, compiling and publishing certain statistics related to the confiscation and retention of firearms as described under section 14 of this chapter.
(9) Establish and administer an electronic system for receiving drug related felony conviction information from courts. The office of judicial administration shall notify NPLEx of each drug related felony entered after June 30, 2012, and do the following:
(A) Provide NPLEx with the following information:
(i) The convicted individual's full name.
(ii) The convicted individual's date of birth.
(iii) The convicted individual's driver's license number, state personal identification number, or other unique number, if available.
(iv) The date the individual was convicted of the felony.
Upon receipt of the information from the office of judicial administration, a stop sale alert must be generated through NPLEx for each individual reported under this clause.
(B) Notify NPLEx if the felony of an individual reported under clause (A) has been:
(i) set aside;
(ii) reversed;
(iii) expunged; or
(iv) vacated.
Upon receipt of information under this clause, NPLEx shall remove the stop sale alert issued under clause (A) for the individual.

(10) After July 1, 2018, establish and administer an electronic system for receiving from courts felony conviction information for each felony described in IC 20-28-5-8(c). The office of judicial administration shall notify the department of education at least one (1) time each week of each felony described in IC 20-28-5-8(c) entered after July 1, 2018, and do the following:

(A) Provide the department of education with the following information:

(i) The convicted individual's full name.

(ii) The convicted individual's date of birth.

(iii) The convicted individual's driver's license number, state personal identification number, or other unique number, if available.

(iv) The date the individual was convicted of the felony.

(B) Notify the department of education if the felony of an individual reported under clause (A) has been:

(i) set aside;

(ii) reversed; or

(iii) vacated.

(11) Perform legal and administrative duties for the justices as determined by the justices.

(12) Provide staff support for the judicial conference of Indiana established in IC 33-38-9.

(13) Work with the United States Department of Veterans Affairs to identify and address the needs of veterans in the court system.

(14) If necessary for purposes of IC 35-47-16-1, issue a retired judicial officer an identification card identifying the retired judicial officer as a retired judicial officer.

(15) Establish and administer the statewide juvenile justice data aggregation plan established under section 12.5 of this chapter.

(b) All forms to be used in gathering data must be approved by the supreme court and shall be distributed to all judges and clerks before the start of each period for which reports are required.

(c) The office of judicial administration may adopt rules to implement this section.

SECTION 34. IC 33-24-6-12.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: **Sec. 12.5. The office of judicial administration shall establish and administer a plan that will ensure that the juvenile justice data in each county is collected and shared with the office of judicial administration so that the office can compile and aggregate the data.**

SECTION 35. IC 33-37-8-5, AS AMENDED BY P.L.187-2011,

SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 5. (a) A county user fee fund is established in each county to finance various program services. The county fund is administered by the county auditor.

(b) The county fund consists of the following fees collected by a clerk under this article: ~~and by the probation department for the juvenile court under IC 31-37-9-9:~~

(1) The pretrial diversion program fee.
~~(2) The informal adjustment program fee.~~
~~(3)~~ **(2)** The marijuana eradication program fee.
~~(4)~~ **(3)** The alcohol and drug services program fee.
~~(5)~~ **(4)** The law enforcement continuing education program fee.
~~(6)~~ **(5)** The deferral program fee.
~~(7)~~ **(6)** The jury fee.
~~(8)~~ **(7)** The problem solving court fee.

(c) All of the jury fee and two dollars ($2) of a deferral program fee collected under IC 33-37-4-2(e) shall be deposited by the county auditor in the jury pay fund established under IC 33-37-11.

SECTION 36. IC 33-38-9.5-6, AS ADDED BY P.L.30-2021, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 6. A local or regional advisory council shall do the following:

(1) Review, evaluate, and make recommendations for local:
(A) criminal justice systems and corrections programs;
(B) pretrial services;
(C) behavioral health treatment and recovery services;
(D) community corrections; and
(E) county jail and probation services.
(2) Promote state and local collaboration between the advisory council and the local or regional advisory council.
(3) Review and evaluate local jail overcrowding and recommend a range of possible overcrowding solutions.
(4) Compile reports regarding local criminal sentencing as directed by the advisory council.
(5) Establish committees to inform the work of the local or regional advisory council.
(6) Communicate with the advisory council in order to establish and implement best practices and to ensure consistent collection and reporting of data as requested by the advisory council.
(7) Oversee and manage grants awarded under IC 31-40-5 and IC 31-40-6, unless another local collaborative body in the county is tasked with overseeing the grant awarded.
~~(7)~~ **(8)** Prepare and submit an annual report to the advisory council not later than March 31 of each year.

SECTION 37. **An emergency is declared for this act.**

Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: __________________ Time: __________________

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~
Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.
Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2021 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1363

AN ACT to amend the Indiana Code concerning family law and juvenile law.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 31-9-2-46.9, AS AMENDED BY P.L.48-2012, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 46.9. "Foster family home", for purposes of IC 31-27 **and IC 31-34-23-6,** means a place where an individual resides and provides care and supervision on a twenty-four (24) hour basis to a child, as defined in section 13(d) of this chapter, who is receiving care and supervision under a juvenile court order or for purposes of placement.

SECTION 2. IC 31-9-2-88, AS AMENDED BY P.L.162-2011, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 88. (a) "Parent", for purposes of the juvenile law, means a biological or an adoptive parent. Unless otherwise specified, the term includes both parents, regardless of their marital status.

(b) "Parent", for purposes of IC 31-34-1, IC 31-34-8, ~~IC 31-34-16,~~ IC 31-34-19, IC 31-34-20 and IC 31-35-2, includes an alleged father.

SECTION 3. IC 31-9-2-107, AS AMENDED BY P.L.3-2016, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 107. (a) "Relative", for purposes of IC 31-19-18 and IC 31-19-25, means:

(1) an adoptive or whole blood related parent;
(2) a sibling; or
(3) a child.

(b) "Relative", for purposes of IC 31-34-3, means:

(1) a maternal or paternal grandparent;
(2) an adult aunt or uncle;
(3) a parent of a child's sibling if the parent has legal custody of the sibling; or
(4) any other adult relative suggested by either parent of a child.

(c) "Relative", for purposes of IC 31-27, IC 31-28-5.8, IC 31-34-4, IC 31-34-19, **IC 31-34-23-6,** and IC 31-37, means any of the following in relation to a child:

(1) A parent.
(2) A grandparent.
(3) A brother.
(4) A sister.
(5) A stepparent.
(6) A stepgrandparent.
(7) A stepbrother.
(8) A stepsister.
(9) A first cousin.
(10) An uncle.
(11) An aunt.
(12) Any other individual with whom a child has an established and significant relationship.

SECTION 4. IC 31-9-2-133.1, AS AMENDED BY P.L.94-2020, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 133.1. "Victim of human or sexual trafficking", for purposes of IC 31-34-1-3.5, refers to a child who is recruited, harbored, transported, or engaged in:

(1) forced labor;
(2) involuntary servitude;
(3) prostitution;
(4) juvenile prostitution, as defined in IC 35-31.5-2-178.5;
(5) child exploitation, as defined in IC 35-42-4-4(b);
(6) marriage, unless authorized by a court under IC 31-11-1-7;
(7) trafficking for the purpose of prostitution, juvenile prostitution, or participation in sexual conduct as defined in ~~IC 35-42-4-4(a)(4);~~ **IC 35-42-4-4(a);** or
(8) human trafficking as defined in IC 35-42-3.5-0.5.

SECTION 5. IC 31-25-2-27 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: **Sec. 27. (a) As used in this section, "child services provider" means any entity whose rate is set by the department under 465 IAC 2-16 and 465 IAC 2-17.**

(b) As used in this section, "COVID-19 federal stimulus funding" means federal money received by the state pursuant to the following federal legislation:

(1) The federal Families First Coronavirus Response Act.

(2) The federal American Rescue Plan Act of 2021.

(3) The federal Coronavirus Aid, Relief, and Economic Security Act.

(4) The federal Consolidated Appropriations Act of 2021.

(c) Costs paid from COVID-19 federal stimulus funding and received by child services providers may not be disallowed when setting rates for calendar year 2023. The disallowance included in this subsection must be within the department's appropriations for the relevant state fiscal year.

(d) The department shall, by December 1, 2022, provide a report to the budget committee that includes the provider reimbursement rate methodology for calendar year 2023 and the total dollar amount estimated to be spent in calendar year 2023 as compared to calendar year 2022.

(e) This section expires January 1, 2024.

SECTION 6. IC 31-30-1-1, AS AMENDED BY P.L.48-2012, SECTION 35, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 1. A juvenile court has exclusive original jurisdiction, except as provided in sections 9, 10, 12, and 13 of this chapter, in the following:

(1) Proceedings in which a child, including a child of divorced parents, is alleged to be a delinquent child under IC 31-37.

(2) Proceedings in which a child, including a child of divorced parents, is alleged to be a child in need of services under IC 31-34.

(3) Proceedings concerning the paternity of a child under IC 31-14.

(4) Proceedings under the interstate compact on juveniles under IC 31-37-23.

(5) Proceedings governing the participation of a parent, guardian, or custodian in a program of care, treatment, or rehabilitation for a child under ~~IC 31-34-16~~ **IC 31-34-20** or IC 31-37-15.

(6) Proceedings under IC 31-34-4, IC 31-34-5, IC 31-37-5, and IC 31-37-6 governing the detention of a child before a petition has been filed.

(7) Proceedings to issue a protective order under IC 31-32-13.

(8) Proceedings in which a child less than sixteen (16) years of age is alleged to have committed an act that would be a

misdemeanor traffic offense if committed by an adult.
(9) Proceedings in which a child is alleged to have committed an act that would be an offense under IC 9-30-5 if committed by an adult.
(10) Guardianship of the person proceedings for a child:
(A) who has been adjudicated as a child in need of services;
(B) for whom a juvenile court has approved a permanency plan under IC 31-34-21-7 that provides for the appointment of a guardian of the person; and
(C) who is the subject of a pending child in need of services proceeding under IC 31-34.
(11) Proceedings concerning involuntary drug and alcohol treatment under IC 31-32-16.
(12) Proceedings under the interstate compact for juveniles under IC 11-13-4.5-1.5.
(13) Proceedings under IC 31-28-5.8.
(14) Other proceedings specified by law.

SECTION 7. IC 31-34-1-2, AS AMENDED BY P.L.51-2021, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) A child is a child in need of services if before the child becomes eighteen (18) years of age:
(1) the child's physical or mental health is seriously endangered due to injury by the act or omission of the child's parent, guardian, or custodian; and
(2) the child needs care, treatment, or rehabilitation that:
(A) the child is not receiving; and
(B) is unlikely to be provided or accepted without the coercive intervention of the court.

(b) A child is a child in need of services if, before the child becomes eighteen (18) years of age: ~~the child:~~
(1) **the child** is a victim of:
(A) an offense under IC 35-42-1-2.5;
(B) an offense under IC 35-42-2-1;
(C) an offense under IC 35-42-2-1.3;
(D) an offense under IC 35-42-2-1.5;
(E) an offense under IC 35-42-2-9;
(F) an offense under IC 35-42-2-10; or
(G) an offense under IC 35-46-1-4; ~~and~~
(2) the offense described in subdivision (1) was committed by the parent, guardian, or custodian of the child; and
~~(2)~~ **(3) the child** needs care, treatment, or rehabilitation that:
(A) the child is not receiving; and

(B) is unlikely to be provided or accepted without the coercive intervention of the court.

(c) A child is a child in need of services if, before the child becomes eighteen (18) years of age, the child:

(1) lives in the same household as an adult who:

(A) committed:

(i) an offense described in subsection (b)(1); or

(ii) an offense under IC 35-42-1-1, IC 35-42-1-2, IC 35-42-1-3, IC 35-42-1-4, or IC 35-42-1-5;

against another child who lives in the household and the offense resulted in a conviction or a judgment under IC 31-34-11-2; or

(B) has been charged with committing an offense described in clause (A) against another child who lives in the household and is awaiting trial; and

(2) needs care, treatment, or rehabilitation that:

(A) the child is not receiving; and

(B) is unlikely to be provided or accepted without the coercive intervention of the court.

(d) Evidence that the illegal manufacture of a drug or controlled substance is occurring on property where a child resides creates a rebuttable presumption that the child's physical or mental health is seriously endangered.

SECTION 8. IC 31-34-16 IS REPEALED [EFFECTIVE JULY 1, 2022]. (Petition for Parental Participation).

SECTION 9. IC 31-34-20-1, AS AMENDED BY P.L.183-2017, SECTION 48, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 1. (a) Subject to this section and section 1.5 of this chapter, if a child is a child in need of services, the juvenile court may enter one (1) or more of the following dispositional decrees:

(1) Order supervision of the child by the department.

(2) Order the child to receive outpatient treatment:

(A) at a social service agency or a psychological, a psychiatric, a medical, or an educational facility; or

(B) from an individual practitioner.

(3) Remove the child from the child's home and authorize the department to place the child in another home, shelter care facility, child caring institution, group home, or secure private facility. Placement under this subdivision includes authorization to control and discipline the child.

(4) Award wardship of the child to the department for supervision, care, and placement.

(5) Partially or completely emancipate the child under section 6 of this chapter.
(6) Order the child's parent, guardian, or custodian to complete services recommended by the department and approved by the court under ~~IC 31-34-16,~~ IC 31-34-18 and IC 31-34-19, **which may include services described in section 3(a) of this chapter.**
(7) Order a person who is a party to refrain from direct or indirect contact with the child.
(8) Order a perpetrator of child abuse or neglect to refrain from returning to the child's residence.

(b) A juvenile court may not place a child in a home or facility that is located outside Indiana unless:
(1) the placement is recommended or approved by the director of the department or the director's designee; or
(2) the juvenile court makes written findings based on clear and convincing evidence that:
(A) the out-of-state placement is appropriate because there is not an equivalent facility with adequate services located in Indiana;
(B) institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship; or
(C) the location of the home or facility is within a distance not greater than fifty (50) miles from the county of residence of the child.

(c) If a dispositional decree under this section:
(1) orders or approves removal of a child from the child's home or awards wardship of the child to the department; and
(2) is the first juvenile court order in the child in need of services proceeding that authorizes or approves removal of the child from the child's parent, guardian, or custodian;
the juvenile court shall include in the decree the appropriate findings and conclusions described in IC 31-34-5-3(b) and IC 31-34-5-3(c).

SECTION 10. IC 31-34-20-3, AS AMENDED BY P.L.183-2017, SECTION 50, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 3. **(a)** If the juvenile court determines that a parent, guardian, or custodian should participate in a program of care, treatment, or rehabilitation for the child, the court may order the parent, guardian, or custodian to do the following:
(1) Obtain assistance in fulfilling the obligations as a parent, guardian, or custodian.
(2) Provide specified care, treatment, or supervision for the child.
(3) Work with a person providing care, treatment, or rehabilitation

for the child.

(4) Participate in a program operated by or through the department of correction.

(5) Participate in a mental health or addiction treatment program.

(b) If a dispositional decree requires a parent to participate in a program of care, treatment, or rehabilitation described in subsection (a), the juvenile court shall advise the parent that failure to participate as required by an order under this chapter, or a modified order under IC 31-34-23, can lead to the termination of the parent-child relationship under IC 31-35.

SECTION 11. IC 31-34-23-3, AS AMENDED BY P.L.119-2018, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 3. ~~(a) Except as provided in subsection (b), before changing the out-of-home placement of a child who has been in the same out-of-home placement for at least one (1) year, the department must file a motion requesting a change in placement. Upon filing the motion, the department shall give notice to the persons affected. The notice must state that the person with whom the child is placed may file a written objection to the motion to change out-of-home placement not later than fifteen (15) days after receipt that requests a hearing on the question. If an objection is timely filed, the juvenile court shall hold a hearing on the question. The department must show that the change in out-of-home placement is in the best interests of the child.~~

~~(b)~~ **(a)** If the department determines that the out-of-home placement of a child is placing the child's life or health in imminent danger, the department shall either:

(1) change the placement of the child and file an emergency motion with the court; or

(2) request the court to issue a temporary order for an emergency change in the child's ~~residence.~~ **placement.**

~~If the department requests an emergency change in the child's residence, the court may issue a temporary order. However, the department shall then give notice to the persons affected and~~

(b) If the department acts under subsection (a), the department shall give notice to all persons affected. The department's notice must state that the person affected may file a written objection not later than ten (10) days after service of the department's notice. If the person affected files a timely objection, the juvenile court shall hold a hearing on the question.

(c) If the motion requests any other modification, the department shall give notice to the persons affected, and the juvenile court shall hold a hearing on the question.

SECTION 12. IC 31-34-23-6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: **Sec. 6. (a) Except as provided in section 3 of this chapter, and subject to subsection (e), before changing a child's out-of-home placement, the department shall file a motion requesting a change in placement if the child:**

(1) has been in the same out-of-home placement for at least one (1) year; and

(2) is in:

(A) a foster family home; or

(B) the care of a relative.

(b) The person with whom the child is placed may:

(1) indicate in writing that the person:

(A) does not intend to contest the change of placement under subsection (a); and

(B) waives the right to request a hearing under subsection (a); and

(2) provide the writing to:

(A) the department; or

(B) the court.

(c) If the department files the motion described in subsection (a), the department shall give notice to all persons affected. The department's notice must state that the person affected may file a written objection not later than ten (10) days after service of the department's notice.

(d) If a writing described in subsection (b)(1) is provided to the department before the department files the motion described in subsection (a), the department may file the writing with the motion requesting a change in placement.

(e) If the court receives the writing described in subsection (b), the court may rule on the department's motion without delay.

(f) If the person affected files a timely objection to the department's motion requesting a change in out-of-home placement, the juvenile court shall hold a hearing on the question.

(g) The department must show that the change in out-of-home placement is in the best interests of the child.

SECTION 13. IC 35-31.5-2-164.2 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: **Sec. 164.2. "Image", for purposes of IC 35-42-4-4, has the meaning set forth in IC 35-42-4-4(a).**

SECTION 14. IC 35-42-4-4, AS AMENDED BY P.L.266-2019, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

JULY 1, 2022]: Sec. 4. (a) The following definitions apply throughout this section:

(1) "Disseminate" means to transfer possession for free or for a consideration.

(2) "Image" means the following:

(A) A picture.

(B) A drawing.

(C) A photograph.

(D) A negative image.

(E) An undeveloped film.

(F) A motion picture.

(G) A videotape.

(H) A digitized image.

(I) A computer generated image.

(J) Any pictorial representation.

~~(2)~~ **(3)** "Matter" has the same meaning as in IC 35-49-1-3.

~~(3)~~ **(4)** "Performance" has the same meaning as in IC 35-49-1-7.

~~(4)~~ **(5)** "Sexual conduct" means:

(A) sexual intercourse;

(B) other sexual conduct (as defined in IC 35-31.5-2-221.5);

(C) exhibition of the:

(i) uncovered genitals; or

(ii) female breast with less than a fully opaque covering of any part of the nipple;

intended to satisfy or arouse the sexual desires of any person;

(D) sadomasochistic abuse;

(E) sexual intercourse or other sexual conduct (as defined in IC 35-31.5-2-221.5) with an animal; or

(F) any fondling or touching of a child by another person or of another person by a child intended to arouse or satisfy the sexual desires of either the child or the other person.

(b) A person who:

(1) knowingly or intentionally manages, produces, sponsors, presents, exhibits, photographs, films, videotapes, or creates a digitized image of any performance or incident that includes sexual conduct by a child under eighteen (18) years of age;

(2) knowingly or intentionally disseminates, exhibits to another person, offers to disseminate or exhibit to another person, or sends or brings into Indiana for dissemination or exhibition matter that depicts or describes sexual conduct by a child under eighteen (18) years of age;

(3) knowingly or intentionally makes available to another person

a computer, knowing that the computer's fixed drive or peripheral device contains matter that depicts or describes sexual conduct by a child less than eighteen (18) years of age; ~~or~~

(4) with the intent to satisfy or arouse the sexual desires of any person:

(A) knowingly or intentionally:

(i) manages;

(ii) produces;

(iii) sponsors;

(iv) presents;

(v) exhibits;

(vi) photographs;

(vii) films;

(viii) videotapes; or

(ix) creates a digitized image of;

any performance or incident that includes the uncovered genitals of a child less than eighteen (18) years of age or the exhibition of the female breast with less than a fully opaque covering of any part of the nipple by a child less than eighteen (18) years of age;

(B) knowingly or intentionally:

(i) disseminates to another person;

(ii) exhibits to another person;

(iii) offers to disseminate or exhibit to another person; or

(iv) sends or brings into Indiana for dissemination or exhibition;

matter that depicts the uncovered genitals of a child less than eighteen (18) years of age or the exhibition of the female breast with less than a fully opaque covering of any part of the nipple by a child less than eighteen (18) years of age; or

(C) makes available to another person a computer, knowing that the computer's fixed drive or peripheral device contains matter that depicts the uncovered genitals of a child less than eighteen (18) years of age or the exhibition of the female breast with less than a fully opaque covering of any part of the nipple by a child less than eighteen (18) years of age; **or**

(5) knowingly or intentionally produces, disseminates, or possesses with intent to disseminate an image that depicts or describes sexual conduct:

(A) by a child who the person knows is less than eighteen (18) years of age;

(B) by a child less than eighteen (18) years of age, or by a

person who appears to be a child less than eighteen (18) years of age, if the image is obscene (as described in IC 35-49-2-1); or

(C) that is simulated sexual conduct involving a representation that appears to be a child less than eighteen (18) years of age, if the representation of the image is obscene (as described in IC 35-49-2-1);

commits child exploitation, a Level 5 felony. **It is not a required element of an offense under subdivision (5)(C) that the child depicted actually exists.**

(c) However, the offense of child exploitation described in subsection (b) is a Level 4 felony if:

(1) the sexual conduct, matter, performance, or incident depicts or describes a child less than eighteen (18) years of age who:

(A) engages in bestiality (as described in IC 35-46-3-14);

(B) is mentally disabled or deficient;

(C) participates in the sexual conduct, matter, performance, or incident by use of force or the threat of force;

(D) physically or verbally resists participating in the sexual conduct, matter, performance, or incident;

(E) receives a bodily injury while participating in the sexual conduct, matter, performance, or incident; or

(F) is less than twelve (12) years of age; or

(2) the child less than eighteen (18) years of age:

(A) engages in bestiality (as described in IC 35-46-3-14);

(B) is mentally disabled or deficient;

(C) participates in the sexual conduct, matter, performance, or incident by use of force or the threat of force;

(D) physically or verbally resists participating in the sexual conduct, matter, performance, or incident;

(E) receives a bodily injury while participating in the sexual conduct, matter, performance, or incident; or

(F) is less than twelve (12) years of age.

(d) A person who, **with intent to view the image,** knowingly or intentionally possesses or accesses ~~with intent to view~~ **an image**

~~(1) a picture;~~

~~(2) a drawing;~~

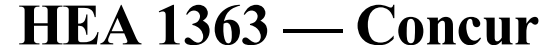
~~(3) a photograph;~~

~~(4) a negative image;~~

~~(5) undeveloped film;~~

~~(6) a motion picture;~~

~~(7) a videotape;~~



~~(8) a digitized image; or~~
~~(9) any pictorial representation;~~
that depicts or describes sexual conduct:
(1) by a child who the person knows is less than eighteen (18) years of age; ~~or~~
(2) by a child less than eighteen (18) years of age, or by a person who appears to be **a child** less than eighteen (18) years of age, ~~and that lacks serious literary, artistic, political, or scientific value~~ **if the representation of the image is obscene (as described in IC 35-49-2-1); or**
(3) that is simulated sexual conduct involving a representation that appears to be a child less than eighteen (18) years of age age, if representation of the image is obscene (as described in IC 35-49-2-1);
commits possession of child pornography, a Level 6 felony. **It is not a required element of an offense under subdivision (3) that the child depicted actually exists.**

(e) However, the offense of possession of child pornography described in subsection (d) is a Level 5 felony if:
(1) the ~~item described in subsection (d)(1) through (d)(9)~~ **sexual conduct, matter, performance, or incident** depicts or describes ~~sexual conduct by~~ a child who the person knows is less than eighteen (18) years of age, or who appears to be less than eighteen (18) years of age, who:
(A) engages in bestiality (as described in IC 35-46-3-14);
(B) is mentally disabled or deficient;
(C) participates in the sexual conduct, matter, performance, or incident by use of force or the threat of force;
(D) physically or verbally resists participating in the sexual conduct, matter, performance, or incident;
(E) receives a bodily injury while participating in the sexual conduct, matter, performance, or incident; or
(F) is less than twelve (12) years of age; or
(2) the child ~~whose sexual conduct is depicted or described in an item described in subsection (d)(1) through (d)(9):~~ **less than eighteen (18) years of age:**
(A) engages in bestiality (as described in IC 35-46-3-14);
(B) is mentally disabled or deficient;
(C) participates in the sexual conduct, matter, performance, or incident by use of force or the threat of force;
(D) physically or verbally resists participating in the sexual conduct, matter, performance, or incident;

(E) receives a bodily injury while participating in the sexual conduct, matter, performance, or incident; or

(F) is less than twelve (12) years of age.

(f) Subsections (b), (c), (d), and (e) do not apply to a bona fide school, museum, or public library that qualifies for certain property tax exemptions under IC 6-1.1-10, or to an employee of such a school, museum, or public library acting within the scope of the employee's employment when the possession of the listed materials is for legitimate scientific or educational purposes.

(g) It is a defense to a prosecution under this section that:

(1) the person is a school employee, **a department of child services employee, or an attorney acting in the attorney's capacity as legal counsel for a client;** and

(2) the acts constituting the elements of the offense were performed solely within the scope of the person's employment as a school employee, **a department of child services employee, or an attorney acting in the attorney's capacity as legal counsel for a client.**

(h) Except as provided in subsection (i), it is a defense to a prosecution under subsection (b), (c), (d), or (e) if all of the following apply:

(1) A cellular telephone, another wireless or cellular communications device, or a social networking web site was used to possess, produce, or disseminate the image.

(2) The defendant is not more than four (4) years older or younger than the person who is depicted in the image or who received the image.

(3) The relationship between the defendant and the person who received the image or who is depicted in the image was a dating relationship or an ongoing personal relationship. For purposes of this subdivision, the term "ongoing personal relationship" does not include a family relationship.

(4) The crime was committed by a person less than twenty-two (22) years of age.

(5) The person receiving the image or who is depicted in the image acquiesced in the defendant's conduct.

(i) The defense to a prosecution described in subsection (h) does not apply if:

(1) the person who receives the image disseminates it to a person other than the person:

(A) who sent the image; or

(B) who is depicted in the image;

(2) the image is of a person other than the person who sent the image or received the image; or
(3) the dissemination of the image violates:
(A) a protective order to prevent domestic or family violence or harassment issued under IC 34-26-5 (or, if the order involved a family or household member, under IC 34-26-2 or IC 34-4-5.1-5 before their repeal);
(B) an ex parte protective order issued under IC 34-26-5 (or, if the order involved a family or household member, an emergency order issued under IC 34-26-2 or IC 34-4-5.1 before their repeal);
(C) a workplace violence restraining order issued under IC 34-26-6;
(D) a no contact order in a dispositional decree issued under IC 31-34-20-1, IC 31-37-19-1, or IC 31-37-5-6 (or IC 31-6-4-15.4 or IC 31-6-4-15.9 before their repeal) or an order issued under IC 31-32-13 (or IC 31-6-7-14 before its repeal) that orders the person to refrain from direct or indirect contact with a child in need of services or a delinquent child;
(E) a no contact order issued as a condition of pretrial release, including release on bail or personal recognizance, or pretrial diversion, and including a no contact order issued under IC 35-33-8-3.6;
(F) a no contact order issued as a condition of probation;
(G) a protective order to prevent domestic or family violence issued under IC 31-15-5 (or IC 31-16-5 or IC 31-1-11.5-8.2 before their repeal);
(H) a protective order to prevent domestic or family violence issued under IC 31-14-16-1 in a paternity action;
(I) a no contact order issued under IC 31-34-25 in a child in need of services proceeding or under IC 31-37-25 in a juvenile delinquency proceeding;
(J) an order issued in another state that is substantially similar to an order described in clauses (A) through (I);
(K) an order that is substantially similar to an order described in clauses (A) through (I) and is issued by an Indian:
(i) tribe;
(ii) band;
(iii) pueblo;
(iv) nation; or
(v) organized group or community, including an Alaska Native village or regional or village corporation as defined

in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.);

that is recognized as eligible for the special programs and services provided by the United States to Indians because of their special status as Indians;

(L) an order issued under IC 35-33-8-3.2; or

(M) an order issued under IC 35-38-1-30.

(j) It is a defense to a prosecution under this section that:

(1) the person was less than eighteen (18) years of age at the time the alleged offense was committed; and

(2) the circumstances described in IC 35-45-4-6(a)(2) through IC 35-45-4-6(a)(4) apply.

(k) A person is entitled to present the defense described in subsection (j) in a pretrial hearing. If a person proves by a preponderance of the evidence in a pretrial hearing that the defense described in subsection (j) applies, the court shall dismiss the charges under this section with prejudice.

SECTION 15. **An emergency is declared for this act.**

Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: ____________________ Time: ____________________

Indiana Rules of Court

Indiana Parenting Time Guidelines

Including Amendments Received Through January 1, 2022

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RULE

PARENTING TIME RULE. ADOPTION OF PARENTING TIME RULE AND GUIDELINES

The Indiana Supreme Court hereby adopts the Indiana Parenting Time Guidelines, as drafted by the Domestic Relations Committee and adopted by the Board of the Judicial Conference of Indiana and all subsequent amendments thereto presented by the Domestic Relations Committee of the Judicial Conference of Indiana, as the Parenting Time Rule and Guidelines of this Court.

GUIDELINES

PREAMBLE

The Indiana Parenting Time Guidelines are based on the premise that it is usually in a child's best interest to have frequent, meaningful and continuing contact with each parent. It is assumed that both parents nurture their child in important ways, significant to the development and well being of the child. The Guidelines also acknowledge that scheduling parenting time is more difficult when separate households are involved and requires persistent effort and communication between parents to promote the best interest of the children involved. The purpose of these guidelines is to provide a model which may be adjusted depending upon the unique needs and circumstances of each family. These guidelines are based upon the developmental stages of children. The members of the Domestic Relations Committee of the Judicial Conference of Indiana developed the guidelines after reviewing the current and relevant literature concerning visitation, the visitation guidelines of other geographic areas, and the input of child development experts and family law practitioners. Committee members also relied upon data from surveys of judges, attorneys, and mental health professionals who work with children, reviews of court files, and a public hearing.

A child whose parents live apart has special needs related to the parent-child relationship. A child's needs and ability to cope with the parent's situation change as the child matures. Parents should consider these needs as they negotiate parenting time. They should be flexible and create a parenting time agreement which addresses the unique needs of the child and their circumstances. Parents and attorneys should always demonstrate a spirit of cooperation. The Indiana Parenting Time Guidelines are

designed to assist parents and courts in the development of their own parenting plans. In the event the parties cannot create their own parenting time agreement, these guidelines represent the minimum time a parent should have to maintain frequent, meaningful, and continuing contact with a child.

A. A CHILD'S BASIC NEEDS

To insure more responsible parenting and to promote the healthy adjustment and growth of a child each parent should recognize and address a child's basic needs:

1. To know that the parents' decision to live apart is not the child's fault.
2. To develop and maintain an independent relationship with each parent and to have the continuing care and guidance from each parent.
3. To be free from having to side with either parent and to be free from conflict between the parents.
4. To have a relaxed, secure relationship with each parent without being placed in a position to manipulate one parent against the other.
5. To enjoy regular and consistent time with each parent.
6. To be financially supported by each parent, regardless of how much time each parent spends with the child.
7. To be physically safe and adequately supervised when in the care of each parent and to have a stable, consistent and responsible child care arrangement when not supervised by a parent.
8. To develop and maintain meaningful relationships with other significant adults (grandparents, stepparents and other relatives) as long as these relationships do not interfere with or replace the child's primary relationship with the parents.

B. PURPOSE OF COMMENTARY FOLLOWING GUIDELINE.

Many of the guidelines are followed by a commentary further explaining the guideline or setting forth the child centered philosophy behind the guideline. The commentary is not an enforceable rule but provides guidance in applying the guideline.

Commentary

__1. Use of Term "Parenting Time."__ Throughout these Guidelines the words "parenting time" have been used instead of the word "visitation" so as to emphasize the importance of the time a parent spends with a child. The concept that a noncustodial parent "visits" with a child does not convey the reality of the continuing parent-child relationship.

__2. Minimum Time Concept.__ The concept that these Guidelines represent the minimum time a noncustodial parent should spend with a child when the parties are unable to reach their own agreement. These guidelines should not be interpreted as a limitation of time imposed by the court. They are not meant to foreclose the parents from agreeing to, or the court from granting, such additional or reduced parenting time as may be in the best interest of the child in any given case. In addressing all parenting time issues, both parents should exercise sensibility, flexibility and reasonableness.

__3. Parenting Time Plans or Calendars.__ It will often be helpful for the parents to actually create a year-long parenting time calendar or schedule. This may include a calendar in which the parties have charted an entire year of parenting time. Forecasting a year ahead helps the parents anticipate and plan for holidays, birthdays, and school vacations. The parenting time calendar may include agreed upon deviations from the Guidelines, which recognize the specialized needs of the children and parents. An online calendar to assist parents in creating a parenting time schedule may be found at: https://public.courts.in.gov/PTC/#/.

C. SCOPE OF APPLICATION

1. Generally. These Guidelines are applicable to all child custody situations, including paternity cases and cases involving joint legal custody where one person has primary physical custody. However, they are not applicable to situations involving family violence, substance abuse, risk of flight with a child, or any other circumstances the court reasonably believes endanger the child's physical health or safety, or significantly impair the child's emotional development. In such cases one or both parents may have legal, psychological, substance abuse or emotional problems that may need to be

addressed before these Guidelines can be employed. The type of help that is needed in such cases is beyond the scope of these Guidelines.

2. Amendments. Existing parenting time orders on the date of adoption of these amendments shall be enforced according to the parenting time guidelines that were in effect on the date the most recent parenting time order was issued. Changes to the Indiana Parenting Time Guidelines do not alone constitute good cause for amendment of an existing parenting time order; however, a court or parties to a proceeding may refer to these guidelines in making changes to a parenting time order after the effective date of the guidelines.

Commentary

Parents who agree that current changes to the Indiana Parenting Time Guidelines are in their child's best interests should file their written agreement with the court for approval. Parents may agree to some or all of the changes to the Indiana Parenting Time Guidelines and should be specific in their written agreement.

3. Presumption. There is a presumption that the Indiana Parenting Time Guidelines are applicable in all cases. Deviations from these Guidelines by either the parties or the court that result in parenting time less than the minimum time set forth below must be accompanied by a written explanation indicating why the deviation is necessary or appropriate in the case. A court is not required to give a written explanation as to why a parent is awarded more time with the child than the minimum in these guidelines.

Commentary

The written explanation need not be as formal as Findings of Fact and Conclusions of Law; however, it must state the reason(s) for the deviation. Because the parenting time guidelines are minimum standards, it is recommended parents and courts not "default" to these guidelines in lieu of a consideration of the best parenting time plan.

SECTION I. GENERAL RULES APPLICABLE TO PARENTING TIME

A. COMMUNICATIONS

1. Between Parents. Parents shall at all times keep each other advised of their home and work addresses, telephone numbers and email addresses. Notice of any change in this information shall be given to the other parent in writing. All communications concerning a child shall be conducted between the parents. Any communication shall occur at reasonable times and places unless circumstances require otherwise. A child shall not be used to exchange documents or financial information between parents.

2. With A Child Generally. A child and a parent shall be entitled to private communications without interference from the other parent. A child shall never be used by one parent to spy or report on the other. Each parent shall encourage the child to respect and love the other parent. Parents shall at all times avoid speaking negatively about each other in or near the presence of the child, and they shall firmly discourage such conduct by relatives or friends.

3. With A Child By Telephone. Both parents shall have reasonable phone access to their child. Telephone communication with the child by either parent to the residence where the child is located shall be conducted at reasonable hours, shall be of reasonable duration, and at reasonable intervals, without interference from the other parent.

Whether a parent uses an answering machine, voice mail, text, or email, messages left for a child shall be promptly communicated to the child and the call returned.

Commentary

Parents should agree on a specified time for telephone calls so that a child will be available to receive the call. The parent initiating the call should bear the expense of the call. A child may, of course, call either parent, though at reasonable hours, frequencies, and at the cost of the parent called if it is a long distance call.

Examples of unacceptable interference with communication include a parent refusing to answer a phone or refusing to allow the child or others to answer; a parent recording phone conversations between the other parent and the child; turning off the phone or using a call blocking mechanism or otherwise denying the other parent telephone contact with the child. A parent may restrict access from a telephone, tablet, or other device used to communicate with the other

parent as punishment for a child, but such punishment shall not prevent communications with the other parent.

4. With A Child By Mail. A parent and a child shall have a right to communicate privately by text, e-mail and faxes, and by cards, letters, and packages, without interference by the other parent.

Commentary

A parent should not impose obstacles to mail communications. For example, if a custodial parent has a rural address, the parent should maintain a mailbox to receive mail at that address. A parent who receives a communication for a child shall promptly deliver it to the child.

5. Electronic Communication. The same provisions above apply to electronic communications of any kind. However, these provisions shall not be construed to interfere with the authority of either parent to impose reasonable restrictions to a child's access to the Internet.

6. Emergency Notification. For emergency notification purposes, whenever a child travels out of the area with either parent, one of the following shall be provided to the other parent: An itinerary of travel dates, destinations, and places where the child or the traveling parent can be reached, or the name and telephone number of an available third person who knows where the child or parent may be located.

7. Communication between parent and child. Each parent is encouraged to promote a positive relationship between the children and the other parent. It is important, therefore, that communication remain open, positive and frequent. Regular phone contact is an important tool in maintaining a parent/child relationship as well as other forms of contact such as letter, e-mail and other more technologically advanced communications systems such as video chat and Skype. No person shall block reasonable phone or other communication access between a parent and child or monitor or record such communications. A parent who receives a communication for a child shall promptly deliver it to the child. Both parents shall promptly provide the other parent with updated cell and landline phone numbers and e-mail addresses when there has been a change.

Commentary

It is important for a child to have as much contact with both parents as possible. Interference with reasonable communication between a parent and child, including monitoring of that communication is destructive not only to the child's relationship with the other parent, but is also destructive to the child. Attempts to block access to and contact with the other parent may violate these parenting time guidelines. These types of behaviors may lead to sanctions, a change of parenting time, or in some cases, a change of custody. The prohibition applies equally to both parents.

B. IMPLEMENTING PARENTING TIME

1. Transportation Responsibilities. Unless otherwise agreed between the parents, the parent receiving the child shall provide transportation for the child at the start of the scheduled parenting time and the other parent shall provide transportation for the child at the end of the scheduled parenting time.

Commentary

1. Presence Of Both Parents. *Both parents should be present at the time of the exchange and should make every reasonable effort to personally transport the child. On those occasions when a parent is unable to be present at the time of the exchange or it becomes necessary for the child to be transported by someone other than a parent, this should be communicated to the other parent in advance if possible. In such cases, the person present at the exchange, or transporting the child, should be a responsible adult with whom the child is familiar and comfortable. In the event a parent chooses to bring a third party to the exchange, care should be taken to ensure the person selected does not serve to increase the level of conflict at the exchange.*

2. Distance/Cost As Factors. *Where the distance between the parents' residences is such that extended driving time is necessary, the parents should agree on a location for the exchange of the child. The cost of transportation should be shared based on consideration of various factors, including the distance involved, the financial resources of the parents, the reason why the distances exist, and the family situation of each parent at that time.*

3. Parental Hostility. *In a situation where hostility between parents makes it impracticable to exchange a child at the parents' residences, the exchange of the child should take place at a neutral site. The use of a law enforcement facility for exchanges is an extreme measure which should only be considered in cases where protective orders between the parents exist or in cases where there is a history of repeated acts of physical violence or intimidation between the parents. In lieu of a law enforcement facility, parties are encouraged to use other public places (i.e., gas station, restaurant, grocery store) to ensure the safety and smooth transition of the child.*

2. Punctuality. Each parent shall have the child ready for exchange at the beginning and at the end of the scheduled parenting time and shall be on time in picking up and returning the child. The parents shall communicate as early as possible regarding any situation that would interfere with the timely exchange of the child. Both parents have a duty to communicate any time the exchange is delayed. When no communication is initiated by the delaying parent, and pick up or return of a child does not occur within a reasonable time, the time and conditions of the exchange may be rescheduled at a time and place convenient to the parent not responsible for the delay.

Commentary

Punctuality is a matter of courtesy to the child and impacts the child's sense of security and well-being. Parents should make every effort to pick up and return a child at the agreed time, and not substantially earlier or later. Parents should recognize, however, that circumstances occur that require leeway in the scheduled times. What constitutes unreasonable time is fact sensitive. Parents are encouraged to include in their parenting plans what constitutes an unreasonable time.

3. Clothing. The custodial parent shall send an appropriate and adequate supply of clean clothing with the child and the non-custodial parent shall return such clothing in a clean condition. Each parent shall advise the other, as far in advance as possible, of any special activities so that the appropriate clothing may be available to the child.

Commentary

It is the responsibility of both parents to ensure their child is properly clothed. The non-custodial parent may wish to have a basic supply of clothing available for the child at his or her home.

4. Privacy of Residence. A parent may not enter the residence of the other, except by express permission of the other parent, regardless of whether a parent retains a property interest in the residence of the other. Accordingly, the child shall be picked up at the front entrance of the appropriate residence unless the parents agree otherwise. The person delivering the child shall not leave until the child is safely inside.

C. CHANGES IN SCHEDULED PARENTING TIME

Introduction

Parents should recognize there will be occasions when modification of the existing parenting schedule will be necessary. Parents should exercise reasonable judgment in their dealings with each other and with their child. Parents should be flexible in scheduling parenting time and should consider the benefits to the child of frequent, meaningful and regular contact with each parent and the schedules of the child and each parent.

1. Scheduled Parenting Time To Occur As Planned. Parenting time is both a right and a responsibility, and scheduled parenting time shall occur as planned. Both parents are jointly responsible for following the parenting time orders. A child shall not make parenting time decisions. If a parent is unable to provide personal care for the child during scheduled parenting time, then that parent shall provide alternate child care or pay the reasonable costs of child care caused by the failure to exercise the scheduled parenting time.

Commentary

Parents should understand it is important for a child to experience consistent and ongoing parenting time. A child is entitled to rely on spending time with each parent in a predictable way and adjusts better after a routine has been established and followed. A parent who consistently cancels scheduled parenting time sends a very harmful message to the child that the child is not a priority in that parent's life. In addition to disappointing a child, the voluntary

cancellation of scheduled parenting time by one parent may interfere with the plans of the other parent or cause the other parent to incur child care and other costs.

Parents share a joint and equal responsibility for following parenting time orders. A child shares none of this responsibility and should not be permitted to shoulder the burden of this decision. See also Section E. 3.

Unacceptable excuses for denying parenting time include the following:

The child unjustifiably hesitates or refuses to go.

The child has a minor illness.

The child has to go somewhere.

The child is not home.

The noncustodial parent is behind in support.

The custodial parent does not want the child to go.

The weather is bad (unless the weather makes travel unsafe).

The child has no clothes to wear.

The other parent failed to meet preconditions established by the custodial parent.

2. Adjustments to Schedule / "Make Up" Time. Whenever there is a need to adjust the established parenting schedules because of events outside the normal family routine or the control of the parent requiring the adjustment, the parent who becomes aware of the circumstance shall notify the other parent as far in advance as possible. Recurring events which may require an adjustment, such as military drill obligations or annual work obligations, should be communicated as soon as those scheduled events are published. Both parents shall then attempt to reach a mutually acceptable adjustment to the parenting schedule.

If an adjustment results in one parent losing scheduled parenting time with the child, "make-up" time should be exercised as soon as possible. If the parents cannot

agree on "make-up" time, the parent who lost the time shall select the "make-up" time within one month of the missed time. "Make-up" time is not an opportunity to deny the other parent of scheduled holidays or special days, as defined with the Guidelines, and should not interfere with previously scheduled activities.

"Make-up" parenting time is intended to help maintain a parent-child relationship, while taking into consideration everyday life demands. "Make-up" parenting time may not be used routinely due to a parent's failure to plan in advance, absent a true emergency.

Commentary

There will be occasions when scheduled parenting times should be adjusted because of events or activities outside of a parent's control, such as illnesses, mandatory work, or military obligations, or special family events such as weddings, funerals, reunions, and the like. Each parent should accommodate the other in making the adjustment so that the child may attend the family event or receive "make-up" parenting time with a parent, when adjustments are needed. After considering the child's best interests, the parent who lost parenting time may decide to forego the "make-up" time.

Decisions made by a parent that are voluntary in nature and prevent their regular exercise of parenting time such as vacations or participation in other, voluntary activities, should not be subject to "make-up" parenting time, absent an agreement by both parents to accommodate the adjustment and subsequent "make-up" time. These events may result in the opportunity for additional parenting time for the other parent.

3. Parties who exercise equal periods of parenting time may not exercise more than three (3) additional days of "make-up" parenting time at any one time, in conjunction with regularly scheduled parenting time, so the parent does not exercise more than ten (10) consecutive days of regular and make-up parenting time. These additional days should be exercised outside of those holidays and special days as designated within the Guidelines when possible.

4. Opportunity for Additional Parenting Time. When it becomes necessary that a child be cared for by a person other than a parent or a responsible household family member, the parent needing the child care shall first offer the other parent the

opportunity for additional parenting time, if providing the child care by the other parent is practical considering the time available and the distance between residences. The other parent is under no obligation to provide the child care. If the other parent elects to provide this care, it shall be done at no cost and without affecting child support. The parent exercising additional parenting time shall provide the necessary transportation unless the parties otherwise agree.

Commentary

The rule providing for opportunities for additional parenting time promotes the concept that a child receives greater benefit from being with a parent rather than a child care provider who is not a household family member. The household family member is defined as an adult person residing in the household, who is related to the child by blood, marriage or adoption. The rule is also intended to be practical. When a parent's work schedule or other regular activities require hiring or arranging for a child care provider who is not a household family member, the other parent should be given the opportunity to provide the care. Distance, transportation or time may make the rule impractical. The period of absence which triggers the exchange will vary depending upon the circumstances of the parties. Parents should agree on the amount of child care time and the circumstances that require the offer be made. It is presumed that this rule applies in all cases which the guidelines cover; however, the parties or a trial court may, within discretion, determine that a deviation is necessary or appropriate. Any such deviation must be accompanied by a written explanation. See Shelton v. Shelton, 840 N.E.2d 835 (Ind. 2006)

This section is sometimes mistakenly referred to as the "right of first refusal." It is more accurate to refer to this section as an opportunity to exercise additional parenting time.

D. EXCHANGE OF INFORMATION

Introduction

Parents should obtain and share information about their children. Parents should take the initiative to obtain information about their child from the various providers of

services. Each parent is responsible to establish a relationship with the child's school, health care provider and other service provider. A child may suffer inconvenience, embarrassment, and physical or emotional harm when parents fail to actively obtain and share information.

1. School Records. Under Indiana law, both parents are entitled to direct access to their child's school records, Indiana Code § 20-33-7-2. Each parent should obtain school information on their own without depending on the other parent. A parent shall not interfere with the right of the other parent to communicate directly with school personnel concerning a child. The noncustodial parent shall be listed as an emergency contact unless there are special circumstances concerning child endangerment.

2. School Activities. Each parent shall promptly notify the other parent of all information about school activities, which is not accessible to the other parent. A parent shall not interfere with the right of the other parent to communicate directly with school personnel concerning a child's school activities. The parent exercising parenting time shall be responsible to transport the child to school related activities.

Commentary

Each parent with knowledge of the child's event should promptly inform the other parent of the date, time, place and event. The opportunity for a child to attend a school function should not be denied solely because a parent is not able to attend the function. The child should be permitted to attend the function with the available parent. Scheduled parenting time should not be used as an excuse to deny the child's participation in school related activities, including practices and rehearsals.

3. Other Activities. Each parent shall promptly notify the other parent of all organized events in a child's life which permit parental and family participation. A parent shall not interfere with the opportunity of the other parent to volunteer for or participate in a child's activities. If the child's activities occur during one parent's time with the child, that parent shall have the first opportunity to provide transportation to the activity.

Commentary

Each parent should have the opportunity to participate in other activities involving the child even if that activity does not occur during his or her parenting time. This includes activities such as church functions, athletic events, scouting and the like. It is important to understand that a child is more likely to enjoy these experiences when supported by both parents.

Parents should attempt to achieve a balance when scheduling extra-curricular activities. A reasonable amount of extra-curricular activities can enrich the child's life and strengthen the bond between parent and child through these shared experiences. On the other hand, excessive participation in these activities could serve to diminish the quality of parenting time. Parents should take care to ensure these activities do not unreasonably infringe upon parenting time with either parent.

Extra consideration should be given to a child's participation in travel activities (i.e. basketball, baseball, softball, soccer, etc.). The cost, time away from home and demands on the child should be considered and balanced with the activity and social experience for the child.

4. Health Information. Under Indiana law, both parents are entitled to direct access to their child's medical records, Indiana Code § 16-39-1-7; and mental health records, Indiana Code § 16-39-2-9.

a. If a child is undergoing evaluation or treatment, the custodial parent shall communicate that fact to the noncustodial parent.

b. Each parent shall immediately notify the other of any medical emergencies or illness of the child that requires medical attention.

c. If a child is taking prescription medication or under a health care directive, the custodial parent shall provide the noncustodial parent with a sufficient amount of medication and instructions whenever the noncustodial parent is exercising parenting time. Medical instructions from a health care provider shall be followed.

d. If required by the health care provider, the custodial parent shall give written authorization to the child's health care providers, permitting an ongoing release

of all information regarding the child to the noncustodial parent including the right of the provider to discuss the child's situation with the noncustodial parent.

Commentary

Each parent has the responsibility to become informed and participate in ongoing therapies and treatments prescribed for a child and to ensure that medications are administered as prescribed. An evaluation or treatment for a child includes medical, dental, educational, and mental health services.

5. Insurance. A parent who has insurance coverage on the child shall supply the other parent with current insurance cards, an explanation of benefits, and a list of insurer-approved or HMO-qualified health care providers in the area where each parent lives. If the insurance company requires specific forms, the insured parent shall provide those forms to the other parent.

Commentary

Qualified health care orders may permit the parent to communicate with the medical health care insurance provider.

E. RESOLUTION OF PROBLEMS AND RELOCATION

1. Disagreements Generally. When a disagreement occurs regarding parenting time and the requirements of these Guidelines, both parents shall make every effort to discuss options, including mediation, in an attempt to resolve the dispute before going to court.

2. Mediation. If court action is initiated, the parents shall enter into mediation unless otherwise ordered by the court.

3. Child Hesitation. If a child is reluctant to participate in parenting time, each parent shall be responsible to ensure the child complies with the scheduled parenting time. In no event shall a child be allowed to make the decision on whether scheduled parenting time takes place.

Commentary

In most cases, when a child hesitates to spend time with a parent, it is the result of naturally occurring changes in the life of a child. The child can be

helped to overcome hesitation if the parents listen to the child, speak to each other and practically address the child's needs.

Parents should inquire why a child is reluctant to spend time with a parent. If a parent believes that a child's safety is compromised in the care of the other parent, that parent should take steps to protect the child, but must recognize the rights of the other parent. This situation must be promptly resolved by both parents. Family counseling may be appropriate. If the parents cannot resolve the situation, either parent may seek the assistance of the court.

4. Relocation. When either parent or other person who has custody or parenting time considers a change of residence, a 30 day advance notice of the intent to move must be provided to the other parent or person.

Commentary

1. Impact Of Move. *Parents should recognize the impact that a change of residence may have on a child and on the established parenting time. The welfare of the child should be a priority in making the decision to move.*

2. Indiana Law. *Indiana law (Ind. Code § 31-17-2.2) requires all individuals who have (or who are seeking) child custody or parenting time, and who intend to relocate their residence to provide notice to an individual who has (or is seeking) child custody, parenting time or grandparent visitation. The notice must be made by registered or certified mail not later than 30 days before the individual intends to move. The relocating party's notice must provide certain specified and detailed information about the move. This information includes: the new address; new phone numbers; the date of the proposed move; a stated reason for the move; a proposed new parenting time schedule; and must include certain statements regarding the rights of the non-relocating party. The notice must also be filed with the Court. The notice is required for* ***all proposed moves*** *by custodial* ***and*** *noncustodial parents in all cases when the proposed move involves a change of the primary residence for a period of at least sixty (60) days. The notice is not required to be filed with the court if a person's relocation will reduce the distance between the relocating and non-relocating person's home or will not result in an increase of more than 20 miles between*

the relocating and non-relocating parents' homes and allow the child to remain enrolled in the child's current school.

5. Withholding Support or Parenting Time. Neither parenting time nor child support shall be withheld because of either parent's failure to comply with a court order. Only the court may enter sanctions for noncompliance. A child has the right both to support and parenting time, neither of which is dependent upon the other. If there is a violation of either requirement, the remedy is to apply to the court for appropriate sanctions.

6. Enforcement of Parenting Time.

A. *Contempt Sanctions*. Court orders regarding parenting time must be followed by both parents. Unjustified violations of any of the provisions contained in the order may subject the offender to contempt sanctions. These sanctions may include fine, imprisonment, and/or community service.

B. *Injunctive Relief*. Under Indiana law, a noncustodial parent who regularly pays support and is barred from parenting time by the custodial parent may file an application for an injunction to enforce parenting time under Ind. Code § 31-17-4-4.

C. *Criminal Penalties*. Interference with custody or visitation rights may be a crime. Ind. Code § 35-42-3-4.

D. *Attorney Fees*. In any court action to enforce an order granting or denying parenting time, a court may award reasonable attorney fees and expenses of litigation. A court may consider whether the parent seeking attorney fees substantially prevailed and whether the parent violating the order did so knowingly or intentionally. A court can also award attorney fees and expenses against a parent who pursues a frivolous or vexatious court action.

F. CUSTODY AND PARENTING TIME DURING A PUBLIC HEALTH EMERGENCY

Introduction

Existing court orders regarding custody and parenting time shall remain in place during a public health emergency and shall be followed. Parties should be flexible and cooperate for the best interests and health of the children during this time.

1. School Calendar. For purposes of interpreting custody and parenting time orders, the school calendar as published at the start of the academic year or as amended during the academic year, from each child's school shall control. Custody and parenting time shall not be affected by the school's closure during a public health emergency.

2. Transportation. Transportation for parenting time shall follow the provisions of the custody order or agreement unless such transportation is restricted pursuant to Executive Order.

3. Temporary Modification. If both parents and any other parties to their court case ("the parties") believe there is a reason to temporarily modify or change the terms of a custody or parenting time court order effective for the duration of a public health emergency and modification is not prohibited by the terms of their existing order, they may agree in writing to temporarily modify their existing order; however, the agreement must be filed and approved by the court to be enforceable. If the parties cannot reach a temporary agreement or do not remain in agreement, any party may file a petition to modify the existing order.

4. Child Support. Many county child support clerk's offices may be closed or not accepting payments in person. Existing court orders for child support payments remain in place and shall be followed. Child support payments can be made online, by telephone, by mail, and at other locations, as described on the Indiana Department of Child Services, Child Support Bureau website. Parents who are unable to make their full or any child support payments as a result of a public health emergency may file a petition to modify child support with the court.

5. How to file documents. Agreements, petitions, or motions should be filed electronically, as documents sent by U.S. Mail or fax may not be reviewed as promptly by the judge. Filings with the court for a party represented by an attorney shall be made by the attorney.

Commentary

A parent's decision to forgo parenting time in order to protect the child's health and well-being or to insulate the health and well-being of household family members should not be considered a voluntary relinquishment of parenting time. If a parent is acting in a child's best interest due to dangerous conditions which make the exercise of parenting time unsafe, for example, during a global

pandemic or due to dangerous travel advisories, and opts to forgo parenting time, a parent should be able to exercise "make-up" time in the future. The exercise of "make-up" time may not be feasible within 30 days of the missed time, depending upon the severity of those dangerous conditions and it may not be reasonable for "make-up" time to occur in a single block of time, if a significant period of parenting time was missed.

SECTION II. SPECIFIC PARENTING TIME PROVISIONS

A. INTRODUCTION

The best parenting plan is one created by parents which fulfills the unique needs of the child and the parents. Parents should attempt to create their own parenting plan which is in the best interests of the child. If an agreement is reached, the parenting plan shall be reduced to writing, signed by both parties, and filed for approval by the court in order to be enforceable. When the parties cannot reach an agreement on a parenting plan, the specific provisions which follow are designed to assist parents and the court in the development of a parenting plan. They represent the minimum recommended time a parent should have to maintain frequent, meaningful, and continuing contact with a child.

For identification purposes, the following provisions set forth parenting time for the noncustodial parent and assume the other parent has sole custody or primary physical custody in a joint legal custody situation. These identifiers are not meant to diminish or raise either person's status as a parent.

Commentary

Given the vast number of parenting plans which may exceed the minimum plan in these Guidelines and the particular needs and characteristics of each child and parent, it is impossible to impose any set of presumptions which will benefit almost all children and families.

The following is a list of factors which may be considered when determining whether a particular parenting plan exceeding the specific parenting time provisions herein is safe, secure, developmentally responsive, and, ultimately, in the best interests of the child. This list is not all-inclusive, and not all factors apply to any particular set of parental relationships. The factors are not listed

in any order of priority. The list is meant to provide a framework for parents and other decision-makers to evaluate the potential for a proposed parenting plan to provide for healthy and continuing parenting relationships and promote the best interests of children.

Factors Related to the Child:

- *The age, temperament, and maturity level of the child*
- *The child's current routine*
- *The child's response to separations and transitions*
- *Any particular physical, emotional, educational, or other needs resulting from the developmental stage or characteristics of the child*

Factors Related to the Parent:

- *The temperament of each parent*
- *The "fit" of each parent's temperament with the child's temperament*
- *Each parent's mental health, including mental illness and substance use or abuse*
- *Each parent's sensitivity to the child's early developmental needs*
- *Each parent's capacity and willingness to be flexible as the child's needs change from day to day and over time*

Factors Related to the Parent-Child Relationship

- *Each parent's warmth and availability to the child*
- *Each parent's ability to correctly discern and respond sensitively to the child's needs*
- *Each parent's past experience living with the child and caregiving history*
- *Each parent's caregiving interest and motivation*
- *Each parent's history of perpetrating child physical or emotional abuse or neglect*

Factors Related to the Co-Parenting Relationship:

- *The parents' capacity and willingness to be flexible with each other as the child's needs get expressed in the moment and change over time*
- *The level and nature of conflict and/or domestic violence, including the history, recentness, intensity, frequency, content, and context (separation specific or broader)*
- *The parents' ability to compartmentalize any conflicts and protect the child from exposure to parental conflict*
- *The parents' ability to communicate appropriately and in a timely manner about the child*
- *The degree to which each parent facilitates contact and communication between the other parent and the child versus "gatekeeping" behavior intended to keep the other parent and the child apart*
- *The parents' capacity for cooperation about the child's developmental needs*

Environmental Factors:

- *The proximity of the parental homes*
- *The parents' work schedules and circumstances*

- *The presence of extended family members or close friends that participate in caregiving*
- *The availability of additional child care if needed and economic resources available to pay for it*
- The mechanics in place to transfer the child from one household to the other

B. OVERNIGHT PARENTING TIME.

Unless it can be demonstrated by the custodial parent that the noncustodial parent has not had regular care responsibilities for the child, parenting time shall include overnights. If the noncustodial parent has not previously exercised regular care responsibilities for the child, then parenting time shall not include overnights prior to the child's third birthday, except as provided in subsection C. below.

Commentary

1. Assumptions. *The provisions identify parenting time for the noncustodial parent and assume that one parent has sole custody or primary physical custody of a child, that both parents are fit and proper, that both parents have adequately bonded with the child, and that both parents are willing to parent the child. They further assume that the parents are respectful of each other and will cooperate with each other to promote the best interests of the child. Finally, the provisions assume that each parent is responsible for the nurturing and care of the child. Parenting time is both a right and a trust and parents are expected to assume full responsibility for the child during their individual parenting time.*

2. Lack of Contact. *Where there is a significant lack of contact between a parent and a child, there may be no bond, or emotional connection, between the parent and the child. It is recommended that scheduled parenting time be "phased in" to permit the parent and child to adjust to their situation. It may be necessary for an evaluation of the current relationship (or lack thereof) between the parent and the child in order to recommend a parenting time plan. A guardian ad litem, a mental health professional, a representative from a domestic relations counseling bureau or any other neutral evaluator may be used for this task.*

3. Age Categories. *The chronological age ranges set forth in the specific provisions are estimates of the developmental stages of children since children mature at different times.*

4. Multiple Children of Different Ages. *When a family has children of different ages, the presumption is that all the children should remain together during the exercise of parenting time. However, the standards set for a young child should not be ignored, and there will be situations where not all of the children participate in parenting time together. On the other hand, when there are younger and older children, it will generally be appropriate to accelerate, to some extent, the time when the younger children move into overnight or weekend parenting time, to keep sibling relationships intact.*

5. Non-traditional Work Schedules. *For parents with non-traditional work schedules, who may regularly work weekends, weekday parenting time should be substituted for the weekend time designated in these rules. Similar consideration should also be given to parents with other kinds of non-traditional work hours.*

6. Factors in Determining the Exercise of "regular care responsibilities *"*
(See Section B., C.2. and C.3. (Children under Three (3) years of age))

- *The length of time the parents resided together with the child(ren)*
- *Overnights previously exercised by the parents prior to court involvement (ability to incorporate the status quo for the parents and child(ren))*
- *Medical conditions, developmental issues, and/or neurological disorders relating to the child(ren), and the history and experience of the parent in providing the care necessary for the child(ren)*
- *The parents' provision of appropriate housing and sleeping arrangements for the child(ren)*
- *The frequency and involvement of the parent in the daily activities of the child(ren) such as feeding, cleaning, changing clothes and/or diapers, and bedtime routine, etc.*
- *Other factors affecting the regular care responsibilities of the child(ren)*

C. INFANTS AND TODDLERS

1. Introduction

The first few years of a child's life are recognized as being critical to that child's ultimate development. Infants (under eighteen months) and toddlers (eighteen months to three years) have a great need for continuous contact with the primary care giver who provides a sense of security, nurturing and predictability. It is thought best if scheduled parenting time in infancy be minimally disruptive to the infant's schedule.

Commentary

1. Both Parents Necessary. *It is critical that a child be afforded ample opportunity to bond with both parents. A young child thrives when both parents take an active role in parenting. There is a positive relationship between the degree of involvement of mothers and fathers and the social, emotional, and cognitive growth of a child. Both parents can care for their child with equal effectiveness and their parenting styles may make significant contributions to the development of the child. Parents, therefore, must be flexible in creating for each other opportunities to share both the routine and special events of their child's early development.*

2. Frequency Versus Duration. *Infants and young children have a limited but evolving sense of time. These children also have a limited ability to recall persons not directly in front of them. For infants, short frequent visits are much better than longer visits spaced farther apart. From the vantage point of the young child, daily contact with each parent is ideal. If workable, it is recommended that no more than two days go by without contact with the noncustodial parent. A parent who cannot visit often may desire to increase the duration of visits, but this practice is not recommended for infants. Frequent and predictable parenting time is best.*

3. *Overnight contact between parents and very young children can provide opportunities for them to grow as a family. At the same time, when very young children experience sudden changes in their nighttime care routines, especially when these changes include separation from the usual caretaker, they can become frightened and unhappy. Under these circumstances, they may find it difficult to relax and thrive, even when offered excellent care.*

__4.__ When a very young child is accustomed to receiving regular, hands-on care from both parents, the child should continue to receive this care when the parents separate. Regardless of custodial status, a parent who has regularly cared for the child prior to separation should exercise overnight parenting time. When a parent has not provided regular hands-on care for the child prior to separation, overnight parenting time is not recommended until the parent and the child have developed a predictable and comfortable daytime care taking routine.

2. Parenting Time In Early Infancy. (Birth through Age 9 Months)

(A) Birth through Age 4 Months:

(1) Three (3) non-consecutive "days" per week of two (2) hours in length.

(2) All scheduled holidays of two (2) hours in length.

(3) Overnight if the noncustodial parent has exercised regular care responsibilities for the child but not to exceed one (1) 24 hour period per week.

Commentary

Parenting time should occur in a stable place and without disruption of an infant's established routine.

(B) Age 5 Months through Age 9 Months:

(1) Three (3) non-consecutive "days" per week of three (3) hours per day. The child is to be returned at least one (1) hour before evening bedtime.

(2) All scheduled holidays of three (3) hours in length. The child is to be returned at least one (1) hour before evening bedtime.

(3) Overnight if the noncustodial parent has exercised regular care responsibilities for the child but not to exceed one (1) 24 hour period per week.

3. Parenting Time in Later Infancy (Age 10 Months through Age 36 Months)

(A) Age 10 Months through Age 12 Months:

(1) Three (3) non-consecutive "days" per week, with one day on a "non-work" day for eight (8) hours. The other days shall be for three (3) hours each day. The child is to be returned at least one (1) hour before evening bedtime.

(2) All scheduled holidays for eight (8) hours. The child is to be returned at least one (1) hour before evening bedtime.

(3) Overnight if the noncustodial parent has exercised regular care responsibilities for the child but not to exceed one (1) 24 hour period per week.

(B) Age 13 Months through Age 18 Months:

(1) Three (3) non-consecutive "days" per week, with one day on a "non-work" day for ten (10) hours. The other days shall be for three (3) hours each day. The child is to be returned at least one (1) hour before evening bedtime.

(2) All scheduled holidays for eight (8) hours. The child is to be returned at least (1) hour before evening bedtime.

(3) Overnight if the noncustodial parent has exercised regular care responsibilities for the child but not to exceed one (1) 24 hour period per week.

(C) Age 19 Months through 36 Months:

(1) Alternate weekends on Saturdays for ten (10) hours and on Sundays for ten (10) hours. The child is to be returned at least one hour before bedtime, unless overnight is appropriate.

(2) One (1) "day" preferably in mid-week for three (3) hours, the child to be returned at least one (1) hour before evening bedtime, unless overnight during the week is appropriate.

(3) All scheduled holidays for ten (10) hours. The child is to be returned one hour before bedtime.

(4) If the noncustodial parent who did not initially have regular care responsibilities has exercised the scheduled parenting time under these guidelines for at least nine (9) continuous months, regular parenting time as indicated in section II. D. 1. below may take place.

Commentary

Parenting Time Guideline II. C. 3. (C) (4) is intended to provide a way to shorten the last age-based parenting time stage when the infant is sufficiently bonded to the noncustodial parent so that the infant is able to regularly go back and forth, and particularly wake-up in a different place, without development-retarding strain. If this is not occurring, the provision should not be utilized. The nine (9) month provision is applicable only within the 19 to 36 month section. Therefore, as a practical matter, the provision could not shorten this stage until the infant is at least 28 months old. The provision applies equally to all noncustodial parents.

D. PARENTING TIME - CHILD 3 YEARS OF AGE AND OLDER

1. Regular Parenting Time

(a) On alternating weekends from Friday at 6:00 P.M. until Sunday at 6:00 P.M. (the times may change to fit the parents' schedules);

(b) One (1) evening per week, preferably in mid-week, for a period of up to four hours but the child shall be returned no later than 9:00 P.M; and,

(c) On all scheduled holidays.

Commentary

Where the distance from the noncustodial parent's residence makes it reasonable, the weekday period may be extended to an overnight stay. In such circumstances, the responsibility of feeding the child the next morning, getting the child to school or day care, or returning the child to the residence of the custodial parent, if the child is not in school, shall be on the noncustodial parent.

2. Extended Parenting Time (Child 3 through 4 Years Old)

The noncustodial parent shall have up to four (4) non-consecutive weeks during the year beginning at 6:00 P.M. on Sunday until 6:00 P.M. on the following Sunday. The noncustodial parent shall give at least sixty (60) days advance notice of the use of a particular week.

3. Extended Parenting Time (Child 5 and older)

One-half of the Summer Vacation. The summer vacation begins the day after school lets out for the summer and ends the day before school resumes for the new school year. The time may be either consecutive or split into two (2) segments. The noncustodial parent shall give notice to the custodial parent of the selection by April 1 of each year. If such notice is not given, the custodial parent shall make the selection and notify the other parent. All notices shall be given in writing and verbally. A timely selection may not be rejected by the other parent. Notice of an employer's restrictions on the vacation time of either parent shall be delivered to the other parent as soon as that information is available. In scheduling parenting time the employer imposed restrictions on either parent's time shall be considered by the parents in arranging their time with their child.

If a child attends a school that has a year-round or balanced calendar, the noncustodial parent's extended parenting time shall be one-half of the time for fall and spring school breaks. Unless otherwise agreed to by the parents or ordered by the trial court, the noncustodial parent shall exercise parenting time the first half of school break in odd years, and the second half of school break in even years. Absent an agreement of the parties, the first half of the break will begin two hours after the child is released from the school, and the second half of the period will end at 6:00 p.m. on the day before school begins again. Summer Vacation should be shared equally between parents as provided in the paragraph above. Winter break/Christmas vacation should be shared as provided in the Holiday Parenting Time Schedule.

If a child attends summer school, the parent exercising parenting time shall be responsible for the child's transportation to and attendance at school.

During any extended summer period of more than two (2) consecutive weeks with the noncustodial parent, the custodial parent shall have the benefit of the regular parenting time schedule set forth above, which includes alternating weekends and mid-week parenting time, unless impracticable because of distance created by out of town vacations.

Similarly, during the summer period when the children are with the custodial parent for more than two (2) consecutive weeks, the noncustodial parent's regular parenting time continues, which includes alternating weekends and mid-week parenting time, unless impracticable because of distance created by out of town vacations.

The selection of a parent's summer parenting time shall not deprive the other parent of the Holiday Parenting Time Schedule below. See Section II. F.

E. PARENTING TIME FOR THE ADOLESCENT AND TEENAGER

1. Regular Parenting Time. Regular parenting time by the noncustodial parent on alternating weekends, during holidays, and for an extended time during the summer months as set forth in the Parenting Time Guidelines (Section II. D.) shall apply to the adolescent and teenager.

Commentary

1. A Teenager Needs Both Parents. *Adolescence is a stage of child development in which parents play an extremely important role. The single most important factor in keeping a teenager safe is a strong connection to the family. The responsibility to help a teenager maintain this connection to the family rests with the parents, regardless of their relationship. The parents must help the teenager balance the need for independence with the need to be an active part of the family. To accomplish this, they must spend time with the teenager. Parents must help the adolescent become a responsible adult. A teenager should safely learn life's lessons if the parents provide the rules which prevent dangerous mistakes.*

2. Anchors of Adolescence. *Regardless of whether the parents live together or apart, an adolescent can be made to feel part of a supportive, helpful family. Things that can help this occur include:*

Regular time spent in the company of each parent*. Parents need to be available for conversation and recreation. They need to teach a teenager skills that will help the teen in adult life.*

Regular time spent in the company of siblings*. Regardless of personality and age differences, siblings who spend time together can form a family community that can be a tremendous support in adult life. If the children do not create natural opportunities for them to want to do things together, the parents will need to create reasons for this to occur.*

Emphasis on worthwhile values. *Parent and teens together should invest time in wholesome activities that teach a teenager important lessons. If a teenager identifies with worthwhile values, the teen is more likely to have a positive self-image.*

Time spent with good friends. *A parent's expectations can influence a teenager's choice of friends. Meet your teenager's friends and their parents and interact with them as guests in your home. This will increase the likelihood that your teenager's friends will be people who are comfortable in the environment that is good for the teen.*

Clear rules that are agreed upon by both parents. *As a child matures, it is very important that the teen knows rules of acceptable behavior. The chances of this occurring are much better if both parents agree in these important areas. When parents jointly set the standard of behavior for their teen, the chances of the child accepting those values are greatly increased.*

Good decisions/greater freedoms. *A teenager who does what is expected should be offered more freedom and a wider range of choices. It is helpful if a teenager is reminded of the good decisions that have caused the teen to be given more privileges. If a teen is helped to see that privileges are earned and not natural "rights" he or she will be more likely to realize that the key to getting more freedom is to behave well. If rules are not followed, appropriate consequences should result. A teenager who does not make good use of independence should have less of it.*

Good decisions/greater freedoms. *A teenager who does what is expected should be offered more freedom and a wider range of choices. It is helpful if a teenager is reminded of the good decisions that have caused the teen to be given more privileges. If a teen is helped to see that privileges are earned and not natural "rights" he or she will be more likely to realize that the key to getting more freedom is to behave well. If rules are not followed, appropriate consequences should result. A teenager who does not make good use of independence should have less of it.*

3. Decision Making In Parenting A Teenager. *The rearing of a teenager requires parents to make decisions about what their teen should be allowed to*

do, when, and with whom. At the same time, parents who live apart may have difficulty communicating with each other.

If parents are not able to agree, the teenager, who very much wants freedom from adult authority, should never be used as the "tie breaker." When parents live apart, it is more likely that a child will be required to make decisions, not as a healthy part of development, but simply to resolve disagreements between the parents.

As a general rule, a teenager should be involved in making important decisions if the parents agree the opportunity to make the decision is valuable, and the value of that opportunity outweighs any possible harm of a poor decision. If the parents feel the welfare of the child is dependent on the decision made, and if they allow the child to make a decision simply because they cannot agree, the parents are in danger of failing the child.

Example #1

Mary Jones and John Jones disagree as to whether or not their daughter, Sally, should study a foreign language in middle school. Mary feels that this early exposure to a foreign language will offer Sally an advantage when she continues this study in high school. John would like Sally to have the opportunity to develop her artistic talents through electives in drawing and painting. The Jones agree that Sally's success and happiness will in large part be determined by her motivation. They agree that Sally should decide between a foreign language and art, and that they will support whatever decision she makes.

Comment: Mary and John feel that Sally is mature enough to think about what interests her and makes her happy. They feel that an opportunity to do this in choosing an elective will be an important experience for Mary--more important than the relative merits of foreign language or art study to Sally's academic career. This is a good example of parents agreeing to involve the adolescent in making a decision that resolves their own disagreement.

Example #2

Tom Smith and Sue Smith cannot come to a visitation agreement. Tom believes their 17 year old son, Pete, should have visitation at a time to be determined by Pete. Tom feels that, if Pete is given a visitation schedule, he will feel that he is being forced to see his father. Tom further believes this will weaken his relationship with his son. Sue believes a clear plan regarding the time Tom and Pete spend together should be established. She says if Pete is not given a firm expectation of when he will be with Tom, it will be too easy for other activities in Pete's life to crowd out this priority. Unable to resolve this question, Tom and Sue give Pete the option of deciding if he would like a visitation schedule or if he would like to be free to see his father whenever he pleases.

Comment: Tom and Sue each feel the quality of Pete's relationship with Tom will depend on the way that visitation is structured. Each believes that, if Pete makes the wrong choice, the problems that follow could impact him throughout his adult life. They have placed the responsibility for the decision on Pete, not because the chance to make such a decision will help him, but because they cannot resolve the matter between themselves. This is a poor reason for entrusting an adolescent with such an important decision.

2. Special Considerations. In exercising parenting time with a teenager, the noncustodial parent shall make reasonable efforts to accommodate a teenager's participation in his or her regular academic, extracurricular and social activities.

Commentary

Making Regular Parenting Time Workable*. Parents must develop a parenting plan that evolves or changes as the teen matures. The needs of the child at age thirteen will be very different from the needs of that same child at age seventeen. Parents also must develop a parenting plan that assures regular involvement of both parents. This can be a particular challenge when the teen is involved with school, activities, and friends, and becomes even more difficult when the parents live some distance apart.*

When parents differ in their views of which freedoms should be given and which should be withheld, the parents must be sufficiently united to keep the teenager from assuming responsibilities when the child is not ready. At the

same time, the parents must respect that they will run their homes differently because they are living apart.

Living apart challenges parents to teach their child that different ways of doing things can work for different parents. They must see that their child needs to work especially hard to adapt to two distinct ways of doing things. Not all differences mean that one parent is right and one parent is wrong. The key is for parents to realize different homes can produce a well-adjusted teen.

Example: The Student Athlete

Jim Doe and Jane Doe have been divorced for 3 years. Their oldest child, Jeremy, is beginning high school. Throughout his middle school years, Jeremy was active in football. Practices were held after school and games took place on weekends. Jeremy had spent alternating weekends and one night each week with his noncustodial parent. The parent who had Jeremy took him to practices and games during the time they were together. On weeknights with the noncustodial parent, this usually consisted of dinner and conversation. Weekends with both parents included homework, chores, play, and family outings.

Jeremy's high school coach is serious about football. Jeremy loves the sport. Coach expects Jeremy to work out with teammates throughout the early summer. In August, practice occurs three times a day. Once school begins, Jeremy will practice after school for several hours each day. In addition, he is taking some difficult courses and expects that several hours of study will be needed each night. Jeremy will have games on Friday nights. Because of his busy weekend schedule, he expects that Saturdays will be his only time to be with friends.

Discussion

On the surface, a traditional parenting plan, placing Jeremy with his noncustodial parent on alternating weekends and one night each week, would not seem to work. Jeremy's athletic and academic demands will require him to work hard on weeknight evenings. Jeremy's parents agree he needs time to be with friends and he should be allowed to make social plans on Saturdays. They

recognize Sundays will often need to be devoted to homework projects which do not fit into the busy weekday schedule.

A Possible Solution

Jeremy's parents want him to enjoy sports and have friends. Yet, they also want him to have the benefits of being actively raised by two parents. They want him to grow to become an adult who sees that balancing family, work, and play is important. They want to teach him how to do this.

Jeremy's parents have agreed to maintain their previous supervision plan. However, they have also agreed on some changes. Jeremy's noncustodial parent will come to the community of the custodial parent for midweek visitation. Regardless of how busy he is, Jeremy needs to eat. The noncustodial parent plans to take Jeremy to dinner at a restaurant that offers quick but healthy meals. They will spend the rest of the time at a local library where Jeremy can study. The noncustodial parent can offer help as needed or simply enjoy a good book. Jeremy's parents plan to purchase an inexpensive laptop computer to assist him when he works at the library.

Jeremy's parents plan that alternating weekends will continue to be spent with the noncustodial parent. They, like many parents of adolescents, understand Jeremy wants to be with his friends more than he wants to be with them. They recognize that, on weekends, they are offering more supervision and Jeremy's friends are getting more time. Yet, they also see the need to help Jeremy establish active family membership as one of his priorities.

F. HOLIDAY PARENTING TIME SCHEDULE

1. Conflicts Between Regular and Holiday Weekends.

The Holiday Parenting Time Schedule shall take precedence over regularly scheduled and extended parenting time. Extended parenting time takes precedence over regular parenting time unless otherwise indicated in these Guidelines.

Alternating weekends shall be maintained throughout the year as follows. If a parent misses a regular weekend because it is the other parent's holiday, it will be lost. If a parent receives two consecutive weekends because of a holiday, that parent shall

have the third weekend also. Regular alternating weekends shall continue throughout the year.

Commentary

A parent may receive three (3) consecutive weekends due to a holiday. It is anticipated that missed weekends due to holidays will balance out for each parent given the alternating schedule for the holidays provided for in these guidelines.

When the court orders a change of physical custody, the court should consider whether the Holiday Schedule change should start at the beginning of the calendar year, at the beginning or the end of the child's school year, or immediately.

2. Holiday Schedule. The following parenting times are applicable in all situations referenced in these Guidelines as "scheduled holidays" with the limitations applied as indicated for children under the age of three (3) years. If a child is three (3) years or older, but not yet enrolled in an academic child care program or educational facility, then the district school calendar of the district where the child primarily resides shall control for the purpose of determining holiday parenting time. If the parties equally share parenting time, then the district school calendar of the parent paying controlled expenses shall be used to determine holiday parenting time. If a child is three (3) years or older and enrolled in an academic child care program or educational facility, then the program or educational facility's calendar where the child is enrolled shall control for the purpose of determining holiday parenting time.

A. Special Days.

[1] Mother's Day. With the child's mother from Friday at 6:00 P.M. until Sunday at 6:00 P.M.

[2] Father's Day. With the child's father from Friday at 6:00 P.M. until Sunday at 6:00 P.M.

[3] Child's Birthday. In even numbered years the noncustodial parent shall have all of the children on each child's birthday from 9:00 A.M. until 9:00 P.M. However, if the birthday falls on a school day, then from 5:00 P.M. until 8:00 P.M. The custodial parent shall have all of the children the day before each

child’s birthday from 9:00 A.M. until 9:00 P.M.; however, if such day falls on a school day, then from 5:00 P.M. until 8:00 P.M.

In odd numbered years the noncustodial parent shall have all of the children the day before each child's birthday from 9:00 A.M. until 9:00 P.M., however, if such day falls on a school day, then from 5:00 P.M. until 8:00 P.M. The custodial parent shall have all of the children on each child's birthday from 9:00 A.M. until 9:00 P.M.; however, if the birthday falls on a school day, then from 5:00 P.M. until 8:00 P.M.

[4] Parent's Birthday. From 9:00 A.M. until 9:00 P.M. with that parent, however, if the parent's birthday falls on a school day, then from 5:00 P.M. until 8:00 P.M.

[5] When the child’s birthday falls within a Special Day, Holiday, or Christmas vacation, the child’s birthday shall be celebrated with the parent having the child during that time period.

When the parent’s birthday falls within a Special Day, Holiday or Christmas vacation, the Special Day, Holiday or Christmas vacation takes precedence.

B. Christmas Vacation.

The Christmas vacation shall be defined as beginning on the last day of school and ending the last day before school begins again. Absent agreement of the parties, the first half of the period will begin at 6:00 P.M. the day the child is released from school. The second half of the period will end at 6:00 P.M. on the day before school begins again.

Each party will receive one half (1/2) of the total days of the Christmas vacation, on an alternating basis as follows:

1. In even numbered years, the custodial parent shall have the first one half (1/2) of the Christmas vacation and noncustodial parent shall have the second one half (1/2) of the Christmas vacation.
2. In odd numbered years, the noncustodial parent shall have the first one half (1/2) of the Christmas vacation and custodial parent shall have the second one half (1/2) of the Christmas vacation.
3. In those years when Christmas does not fall in a parent’s week, that parent shall have the child from Noon to 9:00 P.M. on Christmas Day.

4. No exchanges under this portion of the rule shall occur after 9:00 P.M. and before 8:00 A.M., absent agreement of the parties.

   New Year's Eve and New Year's Day shall not be considered separate holidays under the Parenting Time Guidelines.

C. Holidays.

The following holidays shall be exercised by the noncustodial parent in even numbered years and the custodial parent in odd numbered years:

[1] Martin Luther King Day. If observed by the child's school, from Friday at 6:00 P.M. until Monday at 6:00 P.M.

[2] Presidents' Day. If observed by the child's school, from Friday at 6:00 P.M. until Monday at 6:00 P.M.

[3] Memorial Day. From Friday at 6:00 P.M. until Monday at 6:00 P.M.

[4] Labor Day. From Friday at 6:00 P.M. until Monday at 6:00 P.M.

[5] Thanksgiving. From 6:00 P.M. on Wednesday until 6:00 P.M. on Sunday.

The following holidays shall be exercised by the noncustodial parent in odd numbered years and the custodial parent in even numbered years:

[1] Spring Break. From 6:00 P.M. the day the child is released from school on the child's last day of school before Spring Break, and ending 6:00 P.M. on the last day before school begins again.

[2] Easter. From Friday at 6:00 P.M. until Sunday at 6:00 P.M.

[3] Fourth of July. From 6:00 P.M. on July 3rd until 6:00 P.M. on July 5th.

[4] Fall Break. From 6:00 P.M. the day the child is released from school on the child's last day of school before Fall Break and ending 6:00 P.M. of the last day before school begins again.

[5] Halloween. On Halloween evening from 6:00 P.M. until 9:00 P.M. or at such time as coincides with the scheduled time for trick or treating in the community where the parent exercising parenting time resides.

3. Religious Holidays. Religious based holidays shall be considered by the parties and added to the foregoing holiday schedule when appropriate. The addition of such

holidays shall not affect the Christmas vacation parenting time, however, they may affect the Christmas day and Easter parenting time.

Commentary

Recognizing there are individuals of varying faiths who celebrate holidays other than those set out in the guidelines, the parties should try to work out a holiday visitation schedule that fairly divides the holidays which they celebrate over a two-year period in as equal a manner as possible.

SECTION III. PARENTING TIME WHEN DISTANCE IS A MAJOR FACTOR

Where there is a significant geographical distance between the parents, scheduling parenting time is fact sensitive and requires consideration of many factors which include: employment schedules, the costs and time of travel, the financial situation of each parent, the frequency of the parenting time and others.

1. General Rules Applicable. The general rules regarding parenting time as set forth in Section 1 of these guidelines shall apply.

2. Parenting Time Schedule. The parents shall make every effort to establish a reasonable parenting time schedule.

Commentary

When distance is a major factor, the following parenting time schedule may be helpful:

(A) Child Under 3 Years Of Age. *For a child under 3 years of age, the noncustodial parent shall have the option to exercise parenting time, in the community of the custodial parent, up to two five hour periods each week. The five hour period may occur on Saturday and Sunday on alternate weekends only.*

(B) Child 3 and 4 Years of Age. *For a child 3 and 4 years of age, up to six (6) one week segments annually, each separated by at least (6) weeks. Including the pickup and return of the child, no segment shall exceed eight (8) days.*

(C) Child 5 Years of Age and Older. *For a child 5 years of age and older who attends a school with a traditional school calendar, seven (7) weeks of the school summer vacation period and seven (7) days of the school winter vacation plus the entire spring break, including both weekends if applicable. Such parenting time, however, shall be arranged so that the custodial parent shall have religious holidays, if celebrated, in alternate years.*

If the child attends a school with a year-round or balanced calendar, the noncustodial parent's parenting time should be adjusted so that the noncustodial parent and child spend at least as much time together as they would under a traditional school calendar.

3. Priority of Summer Visitation. Summer parenting time with the noncustodial parent shall take precedence over summer extracurricular activities (such as Little League, summer camp, etc.) when parenting time cannot be reasonably scheduled around such events.

4. Extended Parenting Time Notice. The noncustodial parent shall give notice to the custodial parent of the selection by April 1 of each year. If such notice is not given, the custodial parent shall make the selection.

5. Special Notice of Availability. When the noncustodial parent is in the area where the child resides, or when the child is in the area where the noncustodial parent resides, liberal parenting time shall be allowed. The parents shall provide notice to each other, as far in advance as possible, of such parenting opportunities.

SECTION IV. SHARED PARENTING

A. Introduction to Shared Parenting: An Alternate Parenting Plan

Many parents, who require a degree of separation in their personal relationship but wish for an organized sharing of responsibilities in their parenting relationship, find the Indiana Parenting Time Guidelines to be a helpful model. Some parents require less separation in their personal relationship and wish for a more seamless blending of child rearing practices in their two homes. The needs of these families may better be addressed by a model termed Shared Parenting.

In deciding whether or not a Shared Parenting plan meets the needs of their family, parents need to make a careful assessment of their family situation. The agreement and cooperation of the parents are essential elements of a successful shared parenting plan. In deciding whether or not to approve a Shared Parenting plan, judges need to conduct an independent inquiry to ensure the family meets standards predicting Shared Parenting success.

All Shared Parenting plans, by definition, make a deliberate effort to provide the child with two parents who are actively involved in that child's day to day rearing. As a consequence of an effectively implemented Shared Parenting plan, the child will spend time in the home of each parent as a resident, not a visitor. The home of each parent will be a place where the child learns, works, and plays. To effectively implement a Shared Parenting plan, each parent will need to do the work required to make his or her home a home base for the child.

The task of judging the capacity of parents for Shared Parenting is a complex one. The abilities of the individual parents and their ability to work together, the amount of work Shared Parenting would require of that unique family, and the costs to the child of both Shared Parenting and any alternative all require assessment. Successful Shared Parenting can insulate the child from most material and emotional losses which are frequently a consequence of parental separation. Unsuccessful Shared Parenting can accelerate the parental conflicts which are most predictive of emotional illness in children of separation / divorce.

B. Two Houses, One Home

The feeling that one is "at home" requires a degree of comfort and an element of routine. When children are "at home" they generally know what is expected of them. The patterns of day to day life in the home are understood and taken for granted. In this respect, day to day life requires less work "at home" than it does in more novel situations. Children often feel more relaxed. They are free to devote more energy to other things.

The rewards to the child who can naturally feel "at home" in the residences of both parents are significant. Day to day living can be focused more on growth and development, and less on adaptation. The task of providing two residences with a degree of consistency that makes them both feel like "home" to a child can be a substantial one. It is normally more challenging for two people whose relational conflicts

cause them to decide to live separately. Longer term, children are more likely to enjoy living with both parents if the costs of doing so are small. They are less likely to shift to one home base, and simply visit with the other parent, as the demands of their academic and social lives increase.

Commentary

Factors Helpful in Determining the Capacity for Shared Parenting

Factors Related to the Child

1. Characterize the amount of joint work required in the rearing of the child.

Considerations:

- *The younger the child, the longer the period of time requiring joint work and the greater the number of decisions and accommodations required by the parents.*
- *Some children, from birth, are calmer and naturally better able to adapt to changes (easy temperament). Other children, from birth, naturally exhibit more distress in handling changes and daily discomforts (difficult temperament). These children require more time and more unified parental assistance in making transitions.*
- *Factors unique to the age and developmental needs of the child can require heightened degrees of accommodation on the part of parents. Examples include breastfeeding, time needed to develop special talents and interests, time needed to address educational limitations, and time needed for health-related therapies.*
- *Children with an established routine of being actively raised by both parents naturally need to make a smaller accommodation when transitioning to Shared Parenting. Children who have been raised by one parent predominantly can still benefit from Shared Parenting. However, the initial work required by the child to adjust to a routine involving both parents will be more substantial.*

2. What is the ability of the child to benefit from Shared Parenting?

Considerations:

- *The younger the child, the greater the number of years the child can receive the benefits of being actively raised by both parents. A well-executed Shared Parenting plan can thus be of greatest benefit when put into place early in a child's life.*
- *What are the needs of the child (physical, educational, emotional, other) that are impacted by the separation / divorce of the parents? Will Shared Parenting facilitate the ability of the parents to address these needs post-separation / divorce?*
- *In what significant ways does the child engage in the community outside the family? Will Shared Parenting facilitate this engagement post separation / divorce?*

Factors Related to the Parent

1. What appears to motivate the parent to take specific positions with respect to the rearing of the child? Perception of the needs, feelings, and interests of the child? The needs, feelings, and interests of the parent? Perception of what is fair to the parent? Desire to comply with rules or agreements?

Consideration:

- *A parent motivated by interests, agreements, or rules which are shared with the other parent is more likely to see things as the other parent sees them. A parent who is motivated by personal interests, or a need to maintain fairness when faced with competing interests, is less likely to see things as the other parent sees them.*

2. Does the parent show interest in the work of raising children? Examples include scheduling and attending appointments addressing educational or health-related needs, planning and sharing meals, engaging the children with extended family, athletics, or religious opportunities.

3. Does the parent have a generally peaceful relationship with the child?

Considerations:

- *Peaceful relationships do not require those involved to be highly similar or to be conflict-free.*

- *Peaceful living does require the ability to accommodate differences. For example, high energy children can be peacefully raised by lesser energy parents. The issue is one of accommodation. A lower energy parent may need to take steps to engage the high energy child in exercise activities outside the family.*
- *Peaceful living does require the ability to manage conflicts in a respectful way. Conflict erodes peace only when its expression causes pain and its resolution leaves that pain unaddressed.*

4. Are there factors in the life of the parent which detract from the time and attention needed to perform the tasks of Shared Parenting? Examples include addictions, medical problems, other relationships, and employment requirements.

Factors Related to the Parent-Child Relationship

1. What may the child gain from each parent if the parents have the high level of engagement necessitated by a Shared Parenting arrangement? Weigh that against what the child may gain from each parent if the parents have less engagement than that of parents who have adopted a Shared Parenting arrangement.

2. To what extent do either or both parents exhibit positive relational qualities such as warmth, availability, interest in the child, a shared positive history with the child, and an ability to discern the child's needs? Shared Parenting ensures a child access to those qualities.

3. Does a parent have a history which poses some risk to the child, such as a prior history of using cruel punishment or perpetrating child abuse, a model of parenting which does not require a sharing of responsibilities may provide an opportunity to dilute risk while maintaining parental access?

Factors Related to the Co-Parenting Relationship

1. How do the parents manage disagreements regarding matters pertaining to the child? Does their interpersonal style allow them to maintain a working connection when they see things differently? Does their interpersonal style /

history of previous wounds cause them to establish distance at times of differing opinion which may sever their ability to work together?

2. Is there a history of parental collaboration, even in the midst of conflict, which needs to be protected by a Shared Parenting plan, i.e., a structure which allows the collaboration to continue?

3. Is there a potential for ongoing gate-keeping which could potentially be dampened by a Shared Parenting order?

4. Would Shared Parenting undermine the mental health of either parent?

> *Consideration:*
>
> *A history of abusive behavior generally discourages a recommendation for Shared Parenting. Other variations of protracted parental misbehavior which do not rise to the level of being abusive can be so corrosive as to impact the emotional health of a parent and significantly work against the best interests of the child. Examples of behavior with such potential include:*
>
> - *the initiation of too frequent nonpurposeful text and email communication,*
> - *the use of social media to criticize or embarrass the other parent, and*
> - *violation of the reasonable physical boundaries that allow parents to lead separate lives.*

5. Do parents respond to each other in a conscientious manner?

> *Consideration:*
>
> *In order for Shared Parenting to feel comfortable, parents need to respond to each other with an implicit agreement regarding what constitutes timely response. Delays invite frustration and heighten the opportunity for negative interpretation. Parents who do not require a court to define "timely response" tend to be more in synch, and more motivated to collaborate. Parents who require a court to define "timely response" are less likely to have an innate talent for working together.*

6. Is there a history of highly regrettable behavior?

- *How is it best characterized? (recent / historic, addressed / unaddressed, involving both parents / just one parent, acknowledged by both / reported by just one)*
- *How is it best understood? (a means of controlling others, a chronic lack of emotional self-control, an isolated / circumstantial episode of emotional outburst)*

7. Have the children witnessed regrettable incidents? Have they done so on an isolated or frequent basis?

Consideration:

When a marriage is disintegrating, children commonly witness isolated events of poor parental conduct that the parents themselves may not have been able to adequately anticipate. Parents who make serious mistakes can still effectively share the work of raising the children. Children who frequently witness regrettable incidents many times have parents who do not recognize the child's need for shielding early on and take corrective steps to minimize risk of witnessing future events. Divorce / separation can provide a shield for children who have witnessed regrettable behavior when their parents are together. The increased need for parental contact which comes with Shared Parenting could inadvertently undermine the shield.

8. Characterize the degree to which the child is aware of parental conflicts.

Consideration:

Most children whose parents separate are aware of parental conflict. Children whose level of awareness rises to the level where they experience worry regarding the instability of their home have generally not been adequately shielded from conflict. In general, parents who lack insight or personal control to establish shielding boundaries in a disintegrating relationship also lack the ability to take the perspective of the child. This perspective is necessary for high quality Shared Parenting.

9. Do the parents provide the children with evidence they like each other? For example, do they engage in social banter at exchanges, support the children in choosing gifts for the other parent, refer to the other parent as "mom" / "dad"? Do they deliberately encourage the child's love for the other parent? Do the

parents provide the child with evidence they dislike each other? For example, do they show a lack of cordial conduct at exchanges? Do they maintain physical separation at public gatherings? Do they criticize clothing, food, recreational opportunities chosen by the other parent? Does a parent refer to the other parent negatively or with a lack of respect? Is there evidence a parent would tolerate a child's hostility or disrespect toward the other parent? For example, "You will form your own opinions of your mom / dad when you are older."

Consideration:

The ultimate goal of Shared Parenting is to promote the healthiest bond possible between the child and both parents. *Parents who consistently demonstrate evidence of valuing this bond for their child are most likely to commit to the work of Shared Parenting. Parents who show little evidence of valuing this bond are less likely to commit to the work that Shared Parenting requires.*

Environmental Factors

1. Can Shared Parenting increase the amount of actual time a child is cared for by parent?

Consideration:

Shared Parenting is less a model of parental residence and more a model of parental care. High quality Shared Parenting plans (as opposed to parenting time plans) are constructed around the time when each parent is normally available to be with the child–committing the hands-on time that builds bonds.

2. Does Shared Parenting save the family money / increase the financial stability of the child?

3. Does Shared Parenting drain resources of the family (money, time, work schedule accommodations) to so great an extent that other needs of the child are significantly sacrificed?

SECTION V.PARENTING COORDINATION

A. GENERAL PROVISIONS

1. Parenting coordination is a court ordered, child-focused dispute resolution process in which a Parenting Coordinator is appointed to assist high conflict parties by accessing and managing conflicts, redirecting the focus of the parties to the needs of the child, and educating the parties on how to make decisions that are in the best interest of the child.
2. A Parenting Coordinator is an individual appointed by a Court to conduct parenting coordination.
3. "High conflict parties" are parties who have had ongoing disagreements and conflict. The disagreements and conflict center on the parties' inability to communicate and resolve issues regarding the care of the child, a parenting time schedule, or any other issues that have adversely affected the child.
4. Nothing in this guideline limits, supersedes, or divests the court of its exclusive jurisdiction to determine issues of parenting time, custody, and child support.
5. These guidelines apply to all Parenting Coordinator appointments made after the effective date of the adoption of these guidelines and do not modify an existing parenting coordination order. These guidelines do not limit a party's right to file for modification under existing Indiana law.

B. QUALIFICATIONS

The Parenting Coordinator shall be a registered Indiana Domestic Relations Mediator, with additional training or experience in parenting coordination satisfactory to the court making the appointment. A Parenting Coordinator, as a registered Indiana Domestic Relations Mediator under ADR Rule 1.5, has immunity in the same manner and to the same extent as a judge.

C. APPOINTMENT AND TERMS OF SERVICE

1. A Parenting Coordinator shall serve by agreement of the parties or formal order of the court, which shall clearly and specifically define the Parenting Coordinator's scope of authority and responsibilities.

2. Simultaneously with, or after entry of a Parenting time order, the court may with consent of the parties, or on its own motion, appoint a Parenting Coordinator when it is in the child's best interest to do so.

3. When the court on its own motion appoints a Parenting Coordinator without the consent of both parties, the order appointing a Parenting Coordinator must include a written explanation why the appointment is appropriate in the case.

4. A court order is necessary to provide the Parenting Coordinator authority under these guidelines to obtain information, and serve and make recommendations as specified in the order.

5. In cases where domestic abuse or domestic violence is alleged, suspected, or present, the appointment of a Parenting Coordinator may be contraindicated. If the court appoints a Parenting Coordinator in such a case, the person who is or may be the victim of domestic abuse or domestic violence should be fully informed about the parenting coordination process and of the option to have a support person present at parenting coordination sessions. Appropriate procedures should be in place to provide for the safety of all persons involved in the parenting coordination process. Procedures should be in place for the parenting coordinator to terminate a parenting coordination session if there is a continued threat of domestic abuse, domestic violence, or coercion between the parties.

6. In addition to the court order for Parenting Coordination, a written agreement between the parties and the Parenting Coordinator shall be used to detail specific issues not contained in the court order, such as fee payments, billing practices and retainers. The court has the discretion to apportion the fee between the parties absent an agreement.

7. The parties may agree on the length of appointment, but an initial term of appointment shall not exceed two years. For good cause shown, the court may extend the appointment of the Parenting Coordinator.

8. The court may terminate the service of the Parenting Coordinator at any time upon finding that there is no longer a need for the services or for other good cause. Good cause may include a finding that domestic violence issues or other circumstances exist that appear to compromise the safety of any person or the integrity of the process. The appointment may be terminated if further efforts

by the Parenting Coordinator would be contrary to the best interests of the child; the child has reached the age of majority; or the child no longer lives with a party.

9. The Parenting Coordinator may provide notice to the parties and the court of his or her intent to resign at any time. The court may approve the resignation and discharge the Parenting Coordinator without a hearing unless a party files a written objection within 10 days of the notice and requests a hearing.

10. No party may terminate the services of a court appointed Parenting Coordinator without an order of the court. Absent egregious abuse of discretion or a substantial and unexpected change in circumstances, no party may request a judicial review of the appointment within the first six months of the appointment. Nevertheless, the court may terminate the appointment of a Parenting Coordinator at any time.

11. After the initial six-month period, a party may petition the court for termination of the appointment. Upon a finding that the Parenting Coordinator has exceeded his or her mandate; has acted in a manner inconsistent with this guideline; has demonstrated bias; or for other good cause the court may terminate the appointment.

12. After the initial six-month period, the parties may jointly request the termination of the parenting coordination process or motion for the modification of the terms of the appointment. Modification or termination of the terms of the appointment may be entered by the court for good cause shown as long as the modification or termination is in the best interest of the child.

D. RESPONSIBILITIES OF PARENTING COORDINATOR

1. The role of the Parenting Coordinator includes: assessing the family and the litigation history; educating the parties as to the impact their behavior has on the child; facilitating conflict management; and assisting the parties in the development of parenting plans and alternative resolutions to other disputes.

2. A Parenting Coordinator shall comply with the requirements of and act in accordance with the appointment order issued by the court.

3. A Parenting Coordinator may communicate with the parties, their counsel of record, the child or children involved, and the court. All communications shall

preserve the integrity of the parenting coordination process and consider the safety of the parties and child. The Parenting Coordinator should adhere to any protection orders, and take whatever measures may be necessary to ensure the safety of the parties, a child and the Parenting Coordinator.

4. The Parenting Coordinator shall have the right to review documents that are pertinent to the parenting coordination process. The Parenting Coordinator shall request a release from the parties, or an order of the court, when necessary.

5. In the event the parties are not able to decide or resolve disputes on their own or with the suggestions of the Parenting Coordinator, the Parenting Coordinator is empowered to make reports or recommendations to the parties and the court for further consideration as set forth in section (E) below.

6. A Parenting Coordinator shall have no ex parte communications with the appointing court regarding substantive matters or issues on the merits of the case.

7. A Parenting Coordinator shall not offer legal advice.

8. A Parenting Coordinator has an ongoing duty to report any activity, criminal or otherwise, that adversely affects the Parenting Coordinator's ability to perform the functions of a Parenting Coordinator.

9. A Parenting Coordinator shall report child abuse or neglect as obligated by law.

10. A Parenting Coordinator shall inform the parties that the Parenting Coordinator will report any suspected child abuse or neglect and any apparent serious risk of harm to a family member or a third party to child protective services, law enforcement, or other appropriate authority.

11. A Parenting Coordinator shall maintain independence; objectivity; and impartiality, including avoiding the appearance of partiality, in dealings with parties and professionals, both in and out of the courtroom.

12. A Parenting Coordinator shall not serve in multiple roles in a case that creates a conflict of interest. A person who has served as a Parenting Coordinator in a proceeding may act as a Parenting Coordinator in subsequent disputes between the parties. However, the Parenting Coordinator shall decline to act in any capacity except as a Parenting Coordinator unless the subsequent association is clearly distinct from services provided in the parenting coordination process. The

Parenting Coordinator is required to utilize an effective system to identify potential conflict of interest at the time of appointment.

13. A Parenting Coordinator shall avoid any clear conflict of interest arising from any relationship or activity, including but not limited to those of employment or business or from professional or personal contacts with parties or others involved in the case. A Parenting Coordinator shall avoid self-dealing or associations from which the Parenting Coordinator may benefit, directly or indirectly, except from services as a Parenting Coordinator.

14. A Parenting Coordinator shall advise the appointing court and the parties of any potential conflict of interest, and of any action taken or proposed, to resolve the conflict. After the appropriate disclosure, the Parenting Coordinator may continue to serve with the written agreement of all parties. However, if a conflict of interest clearly impairs a Parenting Coordinator's impartiality, the Parenting Coordinator shall withdraw or be removed.

E. REPORTS, RECOMMENDATIONS, AND COURT ACTION

1. A written agreement, which seeks to modify a court order, signed by the parties and the Parenting Coordinator shall be submitted to the court for consideration within twenty (20) days of the agreement being signed. Copies of the document submitted shall be provided to the parties and their counsel. There shall be no ex parte communication with the court.

2. A Parenting Coordinator's recommendations, which are not agreed to by the parties, may be submitted by the Parenting Coordinator as a written report to the court for consideration. The written report shall include an explanation as to how the recommended change is expected to benefit the family as a whole. The Parenting Coordinator's written report must contain a certificate of service which indicates that the Parenting Coordinator has sent a copy of the report to each party and their counsel.

3. Any party may file with the court and serve on the Parenting Coordinator and all other parties an objection to the written report within ten (10) days after the report is filed with the court, or within another time as the court may direct.

4. Responses to the objections shall be filed with the court and served on the Parenting Coordinator and all other parties within ten (10) days after the objection is served.

5. The court, upon receipt of a report and recommendation may take any of the following three actions.

   a. If the court finds that time is of the essence, the court may approve the recommendation and immediately adopt it as an interim order of the court. However, if a party files an objection to the recommendation, the court shall set an expedited hearing to consider the recommendation and arguments of the parties in favor of and opposing the recommendation.

   b. The court may reject the recommendation in whole or in part. However, if a party files an objection to the recommendation or objects to the court's rejection of all or part of the recommendation, the court shall set a hearing to consider the recommendation and arguments of the parties in favor of and opposing the recommendation.

   c. The court may take no immediate action upon the recommendation. Upon the court's own motion or upon the request of any party, the court may set a hearing regarding the recommendation on the court's calendar.

6. The Parenting Coordinator shall submit a written report to the parties and their counsel at the completion of the Parenting Coordinator's services, and may also submit interim reports as appropriate.

7. All submissions to the court shall comply with the Rules on Access to Court Records.

F. CONFIDENTIALITY

1. Communications made as part of parenting coordination, including communications between the parties and their children and the parenting coordinator, communications between the parenting coordinator and other relevant parties or persons, and communications with the court, shall not be confidential except as provided by law.

2. Nothing in this Guideline is intended to create a privileged or therapist-client privileged communication.

APPENDIX. WILL SHARED PARENTING WORK FOR YOU? QUESTIONS TO CONSIDER

Shared Parenting requires not just a sharing of time and responsibility for raising the child, but a conscious effort to create two homes that are highly unified when taking care of a child and making decisions for the child. The following questions should be seriously considered before deciding to work within a Shared Parenting agreement during the time that your child is being raised in your home.

1. Do you feel you have been thoroughly informed regarding all that is required of parents who practice Shared Parenting?
    - Do you understand all of the things a parent needs to do in one's own household and in coordination with the other parent's household when committing to Shared Parenting?
    - Do you understand what the court expects of parents who commit to Shared Parenting?
2. Do you feel all of your children would benefit from spending nearly equal amounts of time in the homes of both parents?
3. Do you feel you and your child's other parent make higher quality decisions when you make those decisions together?
4. Are there specific areas where one of you is better equipped to make decisions?
    - Do you and the other parent agree about this?
5. Are you willing to give greater weight or acknowledge the opinion of the parent with greater expertise?
6. Do you take steps to shield your child from disagreements?
    - Does the other parent take steps to shield your child from your disagreements?
    - Does your child believe you have significant disagreements in child-relevant areas?
7. Do you take steps to portray a positive relationship to your child?
    - Does the other parent take steps to portray a positive relationship to your child?

- Does your child believe you and the other parent like each other?

8. Does the stress of working through differences with the other parent impact your daily life negatively?
9. Have you or the other parent relied on courts to resolve differences in this case?
10. Do you believe your child would be happiest in a Shared Parenting arrangement?
11. If other people assist you in caring for your child, do you believe they would willingly assist you in fulfilling the commitments of a Shared Parenting relationship?

Section Ten

Cross-Examination

Linda Peters Chrzan
Chrzan Law LLC
Fort Wayne, Indiana

Section Ten

Cross-Examination……………………………………………Linda Peters Chrzan

PowerPoint Presentation

CROSS-EXAMINATION
Linda P. Chrzan
Chrzan Law, LLC

Rule of Evidence 611

- (a) Control by the Court
  - (1) make procedures effective for determining the truth;
  - (2) avoid wasting time; and
  - (3) protect witnesses from harassment or undue embarrassment.
- (b) Scope of Cross-Examination
  - Generally limited to subject matter of direct, and
  - Matters effecting a witness's credibility.

* Judicial discretion to allow inquiry into additional matters

Your Honor,

Leading Questions Allowed

- Rule of Evidence 611 (c):
  - Not allowed on direct.
    - Exception: when necessary to develop the witness's testimony.
  - Allowed on cross-examination.
  - Allowed with hostile witnesses.
  - Allowed with adverse party or a witness identified with adverse party.

Absolute Right to Cross- Examination

- **Criminal cases:**
  - **6th Amendment to US Constitution- The Right to Confront.**
- **Civil cases:**
  - **Common Law right based upon due process.**
  - **NOT to Re-cross, however, a matter of Judicial discretion to allow broader re-cross "in the interests of justice."**
  - **NOT to badger witness. If repetitive or harassing.**

Cross-Examination of Children

- Confrontation Clause applies to children accusers/witnesses.
- IC 35-37-4-6 protects victims including children of certain crimes.
- US Supreme Court has ruled that confrontation clause requires face to face confrontation even if the accuser is a child. *Coy v. Iowa*, 487 US 1012 (1988).
- Arises in family law arena:
  - Protective Orders.
  - Abuse allegations in custody/parenting time cases. *White v. White*, 655 N.E.2d 523 (Ind. App. 1995).
  - CHINS contested hearings.(IC 31-34-13-2-4, 31-34-14-2-7)

Protective Order
IC 34-26-5-1 et. seq.

- Liberty and other constitutional issues involved therefore right to confront exists.
- I.C. 34-26-5-3: Violation of a PO is punishable by confinement or fine.
- Can lose 2nd Amendment right to possess firearms
- Rules of Evidence must be followed
  - Competent witnesses must testify (Evidence Rule 601).
  - In 1990, the IN General Assembly repealed the statute which provides a presumption of incompetence for a child under the age of ten.
  - Currently, so long as child can understand the questions and knows the difference between the truth and a lie, they can be compelled to testify because they are competent.

Custody Proceedings

- **Legal Standard: Child's best interest. (I.C. 31-17-2-8).**
- **Court shall consider the wishes of the child, more consideration given if greater than 14. (IC 31-17-2-8(3)).**
  - **Therefore, child's wishes are relevant. Due process requires ability to present evidence.**
- **BUT Courts frown upon parents calling minors as witnesses in custody proceedings. Pits a child against the other parent. *McClendon v. Triplett*, 184. N.E.3d 1202 (Ind. App. 2022).**
- **If competent, court cannot reject a child witness. *White v. White*, 655 N.E. 2d523 (Ind. App. 1995).**

In Camera Interview

- Interview in chambers. (I.C. 31-17-2-9).
- Broad Judicial Discretion whether to do Interview.
- Broad Judicial Discretion regarding who can be present.
- Broad Judicial Discretion regarding procedure:
  - If parents/counsel can submit questions;
  - If counsel can be present; and
  - If counsel can cross examine child.

Alternatives to Confrontation/Cross-Examination of a Child

- Closed-circuit television. (I.C. 35-37-4-6).
- Videotaped deposition. (I.C. 35-37-4-8).
- Zoom? Seems comparable.
  - The concern is a child may be too scared to testify truthfully if the parent are present.
- Exception: If child is unavailable because a doctor or psychologist says the child will suffer emotional distress from being in Defendant's presence. Not just from testifying.

PREPARING FOR CROSS-EXAMINATION

- PREPARE for Cross-Examination. Don't just wing it!

- How to prepare for effective cross:
  - Listen carefully to your client (Learn the Facts).
  - Know the issues and your client's position on the issues.
  - Outline the issues, your client's position on the issues, key facts in your client's favor and other things you need to prove.
  - Outline direct exam or at least make a checklist of points to be made with each witness. Use the outline of the issues, client's position and key facts to prepare your outline.

- Prepare an outline for each anticipated opposing witness.
  - Use issues, client's positions and key facts to prepare your outline for cross-examination. Be sure to update with direct examination answers.
  - Consider carefully to what potential opposing witnesses may testify:
    - work with your client on what potential witnesses know;
    - what they don't know;
    - what they can say positive about them;
    - what they can say negatively about them and/or opposing party;
    - areas of potential bias; or
    - limitations (such as not seen them for 3 years etc.).

- Get positive statements about your client (they were cooperative, polite, honest, sincere, love their children, kids love client, well meaning early in case etc.)

- Expose bias or potential bias (being paid for testimony, related, close friends, they just went through a custody battle or bitter divorce, they work for party etc.)

- Limit harm (lack of first-hand knowledge, lack of recent contact, lack of significant opportunities to observe-don’t know what happens 350 days of the year that not with Mom).

PREPARATION
CONTINUED

- **Illuminate exaggerations:**
  - **Example 1: "Dad was never home with the kids, because he was always working." Get Mom to admit that this was because they agree for her to be a stay at home and for him to be the provider.**
  - **Example 2: "Mom was drunk all the time." Get Dad to admit that it was only on Tuesday after bowling and the kids were not present because they were in bed when Mom got home.**
  - **Example 3: "Wife never paid for anything." Get Husband to admit, yes he paid the mortgage and utilities, but Wife bought groceries, clothing for the family, other household needs and paid for vacations.**

EXPERTS

Preparation for Cross- Examination of Expert

- If credentials are beyond reproach, stipulate to them and status as an expert.
- Use your expert to help you prepare your cross-examination.
- If time and case budget allow, take opposing expert's deposition.
- Mandatory that you understand the subject matter and the opinion.
- Purpose is to clearly illustrate errors, omissions and weaknesses.
- Judge must understand the differences in competing expert opinions and why they should adopt your opinions.

PREPARATION OF CLIENT FOR CROSS-EXAMINATION

- PREPARE YOUR CLIENT AND OTHER KEY WITNESSES FOR CROSS
- To do well on cross, your client must:
  - Understand the theory of their case.
  - Understand what they are requesting.
  - Be able to clearly articulate what they are seeking from the Court.
  - Review prior under oath statements including Verified Petitions, Interrogatory Answers and Depositions.
  - Review other relevant documents (police reports, tax returns, CSOW).
- Empower Client to stick to their answer. If true when answered me, no need to change answer for opposing counsel!
- Admonish client to be truthful at all costs; that you will have redirect to allow them to explain.

PREPARATION OF CLIENT FOR CROSS-EXAMINATION BY OPPOSING COUNSEL

- **Advise client to remain composed and to only refer to opposing attorney and court in respectful ways. The opposing counsel can be a jerk, but they can't be one.**
- **Advise client not to intellectually joust with opposing counsel. Court just wants to know the facts and will not be impressed and could even be angry.**
- **Advise client to be mindful of their court room demeanor. A good judge starts evaluating the parties the minute they enter the Court room. Ex: facial expressions, posture, dress, don't laugh, shake head or talk loudly.**
- **Advise client "I don't know" and "I don't remember" are appropriate answers <u>if true</u>!**

Impeachment of Witness' Credibility

- Any party may attack a witness's credibility, including the party who called the witness.
  - Rule of Evidence 607
- Examples of impeachment evidence:
  - Lack of first-hand knowledge
    - Rule of Evidence 602
  - Evidence of untruthful character, but only if character of truthfulness is attacked.
    - Rule of Evidence 608 (a)
  - Evidence of certain criminal conviction including those involving dishonesty or false statements.
    - Rule of Evidence 609 (a) (Limited to 10 years, Conviction required, Charge is insufficient).
  - Evidence of religious beliefs or opinion are not admissible to attack or support credibility.
    - Rule of Evidence 610

- Prior Inconsistent Statements or Conduct.
  - Rule of Evidence 613
- Bias
  - Rule of Evidence 616
    - Evidence that a witness is biased, prejudice or interest for or against any party or a motivation to lie
- Capacity: mental or physical defect (eye witness can't see); Drug or alcohol use (could interfere with witnesses ability to perceive events)
  - Burden is on party asserting incapacity.
- Impeachment evidence subject to relevance objections
- The probative value of impeachment evidence must substantially outweigh it prejudicial effect.

Ethical Considerations

- **Good faith basis required to raise topic on Cross-Examination, OR to suggest the existence of a fact through a leading question**
  - **Examples:**
    - **If no factual basis to believe opposing party was every in a mental institution, can't ask question which presupposes such a hospitalization.**
- **Inappropriate to ask questions just to harass, embarrass or demean witness.**
- **Repetitive questions are frowned upon but at times zealous advocacy may require asking same questions a couple of ways**