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21st Annual Family Law Institute

Indiana Continuing Legal Education Forum (ICLEF)

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Feature Release 4.1
August 2020

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21ST ANNUAL FAMILY LAW INSTITUTE

November 2 & 3, 2023

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ICLEF

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Program Director

21ST 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. Effective Preliminary Agreements
Deborah Farmer Smith

10:00 A.M. **Coffee Break**

10:15 A.M. Untangling Alienation and Non-Physical Abuse in Divorce
Michael J. Jenuwine, Ph.D., J.D., Kendra G. Gjerdingen

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

1:00 P.M. Parenting Plans: Tips on Drafting to Avoid Post-Divorce Problems
Jill E. Goldenberg, Brian K. Zoeller

2:00 P.M. Ethical Traps for Attorneys *
Margaret M. Christensen

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

3:15 P.M. Ask a Judge
Honorable Stephenie K. Gookins
Honorable Ashley N. Hand
Honorable William J. Hughes
Honorable Catherine Stafford
Honorable Andrew R. Bloch
Kathryn Hillebrands Burroughs, Moderator

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

November 2 & 3, 2023

21ST ANNUAL
FAMILY LAW INSTITUTE
Agenda

Day Two

8:30 A.M. Cross-Examination
Patricia Kuendig of Dodd & Kuendig PLLC Park City, UT National Speaker and Co-Author of Hiring Family Law Forensic Psychological Experts – How to Maximize the Costs

10:00 A.M. **Refreshment Break**

10:15 A.M. Simulated Direct/Cross of Financial Evaluation Expert and Custody Evaluator
Honorable William J. Hughes, Michael J. Jenuwine, Ph.D., J.D.
Patricia Kuendig, Mark A. Glazier, Troy Patton, and Andrew Z. Soshnick

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

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

2:30 P.M. **Refreshment Break**

2:45 P.M. Mediation Tips**
Ryan H. Cassman, Linda Peters Chrzan, Kelly A. Lonnberg, Jordyn Katzman McAfee
Andrew C. Mallor

3:45 P.M. Hearsay Exceptions, Foundation and Relevance
Honorable William J. Hughes

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

21ST ANNUAL
FAMILY LAW INSTITUTE

Faculty

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November 2 & 3, 2023

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Faculty Continued

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Judges Panel:

Hon. Andrew R. Bloch
Magistrate - Hamilton County Superior Court #2
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Andrew.Bloch@hamiltoncounty.in.gov

Hon. Stephenie K. Gookins
Hamilton Superior Court, No. 7
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Honorable Ashley N. Hand
Allen Circuit Court
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Fort Wayne, IN 46802
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Hon. William J. Hughes
Hamilton Superior Court #3
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Hon. Catherine Berg Stafford
Monroe County Circuit Court IV
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Andrew Mallor, Mallor Grodner LLP, Bloomington / Indianapolis

Andrew C. Mallor leads the firm's private client division, handling all legal needs of the firm's private clients, from matrimonial to wealth management and family wealth planning.

Andy has been a leading family lawyer in Indiana for over 35 years. He is board certified in family law and is an acclaimed trial lawyer. By applying his many years of experience and his innate creativity to the issue at hand, Andy is often able to devise unique solutions to achieve his clients' objectives. His distinctive team approach in family law matters ensures both a quick response and a total focus on his clients' interests. Andy's family law clients know that they have not only Andy to call upon, but also the talented and dedicated members of his team. Andy truly enjoys getting to know his clients and their families, and taking care of them is his highest priority.

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

Hon. Andrew R. Bloch serves as Magistrate for the Hamilton Circuit and Superior Court, where he hears a variety of family, civil, and criminal matters. He is a Certified Family Law Specialist (Family Law Certification Board). He 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, Knox, Gibson, Posey, Vanderburgh, and Warrick counties.

Drew is the 2023 recipient of the Nanette Raduenz Award from the Indiana State Bar Association for his work in elevating family law practice among the judiciary in Indiana.

Before 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 received the Norman Lefstein Award of Excellence. Drew was named a "Super Lawyer" for 2019 and 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, appointed by the Indiana Supreme Court; the Domestic Relations Bench Book Committee, appointed by the Indiana Supreme Court; Hamilton County Bar Association; Indianapolis 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 and a member of the Muncie Bar Association (Executive Committee). He is a member of the Sagamore Inns of Court and a former Ratliff-Cox Inns of Court member.

Drew is a sought-after presenter for several organizations and a featured speaker on various Family Law topics across Indiana.

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

He is a volunteer for the Judges and Lawyers Assistance Program. He often speaks about how people can provide accessible representation to clients and the public while maintaining a healthy work-life balance as practitioners and judicial officers.

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 various 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 Indiana and has lectured on Open Door Law in Indiana and other states concerning 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. Ashley N. Hand, Magistrate, Allen County Circuit Court, Fort Wayne

On April 1, 2020, *Ashley N. Hand* was appointed as a Magistrate for the Allen Circuit Court. She presides primarily over the Family Relations and Paternity cases. She serves on the Domestic Relations Committee, Judicial Conference of Indiana.

Prior to her appointment as a magistrate, Hand graduated from Indiana University - Purdue University Fort Wayne in 2005 with a degree in Political Science and a minor in history. She graduated from Indiana University Robert H. McKinney School of Law in Indianapolis in 2008. Following her graduation from law school, Hand practiced as an associate attorney at Beckman Lawson, LLP in Fort Wayne, Indiana, practicing in the areas of civil litigation, employment litigation, and family law matters. In January 2016, Hand became a partner at Beckman Lawson, LLP and focused her practice on family law matters.

Hand is active in the Allen County Bar Association and the Allen County Bar Foundation. She currently serves on the Family Law Section. She previously served as the New Lawyers Section Chair. She has been the co-editor of the *Domestic Help* family publication for the Allen County Bar Association and the *Family Matters* publication for the Indiana Bar Association.

Hand is a current Board of Director for Wellspring Interfaith Social Services, Fostering Hope for Children, and Allen Circuit Problem Solving Courts.

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

Hon. 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.

B.S., University of Evansville, 1977
J.D., Indiana University, Indianapolis, 1980
Member, Community Relations Committee and Judicial Education Committee, Judicial Conference of Indiana
Board of Managers, Indiana Judges Association, 1991-94
Hamilton County Bar
ISBA
ABA
IJA
AJS

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

Judge at Monroe Circuit Court IV

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.

Ryan H. Cassman, Coots, Henke & Wheeler, P.C., Carmel

Ryan H. Cassman is a Certified Family Law Specialist who focuses his practice on representing individuals in divorce, collaborative divorce, custody, adoption, guardianship, and support matters. His practice also includes drafting and negotiating premarital agreements, and with other attorneys at Coots, Henke and Wheeler, assisting clients in preserving their business interests and investments, pre and post-divorce.

In addition to traditional family law representation, Ryan offers alternative dispute resolution, including mediation and collaborative divorce. He serves as collaborative divorce counsel and is a trained member of the Central Indiana Association of Collaborative Professionals ("CIACP"). Ryan is an active, registered family law mediator. Ryan has been chosen by attorneys and appointed by judges to serve as a guardian ad litem to represent the best interests of children.

Although most family law cases resolve through informal settlement or mediation, when a case must be tried, Ryan is able and eager to do so and enjoys being in the courtroom. Ryan has experience with appeals and has argued before the Indiana Supreme Court.

Ryan has been a guest speaker on WIBC to discuss legal issues concerning divorce and family law. Since 2009 Ryan has authored the Indiana divorce and family law blog, "All Things Family Law-Indiana Divorce and Family Law Blog." Follow Ryan's family law related updates via Facebook, LinkedIn, or Twitter.

Margaret M. Christensen, Dentons Bingham Greenebaum LLP, Indianapolis

Meg Christensen concentrates her practice on three main areas of law: lawyer ethics, appeals and business litigation. Since 2017, she has served as co-chair for Dentons Bingham Greenebaum's Recruiting Committee.

Her focus includes:
- Ethics – Meg has represented lawyers in all stages of the disciplinary process pending before the Indiana Supreme Court. Additionally, she has represented other professionals in front of various state licensing boards, and the IRS Office of Professional Responsibility.
- Appellate – Meg brings a fresh perspective to identifying and analyzing issues on appeal. Meg's experience includes representing clients in the appellate phase of complex business disputes, contract and insurance coverage disputes, and shareholder liability.
- Business Litigation – Meg assists clients in litigation in both state and federal courts in claims involving multi-million dollar contract disputes, shareholder liability, enforcement of employee restrictive covenants, inter-governmental disputes, unfair competition claims, dissolutions, administrative enforcement and licensing. She is experienced in media law issues including defamation defense, reputation management, and social media harms. Meg also represents the media in pursuing access to public records and enforcing open door laws.
- Meg's clients are primarily concerned about the impact their legal disputes will have on their business or personal lives. Recognizing that litigation introduces uncertainty into her client's plans, Meg prides herself in clearly communicating with clients about the practical effect of various strategies. Meg's goal is to help busy clients focus on what they do best while she works to present their strongest arguments in pursuit of the best possible result.
- Between the Indiana State Bar Association (ISBA), the Indiana Continuing Legal Education Forum (ICLEF) and Association of Professional Responsibility Lawyers (APRL), Meg presents on ethics at over a dozen continuing legal education seminars each year. As part of ISBA's Ethics Committee, she considers and issues advisory opinions, recommends rule changes and facilitates lawyer education events. Meg is an active member of the APRL and devotes her time to researching trends in disciplinary enforcement and lawyer ethics.
- In her free time, Meg enjoys cooking, hosting dinner parties, and attending yoga or barre class. She's an avid NPR listener, loves old homes and house rehabs and attending camp with her two children. She has a vested interest in voting advocacy and once served as a member of the United Nations Election Protection Delegation, monitoring the polls in El Salvador's National Election.

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

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.

Mark A. Glazier, Cross Glazier Reed Burroughs, PC, Indianapolis

A partner in the firm, *Mark Glazier* is a lifelong resident of Indianapolis where he graduated from North Central High School. Mr. Glazier received his undergraduate degree from Indiana University in 1990 with a double major in Economics and History. He earned his law degree from Boston University School of Law in 1993 and was admitted to the Indiana Bar in 1993 and the Illinois Bar in 1994. Mr. Glazier is a Fellow of the American Academy of Matrimonial Lawyers and is a Certified Family Law Specialist - Family Law Certification Board. He is also a registered domestic relations mediator and trained collaborative law professional. Mr. Glazier has lectured extensively to other attorneys on a wide variety of family law issues. Mr. Glazier is a member of the American, Indiana, Hamilton County and Indianapolis Bar Associations, and he is a former chair of the executive committee of the Family Law Section of the Indianapolis Bar Association. Mr. Glazier has been named a "Super Lawyer" in Indianapolis Monthly magazine each year since inception of the honor. An Eagle Scout, he remains active with the Crossroads of America Council of the Boy Scouts of America. Mr. Glazier and his wife have four children and reside in Carmel.

Jill E. Goldenberg, Cohen Garelick & Glazier, P.C., Indianapolis

Jill Goldenberg is a divorce lawyer and family law attorney focusing on the areas of mediation, arbitration, domestic relations litigation, divorce and custody since 1993. As a certified family law specialist, as certified by the Family Law Certification Board, and a registered domestic mediator, she has helped thousands of families access the necessary resources to successfully move through the most challenging times in life. Jill has served on executive positions within the Indianapolis and Indiana State Bar Associations, having previously served as Chair of the Alternative Dispute Resolution Section of the Indianapolis Bar Association and is currently the Chair of the Family and Juvenile Law Section of the Indiana State Bar Association. She is also co-Chair of the Family Law Certification Board and has helped draft the Certified Family Law Specialist test for the last ten years. She is one of less than 70 attorneys in Indiana who are recognized as a certified family law specialist as certified by the Family Law Certification Board.
She has been recognized as Best Lawyers®, 2007-2023 and as a Lawyer of the Year in Family Law, 2024. She has also been recognized as a Super Lawyers®, 2008-2023, as a Top 25 Women Indiana Super Lawyers, 2009-2016; 2018-2023 and a Top 50 Super Lawyers, 2011-2016; 2019-2023. She enjoys mentoring new attorneys to meet their potential.

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

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 Childlaw 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.

Patricia Kuendig, Dodd & Kuendig, PLLC, Park City, UT

Founding Attorney *Patricia Kuendig* pursued law out of a desire to help people when they needed it most. For the first few years of her practice, Patricia worked on complex divorce and family law matters from her office in Miami, FL. She credits that experience with her comfort and confidence in the courtroom, as well as at the negotiating table. After several years, Patricia decided to expand her practice to incorporate more areas of law to help people that need it the most. Among those areas was personal injury law and wrongful death.

In 2016, Patricia's mother was hit by a bus while in a crosswalk. Her mother passed away from her injuries. In an instant, Patricia's life changed. She, along with her brother, became a plaintiff in a wrongful death lawsuit. Patricia has a renewed passion for helping accident victims and their families ever since.

Recognized Leader in Law

Through hard work and determination, Patricia has distinguished herself in the legal community. She is a faculty member of the Houston Family Law Trial Institute. Along with several publications and awards to her name, she has given lectures on a variety of trial-related subjects for organizations such as the Utah Association for Criminal Defense Lawyers, The Georgia Bar, The Los Angeles County Bar Association, The Louisiana Association for Justice, and the Oklahoma State Bar's Family Law Section.

Patricia is a regular presenter and faculty member at the Roger Dodd Trial Skills Clinic and has taught lawyers from all over the United States and foreign countries, including Canada, England and Colombia.

Education

Patricia earned a B.S. from New York University's Stern School of Business and a J.D. from George Washington University.

While working on her J.D. at George Washington University, Patricia interned for a U.S. District Court Judge and the U.S. Department of Justice. Her time in school may be done, but as a lifelong learner, she is always looking for new ways to help her clients.

State & Federal Court Admissions

Patricia is a licensed attorney in Utah (2012), Georgia (2013), and Florida (2005). She is also admitted to the United States District Court for the District of Utah and the Middle District of Georgia.

Memberships & Community Involvement

Professional Affiliations

- Family Law Section, Utah State Bar & Florida State Bar
- Utah Association of Criminal Defense Lawyers (UACDL)
- Utah Association of Justice (UAJ)
- Park City Bar Association
- Women Lawyers of Utah
- Park City Women's Business Network

Leadership

- Nuzzles and Co., Director (2021 – present)
- Utah Family Law Journal, Editorial Board (2012 - 2015)
- Utah Bar, Young Lawyer's Division, Director (2012 - 2014)
- Faculty, Houston Family Law Trial Institute (2013 - 2015)
- Florida Bar Family Law Section
- Executive Council (2010 – 2012)
- Co-Chair, Publications Committee (2010 – 2011)
- Chair, Sponsorship Committee (2009 – 2012)
- Florida Bar Family Law Rules & Forms Committee, Member (2010 – 2012)
- Florida Association for Women Lawyers (FAWL), Miami-Dade Chapter, Director (2008 – 2010)
- Museum of Contemporary Art, Jacksonville, FL, Director (2011)
- KidSide, Inc., Director (2008 – 2010)
- YWCA of Greater Miami, Director (2010)

Awards and Recognitions

- Mountain States Superlawyers, "Rising Star" in Family Law (2015 – 2019)
- Florida Superlawyers, "Rising Star" in Family Law (2009 – 2014)
- Florida Legal Elite Magazine, "Up & Comer" (2010)
- South Florida Legal Guide, "Up & Comer" (2009)
- President's Award, Miami-Dade FAWL (2009 & 2010)

- President's Award, FL Bar Family Law Section (2010)

Publications

Hiring Family Law Forensic Psychological Experts - How to Maximize the Results, Minimize the Costs, (Co-Authored with Jonathan Gould, Ph.D. & Roger Dodd, Esq.), California Family Law News, Issue 4, 2013

Chapter 10, *Interspousal Tort Liability*, in Adoption, Paternity, and Other Florida Family Law Practice, The Florida Bar, 9th Ed., 2010 & 2012

Legal Protections for Cohabiting Couples: The Law and Living Together, (Co-Authored with Joshua Goldglantz, Esq.), Florida Family Law Commentator, Summer 2010

The Re-Definition of Family, FAMSEG, October 2010

Kelly Lonnberg, Stoll Keenon Ogden PLLC, Evansville, IN

A Member at Stoll Keenon Ogden's Evansville office, Kelly serves as chair of the firm's Family Law practice. She joined SKO in 2017 as part of the firm's merger with Bamberger, Foreman, Oswald & Hahn, and has extensive legal experience. She is a Certified Family Law Specialist, as certified by the Indiana Family Law Certification Board, and is a registered Family Law Mediator. She specializes in cases involving families in transition with business interests and other high-value assets.

Kelly helps lessen the difficulties of divorce for families through "collaborative practice," a growing legal specialty that's focused on helping parties avoid litigation. She provides options to minimize conflicts, consulting as needed with financial planners and other 3rd-party resources.

Mediation is a large part of Kelly's practice, and she works both with represented parties and parties who have not yet or may not retain counsel, to determine what issues they can resolve by agreement and help them reduce those agreements to writing.

Kelly also assists clients through four other practice groups at the firm, including Business Litigation, Arbitration & Mediation, Trusts & Estates, and Tort, Trial & Insurance.

Whether she's handling a case as a mediator or representing an individual client, Kelly leverages her creative problem-solving skills to arrive at an agreeable resolution, in a manner that's compassionate, efficient and cost effective.

Jordyn McAfee, Katzman & Katzman, P.C., Indianapolis

Areas of Practice

- Family Law
- Divorce
- Child Custody
- Child Support Modification
- Emancipation
- Registered Domestic Relations Mediator
- Collaborative Divorce

Bar Admissions

- Indiana, 2005
- U.S. District Court Northern District of Indiana, 2005
- U.S. District Court Southern District of Indiana, 2005

Education

- Indiana University Robert H. McKinney School of Law, Indianapolis, Indiana
  - J.D. - 2005
  - Honors: summa cum laude
- Indiana University, Bloomington, Indiana
  - B.A. - 2002
  - Major: Psychology

Professional Associations and Memberships

- Indiana Bar Association, 2005 to Present
- Indianapolis Bar Association, 2005 to Present
- Central Indiana Association of Collaborative Professionals, Present

Troy C. Patton, CPA/ABV, Patton & Associates, LLC, Carmel

Mr. Patton is the Managing Director and founder of Patton and Associates. Prior to founding Patton and Associates, Mr. Patton was the founder and president of Frontier Financial Holdings, Inc. (Frontier), an integrated financial services company offering investment services and managed portfolios, lending services, business consulting services, and traditional CPA services through Frontier CPA Group, LLP.

Mr. Patton started his career with Ernst & Young auditing public and private entities. Mr. Patton then started Frontier and grew into one of the premier CPA and Investment Management Services in the Midwest. Frontier quickly grew to 10 offices prior to being purchased in 2004.

Mr. Patton graduated from Miami University of Ohio in 1992 with a degree in accountancy. He holds his Certified Public Accountant and Accredited Business Valuation licenses with the AICPA.

Deborah Smith, Partner, Cohen Garelick & Glazier, P.C., Indianapolis

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.

Brian K. Zoeller, Partner, Cohen & Malad LLP, Indianapolis

Brian joined Cohen and Malad in 1999, and is a Partner. Brian concentrates his practice in the area of Family Law. He believes constant communication with his clients and his availability to quickly and effectively deal with any family law emergencies to be the cornerstone of his practice. He is in court on a daily basis, representing the best interest of his clients, and believes that thorough preparation is the key to success in the courtroom. In 2004, Indianapolis Monthly Magazine named Brian a Super Lawyer among Family Law Attorneys, one of 26 attorneys in the state of Indiana. Brian also received the distinction of Super Lawyer in 2003. Brian represents clients at the state and appellate court levels and focuses his litigation practice in the following areas of law: Contested and Noncontested Marriage Dissolution Contested Custody Disputes and Modifications Child Support Matters Adoptions Contested and Noncontested Paternity Actions Complex Family Law Jurisdiction Actions Educational Background JD, Indiana University School of Law, Indianapolis, 1996 BS, Political Science, University of Indianapolis, 1992 BA, History, University of Indianapolis, 1992 Honors: Cum laude with distinction Bar Admissions Indiana, 1996 U.S. District Court, Northern District of Indiana, 1996 U.S. District Court, Southern District of Indiana, 1996 U.S. District Court, Southern District of Indiana, 1996 Certifications/Specialties Certified Family Law Specialist, Family Law Certification Board Professional Associations & Memberships Indiana State Bar Association, Family Law section Indianapolis Bar Association Johnson County Bar Association, Secretary - Treasurer Published Works "Taking Abusers To Court, " Trial Magazine, June 1995. "Interspousal Relationship Violence Suits, " Crime Victim's Litigation Quarterly, November 1995. Honors & Awards Brian was named an Indiana Super Lawyer in 2004, 2005, 2006, 2007, 2008 & 2009. Certified Family Law Specialist Past Employment Sargent & Meier, Law Clerk, 1992 - 1996 Sargent & Meier, Attorney, 1996 - 1998

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Drafting Effective Preliminary Agreements

Deborah Farmer Smith
Cohen Garelick & Glazier
Indianapolis, Indiana

Section One

Drafting Effective Preliminary Agreements……...… Deborah Farmer Smith

PURPOSES AND USES OF PRELIMINARY AGREEMENTS

- Avoid the risk and expense of a preliminary hearing
- Anticipate and address issues that may arise
- Provide incentive – or disincentive – for delaying or pushing for quick resolution
- Serve as a discovery request
- Serve as a case management order
- Level the playing field with respect to custody and parenting time
- Establish a precedent for custody and parenting time
- Serve as a partial final agreement and stipulation
- Provide for things to be done, which do not need to wait until final hearing or agreement
- Serve as a template for a proposed preliminary order, when an agreement is not reached

STATE OF INDIANA	)	IN THE _____ COURT
	)	
COUNTY OF _____	)	CAUSE NO.

IN RE THE MARRIAGE OF:	)
	)
GINA M. MOTHER ,	)
	)
Petitioner,	)
	)
and	)
	)
GEORGE F. FATHER,	)
	)
Respondent.	)

PRELIMINARY AGREEMENT AND STIPULATION
(and DECREE OF LEGAL SEPARATION/SEPARATE MAINTENANCE)

Petitioner, Gina M. Mother ("Gina") and Respondent, George F. Father ("George") agree preliminarily, and stipulate, as stated in this Preliminary Agreement and Stipulation.

- The parties' Stipulation is intended to, and shall, be a final partial settlement agreement, as to the matters expressly stipulated herein, and shall be incorporated, as if restated verbatim therein, into any document by which the parties' marriage is dissolved.

STIPULATION AND PARTIAL FINAL SETTLEMENT AGREEMENT

(Here, anything may be inserted which would otherwise be included in a final settlement agreement.)

Gina shall receive a pre-distribution of the marital estate in the amount of $_____. This pre-distribution shall be taken from the _____ account, and shall be included in Gina's share of the marital estate, in the final distribution of the parties' assets and debts.

TEMPORARY LEGAL CUSTODY

The parties are the parents of Doris Daughter, age 10, and Sammy Son, age 8. The parties intentionally make no agreement at this time as to temporary legal custody. Doris and Sammy attend, and shall continue to attend, Bestest Ever Elementary School. Doris and Sammy shall continue to be treated by Dr. Patrick Pediatrician and Dr. David Dentist. Doris and Sammy shall continue to regularly attend Heavenly House of Worship. The parties do not anticipate that any decisions will need to be made, *pendente lite,* that would require a determination of temporary sole or joint legal custody.

OR Gina and George shall have temporary joint legal custody of the children. The agreement of both parties is required to change the children's current school, health care providers, or religious upbringing.

OR George shall have temporary legal custody of the children. However, George shall make no change in the children's current school, health care providers, or religious upbringing without prior, meaningful consultation with Gina and consideration of Gina's wishes.

Neither parent shall obtain counseling for a child without the other parent's consent.

The parties shall abide by the General Rules Applicable to Parenting Time of the Indiana Parenting Time Guidelines ("IPTG").

- Can address children's access to and use of media.
- Can address children's exposure to a parent's new partner, to extended family members, etc.

GUARDIAN AD LITEM/CUSTODY EVALUATION

A Guardian ad Litem ("GAL") shall be appointed for the children. _____ shall be the Guardian ad Litem.

OR If the parties do not agree on a GAL within ____ days, each party shall provide 2 suggestions for a GAL, after confirming that each person suggested is available and willing to serve. The GAL shall then be selected as follows: …

OR Gina desires to have a GAL appointed for the children. George objects to the appointment of a GAL. (Language can be included that states this agreement is in lieu of a motion by Gina, and request the Court to set a hearing, or that Gina shall file her motion by a specified deadline. It can also state that the hearing on the appointment of a GAL can be done in summary fashion, or remote video platform.)

The fees of the GAL, if appointed, shall be paid as follows: _____

(Similar language can be used for a custody evaluation.)

TEMPORARY PARENTING TIME SCHEDULE

Gina and George shall have temporary parenting time with the children as follows: ……

OR Gina shall have temporary primary residential custody of the children. George shall have parenting time as follows:

OR Gina and George shall each provide a residence for the children. Parenting time shall be as follows: ….

Each party, during his/her parenting time, shall ensure that the children arrive at school on time, having eaten breakfast, being appropriately dressed and groomed, and having completed their homework.

TEMPORARY CHILD SUPPORT

Effective _____, Gina shall pay child support to George in the amount of $____ per week/bi-weekly pay period/semi-monthly pay period/month. A Child Support Obligation Worksheet is attached hereto as Exhibit ____. This support obligation is the presumptive obligation, as calculated according to the Indiana Child Support Guidelines ("ICSG"). OR This support obligation is the presumptive obligation, as calculated according to the Indiana Child Support Guidelines ("ICSG"), as amended, effective January 1, 2024.

George shall continue to provide health insurance, with the same or similar benefits as the coverage in place at execution of this agreement, for Gina and the children. Gina shall pay ___% and George shall pay ___% of the children's reasonably necessary uninsured healthcare expenses.

Doris has a cell phone/tablet. It is on a family Verizon plan in Gina's name. Gina shall continue to pay for Doris's service. Doris shall have possession of the cell phone, during both parents' parenting time. A parent may place reasonable restrictions on Doris's use of, and access to, the cell phone, provided such restrictions do not interfere with Doris's ability to communicate with the other parent at reasonable hours, of reasonable duration, and at reasonable intervals. (Note: This could also go in the custody/parenting time section of the agreement.)

The children now participate in (insert activities). The parties shall continue to pay the cost of the children's participation in these activities as follows:

USE AND POSSESSION OF PROPERTY AND PAYMENT OF EXPENSES AND DEBTS

Marital Home: (one spouse in home) Gina shall have the exclusive use and possession of the marital residence, as of _____, by which date and time, George shall move out of the marital residence.

OR (both spouses in home) Both Gina and George shall have the non-exclusive use and possession of the marital residence. Gina shall have the exclusive use of the _____ bedroom and bath, and George shall have the exclusive use of the ____ bedroom and bath.

OR (nesting) Effective ____, Gina and George shall alternate having the exclusive use and possession of the marital residence, together with the children. Each period of exclusive use and possession shall begin on ____ at ____, and shall continue for 1 week. Gina's first period of exclusive use and possession shall begin on ___. George's first period of exclusive use and possession shall begin on ___. While in the marital residence, Gina shall sleep in and use the ____ bedroom and bath, and George shall sleep in and use the ___ bedroom and bath. Neither shall enter the bedroom or bathroom used by the other.

OR (modified nesting) Both Gina and George shall have the non-exclusive use and possession of the marital residence, during the week, from ____ p.m. Sunday until ___ a.m./p.m. Friday. Gina and George shall alternate having exclusive use and possession of the marital residence weekends, from ____ a.m./p.m. Friday until ___ p.m. Sunday. Gina's first weekend of exclusive use and possession begins ___, and George's first weekend of exclusive use and possession begins. ___

The expenses of ownership and occupancy of the marital residence shall be paid as follows:

Mortgage payment – by George, starting with the payment due ____, with payments due before this date to be paid from the parties' joint _____ account

HELOC – by Gina, starting with the payment due ___, with payments due before this date to be paid from the parties' joint ___ account

Real estate tax installments due ___ and ___ (if not escrowed) – by ___, subject to allocation at final hearing

Homeowners' insurance premiums (if not escrowed) – by Gina, subject to allocation at final hearing

Homeowners' association dues – by Gina

Utilities (defined as gas, electricity, water, sewer, trash collection, and security system) – by Gina, starting with payments due ___ and thereafter, with payments due before ___ to be paid from the parties' joint ___ account

Satellite TV/cable TV/internet/telephone – by Gina, starting ….

Routine lawn care and snow removal – Gina to pay

Spring and fall mulching, weed removal, etc. – to be paid from the parties' joint ___ account

Routine maintenance, defined as … (can be by amount of each expense, or by type of expense) – Gina to pay

Major repairs – to be paid from the parties' joint ___ account OR from the HELOC, with advance agreement required except in the event of an emergency

Vehicles: Gina shall have exclusive use and possession of the 2020 Chevrolet Equinox and George shall have exclusive use and possession of the 2020 Honda Pilot. Both shall continue to be insured on the multi-line insurance policy which insures the marital residence.

Each party shall pay the premium for his/her automobile. Each party shall pay for the plates and registration, and repairs and maintenance, for his/her automobile.

Other Marital Bills and Expenses:

Streaming services –Gina shall pay Hulu, Netflix, and Peacock, and George shall not use Gina's accounts with these streaming services. George may obtain his own Hulu, Netflix and Peacock accounts. George shall pay Disney + and Apple TV, and Gina shall not use George's accounts with these streaming services. Gina may obtain her own Disney + and Apple TV accounts.

Chase VISA #xx1234, Southwest Rapid Rewards VISA #xx0031, American Express Gold #xx5678, Kohl's, Macy's Store card -- Gina to pay, and George to cease use of these credit cards.

Macy's VISA #xx0032, Discover Card #xx4444, American Express Delta Reserve #xx9876, Brooks Brothers store card – George to pay, and Gina to cease use of these credit cards.

Before George moves out of the marital residence … (insert here provisions for what furniture and household furnishings George will take with him, and/or how George and Gina will agree on this issue)

INCOME TAX RETURNS

The parties shall file joint income tax returns for the year _____. Any refund (net of tax preparation fees, which shall be advanced by George, shall be divided equally between George and Gina. The income tax returns may be filed electronically, after George and Gina have reviewed and approved them. Any refund shall be directly deposited into ____ account, OR sent to (insert address) in the form of a paper check.

OR If this matter is still pending on December 31, ___, the parties shall consult with (insert CPA or tax preparer) to determine the manner of filing which will result in the lowest aggregate income tax being owed to the United States. Neither party shall file a Married Filing Separately tax return until the parties have agreed on what type of income tax returns shall be filed and, if separate returns are to be filed, whether each party shall claim the standard deduction or itemize deductions. If deductions are itemized, … (insert entitlement to deductions for mortgage interest, SALT, charitable contributions, etc.) If separate returns are filed, each party shall be entitled to claim tax credits as follows …(insert entitlement to child tax credit, dependent child care credit, education tax credits).

OR The parties agree, that for tax year __, they will live have lived apart for at least the last 6 months of the tax year. The parties agree that, as a result of this Decree of Legal Separation/Separate Maintenance, they will (if not already divorced) be considered unmarried as of December 31, ___. The parties agree that Gina has paid or will pay more than half the expenses of her household, and George has paid or will pay more than half the expenses of his household, during tax year ___. Doris Daughter shall be deemed Gina's dependent and qualifying child for the purpose of Gina filing her ___ income tax returns as Head of Household. George shall release to Gina the right to claim Sammy Son as her dependent by signing IRS

Form 8332, however, Sammy Son shall be considered George's dependent and qualifying child for the purpose of George filing his ___ income tax returns as Head of Household.

MISCELLANEOUS

- Can provide for family photos and memorabilia to be duplicated/saved, so that this does not become an issue later
- Can require each party to make a list of personal property now, to avoid spending time on this at mediation or in court
- Can provide for duplication of information stored on a computer or elsewhere, such as tax returns, other financial documents
- Can provide for contents of safety deposit box, possession of passports, birth certificates, etc.
- If the parties agree the marital home will need to be sold, can provide for agreeing on a listing agent, and doing any work needed to effectively market the home
- Can provide for certain obligations – e.g., George's payment of the marital home mortgage – to sunset after a period of time, or otherwise to create a disincentive for a party to drag the process out

USE OF SOCIAL MEDIA AND ONLINE ACCOUNTS

Neither party shall make, or cause to be made, any post or message on any type of social media, to which either child has access or is able to obtain access, which is derogatory about the other party.

Neither party shall post photographs of either child on any type of social media.

Neither party shall use the login information of the other party (e.g., username, password, security questions) for any reason. Neither party shall attempt, in any way, to gain access to the other party's email, voicemail, and social media.

JOINT RESTRAINING ORDER

George and Gina shall each be restrained from: (this can be specific from case to case, and may include changing insurance coverage, taking HELOC draws or credit card cash advances, incurring joint debt, etc.)

CASE MANAGEMENT AND PROFESSIONAL FEES

Without formal discovery requests, George shall provide the following documents and information to Gina, through counsel, by ____.:

Without formal discovery requests, Gina shall provide the following documents and information to George, through counsel, by ____:

Gina and George, by counsel, shall select a mediator by ___ and report their selection to the Court. Mediation shall be scheduled at a mutually agreed-upon time, once discovery is complete. The mediator's fees shall be paid _____.

The marital home shall be appraised by Andy Appraiser, as of the filing date. Gina shall pay Andy Appraiser's fee, subject to allocation at final hearing. OR Andy Appraiser's fee shall be paid from the _____ account. The following personal property shall be appraised by Alex Appraiser: _____. Alex Appraiser's fee shall be paid by _____ OR from the _____ account.

_____ _____

Gina M. Mother
Dated:_____

George F. Father
Dated: _____

APPROVED AS TO FORM:

_____ _____

John Doe, #1000-99
Attorney for Mother

Mary Roe, #1000-99
Attorney for Father

Section Two

Untangling Alienation and Non-Physical Abuse in Divorce

Michael J. Jenuwine, Ph.D., J.D.
University of Notre Dame Law School
South Bend, Indiana

Kendra G. Gjerdingen
Mallor Grodner LLP
Bloomington, Indiana

Section Two

Untangling Alienation and Non-Physical Abuse in Divorce…….... Michael J. Jenuwine, Ph.D., J.D.
Kendra G. Gjerdingen

Slide Presentation

Untangling Alienation and Non-Physical Abuse in Divorce

November 2, 2023

Michael Jenuwine, PhD, JD

Trending Client Portrayals of Co-Parent

- **My ex- is:**
  - **Alienating**
  - **Gatekeeping**
  - **Gaslighting**

Why Clients are Bitter

- From a rational perspective, why do clients cling to negative feelings about their ex if they agree that the marriage wasn't working?
  - Expectations of what client thought marriage would be weren't met
    - Expectations of divorce may be unrealistic too – unwilling to do the work
  - Clients grieve the loss of even a dysfunctional relationship
  - Might not agree that the marriage wasn't working
  - Identifying self as cause of "marriage failure" is ego dystonic
    - Easier to blame others than to take responsibility

Divorce-Stress Adjustment Theory

- Range of risk & protective factors that may increase or decrease the risk of mental distress following divorce
  - Some divorcees readily adapt to their new life situation
  - Others show more profound symptoms of distress and reduced mental health
- Severity of psychological reaction to divorce depends on individual characteristics & interpersonal resources
  - Coping skills
  - Social skills
  - Support from friends
  - Support from family
- These factors also impact the length of the adaptation period

Five Factor Model of Personality Structure

- **CONSCIENTIOUSNESS - how careful, deliberate, self-disciplined, and organized an individual is**
- **EXTRAVERSION - how sociable, outgoing, and energetic an individual is**
  - Low scorers are considered to be more deliberate, quiet, low key, and independent
- **AGREEABLENESS - individual's tendencies with respect to social harmony**
  - Reflects how well an individual gets along with others, how cooperative they are, and how they interact within a team
- **OPENNESS - Extent to which an individual is imaginative and creative**
- **NEUROTICISM - ways in which individuals react to stress and propensity to experience negative emotions**
  - Emotional stability of an individual through how they perceive the world
  - How likely someone is to interpret events as threatening or difficult

Neuroticism

- Persistent tendency to experience negative emotional states
- Peaks in late teens and early 20s
- More likely to suffer from psychiatric disorders
- Significant predictor of divorce-proneness
  - Reduces partnership's stability
  - Predicts emotional divorce
    - Psychological & emotional estrangement of couples from each other

Neuroticism & Divorce

- **People high in Neuroticism:**
  - **Have lower marital satisfaction & higher rates of divorce**
  - **React more strongly to marital conflict**
  - **Have higher initial rates of mental health symptoms post-divorce**
    - **Depression**
    - **Anxiety**
    - **Somatization**
    - **Stress**
  - **Engage in more negative and maladaptive behaviors during conflict**
  - **Have more hostile attributions for their partner's behaviors**

PARENT ALIENATION

Parent Alienation vs. Parent Alienation Syndrome

Parent Alienation Syndrome (PAS)

- **PAS defined by Richard Gardner, M.D. in 1985**
  - **A childhood disorder that arises almost exclusively in the context of child-custody disputes. It is a disorder in which children, programmed by the allegedly "loved" parent, embark upon a campaign of denigration of the allegedly "hated" parent. The children exhibit little if any ambivalence over their hatred, which often spreads to the extended family of the allegedly despised parent**

    Recommendations for Dealing with Parents Who Induce a Parental Alienation Syndrome in Their Children, *Journal of Divorce and Remarriage 28* (1998)

Syndromes in Legal Proceedings

- **In medicine, a syndrome is a cluster of related symptoms**
- **In court, identifying a social phenomenon as a "syndrome" suggests a particular significance for the evidence**
  - **Requires additional scrutiny**
- **Syndromes lacking an empirical basis have weak evidentiary value**
  - **History of "junk science" syndromes**
- **The term "syndrome" indicates a claim that physical or psychological markers reveal:**
  - **Its cause**
  - **That it has significant and predictable effects on perceptions or behavior**
  - **That experts can accurately identify individuals who fit within its boundaries**
- **Other uses of "syndrome" are superfluous and should be rejected**

Parent Alienation Syndrome

- **For Gardner, PAS was a child's campaign of denigration against one of their parents**
  - **Diagnosed in the child**
  - **Encouraged by the other parent**
- **PAS does not apply when there is a history of abuse or neglect of the child by the target parent**
- **PAS does not apply if the target parent has exhibited behaviors that would justify the child's rejection or animosity toward that parent**

Parent Alienation (Not PAS)

- Parent Alienation identifies a collection of one parent's behaviors aimed at causing the child to become alienated from the other parent
- Children become alienated from a parent for a variety of reasons:
  - Sexual abuse, Physical abuse, Emotional abuse
  - Parental abandonment
  - Adult substance abuse
  - Child blames parent for breaking up the family
- Parental alienation is a strategy whereby one parent intentionally displays to the child unjustified negativity aimed at the other parent
  - Purpose of the strategy is to damage the child's relationship with the other parent and to turn the child's emotions against that other parent

Parental Alienation

- **PARENTAL ALIENATION = … [A] child, usually one whose parents are engaged in a high-conflict separation or divorce, allies strongly with one parent (the preferred parent) and rejects a relationship with the other parent (the alienated parent) without legitimate justification**

Lorandos, D. and Bernet, W. (2020) *Parental Alienation: Science and Law*. Springfield, IL: Charles C. Thomas

Parental Alienation

- **Not generally accepted as a syndrome**
- **Alienating behaviors by a preferred parent are commonly recognized and can influence court's decision-making process**
  - **Badmouthing the other parent to the child**
  - **Speaking negatively about the other parent in front of the child**
  - **Intense emotions (yelling, crying) about the other parent to the child**
  - **Interfering with the other parent's parenting time**

How Does Parent Alienation Typically Manifest?

- **Child resists or refuses contact with parent**
  - **Over the past ~15 years, resist/refuse dynamics have been increasing**
    - **21% - 27% of contested child custody cases**
  - **Many resources go into analyzing and arguing about who is to blame**
  - **Appropriate analysis requires a broad understanding of all possible explanations for the child's behavior as well as attempts to directly observe each parent's behavior as well**

Severity of Parent Alienation

- **Practitioners attempted to empirically categorize degrees of alienating behaviors**

Fidler, B. J., Bala, N., & Saini, M. A. (2013). Children who Resist Postseparation Parental Contact: A Differential Approach for Legal and Mental Health Professionals. Oxford University Press

Severity: MILD

- **Minimal interference/badmouthing by Favored Parent against the Resisted/rejected parent**
- **Favored Parent values child's relationship with Resisted/rejected parent but occasionally displays misguided protective behavior**
- **Child values relationship with both parents but displays discomfort with Resisted/rejected parent although not with Resisted/rejected parent's extended family**
- **Minor interruptions of child's contact with Resisted/rejected parent (e.g., late or missed visits, short-lived transition difficulties in presence of Favored Parent)**
- **Situational and infrequent relationship strain between child and Resisted/rejected parent (e.g., due to affinity, alignment, expected and time-limited upset over parents' separation/divorce)**

Severity: MILD (continued)

- **Parents generally flexible but can be rigid regarding parenting time and related issues**
- **Parents responsive to education/treatment to improve parent-child relationships**
- **Parents compliant with parenting plan, treatment agreement, and court orders**

Severity: MODERATE

- **Episodic interference/badmouthing**
- **Favored Parent is overly protective and (unwittingly or intentionally) undermines child's relationship with Resisted/rejected parent**
- **Child shows more resistance and more rigid attitudes & behaviors but reactions are mixed, confused, or inconsistent (e.g., just before or during transitions, or just during certain activities**
- **Child's contact with Resisted/rejected parent is sporadic, infrequent, and/or often delayed**
- **More consistent relationship strain between child and Resisted/rejected parent, with a pattern of missed opportunities for parent-child contact, child taking longer to settle in after transition to Resisted/rejected parent and/or may become unsettled closer to return to Favored Parent**

Severity: MODERATE (continued)

- **Parents are generally rigid but sometimes flexible**
- **Parents attend treatment but sporadically and/or with minimal success**
- **Parents show inconsistent compliance with parenting plan, treatment agreement, and court orders**

Severity: SEVERE

- **Favored Parent explains alienating behaviors as protecting the child despite repeated investigations or evidence that demonstrates that the risk of future harm is improbable, and/or the Favored Parent makes malicious allegations knowing they are unfounded**
- **Child shows rigid/extreme reactions to Resisted/rejected parent (e.g, threatens to run away, threatens to harm self or others, is very defiant and/or aggressive)**
- **Contact between child and Resisted/rejected parent is nonexistent or infrequent**
- **Child's relationship with Resisted/rejected parent is chronically disrupted**

Severity: SEVERE (continued)

- **The parents are extremely rigid**
  - **Clinging to previously held convictions and resisting any alternatives even in light of new information**
- **The parents refuse treatment, and prior attempts at treatment proved unsuccessful**
- **The parents are noncompliant with the parenting plan, treatment agreement, or court orders**

What if the Parent SUCKS? Realistic Estrangement

- **Describes instances when child resists or refuses contact with a parent because of the rejected parent's own behavior**
  - **Domestic violence**
  - **Child abuse**
  - **Emotionally intense parenting**
  - **Very poor parenting**
  - **Lack of a prior attachment bond with the parent**
- **Favored parent's protective behaviors are usually considered realistic and not out of proportion to the abusive behavior of the rejected parent**

Alienation vs. Estrangement

This means that it is not possible to determine based solely on the rejecting behavior of a child whether that child is alienated or estranged. Any clinician who claims that all children who reject a parent are alienated or claims that it is possible to make a determination regarding whether a child is alienated based on the child's behavior alone is failing to consider the total clinical picture and is therefore making a fundamental clinical error. No mental health professional should endorse this premise as it violates Parental Alienation theory as well as sound clinical practice.

Lorandos, D. and Bernet, W. (2020) *Parental Alienation: Science and Law.* Springfield, IL: Charles C. Thomas

Factors In Assessing Alienation

When a child resists a parent, the following must be considered:

- **Child factors (age, cognitive abilities, etc.)**
- **Parent conflict (before and after separation)**
- **Sibling relationships**
- **Preferred parent factors (negative beliefs, behaviors, personality disorders)**
- **Rejected parent factors (negative beliefs, behaviors, personality disorders)**
- **The adversarial court process**
- **Third parties, such as professionals and family members aligned with one "side"**
- **Lack of functional co-parenting, poor or conflictual parental communication**

Fidler, B.J. and Bala, N. (2020), Conclusion: Concepts, Controversies and Conundrums of Alienation: Lessons Learned in a Decade and Reflections on Challenges Ahead. *Family Court Review,* Vol. 58, No. 2, April 2020, 576-603

Assessing Possible Alienation

- **What about requests for an *in camera* interview of the child who is resisting parent contact?**
  - **If the court decides to conduct an *in camera* interview, they should try to interview the child once when transported by PARENT A, and a second time when transported by PARENT B (if possible)**

It Takes Three to Tango

- **Behaviors of both parents and the child contribute to the problem**
  - **Favored parent aligns with child and discourages relationship with the other parent**
    - **Rewards child's negative behaviors toward non-custodial parent**
  - **Rejected parent reacts very negatively when the child resists spending time, exacerbating conflict**
    - **Non-custodial parent's reaction can begin to justify contact refusal**

Five Factor Model for Identifying PA

- **FACTOR ONE: child manifests contact resistance or refusal (ie. Avoids a Relationship) with one parent**
- **FACTOR TWO: presence of a prior positive relationship between child and the rejected parent**
- **FACTOR THREE: Absence of abuse, neglect, or seriously deficient parenting on the part of the rejected parent**
- **FACTOR FOUR: use of multiple alienating behaviors on the part of the favored parent**
- **FACTOR FIVE: child exhibits many of the 8 behavioral manifestations of alienation**

Bernet, W. & Greenhill, L. (2022) The Five Factor Model for Diagnosis of Parent Alienation, *Journal of the American Academy of Child & Adolescent Psychiatry,* 61(5), 591-594

FACTOR FOUR REQUIRES THAT THE FAVORED PARENT HAS MANIFESTED SEVERAL OF THE 17 COMMON ALIENATING BEHAVIORS THAT HAVE BEEN OBSERVED IN CASES OF PARENTAL ALIENATION

- **Bad-mouthing the rejected parent (RP)**
- **Limiting the child's contact with RP**
- **Interfering with child's communications with RP**
- **Limiting mention of the RP**
- **Withholding approval when the child shows interest in RP**
- **Telling the child that the RP does not love them**
- **Allowing the child to choose between their parents**
- **Creating the impression that RP is dangerous**
- **Forcing the child to reject the alienated parent**
- **Confiding in the child about adult topics**
- **Asking the child to spy on RP**
- **Asking the child to keep secrets from RP**
- **Referring to the RP by their first name**
- **Referring to a stepparent as "Mom" or "Dad"**
- **Withholding medical, social, or academic information**
- **Changing child's name to remove association with RP**
- **Undermining the authority of RP**

FACTOR FIVE REQUIRES THAT THE THAT THE CHILD, WHO IS ENGAGING IN CONTACT REFUSAL, HAS MANIFESTED SOME OR ALL OF THE COMMON BEHAVIORAL SIGNS OF PARENTAL ALIENATION

- **Campaign of denigration, whereby the child repeats their list of criticisms of the rejected parent to counselors, evaluators, attorneys, and, ultimately, the judge**
- **Weak, frivolous, and absurd rationalizations for the child's rejection of a parent**
- **Lack of ambivalence regarding both the favored parent and the rejected parent**
  - **i.e. child considers one parent all good and the other parent all bad**
- **Rejection of RP's extended family**
- **The independent thinker phenomenon, whereby the child strongly professes that the decision to cut off the rejected parent is theirs alone**
- **Absence of guilt about their rude, hurtful treatment of the rejected parent (RP)**
- **Reflexive support for the favored parent in parental conflict**
- **Presence of borrowed scenarios**
  - **i.e. making accusations about the rejected parent that use phrases and ideas adopted from the favored parent**

Five Factor Model

The FFM appears to be a reliable way to identify PA; it can be used to differentiate between alienation and estrangement…Clinicians need a reliable way to identify PA, especially as a correct diagnosis drives the choice of a suitable intervention and may influence the outcome of contentious hearings and trials. The FFM may become a useful tool for both mental health clinicians and forensic practitioners to identify PA in children and adolescents. At this stage, more research needs to be done to further strengthen the reliability of the FFM.

Bernet, W. & Greenhill, L. (2022) The Five Factor Model for Diagnosis of Parent Alienation, *Journal of the American Academy of Child & Adolescent Psychiatry,* 61(5), 591-594

Measures to Detect Parent Alienation

- **Baker Alienation Questionnaire (BAQ)**
  - **Baker, Amy J. L., Barbara Burkhard, & Jane Albertson-Kelly (2012)**
- **Parental Alienating Behaviors Scale (PABS)**
  - **Braver, Sanford L., Diana Coatsworth, & Kelly Peralta (2006)**
- **Alienated Family Relationship Scale (AFRS)**
  - **Laughrea, Kathleen (2002)**
- **Parental Alienation Scale (PAS)**
  - **Gomide, Paula I. C., Everline B. Camargo, & Marcia G. Fernandes (2016)**
- **Rowlands' Parental Alienation Scale (RPAS)**
  - **Rowlands, Gina A. (2018)**

Case Example

- **Ten year-old boy**
- **Parents separated for two years**
- **Mother has physical custody**
- **Child refuses to go to parenting time with Father**

GATEKEEPING

Gatekeeping

PARENTAL GATEKEEPING

- **Refers to how parents' attitudes and actions affect the involvement and quality of the relationship between the other parent and child**

Normal Gatekeeping

- **Gatekeeping serves a productive purpose during intact parental relationship**
  - **Defines roles with the child according to parental availability & expertise**
  - **Influenced by:**
    - **Cultural background**
    - **Religious beliefs**
    - **General attitudes regarding gender differentiation & parental involvement**
- **Delineation of parental responsibility**
  - **Explicit – well thought out and openly discussed**
  - **Implicit - developing from the patterns assumed by the parents**
- **Parental responsibilities may be reassessed throughout the years**
  - **Based on developmental needs of the child**
  - **Changes in the availability of the parents**
  - **May be prompted by life cycle events**

Post-Separation Gatekeeping Conflict

- **Re-negotiation of the co-parenting relationship**
  - **Redefining relationships can prove challenging during times of transition**
  - **Necessary changes may threaten previously assumed parental identities**
- **Power Struggles can occur when one parent has difficulty letting go of parental responsibilities and access at the same time that the other parent is attempting to broaden his or her role with the child**

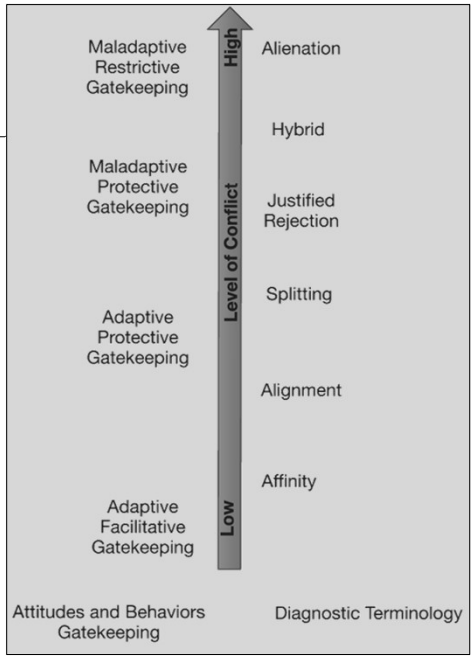
Parental Relationships with Children

Research has verified the importance of <u>both</u> parents to children's adjustment and development, except in cases that pose an imminent threat to a child's physical and/or psychological safety

- **Children show best long-term adjustment to parental separation or divorce when:**
  1. **They have quality relationships with both parents (Amato & Sobolewski, 2001, 2004; Flouri, 2005); and**
  2. **Parents have a positive coparenting relationship (Amato & Sobolewski, 2004; Camara & Resnick, 1989; Flouri; Sobolewski & King, 2005; Whiteside & Becker, 2000)**
- **Exposure to conflict often results in poor adjustment of children, unless they are shielded from the conflict by at least one parent's compensatory parenting and/or parents' ability to keep the child from being the focus of, or a participant in the conflict (Buchanan, Maccoby, & Dornbusch, 1991; Hetherington, 1999)**
- **Mothers are more satisfied with fathers' involvement with their child when there is low couple conflict (Sobolewski & King, 2005)**
- **When mothers are more satisfied with fathers' parenting, fathers tend to be more positively involved with their children (Beitel & Parke, 1998; Shoppe-Sullivan, Brown, Cannon, & Mangelsdorf, 2008)**
- **When mothers have negative attitudes toward fathers, father involvement tends to be less (Herzog, Umaña-Taylor, Madden-Dedrich, & Leonard, 2007; Kulik & Tsoref, 2010)**

Parental Gatekeeping

- **Best Interests**
  - **I.C. § 31-17-2-8: The court shall consider all relevant factors, including…**
- **One relevant factor is the encouragement of both parents' continuing involvement in the life of the child following parental separation and divorce**
- **Gatekeeping exists on a continuum that varies in degrees of facilitative to restrictive on the issue of supporting the other-parent–child relationship**



Analyzing Post-Separation Gatekeeping

- **Helpful to determine how facilitative or restrictive a parent is likely to be in the role of a co-parent or in regard to a shared parenting plan**
- **Past behaviors are the best predictors of future behaviors**
  - **What were co-parenting attitudes and behaviors of each parent before & after separation?**
  - **Are restrictive gatekeeping behaviors tied to the divorce & litigation or longstanding?**

How inclusive is each parent is toward the other in attitudes & behaviors?

Ranges in attitudes/behavior from Facilitative Gatekeeping to Restrictive Gatekeeping		
Very Facilitative → Cooperative → Disengaged → Restrictive → Very Restrictive		
Proactive Toward Other Parent	⟷	Severely Alienating Behaviors
Inclusive of Other Parent	⟷	Marginalizes Other Parent
Boosts Image of Other Parent	⟷	Derogates Other Parent
Ongoing Efforts at Communication	⟷	Refuses Communication with Other Parent
Flexible Timesharing	⟷	Rigid Adherence to Parenting Time Schedule
Ensures Opportunity to Develop Relationship w/Other Parent	⟷	Blocks All Attempts for Engagement w/Other Parent

Facilitative Gatekeeping

- Demonstrated capacity and disposition of each parent to:
  - Facilitate & encourage a close and continuing parent-child relationship
  - Honor the time-sharing schedule
  - To be reasonable when changes are required
- Facilitative gatekeeping occurs when a parent acts to support continuing involvement and maintenance of a meaningful relationship with the child
- Facilitating behaviors are proactive, inclusive, & demonstrate to the child that a parent values the other parent's contributions

Restrictive Gatekeeping

- **Actions by a parent that are intended to interfere with the other parent's involvement with the child and would predictably negatively affect the quality of their relationship**
- **Research shows:**
  - **Maternal restrictive gatekeeping has been estimated to occur in 1 out of 5 intact families**
  - **Restrictive gatekeeping is much more common between divorced parents**
  - **Bilateral gatekeeping is more common in high conflict divorces**

Protective Gatekeeping

- **A parent acts to limit the other parent's involvement or is critical of parenting skills because of concern about harm to the child**
  - **Form of Restrictive Gatekeeping**
- **Defined in terms of the reasons a parent wants to limit access/involvement of the other parent:**
  - **A history of substantial IPV**
  - **Harsh parenting**
  - **Substance or alcohol abuse**
  - **Major mental disorder**
- **Psychological/or parenting time evaluations, substance abuse testing, or DV risk assessments can provide collateral data**
- **Parents (usually mothers) also act protectively over concerns about the other parent's level of parenting skills & experience**
  - **i.e. A mother who asserts that overnights for a very young child are premature and this would reflect a motivation to protect the child's well-being and sense of emotional security**

GASLIGHTING

What is Gaslighting?

- **Form of psychological/emotional abuse inflicted on an intimate partner**
- **Includes manipulative tactics to destabilize another**
  - **Misdirection**
  - **Denial**
  - **Lying**
  - **Contradiction**

Gaslighting Defined

- **Term coined from 1944 movie: *Gaslight***
  - **Husband uses tricks to convince wife that she has gone mad**
  - **Anton gradually causes gaslights to get progressively dimmer night after night and suggests Paula is just imagining it**
- **Type of psychological & emotional abuse that involves one person attempting to make a victim/survivor question their own sanity by creating a "surreal" interpersonal environment**
  - **Term recently overused to apply to ordinary disagreements or different perspectives of the same situation**

ALIENATION & GATEKEEPING AS ABUSE

Emotional Abuse

- **Emotional abuse can be a repeated pattern of caregiver behavior or an extreme incident that conveys to a child that he or she is worthless, flawed, unloved, unwanted, endangered, or onlyof value in meeting another's needs (American Professional Society on the Abuse of Children 1995)**
- **Emotionally abusive act(s) can be grouped into the categories of spurning, terrorizing, exploiting/corrupting, isolating, and denying emotional**

Emotional Abuse in Indiana

- **IC § 31-34-1-2 - A child is a "child in need of services" if the child's mental health is seriously endangered by an act or omission of the child's parent, guardian, or custodian**
- **Indiana DCS defines an emotionally abused child as one whose health or welfare is harmed or threatened with harm, when his or her parent, guardian, or custodian inflicts or allows to be inflicted an emotional injury or creates or allows to be created a risk of emotional injury upon the child**
- **Indiana DCS defines an emotional injury as an injury to the mental or psychological capacity or emotional stability of a child as evidenced by a substantial impairment in the child's ability to function within a normal range of performance and behavior with due regard to his or her age, development, culture, and environment as testified to by a Qualified Mental Health Professional**

Section Three

The ABC's of Parenting Time Ideas and Suggested Clauses for Settlement Agreements

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Section Three

THE ABC's of PARENTING TIME

IDEAS AND SUGGESTED CLAUSES FOR SETTLEMENT AGREEMENTS

BY, JILL GOLDENBERG SCHUMAN

& BRIAN K. ZOELLER

WHAT TO INCLUDE IN YOUR CLIENT'S SETTLEMENT AGREMENT

- **(1) OBTAIN CLIENT GOALS. EVERY CLIENT IS DIFFERENT. PAY ATTENTION TO DISPUTES THAT HAVE ARISEN PROVISIONALLY AND ADDRESS THOSE ISSUES.**
- **(2) BE SIMPLE – DRAFT EASY TO READ and SHORT CLAUSES**
- **(3) BUT BE DETAILED IF SPECIFICS ARE IMPORTANT (LIKE EXCHANGE DETAILS (time date location) AND COMMUNICATION DETAILS (OFW, Talking Parents, phone, text etc.) and also COMMUNICATION WITH KIDS**
- **(4) ADD EFFECTIVE DATES IF NECESSARY**
- **(5) AVOID USE OF PARTIES OR PETITIONER/RESPONDENT. I PREFER FIRST NAMES OF PARTIES RATHER THAN HUSBAND/WIFE OR MOTHER/FATHER (EASIER TO READ AND WORKS FOR SAME SEX PARTIES AS WELL).**

WHAT TO INCLUDE IN YOUR CLIENT'S SETTLEMENT AGREMENT

- **(6) IMPLEMENT THE INDIANA PARENTING TIME GUIDELINES BUT BE SURE TO HIGHLIGHT ANY CHANGES YOUR CLIENT INTENDS TO MAKE. IPTG SHOULD BE GIVEN TO EVERY CLIENT AT THE FIRST MEETING WITH A REQUEST THAT THE CLIENT READ AND REVIEW THESE AND LET YOU KNOW IF THERE ARE ANY ISSUES THEY HAVE**
- **(7) TRAVEL/HOLIDAYS/SUMMER – SPELL OUT ESPECIALLY AS MANY PARTIES DO NOT FOLLOW THE SUGGESTED SUMMER GUIDE BUT INSTEAD DO A WEEK ON WEEK OFF AS AN EXAMPLE**
- **(8) ALWAYS DETAIL OUT THE PARENTING TIME PLAN IN THE AGREEMENT. IT HELPS TO PUT IN A VISUAL GRID OF THE PARENTING TIME SCHEDULE**

STANDARD INDIANA PARENTING TIME GUIDELINES

Monday	Tuesday	Weds	Thursday	Friday	Saturday	Sunday
Jane	Jane	Tom/Jane	Jane	Jane	Jane	Jane
Jane	Jane	Tom/Jane	Jane	Tom	Tom	Tom/Jane
Jane	Jane	Tom/Jane	Jane	Jane	Jane	Jane
Jane	Jane	Tom/Jane	Jane	Tom	Tom	Tom/Jane

INDIANA PARENTING TIME GUIDELINES "PLUS" (I.E., MIDWEEK AND SUNDAY OVERNIGHTS)

Monday	Tuesday	Weds	Thursday	Friday	Saturday	Sunday
Jane	Jane	Tom	Jane	Jane	Jane	Jane
Jane	Jane	Tom	Jane	Tom	Tom	Tom
Jane	Jane	Tom	Jane	Jane	Jane	Jane
Jane	Jane	Tom	Jane	Tom	Tom	Tom

EQUAL PARENTING TIME – 2,2,5,5

Mondy	Tuesday	Weds	Thursday	Friday	Saturday	Sunday
Jane	Jane	Tom	Tom	Jane	Jane	Jane
Jane	Jane	Tom	Tom	Tom	Tom	Tom
Jane	Jane	Tom	Tom	Jane	Jane	Jane
Jane	Jane	Tom	Tom	Tom	Tom	Tom

WHAT TO INCLUDE IN YOUR CLIENT'S SETTLEMENT AGREMENT

- **(9) EFFECTIVE DATES: ARE THERE ANY PREREQUISITES TO PARENTING TIME**
- **(10) DECISION MAKING FOR LEGAL DECISIONS AND OTHER MORE ROUTINE MATTERS**
- **(11) DISPARAGEMENT CONCERNS**
- **(12) DISPUTE RESOLUTION – MEDIATION AND ARBITRATION**
- **(13) HOW TO HANDLE FUTURE MATTERS: CAR, COLLEGE**
- **(14) SPECIFIC MATTERS: PASSPORTS, GUN STORAGE, TRAVEL ON PRIVATE PLANS IF ONE A PILOT, DANGEROUS SPORTS OR ACTIVITIES**
- **(15) REVIEW OF THE CURRENT PARENTING TIME PLAN. SHOULD THERE BE AN AUTOMATIC REVIEW?**

A is for ADDICTION

Addiction is serious and can and should be dealt with in parenting time plans. There are functional alcoholics and parents who allegedly overuse prescriptions who are amazing parents and not a risk to their children who enjoy custody and parenting time. It is not necessarily "all or nothing" when someone has an addictive personality. This is for addiction to pornography as much as addiction to pills or alcohol. Consider addressing the addiction in the settlement agreement itself, or implementing a side agreement, to be signed by both parties, that would only be introduced into court if and when one party alleges the other parent is in contempt.

- **<u>For Drug Use/Testing there are considerations</u>**:
- **(1) what substances are you testing for?**
- **(2) what is the desired window of detection?**
- **(3) what specimen will be used (urine, blood or hair)**
- **(4) concerns about cheating the system?**
- **(5) cost – how to pay since insurance likely will not cover?**
- **(6) notice required prior to collection?**

SUGGESTIONS FOR PRIVATE AGREEMENTS/DRUG TESTING

1. Father agrees to submit to up to five (5) random urine screens before xx, as follows: Upon request of Mother, Father shall submit himself to [name of drug testing site], at [insert location], randomly, monthly, and within five days of her request hereafter, with the first to occur prior to his first overnight with the children, for a 10 panel urine drug test to be paid for through the joint account for the first four tests. The fifth test shall be paid by Mother. Father shall make arrangements with the testing facility to provide copies of the results directly from the lab to counsel for both parties.

2. Copies of results shall be held by counsel and not released to Parties.

3. Neither party shall introduce this Agreement or the test results into court unless there is a contention that there has been noncompliance with the Agreement and/or a positive urine screen

A is also for Mandatory Arbitration Clause

- **The Mediator [or insert name] shall serve as Arbitrator to interpret any disputes concerning this Agreement or xx [school choice, vaccinations, vacations]**

B is for BABBYSITTERS

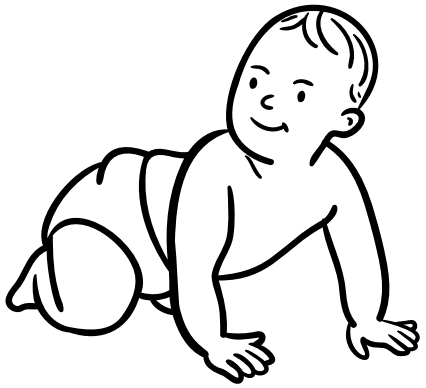
- **Parties who have high school age children (or even middle schoolers) or have blended families with children who can babysit often disagree on the age or person that can watch their children. Especially in the summer or for long periods of time. The commentary to the right of first opportunity in the IPTG defines a household member as an "adult family member residing in the household who is related to the child by blood marriage or adoption". It is therefore important to head off future controversy if there is an agreement when one sibling who is less than 18 can watch another, whether that child should take a safe sitter course, whether the child should be paid, and whether a step-child can be the person watching or driving the children. While you may not alleviate all disputes, and may ultimately have to leave this to a Parenting Coordinator, if the issue is brewing, it often makes sense to deal with it to the extent possible in the Decree.**

Sample Babysitting Clause

The parties agree that either can use their under age 18 children as babysitters for their other children for a period of up to xx hours without triggering the right of first opportunity so long as (1) the parties agree that the child has sufficient maturity to do so and (2) the child has taken a safe sitter course.

BAPTISM & RELIGIOUS ACTIVITIES

Baptism. The parties agree the children may be baptized in the [*Church] when they each reach the age of [**]. They further agree that neither party shall unilaterally baptize a child without having given the other parent at least two months advance notice as to the proposed date and time for the baptism. Both parents and their family and/or guests shall be entitled to attend.



Religious Activities. The child may attend religious activities with a parent in whose direct care he or she is in at the time of the activity. Neither parent shall schedule any religious ceremony or sacrament for the child without notice to the other parent, and without the other parent's approval. Both parents may attend any such religious ceremony or sacrament.

C is COMMUNICATION [with kids or with one another]

- **Communication with Children.** Neither party shall interfere with the other's ability to communicate with the children by telephone and each party shall be allowed one phone call to the children per day, when it is not their parenting time. Video calls/telephone calls are for the children's benefit and should be guided by the particular child. In general, calls are not expected to last longer than five to ten minutes but should be based on the particular child's interest level. Calls are for the purpose of check-ins, not to exercise parenting time on the other parent's time. At the time of the call, the child should be available, not distracted and as private as his or her age allows. Both parties shall ensure that the other has the opportunity to speak with any of the children whenever the child requests such communication.

Communication Between Parents. The parties shall only communicate via [Our Family Wizard with tone meter or Talking Parents] unless an emergency exists. The parties shall only communicate regarding the children. Both parties will use all best efforts to respond to reasonable emails or other communications from the other parent concerning children's issues within twenty-four (24) hours, absent a genuine emergency preventing them from doing so. The parties agree to copy one another on any substantive communications to medical providers or the school or teachers pertaining to joint legal custody issues. As well, the parties shall endeavor to schedule medical appointments at mutually convenient times.

D is for DECISION MAKING

- **This is HUGE. Define what kinds of decisions are "MAJOR" decisions and what are not. You can simply refer to the statutory definition of joint legal custody or you can be more expansive. A lot of attorney's form agreements have VERY EXPANSIVE language that your client may or may not want.**
- **Remember, "Joint legal custody" means that the parties share, equally, the authority and responsibility for making major decisions concerning [Child's] upbringing, including matters of education, health care and religious training.**
- **Very helpful to have dispute resolution options tied to major decision making if one parent is not ultimately the tie breaker.**
- **Can parcel out decisions such as one gets to make education and one gets to make healthcare decisions.**
- **If first hair cut or prom dress shopping is going to be an issue, spell it out now.**
- **Be sure to address any issues the parties disagreed on provisionally to avoid further dispute.**

Decision Making cont'd

- **In the event the parties are unable to reach a decision, consider adding a required mediation provision. But think carefully on this as it can also be used to delay matters that need immediate attention when one side constantly seeks to delay.**

- **<u>Requirement of Mediation</u>. The parties agree that if any disagreement arises concerning the non-financial portion of this Agreement concerning [Child] that cannot be settled directly between themselves by negotiation, they will first attempt in good faith to mediate the dispute with the services of a mutually agreeable professional mediator before initiating any legal action, unless mediation cannot be scheduled before a decision must be made. The parties shall share equally in the Mediator's costs, unless otherwise agreed.**

E is for EXTRACURRICULARS

- **Only Extracurriculars or add co-curriculars?**
- **What about summer camp when you already have a nanny or summer care?**
- **Limit activities per semester or season?**
- **Add in a provision to grandfather in certain activities?**
- **Add in a CAP on contribution to activities?**
- **Add in transportation requirements to activities?**
- **Consider ability of one parent to enroll a child in an activity on his or her time at his or her cost**

ExtraCurricular and CoCurricular Activities. Each party shall pay his/her Pro Rata Share of the cost of [Child's] participation in extra-curricular activities, provided the parties have agreed on [Child's] participation, in advance of [Child] being registered for the activity. Neither party shall unreasonably withhold consent for [Child] to participate in an extra-curricular activity. There shall be a presumption that [Child] shall be permitted to participate in school-sponsored activities such as debate, drama, athletics, choir, band, yearbook, etc. Expenses for such school-sponsored activities, such as athletic practice and game apparel and equipment not provided by the school, costumes, uniform purchase or rental, etc., are not controlled expenses, but are extracurricular activity expenses to be paid by the parties according to their Pro Rata Shares. Each parent shall be required to provide transportation and/or ensure [Child] attends his/her activities during his or her time. Neither parent is prohibited from enrolling a child in an activity during his or her parenting time at his or her cost.

F is for PHONES

- **THIS IS A BIG CONCERN FOR A LOT OF CLIENTS & FACT SENSITIVE. SOME THINGS TO ADDRESS:**
- **(1) WHEN TO GET A PHONE**
- **(2) WHO TO PURCHASE**
- **(3) LOCATION SERVICES/TRACKING**
- **(4) SHARING OF ACCOUNTS/PASSWORDS**
- **(5) SOCIAL MEDIA – age for various accounts – Instagram, Snapchat etc**
- **(6) USAGE GUIDELINES**

G is for GUNS

- **Many clients have concerns about their spouse either keeping a gun in the home OR teaching a child how to handle and shoot a gun. Acknowledge your client's concerns and try to draft around his or her specific issue.**
- **GUN STORAGE. The parties agree that all guns shall be kept in locked gun safes at all times and that the child shall not be given they key or the code. Neither parent shall take a child to a gun range without prior approval and neither party shall allow a child to handle a gun without adult supervision.**

H is for HOUSEHOLD ITEMS

- **The parents should reach an agreement as to who is to provide what in each household. Do they live close enough that they share bikes and the child can ride his or her bike back and forth or go to the other house to retrieve his or her bike?**
- **Are there certain things that will ALWAYS travel with the child such as their blanket and lovie, or their laptop computer and cell phone.**
- **In joint physical custody situations, which parent is to buy certain household items that travel back and forth?**

I is for INDIANA PARENTING TIME GUIDELINES (IPTG)

- **The parties hereby adopt the Indiana Parenting Time Guidelines (IPTG) in full except as otherwise set forth in this Agreement**
- **Each of the parties acknowledges receiving and reviewing a copy of the IPTG, and each party waives any right to argue that parenting time pursuant to the IPTG cannot be enforced, including by the Court's contempt powers, because a copy of the document has not been physically attached to this Agreement.**

I is for INDIANA PARENTING TIME GUIDELINES (IPTG) cont'd

- **Drafting tip – be very specific when deviating from the IPTG, especially in high conflict cases. In one case we added this language:**
- ***In addition, annually Husband shall have 5 additional periods of 3 consecutive days, being Tuesday, Wednesday and Thursday overnights, during the school year, upon 60 days' written notice to Wife of his selection days. Husband may not elect an additional period which conflicts with Mother's holidays or special days.***
- **Even with that level of specificity, because it was high conflict, there was constant conflict over this provision.**

J is for JUDICIAL ACTION to seek a PC

- **Often times parties are adverse to hiring a Parenting Coordinator; however, once one is needed, the time to obtain judicial action to appoint a Parenting Coordinator might take longer that necessary and the parties may find themselves with emergency litigation of matters better handled by a PC. Accordingly, it might be good practice to carve out a requirement that if either requests, a PC shall be appointed, the name of the PC and the division of costs. This can save time and money in the long run.**
- **Sometimes one party is resistant to the PC process and to overcome that in one case my client agreed to this language to get an agreement:**
- **The PC is appointed for one (1) year, or unless discharged prior to the expiration of this one-year period. Each Party may request to address no more than four (4) issues each with the PC per year in a total of no more than eight (8) sessions.**

Judicial Action for Parenting Coordination

OPTION 1: The parties agree to the appointment of [insert name] as parenting coordinator in this matter for a term of two years. The parties shall equally divide the costs associated with utilizing a parenting coordinator. The parties are simultaneously submitting an Order Appointing Parenting Coordinator.

OPTION 2: In the event of an impasse on a dispute pertaining to the Children or implementation of the terms of this Agreement, the parties agree to the appointment of [insert name] as parenting coordinator in this matter for a term of two years. The parties shall equally divide the costs associated with utilizing a parenting coordinator. The parties will file at that time an Order Appointing Parenting Coordinator.

OPTION 3: By design, this parenting time schedule includes flexibility and lacks specifics; in the event of any implementation disagreement of the parties, they shall work through counsel in an effort to resolve it or, failing same, submit the matter to the Court for resolution and a more detailed parenting time schedule, including the appointment of a Parenting Coordinator to assist with parenting time schedule issues.

K is for KINDERGARTEN

- **While Kindergarten may not seem to be a "big deal" in the scheme of a child's overall education, especially since it is not mandated in Indiana [Pursuant to I.C. 20-33-2-6 students are not required to enroll in school until the beginning of the fall school term for the school year in which the student becomes seven (7)] for settlement agreements it is HUGE as it likely establishes where a child where attend school, whose district, whether the child is "red shirted," and whether the program is a full or one half day program.**
- **Consider adding a mandatory mediation or arbitration clause if the parties have not agreed on the Kindergarten program, enrollment or cost prior to May 1st of the year in which the child would enroll in a Kindergarten program.**

L is for LEARNING

- **INVOLVEMENT IN ALL THINGS RELATED TO "LEARNING"**

1. **<u>College Selection</u>. Both parents shall be equally involved in [Child's] college application process (to include test taking, the applications themselves, review of essays), and college selection. Each parent shall have an affirmative obligation to inform the other of developments in these regards.**

M is for MANDATES (for OFAPT)

- **<u>Opportunity for Additional Parenting Time:</u>** **If either party is unable to personally care for the children for a period of [x] hours or more, that parent shall offer the other parent the opportunity for additional parenting time. However, each parent shall be permitted to let the children have "Grandparent time" for up to seven days a year where the children can stay overnight with the Grandparents without triggering OFAPT.**

N is for NON-DISPARAGEMENT

- **No Disparagement.** **Each party shall refrain from discussing the other with the children or in the presence of the children except in a manner which is supportive of or complimentary to the other. Each party shall refrain from any effort to alienate the children from the other parent, the absolute aim of the parents to be a healthy, respectful relationship of the children with each parent. Disputes between the parents regarding the above shall be resolved between themselves, and neither shall include the children in these disputes or their resolution.**

O is for OVERNIGHTS (when a parent in a relationship)

THE DREADED MORALITY CLAUSES. OFTEN TIMES THESE CLAUSES ONLY COME UP PROVISIONALLY; HOWEVER, THERE ARE SOME PARTIES WHO WANT CLAUSES IN THEIR SETTLEMENT AGREEMENTS LIMITING WHEN OR IF AN EX-SPOUSE CAN INTRODUCE A NEW RELATIONSHIP TO THE CHILDREN OR HAVE THEM SPEND THE NIGHT.

Neither parent shall have a non-family member of the opposite sex [or a person with whom he or she is in a romantic relationship] spend the night during his or her parenting time until they are in a committed relationship of six months. The parent shall give the other parent an advance warning if and when they intend to introduce [Child] to someone with whom he or she is in a romantic relationship.

P is for PASSPORTS

- **<u>Passports</u>. The parties agree to obtain passports for their Children at age xx. The parties shall meet at the Post Office at an agreed upon date and time to facilitate the timely attainment of passports. Upon receipt of the passports, XX shall hold the Passports in his or her possession. XX shall provide Passports to YY at the parenting time exchange just prior to YY needing the Passports for international travel. After YY returns to the United States with the Children, the passports shall be returned to XX at the following parenting time exchange. Neither parent shall travel out of the country without express written consent from the other parent, consent of which shall not be unreasonably withheld. Either parent shall sign any additional requested forms such as notarized consents to assist with potential issues in traveling overseas with only one parent. The costs of the Passports shall be equally divided. All proposed out of country travel shall be communicated to the other parent as soon as such travel is contemplated in an effort to avoid last minute litigation.**

Q is for NO QUESTION

- **While the IPTG address child hesitation, it might be best practice to reiterate in the settlement agreement that each parent shall ensure the child or children go to the other parent for parenting time and appropriately deal with any child hesitation.**
- **As well, in cases where there is child hesitation, language pertaining to counseling or reunification therapy may be appropriate.**

R is for RELOCATION

- **PRACTICE TIP FOR THOSE PARENTS WHERE ONLY ONE PARENT IS RESIDING IN THE SCHOOL DISTRICT**
- **It is good to recite the relocation statute in your Agreement so that the parents understand the current law; however, many clients want additional reassurances that a party does not intend to move out of the school district if they are the only one currently residing there or if they do intend to move out of the district, they will give the other party advance notice so that party can attempt to relocate to the appropriate school district if not currently residing there.**

S is for SOBERLINK* (or other alcohol monitoring matters). Can also consider Intoxalock devices.

(1) The parties have reached agreements concerning custody and parenting time for the children, as set forth in the *Agreed Provisional Orders* being submitted for Court approval along with this Agreement.

(2) Per the parties' agreement, Mother shall use the Soberlink Level 1 Plus Monitoring Program to monitor Mother's sobriety when she has parenting time with the children.

(3) Alcohol monitoring will be obtained from Soberlink. Mother shall purchase a device at www.soberlink.com. A Soberlink Monitoring Agreement shall be requested at www.soberlink.com and electronically signed by Father and Mother before monitoring can begin. Father's counsel will fill out the agreement details. Upon activation, Mother and Father will opt in to Soberlink text messages. Soberlink records will be admissible in court.

1. ***A less costly option to Soberlink is BACtrack but note that no monitoring is foolproof.**

Soberlink language cont'd

(4) For all of Mother's parenting time periods, she shall submit to a test one (1) hour prior to the commencement of parenting time and immediately following the conclusion of parenting time. For any parenting time periods exceeding six (6) hours, Mother shall submit to additional tests every four (4) hours from first test (prior to parenting time) until the last test immediately following the conclusion of parenting time.

(5) In the event that Mother fails to submit to a Soberlink test for more than thirty (30) minutes past the scheduled test time, the test shall be considered a failed (or positive) test. If parenting time has not yet commenced, it does not need to commence.

(6) Should Mother submit a positive Soberlink test or miss a scheduled test by more than thirty (30) minutes, and Mother has the Children, Mother shall notify Father of her and the children's whereabouts, and Mother's parenting time shall be immediately suspended for the remainder of that period. Father may immediately retrieve the Children.

Soberlink language cont'd

(7) The parties agree to utilize Soberlink's procedure for avoiding "false positive" tests. Therefore, if a test shows positive, Mother shall submit to a retest 15 minutes later, when prompted by Soberlink. If the retest is negative, the parties agree that the original test shall be considered negative. If the retest is positive, the original test shall be considered positive and the sections above shall dictate the start or termination of parenting time.

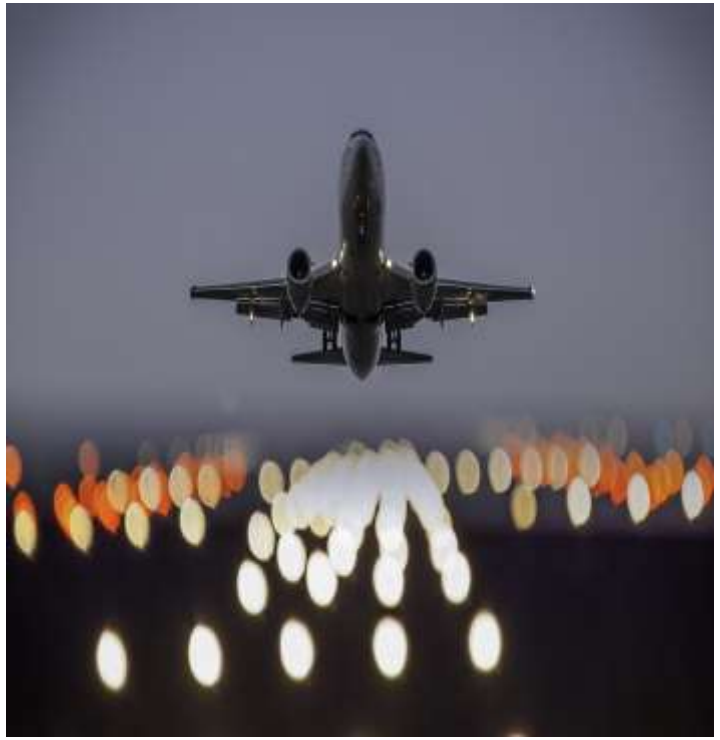
(8) Mother shall be solely responsible for the cost of Soberlink equipment and the monthly monitoring fee. Should either party wish to request any Reports for evaluation from Soberlink beyond the reports/notifications included with the monthly fee, they shall do so at their own cost.

(9) Should Mother submit a positive test through Soberlink ("positive test" being defined as any alcohol showing up in Mother's system, subject to the provisions above concerning false positive tests), or should Mother miss a scheduled test by more than thirty (30) minutes, the parenting time session in question shall terminate immediately.

T is for TRIPS/TRAVEL INFORMATION

- **The Indiana Parenting Time Guidelines has a provision for emergency notification as follows: 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* (emphasis supplied). Most of my clients do not just want "an available third person who knows where the child or parent may be located," so I prefer to include a paragraph on itinerary. Especially with out of country travel.**
- **ALSO, IF YOU HAVE A PARENT AND/OR CHILD(REN) WITH DUAL CITIZENSHIP, BE SURE THAT THE OTHER COUNTRY RECOGNIZES THE HAGUE CONVENTION, ESPECIALLY IF IT IS A HIGHLY CONTENTIOUS CASE.**

TRAVEL INFORMATION/ ITINERARY



<u>Travel Information</u>. Any time a parent will be traveling with a child and staying overnight anywhere than other than his or her home address, the parent shall provide the other parent with the following: dates of travel including pick up and drop off dates, method of travel, plane itinerary (carrier, flight number and dates and times), and hotel or lodging information. If a party will be out of the country they should provide an emergency method of communication if they will not have regular cell phone access. If anything special is needed for travel such as passports, medication, special clothing, the parties shall arrange in advance the transfer and return of such necessary travel documentation or accessories.

U is for UNEXPECTED SCHOOL CLOSURES

- TRUST ME WHEN I TELL YOU THAT IT IS ALWAYS A GOOD IDEA TO SPELL OUT WHO IS IN CHARGE OF A CHILD ON A PARTICULAR DAY. THIS AVOIDS MULTIPLE CALLS AND BATTLES. IT REALLY DOESN'T MATTER HOW YOU DO IT, SO LONG AS A PARENT KNOWS IF HE OR SHE IS IN CHARGE IF THERE IS AN UNEXPECTED SCHOOL CLOSURE LIKE A SNOW DAY, IF A CHILD WAKES UP SICK, IF A CHILD BECOMES SICK OR HURT AT SCHOOL, OR IF A SCHOOL INADVERTANTLY CLOSES EARLY.
- ALSO, ON A RELATED NOTE, IF BOTH PARENTS WORK IT IS SOMETIMES HELPFUL TO DESIGNATE WHO OTHER THAN A PARENT (I.E. GRANDPARENT, AUNT) CAN PICK UP THE CHILDREN FROM SCHOOL WHEN THE PARENTS CANNOT.

UNEXPECTED SCHOOL CLOSURE/ PARENT IN CHARGE

- **The parties agree that the Parent in Charge will be the parent to care for and/or pick up a Child in the following circumstances: school closures and/or a child is too sick to attend school. If a child wakes up too sick to attend school, the Parent in Charge shall be the parent in whose home the Child awoke and shall be responsible to stay home with the Child or to arrange alternate care (with the other parent being immediately advised of the illness and the opportunity to care for the Child). If a Child is injured or becomes ill at school, the parent to pick up that Child should be the parent with whom that Child is set to spend the night that evening.**
- **DRAFTER'S NOTE: SOME PARENTS MAY WANT TO SPELL OUT THAT EVENTS PRIOR TO 3 PM GO TO THE PARENT WHO HAD THE CHILD THE NIGHT BEFORE AND EVENTS THAT HAPPEN 3 PM OR LATER GO THE PARENT WHO WILL HAVE THE OVERNIGHT. EVEN OTHERS PREFER TO SPELL OUT THAT THE CUSTODIAL PARENT WILL BE THE PARENT TO RETRIEVE THE CHILD FOR INJURIES OR ILLNESS. THESE ARE FACT SENSITIVE.**

V is for VACCINATION

- **Vaccination issues cropped up a lot in recent years after the Covid 19 pandemic. Some parties have requested language in their settlement agreements pre-empting controversy surrounding decisions:**
- **<u>Vaccinations</u>: The parties agree that they shall follow a vaccination and booster schedule as recommended by their Children's pediatrician, the CDC and the American Academy of Pediatrics. In the event there is a disagreement between the three sources, the parties shall hold off on the vaccine until further Agreement, mediation or Court Order.**

V is for VOLUNTEERING at school

- **Parents have expressed resistance to their spouse being at school on his or her "days" – such as having lunch with a child or attending a field trip or class party.**

- **<u>Volunteering at School or Attending School Functions</u>: Either parent may attend school functions and volunteer at school as is allowed by the school. A parent shall not be prohibited from attending classroom parties, volunteering in a classroom, having lunch with a child, or attending a school field trip even if the date in question is not that parent's "day" with the child.**

W is for WORKING/NON-TRADITIONAL SCHEDULES

- If you have a client with a non-traditional work schedule such as a pilot, policeman, firefighter it is important to delineate how to maximize a child's time with both parents.
- (1) Consider provisions requiring a parent to provide his or her schedule upon receipt/published so they can alter or create their parenting time schedule
- (2) if there is a schedule that works based on a set schedule (police or firefighter) but their day off or rotation gets changed through no fault of their own, an agreement that parenting time gets changed accordingly.
- (3) Consider instituting parameters for the review of these non traditional schedules
- (4) Have arrangements in place for when one parent is on "call"
- **DRAFTING NOTE – BE VERY SPECIFIC, AS THESE NON-TRADITIONAL SCHEDULES ARE EASILY MANIPULATED AND DISPUTED POST-DECREE SO THINK VERY CAREFULLY ON HOW TO ADDRESS THESE ISSUES.**

X is for the EXCHANGE of information

- **<u>Exchange of Tax Returns and Income information</u>. The parties shall exchange their tax returns, W-2's and all schedules for the previous tax year on May 1. The parties shall also inform one another of any job or salary changes within 30 days.**
- **<u>Exchange of Children's Activity Information</u>. Upon enrollment in any activity, the parent shall supply the team coach or parent the other parent's email address for all communications. Absent the ability to do this, the parent enrolling the child shall provide the other parent with the practice and game schedule upon receipt (or means to get on the website or team App)**

**Under Indiana law, both parents are entitled to direct access to their child's school records, Indiana Code § 20-33-7-2.

**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.

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. But articulated direction, especially if the IPTG are not adopted, is helpful.

EXCHANGE of information, cont'd

- **1. <u>School Records</u>. Each parent should obtain school information on their own without depending on the other parent. Either parent may communicate directly with school personnel concerning a child; however, the parties agree that they shall copy the other parent on any substantive communications regarding their Child. Both parents shall always be listed as emergency contacts. Both parents are entitled to attend all school conferences and open houses irrespective of whether it is his or day with the Child.**

- **2. <u>School Activities</u>. Each parent shall promptly notify the other parent of all information about school activities, which is not accessible to the other parent. The parent exercising parenting time shall be responsible to transport the child to school related activities. The other parent is entitled to attend.**

- **3. <u>Other Activities</u>. 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.**

EXCHANGE of information cont'd

4. <u>Health Information</u>.

- **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.**

5. <u>Insurance</u>. A parent who has insurance coverage on the child shall supply the other parent with current insurance cards as well as user information for the parent to see the 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 if that parent will not be present at the healthcare appointment.

Y is for YEAR ONE REVIEW

IF THERE ARE CONCERNS OR HESITATION REGARDING THE IMPLEMENTATION OF A PARENTING TIME SCHEDULE, PUT IN A MANDATORY REVIEW OF THE SCHEDULE IN A YEAR. YOU CAN EVEN SPELL OUT THE METRICS THAT MAY BE USED IN THE REVIEW SUCH AS TESTIMONY FROM TEACHERS, CAREGIVERS AND THERAPISTS, ATTENDANCE AND TARDY RECORDS AND GRADES.

Z is for ZEBRA – who is going to take care of the damn Zebra?!

COHEN GARELICK & GLAZIER, P.C.
A Professional Corporation of Attorneys at Law

Mediation Checklist**

** Problem Solving for Attorneys and Mediators

I. Property Issues:

A. Real Estate:

Marital Residence:

•Who will live there/own (should there be a lease or a co-ownership agreement?)

•Date of possession

•Payment of Mortgage/insurance/taxes/homeowner's association fees/utilities/routine maintenance such as mowing/snow removal/payment of non-routine items such as roof/HVAC

•Who claims mortgage interest deduction

•Who claims Real Estate taxes

•Is there a requirement to refinance

If so – are there contingencies (rate to be same or lower, time frame to refinance, costs to refinance, co-signer)

•Quitclaim Deed – when to sign and who to keep or when to file

•Consider adding in clause to sell real estate if the party fails to qualify for a refinance within a certain time frame

•Foreclosure issues and debt forgiveness

If listing:

•Choose Realtor

•Date to list real estate

•If both parties are not on title, need language to ensure other party consents to offers and counteroffers

•Consider side agreement re: dates/timeframes to reduce list price/ price range within which an offer to be accepted

•Work out in advance who pays costs to list house and appropriate reimbursement

•payment of inspection and repairs

•Division of net proceeds

•Payment of mortgage, taxes and insurance pending sale

•Will there be a credit to either party for principal reduction (if so – calculated from what date)

•Tax Consequences – Capital Gains: Consider what happens if sale does not happen for over two years and other side has purchased a home

•Contingency plan if not sold in a certain time frame?

•Consideration of Auctioning?

•Appointing a Commissioner? Duties of Commissioner. Payment to Commissioner

Commercial Leases:

•Mitigating Damages

Farms

•valuation issues

•ability to sell?

•hidden costs to sell - taxes

•equipment on farm

•livestock

Vacation Homes:

•payment of local counsel to draft and file deeds

•transfer costs associated with deeds in other states

Time shares:

•Considerations of co-ownership pending sale (payment of fees and assessments)

•Other ways to sell – Internet sources

☐ B. Retirement Accounts:

•Valuation date

•How to treat loans

•How to treat contributions after date of filing

•QDROs – who drafts?

•Have attorneys reviewed the model QDRO and QDRO procedures

•Payment of administrative fees

•Timeframe for drafting

•Pensions – is there a survivor's annuity – has it been valued?

•IRAs – IRA Transfer Orders

•401(k)'s – consider transferring to one party and using net proceeds to pay off marital debt

☐ C. Household Goods and Furnishings

•Value assigned?

•Date to pick up (consequences of not picking up set forth in Decree)

•Engagement ring and jewelry

•Photos and videos of the kids

•Division of towels, linens, kitchenware, utensils...

•Holiday decorations

•Computers – copying drives

•Storage units

•Lock boxes at banks – have parties gone there together? Make sure to address in Decree

☐ D. Vehicles/Boats/Motorcycles:

•Transfer of titles

•Requirement to refinance?

•Requirement to sell if cannot refinance?

•Leases: consider terms re: payment of excess mileage, damages, fees

•Contingencies for failure to timely pay lease or loan?

☐ E. Financial and Bank Accounts

•Who keeps

•Requirement to transfer or remove names?

•Requirement to close accounts – time frame

•overdraft fees

•stocks/bonds

☐ F. Credit Card Debt

•Has all been identified? (credit reports for both parties?)

•Requirement to close or to remove names

•Last date for charging items or responsible?

•Points and Mileage – assignment, valuation and transfer

☐ G. Property Settlement/Maintenance/Structure

•amount

•timeframe

•prepayment option

•termination clause

•modifiable?

•Security

☐ H. Business Interests

•Valuation methodology

•Valuation Date

•Division

•Buy outs

•liquidation

☐ I. Rehabilitative Maintenance

•time frame

•payment directly to party or creditor

•considerations re: a monthly amount to live on versus an "up to $xx" to pay for certain school expenses

☐ J. Stock Options

•Transferability

•Vesting Date

•valuation

•"under water" v. "in the money"

•methodology if non-transferable

☐ K. Payment of Fees

•Attorney Fees

•Mediation Fees (make sure you address retainers already paid)

•Expert Fees

•Court cost

•Litigation fees (depositions, private service, etc)

☐ L. Health Insurance Coverage

•is Cobra available or other options?

•Who pays

•Timeframe

☐ M. Life Insurance

•Use as security for property settlement obligations

☐ N. Division of Tax Refund or Payment of Tax Liability

•look at prior year's return to see if tax was paid or applied to next year's return

•Payment of accountant fee

•if one spouse self-employed – do his or her estimated taxes get taken into consideration in marital balance sheet

•address payment of tax liability from prior year

•address audit situation

☐ O. Family Pets

☐ P. Filing Status for this year

•Joint

•Married Filing Separately

•Holding Decree to be married on 12/31 or filing before?

☐ Q. Security for Property Settlement or Maintenance

•life insurance

•liens/mortgages

•stock

•retirement accounts

☐ R. Bankruptcy

II. Financial Child Related Issues:

☐ A. Child Support.

•Must attach worksheet. If deviating explain deviation

•for high income earners consider tax effecting

•double dip issue for business owners who receive passive income from business that was valued in Decree?

•how to treat distributions from tax return

•imputing income

•treatment of bonuses

•treatment of irregular income

•annual exchange of information?

☐ B. Health Insurance Coverage and Payment of Uninsured Medical Expenses

•who covers

•contingency in event one loses coverage?

•6% Rule

•definition of uninsured medical expenses

•treatment of orthodontia

•treatment of counseling expenses

•treatment of health savings accounts

☐ C. Payment of Agreed Upon Extracurricular Expenses

☐ D. Private School

☐ E. Requirement to carry life insurance

☐ F. Educational Needs Order

•payment of college and parameters

•Filing Financial Aid forms

•Obligation to Pay Student loans

•application of 529 accounts or children accounts

☐ G. Claiming the Children on Taxes

•Exemption

•Child Tax Credit

•Dependent Care Credit

•Head of Household Status

•Education Tax Credits

☐ H. Filing Status

•Head of Household status

☐ I. QDROs for Arrearages or Child Related Obligations

III. Child Related Issues:

☐ A. Custody:

☐ Legal (Education, Religious Upbringing, Medical decisions); (*consider giving one parent a tie breaking vote or one parent takes school and other takes medical)

☐ Physical

☐ B. Parenting Issues:

☐ Co-parenting Classes

☐ Parenting Coordinator

☐ C. Parenting Time. If not following Guidelines explain deviation

☐ K. Relocation

Mediation Letter to send clients participating in mediation

Please find enclosed correspondence received from the mediator. *[Name of Mediator]* has been appointed the mediator in your case. *[mediator]*'s office is located at _____; and *her/his* phone number is (___) _____. Your mediation will begin promptly at _____ a.m./p.m. on _____. I will meet you at the mediator's office. Please read and bring with you the Agreement to Mediate and Rules of Mediation that is enclosed. If at any time you need another copy, please let me know. Please note a retainer fee in the amount of $_____ is due to the mediator prior to mediation.

This letter will provide advice as to preparing and participating in mediation.

1. **Why was mediation ordered?** The purpose of mediation is to give the parties an opportunity to resolve their differences without court action. Research has shown that agreements reached by the parties generally required fewer subsequent court appearances with respect to enforcement, and such agreements are more likely to be voluntarily honored by the parties.

The processes used in mediation may differ, but generally mediation is a cooperative process for resolving conflict with the assistance of a trained, neutral third-party, whose role is to facilitate communications, to help define issues, and to assist the parties in identifying and negotiating fair solutions that are mutually agreeable. In many cases mediation succeeds in reaching agreements because it provides the parties an opportunity to present their differences and have someone attempt, in an informal setting, to craft an agreement that meets both of their wishes.

2. **Who conducts the mediation?** The mediator is a lawyer who will attempt to help you and _____ reach an agreement. Keep in mind that the mediator is not a judge, and the mediator does not decide the case. It is the parties who will reach an agreement with the help of the mediator.

3. **What is the mediation process?** In the upcoming weeks I will begin preparing your mediation statement, which will be submitted to the mediator the day before mediation or occasionally earlier. The mediation statement is a confidential document submitted to the mediator, which is not shared with the opposing side at any time. The mediation statement gives the mediator the information necessary for the mediator to effectively mediate, but is not intended to present all of the information that would be presented in court. It also isn't intended to persuade or convince the mediator, because, unlike a judge, the mediator does not make any decisions. While a mediator cannot decide your case, if a mediator sides with you it is possible the mediator will attempt to bring _____ around to seeing that your positions are

reasonable. For this reason, the mediation statement is a crucial part of the mediation process.

On the day of mediation, you and _____ will be in separate rooms with your respective attorneys. The mediator will go back and forth between the two rooms to obtain the facts of the case, identify issues, and start the negotiation process. You are asked not to draw any conclusions from the amount of time the mediator might spend in one room. One of the initial steps is to focus on the needs and interests of the parties. After focusing on these needs and interests, the mediator will try to have the two of you look at options that often include reviewing different scenarios. The goal of your mediation is to settle your case by reaching a signed agreement. If you and _____ reach an agreement and it is signed, that agreement will be binding on the court.

4. Final words of advice.

- Go into mediation open minded.
- Focus on interests and try to avoid inflexible bottom-line positions. Rather express yourself in terms of needs and interests and outcomes you would like to realize.
- View mediation as an opportunity to avoid major legal expenses.
- Reaching an agreement in mediation negates the risk of trial.
- Identify and make a list of your goals and bring that with you to mediation so you have a check list of addressing all issues.
- Lastly, please bring a book, magazine, or any work you may need to do because I cannot predict how much time the mediator will spend with _____, which can result in a lot of down time for you. Having something to occupy you during these times will help alleviate any frustrations with the process. During this time, I will review and respond to emails, voicemails, etc., on other cases. Please note that any time I spend working on other matters during your mediation session will be deducted from the time I am with you for mediation – causing you only to incur charges for time I spend directly on your case in mediation.

If you plan on bringing anyone with you to the mediation session, you must notify me in advance of the date of mediation, so I may notify the mediator of the same. It is up to the mediator to make the final decision on whether others (individuals not a party in this matter) may attend the mediation session.

Mediation can be a rewarding experience if approached with an open mind and realistic goals. If you have any questions prior to mediation, please feel free to call me. I will see you at mediation.

COHEN GARELICK & GLAZIER, P.C.
A Professional Corporation of Attorneys at Law

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*Registered Family Law Mediator
*Indiana Certified Family Law Specialist, as certified by the Family Law Certification Board

AGREEMENT TO MEDIATE AND RULES OF MEDIATION

Via Electronic Mail Only

RE: Mediation date: September 24, 2020, at 9:00 a.m.

Dear Mediation Participants:

Under the Indiana Rules for Alternative Dispute Resolution, I have been selected to mediate your impending family law matter. I will be mediating this case on September 24, 2020, starting at 9:30 a.m.

Rule 2.7 requires that you be advised of certain matters before the commencement of mediation and they are set out below.

1. Definition of Mediation: Mediation is a process in which a neutral third person, called a mediator, acts to encourage and to assist in the resolution of a dispute between two or more parties. This is an informal and non-adversarial process. The objective is to help the disputing parties reach a mutually acceptable agreement between or among themselves on all or any part of the issues in dispute. Decision-making authority rests with the parties, not the mediator. The mediator assists the parties in identifying issues, fostering joint problem-solving, exploring settlement alternatives and in other ways consistent with these activities. A copy of the ADR Rules pertaining to Mediation is attached. Please review these Rules before our first session. I would be happy to address any questions you may have when we meet.

2. Mediator Neutrality: As your mediator, I am completely neutral and do not represent or have any personal, financial or other relationship with any of the parties that could result in bias or conflict of interest.

3. Confidentiality: Mediation shall be regarded as settlement negotiations as governed by Ind. Evidence Rule 408. Mediators shall not be subject to process (i.e. being subpoenaed to testify in court) requiring the disclosure of any matter discussed during the mediation. Rather, such matters shall be considered confidential and privileged in nature. The confidentiality requirement may not be waived by the parties. An objection to the obtaining of testimony or physical evidence from mediation may be made by any party

or by the mediator.

4. Independent Legal Advice: The parties and their attorneys shall be present at all mediation sessions involving domestic relations proceedings unless otherwise agreed. Since you are represented by competent counsel and since they will be in attendance at the session, you will receive independent legal advice from your counsel. Pursuant to ADR Rule 2.7, please be advised that the mediator (a) is not providing legal advice, (b) does not represent either party, (c) cannot assure how the court would apply the law or rule in the parties' case, or what the outcome of the case would be if the dispute were to go before the court, and (d) recommends that the parties seek or consult with their own legal counsel if they desire, and believe they need legal advice. Further, the mediator will not advise any party (i) what the party should do in the specific case, or (ii) whether a party should accept an offer.

5. Time and Place of Mediation. The mediation session will be conducted in the offices of Cohen Garelick & Glazier, 8888 Keystone Crossing Boulevard, Suite 800, Indianapolis, Indiana, on **September 24, 2020, at 9:00 a.m.**

6. Mediation Fees: My services shall be billed at the rate of $350.00 per hour. A flat fee of $100.00 will be charged for administrative work, including setting up a file, sending out mediation contracts, copies, postage, and fax-filing fees. Absent an agreement otherwise, the fees shall be divided equally between the parties participating in the mediation. This will include time spent before the commencement of the mediation, time actually spent at the mediation and any time required after the mediation is closed. **A retainer of $700.00, plus $50.00 for each party's portion of the administrative fee, will be required from each party prior to mediation. The balance of your portion of the mediation fees shall be due at the close of the mediation session.**

7. Mediation Conferences:

(1) The parties and their attorneys shall be present at all mediation sessions involving domestic relations proceedings unless otherwise agreed. At the discretion of the mediator, nonparties to the dispute may also be present.

(2) All parties, attorneys with settlement authority, representatives with settlement authority, and other necessary individuals shall be present at each mediation conference to facilitate settlement of a dispute unless excused by the court.

(3) A child involved in a domestic relations proceeding, by agreement of the parties or by order of court, may be interviewed by the mediator out of the presence of the parties or attorneys.

(4) Mediation sessions are not open to the public.

I have reserved one (1) full day for our first session, although it may not be necessary to utilize all of that time. Because mediations often run long, however, it is

important to clear your calendar and make daycare/pickup arrangements for your children so as not to break the momentum if someone has to leave before settlement is reached.

At the end of the mediation process, I may prepare an agreement outlining the terms of any agreement reached for the parties and counsel to sign. Or, with the assistance of your attorneys, we will prepare the entire Settlement Agreement and Decree for signature and approval by the Court. If the mediation is court-ordered, I will submit a report to the court stating whether or not an agreement was reached by the parties.

I look forward to working with each of you and your attorneys. Should this document accurately reflect our understanding, please complete the attached form, sign where indicated and return to me with your retainer. Thank you.

Very truly yours,

COHEN GARELICK & GLAZIER, P.C.

Jill E. Goldenberg

RE: Mediation date: September 24, 2020, at 9:00 a.m.

READ, UNDERSTOOD, AND AGREED:

_____ _____

Signature Date

_____

Printed Name

Address: _____

(street address)

_____

(city, state, zip code)

Phone Number: _____

Email Address: _____

Date of Birth: _____ SSN:_____

Type of Card (please circle):

VISA MasterCard American Express Discover

Credit card account number:_____

Expiration date:_____ Security Code:_____

Section Four

Family Law Ethics

Margaret M. Christensen
Dentons Bingham Greenebaum
Indianapolis, Indiana

Section Four

Family Law Ethics……. Margaret M. Christensen

Slide Presentation

DENTONS

FAMILY LAW ETHICS

Meg Christensen, Attorney

Grow | Protect | Operate | Finance

SCOPE OF REPRESENTATION

RULES AND COMMENTARY

Rule 1.4:

(a) lawyer shall:

- (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
- (3) keep the client reasonably informed about the status of the matter

LAW-RELATED SERVICES

Rule 5.7(b):

- The term “law-related services” denotes services that might reasonably be performed in conjunction with and in substance are related to the provision of legal services, and that are not prohibited as unauthorized practice of law when provided by a non-lawyer.

LAW-RELATED SERVICES

Providing title insurance,
Financial planning,
Accounting,
Real estate counseling,
Legislative lobbying,
Economic analysis,
Social work,
Psychological counseling,
Tax preparation,
Medical or environmental consulting, and
Coordinating Parenting Time

RESPONSIBILITIES

Rule 5.7(a):

A lawyer shall be subject to the Rules of Professional Conduct with respect to the provision of law-related services, [if such] services are provided:

(1) by the lawyer in circumstances that are not distinct from the lawyer's provision of legal services to clients; or

(2) in other circumstance by an entity controlled by the lawyer individually or with others if the lawyer fails to take reasonable measures to assure that a person obtaining the law-related services knows that the services are not legal services and that the protections of the client-lawyer relationship do not exist.

A CAVEAT:
Rule 8.4:

- Even if activities fall outside of 5.7(a), and are not subject to the Rules of Professional Conduct, 8.4 may apply
- It is misconduct to. . .

  (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

  (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

  (d) engage in conduct that is prejudicial to the administration of justice;

  (e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law

RESPONSIBILITIES

The Rules of Professional Conduct APPLY if:

- The non-legal services are performed out of your office location, phone line, using your legal staff, and shared letterhead;
- If the client doesn't understand that the services are non-legal and that the protections of the client-lawyer relationship do not exist.

PURPOSE
Avoiding Confusion

Comment 1 to Rule 5.7:

- ". . . the person for whom the law-related services are performed fails to understand that the services may not carry with them the protections normally afforded as part of the client-lawyer relationship."
- "The recipient of the law-related services may expect":
  - ❑ the protection of client confidences,
  - ❑ prohibitions against representation of persons with conflicting interests, and
  - ❑ obligations of a lawyer to maintain professional independence apply to the provision of law-related services.

AVOIDING CONFUSION

Rule 5.7, Comment 6:

The attorney bears the duty to communicate that the ethics rules don't apply:

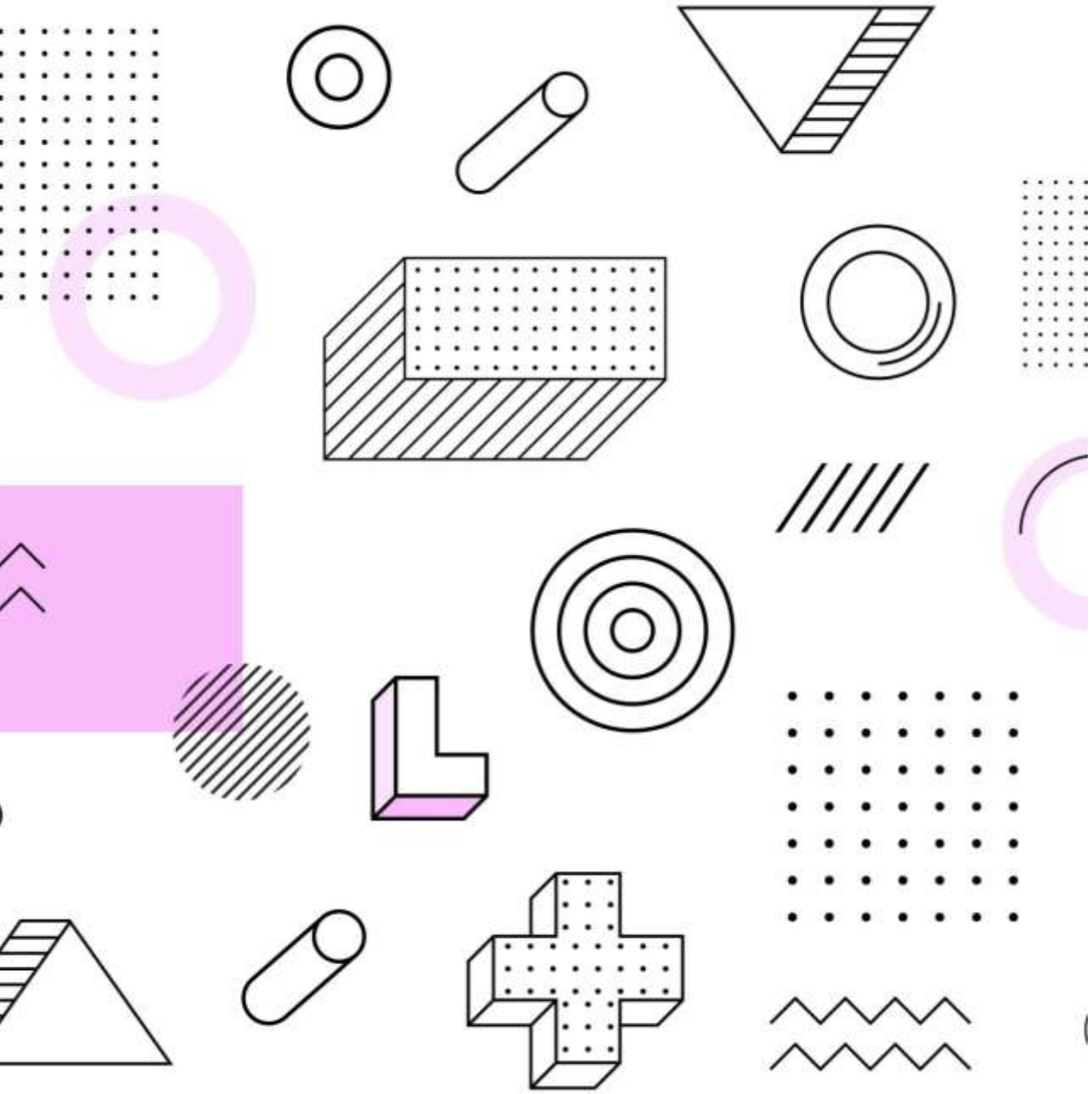
- (a)(2): "reasonable measures"
- Communicate to the person receiving the law-related services in a manner sufficient to assure that the person understands the significance of the fact, that the relationship of the person to the business entity will not be a client-lawyer relationship.
- The communication should be made ***before*** entering into an agreement for provision of or providing law-related services, and ***preferably should be in writing***.

AVOIDING CONFUSION

Rule 5.7, Comment 7:

The burden is upon the lawyer to show that the lawyer has taken reasonable measures under the circumstances to communicate the desired understanding.

For instance, a sophisticated user of law-related services, such as a publicly held corporation, may require a lesser explanation than someone unaccustomed to making distinctions between legal services and law-related services, such as an individual seeking tax advice from a lawyer-accountant or investigative services in connection with a lawsuit.



AVOIDING CONFUSION

Rule 5.7, Comment 8:

- “Regardless of the sophistication of the client. . . take special care to keep separate the provision of law-related and legal services in order to minimize the risk that the recipient will assume that the law-related services are legal services.”
- “The risk of such confusion is especially acute when the lawyer renders both types of services with respect to the same matter.”
- “Under some circumstances the legal and law-related services may be so closely entwined that they cannot be distinguished from each other, and the requirement of disclosure and consultation imposed by paragraph (a)(2) of the Rule cannot be met.”

AVOIDING CONFUSION

In Writing

- Protect yourself by obtaining “written informed consent”
- Include it in your engagement letter:
  - ✓ I am an attorney
  - ✓ You have engaged me to perform non-legal services
  - ✓ I do not represent you
  - ✓ I am not providing legal advice in the course of my PC services
  - ✓ The Rules of Professional Conduct do not apply to these services, and the ordinary protections of the attorney-client relationship do not apply
    - Confidentiality
    - Privilege
    - Conflicts

CONFLICTS OF INTEREST

CONFLICTS OF INTEREST

- Absent consent, lawyer cannot accept representation where he or she would be directly adverse to another current client.
- Consent is not effective waiver if the lawyer would be materially limited by a concurrent representation.

CONFLICTS OF INTEREST

Rule 1.7

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest.

A concurrent conflict of interest exists if:

1. the representation of one client will be directly adverse to another client; or
2. there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

WAIVER OF CONFLICTS

Rule 1.7:

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

1. the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
2. the representation is not prohibited by law;
3. the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
4. each affected client gives informed consent, confirmed in writing.

OTHER CONFLICT RULES

- Rule 1.8: Specific Conflicts of Interest
- Rule 1.9: Duties to Former Clients
- Rule 1.10: Imputation of Conflicts
- Rule 1.11: Special Conflicts for Former and Current Government Employees
- Rule 1.12: Former Judge, Arbitrator, Mediator, or Other Third-Party Neutral
- Rule 1.13: Organization as Client


CONFIDENTIALITY

REVEALING CONFIDENTIAL INFORMATION

***In re: Anonymous*:**

- Friend contacted attorney for referral.
- Client became prospective client and revealed confidential information regarding an altercation with her husband.
- Lawyer referred her to another lawyer.
- Lawyer encouraged a friend to reach out to prospective client because she was going through a hard time.
- Violation for revealing confidential information.

OBLIGATIONS TO THIRD PARTIES

THIRD PARTY PAYING FOR LEGAL SERVICES

Rule 1.7, Comment 13

- **A lawyer may be paid from a source other than the client, including a co-client, if the client is informed of that fact and consents and the arrangement does not compromise the lawyer's duty of loyalty or independent judgment to the client.**
- See Rule 1.8(f). If acceptance of the payment from any other source presents a significant risk that the lawyer's representation of the client will be materially limited by the lawyer's own interest in accommodating the person paying the lawyer's fee or by the lawyer's responsibilities to a payer who is also a co-client, then the lawyer must comply with the requirements of paragraph (b) before accepting the representation, including determining whether the conflict is consent able and, if so, that the client has adequate information about the material risks of the representation.

THIRD PARTY PAYING FOR LEGAL SERVICES

Rule 1.8:

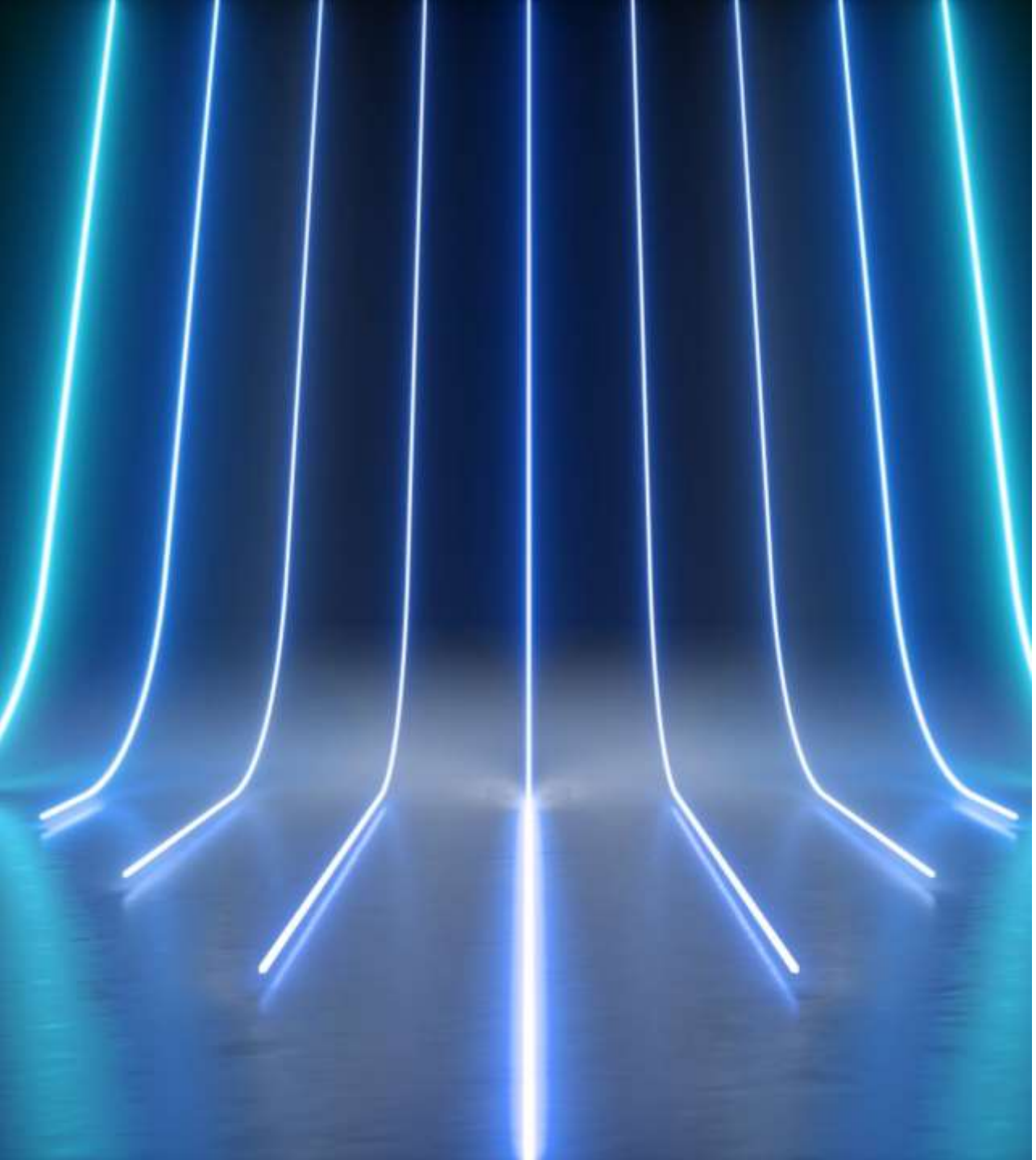
Conflict of Interest –
Current Clients: Specific Rules

- (f) A lawyer shall not accept compensation for representing a client from one other than the client unless:
  1. the client gives informed consent;
  2. there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and
  3. information relating to representation of a client is protected as required by Rule 1.6.

THIRD PARTY PAYING FOR LEGAL SERVICES

Rule 1.8, Comment 11:

. . . Because third-party payers frequently have interests that differ from those of the client, including interests in minimizing the amount spent on the representation and in learning how the representation is progressing, lawyers are prohibited from accepting or continuing such representations unless the lawyer determines that there will be no interference with the lawyer's independent professional judgment and there is informed consent from the client.



THIRD PARTY PAYING FOR LEGAL SERVICES

Rule 1.8, Comment 12:

- Sometimes, it will be sufficient for the lawyer to obtain the client's informed consent regarding the fact of the payment and the identity of the third-party payer.
  - Rule 1.6, Confidentiality
  - Rule 1.7, Conflict of Interest

THIRD PARTY PAYING FOR LEGAL SERVICES

Rule 5.4.

Professional Independence of a Lawyer

(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

Comments:

- [1] . . . . Where someone other than the client pays the lawyer's fee or salary, or recommends employment of the lawyer, that arrangement does not modify the lawyer's obligation to the client.
- [2] Rule 1.8 requires informed consent and third-party payor may not dictate legal strategy


MULTIPLE REPRESENTATION

There is nothing inherently wrong in representing multiple clients where their interests are aligned.

Cincinnati Ins. Co. v. Wills, 717 N.E.2d 151, 161 (Ind. 1999)

REPRESENTING BUSINESS AND INDIVIDUAL

DUTY OF DISCLOSURE OF ALL INFORMATION TO ALL REPRESENTED PARTIES

POTENTIAL FOR CONFLICT

POSSIBILITY OF WITHDRAWAL IF A CONFLICT ARISES

REPRESENTING BUSINESS AND INDIVIDUAL

- Lawyer violated Rules 1.7 and 1.13 by representing corporation and its CEO without obtaining consent from appropriate corporation official
- Court accepted stipulated 30-day suspension but said it would have imposed more severe sanction absent agreement

930 N.E.2d 1135 (Ind. 2010)

UPJOHN WARNINGS

- I.D. Client, Lawyer and Matter
- I.D. Client's Expectation (Truth)
- Confidence belongs to Company; Can Disclose
- Confidential Outside Organization; not within
- I do/do not represent you
- Separate counsel?

REPRESENTING BOTH SPOUSES

- In Transactions?
- In Prenuptial Agreements?
- Estate Planning Before Divorce?
- In Divorce?

PRENUPTIAL AGREEMENTS

Adversarial

Choose One Client

ESTATE PLANNING

Cannot use information learned during estate planning against former client

Rule 1.9 (c)

COLLABORATIVE DIVORCE

- Privilege
- Diligence
- Potential conflict if collaboration fails
- Effect on each client’s interests
- Cannot represent both parties, pursuant to Rule 1.7

COLLABORATIVE DIVORCE – AGREEMENT

Specify the scope of representation and the goals to be achieved

Address whether attorneys must withdraw if the dispute requires litigation

Cannot restrict access to courts – clients may terminate collaborative process

COLLABORATIVE DIVORCE - CONFIDENTIALITY

- To what extent may counsel and parties exchange confidential/privileged information?
- “Clients must be made aware that, absent an agreement in which the parties exclude from evidence information revealed during the collaborative process, all disclosed information may be shared with the opposing party and their counsel and admitted as evidence in any contested adjudicative opinion.”

(Me. Bd. of Bar Overseers Prof’l Ethics Comm’n, Op. 208, 3/6/14).

COLLABORATIVE DIVORCE – PRO SE PARTIES

Rule 4.3: “ . . . **a lawyer shall not state or imply that the lawyer is disinterested.**

When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding.

The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such person are or have a reasonable possibility of being in conflict with the interests of the client.”

Lawyers may not represent multiple parties under a collaborative participation agreement.

“. . . the subject of the agreement inevitably invokes the lawyer’s duty to exercise independent judgment to consider, recommend or carry out an appropriate course of action for the client . . . ” *(Me. Bd. of Bar Overseers Prof’l Ethics Comm’n, Op. 208, 3/6/14).*

ADOPTIONS

- Paying Fees: Adoptive parents hiring counsel for birth parents? (Rules 1.7, 1.8, and 5.4)
- Multiple Representation:
  - Can't represent both birth parents if they have differing positions about the adoption (Rule 1.7); Informed consent
  - Can't represent child and birth parent.
- Communication: With unrepresented birth parent governed by Rule 4.3
- Confidentiality: Bad facts about adoptive parents?
  - Can't disclose to court without client consent
  - May withdraw

District of Columbia Bar Legal Ethics Comm., Op. 366 1/14

Matter of Kirsch, 83 N.E.3d 699 (Ind. 2017)

DUTIES OF INTERMEDIARY/ THIRD-PARTY NEUTRAL

LAWYER AS INTERMEDIARY RULE 2.2

- Lawyer must consult with each client concerning the implications of common representation (effect on privilege)
- Must obtain informed consent
- Must believe there is little risk of prejudice if resolution is unsuccessful
- Must maintain impartiality

LAWYER AS INTERMEDIARY

EXAMPLES

- Helping clients who are co-plaintiffs in a personal injury action reach an agreement about allocation of a settlement in a case;
- Aiding several clients to reach an agreement regarding allocation of an award to be distributed by a copyright tribunal from a limited fund;
- Accomplishing a transfer of real property from an individual to both the individual and his/her spouse;
- Representing a chiropractor and a group of the chiropractor's patients in trying to get payments from a workers' compensation carrier;
- Working out an agreement in which a property owner and an unrelated individual will become co-owners of property where they both intend to live; and
- Negotiating or preparing contracts between a county and a city within the county's jurisdiction.

LAWYER AS THIRD-PARTY NEUTRAL

RULE 2.4

- Assisting 2 or more parties who are not the lawyer’s clients reach a resolution of a dispute.
- Shall inform unrepresented parties that the lawyer-mediator is not representing them.

NEUTRAL PREPARING SETTLEMENT AGREEMENT

Written agreement may expose terms that were not resolved at mediation

Mediator should not propose a resolution of those terms to avoid the appearance of favoring one party over another

Prepare a memorandum of agreement if the settlement agreement cannot be provided without providing additional terms

PERSONAL CONFLICT OF INTEREST

Specific Conflicts of Interest

Rule 1.8

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

1. the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;
2. the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and
3. the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

SPECIFIC CONFLICTS OF INTEREST

Rule 1.8

(b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these Rules.

(c) a lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift is related to the client. For purposes of this paragraph, related persons include a spouse, child, grandchild, parent, grandparent or other relative or individual with whom the lawyer or the client maintains a close, familial relationship.

Specific Conflicts of Interest

Rule 1.8

(d) Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and
2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

Specific Conflicts of Interest

Rule 1.8

(f) A lawyer shall not accept compensation for representing a client from one other than the client unless:

(1) the client gives informed consent;

(2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and

(3) information relating to representation of a client is protected as required by Rule 1.6.

SPECIFIC CONFLICTS OF INTEREST

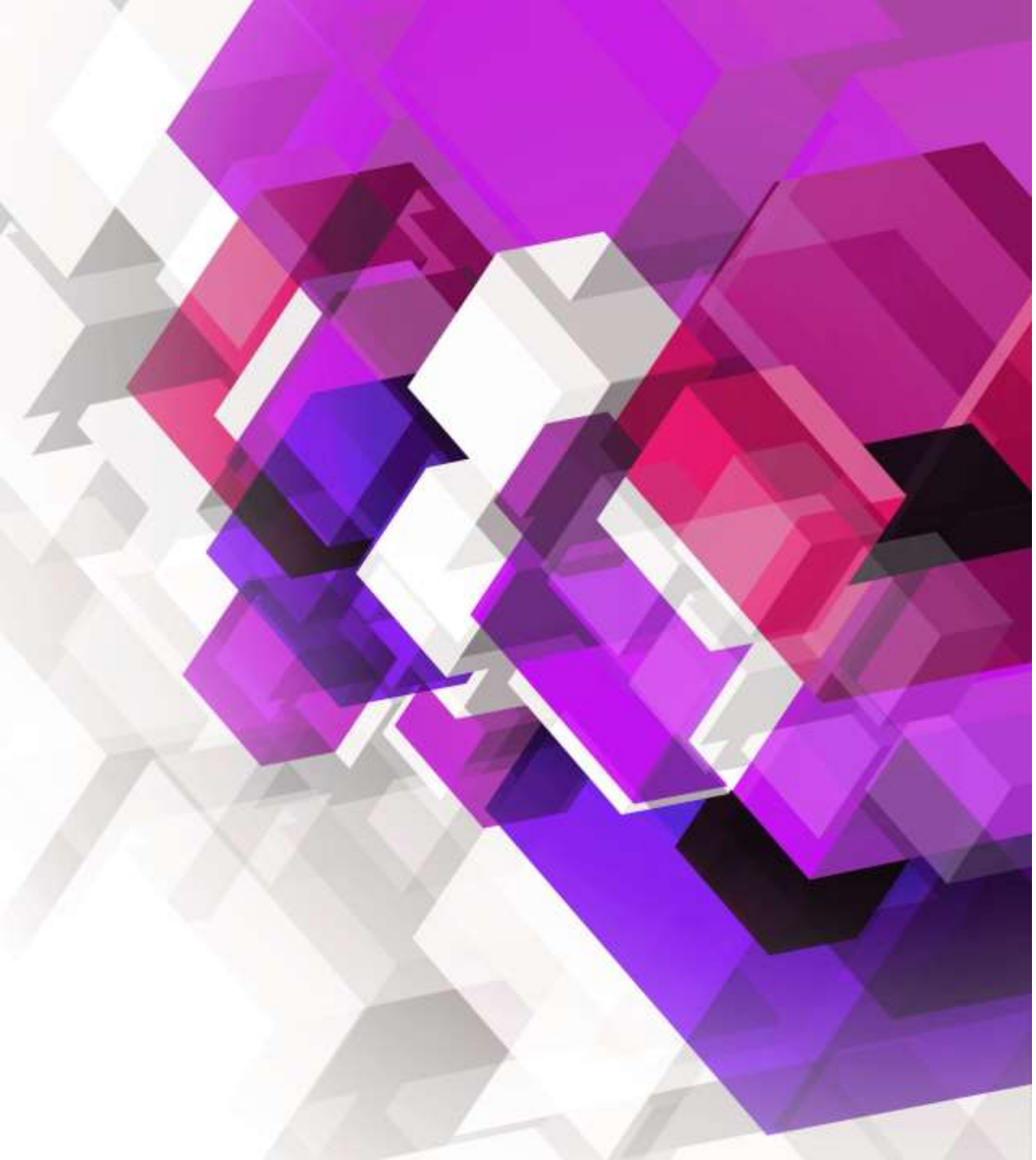
Rule 1.8

(g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client gives informed consent, in a writing signed by the client. The lawyer's disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.

(h) A lawyer shall not:

(1) limit future liability (unless client is independently represented); or

(2) settle a claim or potential claim for such liability with an unrepresented client or former client (unless client is advised of right to counsel)



SPECIFIC CONFLICTS OF INTEREST

Rule 1.8

- (i) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:
  - (1) acquire a lien authorized by law to secure the lawyer's fee or expenses; and
  - (2) contract with a client for a reasonable contingent fee in a civil case.
- (j) A lawyer shall not have sexual relations with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced.

SUPERVISION OF ASSOCIATES AND ASSISTANTS

RESPONSIBILITIES REGARDING NON-LAWYER ASSISTANTS

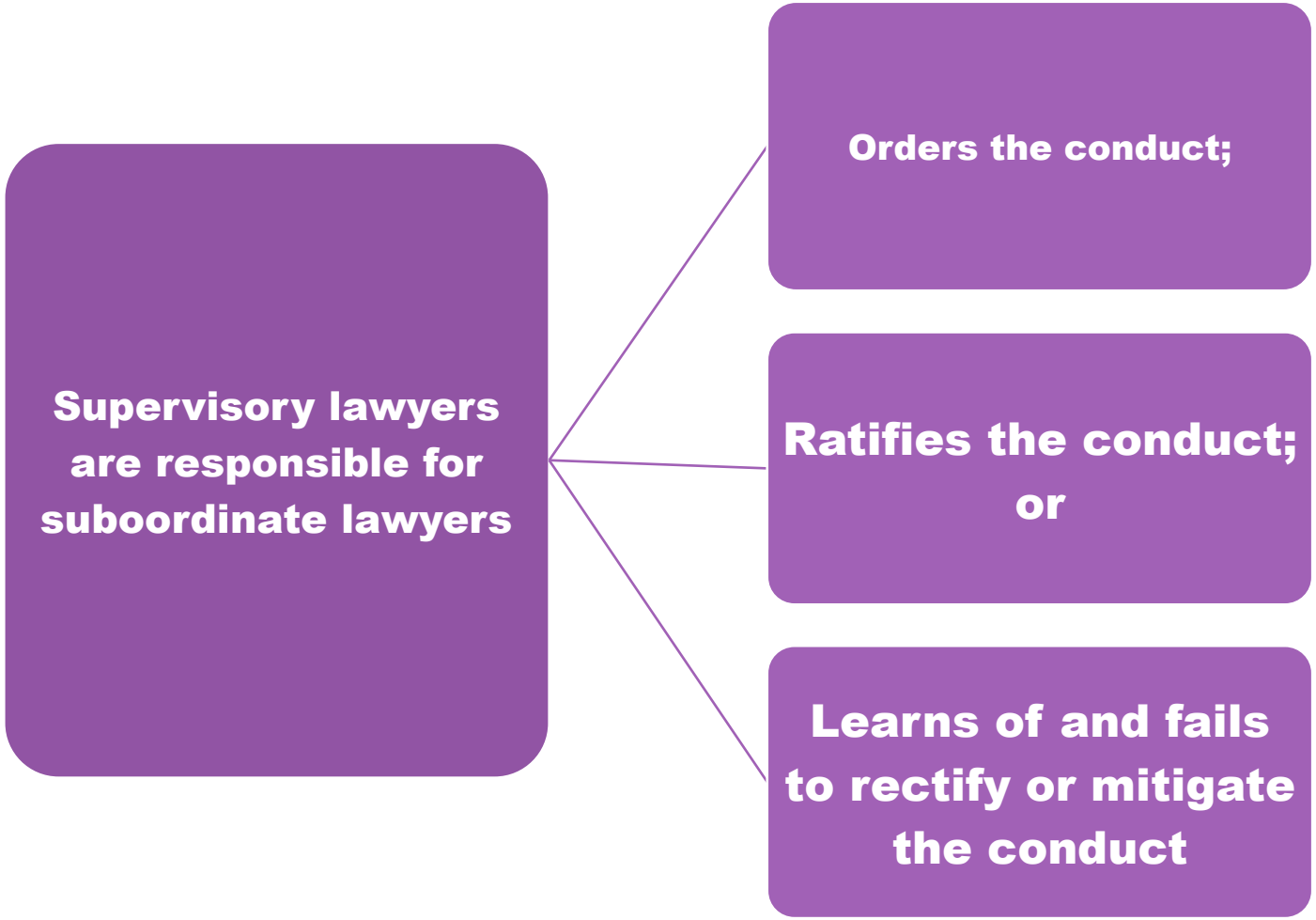
Rule 5.3

- Lawyer is responsible for conduct of non-lawyer staff
  - Orders the conduct
  - Knows and ratifies the conduct
  - Learns of and fails to rectify or mitigate conduct

- Obligation to implement training

RESPONSIBILITIES OF A PARTNER OR SUPERVISORY LAWYER

Rule 5.1



RESPONSIBILITIES OF A PARTNER OR SUPERVISORY LAWYER

Rule 5.2

A lawyer is bound by the Rules of Professional Conduct notwithstanding that the lawyer acted at the direction of another person.

A subordinate lawyer does not violate the Rules of Professional Conduct if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty.

SOCIAL MEDIA

COMPETENCY: DON'T IGNORE SOCIAL MEDIA

Do ethical duties require lawyers to be adept in social media?

Can a lawyer who ignores social media provide truly competent representation?

66% of divorce attorneys use Facebook as their primary source of online evidence, according to the American Academy of Matrimonial Lawyers.

Can a family law attorney fulfill their duty of competency if they never incorporate searches of online social networking sites as part of their investigative efforts in divorce cases?

DILIGENCE: DO NOT IGNORE SOCIAL MEDIA

- Indiana Rule of Professional Conduct 1.3 provides that a lawyer shall act with reasonable diligence and promptness in representing a client.
- If the diligent attorney should be zealous in pursuing a matter on his clients behalf, it seems possible that more than familiarity may be required – actual use of social media may be necessary.
- Failure to check Facebook for evidence about your client's soon to be former spouse may constitute a failure to perform due diligence.
- Does the duty of diligence require a lawyer to monitor the internet for potentially damaging information about his/her client?

SPOLIATION OF EVIDENCE

- What happens when a clients page contains unsavory images or comments that could be favorable to the other side?
- Indiana Rule of Professional Conduct 3.4 prohibits lawyers from unlawfully altering or destroying evidence or assisting others from doing so.
- The failure to preserve evidence can lead to significant sanctions.
- Consider having clients set their Facebook profiles to “private”. This keeps the opposing party from having direct access to the page and would require them to conduct more formal discovery to view the page.

RELEVANCE: DON'T USE SOCIAL MEDIA TO HARASS

Indiana Rule of Professional Conduct 4.4(a) prohibits a lawyer from using the means that have no substantial purpose other than to embarrass, delay, or burden.

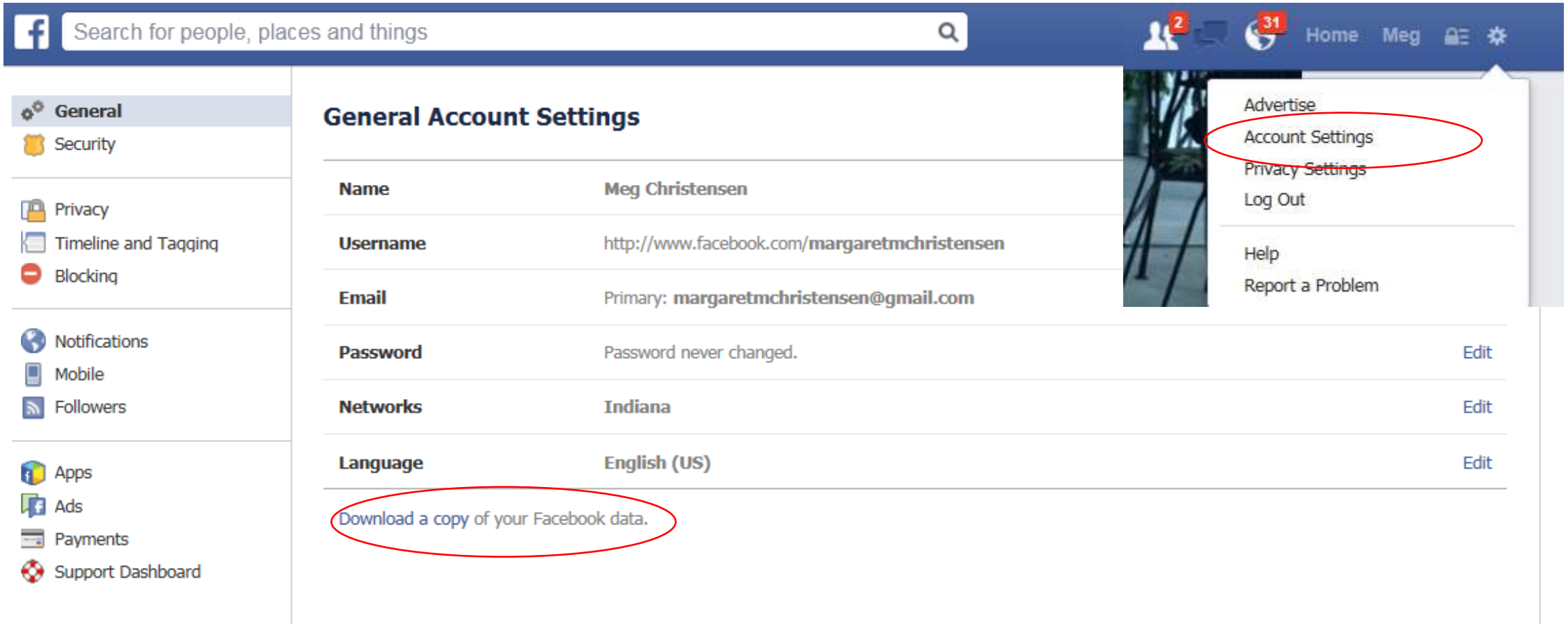
A lawyer may be limited in how they use what is found as the result of an online investigation.

Just because its juicy doesn't mean it's ethical to use or relevant to the case.

WHAT TO DO WITH SOCIAL MEDIA EVIDENCE?

- Once you find the evidence, immediately preserve it as if you were a police detective because the author might remove it from the Internet or block you from seeing it.
- **Discovery!**
  - Facebook records all content that has ever appeared on a user's page. The user can obtain a log of this information from his or her own account. A request directly to Facebook will be met with the unduly burdensome objection, as the information belongs to the user and can be easily accessed by the user.
  - "For each Facebook account maintained by you, please produce your account data for the period of February 1, 2008 through present. You may download and print your Facebook data by logging onto your Facebook account, selecting "Account Settings" under the "Account" tab on your homepage, clicking on the "learn more" link beside the "Download Your Information" tab, and following the directions on the "Download Your Information" page."

THIRD PARTY PAYING FOR LEGAL SERVICES

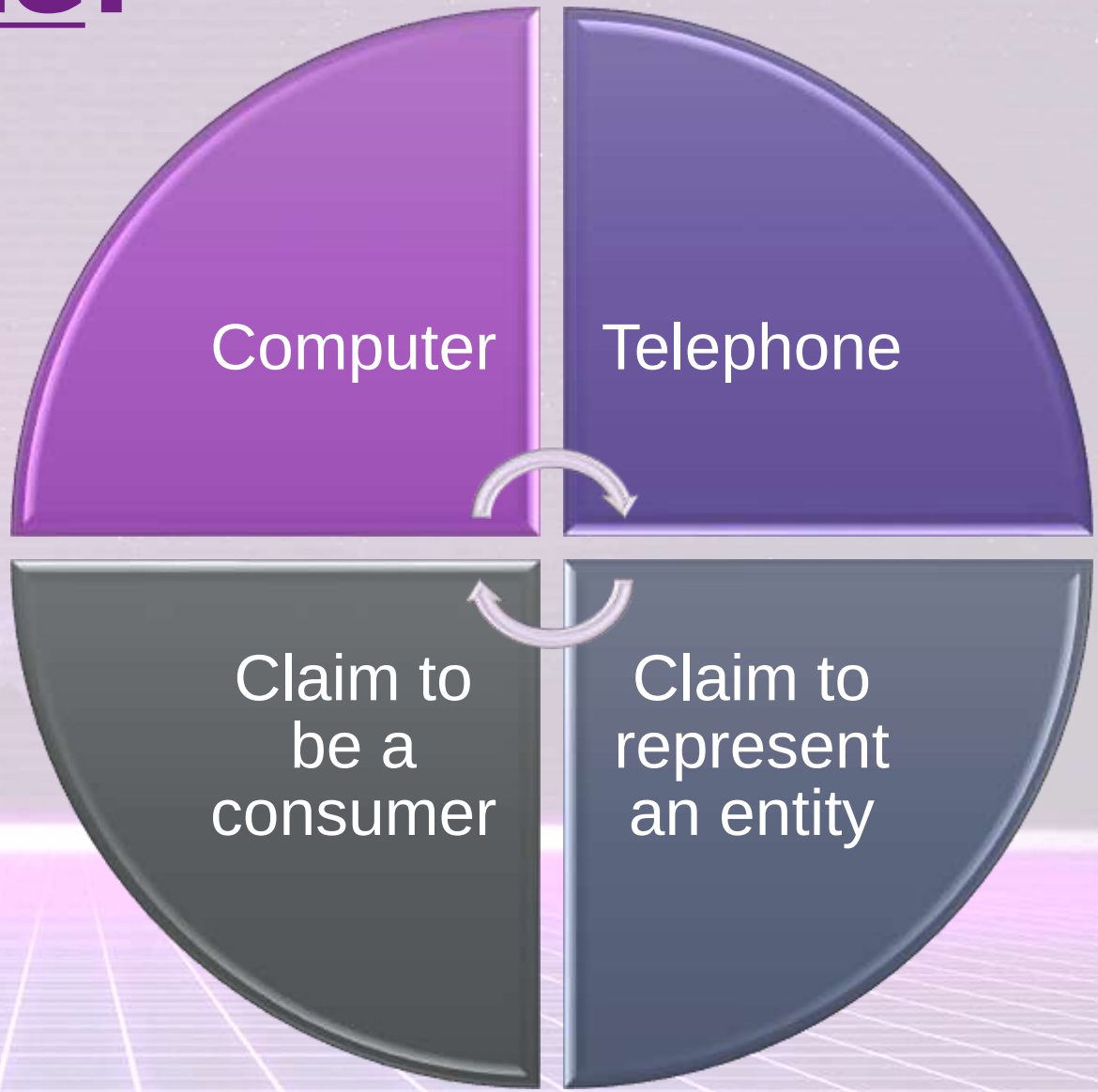


SOCIAL MEDIA TIPS FOR FAMILY LAW CLIENTS

- Postings are not confidential - **DO NOT WAIVE ATTORNEY-CLIENT PRIVILEGE.**
- Warn clients to keep their guard up.
- E-mail, texting, Facebook, Twitter, etc., communication must be ethical and responsible.
- Tell clients to ask themselves if their social media posts could possibly be used against them?
- Tell clients to assume their search history is available to others.
- side is not going to help resolve the matter.
- Negative stuff on the computer that may enrage the other

WHAT IS PRETEXTING?

Pretexting is the practice of lying about one's identity to obtain information



WHAT'S THE *DANGER* IN THAT?

Indiana Rule of Professional Conduct 4.1 requires TRUTHFULNESS in statements to others.

- In the course of representing a client a lawyer shall not knowingly:
  a) make a false statement of material fact or law to a third person; or
  b) fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

Indiana Rule of Professional Conduct 8.4(c) PROHIBITS dishonesty, fraud, deceit or misrepresentation.

SO I CAN'T LIE ABOUT MY IDENTITY IN THE COURSE OF INVESTIGATING A CASE?

NO.

And you can't:

- Create a fake Facebook Profile
- Participate in a social media conversation using someone else's account or login information

“THAT’S FINE, I’LL JUST ASK MY CLERK TO DO MY PRETEXTING FOR ME”

NO, THAT’S A TERRIBLE IDEA!

- Rule 5.1(b) requires a supervising lawyer to make reasonable efforts to ensure subordinate lawyers follow the ethics rules.
- Rule 5.1(c) holds a lawyer responsible for another lawyer’s conduct if:
  - the lawyer orders or ratifies the conduct; or
  - the lawyer has direct supervisory authority over the other lawyer, but fails to stop the conduct

“OKAY, MY ASSISTANT CAN DO IT THEN. . .”

Wrong Again.

Rule 5.3 holds a lawyer responsible for a non-lawyer employee’s conduct if the lawyer:

- Orders the conduct
- Ratifies the conduct
- Knows of and fails to mitigate the conduct

IN THE MATTER OF PAULTER,

47 P.3d 1175 (Colo. 2002)

- District attorney represented himself to be a public defender to negotiate the surrender of a murderer
- 3-months suspension, stayed during 12-month probation
- “This sanction reaffirms for all attorneys, as well as the public, that purposeful deception by lawyers is unethical and will not go unpunished.”

THIRD PARTY PAYING FOR LEGAL SERVICES

- Opines that attorney may send investigator to interview domestic violence victim
- The investigator must disclose the identity of her employer
  - It was insufficient to disclose that she worked for “court-appointed counsel” because it gave the victim the impression that the investigator was from the court.
  - Lawyers (and their investigators) should “take affirmative steps to avoid misunderstandings and ensure that the unrepresented person correctly understands the lawyer’s role in the matter.”

“OKAY, SO WHAT CAN I DO?”

The duty not to deceive extends to social media

Access publicly available Facebook and Myspace pages

- But “friending,” even as yourself may be a pretext because it insinuates that you are communicating for the purpose of friendship.
- Also, friending someone can be considered a communication with a represented person.

If you do send a friend request, provide a full disclosure of your identity and the purpose for the communication. (Do this at your own risk, see Rules 4.2 and 4.3)

Request the social media pages through formal discovery requests directed to the party.


OTHER LIES

LYING TO COURT/SPOUSE ABOUT MARITAL ASSETS

- Attorney didn't disclose two large contingency clients to his spouse during his own divorce
- Not a violation of Rule 3.3 (requiring candor toward tribunal) because the lawyer wasn't acting as an advocate before the tribunal
- Was a violation of 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation) because 8.4 is not limited to actions in the scope of advocacy
- Damaged "professional standing"

Iowa Supreme Court Attorney Disciplinary Bd. v. Rhinehart, Iowa, No. 12-1024, 2/15/13)

SPEAKING WITH REPRESENTED PEOPLE

Rule 4.2

In representing the client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law or a court order.

MATTER OF S.L.,

55S00-0706-DI-241

- Deponent was represented
- Attorney for deponent could not attend deposition
- Deponent nevertheless appeared in spite of attorney’s advice
- Deponent was advised of her Miranda rights and was advised not to proceed without counsel being present

MATTER OF S.L.,
55S00-0706-DI-241

- Incriminating statements were elicited from deponent
- Violation Rule 4.2
- Sanction: Public reprimand

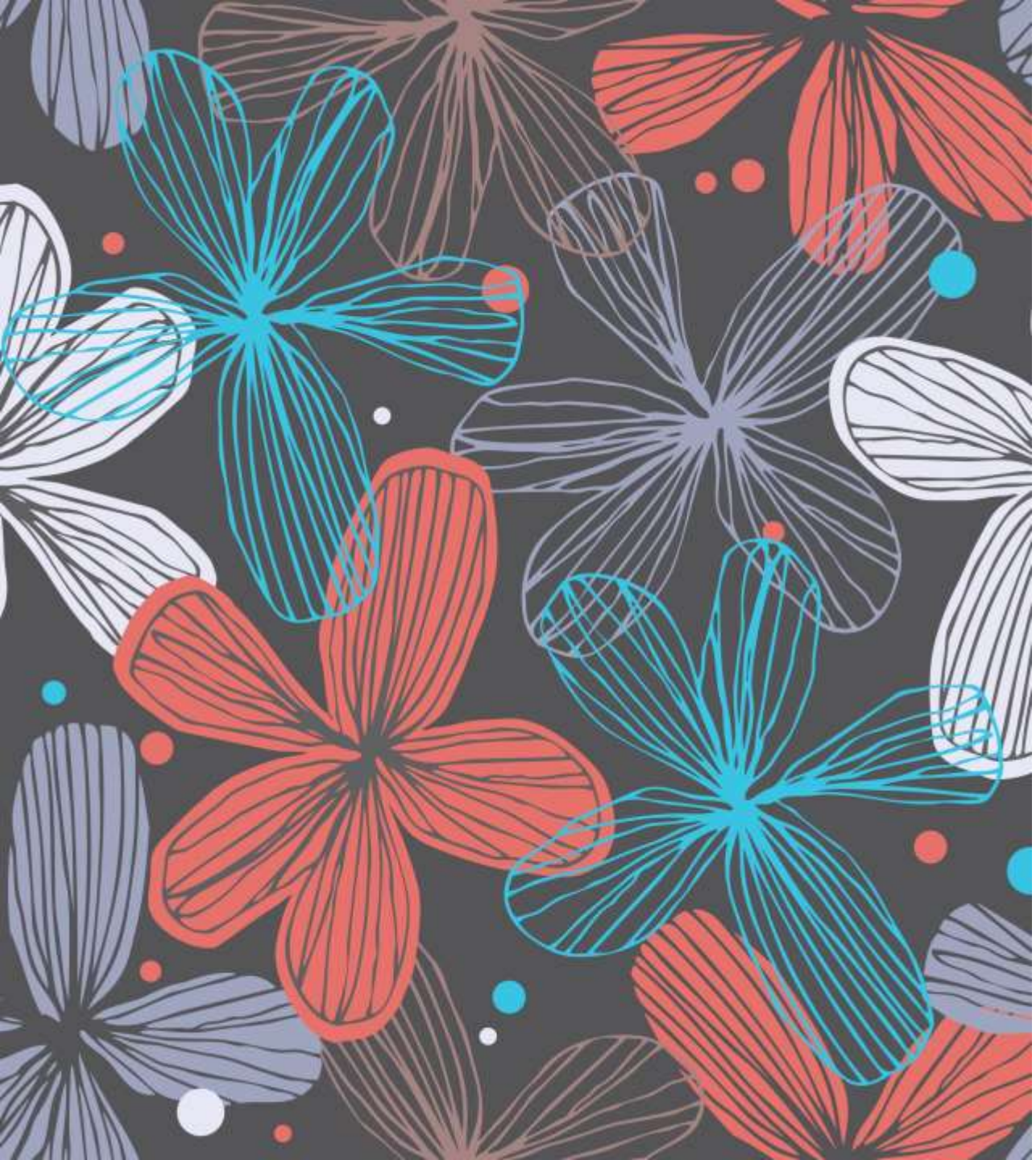
MATTER OF UTTERMOHLEN

“The Rule applies even though the represented person initiates or consents to the communication.”


SEX WITH CLIENT

RULE 1.8(J)

A lawyer shall not have sexual relations with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced.



770 N.E.2d 273

Respondent “personally manifested his romantic interest in [client] during appointments . . . Three times he hugged and kissed her during the pendency of the dissolution and bankruptcy.”

Respondent violated Indiana Professional Conduct Rule 1.7(b) by continuing to represent the client after expressing and promoting his personal and romantic interest in her.

Footnote: “It was the respondent’s expression of personal and romantic interest in the client that led to the respondent’s conflict of interest. Had the expression been manifested in more strenuous fashion, the appropriate discipline would have been more severe.”

MATTER OF DIVORCE LAWYER, 674 N.E.2d 551 (IND. 1996)

- Hired May of 1987 for divorce case
- February 1988 sexual relations begin and continue
- Conducts trial for the client in April 1988
- Assures her that the bill is “taken care of”

- Aug 1988 client terminates personal relationship: “Not Appropriate.”
- Sends bill/files Attorney Lien
- Client goes to the Commission

- Response to Grievance: Called Client’s accusations:
- “Nothing more than the raving of a lazy, promiscuous, greedy, psychotic bitch.”

THE FLORIDA BAR v. TIPLER

- Attorney represented 18-year-old woman
- Lawyer charged client flat fee of $2,300
- As part of fee agreement, reduced balance by $200 every time client had sex with him or $400 every time client arranged for another woman to have sex with him
- Pled guilty to one count of solicitation of prostitute
- Disbarred

MATTER OF INGLIMO,
740 N.W.2d 125, 139 (WIS. 2007)

Wisconsin Supreme Court held lawyer did not have sexual relations with client within the meaning of the Rules of Professional Conduct.

Rules prohibit sexual relations “with” clients.

Lawyer had sex with third party who was simultaneously having sex with lawyer’s client.

FRIENDS AND LOVERS:

O'LEARY, MD., MISC. DOCKET AG NO. 20, 7/10/13

- Attorney was friends with wife before divorce
- Represented husband in divorce
- Began romantic relationship with husband during course of representation
- Attorney began cohabitating with her client
- Shared his child support obligations while trying to get them reduced
- Lied about terminating representation
- Acquired personal interest in the litigation
- Sent hundreds of texts to ex-wife (who was formerly a friend) regarding the child support analysis

O'LEARY: DISBARRED

- 1.7(a)(2): Conflict of interest created by personal interest of the lawyer
- 1.8(i): Proprietary interest in cause of action
- 1.16(a) Terminating representation
- 4.2: Communication with represented persons
- 8.4(a), (c), (d): Misconduct

DENTONS

Thank you

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Section Five

Ask A Judge

Hon. Stephenie K. Gookins
Hamilton Superior Court 6
Noblesville, Indiana

Hon. Ashley N. Hand
Allen Circuit Court
Fort Wayne, Indiana

Hon. William J. Hughes
Hamilton Superior Court 3
Noblesville, Indiana

Hon. Catherine Berg Stafford
Monroe County Circuit Court IV
Bloomington, Indiana

Hon. Andrew R. Bloch
Magistrate - Hamilton Superior Court
Noblesville, Indiana

Kathryn Hillebrands Burroughs, Moderator
Cross | Glazier | Reed | Burroughs, PC
Carmel, Indiana

Section Five

Notes

Notes

Section Six

Cross-Examination

Patricia Kuendig
Dodd & Kuendig
Park City, Utah

Section Six

Cross-Examination…….. Patricia Kuendig

Section Seven

Simulated Direct/Cross of Financial Evaluation Expert and Custody Evaluator

Hon. William J. Hughes
Hamilton Superior Court 3
Noblesville, Indiana

Michael J. Jenuwine, Ph.D., J.D.
University of Notre Dame Law School
South Bend, Indiana

Patricia Kuendig
Dodd & Kuendig
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Troy C. Patton
Patton & Associates LLC
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Andrew Z. Soshnick
Faegre Drinker Biddle & Reath LLP
Indianapolis, Indiana

Section Seven

Simulated Direct/Cross of Financial Evaluation Expert and Custody Evaluator…….. Hon. William J. Hughes
Michael J. Jenuwine, Ph.D., J.D.
Patricia Kuendig
Mark A. Glazier
Troy C. Patton
Andrew Z. Soshnick

Conclusion of Value prepared by Patton & Associates

Child Custody & Parenting Time Evaluation – Michael J. Jenuwine, Ph.D., J.D.

Conclusion of Value

for

Patton and Associates

as of 12/31/2014

prepared by

PATTON & ASSOCIATES LLC

VALUATION EXPERTS & CONSULTANTS

CONTENTS

1. PURPOSE AND APPROACH

The Company has engaged Patton & Associates, LLC to provide business valuation services by expressing an opinion of the fair market value of a 100% equity interest in the Company.

Purpose

This study was undertaken at the request of WIFE , An owner of the COMPANY to establish the Fair Market Value of a 100% interest in the equity of the Company . The valuation is to assist the principals in establishing market value in connection with a marital dissolution and a potential buy out among owners.

The Company is closely held; the interest considered is not marketable and has no liquidity. The interest has been valued on a non-marketable, controlling interest basis.

Standard of Value

The standard of value applied in this case is Fair Market Value. For this purpose, Fair Market Value is defined as:

> *"…the price at which the property would change hands between a willing buyer and a willing seller when the former is not under any compulsion to buy and the latter is not under any compulsion to sell, both parties having reasonable knowledge of relevant facts."*

This definition is derived from IRS Revenue Ruling 59-60 and is nearly universally accepted as the basic standard by which virtually all IRS-related valuations and most other valuations are conducted. It should be noted that the "willing buyer" and the "willing seller" are generally taken to be "typical" financial investors, with no external synergistic expectations or benefits. Also incorporated into the general definition of Fair Market Value is an assumption that the interest under consideration can be transferred, and the reported value is in terms of cash or cash equivalents.

Premise of Value

In general, a business can be valued under at least four common premises of value:

1 Going Concern
2 Asset Sale, or Assemblage of Assets, or Asset Value
3 Orderly Disposition (Orderly Liquidation)
4 Forced Liquidation

Similar to the preceding discussion concerning the Standard of Value, selection of the premise of value can and often does have a substantial effect on the appraised value. For purposes of this engagement, we have treated the Company as a going concern.

Approach and Scope of Work

Our objective is to determine a value which would provide a fair and reasonable return on investment to an investor/owner, the "willing buyer" as well as the "willing seller," in view of the facts available to us as of the effective date of the valuation.

Value has been defined as the "present worth of future benefits." Accordingly, we are concerned with the earnings and cash flow that are expected to be realized in the future, as those appear from the vantage point of the "as of" date of the valuation. We are also concerned with the risks facing the business, and their possible effect on those future benefits.

We obtained information from the Company, including:

- Federal Tax Returns for 12/31/2009 - 12/31/2013
- Financial Statements for 12/31/2009 - 12/31/2013
- Financial Statements for 1/1/2014 - 10/31/2014
- Financial Documents provided by Husband
- Top 5 Customer list provided by Husband
- Written managerial statements provided by Husband
- Interview conducted by Troy Patton, CPA/ABV

Historical earnings and financial condition are considered because they generally are indicative of the expected future income, although that is not always true. Adjustments are usually necessary to recast the historical financials so that they more fairly represent the likely pattern of future income and financial condition. We gave special attention to the current and anticipated cash flow of the Company.

Control basis means that the interest under consideration can affect certain discretionary items, including owners' and officers' compensation.

Both internal and external factors which influence the value of the Company were reviewed, analyzed and interpreted. Internal factors include the Company's financial condition, results of operations and the size and marketability of the interest being valued. External factors include, among other things, the status of the industry and the position of the Company relative to others in the industry.

Having reviewed the Company's condition and situation, we next sought to determine the pricing parameters to be applied. We generally rely on market pricing from business sales transactions, or public stock prices, or both. It should be noted that it is often difficult or impossible to find market transactions or public companies that are strictly comparable to the business under consideration. When this is true, we generally find market data that provides the best available evidence, and use that as a starting point for our analysis of market pricing patterns.

RR 59-60 advocates the use of public companies that are the same as or similar to the subject company; where "similar" has been interpreted to allow wide latitude in guideline company selection. For example, in "Estate of Gallo v Commissioner," there were no good public winemaker comparables, so experts on both sides used brewers, distillers, soft drink bottlers, and a brand name recognition consumer food packager. The object is to find companies that have similar risk characteristics, similar modes of operation, similar financial structure, and similar size and profitability to the greatest extent possible.

Our search for private business sales transactions was more successful. In this case we found thirteen useful market transactions involving sales of businesses similar to the Company. Private market transactions reflect sales of marketable, controlling interests.

We generally use as many methods as are meaningful, and then average the results, or take a weighted average based on our opinion as to which methods are the most appropriate. The reason for this is that no single valuation method utilizing a few mathematical variables can possibly capture the value of a complex, operating business. Historical methods assume that the future will be much like the past, although with allowances for anticipated changes. Future earnings and cash flow methods rely on projections that are often speculative and sometimes self-serving. Each method provides for a different perspective on value, and it is our opinion that the "true" value of the business is better revealed when it has been considered from as many perspectives as can reasonably be developed.

After the value was determined, we performed a "Cash Flow Coverage" calculation, to see if a leveraged purchase of the business at that price could realistically be supported by the cash flow. This analysis is critical, because most businesses are sold in a leveraged transaction in which the cash flow of the business is used to pay down the debt. Consequently, the cash flow available to the purchaser imposes an upper limit on the value that can be achieved in the marketplace, unless there is some other alternate source of financing available, such as a private placement or IPO.

Representations

Conduct of the Engagement

This report was prepared by Patton & Associates, LLC, under the direction of Troy Patton, CPA/ABV. Professional assistance was provided by Kurt Tobin, CVA.

This report was completed on 1/0/1900

Obligation to Update the Report

Under the terms of our engagement letter with the Company, we are not obligated to update this report unless prior arrangements have been made with the analyst regarding such additional engagement.

Subsequent Events

There were no events subsequent to the date of the valuation which affected the analysis of value other than to confirm the estimates made based on information available prior to the valuation date.

2. CONCLUSION OF VALUE

Based on our review of the information available to us, it is our opinion that , the Fair Market Value of a 100% interest in the Company was (rounded):

Fair Market Value of	
FAIR MARKET VALUE of 100% of the Equity *Marketable, controlling interest basis*	$ 390,300

The Fair Market Value of 100% of the Equity represents the value when the buyer acquires all of the assets and assumes all of the liabilities of the Company.

It is our opinion that an investor could realize a reasonable return on investment at the value above, commensurate with the risks involved, assuming that the business is operated prudently and that there are no unforeseen adverse changes in the economic conditions affecting the business, the market, or the industry.

This valuation does not guarantee a willing buyer would pay the amount found in this valuation or any amount proposed with this valuation.

Our analyses, opinions, and conclusions were developed, and this report has been prepared in conformity with the Uniform Standards of Professional Appraisal Practice of The Appraisal Foundation. We have complied with the standards of the American Institute of Certified Public Accountants' Statement of Standards for Valuations Services.

3. COMPANY DESCRIPTION

The Company was formed in Indianapolis, Indiana as an S-Corporation. The Company has been in business for 21 years.

Products and Services

(the 'Company') is a wholesaler of adhesive and packaging products.

The Company's activities are best classified in NAICS code:

423840	Industrial Supplies Merchant Wholesalers

At the present time, the Company's reputation and long-standing relationships allow for continuing patronage from their clients.

Facilities

The Company was operating out of a office and a small warehouse space on the same property as the owner's home. Recently, Husband closed down the office and warehouse space and moved to California. He has outsourced the warehousing to a local company in Indianapolis. The Company has been operating as a virtual office ever since.

Market

The primary market for the Company's products are commercial and industrial institutions. Their top 5 customers are; The market is considered well established and stable at this time. The Company is micro in size compared to others in the industry. The Company sells their services regionally.

Industry

Since these items are used by a variety of industrial sectors, industry demand depends on the general level of manufacturing and activity in the US economy. The array of markets is expected to fuel modest industry growth in the five years to 2014, at an average annual rate of 2.5% to $60.9 billion. This includes forecast growth of 1.9% during 2014. See *Appendix II* for additional details.

Competition

The Company's operates as a wholesaler and their products offered are fairly common with no distribution rights, thus weakening their competitive position. Also, because the Company is among the smaller firms in its market, the Company's competitive position is further weakened.

For new competitors, entry into this type of business would be considered easy and inexpensive. Exit from this type of business would also be considered easy and inexpensive, which reduces the Company's downside risk. It also means that competitors are more likely to leave the business in difficult times.

Employees and Management

In the past, the Company had three employees, the owners and an assistant who works part-time helping fulfill orders. The Company currently operates with two employees, Husband running the sales and the assistant working part-time from home. The employee turnover rate is considered very low by industry standards, which implies a high degree of employee satisfaction and potentially lower costs of recruitment and training. There is no unionization among the employees. There are no employee agreements or covenants of non-compete in place at this time.

Ownership Structure

Owner	% Owned
Wife	51%
Husband	49%
Total	100%

4. INCOME STATEMENT

The purpose of this and the upcoming sections is to provide a financial analysis of the Company. We will examine the financial condition and performance of the Company in order to gain insight into trends affecting future earnings capacity, as well as to analyze various financial risks. Knowledge gained from these sections, as well as other factors impacting the business are used in valuing the Company.

Income statement profitability is a function of sales, the gross profit margin on those sales, and expenses. Following is the 3 year historical income statement and adjusted EBITDA and EBT. We adjusted data provided through October of 2014 to year end December 2014 to compare to historical earning results.

Source:	1120	1120	Internal
Basis:	Accrual	Accrual	Accrual
	12 mos	12 mos	10 mos
($)	**Dec-2012**	**Dec-2013**	**Oct-2014**
REVENUE	938,935	919,934	776,368
Cost of Sales (excl depr)	609,384	572,479	520,816
Depreciation in COS	-	-	-
Gross Profit	329,551	347,455	255,551
Gross Margin (% Sales)	35.1%	37.8%	32.9%
Operating Expenses	152,548	126,619	97,364
Total Operating Expenses as % Sales	16.2%	13.8%	12.5%
Owners' Compensation	140,300	153,077	163,082
Operating Income	36,703	67,759	(4,895)
Depreciation (-)	(18,456)	(5,980)	-
Amortization (-)	-	-	-
Interest Expense (-)	(1,316)	-	-
Interest Income (+)	-	-	-
Other Income (Expense)	-	-	-
NET INCOME BEFORE TAX	16,931	61,779	(4,895)
Adjustments:			
1. Comparable compensation	(105,000)	(105,000)	(87,500)
2. Owners' compensation	140,300	153,077	163,082
3. Depreciation/Amortization	18,456	5,980	-
4. Interest expense	1,316	-	-
5. Personal Expenses	24,743	33,783	18,234
6. Annualized Earnings	-	-	17,784
Adjusted EBITDA	**96,746**	**149,619**	**106,706**
Revenue	938,935	919,934	776,368
Revenue Adjustments	-	-	155,274
Adjusted Revenue	938,935	919,934	931,641
Adj. Earnings as a % of Revenue	10.30%	16.26%	11.45%

Adjusted EBT

	Dec-2012	**Dec-2013**	**Dec-2014**
Adjusted EBITDA	96,746	149,619	106,706
Depreciation	(18,456)	(5,980)	-
Amortization	-	-	-
Interest expense	(1,316)	-	-
Adjusted EBT	76,974	143,639	106,706

NOTES TO INCOME STATEMENT ADJUSTMENTS:

1,2 Executive shareholder compensation is adjusted to reflect the normal economic cost of management. Adjusted compensation is based on data obtained from management as well as The Bureau of Labor Statistics (www.bls.gov) which monitors compensation data nationwide. Data is adjusted for type of business, geographic region, size of business, and date of valuation.

Actual officer compensation recap

	12 mos **Dec-2012**	12 mos **Dec-2013**	10 mos **Oct-2014**
Husband	70,150	76,539	81,541
Wife	70,150	76,539	81,541
Total reported on F/S	140,300	153,077	163,082

Normalized officer compensation recap

Sales Manager	75,000	75,000	62,500
Bookkeeper	30,000	30,000	25,000
Total Normalized Comp.	105,000	105,000	87,500

3 Depreciation expense is added back to arrive at EBITDA.

4 Interest expense is added back to arrive at EBITDA.

5 Personal Expenses have been run through the Company and need to be added back.

	2012	2013	2014
Owner HealthCare*	3,000	7,712	5,038
Owner Insurance	8,157	11,947	8,991
Contributions	10,386	9,624	3,702
Pension	3,200	4,500	503
Total	24,743	33,783	18,234

* We only added back 50% of health care costs as we believe this is the reasonable amount that would be paid by an employer to an employee and therefor justifiable.

No other income statement adjustments were considered necessary.

WEIGHTED AVERAGES

The results of each year are usually weighted to reflect the expected relevance of each year toward the future sustainable results of the Company. The objective of this exercise is to arrive at reasonable estimates of what level of revenue and earnings the Company is likely to be able to sustain in the near future. A commonly used pattern is to weight the oldest year least, and the most recent year highest, in the belief that the near-term future will most closely resemble the Company's most recent experience. Other times, when the Company's historical financials do not indicate a definite earnings and/or revenue pattern or does not reflect stabilized or predictable earnings, the analyst may distribute the weight equally among the periods or weight some period the same and others different. The weights are used to calculate a set of weighted averages of earnings and revenues, shown below, which are used in all of the value calculations which follow.

In this case, the year weights were set as follows:

	12 mos **Dec-2012**	12 mos **Dec-2013**	12 mos **Dec-2014**
Year Weights:	1	2	3
Company Revenue	938,935	919,934	931,641
Company EBITDA	96,746	149,619	106,706
Company Return on Sales	10.30%	16.26%	11.45%

WEIGHTED AVERAGE ADJUSTED EBITDA	**119,350**
WEIGHTED AVERAGE ADJUSTED EBT	**114,061**
WEIGHTED AVERAGE REVENUE	**928,954**
Weighted Average Adj. EBITDA/Revenue	**12.8%**
Weighted Average Gross Profit Margin	**32%**
WEIGHTED AVERAGE SDCF	**194,350**

5. BALANCE SHEET

Balance sheet analysis will evaluate the financial strength of the Company, including trends and standing as compared to industry peers. When further analysis is done, we will be able to analyze the liquidity and working capital factors that are indicative of its ability to meet obligations and support operations. Following is a summary of the assets and liabilities of the Company for the periods shown:

Source: As Reported ($)	1120 Dec-2012	1120 Dec-2013	Internal* Oct-2014
ASSETS			
Cash	(12,739)	(32,726)	(3,802)
Accounts Receivable	64,519	37,251	105,169
Inventory	9,933	3,212	115,742
Other Receivables	-	-	-
Other Current Assets	-	3,000	-
Total Current Assets	61,713	10,737	217,108
Land	-	-	-
Plant and Equipment	88,109	88,109	91,653
Accumulated Depreciation (-)	(62,239)	(68,219)	(62,236)
Net Plant and Equipment	25,870	19,890	29,417
Other Long Term Assets	-	-	-
Intangibles	-	-	-
Total Assets	**87,583**	**30,627**	**246,526**
LIABILITIES			
Accounts Payable	70,134	58,075	262,246
Short Term Debt	14,146	10,651	9,630
Accrued Expenses	-	-	-
Taxes Payable	-	-	-
Other Current Liabilities	44,313	28,775	32,463
Total Current Liabilities	128,593	97,501	304,339
Long Term Debt	-	-	(7,100)
Deferred Taxes	-	-	-
Other Long Term Liabilities	-	-	-
Total Liabilities	128,593	97,501	297,239
NET WORTH			
Common Stock	63,941	63,941	63,941
Retained Earnings	(243,565)	(269,429)	(165,690)
Other Equity	138,614	138,614	138,614
Dividends	-	-	(87,578)
Net Worth	(41,010)	(66,874)	(50,713)
Total Liabilities & Net Worth	**87,583**	**30,627**	**246,526**

* The wide swing in book values has to do with the removal of the bookkeeper from the company, and the hiring of a new accountant. The current owner is not properly booking items, due to lack of access to information we have not utilized this year in determining any future working capital/ capital expenditure needs of the Company.

Balance Sheet Adjustments

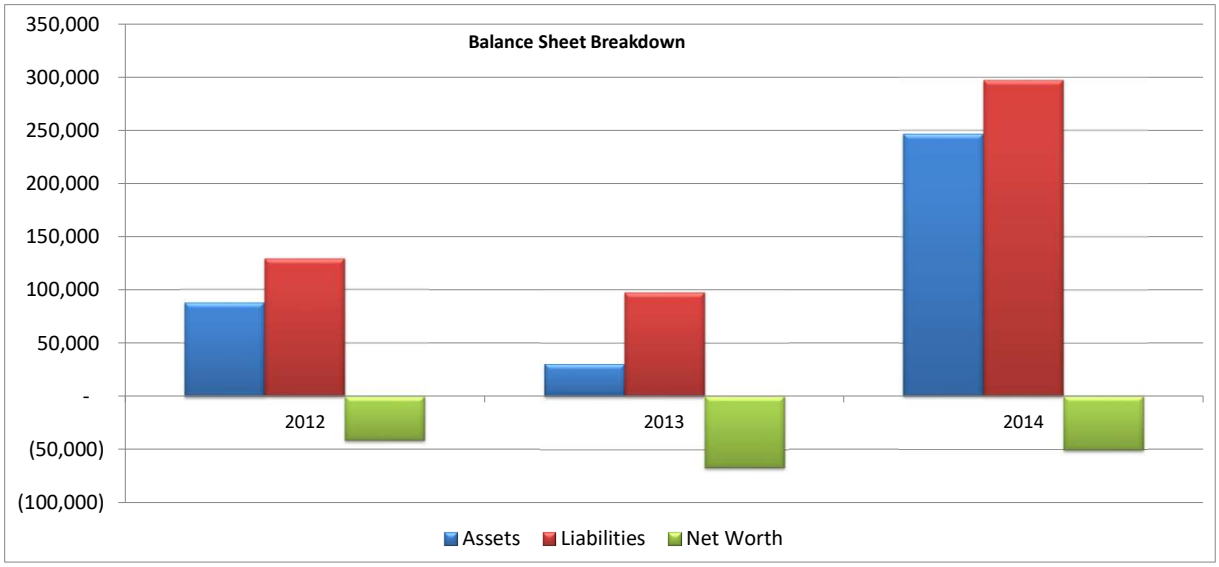
($)		Dec-2012	Dec-2013	Oct-2014
Net Worth before Adjustments		(41,010)	(66,874)	(50,713)
Adjustments:				
1		-	-	-
2		-	-	-
3		-	-	-
ADJUSTED NET WORTH		(41,010)	(66,874)	(50,713)
Add Back Interest-Bearing Debt				
Short Term Debt		14,146	10,651	9,630
Long Term Debt	Note 1	-	-	(7,100)
Total Interest-Bearing Debt		14,146	10,651	2,530
INVESTED CAPITAL		(26,864)	(56,223)	(48,183)

NOTES TO BALANCE SHEET ADJUSTMENTS:

Note 1 - The long term debt is a related party note. We assume that this is a loan made by the Company to the shareholder.

Working Capital

Working Capital	(66,880)	(86,764)	(87,231)
Adj Working Capital (excl. Cash, Debt)	(39,995)	(43,387)	(73,798)
Est Capital Spending	-	-	9,527



6. HISTORICAL AND PROJECTED CASH FLOW

Historical Cash Flow

The following exhibits shows historical financials and analyzes the ongoing cash flow based on historical performance and expected future cash flows. We have projected 2014 revenues and earnings out to year end. We use the ongoing cash flow calculated below in Section 10.3 capitalization of earnings.

	Dec-2012	Dec-2013	Dec-2014
Revenue Growth Rate	0.0%	-2.0%	1.3%
Depreciation (% Sales)	2.0%	0.7%	0.0%
Working Capital (% Sales)*	-4.3%	-4.7%	-9.5%
Capital Spending (% Sales)	0.0%	0.0%	0.5%
New Debt	0%	-25%	-76%
Debt/Equity ratio	(0.34)	(0.16)	(0.05)
Net Plant/Sales ratio	0.03	0.02	0.03
Net Worth/Sales ratio	(0.04)	(0.07)	(0.05)
Net Worth	(41,010)	(66,874)	(50,713)
Cash Balance	(12,739)	(32,726)	(3,802)
Adjusted Working Capital	(39,995)	(43,387)	(73,798)
Net Plant and Equip	25,870	19,890	29,417
Interest-Bearing Debt	14,146	10,651	2,530
Interest (% Year End Debt)	9.3%	0.0%	0.0%
Revenue	938,935	919,934	931,641
Earnings Margin	10.3%	16.3%	11.5%
Adj EBITDA	96,746	149,619	106,706

Weighted Averages

Year Weights:	12 mos **Dec-2012**	12 mos **Dec-2013**	12 mos **Dec-2014**
	1	2	3

Weighted Avg Ongoing EBITDA	**119,350**
Weighted Avg EBITDA Margin	**12.8%**

Ongoing Cash Flow analysis	
Ongoing EBITDA	$ 119,350
Less: Ongoing Depreciation	(7,000)
Ongoing EBIT	112,350
Income Taxes (30%)	(33,705)
Ongoing pre-debt income	78,645
Ongoing depreciation	7,000
Incremental Working Capital	1,043
Capital Expenditures	(7,000)
Ongoing free Cash flow	$ 79,688

NOTES TO ONGOING CASH FLOW ANALYSIS

The ongoing cash flow analysis takes into consideration historical trends and industry averages in order to conclude a cash flow that can be expected to be maintained moving forward with stable long term growth.

Ongoing EBITDA	We used an average EBITDA over the past three years. We obtained these earnings from profit and lose statements provided by Husband.
Ongoing Depreciation	Estimated using historical trends and based on expected ongoing capital expenditures.
Tax rate	Estimated tax rate.
Working capital	Working capital necessary to support future operations, moving forward the Company's working capital is going to change as the Company is keeping little inventory on hand and is drop shipping most of its products. The ongoing working capital is calculated based on this assumption.
Capital spending	Estimated to equal depreciation as an ongoing Maintenance Capex.

The ongoing free cash flow determined above is used in Section 10.2 to derive a value using a capitalization rate.

PROJECTED CASH FLOW

The cash flow projections given below are used in the discounted future earnings and cash flow methods, and are used in the coverage calculations in a later Section, Cash Flow Coverage. Some of the key parameters used in the projections are calculated on the following pages.

	Dec-2015	Dec-2016	Dec-2017	Dec-2018	Dec-2019
Revenue Growth Rate	3.0%	3.0%	3.0%	3.0%	3.0%
Depreciation (% Sales)	0.75%	0.75%	0.75%	0.75%	0.75%
Working Capital (% Sales)*	-4.5%	-4.5%	-4.5%	-4.5%	-4.5%
Capital Spending (% Sales)	1.3%	1.3%	1.3%	1.3%	1.3%
New Debt (% Cap Spend +chg WC)	-3.2%	-3.2%	-3.2%	-3.2%	-3.2%
Debt/Equity ratio	(0.05)	(0.05)	(0.05)	(0.05)	(0.05)
Net Plant/Sales ratio	0.03	0.03	0.03	0.03	0.03
Net Worth/Sales ratio	0.03	0.12	0.20	0.28	0.28
Net Worth	30,229	115,340	202,885	293,057	385,934
Cash Balance	(3,802)	(3,802)	(3,802)	(3,802)	(3,802)
Adjusted Working Capital	(43,066)	(44,477)	(45,811)	(47,186)	(48,601)
Net Plant and Equip	29,417	29,417	29,417	29,417	29,417
Interest-Bearing Debt	-	-	-	-	-
Interest (% Year End Debt)	0.0%	0.0%	0.0%	0.0%	0.0%
Projected Revenue	959,590	988,378	1,018,030	1,048,570	1,080,028
Earnings Margin EBITDA	12.8%	12.8%	12.8%	12.8%	12.8%
Adj EBITDA	123,286	126,985	130,794	134,718	138,760
Interest	-	-	-	-	-
Depreciation	(7,197)	(7,413)	(7,635)	(7,864)	(8,100)
Projected Adj EBT	116,089	119,572	123,159	126,854	130,659
Tax Rate	30%	30%	30%	30%	30%
Estimated Distributions for Tax	(34,827)	(35,872)	(36,948)	(38,056)	(39,198)
Projected Earnings after Tax	81,262	83,700	86,211	88,798	91,462
Depreciation	7,197	7,413	7,635	7,864	8,100
Capital Spending	(7,197)	(7,413)	(7,635)	(7,864)	(8,100)
Working Capital Change*	(321)	1,411	1,334	1,374	1,416
Proj Equity Cash Flow after Tax	80,941	85,111	87,546	90,172	92,877
Projected Cash Flow Margin	8.4%	8.6%	8.6%	8.6%	8.6%
Dividend Capacity	(80,941)	(85,111)	(87,546)	(90,172)	(92,877)
Net Retained Cash Flow	-	-	-	-	-
Ratio of Cash Flow to Earnings	0.657	0.670	0.669	0.669	0.669
Ratio of Cash Flow to EBT	0.697	0.712	0.711	0.711	0.711
Net Cash Flow Ret on Net Worth	267.8%	73.8%	43.2%	30.8%	24.1%

* WC excludes Cash and Short Term Interest-Bearing Debt, which are calculated separately.

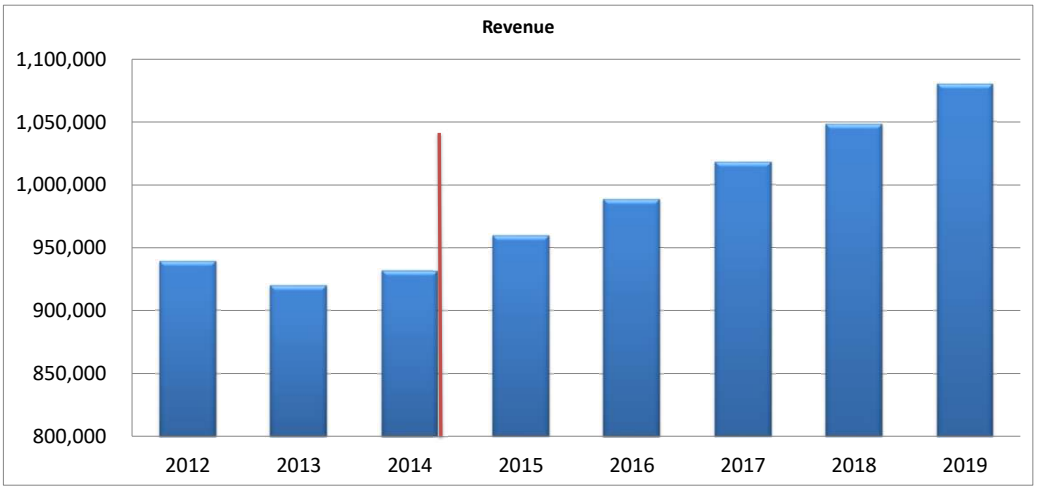
NOTES TO FINANCIAL PROJECTIONS

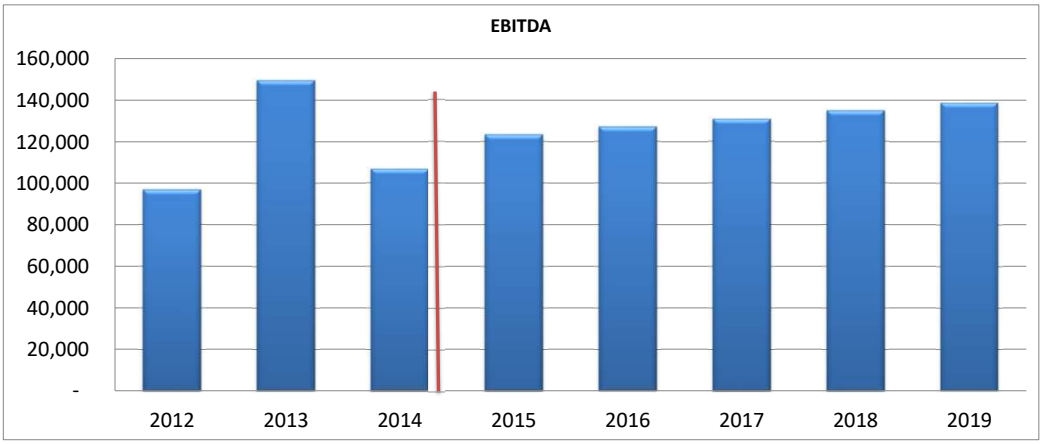
The projections above were prepared by the appraiser based on information provided by the client.

Revenue growth	Revenue growth projections were not obtained from Company management. Figures used for this analysis were based on the Company's historical trends as well as industry projections published by IBIS World.
Earnings margin	Set at the weighted average of historical earnings.
Tax rate	Estimated tax rate.
Capital spending	Estimated from historical patterns in relation to sales and growth.
Working capital	Expected working capital necessary to support operations.

The financial projections presented in this report are included solely to assist in the development of the value conclusion presented in this report. These presentations do not include all disclosures required by the guidelines established by the AICPA for the presentation of financial projections. The actual results may vary from the projections, and the variations may be material.

HISTORICAL AND PROJECTED RESULTS





7. RISK ASSESSMENT, COMPARATIVE ANALYSIS

The risk assessment and comparative analysis section is used to assist in generating a company specific risk premium that will be used in the capitalization rate buildup method. In order to better understand the risks facing the Company and its owners, it is necessary to consider how the Company's performance and operating characteristics compare to those of similar companies in the same industry.

The Company's activities are best classified in NAICS code:

423840 **Industrial Supplies Merchant Wholesalers**

RISK ASSESSMENT TABLE

The following table summarizes the appraiser's assessment of the degree of risk inherent in this business, including consideration of its current financial condition. See also the Company Description.

Risk factors	Current status	Risk Category	Risk Profile
Years in business	Well Established	Low	+
Proprietary content	Little/None	High	+++++
Industry life cycle	Mature	Low	+
Industry stability	Some Instability	Medium	+++
Relative size of the company	Smaller	High	+++++
Customer concentration	> 50% to top 5 clients	High	+++++
Relative product quality	Excellent	Low	+
Product differentiation	Little/Commodity	High	+++++
Strength of the market	Stable	Medium	+++
Size of the market	Very Large	Low	+
Price competition	High Intensity	High	+++++
Employee turnover	Very Low	Low	+
Unionization	No Union	Low	+
Management depth	Excellent	Low	+
Condition of facilities	Not Important	N/A	N/A
Ease of market entry	Easy	High	+++++
Ease of market exit	Easy	Low	+

ANALYSIS OF COMPANY COMPARED TO INDUSTRY NORMS

The following table shows how the Company compares against selected industry financial measures.

(Ratios based on adjusted statements)	Company Wtd Avg	Industry Rates HiQtile	Med	LoQtile	Risk Level
Company ratios historical avg:					
Revenue Growth Rates	-0.3%		3.2%	→ Industry Avg	High
Profit Before Taxes	12.9%	18.4%	5.6%	-17.1%	Low
Operating Expenses	13.6%	62.9%	29.9%	6.7%	Low
Gross Profit Margin	34.9%	63.9%	36.0%	11.5%	Low
Company ratios based on latest period financials:					
Current Ratio	0.7	2.8	2.0	0.7	Medium
Quick Ratio	0.3	1.9	1.4	0.7	High
Debt/Equity Ratio	(5.9)	0.5	8.8	(4.9)	High
Sales/Receivables	8.86	13.80	8.00	4.50	Medium
Cost of Sales / Payables	1.99	280.00	8.90	4.40	High
Sales/Total Assets	3.78	2.4	2.0	1.5	Low
Sales/Working Capital	(10.68)	3.4	4.0	(23.4)	Medium
EBIT / Interest	NA	NA	NA	NA	Low

Industry sources: Unless otherwise noted, industry ratios are from RMA (Risk Management Association)

RECAP OF RISK FACTORS:	Low	Med	High
Weights based on risk factors	8	2	6
Weights based on industry norms	5	3	4
Totals	13	5	10

Our analysis suggests that the general risk in this business is low compared to the industry. Considering the above, the Company appears to be in above average financial condition.

8. APPROACHES TO VALUE

Business appraisers, like real estate appraisers, often think in terms of three basic approaches to valuation - Asset (or Cost) approaches, Income approaches, and Market approaches.

In real estate appraisal, the Asset Approach considers the cost to construct a property essentially identical to the one being appraised. Because the essential elements of a business are usually far more complex and far less tangible, it would be very difficult in most cases to determine the cost to create a business that is essentially the same as the one being appraised. Even the equipment used in a business can be difficult to value in this way, with such questions as whether the appropriate measure is the cost of new equipment, the depreciated cost of the existing equipment, the cost of used equipment, what the Company's equipment would sell for in liquidation, and whether to include the cost of delivery and installation. As a practical matter, Asset approaches in business valuation are usually 1) the book values of all the assets and liabilities of the business adjusted to their approximate Fair Market Values or 2) their value based on an orderly liquidation. The methods within the Asset Approach were rejected for determining the value of COMPANY because my review indicates that the value of the enterprise is driven by the ability of the collection of assets in place to generate a benefit stream and is more important in terms of valuation than the value of the underlying assets themselves. In other words, the value of the individual assets and their associated liabilities are less important than the manner in which management has utilized them.

The Income Approach traditionally refers to several methods that use one or more types of historical or projected income or cash flow as indicators of value. Value is estimated by applying a capitalization rate or discount rate that is derived from Ibbotson's rates of return, which are themselves derived from returns in the public stock and bond markets. After careful consideration, it was determined that the methods within the Income Approach provide the most reliable determination of value for COMPANY.

The Market Approach develops a value using the principle of substitution. This simply means that if one thing is similar to another and could be used (or in this case invested in) for the other, then they must be equal. Furthermore, the price of two like and similar items should approximate the value of one another. For the market approach to be used, there must be a sufficient number of comparable companies to make comparisons, or alternatively, the industry composition must be such that meaningful comparisons can be made. In this case, it was determined that the information available regarding transactions within the Company's industry was sufficient in order to draw comparisons and conclusions of COMPANY.

9. CAPITALIZATION RATES AND MULTIPLIERS

Revenue Ruling 59-60 says in Sec 6 In the application of certain fundamental valuation factors, such as earnings and dividends, it is necessary to capitalize the average or current results at some appropriate rate. A determination of the proper capitalization rate presents one of the most difficult problems in valuation. That there is no ready or simple solution will become apparent by a cursory check of the rates of return and dividend yields in terms of the selling prices of corporate shares listed on the major exchanges of the country. Wide variations will be found even for companies in the same industry. Moreover, the ratio will fluctuate from year to year depending upon economic conditions. Thus, no standard tables of capitalization rates applicable to closely held corporations can be formulated. Among the important factors to be taken into consideration in deciding upon a capitalization rate in a particular case are: (1) the nature of the business; (2) the risk involved; and (3) the stability or irregularity of earnings.

The discount rate represents the risk an investor is willing to accept for the potential reward an investment in the subject company will return. Different rates apply to types of businesses. It can also be considered the rate of return an investor requires on an ongoing basis. This risk is not calculated in a vacuum or sterile environment but rather it is calculated based on the factors that can be contrasted against the investment in other vehicles that are available and in the specific environment as

The buildup method layers different risk estimates to build up a discount rate. The appropriate discount rate components for the Company are the risk free rate, equity risk premium, size premium and company specific premium. Subtracting the sustainable growth from the discount rate develops the capitalization rate.

The following rates are used as inputs into the buildup capitalization rate:

Risk Free Rate

The risk free rate measures the rate of return an investor can earn without taking any additional risk. Examples of risk free returns are United States Treasury bonds. As of the valuation date, the yield was 3.27%.

Equity Risk Premium

The equity risk premium represents the risk an investor accepts for investing in large public companies. This risk is measured by taking the returns of public companies over the last 80 years and subtracting the risk free return over the last 80 years (the average annual returns for large capitalization stocks minus average annual returns for long term government bonds). This information is published by Morningstar. As of the valuation date, the equity risk premium was 6%.

Size Risk Premium

Empirical evidence shows that the risk reward principle (the greater the risk the greater the reward) holds true in the size or capitalization of the company. The size premium represents average annual return for small capitalization stocks minus the average annual returns for large capitalization stocks. Based on Stocks, Bonds, Bills, and Inflation Yearbook, a publication of Morningstar, the small stock risk premium averaged 6.36% from 1926 to 2013.

Industry Risk Premium

Based upon the industry of the subject company as reported in Stocks, Bonds, Bills, and Inflation Yearbook, a publication of Morningstar, the industry risk premium was calculated as 2.77%.

Specific Company Risk Premium

Based upon Company specific factors below, an additional investment risk is placed on the subject company. Each area is given careful consideration based on information obtained from the client, employees, company financial data, and observations made by the analyst. (+) increased risk, (-) decreased risk, and ( ) balanced risk.

The summation requires an additional risk premium of 5%.

Financial Risk	< >
Industry Risk	<+>
Ease of Entry	<+>
Ease of Exit	< >
Competition Risk	<+>
Proprietary Content	<+>
Client Concentration	<+>
Size of Market	<->
Strength of Market	< >
Number of Highly Skilled Employees	<+>
Management Depth & Quality	< >
Covenants Not to Compete	<+>
Employee Agreements	<+>

The Company has no management structure in place, is run remotely by the current owner, and is constantly at risk of losing their biggest client which accounts for 50% of the business. The Company has very little physical assets meaning most of the risk is attributable to the intangible assets. The customer relationships are the main driver of cash flow, with such high concentration the risk is greatly increased.

Expected Sustainable Growth Rate

We estimate 3% long term compound annual growth. This cash flow growth estimate is based upon my assessment of the Company's prospects for sustained growth in relationship of ongoing cash flow developed above.

Rate to Factor Conversion

The capitalization rate that was developed using the buildup method was:	20.4%
The reciprocal of this measure provides a capitalization multiple of:	4.902

BUILDUP CAPITALIZATION RATE		
Risk-Free Rate of Return	3.27%	
Equity Risk Premium	6.00%	
Small Stock Risk Premium	6.36%	
Industry Risk Premium	2.77%	
Company Specific Premium	5.00%	
Discount Rate	**23.40%**	
		23.40%
Sustainable Growth		3.00%
Capitalization Rate		**20.40%**
Adjustment to current period		1.03
Capitalization Rate (After-tax net cash flow cap rate for current year)		**19.81%**

10. COMPUTATION OF VALUE

SUMMARY OF VALUATION METHOD RESULTS

The values determined below are based upon private market transactions which reflect the sale of marketable, controlling interests. As a consequence, these are marketable, controlling interest values, which must be adjusted for additional lack of marketability.

These results are for a going concern, so earnings and cash flow are the most meaningful.

The following table summarizes the results of the methods considered in this valuation. Details describing each method are presented in the following pages.

VALUATION METHOD RESULTS	Weight	Weight %	Value	Marketability Discount (2)	Value
a) Asset Approach					
1. Adjusted Net Worth	0	0%	(50,713)	0%	(50,713)
b) Income Approach					
2. Capitalization of Earnings	1	33%	402,345	6%	378,205
3. Mid-Year Discounted Cash Flow	1	33%	448,016	6%	421,135
c) Market Approach					
4. MVIC/Revenue	1	33%	371,582	0%	371,582
Weighted Avg Value of Operations [Note 1]	3			100.0%	**$ 390,307**
Marketable, Controlling Interest Basis					
Percentage of Ownership Valued					100.0%
					390,307
Adjustment for Personal Goodwill[Note 3]				0.00%	0
Non-Operating Assets [Note 4]					-
Net Value of 100% Ownership Interest					**$ 390,307**
marketable, controlling interest basis					

NOTES TO THE SUMMARY OF VALUATION METHODS

1 We generally use as many methods as are meaningful, and then average the results, or take a weighted average based on our opinion as to which methods are the most appropriate. The reason for this is that no single valuation method utilizing a few mathematical variables can possibly capture the value of a complex, operating business. Historical methods assume that the future will be much like the past, even with allowances for anticipated changes. Future earnings and cash flow methods rely on projections that are often speculative and sometimes self-serving. Each method provides a different perspective on the value, and it is our opinion that the "true" value of the business is better revealed when it has been considered from as many perspectives as can be reasonably developed.

A discussion of the methods and the weights applied to each is included in the description of each method, on the following pages.

2 The adjustment for lack of marketability transforms the value from a non-marketable basis to a marketable basis. Marketability is defined as "the ability to quickly convert property to cash at minimal cost".

The undiscounted value is based on actual sales of small businesses similar to this one, and therefore represents a "marketable" value, but it is not "freely marketable" in the same sense as most public stock. While the undiscounted value represents the amount the owner would likely eventually receive in a sale of this business, it would still take some time to prepare for, arrange and complete a sale. See additional discussion in Section 13.

3 The breakout of personal and enterprise goodwill from total goodwill is important in a marital dissolution setting. In Indiana Yoon Vs. Yoon, the Indiana Supreme Court ruled that personal goodwill would be excluded from the value of the enterprise. Said another way, the goodwill that depends on the continued presence of a particular individual is a personal asset not a part of the marital estate. It was determined that the personal goodwill in the Company is very low and immaterial. Either Husband or Wife, who built the Company together could continue operations if one or the other were not present, as can be seen from the last year of operations. This proves that the goodwill of the Company is not tied to either individual, rather it would be considered Enterprise goodwill.

4 Non-operating assets consist of assets held in the Company that are not used in the course of doing business, i.e., the business would operate exactly the same without these assets. However, because they are held in the Company, they must be included in the determination of its value. It was determined that there were no non-operating assets in the Company.

10a.1 ADJUSTED NET WORTH

Net Worth as adjusted simply summarizes the net assets and liabilities of the Company. It is generally of interest mostly as an indicator of the financial reserves available to the owners and as an indicator of how much the owners have invested in the Company. This method ignores the value of revenue, earnings, and cash flow and is usually considered as an indicator of value only when the earnings methods indicate values lower than Net Worth.

A non-controlling interest could not choose to sell the Company's assets. As a result, the Adjusted Net Worth method is not a good indicator of the Company's value under these circumstances.

	($)
Book Value of Net Worth	(50,713)
Net Adjustments	0
Adjusted Net Worth	(50,713)

10b.2 CAPITALIZATION OF EARNINGS

This method relies on a single estimate of sustainable earnings, and a single capitalization rate chosen to reflect an investor's required rate of return. Because of the superficial simplicity of this method, it is widely used in the valuation of closely held companies. The basic theory is that the ultimate value of a firm and its assets is determined by the earnings that the firm generates. The capitalization rate represents the rate of return required to compensate for the risk inherent in the business. Both of these variables are subject to a large degree of subjectivity, and rely on the assertion that the value of a complex business can be encompassed in just two variables.

		($)
Average Adjusted Earnings		79,688
Earnings basis is control Equity Cash Flow After Tax		
Capitalization Rate- Buildup Method		19.81%
Gross Valuation		402,345
Adjustments		0
Net Valuation	(Freely-marketable, controlling interest basis)	402,345

10b.3 MID-YEAR DISCOUNTED CASH FLOW

This method is frequently used, especially when the future cash flow and other financial factors are expected to be significantly different than the historical conditions. This method reflects expectations for both the amounts and the timing of future earnings, as well as changes on the balance sheet which can have a major impact on cash flow. Financial projections for both the income statement and the balance sheet are an essential element, of course, which introduces the possibility of overly optimistic or pessimistic projections.

In this method, cash flows for each year of the projection period are discounted using the rate developed in Section 9. The mid-year discount rate assumes the investor of the interest ownership is receiving cash flows evenly throughout the year and prevents discounting the future value too much. The terminal year value is then capitalized using the capitalization rate developed in Section 9.

DISCOUNT RATE DETERMINATION

Equity Cash Flow after Tax capitalization rate	20.40%
Company long term growth rate	3.00%
Discount rate	23.40%
Company 10 yr avg projected growth rate	3.00%

CALCULATION OF VALUE

Following are the projected earnings for the company

Year Ending	Revenue Growth	Projected Revenue	Margin	Projected Net Cash Flow a/Tax		Mid-year Adj Disc Factor	Present Value
Dec-15	3.0%	959,590	8.4%	80,941	0.50	1.1109	72,864
Dec-16	3.0%	988,378	8.6%	85,111	1.5	1.3708	62,089
Dec-17	3.0%	1,018,030	8.6%	87,546	2.5	1.6916	51,754
Dec-18	3.0%	1,048,570	8.6%	90,172	3.5	2.0874	43,198
Dec-19	3.0%	1,080,028	8.6%	92,877	4.5	2.5758	36,057
Dec-20	3.0%	1,112,428	8.6%	95,663	5.5	3.1786	30,096
Dec-21	3.0%	1,145,801	8.6%	98,533	6.5	3.9224	25,121
Dec-22	3.0%	1,180,175	8.6%	101,489	7.5	4.8402	20,968
Dec-23	3.0%	1,215,581	8.6%	104,534	8.5	5.9728	17,502
Dec-24	3.0%	1,252,048	8.6%	107,670	9.5	7.3705	14,608
Terminal Value = last period x (1+growth) / cap rate				543,628	9.5	7.3705	73,758

Present value of future cash flow (based on after-tax cash flow)	448,016
Adjustments	0
Net Valuation (Freely-marketable, controlling interest basis)	448,016

10c. MARKET APPROACH

We searched private transaction databases to find comparable closely held companies that have sold in the private market. The databases used were Pratt's Stats and Bizcomps which are explained in depth in Section 12. The transactions in the databases involve privately held businesses where a controlling interest has been transferred. The ratios selected and shown in the table below all have a low coefficient of variation which means that the market value of invested capital is relatively proportionate to the value in the denominator between companies and that these ratios serve as a useful tool in predicting the value of the Company.

Valuation Multiples of Private Company Comparables		
	Number of Comp	Price to Sales
Pratt's Stats	13	0.40

10c.4 PRICE TO REVENUE

The principle behind this method is the idea that the Company would be sold for a multiple of revenues generated by similar companies. This would in fact place a potential amount on the goodwill of the Company.

This method relies on data from sales of closely held companies as reported by merger and acquisition consultants and business brokers, but can also be based on data from public stock prices. Generally speaking, the theory underlying the Price to Revenue method is that a given level of revenue should generate an expected level of earnings more or less in line with those of similar characteristics.

Weighted Average gross revenues	a		928,954
Price/Revenue multiplier	b	Combined Market Data	0.40
Value of Equity (a*b)	(Marketable, controlling interest basis)		371,582
Adjustments			
Less debt capital (Interest Bearing Debt)			
Net Valuation	(Marketable, controlling interest basis)		371,582

11. MARKET DATA

Based on the preceding analysis of risks, we have chosen multipliers and capitalization rates to be applied in this case. We have derived value multipliers and cap rates from an analysis of transactions involving sales of closely held companies or public stock prices, or both.

Transactions were chosen for this purpose using the most closely comparable data available, based on size, NAICS and SIC codes, and profitability. In general, it should be noted that it is often difficult or impossible to find market transactions or public companies that are strictly comparable to the business under consideration. When this is true, we try to find market data that provides the best available evidence and use that as a starting point for our analysis of market pricing patterns.

In this case, because the Company is profitable, we have eliminated from consideration those guideline companies that were not profitable, or which had negative net worth. Further, we have eliminated those for which the market pricing multipliers or earnings margins were "outliers" in that they were greatly different than the others or very far from the median.

The transactions that remained after this preliminary screening were reviewed for general similarity in business activities, and those that were judged to be too dissimilar were removed from further consideration.

Some of the transactions may go back as far as 10 years. An analysis of the data usually shows that there was almost zero correlation between transaction dates and the Price/Revenue multipliers, and therefore we concluded that older transactions were valued in the marketplace on about the same basis as more recent transactions.

Some of the transactions used reflect "asset sales", while other reflect "stock sales". In the former case, selected assets were sold, usually including fixed assets, the business operations, and often some other current assets and occasionally some current liabilities. In a stock sale, shares of the equity were sold, which carry with them the net market value of all assets and liabilities. Some practitioners do not use both asset and stock transactions at the same time, but we do. After having done hundreds of both asset and equity valuations, our experience is that the difference between the asset value and the equity value of a business is usually minimal. Furthermore, asset value are sometimes greater and sometimes less than the corresponding equity values due to variations in asset and liability structure and in the selection of assets and liabilities transferred in an asset sale. The net effect is that any bias introduced by using asset sales in an equity valuation, or vice versa, is generally undeterminable, and almost certainly minimal. Finally, these transactions provide merely a starting point in the determination of value; the final value is the result of many other, more important factors than the type of sale represented in the transaction data set.

12. BUSINESS SALES TRANSACTIONS

Pratt's Stats

We have used data from the Pratt's Stats database, which contains records of sales of businesses similar to the subject of this valuation.

For our purposes, the key factors in the data are:

* Sales Revenue
* Earnings before Tax (EBT)
* Earnings before Interest, Tax and Depreciation (EBITDA)
* Equity Sales Price

From this data, we have concluded the following ratios:

* MVIC = Market Value of Invested Capital = Equity Price + Debt
* Return on sales = EBITDA/Revenue
* Price/Sales
* EBT Capitalization Rate
* EBITDA Capitalization Rate (MVIC / EBITDA)
* Goodwill/SDCF (SDCF = EBITDA plus estimated normal owner's comp)
* Goodwill/Revenue
* SDCF/Revenue

These factors were then compiled for each business in the database which is potentially relevant to this analysis.

13. ADJUSTMENTS TO VALUE

ADJUSTMENT FOR LACK OF MARKETABILITY

Marketability considers the liquidity of the interest, that is, how quickly and certainly it can be converted to cash at the owner's discretion. The market pays a premium for liquidity or, conversely, exacts a discount for a lack of it.

There are almost always differences in the marketability of public company stocks and interest in closely held companies. When public stocks have provided the market basis for valuing a closely held company, a discount for lack of marketability is usually necessary due to the difference in liquidity between actively traded public securities and closely held stock. Further, there may be reason to discount a value derived from analysis of market transactions involving sales of closely held companies, even though the transaction usually represents the sale of a closely held interest.

The undiscounted value is based on actual sales of small businesses similar to this one, and therefore represents a "marketable" value, but it is not "freely marketable" in the same sense as most public stock. While the undiscounted value represents the amount the owner would be likely to eventually receive in a sale of this business, it would still take some time to prepare for, arrange and complete a sale. Further, for a minority interest, the time to reach liquidity could be much longer, if ever, because the minority interest cannot force a sale of the business in most circumstances. This adjustment brings that potential future liquidity value to its present value.

To complicate things, discounts for lack of marketability for controlling interests are different than discounts for lack of marketability for minority interests. Unlike in minority interest transactions, there is no empirical transaction database from which to draw guidance for quantifying discounts for lack of marketability for controlling interests.

Marketability of Controlling Interests

The rationale for a lack of marketability discount for a controlling/minority interest of a closely held company is that the owner of closely held business who wishes to liquidate a controlling interest generally faces several issues:

1 Uncertain time horizon to complete the offering or sale, usually many months or even several years
2 Costs to prepare for and execute the offering or sale
3 Risk concerning the eventual sale price
4 Noncash and deferred transaction proceeds, e.g.. Stock swaps, seller financing, contingent payments
5 Inability to hypothecate (i.e. the inability to borrow against the estimated value of the stock)

The most logical base from which to take the discount is the anticipated buyout price (i.e. the price the owner expects to receive prior to all transaction costs). In order to complete a sale and receive the proceeds, the Company and owner generally will have to complete several tasks:

1 Create accounting records satisfactory to buyers.
2 Incur legal expenses to document Company attributes, often including representations and warranties regarding the state of various aspects of the Company (contingent liabilities).
3 Utilize substantial management time to facilitate the above and cure negative factors that would be undesirable to the typical buyer (i.e. take nonperforming relatives off the payroll).
4 Find a buyer or buyers (easier for some kinds of companies than others).
5 Engage in negotiations with one or more buyers over an extended time.

The value must reflect both the potential risks, and the accomplishment of the above listed tasks.

The Company is being valued as of a certain date. Generally, the Company's stockholders have not completed any of the above items as of the valuation date. Were the Company's management to have offered the Company for sale at the valuation date it would still have to complete the above tasks and it would be exposed to the stated risks during the sale process. The costs of accomplishing these tasks and the transaction costs of sale, must be reflected in the discount for lack of marketability when comparing value at the valuation date to any expected future proceeds.

Accomplishing these necessary steps takes time. Therefore, eventual expected proceeds need to be discounted to allow for the time value of money. Also, there is no guarantee that the time value of money will be offset by the expected positive cash flows during the holding period. Accordingly, the owner would be expected to accept a discount from the eventual selling price, if the business could be sold for cash within a few days, rather than the probable months or years required for the typical selling cycle.

After analyzing the factors above, and taking into consideration the Company Specific Factors impacting Marketability, we have concluded a 6% lack of marketability to be reasonable.

14. CASH FLOW COVERAGE

The following calculations confirm whether a sale of the business at the net value can be justified by the cash flow of the business, assuming that the business was sold on realistic terms. This analysis considers whether the value is realistic from the point of view of a willing buyer.

Value of Operations Before Marketability Adjustment		[Section 11]	390,307
Down Payment on Purchase	20.00%		78,061
Balance to Pay, above existing debt			312,246
Interest Rate on new Purchase Debt	6.0%		
Years to Pay	7		
Annual Debt Service on Balance to Pay (Interest and Principal, one annual payment)			$55,934

AMORTIZATION OF PURCHASE DEBT

	Dec-15	Dec-16	Dec-17	Dec-18	Dec-19
Beginning Balance	312,246	275,046	235,615	193,818	149,513
Interest	18,735	16,503	14,137	11,629	8,971
Principal	37,199	39,431	41,797	44,305	46,963
Ending Balance	275,046	235,615	193,818	149,513	102,549

CASH ON CASH RETURN ON DOWN PAYMENT

Projected Cash Flow after Tax	80,941	85,111	87,546	90,172	92,877
Tax Benefit, Purchase Interest	2,810	2,475	2,121	1,744	1,346
Purchase Payments	(55,934)	(55,934)	(55,934)	(55,934)	(55,934)
Cash Flow after Purchase	27,818	31,652	33,732	35,982	38,289
Debt/Equity including purchase debt	9.10	2.04	0.96	0.51	0.27
Coverage Ratio	1.50	1.57	1.60	1.64	1.68

Generally, a Cash Return on Down Payment in the range of 20-30% is considered satisfactory, although under some circumstances a higher or lower return might be appropriate. At the same time, the Debt/Equity ratio should be within a realistic range for bank financing, usually less than 2 to 2.5. Finally, the Loan to Coverage Ratio should be higher than 1.25. Conditions outside these ranges will generally require seller financing.

15. CERTIFICATION

We certify that, to the best of our knowledge and belief.

The analyses, opinions, and conclusions of value included in this valuation report are subject to the specified assumptions and limiting conditions, and they are the personal analyses, opinions, and conclusion of value of the valuation analyst.

The economic and industry data included in the valuation report have been obtained from various printed or electronic reference sources that the valuation analyst believes to be reliable. The valuation analyst has not performed corroborating procedures to substantiate that data.

The valuation engagement was performed in accordance with the American Institute of Certified Public Accountants Statement of Standards for Valuation Services.

The parties for which the information and use of the valuation report is restricted are identified; the valuation report is not intended to be and should not be used by anyone other than such parties.

The analyst's compensation is fee-based and is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the estimate of value or the attainment of a stipulated result.

The valuation analyst has no obligation to update the report or the opinion of value for information that comes to his attention after the date of the report. This report was prepared under the direction of Troy Patton, CPA/ABV.

Patton & Associates, LLC
0-Jan-00

16. APPRAISER'S CREDENTIALS

Troy C. Patton, CPA/ABV
9000 Keystone Crossing #630
Indianapolis, IN 46240
(800) 800-1776

As a Partner of Patton and Associates, LLC, Troy serves as partner in charge of the firm's Valuation and Litigation practice. In addition to his CPA certification, he has obtained his Accredited Business Valuation certification by the AICPA. Troy has been called as an expert in state and local courts, and has testified in courts, arbitration, and depositions in matters involving valuation and financial issues.

Troy has been a speaker with various State CPA Societies and to groups of CPA's and Accountants regarding business valuations. He teaches a CLE course in Indiana to Attorneys discussing marital value. He is often seen as an outsourcing arm for many CPA's across the country and currently prepares 8-14 valuations per month for closely held and publicly traded businesses across many different types of companies and professional practices. He is also a resource to nearly a half dozen banks for valuation issues involving SBA lending.

Education: Miami University, Oxford, OH, B.S. Accountancy - 1992

Experience: Patton and Associates, LLC – Managing Partner.
January 2005 – Present
Leads the Business Valuation Group as Analyst and Litigation expert.
30% of our engagements are for Marital Value/Enterprise vs. Personal Goodwill
70% are for corporate planning purposes, which include estate, buy/sell, stock options, SBA lending, shareholder disputes, damages, etc.

Archer Investment Corporation, Inc. – President
Responsible for the management of The Archer Funds.
July 2005 – Present
Prepare Business Valuations for Intrinsic Value/FMV for Publicly Traded Companies
(Stock Options, Phantom Stock)
Responsible for the day to day operations of an SEC RIA, Archer Investment Corporation, including compliance, supervision, registrations, etc.

Ernst & Young, LLP – Audit Senior. 1992-1995

Correlated Products, Inc. – CFO/Treasurer. 1995-1996

Frontier CPA Group – Managing Partner of 10 offices throughout Indiana.1996-2004

(negotiated the sale to a billion dollar worldwide accounting firm in 2004)

Accounting and technical experience include:
- Preparation of extensive Business Valuations across all industries.
- Extensive consulting regarding Business Valuations for buy-sell, divorce, estate, liquidation, minority interests
- Direct and assist executives/owners in implementation of strategic planning concepts.
- Provide attorneys extensive consulting on non prepared valuations
- Preparation of financial statements for public and private entities.
- Preparation of registration statements, 10K filings, and other financial presentations for the SEC and other agencies.
- Presentation of financial results and other matters to executive clientele.
- Assisted in the preparation of engagement proposals and budgeting.
- Train colleagues in technical and technological matters.

Achievements, presentations and professional affiliations:

- American Institute of Certified Public Accountants.
- Indiana CPA Society
- 2008 Top 40 CPA's in the U.S.A. by Thomson/Reuters
- 2005 Named Outstanding CPA in public practice by the Indiana CPA Society
- Editorial Board for Accounting Technology – responsible for shaping the discussion of practice management and areas of interest to the CPA community (2009/10)
- 1990 Member of USA Wrestling team to compete in Yugoslavia against communist block countries.
- Recognized in 2003 as top 5 CPA's in Indiana under 35.
- Guest speaker for CPA Societies in Valuations of CPA Firms.
- Over 150 hours of Continuing Professional Education in last three years.
- Guest Speaker for the American Association of Individual Investors for their Annual Conference with 800 attendees – 2008
- Developed the Valuation Template for one of the nation's leading publicly traded banks for lending to professional practices

- Published, "Three things every Accountant should know about Business Valuations" for New Clients, Inc. Distributed to over 10,000 CPA's across the country. (2008)
- Consultant to the American Dental Association
- Lead Instructor for the ADA for courses on Dental practice valuation, operations, financing, etc.
- Lead Instructor and author of the CPE class: "How to consult on value without being an expert in valuations."
- Lead Instructor for CLE class: "Business Valuation and Divorce, the Complicated Relationship"
- Has Testified in Virginia, Florida, Indiana, Ohio, and California. Has prepared valuations in every State of the United States except for Alaska.

17. SOURCES OF INFORMATION

In the course of this study, the following documents and materials were considered:

Federal Tax Returns for 12/31/2009 - 12/31/2013

Financial Statements for 12/31/2009 - 12/31/2013

Financial Statements for 1/1/2014 - 10/31/2014

Financial Documents provided by Husband

Top 5 Customer list provided by Husband

Written managerial statements provided by Husband

Interview conducted by Troy Patton, CPA/ABV

Owner's statements

Statement Studies, Risk Management Associates - summary statistics on more than 600 industries, based on approximately 80,000 financial statements submitted by commercial banks.

IBIS World - Industry Profiles and Outlooks

Key Value Data

Bureau of Labor Statistics salary and compensation database

Federal Reserve Bank, Monthly Summary of Economic Activity

Bizcomps Database of Closely Held Company Sales, describing sales of closely held companies with sales prices typically in the range of $50,000 to $5 million.

Pratt's Stats Database, describing sales of closely held companies of all sizes.

18. CONDITIONS AND ASSUMPTIONS

Conditions

The historical financial information presented in this report is included solely to assist in the development of the value conclusion presented in this report, and it should not be used to obtain credit or for any other purpose. Because of the limited purpose of this presentation, it may be incomplete and contain departures from generally accepted accounting principles. We have not audited, reviewed, or compiled the historical accounting statements and express no assurance on them. The financial information presented in this report includes normalization adjustments made solely to assist in the development of the value conclusion presented in this report. Normalization adjustments are hypothetical in nature and are not intended to present restated historical results or forecasts of the future in accordance with AICPA guidelines.

Readers of this business valuation report should be aware that business valuations are based on future earnings potential that may or may not materialize. Any financial projections presented in this report are included solely to assist in the development of the value conclusion presented in this report. These presentations do not include all disclosures required by the guidelines established by the AICPA for the presentation of financial projections. The presentation includes financial projections. The actual results may vary from the projections, and the variations may be material.

This report should not be used to obtain credit or for any purposes other than those listed in this valuation. This report is only to be used in its entirety, and for the purpose for which it was prepared. No third parties should rely on the information contained in this report without the advice of their attorney or accountant, and without confirming for themselves the information contained herein.

The value of a business changes over time in response to changes in its markets, the economy, its internal operations, and a myriad of other factors both within and outside the control of its owners and managers. The value discussed in this report was developed using data pertinent to a specific point in time. The value conclusions in this report therefore cannot be assumed to be meaningful at any other point in time.

We have no responsibility to update this report for events and circumstances occurring subsequent to the date of this report. We do not purport to be guarantor of value. Valuations of closely-held companies is an imprecise science, with value being a question of fact, and reasonable people can differ in their estimates of value. We have, however, used conceptually sound and commonly accepted methods and procedures of valuation in determining the estimate of value in this report.

The valuation analyst, by reason of performing this valuation and preparing this report, is not to be required to give expert testimony nor be in attendance in court or at any government hearing with reference to the matters contained herein.

General Assumptions

The opinion of value given in this report is based on information provided in part by management of the Company and other sources contained herein. This information is assumed to be accurate and complete; we have not audited or attempted to confirm this information for accuracy or completeness.

We have relied upon the representations contained in the public and other documents in our possession concerning the value and useful condition of all investments in securities or partnership interests, and any other assets or liabilities except as specifically stated to the contrary in this report. We have not attempted to confirm whether or not all assets of the business are free and clear of liens and encumbrances, or that the owner has good title to all the assets.

We have also assumed that the business will be operated prudently and that there are no unforeseen adverse changes in the economic conditions affecting the business, the market, or the industry. This report presumes that the management of the Company will maintain the character and integrity of the Company through any sale, reorganization or reduction of any owner's or manager's participation in the existing activities of the Company.

We have been informed by management that there are no environmental or toxic contamination problems, and no significant lawsuits, or any other undisclosed contingent liabilities which may potentially affect the business, except as may be disclosed elsewhere in this report. We have assumed that no costs or expenses will be incurred in connection with such liabilities, except as explicitly stated in this report.

It is implicit in the value calculations that in the event of a sale of the business to a willing buyer, the current management would

remain in place at least long enough to effect an orderly transition with no loss of essential management skills and productivity.

In the event of a sale, it is also implicit in the calculation of value that the current owners would be willing to commit to a non-competition agreement. Such agreements are an element of almost all business sales, and the absence of such an agreement would generally reduce the value of the business as a going concern.

19. REVENUE RULING 59-60

This valuation was conducted under guidelines established by Treasury Department and the Internal Revenue Service in its determination of fair market values of closely held business enterprises for income tax, estate tax, gift tax, and other related purposes. The Internal Revenue Code, Section 2031(b), specifies that the value of stocks and securities of corporations not listed on an exchange or freely traded "…shall be determined by taking into consideration, in addition to all other factors, the value of stock or securities, of corporations engaged in similar line of business which are listed on an exchange."

The basic rules for tax-related valuations were laid down in Revenue Ruling 59-60 issued by the Internal Revenue Service in March 1959. In Revenue Ruling 65-193 the Treasury Department extended the use of Revenue Ruling 59-60 to include the determination of fair market value of closely held businesses for income and other tax purposes. These rulings have been widely adopted as the primary authority for determination of fair market value of a business enterprise in virtually all valuation situations.

The rulings define "fair market value" as follows:

> *"…the price at which the property would change hands between a willing buyer and a willing seller when the former is not under any compulsion to buy and the latter is not under any compulsion to sell, both parties having reasonable knowledge of relevant facts."*

Court decisions frequently state, in addition, that the hypothetical buyer and seller are assumed to be able and willing to trade and be well informed about the property and concerning the market for such property.

This definition is widely accepted and used in courts of law and in tax literature and is the most widely used approach in valuing

closely held securities. It is the basic definition upon which we rely in determining the fair market value of a Company's stock. Revenue Ruling 59-60 requires that the following factors be considered:

1 The history of the Company and the nature of the business.
   See Section 3. COMPANY DESCRIPTION
2 General economic outlook and the outlook of the particular industry.
   See Section 3. COMPANY DESCRIPTION
   See Appendix I ECONOMIC CONDITIONS AND OUTLOOK
   See Appendix II INDUSTRY PROFILE
3 Book value of the stock and the financial condition of the business.
   See Section 5. BALANCE SHEET
   See Section 7. RISK ASSESSMENT, COMPARATIVE ANALYSIS
4 Earnings capacity of the Company.
   See Section 4. INCOME STATEMENT
5 Dividend paying capacity.
   See Section 10. COMPUTATION OF VALUE
   See Section 6. HISTORICAL AND PROJECTED CASH FLOW
6 Whether the enterprise has goodwill or other intangible value.
   See Section 2. CONCLUSION OF VALUE
   See Section 10. COMPUTATION OF VALUE
7 Sales of stock and the size of the block to be valued.
   See Section 10. COMPUTATION OF VALUE
8 Market prices of stock other comparable companies traded on exchanges.
   See Section 12. BUSINESS SALES TRANSACTIONS

These eight factors are fundamental to any appraisal of closely held securities. They are not, however, all-inclusive. All other factors relevant to the subject valuation must also be considered. Specifically, an appraiser must consider comparability of accounting methods and discounts for fair market value determinants.

CHILD CUSTODY & PARENTING TIME EVALUATION

PARENTS' NAMES: Sebastian Dudé
Caroline "Carrie" Elrod

CHILD'S NAME: Philomena (age 23 months)

CAUSE NUMBER: 00D06-2203-DC-677

DATE OF REPORT: October 27, 2023

REASON FOR REFERRAL

Mr. Sebastian Dudé and Ms. Caroline Elrod, along with their daughter Philomena (23 months), were court-ordered to participate in a child custody evaluation to assist in determining the best custodial arrangement for their child.

During the pendency of this evaluation, the parents shared legal custody of their daughter Philomena. Carrie has sole physical custody. Sebastian petitioned for sole legal and sole physical custody, and wants Philomena to move to South Carolina to live with him and be closer to his extended family.

This evaluation is being conducted by an independent evaluator with no guarantee to either parties regarding custody or parenting time. All recommendations made are determined based on the best interest of the child and serve as only one component of the overall custodial arrangements determined by the court. Information contained in this evaluation was gathered in a manner consistent with best practices and guidelines set forth by the American Psychological Association and the Association of Family Conciliation Courts. Information was gathered by interview, testing, observation, document review, and collateral contact report as detailed below.

SOURCES OF DATA

The sources of data for the present evaluation are as follows:

1. The Personality Assessment Inventory (PAI) completed by Sebastian Dudé and Carrie Elrod.
2. The Minnesota Multiphasic Personality Inventory-2 (MMPI-2) completed by Carrie Elrod and Sebastian Dudé.
3. The Millon Clinical Multiaxial Inventory-III (MCMI-3) completed by Sebastian Dudé and Carrie Elrod.
4. The Parenting History Survey completed by Carrie Elrod and Sebastian Dudé.
5. The Social-Psychological History Questionnaire completed by Sebastian Dudé and Carrie Elrod.
6. The Parenting Stress Index (PSI) completed by Carrie Elrod and Sebastian Dudé.
7. The Parent-Child Relationship Inventory (PCRI) completed by Sebastian Dudé and Carrie Elrod.
8. The Parent Behavior Checklist (PBC) completed by Carrie Elrod and Sebastian Dudé.
9. Joint and individual interviews with Carrie Elrod and Sebastian Dudé.

10. Observation of Carrie Elrod with Philomena.
11. Observation of Sebastian Dudé with Philomena.
12. Collateral Source Data.

BRIEF HISTORY

Sebastian is a college graduate with a Master's degree in Architecture from the University of Notre Dame. He currently works as an architect in South Carolina. Sebastian was never married before, and has no children other than Philomena, the subject of the current custody dispute. Carrie was previously enrolled in college classes but never graduated. She describes herself as a homemaker and is currently enrolled in an online leadership program tailored to women entrepreneurs. Before giving birth to Philomena, Carrie worked as a nanny for a three-month-old baby and a five-year old child in South Bend. Prior to that, Carrie held a sales job in Chicago, and had previously worked as a nanny in Chicago. Carrie was married once before, from 2015 to 2019. This is a point of contention between Sebastian and Carrie because Carrie not only didn't tell Sebastian about her prior marriage, but actually denied ever being married when asked directly by the priest interviewing the couple in preparation for their wedding. Carrie has no other children.

Sebastian and Carrie met several years ago through a mutual friend. Shortly afterwards, Carrie and Sebastian became roommates at their mutual friend's residence. They became romantically involved and five months later, Carrie became pregnant. At that time, Sebastian was a graduate student in architecture and had been pursuing an internship in New York. Sebastian contends that he later learned that Carrie had talked to their mutual friend about having an abortion without telling Sebastian, but Carrie insists she never considered terminating her pregnancy. The couple married, and Sebastian moved to New York, and later to Rome as part of his graduate training. Carrie stayed in South Bend, working as a Nanny until she was no longer able due to fatigue and other issues related to her pregnancy. Carrie gave birth to Philomena in November of 2021, and Sebastian flew home from Rome the next day.

Sebastian and Carrie both report that their relationship had changed significantly, and that there were major strains and tensions between them. Carrie filed for divorce when Philomena was four months old. Sebastian accepted his current job as a project architect and moved to South Carolina three months later, when Philomena was approximately seven months old. Sebastian contends that Carrie convinced him to move to South Carolina rather than accepting another position in South Bend in order to separate him from Philomena. Carrie argues that Sebastian would not have been happy with the local job offer because he would not be working as an architect. She believes that Sebastian was more invested in the type of work offered by his current firm in South Carolina, and that he had greater potential in that position.

CONCERNS RAISED

At the time of the evaluation, there were numerous allegations made by both parties regarding the other parent, and concerns raised on both sides. Below is a summary of these:

- Sebastian believes that Carrie makes it hard for him to see Philomena and that she pushes him out of Philomena's life. His parenting time occurs every other weekend during which Sebastian stays with Philomena in a local hotel in South Bend. Sebastian believes that his ability to be involved as a parent has been crippled by Carrie. Sebastian doesn't feel like a "parent" but rather "just the guy who comes every other week to play with her." Sebastian also told the

evaluator that Carrie doesn't value him as a parent, and that Carrie doesn't include Sebastian in decision making regarding Philomena.

- Sebastian has significant difficulty trusting Carrie. This is based in part on Carrie's past dishonesty to Sebastian and his family priest about her prior marriage. Sebastian felt deceived particularly because he had interacted with Carrie's ex-husband (Keith) on several occasions, not being aware that they were previously married. Carrie asserts that Sebastian and Keith actually got along very well, and she feared that explaining her past marriage would taint an otherwise positive friendship. Sebastian feels that Carrie had convinced he and his family that she was "someone she's not" and didn't show her true self until after Philomena was born.

- Carrie thinks Sebastian will try to poison Philomena against him. She claims that he told her "I can't wait until Philomena is old enough so I can tell her that her mother wanted to abort her." Carrie denies ever wanting an abortion, and fears that Sebastian will use this information to turn their daughter against her when she is old enough to understand. Carrie further expressed difficulty honestly and openly communicating with Sebastian due to her fears that what she says will be used against her in the custody proceedings. Carrie discussed her belief that Sebastian had picked-up Philomena for parenting time, and walked around Carrie's property, video recording cars and license plates all the while holding his daughter and talking to her, making statements such as "Let's see who is visiting…" Carrie's neighbors have reported to her that a "strange man" had been walking between the houses and collecting information about her, and believes Sebastian has hired a private investigator to "spy" on her. This has caused Carrie to feel violated and embarrassed around her neighbors. Sebastian confirmed that he hired an investigator for one week to help collect information concerning Philomena's welfare and best interests.

- Both parents complain about each other's inability and unwillingness to openly communicate about Philomena. Sebastian states that he never knows how Carrie is going to react to him. From his perspective, Sebastian "tries to word things carefully" and Carrie "explodes despite this." Overall, Sebastian feels his questions to Carrie are not answered, and that his ideas about parenting are not acknowledged. Sebastian indicated that Carrie does not accept his telephone calls, while he always responds to Carrie's texts & calls when he has Philomena for parenting time. Carrie believes that she tries hard to keep Sebastian apprised of Philomena's day-to-day life. Carrie is frustrated, however, that Sebastian doesn't appreciate her attempts to update him. Rather, Carrie perceives that Sebastian asks more and more questions as the communication progresses, resulting in Carrie feeling overly scrutinized, and experiencing Sebastian to be increasingly condescending and disrespectful of her.

- Carrie has a concern about Sebastian failing to contact her when Philomena was ill during his parenting time on one occasion. During a parenting time exchange, Sebastian informed her that Philomena was not acting her usual self, and had also refused to eat. Carrie subsequently took Philomena to the pediatrician where she was diagnosed with the virus that causes hand-foot-and-mouth disease. Carrie believes that Sebastian should have contacted her during his parenting time to communicate about Philomena's health rather than wait until the end of his parenting time, the next day. Additionally Carrie expressed concern that despite Philomena being ill that weekend, Sebastian took her to a friend's house for dinner, to Mass, and to feed the ducks rather than tending to her illness.

- Sebastian is concerned that Carrie isn't spending enough time with Philomena. He expressed worry because Carrie has enrolled Philomena in daycare and because Carrie uses other childcare from time to time (even though she claims to be a stay-at-home mom). Sebastian also complains that "Carrie doesn't tell me what they've been doing when I ask her" which leads him to wonder whether she just doesn't want to tell Sebastian, or because they aren't doing anything together. Sebastian wants Philomena to live with him in South Carolina. He has a bedroom for her in his residence. If he were granted physical custody of Philomena, Sebastian reports that his parents would acquire an apartment next door to him in South Carolina to assist with raising his daughter. Sebastian believes this would also be beneficial to Philomena because Sebastian's sister, aunt, uncle, and cousins live nearby in South Carolina. Sebastian has observed bruises on Philomena while she was in Carrie's custody. Although he is concerned, Sebastian told the evaluator that he has not called Child Protection Services at the advice of his attorneys.

- Carrie reported that she does many things with Philomena and spends the majority of her time with her daughter. She is reluctant to tell Sebastian specifics about her time with Philomena because she feels anxiety about the scrutiny he has concerning her mothering ability and this custody case. According to Carrie, Philomena is "healthy, happy, and thriving." Carrie sees no reason for Philomena to move and vehemently opposes the idea. In terms of Philomena's development, Carrie indicates "Everything has come early and easy to her." Carrie believes Philomena is "brilliant" and concludes that Philomena would not be doing this well if Carrie was not acting solely in Philomena's best interests. Carrie's family lives near South Bend, and Carrie tries to socialize Philomena with cousins her age and other friend's children her age.

- Sebastian is also concerned about the environment Philomena is living in. He is particularly concerned that Carrie receives financial support from her former boyfriend. Sebastian feels Carrie's dependence on this individual sets a bad example for Philomena. Sebastian sees Carrie as completely dependent on her ex-boyfriend who is paying Carrie's legal fees and has provided her with a vehicle. Sebastian acknowledges, however, that his family is providing him "financial assistance" to pay his own legal bills. Sebastian also wants physical custody of Philomena based on Carrie's history of relationships marked by domestic violence, citing both her former boyfriend (upon whom Sebastian alleges Carrie is financially dependent) and a high school boyfriend. Carrie denies any domestic violence in her life at this time, and further denies that Philomena has ever been exposed to physical violence of any kind.

- Sebastian wants Philomena to be raised in the Catholic faith, and stated that Carrie agreed to convert to Catholicism and raise Philomena Catholic when they were first married. Sebastian has consistently taken Philomena to Catholic Mass during his parenting time. Carrie says that religion is important to her as well. She disagrees that Philomena be automatically raised Catholic and would like Philomena raised Christian. Carrie takes Philomena to Sunday School and wants her raised in a home "knowing Christ and the Bible." Carrie feels strongly that Philomena make her own decisions concerning religion once she is old enough to do so and says she does not oppose Sebastian exposing Philomena to Catholicism during his parenting time.

PSYCHOLOGICAL TESTING RESULTS

Father's Psychological Functioning

Prior to the current custody evaluation, Mother expressed concerns that Father suffered from Asperger's Disorder. When asked by the evaluator, she described Father to be overly rigid, and reported that he lacks the ability "to connect on an emotional level." Mother believes this may limit Father's parenting ability, as reported in her Parenting History Survey: "(t)here were two very traumatic instances involving him and Philomena in her early stage of life and I was in protection mode at the prospect of him being left alone with her and 'unable to judge the severity of a situation.'"

At the time of completing the Social-Psychological History Questionnaire, Mr. Dudé indicated that he typically feels "happy" and is worried, anxious, and "concerned that I will not be able to be involved in Philomena's life" and that "Carrie is putting Philomena in unhealthy environments." His apprehension reportedly began when Mother "started separating me from Philomena" and Father feels sadness that he is "not able to be with Philomena and she does not get to have a normal family."

At the time of the evaluation, there was no evidence that Mr. Dudé suffered from any major mental illness, nor that he suffered from any cognitive problems. He denied and showed no evidence of suicidal or homicidal ideation, plan, or intent. Mr. Dudé exhibited no signs of delusional or otherwise disturbed thought processes. Mr. Dudé responded in a manner that suggests he has an average interest in being with others, and is not socially isolated or withdrawn. People who score similarly to Mr. Dudé are seen as somewhat dependent, and tend to be rather passive in relationships. This may indicate a tendency to use indirect means to make demands on others, and a reluctance to assert himself for fear of disapproval. Deep down, Mr. Dudé is rather self-centered and not always attuned to the needs of others. Based on this profile, Mr. Dudé is likely deferential and ingratiating in his interactions with superiors, going out of his way to impress them with efficiency, sophistication, and serious-mindedness. However, his façade of sociability, maturity, and self-assurance may mask a fear of true autonomy, shrouding deep-seated feelings of antagonism. His pattern of responding suggests that he likely masks his hostile feelings which are expressed only indirectly, most likely through passive-aggressive behaviors and comments.

In response to Mr. Dudé's assertion that Ms. Elrod had a problem with alcohol, Ms. Elrod alleged that Mr. Dudé drank alcohol daily during their relationship, that Mr. Dudé drank to excess on numerous occasions, and that she and Mr. Dudé consumed alcohol to the point of blacking out. Additionally, Ms. Elrod alleged that for a period of time, Mr. Dudé smoked marijuana daily, and frequently used cocaine. Ms. Elrod further asserted that Mr. Dudé smoked marijuana once while she was pregnant and that she "flipped out." Mr. Dudé endorsed items suggesting a history of drug and alcohol use.

On the Social-Psychological History Questionnaire, Mr. Dudé endorsed two items in response to the prompt "*I have had the following problems or experiences due to or in some way related to alcohol consumption: (1) Driving while under the influence, and (2) Used alcohol in combination with drugs*. Mr. Dudé elaborated "I got a DUI when I was 21. I spent one night in jail. I am not sure if I was bailed out or bonded out. There was a probational period associated with the offense." Despite this, Mr. Dudé endorsed *No Problem Ever* in response to another prompt inquiring about problems he has ever had with alcohol consumption.

Throughout the interview, Mr. Dudé denied problems with drugs or alcohol. On one measure including items that focus directly on problematic consequences of alcohol use and features of alcohol dependence, Mr. Dudé reported little to moderate alcohol use and few adverse consequences related to drinking. It is noteworthy that questions from this subtest are obvious, so denial can easily suppress the scale.

Mother's Psychological Functioning

Mr. Dudé informed the Evaluator that Ms. Elrod is unstable. volatile, anorexic, and suffers from Obsessive-Compulsive Disorder. On psychological testing measures, however, Ms. Elrod didn't endorse any symptoms to indicate that she suffers from a mental illness. Scores on a measure of cognitive functioning indicate no impairment. She denied and showed no indications of suicidal or homicidal ideation, plan, or intent. Her thought processes were logical, with no evidence of delusions or disturbed thinking.

At the time of completing the Social-Psychological History Questionnaire, Ms. Elrod indicated that she typically feels "happy" and "cheerful" and is worried, anxious, and fearful "in divorce." She acknowledged some tearfulness and anger as well. Ms. Elrod endorsed items suggesting some sleep disturbances which she attributes to "baby" and "divorce." She elaborated that past sleeping difficulties were related to "Philomena's sleep cycle." She described an agitation when depressed or sad, and denied any unusual or troubling thoughts.

In terms of personality functioning, Ms. Elrod's scores showed a slight elevation on one subscale typically indicative of suspicion and mistrust. Some individuals who are undergoing psychological assessment in a forensic context experience a heightened degree of interpersonal sensitivity, resulting in a moderate elevation of this scale. In this case, it is likely that Ms. Elrod's sub-clinical elevation on this scale may have been triggered by her experience of having a private investigator covertly collecting information for the current custody case. Specifically, items inquiring about being watched, followed, or plotted against would be correctly answered in the positive by someone who has been followed by a private investigator without indicating maladaptive symptomatology.

Ms. Elrod's scores suggest that interpersonally, she is outgoing and sociable, and exhibits a strong need to be around others. She is outgoing and enjoys attention. People who scored similarly to Ms. Elrod are seen as exhibiting an anxious conformity to the expectations of others, in addition to rigidity and defensiveness about admitting psychological problems. Beneath a controlled façade are likely strong feelings of insecurity, marked by a tendency to downgrade herself, distance herself from others, and to anticipate rejection. She experiences marked anxiety at times, and becomes frustrated when unable to completely control all aspects of situations.

Mr. Dudé expressed concerns that Ms. Elrod has "alcohol dependency issues" and that her peers & family members have substance abuse issues as well. Mr. Dudé specifically indicated that shortly after he and Mother had begun their relationship, he feared she had a problem with alcohol. He provided the evaluator with the following: "Often times when I came home from school Carrie already had drank an entire bottle of wine. Sometimes she was so out of it that I would not even be able to sit with her and talk…I became concerned about this when it became every day that I came home to her completely sloshed."

On the Social-Psychological History Questionnaire, Ms. Elrod acknowledged that her family had concerns about her alcohol use during her early 20's, following the death of her grandfather. She indicated that she currently consumes alcohol about one time per month, and that she has previously used alcohol in combination with drugs together with Mr. Dudé. Ms. Elrod denied current problems with alcohol use, and denied ever having regularly used illicit drugs. Ms. Elrod consistently responded to test measures to suggest that she has no significant problems with alcohol, drug abuse, or dependence. As noted above, the questions concerning drug and alcohol use are obvious, so denial can easily suppress the scale.

RECOMMENDATIONS

It is recommended that Mr. Dudé and Ms. Elrod set aside their personal differences and attempt to prioritize Philomena's needs. Research suggests that children whose parents continue in conflict following custody litigation are at a high risk for emotional disorders and poor school performance. Unfortunately, there is no way to predict at the time of the custody litigation which parents will reconcile their differences and which will not. However, in the present case one does not have to predict because the facts speak for themselves. Father and Mother have created a conflicted binuclear family in which Philomena is caught in the middle.

It would be in Philomena's best interests for her parents to share legal custody, and to co-parent collaboratively in a manner that promotes each parent's relationship with their daughter and supports a goal of protecting Philomena from exposure to animosity between Mother and Father. It was suggested to the Evaluator that joint legal custody would be unworkable because of the difficulties Mother and Father have had thus far in agreeing on various things. Research suggests, however, that joint legal custody will benefit the parents as well as Philomena. For example, mothers with joint legal custody report more cooperative relationships with their ex-spouses and feel more supported as parents, while fathers with joint custody are more likely to behave positively toward their former spouse. Also fathers with joint legal custody, because of the increased legal responsibility and authority bestowed on them, will arguably take a more active and involved role in child rearing, to the benefit of all family members. Fathers with joint legal custody are better able to cooperate with and support mothers. Mothers with joint legal custody report greater paternal compliance with child support orders as well as an easing of the "psychological" parenting burden.

Children of parents who share joint legal custody generally experience higher quality parenting, richer relationships with both parents, more cooperative co-parenting, and ultimately better adjustment. This research has found that compared to mothers with sole custody, mothers with joint custody described their children as exhibiting fewer negative and impulsive behaviors two years post-divorce. These findings aren't based on attributes of the individuals, but suggests that sharing joint legal custody mediates how co-parenting relationships are developed and maintained.

The co-parental relationship between divorced parents is something that is constructed, and not something that simply can be carried over from pre-separation patterns. In order for Mother and Father to effectively negotiate with each other in making decisions on behalf of Philomena, they need to step out of their current conflict and begin working collaboratively on forming a positive co-parenting relationship. Once Mother and Father move away from litigation/battle mode, they will hopefully begin to develop a new foundation of trust towards a common goal of Philomena's future. It may be beneficial for Mother and Father to participate in counseling targeted at parents engaged in

conflictual relationships. The services of such a professional could assist the parents in forming more adaptive communication habits with each other.

Mother and Father have some choices to help structure how they deal with decisional differences in the present until they strengthen their co-parenting skills. One option would be to employ the services of a parenting coordinator who could monitor the custody and parenting time arrangements, and who would be vested with some degree of authority to make final decisions when the parents are unable to agree on various decisions regarding Philomena. One key to preventing future litigation is to design a custody and parenting time arrangement which will have the highest probability of lowering and/or managing future conflict between the parents while at the same time providing Philomena with healthy, frequent, and consistent contact with both parents. The use of a parenting coordinator who can work with the parents to carefully craft a workable parenting plan is designed to meet this need. An alternative arrangement would be to give Mother and Father joint decision making on behalf of Philomena, but to divide who has the final say if the parents are at an impasse. For example, Mother could be the final arbiter on decisions involving education and emergency healthcare while Father would have the final say regarding religion and non-emergency medical needs. In this alternative, Mother and Father would be motivated to work collaboratively toward the best solution, recognizing that the other party holds the power for making the final decision regarding other aspects of Philomena's life.

Physical custody should remain with Mother. There is no evidence to support the contention that Philomena's environment with her mother is anything but loving, supportive, and beneficial to her continued healthy development. Mother has exhibited relative strengths in History of Prior Caring, Parental Availability, and Parental Planning Ability that make her the superior physical custodian at this time. If Mother or Father relocated so that distance weren't such an issue, a joint physical custody arrangement may work well for Philomena. However, such a recommendation remains speculative, and would depend on other factors related to the move and Philomena's developmental level at the time of relocation.

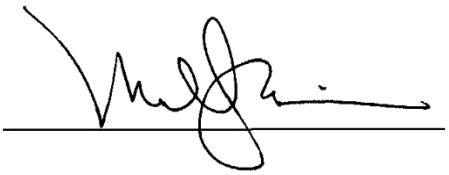
Philomena should have regular and consistent parenting time with her Father. She has successfully had overnight parenting time with her Father which should continue. Children aged 12 to 36 months begin to develop a sense of self and identity separate from the parents, and thus become more aware of the absence of a parent (either custodial or non-custodial). The role of the caregiver at that age includes providing a secure base, firm support, and flexible self-control. Interactions with both parents at this age help the child develop their gender identity and role orientation. If there are plans for Philomena to spend a longer amount of time with Father, it is essential that she have contact with Mother, without taking for granted the stability that her maternal relationship provides. Because of limited cognitive development in a young child, it is unclear to the Evaluator whether Facetime or Skype successfully provides that to a child of Philomena's age. Of major importance, however, is the establishment of a regular schedule upon which Philomena can rely, minimizing interruptions, changes, or extended absences.

With any custody arrangement, transitions should be minimized initially to prevent Philomena from being exposed to conflict between her parents. Thus far, the parties have only been marginally successful at containing animosity in the presence of their daughter. One way to minimize transitions (and exposure to conflict) would be to have parenting time exchanges occur during normal transitions that already exist in Philomena's schedule. For example, parenting time exchanges could occur at daycare, or regularly occurring extracurricular activities (i.e. one parent drops Philomena off at the

activity and leaves, then the other parent picks Philomena up at the end). Arguably, this may not be possible until Philomena is older. This would, however, help routinize parenting time transitions for Philomena.

In conclusion, it is hoped that this report has offered information and reasoning that may be useful to Mr. Dud*é*, Ms. Elrod, Philomena, and to the court in resolving the custody and parenting time questions that have been posed by this family.

Respectfully Submitted,



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

Section Eight

2023 INDIANA FAMILY LAW UPDATE

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Section Eight

2023 Indiana Family Law Update.....Andrew Z. Soshnick

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2023 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 2022 to August 2023. As has been the case for many years, "Memorandum Decisions" constituted the majority of family law decisions and now have limited reference value. Fewer "For Publication" opinions addressed many important substantive areas.

II. CASE LAW

A. PROPERTY DIVISION

1. *Herber v. Bunting*, 194 N.E.3d 1142 (Ind. Ct. App. 2022). In August 2000, husband and wife married. There were two mortgages on the marital residence signed by both parties: a first mortgage held by USAA Federal Savings Bank ("USAA") and a second mortgage held by Stephen J. Bobeck. In October 2016, husband petitioned to dissolve the parties' marriage. In July 2019, the trial court entered a dissolution decree and incorporated their settlement agreement into the decree. The settlement agreement provided that the marital residence would be wife's "sole and separate property," with wife assuming and being solely responsible for any and all liens on the marital residence. Wife had six months to refinance the marital residence and, if she did not, husband could petition the trial court to force the sale of the marital residence. Starting in early 2020, wife made no payments on the first mortgage for approximately sixteen months. In May 2021, husband moved to enforce the settlement agreement and compel the sale of the marital residence. Husband alleged that wife's failure to refinance the marital residence damaged his credit and limited his ability to borrow. On August 30, 2021, the trial court conducted an evidentiary hearing on husband's motion to enforce. Both husband and wife testified that wife tried to refinance the first mortgage, but USAA only offered her a loan modification that required husband's signature and would not remove husband's name from the first mortgage. Husband declined to sign the loan modification. As to the second mortgage, wife claimed she had paid off the loan, but Bobeck would not release the mortgage because he claimed wife owed him $50,000.00 on the mortgage. Wife and Bobeck were at an impasse and their dispute was going to litigation. Wife also testified that USAA would not refinance the first mortgage until Bobeck released the second mortgage. Husband testified that he could buy his own home because the mortgages were still on his credit report. At the end of the hearing, the trial court found wife had breached the settlement agreement by failing to refinance the marital residence. The trial court ordered wife to reinforce the marital residence and, if she did not, the marital residence would be sold. On October 4, 2021, the trial court issued a written order on husband's motion, which affirmed the findings and conclusions of its oral ruling. In addition, the written order provided that if the marital residence were sold, husband would choose the real estate broker to list the marital residence and the broker would set the listing price and was to accept any offer on the marital residence within five percent of the listing price. Wife was to maintain the marital residence and make timely payment on the mortgages, and provide details about how the sales proceeds would be distributed. On October 29, 2021, wife filed a motion to correct error alleging, in part, that the settlement agreement did

not give husband the authority to choose the listing agent for the sale of the marital residence. The trial court granted the motion, in part, by ruling that wife would select the listing agent, but if a listing agent were not selected, the trial court would appoint a commissioner to facilitate the sale. The trial court also ruled that all other provisions in its order granting husband's motion remained in effect. Wife appealed and the Indiana Court of Appeals affirmed. The Court of Appeals rejected wife's contention that the trial court's order of enforcement was an impermissible modification of the settlement agreement because the order included terms that were not in the settlement agreement and that were not addressed in the parties' testimony at the hearing. The Court of Appeals concluded that the trial court, in ordering the sale of the marital residence, enforced an express provision of the settlement agreement (that wife was to sell the marital residence if she did not refinance the marital residence within the prescribed time limit). While some of the terms of the enforcement order were not expressly stated in the settlement agreement and were not addressed in the testimony at the hearing, the new terms were not a modification. Trial courts can interpret and effectuate dissolution decrees and resolve questions of interpretation and enforcement of a settlement agreement. *See Fackler v. Powell*, 839 N.E.2d 165, 167-68 (Ind. 2005). That is what the trial court did. The trial court did not abuse its discretion in providing details in the order of enforcement about how the marital residence should be sold, and its ruling on wife's motion to correct error was not an abuse of discretion. Husband also requested that wife pay his appellate attorneys' fees. The Court of Appeals concluded that wife's request for appellate relief convinced it that the purpose of her appeal was to keep delaying the sale of the marital residence. Therefore, the Court of Appeals concluded that husband was entitled to appellate attorneys' fees and remanded to the trial court to determine the proper amount of appellate attorneys' fees.

2. *Wilson v. Wilson*, 205 N.E.3d 238 (Ind. Ct. App. 2023). In 2001, the parties married. In 2002, child was born. On July 6, 2021, mother filed a petition for dissolution of marriage. On July 28, 2022, the trial court held a final hearing. Mother testified that child had special needs and received about $840.00 monthly in Social Security Disability. She also testified that child was on Medicaid, which paid most of her medical bills. Mother also testified child used her Social Security Disability benefit every month and that amount did not go very far. Mother introduced a proposed Child Support Obligation Worksheet, which included a recommended child support obligation to be paid by father of $262.00 per week. Mother further testified that the source of the funds in the parties' joint Ameritrade account was a settlement father received following the loss of his leg due to a motorcycle accident. Mother testified that the account balance had declined because father had dissipated marital assets by spending money on another woman. Mother requested 60% of the marital estate. Father testified that he carried the financial burden for the family and that he believed that child's Social Security income was sufficient to meet her needs moving forward. Father also testified that he used funds in the Ameritrade account to sustain the parties' lifestyle such as house payments during his time of unemployment, but that "the long-term goal is to have those funds available for medical care." On August 4, 2022, the trial court entered a decree of dissolution of marriage. The trial court divided the marital estate 54% to mother and 46% to father, giving mother $50,540.00 more than father. The trial court ordered that mother would continue to receive and be responsible for child's Social Security income and have the authority to handle all banking and

monetary transactions necessary for the care of child. The trial court ordered father to pay $262.00 per week in child support. Father appealed and the Indiana Court of Appeals reversed and remanded. As to property division, the Court of Appeals determined that, while the evidence might support an unequal division of property, the decree was devoid of any reason or explanation for its deviation from the presumptive equal division of the parties' marital estate. The trial court did not enter findings addressing the factors in Ind. Code § 31-15-7-5. The Court of Appeals remanded to the trial court to either follow the statutory presumption and set forth its rationale from deviating from the presumption that an equal division of the parties' marital estate was just and reasonable. The Court of Appeals instructed that the trial court's findings on remand should include its reasons for its treatment of the personal injury settlement funds remaining in the Ameritrade account. As to child support, father argued that the trial court erred when it did not consider child's Social Security Disability payments in calculating his child support obligation. Father argued that the Indiana Child Support Guidelines provide that Social Security Disability income based on a parent's disability is included in the parent's income in calculating child support. Mother argued that the trial court ordered that she continue to receive child's Social Security Disability income did take the benefit into consideration. She further argued that child's benefit was not based on a parent's disability, but on child's own decreased earning capacity. The Indiana Child Support Guidelines contain statements which appear to relate primarily to Social Security payments based upon the disability of a parent. Mother's proposed Child Support Obligation Worksheet included amounts for weekly gross incomes of the parties, but it did not include any adjustments. The trial court heard testimony regarding amounts spent on behalf of child. In light of the record, the Court of Appeals remanded for the trial court to determine and make findings as to whether child's overall financial needs were satisfied in full or in part by the Social Security benefit she received and for entry of father's child support obligation which, if appropriate, would include an adjustment for the income child receives in Social Security benefits.

3. *Nix v. Nix*, 205 N.E.3d 1010 (Ind. Ct. App. 2023). In 1979, husband and wife married. They had three children who were adults at the date of their divorce. During the marriage, husband and wife started a business called Outerspace, LLC ("Outerspace"), which owned 33 acres of land (including warehouses) in Auburn, Indiana. Additionally, wife was the sole shareholder in an S Corporation called NX Enterprises, Inc. ("NXE"), which was a warehouse and logistics company. NXE leased property from Outerspace. On July 20, 2017, husband filed a petition for dissolution of marriage. On April 15, 2021, the parties agreed that wife would be awarded Outerspace at a value of $1,600,000.00. During the final hearing in March and April 2022, the parties submitted evidence regarding the value of NXE. Husband submitted an expert opinion that NXE was worth $992,100.00 as of the date of filing the divorce case. Wife submitted an expert's opinion that NXE was worth $470,000.00, as of December 31, 2018. One of the parties' adult children, Amanda Couts, testified that on June 1, 2017, she offered to buy NXE for $4,250,000.00. Husband introduced into evidence Couts's unsigned purchase agreement. In the decree of dissolution of marriage, the trial court valued NXE at $4,250,000.00 "due to the offer to purchase at or near the date of filing" and awarded NXE to wife. The trial court ordered wife to pay husband an equalization payment of $622,839.74 plus $10,000.00 toward husband's attorneys' fees. The parties filed cross-motions to correct

error. The trial court denied both motions, wife appealed, and the Indiana Court of Appeals reversed and remanded with instructions. Wife's sole contention on appeal was that the trial court abused its discretion when it valued NXE. Courts abuse their discretion in valuing a marital asset when it does not select a date between the filing of the divorce case and the final hearing date. *See Trackwell v. Trackwell*, 740 N.E.2d 582, 584 (Ind. Ct. App. 2000). Additionally, Couts's offer was not competent evidence of the market value of NXE. The offer to purchase appeared to encompass both NXE and Outerspace and had various ambiguities. Further, Couts testified that wife did not take the offer seriously and laughed at her. It was undisputed that Couts did not have enough money to buy NXE. Rather, she claimed to have an investor who would fund the purchase, but did not identify any investor and did not establish either the investor's ability or contractual responsibility to fund the purchase offer. Finally, Couts did not sign the purchase agreement and could not be bound by it. Given the ambiguity and overall unreliability of the promises made in the offer, the offer to purchase was not competent evidence of the fair market value of NXE. On remand, the trial court was to assign a value to NXE within the range of values put forth by husband and wife - $470,000.00 to $992,100.00, which was the only competent evidence of the businesss' value. Once the trial court had chosen a new value for NXE, based on that evidence the trial court was to recalculate the division of marital property accordingly.

4. *Ivankovic v. Ivankovic*, 205 N.E.3d 1061 (Ind. Ct. App. 2023). On August 5, 2006, husband and wife married. The parties had three children. The parties also had a three-year-old Lilac Boston Terrier named Roxy. On January 4, 2022, husband filed a petition for dissolution of marriage. After three mediation sessions, the parties entered into a Partial Mediation Agreement. The two major issues that remained unresolved were the ownership of Roxy and the ownership of a certain firearm. On November 9, 2022, the trial court conducted a hearing on the outstanding issues. On November 18, 2023, the trial court entered a Decree of Dissolution of Marriage, providing, among other things, that husband was awarded $400 from wife in cash to compensate him for the gun and for wife being awarded Roxy. The children were permitted to bring Roxy to husband's home during parenting time, as they also were able to bring any of their personal effects to husband's home during their parenting time. Neither parent were to attempt to influence the children to convince to them to bring or not bring Roxy to husband's home. Less than thirty days after the entry of the decree, husband filed a contempt action alleging that wife had attempted to influence the children about bringing Roxy to parenting time and had supposedly failed to send Roxy to husband's residence with the children. Wife appealed the Decree and the Indiana Court of Appeals reversed. In Indiana, the law is clear that animals are personal property subject to distribution by the trial court. *See Forbar v. Vonderahey*, 771 N.E.2d 57, 58 n.1 (Ind. 2002). Because dogs are treated as chattel or personal property in Indiana, it is the property rights of the parties rather than their respective abilities care for the dog or their emotional ties to it, that are determinative. As a consequence, whichever spouse is awarded a dog, will have sole possession to the complete exclusion of the other party. There is no "best interests of the canine" standard in Indiana. To allow full-blown dog custody cases would further burden the courts to the detriment of children. Although the trial court awarded Roxy to wife as her personal property, husband, in essence, attempted to create dog visitation by using the children's decision to bring Roxy with them to husband's

residence during parenting time. The trial court awarded Roxy to wife in the decree and ordered wife to pay husband an equalization payment of $400. If Roxy had been the children's personal property, the dog would not have been included in the marital estate or be subject to division by the trial court, and no equalization payment would have been required. While Roxy might have been considered a member of the family, under Indiana law she was wife's personal property and the children could not be awarded discretionary decision-making authority to transport wife's personal property to husband's residence during parenting time.

5. *Meyer v. East*, 205 N.E.3d 1066 (Ind. Ct. App. 2023). In June 1989, husband and wife married. They had three adult children. During the marriage, wife was employed as a teacher and participated in the IMPRS pension program through her employment. In July 2020, wife filed a petition for dissolution of marriage. During the final hearing, husband presented a report from Dan Andrews, an expert on pension valuations hired by husband, as to the value of wife's IMPRS pension. Andrews noted that the Teacher Retirement Fund is a "defined benefit pension that requires 10 years to vest and, in their standard form, are single life payable with a five-year guarantee . . . . The Rule of 85 provides that if a retiree has his/her age in years plus service years totaling 85, retirement may occur as early as 55 with no early retirement actuarial reduction." Wife, who was almost 55 years old at the time of filing her divorce petition, would meet the Rule of 85 at age 56.5. At that point, wife could retire and begin receiving $1,919.85 per month. Andrews concluded that the present value of wife's benefit was $507,353.43. Wife, however, proposed valuing the IMPRS pension at $1,919.85 per month for the duration of the five-year guarantee only, for $115,191.00. On May 5, 2022, the trial court entered an order regarding the valuation and division of the marital estate, except for personal property. The trial court valued wife's IMPRS pension at $115,191.00, valued the marital residence at $246,700.00 (which was wife's proposed valuation), gave wife possession of the marital residence, included husband's inheritance in the marital estate, and excluded a Parent Plus Loan from the marital estate and ordered wife to pay that debt in full. The trial court found that the marital estate was to be divided equally and, except for the personal property, ordered wife to pay husband $114,319.97 as an equalization payment. On May 9, 2022, the trial court entered a separate order regarding personal property and ordered husband to pay wife $14,140.00 as an equalization payment related only to personal property. Net, the trial court ordered wife to pay husband a final equalization payment of $100,179.97 within four months. Husband filed a motion to correct error. The trial court denied the motion to correct error except to clarify that it purposely excluded the Parent Plus Loan from the marital estate. Husband appealed and the Indiana Court of Appeals affirmed in part, reversed in part, and remanded. As to the marital estate, husband argued that his inheritance should not have been included as marital property. The trial court rejected that contention and concluded that the inheritance, a disputed grill, a disputed ring, and the Parent Plus Loan should have been included as marital assets and liabilities. The trial court abused its discretion by excluding the Parent Plus Loan from the marital estate. Husband also argued that the trial court abused its discretion when valuing the marital residence and wife's IMPRS pension. As to the marital residence, the trial court valuation was not an abuse of discretion and the Court of Appeals did not reweigh the evidence. As to wife's IMPRS pension, under the trial court's valuation of wife's IMPRS pension, if wife lived longer than five years after retirement she would receive a windfall. If

wife died within the five years after retirement, then husband would receive a windfall. Ind. Code § 31-9-2-98(b) does not differentiate between guaranteed pension benefits and benefits that continue until death. That statutory provision required the inclusion of "the right to receive pension or retirement benefits that are not forfeited upon termination of employment or that are vested (as defined in Section 411 of the Internal Revenue Code), but that are payable after the dissolution of marriage." The post-five-year guarantee payments also were "payable after the dissolution of marriage," and were to be included in the calculation of the pension's present value. Accordingly, the trial court abused its discretion by failing to include a value of the pension after the five-year guarantee. Wife contended that the Court of Appeals should remand for the trial court to distribute the pension by deferred distribution rather than immediate offset. Trial courts are generally prohibited from distributing an IMPRS pension benefit by way of a QDRO or otherwise ordering wife to assign her benefits directly to husband. The trial court used the immediate offset method rather than the deferred distribution method. The Court of Appeals remanded for the trial court to consider whether immediate offset or a deferred distribution was warranted with the higher value of the IMPRS pension. Finally, husband argued that the trial court's equal division of the marital estate was an abuse of discretion. The trial court purported to order an equal division of the marital estate, while husband argued that an equal division was improper given his inheritance and wife argued that an equal division was improper given husband's dissipation of assets. Given the trial court's abuse of discretion regarding the Parent Plus Loan and the valuation of the IMPRS pension, the trial court's decision to divide the marital estate equally was not based on an adequate determination of the marital estate. Once the trial court determined the property value of the marital estate on remand, the trial court was to determine whether an equal division of the marital estate was "just and reasonable." The Court of Appeals remanded for the trial court to include the Parent Plus Loan and the property valuation of the IMPRS in the marital estate and either divide the marital estate pursuant to the rebuttable presumption of an equal division or set forth its rationale for an unequal division of the marital estate.

6. *Cooley v. Cooley*, 209 N.E.3d 11 (Ind. Ct. App. 2023). In November 1995, husband and wife married. They had no children. In August 2021, the parties separated and wife filed a petition for dissolution of marriage. Following the final hearing, the trial court entered a decree of dissolution of marriage valuing the marital estate at $1,257,934.96 and dividing it equally between the parties. Husband was employed by the Morgan County Sheriff's Department and the trial court valued the present interest in his pension at $1,101,110.82. Husband's pension was not subject to a Qualified Domestic Relations Order. Accordingly, the trial court awarded the pension to husband and ordered him to pay wife an equalization payment in the amount of $475,043.29. Husband did not have liquid assets sufficient to pay wife the equalization payments, and testified that it was "possible" that he would ignore the trial court order that he pay wife one-half of his future retirement benefits to satisfy the equalization payment. Subsequently, the trial court ordered that husband pay wife over time and apply for a life insurance policy with an initial death benefit of $475,000.00. Wife was to be the owner and beneficiary of that life insurance policy and pay the premiums. The trial court also added the premiums paid by wife to the equalization payment set forth in the trial court's distribution of the parties' marital estate. Husband appealed and the Indiana Court of

Appeals affirmed in part, reversed in part, and remanded. As to the life insurance policy, husband contended that the trial court abused its discretion when it ordered him to obtain and subsidize a life insurance policy naming wife as the owner and beneficiary. The Court of Appeals characterized this as an issue of first impression: Whether a divorce court has discretion to order a party to buy life insurance as security for an equalization payment. Wife asserted that the trial court had that authority under Ind. Code § 31-15-7-8, which provides that when it enters a divorce decree, a court may provide for the security, bond, or other guarantee that is satisfactory to the court to secure the division of property. The Court of Appeals previously stated that this "statutory language obviously affords the court the broadest possible discretion in requiring security." *See Birkhimer v. Birkhimer*, 981 N.E.2d 111 (Ind. Ct. App. 2012). The Court of Appeals agreed with wife that Ind. Code § 31-15-7-8 gave the trial court discretion to order husband to secure wife's share of the marital estate by life insurance. However, whether the trial court could add the values of those future premium payments to the equalization payments husband owed wife was a different issue. Ind. Code § 31-15-7-4 provides that the marital estate that the trial court must divide is comprised of property owned or acquired by either party before the date of final separation or filing date of the divorce case. The decree in this case increased the amount of the equalization payment to wife with every premium payment and, in effect, increased the value of the marital estate and the share of the marital estate awarded to wife beyond the value at the date of the parties' final separation. The Court of Appeals held that portion of the decree violated Ind. Code § 31-15-7-4 and reversed. On remand, the trial court was to determine, either by agreement of the parties or by way of submissions or another hearing, the cost of the life insurance premiums, in light of husband's life expectancy. With those factors determined, the trial court was to include the total projected cost of the life insurance policy in the marital estate as a security and recalculate the equalization payment to wife so that wife and husband shared the cost of the security equally. In a footnote, the Court of Appeals noted that, because husband had expressed disdain for the concept of sharing his pension with wife, the trial court could determine on remand that wife should pay the premiums, which could be listed as a liability assigned to wife. Query whether either of those options is consistent with the concept that marital property is valued at any date from the date of filing of a divorce case to the date of final hearing. Husband also contended that the trial court abused its discretion when it did not consider the tax consequences he would incur when, at some point in the future, he started to draw on his pension and paid wife one-half of those benefits. Wife argued that husband did not present evidence to support an award based on his tax consequences and invited any error. The Court of Appeals agreed with wife. Husband merely testified that he would have to pay taxes on his monthly pension benefits, but did not present evidence and could only speculate as to the amount he would owe in taxes on those benefits. Accordingly, husband had not preserved this issue for appellate review.

7. *Randolph v. Randolph*, 210 N.E.3d 890 (Ind. Ct. App. 2023). In October 2003, father and mother married. In January 2006, their daughter was born. Mother also had two older children from a previous relationship. In February 2021, the parties separated and father filed a petition for dissolution of marriage. Prior to the parties' marriage, father and mother each owned a residence. The parties sold both residences and purchased a residence in Fort Wayne, Indiana. Prior to the parties' marriage, father, a mechanical engineer, worked at

Navistar and had a 401(k) account which father estimated was valued at $85,000 at the time of the marriage. Father stopped making contributions to the account shortly before the marriage. At the time of the petition for dissolution of marriage, father's 401(k) account was valued at $248,854.72. In 2011, father's employment with Navistar ended and he began doing contract work. In approximately 2015, father's employment often was out of town and he returned on weekends. At the beginning of the parties' marriage, mother had student loans of approximately $33,000. Mother was a nurse and worked in a doctor's office until their daughter was born. Mother stayed home to care for all of her children until the parties' child was 8 years old. Mother then worked as a surgical nurse in a hospital. Approximately 5 or 6 years ago, mother began working as a school nurse. In April 2021, the trial court entered provisional orders that provided, in part, for joint legal custody of the parties' daughter, with mother having primary physical custody and father having parenting time, pursuant to the Indiana Parenting Time Guidelines with adjustment for work schedule. The trial court eventually appointed a Guardian *Ad Litem* who believed that father and the parties' daughter had "very different" personalities which "clash." In April 2022, the trial court held a final hearing. Father requested 71% of the marital estate and mother requested 60% of the marital estate. The trial court conducted an *in camera* interview with the parties' daughter. The trial court then entered findings of fact and conclusions of law awarding the parties joint legal custody of their daughter, with mother having primary physical custody. Father objected to the Guardian *Ad Litem*'s recommendation that father's parenting time be a Saturday overnight every other weekend and a midweek evening visit without an overnight as an improper "restriction" on his parenting time, since this was less than the Indiana Parenting Time Guidelines. Regarding the parties' marital estate, the trial court included father's entire Navistar 401(k) account in the marital estate and divided the marital estate 60% to mother and 40% to father. Father appealed and the Indiana Court of Appeals affirmed. As to parenting time, the Court of Appeals rejected father's argument that the trial court abused its discretion by "restricting" his parenting time with the parties' daughter. Father relied upon Ind. Code § 31-17-4-2, which applies to the modification of parenting time, as opposed to an initial determination of parenting time. Ind. Code § 31-17-4-1 applies initial parenting time determinations and provides that a non-custodial parent is entitled to "reasonable parenting time rights." The Court of Appeals rejected father's argument that any deviation of parenting time below that recommended by the Indiana Parenting Time Guidelines was a "restriction" requiring a finding that parenting time would endanger a child's physical health or significantly impair a child's emotional development. The Court of Appeals noted that it addressed a similar issue in *In Re Paternity of J.K.*, 184 N.E.3d 658 (Ind. Ct. App. 2022) and concluded that parenting time less than that prescribed by the Parenting Time Guidelines was reasonable. The trial court was required to, and properly provided, an explanation of its deviation by noting that the parties' daughter was "experiencing anxiety, nausea, and vomiting, associated with parenting time" with father. As to the parties' marital estate, all assets and liabilities of both parties is required to be included in the marital pot. Accordingly, the trial court did not abuse its discretion by including father's Navistar 401(k) account as a marital asset, as it was required to consider all property obtained prior to the filing of the petition for dissolution of marriage. The trial court also did not abuse its discretion in awarding mother 60% of the marital estate. The Court of Appeals also rejected mother's request for appellate attorneys' fees.

B. PROCEDURAL ISSUES

1. *J.L. v. M.M.*, 194 N.E.3d 152 (Ind. Ct. App. 2022). Father and mother were the parents of 14-year-old child. On August 6, 2021, mother filed a petition for an order for protection on behalf of child against father. Mother alleged that father threatened, attempted, and caused physical harm to child, placed child in fear of physical harm, and "committed repeated acts of harassment against the child." The petition described an incident in which father pinned down child and squeezed child's face. Child alleged that "[t]his kind of thing happens frequently" when child is with father. The petition requested that father be denied all contact and parenting time with child. The initial trial court granted an *ex parte* order for protection on behalf of child and against father and the matter was transferred to the trial court that was addressing paternity. In the trial court, father filed a motion for rule to show cause and a motion to modify custody, parenting time, child support, and child's education. On August 30, 2021, the trial court held a hearing on the petition for order of protection. At that hearing, mother sought to have child participate in an *in camera* interview. Father objected, and the trial court overruled the father's objection but allowed the parties to submit specific questions to be asked of child. After mother and father presented evidence, the trial court summarized child's *in camera* interview, as follows: child indicated that things started getting bad when he was 13, child and father argued fairly frequently, child did not feel safe when the arguments occurred, and father had put his hands on child (including holding his hand over child's mouth, squeezing child's cheeks, pushing child down, holding child on the bed, holding child's arms tightly, and pushing child into a wall). Child had sustained a cut on his lower lip from his braces and hit his head on a windowsill. When asked if he felt safe with father, child responded that things instantly changed and that he felt he was walking on explosive eggshells. The trial court found that father "represents a credible threat to the safety of" child. The trial court entered findings granting the order of protection for two years, which prohibited father from "harassing, annoying, telephoning, contacting, or directly or indirectly communicating" with child and ordered father to "stay away from the residence and/or school" of child. Father filed a motion to correct error, which the trial court denied. Father appealed and the Indiana Court of Appeals affirmed in part, reversed in part, and remanded. As to the order of protection, mother and child proved, by a preponderance of the evidence, that domestic or family violence was occurring and that father was a credible threat to child's safety. Accordingly, the trial court did not err by granting the order for protection. However, the Court of Appeals took issue with the two-year length of the protective order and the order prohibiting father from having any contact with child directly or indirectly. Mother presented insufficient evidence to warrant a two-year order of protection with absolutely no contact between father and child, and the order exceeded that which was necessary to stop the violence. Father also argued that the trial court should have granted him supervised parenting time in the protective order. Trial courts have discretion to determine the duration of an order for protection necessary to stop violence. The Court of Appeals noted that Ind. Code § 34-26-5-9(i) provides that an order for protection is "superseded" by an order from a trial court parenting time order in a paternity case. To resolve the different requirements for both an order for protection and a parenting time order, the Court of Appeals looked to both statutes and harmonized them. Ind. Code § 31-17-4-2 governs a modification of parenting time in a paternity action. The Court of Appeals, in addition to not being convinced that the two-year order for

protection was necessary to stop the violence, noted that even where a parent had been convicted of domestic violence, there is a rebuttable presumption that the parent is entitled to supervised parenting time. A better practice to stabilize the situation with a limited-duration order for protection is to fashion a parenting time order that implements supervised parenting time, therapeutic parenting time, and/or other methods so as to not eliminate the parent-child relationship completely unless absolutely necessary to protect the child. The trial court erred by ordering a complete denial of parenting time and all contact for two years. The Court of Appeals reversed the portion of the order for protection that denied father parenting time for two years and remanded with instructions to allow father to have some contact with child, including supervised or therapeutic parenting time between father and child, until matters were addressed in the paternity action.

2. *Perry v. Indiana Department of Child Services and Derucki*, 196 N.E.3d 1264 (Ind. Ct. App. 2022). On July 19, 2021, the Perry's filed suit against the Indiana Department of Child Services ("DCS") and Family Case Manager Linzy Derucki ("Derucki"), raising a 42 U.S.C. § 1983 civil rights violation claim against Derucki based on their allegation that the parties' children's removal from their care had violated their Constitutional rights to family integrity and to due process; a negligence claim against DCS; and a defamation against both DCS and Derucki for alleging making false statements to third parties (including a claim that that the Perry's sought out and conspired with medical providers to subject children to unnecessary medical treatment). On March 14, 2022, the trial court dismissed the Perry's amended complaint in full. The Perry's appealed and the Indiana Court of Appeals affirmed in part, reversed in part, and remanded. Aa to the § 1983 claim against Derucki, the Perrys' amended complaint affirmatively showed that Derucki was entitled to qualified immunity and that claim was properly dismissed. DCS conceded that the Perrys' negligence and defamation claims against DCS could proceed so the trial courts dismissal of those claims was reversed. As to the defamation claim against Derucki, the amended complaint failed to state a claim upon which relief could be granted.

3. *McGhee v. Lamping*, 198 N.E. 3d 730 (Ind. Ct. App. 2022). In 1995, mother and father married. In 2007, mother filed a petition for dissolution of marriage and the parties entered into a settlement agreement. Pursuant to the terms of the settlement agreement, father, *inter alia*, agreed to pay mother $2,000 per month in child support for the parties' two daughters until December 2007 and $1,500 per month in child support beginning in January 2008. Father further agreed to maintain health insurance for the parties' daughters and to pay for all of their reasonable medical, dental, optometric, orthodontic, pharmaceutical, and counseling expenses that were not covered by insurance. Father additionally agreed to pay for the children's private school education until graduation from high school and all college expenses. In 2009, the trial court entered an order granting father's petition to modify child support. The children were living with father, and the trial court ordered the cessation of father's obligations to pay $1,500 per month for child support and to pay for the mortgage, taxes, insurance, and reasonable repairs and maintenance of the marital residence. In 2011, the trial court entered an agreed order which provided that, effective January 1, 2011, mother would pay for the children's medical, dental, and vision insurance, so long as it was reasonably available through her employer and that the

parties would equally divide the children's uninsured medical expenses. In 2012 through 2017, father filed various contempt petitions against mother for non-compliance with court orders. On January 19, 2018, the trial court entered an order that, in part, concluded that mother owed father a total of $19,880.61 for uninsured medical expenses and attorneys' fees. The trial court also amended mother's income withholding order to $88.50 per week. In February 2019, father filed another contempt petition. Various filings occurred prior to a two-day hearing in October and November 2021, where the trial court denied various motions by mother for relief from judgment. Mother appealed and the Indiana Court of Appeals affirmed. Mother argued that the trial court abused its discretion when it denied her motion for relief from judgment. Mother argued that she was entitled to relief under Ind. Trial Rule 60(B)(8). Under that Trial Rule, mother needed to show that her failure to act was not merely due to an omission involving a mistake, surprise, or excusable neglect. Rather, mother needed to affirmatively demonstrate "extraordinary circumstances." Mother did not meet that burden of proof nor did she proceed as she should have under Ind. Trial Rule 60(B)(3) as to misrepresentations or fraud allegations.

4. *In re the Marriage of Sims*, 199 N.E.3d 374 (Ind. Ct. App. 2022). In 1997, husband and wife, both American citizens, were married in Moscow, Russia and one month later moved to the United States. During their marriage, husband and wife lived in Virginia, Texas, North Carolina, and Nevada. In 2017, husband moved to Germany and wife joined in him 2018. Soon after wife moved to Germany, the parties separated. In 2019, even though husband and wife lived in Germany, husband filed a petition for dissolution of marriage in Nevada which was subsequently dismissed. Later in 2019, wife filed a petition for dissolution of marriage in Germany, requesting, in part, division of marital property, including husband's pension. Husband argued that the German court lacked jurisdiction to address wife's request for the division of property, including his pension. In February 2020, husband moved to Johnson County, Indiana. That same month, the German court dissolved husband and wife's marriage but found it lacked jurisdiction to divide the parties' marital property and declined to rule on the merits of wife's request for a division of marital property, including husband's pension. In November 2020, the German court again declined to address wife's property division request, once again determining that it lacked jurisdiction to divide marital property, including husband's pension. In September 2020, wife filed a petition in the trial court and later filed an amended petition asking the trial court, in each petition, to assume jurisdiction over the issue of division of marital property. In February 2021, the trial court denied wife's amended petition to assume jurisdiction, finding that the doctrine of *res judicata* barred it from assuming jurisdiction over wife's petition. The trial court concluded that the German court (1) was a court of competent jurisdiction and (2) had rendered a decision on the merits of wife's request for the division of marital property. In March 2021, wife filed a motion to correct error. The trial court denied the motion to correct error. Wife appealed and the Indiana Court of Appeals affirmed. Wife argued that the doctrine of *res judicata* did not apply because the German court did not render judgment on the merits of her request for a division of marital property. The Court of Appeals agreed, noting that one necessary element for *res judicata* to apply – a former judgment rendered on the merits – was missing. The Court of Appeals sympathized with the trial court's frustration in interpreting the German court's rulings, but noted that whatever ambiguities existed in those

rulings, the rulings clearly showed that the German court did not render a judgment on the merits of wife's request for a division of marital property.

5. *In the Matter of K.G.*, 200 N.E.3d 475 (Ind. Ct. App. 2022). On June 24, 2009, child was born. In March or April 2021, child informed mother that child identified as transgender. Mother and child then began working with medical and mental health professionals to make sure that child knew what that meant and that truly was who child was. Mother also worked with child's medical and mental health professionals to create a plan for when child was to begin puberty blockers and hormone replacement therapy. On September 16, 2021, mother filed verified petitions to change child's name and gender marker. On January 14, 2022, the trial court conducted a hearing. During the hearing, mother testified that since "coming out" child's disposition and overall mood had improved, with child being "happier and not as depressed." Mother also submitted letters from child's doctor and social worker supporting a change in name and gender marker. In discussing whether the change of name and gender marker were in child's best interests, mother emphasized that child had her full support whether the trial court changed anything or not, and talked about statistics for transgender youth. When asked by the trial court what would be the harm in waiting until the child was older, mother responded that child would feel invalidated and not taken seriously. On February 11, 2022, the trial court denied both petitions, finding that mother "failed to prove that it is in this minor child's best interest to grant the petition." Mother appealed and the Indiana Court of Appeals affirmed in part and remanded with instructions. As to the gender marker change, the Court of Appeals noted that Ind. Code § 16-37-2-10 applies to additions or corrections to birth certificates. The Court of Appeals recognized that other panels of that court had interpreted this statute as providing a mechanism by which a parent could seek to have a child's gender marker changed on the child's birth certificate. The Court of Appeals cited *Matter of R.E.*, 142 N.E.3d 1045 (Ind. Ct. App. 2020), *Matter of A.B.*, 164 N.E.3d 167 (Ind. Ct. App. 2021), and *In Re A.L.*, 81 N.E.3d 283 (Ind. Ct. App. 2017). This panel said it did not believe that the statute could be read in such a broad manner. This panel noted Judge Pyle's (who was a member of this panel) dissent in the *A.B.* opinion and looked at the statute's unambiguous language, concluding that it must apply the statute's plain and ordinary meaning without enlarging or restricting the obvious intent of the legislature. The Court of Appeals determined the statute did not provide a mechanism for the trial court to grant the requested relief. This panel also recognized that Judge Bailey (also who was a member of this panel) pointed out in *In Re H.S.*, 175 N.E.3d 1184 (Ind. Ct. App. 2021) that the Indiana General Assembly had not addressed this emerging area of the law, leaving the Court of Appeals "again asked to expand upon the generic language for birth certificate alteration found in Indiana Code section 16-37-2-10(b)." This panel did not believe that the statute provided the trial court with the authority to grant the requested relief, and concluded that the trial court did not err in denying mother's petition to change child's gender marker. As to the name change request, Ind. Code § 34-28-2-1 provides that trial courts in Indiana may change the names of natural persons on application by petition. In the case of a parent or guardian who wishes to change the name of a minor child, the petition must be verified and must state in detail the reason the change is requested. *See* Ind. Code § 34-28-2-2(b). In deciding on a petition to change the name of the minor child, courts are guided by the best interests of the child rule under Ind. Code § 31-17-2-8. *See* Ind. Code § 34-28-2-4(d). Ind. Code

§ 31-17-2-8 provides that in determining the best interests of a child, courts shall consider all relevant factors, including those listed in the statute. The trial court did not make specific findings, and given those lack of findings the Court of Appeals was unable to ascertain why the trial court found that mother had failed to meet her burden of proving that the requested name change was in child's best interests. The Court of Appeals remanded with instructions to the trial court to make additional factual findings explaining its decisions, focusing specifically on the statutory best interests factors listed in Ind. Code § 31-17-2-8.

6. *LaMotte v. LaMotte*, 200 N.E.3d 922 (Ind. Ct. App. 2022). In August 1995, mother and father married. The parties had three children born in 1998, 2001, and 2007. In November 2018, mother filed a petition for dissolution of marriage. Before the final divorce hearing, mother filed a written request under Ind. Trial Rule 52(A) for specific findings of fact and conclusions of law. In November 2020, Magistrate Kimberly Mattingly held a two-day divorce hearing. The issues before Magistrate Mattingly were mother's request for rehabilitative maintenance, custody of the children, parenting time with the children, and a distribution of the marital assets. During the hearing, Magistrate Mattingly heard testimony, received evidence, and later took the matter under advisement. At some point before the final order was entered, Magistrate Mattingly left her position. In April 2021, father filed a petition asking for a ruling on the pending issues. Mother had requested the entire matter be re-tried and father objected. Father asked the trial court to either issue Magistrate Mattingly's ruling (which Magistrate Mattingly indicated had been completed but not entered) or review the evidence and issue a ruling without the necessity of a new trial. Also in April 2021, mother filed a request for a final hearing and objection to father's petition to rule on the pending issues. In June 2021, a new judicial officer held a hearing on father's petition for the trial court to rule on the pending issues and determined that it would hold an additional hearing limited to custody and parenting time issues. In August 2021, that hearing occurred. At the beginning of that hearing, mother made a continuing objection and reminded the trial court that mother had requested a new hearing on all issues. The judicial officer allowed only mother and father to testify. In October 2021, the trial court entered an order distributing the marital assets and denying mother's request for rehabilitative maintenance. The trial court also awarded sole legal and physical custody of the parties' one minor child to father and awarded mother supervised parenting time with that child. In November 2021, mother filed a motion to correct error, which the trial court denied. Mother appealed and the Indiana Court of Appeals reversed. Mother contended that her due process rights were violated because "a successor judge made factual findings and legal conclusions about a trial *de novo* following the departure of the original judge who conducted a two-day evidentiary hearing, but did not issue an order." The Court of Appeals agreed, noting that *In Re D.P.*, 994 N.E.2 1228 (Ind. Ct. App. 2013) had addressed this issue. *See also In Re I.P.*, 5 N.E.3d 750 (Ind. 2014). The facts in this case were analogous to those in *D.P.* Mother's due process rights were violated. The Court of Appeals reversed the trial court's judgment and remanded the case to the trial court for a new divorce hearing on all issues.

7. *Chatman v. State*, 201 N.E.3d 241 (Ind. Ct. App. 2022). This important evidentiary opinion involves Indiana Evid. Rule 703. Chatman was accused of aggravated battery for injuries he inflicted on his ten-month-old son. A pediatric nurse practitioner was a

member of the Riley Children's Hospital Child Protection Team. The Child Protection Team assessed child's condition. The pediatric nurse practitioner spoke with other members of the Child Protection Team and conducted her own examination of child. She observed discoloration on child's forehead, cheek, right flank, and underarm. She also observed severe bruising on his right leg. The pediatric nurse practitioner attempted to testify about matters related to child's medical condition based on information she acquired from other medical professionals. The Indiana Court of Appeals affirmed the trial court's conviction, determining that the pediatric nurse practitioner's testimony was not admissible under hearsay exception in Ind. Evid. Rule 803(4). However, the pediatric nurse practitioner's testimony was admissible under Ind. Evid. Rule 703, in the process treating her as an expert. The Court of Appeals noted that in such circumstances, the expert's testimony is "merely 'a conduit'" for placing another medical professional's diagnosis into evidence "without meaningful opportunities for cross-examination." The Court of Appeals concluded that the pediatric nurse practitioner's expert opinion as to the cause of child's injuries was based on upon evidence of the type reasonably relied upon by experts in the medical field – histories provided by emergency first responders, medical records, testing, and what she had learned. Therefore, what the pediatric nurse practitioner had learned about child's condition from other medical professionals was admissible pursuant to Ind. Evid. Rule 703.

8. *In Re D.C. and M.C.*, 201 N.E.3d 660 (Ind. Ct. App. 2022). On February 29, 2012, mother gave birth to D.C. On March 18, 2015, mother gave birth to M.C. On September 24, 2020, the Indiana Department of Child Services ("DCS") received a report that children were victims of neglect by mother, father, and stepfather. The report alleged mother and stepfather had unstable housing, food, and security, children did not regularly attend school, and children were exposed to domestic violence and drug abuse. On November 16, 2020, DCS filed a CHINS petition. On January 15, 2021, mother admitted children were CHINS. On February 19, 2021, the trial court ordered mother to participate in several services. During the CHINS proceedings, mother was represented by appointed counsel. Mother did not consistently participate in services. On March 1, 2022, mother and father executed consents to children's adoptions by their foster placement. On March 29, 2022, mother revoked her consents to adoption. On May 12, 2022, DCS filed petitions to terminate mother's and father's parental rights to children, based on mother's noncompliance with services. On May 13, 2022, the trial court sent mother a document notifying her of the petition, the hearing, and the potential for a default judgment. On June 3, 2022, the trial court held an initial hearing on the termination petitions. Neither mother nor her appointed counsel attended. The trial court did not appoint new counsel for mother. The trial court set a "default hearing" for June 21, 2022. On June 21, 2022, the trial court held a hearing on the termination petitions. Neither mother nor her prior appointed attorney appeared. The trial court held a hearing without mother and without appointed counsel to represent mother and granted DCS's petition to involuntary terminate mother's parental rights to children. Mother appealed and the Indiana Court of Appeals reversed and remanded. Mother argued that the trial court violated her right to due process when it held the termination hearing without first appointing her counsel in the matter. The trial court appointed counsel to represent mother during the CHINS proceedings. On May 6, 2022, at what ultimately would be the last hearing of the CHINS proceedings, the trial court set a status hearing

on the CHINS case for June 3, 2022, which was a date the appointed attorney indicated she was unavailable to attend. It was unclear from the record why the trial court set a CHINS status hearing on a date when mother's appointed counsel was unavailable. DCS filed petitions to terminate mother's rights to children less than a week later. The trial court set an initial hearing on the termination petitions on the same day it scheduled the CHINS hearing and when mother's appointed attorney was unavailable. While mother knew she was entitled to representation by counsel in the termination proceedings, the notice did not inform mother that her prior appointed attorney would no longer be her counsel, as DCS's proceedings regarding children continued or that mother needed to request new counsel. There was no indication elsewhere in the record that prior appointed counsel, the trial court, or DCS staff informed mother that her prior appointed counsel would not be her counsel in the termination proceedings. Instead, it appeared mother believed prior appointed counsel was her counsel during the termination proceedings because she contacted her after the trial court terminated her parental rights to request appointment of appellate counsel to challenge the trial court's ruling. The trial court violated mother's right to due process when it did not appoint counsel to represent her with respect to the state of Indiana's petition to involuntary terminate her parental rights to children.

9. *R.M. v. Indiana Dept. of Child Services*, 203 N.E.3d 559 (Ind. Ct. App. 2023). On June 12, 2013, the Indiana Department of Child Services ("DCS") received a report that R.M.'s two children "were exposed to domestic violence and unsafe living conditions and [children's] basic needs [were] not being met." DCS's investigation found "deplorable conditions" at the family's residence, which had been condemned by the health department. DCS filed a petition to adjudicate children as CHINS. On February 7, 2014, the trial court adjudicated children as CHINS. On June 5, 2015, the trial court changed children's permanency plan from reunification to adoption because of mother's failure to complete necessary services. At some point after that date and prior to the trial court's May 16, 2016, periodic review hearing, mother voluntarily relinquished her parental rights to children. Maternal grandmother adopted children. On December 3, 2021, R.M. filed a petition under Ind. Code § 31-33-27-5 to expunge DCS's substantiated reports about her. On January 13, 2022, the trial court, without conducting a hearing, denied R.M.'s petition to expunge DCS.'s substantiated reports about her. On January 26, 2022, R.M. filed a motion to correct error that the trial court denied. Mother appealed and the Indiana Court of Appeals affirmed. Mother argued that the trial court abused its discretion when it denied her petition to expunge DCS's substantiated reports about her. While eligible for expungement, mother was required to prove by clear and convincing evidence that she met the requirements that there was little likelihood that she would be a further perpetrator of child abuse or neglect and the information had insufficient current probative value to justify its retention in DCS's records for future reference. The trial court correctly found and concluded mother met the first prong of the test, but determined that there was probative value in retaining the records based on the standards set forth in the statute. Mother attempted to distinguish *G.E. v. Indiana Dept. of Child Services*, 29 N.E.3d 769 (Ind. Ct. App. 2015), but the Court of Appeals determined that the cases were similar enough and that the trial court did not abuse its discretion when it denied mother's petition to expunge DCS's substantiated reports about her.

10. *In re Name Change of Israel James Croney*, 204 N.E.3d 240 (Ind. Ct. App. 2022). In 2018, child was born and given the surname of his biological father. Child's parents divorced and mother's maiden surname of "Underwood" was restored to her in the divorce decree. On April 20, 2022, mother filed a petition to change child's name to also include her maiden surname. Notice of the legal action was published pursuant to Ind. Code § 34-28-2-3 and personal service of the petition was made upon father, a California resident. On July 21, 2022, the trial court conducted a hearing. Father did not appear and did not file an objection or written consent. On July 25, 2022, the trial court denied the petition, stating that Ind. Code § 34-28-2-2(b) requires the "written consent of the non-petitioning parent must be filed with the petition." Mother filed a motion to correct error, which the trial court summarily denied. Mother appealed and the Indiana Court of Appeals reversed and remanded. Ind. Code § 34-28-2-2 does not require written consent. Father refused or failed to give written consent, but it was not required. Rather, if publication and proper service had been performed, the trial court, by statute, was to conduct a hearing and was to "be guided by the best interest of the child rule under I.C. 31-17-2-8." The trial court misinterpreted Ind. Code § 34-28-2-2 to require, with the filing of the petition, the written consent of both parents of a child for whom a name change had been requested. The Court of Appeals reversed and remanded with instructions to the trial court to conduct a hearing regarding the best interest of child.

11. *Ivankovic v. Ivankovic*, 205 N.E.3d 1061 (Ind. Ct. App. 2023). On August 5, 2006, husband and wife married. The parties had three children. The parties also had a three-year-old Lilac Boston Terrier named Roxy. On January 4, 2022, husband filed a petition for dissolution of marriage. After three mediation sessions, the parties entered into a Partial Mediation Agreement. The two major issues that remained unresolved were the ownership of Roxy and the ownership of a certain firearm. On November 9, 2022, the trial court conducted a hearing on the outstanding issues. On November 18, 2023, the trial court entered a Decree of Dissolution of Marriage, providing, among other things, that husband was awarded $400 from wife in cash to compensate him for the gun and for wife being awarded Roxy. The children were permitted to bring Roxy to husband's home during parenting time, as they also were able to bring any of their personal effects to husband's home during their parenting time. Neither parent were to attempt to influence the children to convince to them to bring or not bring Roxy to husband's home. Less than thirty days after the entry of the decree, husband filed a contempt action alleging that wife had attempted to influence the children about bringing Roxy to parenting time and had supposedly failed to send Roxy to husband's residence with the children. Wife appealed the Decree and the Indiana Court of Appeals reversed. In Indiana, the law is clear that animals are personal property subject to distribution by the trial court. *See Forbar v. Vonderahey*, 771 N.E.2 57, 58 n.1 (Ind. 2002). Because dogs are treated as chattel or personal property in Indiana, it is the property rights of the parties rather than their respective abilities care for the dog or their emotional ties to it, that are determinative. As a consequence, whichever spouse is awarded a dog, will have sole possession to the complete exclusion of the other party. There is no "best interests of the canine" standard in Indiana. To allow full-blown dog custody cases would further burden the courts to the detriment of children. Although the trial court awarded Roxy to wife as her personal property, husband, in essence, attempted to create dog visitation by using the children's decision to bring Roxy with them to husband's

residence during parenting time. The trial court awarded Roxy to wife in the decree and ordered wife to pay husband an equalization payment of $400. If Roxy had been the children's personal property, the dog would not have been included in the marital estate or be subject to division by the trial court, and no equalization payment would have been required. While Roxy might have been considered a member of the family, under Indiana law she was wife's personal property and the children could not be awarded discretionary decision-making authority to transport wife's personal property to husband's residence during parenting time.

12. *C.M. v. J.M.*, 209 N.E.3d 469 (Ind. Ct. App. 2023). Father and mother were married and had one child. In 2018, they divorced. In May 2022, in a court different from the divorce court, mother filed a petition for an order of protection against father on child's behalf. On May 24, 2022, that court granted an *ex parte* order of protection against father. On May 26, 2022, father filed an objection alleging that because the parties' divorce occurred in a different court the divorce court had jurisdiction over the order of protection. The non-divorce court agreed and transferred the order of protection matter to the divorce court. Father then filed in the divorce court a request for hearing and motion to terminate the order of protection. On June 8, 2022, the parties stipulated that Howard Superior Court Judge Douglas Tate would serve as Special Judge in the divorce court. Judge Tate assumed jurisdiction on June 10, 2022, and set a fact-finding hearing for June 23, 2022 "in the Howard Magistrate Court." The Magistrate presided and, at the conclusion of the June 23, 2022, hearing, ruled from the bench terminating the order of protection, allowing father to resume his parenting time, and ordering mother to pay $2,730.00 in attorneys' fees to father's counsel. On that same date, the divorce court also entered an order dismissing the *ex parte* order of protection. On June 28, 2022, the divorce court entered its written order. Mother appealed and the Indiana Court of Appeals affirmed. Mother first contended that the Magistrate did not have "jurisdiction" to preside over the June 23, 2022, hearing. Mother cited Ind. Trial Rule 79(I)(2)(a) relating to special judges, noting that a special judge may appoint a magistrate to address issues. Mother argued that an appointment under Ind. Trial Rule 79 must be made in writing pursuant to Ind. Trial Rule 63(E). The Court of Appeals disagreed, noting that the divorce court stated that the hearing would be "in the Howard Magistrate Court." Mother did not object at trial and waived any claim that the Magistrate did not have jurisdiction over the order of protection hearing. Mother also contended that the divorce court lost all jurisdiction to enter orders after the dismissal of the case. The Court of Appeals again disagreed. The divorce court expressly stated in open court that it dismissed the *ex parte* order of protection, that father's parenting time was to resume, and that mother was to pay $2,730.00 in attorneys' fees to father's counsel. Those errors were merely reduced to writing after the hearing and mother did not show error. Finally, mother contended that, in the context of the order of protection proceeding, the Magistrate had no jurisdiction over parenting time. However, mother filed her petition for order of protection, originally, in the wrong court. It was subsequently transferred to the divorce court, which was the same court with jurisdiction over the divorce, custody, and parenting time. Mother's argument lacked merit.

13. *Haaland v. Brackeen*, 143 S.Ct. 1609 (2023). This rare U.S. Supreme Court case arises from three separate child custody proceedings governed by the Indian Child Welfare Act ("ICWA"). ICWA governs state court adoption and foster care proceedings

involving Indian children. Among other things, ICWA requires placement of an Indian child according to ICWA's hierarchical preferences unless the state court finds "good cause" to depart from them. Petitioners were a birth mother, foster and adoptive parents, and the state of Texas. Several Indian tribes intervened to defend the law alongside the federal parties. Petitioners challenged ICWA as unconstitutional on multiple grounds. The United States District Court granted petitioners' motion for summary judgment on their Constitutional claims, and the United States Court of Appeals for the Fifth Circuit affirmed in part and reversed in part. The Fifth Circuit concluded that ICWA did not exceed Congress's legislative power and that some of ICWA's placement preferences satisfied the guarantee of equal protection. The Fifth Circuit was evenly divided as to whether ICWA's other preferences, those prioritizing "other Indian families" and "Indian foster home[s]" over non-Indian families, unconstitutionally discriminated on the basis of race and thus affirmed the District Court's ruling that those preferences were unconstitutional. The Supreme Court granted *certiorari* and held that the Fifth Circuit's conclusion that ICWA was consistent with Congress' Article I authority was affirmed. The Supreme Court also rejected petitioners' anti-commandeering challenges, which addressed three categories of ICWA provisions. Finally, the Supreme Court did not reach the merits of petitioners' equal protection and non-delegation challenges since no party before the Supreme Court had standing.

14. *In re Adoption of S.L.*, 210 N.E.3d 1280 (Ind. 2023). Father was the biological father of child. Child was removed twelve days after birth and placed with adoptive parents for fourteen months. In May 2015, grandparents petitioned for guardianship, which petition was granted by the trial court the next day. Child resided with grandparents and spent weekends, holidays, and vacations with adoptive parents. By May 2019, child was placed full-time with adoptive parents. In June 2020, adoptive parents petitioned to adopt child and separately moved for temporary custody and to consolidate the adoption and temporary custody cases. Father was not served with the petitions or motions. While father was entitled to notice of the adoption petition (Ind. Code §§ 31-19-2.5-3 and 31-19-9-1), the law required no such notice of temporary custody actions (Ind. Code § 31-19-2-13). The trial court conducted a hearing on the motion for temporary custody with only adoptive parents and grandparents present. On July 8, 2020, the trial court granted adoptive parents temporary custody and determined it was in child's best interest to be placed with adoptive parents while the adoption was pending. More than a year later, father filed an Ind. Trial Rule 60(B)(6) motion to set aside the trial court's order of custody, arguing that the order was void *ab initio* for lack of personal jurisdiction since he did not receive notice. The trial court denied father's motion. In a unanimous unpublished decision, the Indiana Court of Appeals reversed. *P.L. v. M.H. and A.H.*, 194 N.E.2d 654 (Ind. Ct. App. 2022). The Indiana Supreme Court granted transfer and dismissed the appeal. In dismissing, the Supreme Court indicated that an appellate court must have jurisdiction to review a trial court's order and a trial court has a duty to determine whether it has jurisdiction before proceeding to the merits of the case. Ind. Appellate Rule 2(H) defines a final judgment as a judgment that "disposes of all claims as to the parties" or "the trial court in writing expressly determines under Trial Rule 54(B)…there is no reason for delay and writing expressly directs the entry of judgment…." Ind. Appellate Rule 2(H)(2). The trial court in this case consolidated the two cases, thereby creating one case. The petition for adoption was still pending at the time the trial

court entered its preliminary order, thus not disposing of all claims. The trial court's temporary order was not a final judgment. The trial court's order was also not a final judgment because it lacked a key phrase. An order "as to less than all the issues, claims, or parties in an action, may become final only by meeting the requirements of T.R. 54(B)." *Martin v. Amoco Oil Co.*, 696 N.E.2d 383, 385 (Ind. 1998). The trial court's order was an interim order and was not a final judgment.

15. *S.D. v. G.D.*, 211 N.E.3d 494 (Ind. 2023). Mother and father were the divorced parents of a daughter. Mother and child lived in northern Indiana. Father lived in Michigan. The parties were divorced in Michigan, with father granting parenting time with child to be supervised by mother. On December 26, 2021, father exercised supervised parenting time at mother's house with child, who was 2 years old, at the time. During that parenting time, a physical altercation ensued. It began when father informed mother that he was going to take child and leave "because he wasn't going to be 'trapped in the house.'" Mother said "no" and father screamed at her in front of child. After mother repeatedly told child she would not fight with him, father snatched child up by her arm and dug nails into her arm. Child screamed "Mommy" and mother intervened, at which point, father grabbed child "by the ribcage" and tried "to take off with her." Mother then grabbed father's throat to make him release child. Due to mother choking father, he eventually let go of child and mother ran out of the house with child and called the police. Eleven days later, mother filed a petition for an *ex parte* order of protection which was granted. Father then wrote the court a letter objecting to the order of protection, denied mother's allegations, and requested a hearing. The trial court heard evidence at the hearing and entered a two-year protective order, concluding mother had established that "domestic or family violence" occurred and that father "represents a credible threat to the safety" of mother or child. Father appealed and a divided Indiana Court of Appeals reversed. *S.D. v. G.D.*, 195 N.E.3d 406 (Ind. Ct. App. 2022). Mother petitioned for transfer and the Indiana Supreme Court vacated the Court of Appeals opinion and affirmed the trial court. The Supreme Court noted that the Indiana Civil Protection Order Act ("Act") provides Hoosiers in trial courts with a vital tool to remedy and guard against domestic or family violence in their communities. Three years earlier, the Supreme Court recognized that domestic and family violence was "a public-health crisis that harms both the victim and those within the victim's household." *S.H. v. D.W.*, 139 N.E.3d 214, 216 (Ind. 2020). The Supreme Court noted that this crisis in Indiana had unfortunately only intensified. The Act, itself, strikes the balance between requiring the petitioner make specific showings before a trial court can enter a protective order. To justify an order, a petitioner must show by a preponderance of the evidence that the respondent committed an act of domestic or family violence such that the "respondent represents a credible threat to the safety of" the petitioner or a member of the petitioner's household. The Supreme Court found this case to be a close case and echoed Judge Altice's observation in dissent below that "the trial court is the one to make that call." After considering such evidence from mother and father, the trial court entered a protective order against father. The evidence favorable to the trial court's decision supported the findings which, in turn, supported the judgment. The Supreme Court also looked at the definition of "domestic or family violence" and found that, again, the trial court made a credible determination that father committed an act of domestic or family violence. A petitioner seeking a successive protective order may not be able

to show that the respondent proposed an objectively credible threat where relief is sought based solely on circumstances justifying a previous order. However, lapses in time where intervening events do not necessarily render a threat less credible. A one-time perpetual threat, regardless of when it was made, could justify a trial court's credible threat finding. Father's actions were viewed objectively at the time mother sought relief provided the trial court with reasonable grounds to conclude he proposed an objective, credible threat to mother or child's safety. From the evidence, the trial court could have reasonably concluded father posed an objectively credible threat to mother or child's safety when mother sought relief. The Supreme Court declined to re-weigh the evidence and re-assess witness credibility. *See also Counterman v. Colorado*, 143 S.Ct. 2106 (2023) (holding that the First Amendment to the United States Constitution requires proof in a criminal action regarding a true threat the defendant had some subjective understanding of the threatening nature of his statements *and* that recklessness is the appropriate *mens rea* consistent with the First Amendment, for a criminal conviction, for communications constituting a true threat).

16. *In the Matter of L.S.*, 212 N.E.3d 708 (Ind. Ct. App. 2023). On December 21, 2020, L.S. was adjudicated a Child in Need of Services ("CHINS"). L.S. was removed from the home of mother, where L.S. was living at the time, and mother tested positive for both benzodiazepine and THC. During L.S.'s early life, father was itinerant and it was not until December 19, 2021, after his location was determined to be the Vanderburgh County Jail, that he was determined to be L.S.'s biological father. Father was subsequently convicted of and sentenced on eight felonies ranging from bigamy to domestic battery to handgun possession to possession of narcotics. L.S.'s paternal grandmother sought to become involved in the CHINS proceedings, as did L.S.'s foster parents, and the trial court set the matter for a placement hearing. After the hearing, the trial court denied requests for L.S. to be placed with his paternal grandmother and concluded it was in the child's best interest to remain in his foster placement. Father filed a notice of appeal, alleging that the basis for the Indiana Court of Appeals jurisdiction was that he was seeking appeal from a final judgment as defined by Ind. Appellate Rule 2(H) and 9(I). The Indiana Court of Appeals dismissed father's appeal. Ordinarily, and by definition, placement orders by a juvenile court in CHINS proceedings are not final judgments. Placement decisions are necessarily continuing rather than final in nature, which is why they are reviewed every six months. *See* Ind. Code § 31-34-21-2. The Court of Appeals had held at least once previously that it may accept jurisdiction over a CHINS action during its pendency by interlocutory appeal of a placement or custody decision in accordance with Ind. Appellate Rule 14. While some circumstances may favor the availability of an interlocutory appeal for a placement decision, the Court of Appeals was concerned that a blanket rule allowing interlocutory appeals of any and all placement or custody determinations would threaten the principles underlying the Court of Appeals' jurisdictional rules and its deference to family law courts on matters dictated by the delicate balance between the best interests of the child and the Constitutional right of the parents. Expanding appellate jurisdiction to any and all custody or placement decisions made by a CHINS court may invite a deluge of new appeals, each one with the potential to sidestep the interests in judicial economy and expedience upon which both CHINS and jurisdictional jurisprudence are based.

17. *Stout v. Knotts*, 22A-PL-1216, 2023 WL 4752487 (Ind. Ct. App. July 26, 2023). An unmarried couple chose to cohabit. Stouts selected a home in Roachdale, Indiana. The home was then purchased by Knotts for $69,900 and was titled in his name. In July 2019, the parties began to live together. During this time, the parties entered into a "joint venture" wherein they "used their own assets to make improvements and buy supplies and materials, increasing the value" of the home. In addition, Stout paid for utilities, a large part of the renovations, and assisted in completing renovations on the home. At some point in July 2021, Knotts forced Stouts to leave the residence, leaving behind personal property that was jointly purchased. Knotts subsequently sold the house for $149,000, and Stout had "no expected reimbursement from the sale of the house[.]" On November 11, 2021, Stout filed a complaint alleging that she and Knotts had an implied contract to cohabit wherein she would contribute to the rehabilitation and maintenance of the home. Stout alleged that her removal from the home and Knotts's subsequent sale of the home, without her being compensated for her contributions, resulted in Knotts's unjust enrichment. In addition, Stout filed a temporary restraining order seeking to prevent Knotts from spending the money received from the sale of the home before the case was resolved. On November 12, 2021, the trial court granted the temporary restraining order. On November 30, 2021, Knotts filed a request for an extension of time to respond and also filed a motion for change of judge. The motion for change of judge was granted. On December 10, 2021, Stout filed a motion requesting that the trial court order that the proceeds from the sale of the home be held by the Putnam County Clerk while the case was pending. On December 12, 2021, Knotts filed a motion to dismiss pursuant to Ind. Trial Rule 12(B)(6), asserting that Indiana did not recognize palimony, and that since the parties were not married and the home was solely in Knotts's name, Stout had failed to state a claim upon which relief could be granted. In addition, Knotts objected to the temporary restraining order and the transfer of the proceeds to the Putnam County Clerk. On December 15, 2021, before Stout filed any response, the trial court granted Knotts's motion to dismiss. On December 21, 2021, Stout filed a motion to correct error. Stout argued that Indiana recognizes a cause of action brought under implied contract and unjust enrichment, whereas a cohabitant seeks relief based upon contributions made during the period of cohabitation. The next day, again before any response could be filed, the trial court granted Stout's motion, which vacated the December 15, 2021, order dismissing Stout's complaint. On January 4, 2022, Stout filed a second motion requesting an order directing that the funds from the sale of the home be held by the Putnam County Clerk. The trial court entered that order the same day. On January 19, 2022, Knotts filed his motion to correct error. Knotts argued that the trial court should not have granted Stout's motion to correct error before he had an opportunity to respond. On January 20, 2022, Knotts filed a motion requesting that the trial court release the funds for the sale of the home to him. On January 21, 2022, the trial court, again before Stout could file a response, granted Knotts's motion to correct error. On January 26, 2022, Stout filed a response to Knotts's motion to correct error. In an order dated January 27, 2022, again before Knotts filed any response, the trial court entered an order giving Knotts fifteen days from January 21, 2022, to file his response to Stout's motion to correct errors and denying Knotts's request to release the funds from the sale of the house. On March 8, 2022, the trial court held a telephonic pre-trial conference and scheduled a September 22, 2022, trial date. On March 17, 2022, Stout filed a motion requesting that the trial court judge recuse

himself. The trial court took no action and failed to make any ruling on the motion for recusal. On March 17, 2022, Knotts filed a motion asking the trial court to vacate the trial date. Knotts argued that when the trial court granted his motion to correct error on January 21, 2022, it effectively returned the procedural posture of the case to the point where Stout's complaint had been dismissed. On April 8, 2022, the trial court granted Knotts's motion and vacated the trial setting. In addition, the trial court found that Stout's complaint should be dismissed without prejudice. Knotts subsequently filed a motion for release of funds, which the trial court granted on April 13, 2022. On May 2, 2022, Stout filed her motion to correct error, which the trial court denied. Stout appealed and the Indiana Court of Appeals reversed and remanded with instructions. The Court of Appeals agreed that Stout's complaint adequately stated a claim for relief under Indiana law. In Indiana, a party who cohabits with another without subsequent marriage is entitled to relief upon a showing of an express contract or a viable equitable theory, such as implied contract or unjust enrichment. The allegations in Stout's complaint sounded in implied contract and unjust enrichment. Based upon the allegations, Stout had stated a claim upon which relief could be granted. The Court of Appeals made no comment whether Stout would produce sufficient evidence to be successful, but noted the allegations in her complaint were sufficient to warrant remand. As to the motion for recusal, the Court of Appeals reviewed the trial court judge's statements and found that they fell woefully short of the standard of "an objective person, knowledgeable of all of the circumstances, would have a rational basis for doubting the judge's impartiality." The trial court judge clearly expressed disdain, not only for the type of relief Stout was seeking, but for the gender he believed most often sought this type of relief. The Court of Appeals held that an objective person would have a rational basis for doubting the trial court judge's impartiality. On remand, Stout was entitled to a new judge.

C. CHILD SUPPORT

1. *Lyons v. Parker*, 195 N.E.3d 883 (Ind. Ct. App. 2022). Mother and father were the parents of twin girls born in April 2014. After the parties' relationship ended, in 2017 father initiated a paternity action. The trial court ordered joint custody of the twins and equal parenting time. The distance between the parties' homes made this arrangement untenable as the twins reached school age. On August 8, 2019, following a hearing, the trial court granted mother primary physical custody of the twins, which allowed them to attend school in Whiteland, Indiana. Father, who lived in Greencastle, Indiana with his mother, was granted parenting time in accordance with the Indiana Parenting Time Guidelines ("Guidelines") and ordered to pay child support in the amount of $75.00 per week. The twins started kindergarten well behind their peers academically. Father attended the parent-teacher conference with both teachers; mother did not. Father regularly communicated with the twins' teachers and asked what extra work he could do with the twins on weekends to try and help them academically. Mother never communicated with the kindergarten teachers regarding academics. By March 2020, one child was still gravely behind and another child was behind but making some gains. The twins regularly came to school in ill-fitting and dirty clothes and were unbathed and had unkempt hair. In the winter, the twins often lacked socks, hats, and gloves. During the COVID-19 pandemic, there were seven children living in mother's three-bedroom home along with mother

and her boyfriend. Mother also began working from home, and the parties agreed to return to equal parenting time with alternating works. That shared physical custody arrangement lasted approximately five months. In August 2020, the parties returned to the custody arrangement set forth in the 2019 order. The twins went back to in-person school in Whiteland after a few weeks of e-learning at the start of first grade. The twins started first grade "extremely behind" and had "no support" from mother. The teacher described communication from mother as "crickets" and indicated that all contact came from father. As of January 2021, the teacher opined that the twins were "behind due to environment" and not COVID or cognitive delay and that they were at "a point of no return" and unlikely to be ready for second grade. The teacher also expressed concern about the twins' appearance and indicated that she did not believe they were being adequately cared for in mother's home. On February 6, 2020, following the filing of several motions, the parties filed an agreed entry in which they agreed to vacate a contempt hearing and to appoint a Guardian *Ad Litem*. Following a hearing, the trial court issued an order modifying custody. Pursuant to that February 2021 order, father received primary physical custody of the twins, mother and father continued to share legal custody, mother was granted parenting time consistent with the Guidelines, and mother was ordered to pay child support in the amount of $83.00 per week. Mother appealed and another panel of the Indiana Court of Appeals reversed and remanded for a new modification hearing, finding that the trial court had abused its discretion in denying mother's request for a continuance. On February 11, 2022, the new modification hearing took place. The Guardian *Ad Litem* testified and recommended that father have primary physical custody of the twins. On February 24, 2022, the trial court issued an order modifying custody in favor of father. The order was amended, in minor part, the following day. Specifically, the trial court awarded father primary legal and physical custody, with mother to exercise parenting time pursuant to the Guidelines. Mother's mid-week parenting time was to take place in Greencastle. The trial court further ordered mother to pay child support retroactively to February 20, 2021, in the amount of $85.00 per week through July 2021, and thereafter, in the amount of $75.00 per week. Mother appealed and the Court of Appeals affirmed. As to modification of custody, the trial court's findings were amply supported by the record. The trial court's conclusions that there had been a substantial change in circumstances since the 2019 order and that modification was in the girls' best interest were not clearly erroneous. As to child support, the retroactive modification of child support for the approximate five-month period of time between the certification of the prior appellate decision and the current modification order was not an abuse of discretion since father had physical custody of the twins during that time. As to parenting time, the trial court did not abuse its discretion in ordering that mother's midweek parenting time occur in Greencastle.

2. *Carter v. Carter*, 201 N.E.3d 230 (Ind. Ct. App. 2022). In October 2015, mother and father married. In December 2017, daughter was born. The family lived in Miami County, Indiana, and mother initially stayed home with daughter while father worked. When daughter was six-months-old, mother began working part-time. Either maternal grandmother or paternal grandmother took care of daughter while mother and father worked. In August 2019, mother began taking classes to become a registered medical assistant. In November 2019, father learned that mother had become involved in a relationship with Dillon Young ("Young"), who lived in Cincinnati, Ohio. In January 2020, mother filed a petition for dissolution of

marriage. Also in January 2020, father filed a counter-petition for dissolution of marriage as well as a petition requesting a provisional order for custody, parenting time, and child support. In March 2020, father filed a petition asking the trial court to enjoin mother from relocating daughter to Cincinnati. In April 2020, the trial court held a hearing on all motions. Following the hearing, the trial court told mother that it was going to award her provisional custody of daughter, but that it was not going to allow her to relocate daughter to Cincinnati. In addition, the trial court awarded father parenting time consistent with the Indiana Parenting Time Guidelines ("IPTG") and ordered him to pay mother $145.00 per week in child support as soon as mother moved out of the marital residence. Immediately following the hearing, mother told father that she would marry Young, said she would "have a kid with him," and filed a petition to relocate and move out-of-state so that father could not see daughter. The day after the hearing, mother took daughter on a six-day visit to Young's home in Cincinnati. Two weeks after the hearing, the trial court issued a detailed written order granting father's petition to enjoin mother from relocating daughter to Cincinnati. At the end of April 2020, mother and daughter moved into her estranged father's home and mother took a job at a nearby hospital. During Summer 2020, mother maintained her relationship with Young and continued to visit him in Cincinnati during father's weekends with daughter. In July 2020, mother told father that she was taking daughter to Tennessee and that maternal grandmother and mother's sister would also be going on the trip. Father later learned that mother and daughter had met Young in Tennessee. In September 2020, maternal grandfather told mother that she and daughter had to leave his home. In October 2020, the trial court held a hearing on the petition for dissolution of marriage. Mother and father had already agreed to share joint legal custody of daughter and reached an agreement on dividing property. At the end of the hearing, the trial court asked both parties to submit proposed dissolution decrees by December 8, 2020. On December 7, 2020, father filed a petition asking the trial court to reopen the evidence, alleging that in November 2020, following the dissolution hearing, mother had reinitiated her relationship with Young and had threatened father she would enroll in the military so she could move away with daughter from father and the parties' families in an effort to circumvent the trial court's existing order and to prevent father from seeing daughter. Mother objected. In April and August 2021, the trial court held a hearing on father's petition to reopen the evidence. In October 2021, the trial court issued a detailed order which granted father's motion to reopen the evidence. The trial court also applied each of the child custody statutory factors set forth in Ind. Code § 31-17-2-8 and concluded that mother had "consistently demonstrated that [daughter's] care and well being [was] not her primary focus." Based on its analysis of the statutory factors, the trial court awarded father primary physical custody of daughter. The trial court further awarded mother parenting time with daughter, consistent with the IPTG and ordered that mother was not to remove daughter from Indiana without father's permission. Based on figures submitted to the trial court, father's recommended child support obligation was $20.00 per week and mother did not have a recommended child support obligation because the $161.41 adjustment to her child support obligation exceeded her $141.91 obligation. The trial court ordered mother to pay father $20.00 per week in child support. Mother appealed and the Indiana Court of Appeals affirmed in part, reversed in part, and remanded with instructions. The Court of Appeals found that mother had waived appellate review of the trial court's reopening of the evidence and that mother had

failed to either allege or show how the additional evidence prejudiced her substantial rights. The additional evidence revealed that mother's behavior had continued to escalate to the point where she physically attacked father and included paternal grandparents in the conflict. The trial court did not abuse its discretion in granting father's motion to reopen the evidence after the conclusion of the final hearing. The trial court also did not abuse its discretion when it awarded primary physical custody of daughter to father. The trial court properly considered the statutory factors in Ind. Code § 31-17-2-8 and found that, mother could not provide a stable home for daughter while father was able to provide daughter with stable housing in the marital residence. As to child support, the trial court did abuse its discretion when it ordered mother to pay $20.00 per week in child support. The trial court used mother's child support obligation worksheet. Neither party argued that the worksheet was inaccurate. Mother argued that she had no recommended child support obligation because her adjustments exceeded her obligation. The Court of Appeals looked to *Grant v. Hager*, 853 N.E.2d 167 (Ind. Ct. App. 2006) *trans granted, vacated in part on other grounds*, 868 N.E.2d 801 (Ind. 2007) in recognizing that the "negative" child support calculated on mother's worksheet led to the trial court's abuse of discretion when it ordered mother to pay father $20.00 per week in child support. The Court of Appeals reversed and remanded with instructions for the trial court to enter an order that mother was not required to pay child support because the adjustments to her child support obligation exceeded her obligation.

3. *Wilson v. Wilson*, 205 N.E.3d 238 (Ind. Ct. App. 2023). In 2001, the parties married. In 2002, child was born. On July 6, 2021, mother filed a petition for dissolution of marriage. On July 28, 2022, the trial court held a final hearing. Mother testified that child had special needs and received about $840.00 monthly in Social Security Disability. She also testified that child was on Medicaid, which paid most of her medical bills. Mother also testified child used her Social Security Disability benefit every month and that amount did not go very far. Mother introduced a proposed Child Support Obligation Worksheet, which included a recommended child support obligation to be paid by father of $262.00 per week. Mother further testified that the source of the funds in the parties' joint Ameritrade account was a settlement father received following the loss of his leg due to a motorcycle accident. Mother testified that the account balance had declined because father had dissipated marital assets by spending money on another woman. Mother requested 60% of the marital estate. Father testified that he carried the financial burden for the family and that he believed that child's Social Security income was sufficient to meet her needs moving forward. Father also testified that he used funds in the Ameritrade account to sustain the parties' lifestyle such as house payments during his time of unemployment, but that "the long-term goal is to have those funds available for medical care." On August 4, 2022, the trial court entered a decree of dissolution of marriage. The trial court divided the marital estate 54% to mother and 46% to father, giving mother $50,540.00 more than father. The trial court ordered that mother would continue to receive and be responsible for child's Social Security income and have the authority to handle all banking and monetary transactions necessary for the care of child. The trial court ordered father to pay $262.00 per week in child support. Father appealed and the Indiana Court of Appeals reversed and remanded. As to property division, the Court of Appeals determined that, while the evidence might support an unequal division of property, the decree was devoid of any reason or

explanation for its deviation from the presumptive equal division of the parties' marital estate. The trial court did not enter findings addressing the factors in Ind. Code § 31-15-7-5. The Court of Appeals remanded to the trial court to either follow the statutory presumption and set forth its rationale from deviating from the presumption that an equal division of the parties' marital estate was just and reasonable. The Court of Appeals instructed that the trial court's findings on remand should include its reasons for its treatment of the personal injury settlement funds remaining in the Ameritrade account. As to child support, father argued that the trial court erred when it did not consider child's Social Security Disability payments in calculating his child support obligation. Father argued that the Indiana Child Support Guidelines provide that Social Security Disability income based on a parent's disability is included in the parent's income in calculating child support. Mother argued that the trial court ordered that she continue to receive child's Social Security Disability income did take the benefit into consideration. She further argued that child's benefit was not based on a parent's disability, but on child's own decreased earning capacity. The Indiana Child Support Guidelines contain statements which appear to relate primarily to Social Security payments based upon the disability of a parent. Mother's proposed Child Support Obligation Worksheet included amounts for weekly gross incomes of the parties, but it did not include any adjustments. The trial court heard testimony regarding amounts spent on behalf of child. In light of the record, the Court of Appeals remanded for the trial court to determine and make findings as to whether child's overall financial needs were satisfied in full or in part by the Social Security benefit she received and for entry of father's child support obligation which, if appropriate, would include an adjustment for the income child receives in Social Security benefits.

D. SPOUSAL MAINTENANCE

1. *In re Guardianship of Weber*, 201 N.E.3d 220 (Ind. Ct. App. 2022). This non-divorce case involves other concepts of spousal maintenance. In 1965, the Webers married. In 2018, husband began exhibiting poor mental health, including hoarding, paranoia, aggression, and memory loss. In February 2019, husband underwent a psychiatric examination and was diagnosed with dementia, bi-polar disorder, anxiety, and post-traumatic stress disorder. In May 2019, husband was institutionalized in a nursing-care facility and wife moved for temporary guardianship. In August 2019, wife petitioned for spousal support in the guardianship case under Ind. Code § 31-16-14-1. The parties entered into an agreement that wife should receive $3,800.00 per month from husband in spousal support. On August 9, 2019, the trial court entered an order granting wife $3,800.00 per month in spousal support, finding husband was incapacitated and "exceptional circumstances" existed requiring support. The Indiana Family and Social Services Administration ("FSSA") moved to intervene, which the trial court granted. FSSA also moved for relief from judgment under Ind. Trial Rule 60(B), which the trial court denied. FSSA appealed, arguing the trial court, in denying its motion for relief from judgment. Wife cross-appealed, arguing the trial court erred in granting FSSA's motion to intervene. The Indiana Court of Appeals affirmed in part, and reversed and remanded in part. As to intervention, the Court of Appeals found that the trial court did not abuse its discretion in granting FSSA's motion to intervene post-judgment in order to protect its interests under Federal law, court-ordered spousal support awards. *See* 42 U.S.C. § 1396(r-5)(d)(5). As

for motion for relief from judgment under Ind. Trial Rule 60(B), the Court of Appeals noted that FSSA had a meritorious claim or defense because the trial court's spousal support order was contrary to law. The trial court granted wife spousal support based on Ind. Code § 31-16-14-1(a)(3), which required the other spouse to become incapacitated or neglect to provide support for a dependent spouse or dependent children because of a being a habitual drunkard. There was no allegation that husband was a habitual drunkard and wife's argument under Ind. Code § 12-15-2-25 regarding Medicaid was misplaced. The trial court's order granting wife spousal support was erroneous, and FSSA had shown a meritorious claim or defense. FSSA also sought equitable relief. FSSA had shown extraordinary circumstances warranting relief. Despite the outcome of the appeal, the Court of Appeals noted that wife still had a remedy available to her because she was not entitled to seek a community spouse allowance pursuant to Ind. Code § 12-15-2-25 until husband applied for and was found eligible for Medicaid. That remedy was available to wife and husband, despite FSSA's admitted failure to adopt rules "setting forth the manner in which the office will determine the existence of exceptional circumstances resulting in significant financial duress" as required under Ind. Code § 12-15-2-25(d). The Court of Appeals added that, should husband and wife be dissatisfied with FSSA's determination of the amount of the community spousal monthly income allowance, they might have a due process claim on appeal of that decision since FSSA had no written standards at all regarding what it considered in determining the existence of exceptional circumstances resulting in significant financial duress.

E. CUSTODY/PARENTING TIME

1. *In re Paternity of E.P.*, 194 N.E.3d 160 (Ind. Ct. App. 2022). Prior to child's birth, mother obtained a protective order against father based on allegations that he had been physically and verbally aggressive with mother and mother's other children. After obtaining the protective order, mother relocated to Lake County, Indiana, but continued her relationship with father. On June 28, 2019, child was born to mother and father. Father executed a paternity affidavit for child. Until September 2019, father traveled to Lake County, Indiana on the weekends to visit with child. At that point, mother and father had a verbal altercation involving mother's then-current boyfriend. Thereafter, mother and father were unable to agree on a time and place for father to exercise parenting time with child. Father expressed fear of coming to mother's home or even entering Lake County, Indiana, for parenting time because of the protective order and mother's feeling that father was using the parenting time arrangements to harass her. On December 5, 2019, father filed a petition to establish parenting time and joint legal custody. On March 25, 2020, the trial court held the first of six hearings on father's petition. The scope of the hearings expanded to the issue of physical custody. On March 26, 2020, the trial court entered an interim order that father was to have video calls with child every other day during the week for two hours. On July 30, 2020, mother filed an emergency petition for supervised parenting time and for child support. On August 11, 2020, the trial court held a hearing on father's and mother's petition. Father felt that mother's then-husband was taunting him during the sessions and that mother had muted the sound at times so child could not hear him. Mother accused father of using the video calls to make inappropriate comments aimed at her, and she felt that father had made a racist comment toward mother's boyfriend and unfairly demanded that she keep child away. Both parents testified that their

communication continued to be poor. By that time, father had a pending charge of invasion of privacy in Lake County, Indiana for violating the protective order. Mother confirmed that father had promised to "tak[e] [her] down[.]" On August 27, 2020, mother filed a motion for appointment of a Guardian *Ad Litem* ("GAL"), which father opposed. Mother, father, and the GAL agreed that the parties could benefit from a parenting time coordinator, although cost was a concern. On August 2, 2021, the trial court entered its order awarding mother and father joint physical and legal custody of child. The trial court found that mother had mischaracterized father as short-tempered and mentally unstable, that mother had a history of unstable relationships, that mother's relocation had negatively impacted father's relationship with child, and that mother had engaged in efforts to thwart father's parenting time. On September 1, 2021, mother filed a motion to correct error which the trial court denied on December 10, 2021. Mother appealed and the Indiana Court of Appeals reversed and remanded with instructions. Mother argued that the trial court erred when it failed to enter adequate findings to support its award of joint legal custody. Ind. Code § 31-9-2-67 defines joint legal custody. In a paternity action, a trial court may make an award of joint legal custody when it determines that it would be in a child's best interest. *See* Ind. Code § 31-14-13-2.3(a). It is of primary, but not determinative, importance that the persons awarded joint legal custody agree to that arrangement. *See* Ind. Code § 31-14-13-2.3(c). A trial court is required to consider all relevant factors, but is not required to make specific findings. In this case, the trial court entered findings of fact and conclusions thereon but did not enter a specific finding that joint legal custody was in child's best interest or findings as to each factor enumerated in the joint custody of statute. Because neither mother nor father requested specific findings, there was no error. Mother also challenged the substance of the trial court's joint legal custody determination. Despite evidence of the parties' inability to communicate and cooperate to advance child's interests and the trial court's findings, the trial court entered an award of joint legal custody. Given the importance of that factor to a determination of joint legal custody, the Court of Appeals concluded that the trial court's findings did not support the judgement in this case. Rather it appeared that the trial court attempted the very "cutting [of] the baby in half" which is inappropriate when parents cannot work together. *See Rasheed v. Rasheed*, 142 N.E.3d 1017 (Ind. Ct. App. 2020). The Court of Appeals remanded for the trial court to enter an award of sole legal custody for either father or mother and clarified that the trial court was not required to accept additional evidence and that it could make its decision based on the record already developed through the six evidentiary hearings held in this case. Judge Tavitas concurred, but wrote separately to emphasis the need for clear findings in these types of cases. The trial court entered *sua sponte* findings of fact and conclusions thereon but did not enter findings regarding the child's best interests, the statutes it applied, or the factors it considered in awarding joint legal custody. Abbreviated findings, although permissible, make review of the trial court's order more difficult. A better practice would be to cite the applicable statutes and make findings regarding a child's best interests and the relevant factors.

2. *Lyons v. Parker*, 195 N.E.3d 883 (Ind. Ct. App. 2022). Mother and father were the parents of twin girls born in April 2014. After the parties' relationship ended, in 2017 father initiated a paternity action. The trial court ordered joint custody of the twins and equal parenting time. The distance between the parties' homes made this arrangement untenable as the

twins reached school age. On August 8, 2019, following a hearing, the trial court granted mother primary physical custody of the twins, which allowed them to attend school in Whiteland, Indiana. Father, who lived in Greencastle, Indiana with his mother, was granted parenting time in accordance with the Indiana Parenting Time Guidelines ("Guidelines") and ordered to pay child support in the amount of $75.00 per week. The twins started kindergarten well behind their peers academically. Father attended the parent-teacher conference with both teachers; mother did not. Father regularly communicated with the twins' teachers and asked what extra work he could do with the twins on weekends to try and help them academically. Mother never communicated with the kindergarten teachers regarding academics. By March 2020, one child was still gravely behind and another child was behind but making some gains. The twins regularly came to school in ill-fitting and dirty clothes and were unbathed and had unkempt hair. In the winter, the twins often lacked socks, hats, and gloves. During the COVID-19 pandemic, there were seven children living in mother's three-bedroom home along with mother and her boyfriend. Mother also began working from home, and the parties agreed to return to equal parenting time with alternating works. That shared physical custody arrangement lasted approximately five months. In August 2020, the parties returned to the custody arrangement set forth in the 2019 order. The twins went back to in-person school in Whiteland after a few weeks of e-learning at the start of first grade. The twins started first grade "extremely behind" and had "no support" from mother. The teacher described communication from mother as "crickets" and indicated that all contact came from father. As of January 2021, the teacher opined that the twins were "behind due to environment" and not COVID or cognitive delay and that they were at "a point of no return" and unlikely to be ready for second grade. The teacher also expressed concern about the twins' appearance and indicated that she did not believe they were being adequately cared for in mother's home. On February 6, 2020, following the filing of several motions, the parties filed an agreed entry in which they agreed to vacate a contempt hearing and to appoint a Guardian Ad Litem. Following a hearing, the trial court issued an order modifying custody. Pursuant to that February 2021 order, father received primary physical custody of the twins, mother and father continued to share legal custody, mother was granted parenting time consistent with the Guidelines, and mother was ordered to pay child support in the amount of $83.00 per week. Mother appealed and another panel of the Indiana Court of Appeals reversed and remanded for a new modification hearing, finding that the trial court had abused its discretion in denying mother's request for a continuance. On February 11, 2022, the new modification hearing took place. The Guardian Ad Litem testified and recommended that father have primary physical custody of the twins. On February 24, 2022, the trial court issued an order modifying custody in favor of father. The order was amended, in minor part, the following day. Specifically, the trial court awarded father primary legal and physical custody, with mother to exercise parenting time pursuant to the Guidelines. Mother's mid-week parenting time was to take place in Greencastle. The trial court further ordered mother to pay child support retroactively to February 20, 2021, in the amount of $85.00 per week through July 2021, and thereafter, in the amount of $75.00 per week. Mother appealed and the Court of Appeals affirmed. As to modification of custody, the trial court's findings were amply supported by the record. The trial court's conclusions that there had been a substantial change in circumstances since the 2019 order and that modification was in the girls' best interest were not clearly

erroneous. As to child support, the retroactive modification of child support for the approximate five-month period of time between the certification of the prior appellate decision and the current modification order was not an abuse of discretion since father had physical custody of the twins during that time. As to parenting time, the trial court did not abuse its discretion in ordering that mother's midweek parenting time occur in Greencastle.

3. *In re Paternity of A.R.S.*, 198 N.E.3d 423 (Ind. Ct. App. 2022). In June 2012, child was born. In 2013, father established paternity. In 2016, the trial court granted father primary physical custody of child and granted the parties joint legal custody. Mother was granted parenting time pursuant to the Indiana Parenting Time Guidelines. In October 2021, child told a friend at school that she had been molested. The Indiana Department of Child Services ("DCS") investigated, and child reported that her 11-year-old cousin had been having sexual contact with her, including sexual intercourse, at the grandparents' home. During the DCS interview, child failed to repeat her allegations of sexual abuse. Mother still believed child's initial claims of being molested. Child began to have suicidal thoughts and ideations and wrote in her journal her desire to kill herself. On October 19, 2021, child again reported to a teacher at school that her cousin had sexually abused her and DCS scheduled another forensic interview. The subsequent DCS report noted that father was upset by the molestation allegations and that he had made inconsistent statements about whether he planned to keep daughter away from her cousin. Per DCS's request, mother arranged for child to attend counseling. DCS also referred the family to Ireland Homebased Services. The counselor at that facility recommended that child have a means of contacting both parents at all times. Accordingly, mother obtained a cell phone for child. Father did not agree with providing child with a cell phone, but the counselor told mother that she did not need father's permission to give the phone to child. While in father's care, child began to have issues at school, child disclosed to her friends that she had been sexually abused. Some of her friends then told their parents, who, inexplicably informed their children to avoid child. As a result, child was isolated and bullied at school and often would not go outside at recess. On October 22, 2021, mother filed a petition to modify custody, parenting time, and child support. At the modification hearing, father testified that he had difficulty "processing" child's allegations because of how close his family was. Father also testified that he had trouble believing that the allegations occurred, but that there may have been "consensual" activity between child and her cousin. Father also expressed doubts about whether the molestation began when child was four years old. At the conclusion of the evidence, the trial court stated from the bench that it would keep the current joint legal custody, with mother being the primary decisionmaker in the event of a dispute. The trial court also indicated that father would have Indiana Parenting Time Guidelines with overnights every other weekend and half the summer and that molestation should not be discussed. The next day, the Chronological Case Summary indicated that father's parenting time would be without overnight visits. Subsequently, the trial court, after mother's counsel did not submit a proposed order as directed, corrected the record that father would have overnight parenting time. Father appealed and the Indiana Court of Appeals affirmed. As for primary physical custody, neither party requested specific findings and conclusions, pursuant to Ind. Trial Rule 52(A). Ample evidence was presented from which the trial court could reasonably conclude that there had been substantial changes in one of the factors set forth in Ind. Code § 31-14-13-2. The Court of Appeals declined what effectively was

little more than a request to reweigh the evidence filed by father. As to legal custody, the trial court ordered joint legal custody with mother being the final decisionmaker in areas of disagreement. The Court of Appeals noted that this unusual arrangement was not truly an award of joint legal custody, but that, had the trial court awarded mother sole legal custody of child, father would have no authority or responsibility for daughter's upbringing. Under the trial court's order, father had such authority and responsibility with mother having the final say in the event of a dispute. Although this was not truly joint legal custody, father made no argument that the trial court was without authority to modify legal custody in that manner. The trial court did not err by granting mother final decision-making authority when it came to child's upbringing.

4. *Carter v. Carter*, 201 N.E.3d 230 (Ind. Ct. App. 2022). In October 2015, mother and father married. In December 2017, daughter was born. The family lived in Miami County, Indiana, and mother initially stayed home with daughter while father worked. When daughter was six-months-old, mother began working part-time. Either maternal grandmother or paternal grandmother took care of daughter while mother and father worked. In August 2019, mother began taking classes to become a registered medical assistant. In November 2019, father learned that mother had become involved in a relationship with Dillon Young ("Young"), who lived in Cincinnati, Ohio. In January 2020, mother filed a petition for dissolution of marriage. Also in January 2020, father filed a counter-petition for dissolution of marriage as well as a petition requesting a provisional order for custody, parenting time, and child support. In March 2020, father filed a petition asking the trial court to enjoin mother from relocating daughter to Cincinnati. In April 2020, the trial court held a hearing on all motions. Following the hearing, the trial court told mother that it was going to award her provisional custody of daughter, but that it was not going to allow her to relocate daughter to Cincinnati. In addition, the trial court awarded father parenting time consistent with the Indiana Parenting Time Guidelines ("IPTG") and ordered him to pay mother $145.00 per week in child support as soon as mother moved out of the marital residence. Immediately following the hearing, mother told father that she would marry Young, said she would "have a kid with him," and filed a petition to relocate and move out-of-state so that father could not see daughter. The day after the hearing, mother took daughter on a six-day visit to Young's home in Cincinnati. Two weeks after the hearing, the trial court issued a detailed written order granting father's petition to enjoin mother from relocating daughter to Cincinnati. At the end of April 2020, mother and daughter moved into her estranged father's home and mother took a job at a nearby hospital. During Summer 2020, mother maintained her relationship with Young and continued to visit him in Cincinnati during father's weekends with daughter. In July 2020, mother told father that she was taking daughter to Tennessee and that maternal grandmother and mother's sister would also be going on the trip. Father later learned that mother and daughter had met Young in Tennessee. In September 2020, maternal grandfather told mother that she and daughter had to leave his home. In October 2020, the trial court held a hearing on the petition for dissolution of marriage. Mother and father had already agreed to share joint legal custody of daughter and reached an agreement on dividing property. At the end of the hearing, the trial court asked both parties to submit proposed dissolution decrees by December 8, 2020. On December 7, 2020, father filed a petition asking the trial court to reopen the evidence, alleging that in November 2020, following the dissolution hearing, mother had reinitiated her relationship

with Young and had threatened father she would enroll in the military so she could move away with daughter from father and the parties' families in an effort to circumvent the trial court's existing order and to prevent father from seeing daughter. Mother objected. In April and August 2021, the trial court held a hearing on father's petition to reopen the evidence. In October 2021, the trial court issued a detailed order which granted father's motion to reopen the evidence. The trial court also applied each of the child custody statutory factors set forth in Ind. Code § 31-17-2-8 and concluded that mother had "consistently demonstrated that [daughter's] care and well being [was] not her primary focus." Based on its analysis of the statutory factors, the trial court awarded father primary physical custody of daughter. The trial court further awarded mother parenting time with daughter, consistent with the IPTG and ordered that mother was not to remove daughter from Indiana without father's permission. Based on figures submitted to the trial court, father's recommended child support obligation was $20.00 per week and mother did not have a recommended child support obligation because the $161.41 adjustment to her child support obligation exceeded her $141.91 obligation. The trial court ordered mother to pay father $20.00 per week in child support. Mother appealed and the Indiana Court of Appeals affirmed in part, reversed in part, and remanded with instructions. The Court of Appeals found that mother had waived appellate review of the trial court's reopening of the evidence and that mother had failed to either allege or show how the additional evidence prejudiced her substantial rights. The additional evidence revealed that mother's behavior had continued to escalate to the point where she physically attacked father and included paternal grandparents in the conflict. The trial court did not abuse its discretion in granting father's motion to reopen the evidence after the conclusion of the final hearing. The trial court also did not abuse its discretion when it awarded primary physical custody of daughter to father. The trial court properly considered the statutory factors in Ind. Code § 31-17-2-8 and found that, mother could not provide a stable home for daughter while father was able to provide daughter with stable housing in the marital residence. As to child support, the trial court did abuse its discretion when it ordered mother to pay $20.00 per week in child support. The trial court used mother's child support obligation worksheet. Neither party argued that the worksheet was inaccurate. Mother argued that she had no recommended child support obligation because her adjustments exceeded her obligation. The Court of Appeals looked to *Grant v. Hager*, 853 N.E.2d 167 (Ind. Ct. App. 2006) *trans granted, vacated in part on other grounds*, 868 N.E.2d 801 (Ind. 2007) in recognizing that the "negative" child support calculated on mother's worksheet led to the trial court's abuse of discretion when it ordered mother to pay father $20.00 per week in child support. The Court of Appeals reversed and remanded with instructions for the trial court to enter an order that mother was not required to pay child support because the adjustments to her child support obligation exceeded her obligation.

5. *Easterday v. Everhart*, 201 N.E.3d 264 (Ind. Ct. App. 2023). On August 25, 2010, child was born. On July 10, 2012, mother filed for divorce. On September 18, 2012, the trial court approved the parties' settlement agreement and entered a decree of dissolution of marriage. Pursuant to their settlement agreement, father and mother shared joint legal custody, mother had primary physical custody, and father had parenting time on Wednesday evenings and every other weekend. At the time, father lived in Greenwood, Indiana and mother lived in Brownstown, Indiana. On March 17, 2014, the parties modified their settlement agreement so

that parenting changes would occur just south of Columbus, Indiana. On April 24, 2019, mother filed a petition to modify parenting time. At father's request, the trial court appointed a Guardian *Ad Litem* ("GAL"). In due time the GAL filed a report that recommended that parenting time stay the same. On October 3, 2019, the trial court stayed the proceedings. On March 21, 2022, mother filed a new petition to modify parenting time. At that time, mother still lived in Brownstown, Indiana, but father had moved to Indianapolis, Indiana. Mother requested that the pickups and drop-offs be in a Jackson County, Indiana location. Additionally, mother asserted a substantial change in circumstances justifying a modification of all parenting time. On April 5, 2022, father filed a new request for a GAL that the trial court denied the next day. On May 19, 2022, the trial court held a hearing on mother's petition to modify parenting time. Mother testified she and her family, including child, changed churches. Since changing churches, child stopped painting her nails and wore only long skirts. Father presented a different view regarding child's religious upbringing. Father testified that he was agnostic but denied telling child that "there wasn't a God." Mother admitted child was baptized without her informing father until after the baptism had occurred. Mother testified she wanted the trial court to modify parenting time to eliminate father's ability to question child's religion and his attempts to try to talk child into believing that there was no God. On May 27, 2022, the trial court conducted an in-camera interview with child. On June 2, 2022, the trial court entered its order that, among other things, determined that Wednesday mid-week parenting time put an unreasonable burden on child for spending 3 ½ hours in a car and that there had been a change in circumstances relating to legal custody. The trial court found that child was allowed to pursue and express her faith, that mother should have sole legal custody of child as well as primary physical custody, and that father should not discuss religion with child. Father appealed and the Indiana Court of Appeals reversed in part. As to the legal custody modification, the Court of Appeals noted that the trial court's modification of legal custody in favor of mother was based entirely on religion. The Court of Appeals cited *Johnson v. Nation*, 615 N.E.2d 141 (Ind. Ct. App. 1993), which held that a trial court erred when it granted mother sole custody based on father's increased involvement in religion. Accordingly, the trial court erred when it awarded mother sole legal custody. Father also argued that the trial court's order prohibiting him from discussing religion with child violated his First Amendment right to free speech. The Court of Appeals analyzed the situation and agreed that the trial court's order totally prohibiting father from discussing religion with child violated his right to free speech under the First Amendment. *See Matter of A.C.*, 198 N.E.3d 1 (Ind. Ct. App. 2022).

6. *Ivankovic v. Ivankovic*, 205 N.E.3d 1061 (Ind. Ct. App. 2023). On August 5, 2006, husband and wife married. The parties had three children. The parties also had a three-year-old Lilac Boston Terrier named Roxy. On January 4, 2022, husband filed a petition for dissolution of marriage. After three mediation sessions, the parties entered into a Partial Mediation Agreement. The two major issues that remained unresolved were the ownership of Roxy and the ownership of a certain firearm. On November 9, 2022, the trial court conducted a hearing on the outstanding issues. On November 18, 2023, the trial court entered a Decree of Dissolution of Marriage, providing, among other things, that husband was awarded $400 from wife in cash to compensate him for the gun and for wife being awarded Roxy. The children were permitted to bring Roxy to husband's home during parenting time, as they also were able to

bring any of their personal effects to husband's home during their parenting time. Neither parent were to attempt to influence the children to convince to them to bring or not bring Roxy to husband's home. Less than thirty days after the entry of the decree, husband filed a contempt action alleging that wife had attempted to influence the children about bringing Roxy to parenting time and had supposedly failed to send Roxy to husband's residence with the children. Wife appealed the Decree and the Indiana Court of Appeals reversed. In Indiana, the law is clear that animals are personal property subject to distribution by the trial court. *See Forbar v. Vonderahey*, 771 N.E.2d 57, 58 n.1 (Ind. 2002). Because dogs are treated as chattel or personal property in Indiana, it is the property rights of the parties rather than their respective abilities care for the dog or their emotional ties to it, that are determinative. As a consequence, whichever spouse is awarded a dog, will have sole possession to the complete exclusion of the other party. There is no "best interests of the canine" standard in Indiana. To allow full-blown dog custody cases would further burden the courts to the detriment of children. Although the trial court awarded Roxy to wife as her personal property, husband, in essence, attempted to create dog visitation by using the children's decision to bring Roxy with them to husband's residence during parenting time. The trial court awarded Roxy to wife in the decree and ordered wife to pay husband an equalization payment of $400. If Roxy had been the children's personal property, the dog would not have been included in the marital estate or be subject to division by the trial court, and no equalization payment would have been required. While Roxy might have been considered a member of the family, under Indiana law she was wife's personal property and the children could not be awarded discretionary decision-making authority to transport wife's personal property to husband's residence during parenting time.

7. *Randolph v. Randolph*, 210 N.E.3d 890 (Ind. Ct. App. 2023). In October 2003, father and mother married. In January 2006, their daughter was born. Mother also had two older children from a previous relationship. In February 2021, the parties separated and father filed a petition for dissolution of marriage. Prior to the parties' marriage, father and mother each owned a residence. The parties sold both residences and purchased a residence in Fort Wayne, Indiana. Prior to the parties' marriage, father, a mechanical engineer, worked at Navistar and had a 401(k) account which father estimated was valued at $85,000 at the time of the marriage. Father stopped making contributions to the account shortly before the marriage. At the time of the petition for dissolution of marriage, father's 401(k) account was valued at $248,854.72. In 2011, father's employment with Navistar ended and he began doing contract work. In approximately 2015, father's employment often was out of town and he returned on weekends. At the beginning of the parties' marriage, mother had student loans of approximately $33,000. Mother was a nurse and worked in a doctor's office until their daughter was born. Mother stayed home to care for all of her children until the parties' child was 8 years old. Mother then worked as a surgical nurse in a hospital. Approximately 5 or 6 years ago, mother began working as a school nurse. In April 2021, the trial court entered provisional orders that provided, in part, for joint legal custody of the parties' daughter, with mother having primary physical custody and father having parenting time, pursuant to the Indiana Parenting Time Guidelines with adjustment for work schedule. The trial court eventually appointed a Guardian *Ad Litem* who believed that father and the parties' daughter had "very different" personalities which "clash." In April 2022, the trial court held a final hearing. Father requested 71% of the

marital estate and mother requested 60% of the marital estate. The trial court conducted an *in camera* interview with the parties' daughter. The trial court then entered findings of fact and conclusions of law awarding the parties joint legal custody of their daughter, with mother having primary physical custody. Father objected to the Guardian *Ad Litem*'s recommendation that father's parenting time be a Saturday overnight every other weekend and a midweek evening visit without an overnight as an improper "restriction" on his parenting time, since this was less than the Indiana Parenting Time Guidelines. Regarding the parties' marital estate, the trial court included father's entire Navistar 401(k) account in the marital estate and divided the marital estate 60% to mother and 40% to father. Father appealed and the Indiana Court of Appeals affirmed. As to parenting time, the Court of Appeals rejected father's argument that the trial court abused its discretion by "restricting" his parenting time with the parties' daughter. Father relied upon Ind. Code § 31-17-4-2, which applies to the modification of parenting time, as opposed to an initial determination of parenting time. Ind. Code § 31-17-4-1 applies initial parenting time determinations and provides that a non-custodial parent is entitled to "reasonable parenting time rights." The Court of Appeals rejected father's argument that any deviation of parenting time below that recommended by the Indiana Parenting Time Guidelines was a "restriction" requiring a finding that parenting time would endanger a child's physical health or significantly impair a child's emotional development. The Court of Appeals noted that it addressed a similar issue in *In Re Paternity of J.K.*, 184 N.E.3d 658 (Ind. Ct. App. 2022) and concluded that parenting time less than that prescribed by the Parenting Time Guidelines was reasonable. The trial court was required to, and properly provided, an explanation of its deviation by noting that the parties' daughter was "experiencing anxiety, nausea, and vomiting, associated with parenting time" with father. As to the parties' marital estate, all assets and liabilities of both parties is required to be included in the marital pot. Accordingly, the trial court did not abuse its discretion by including father's Navistar 401(k) account as a marital asset, as it was required to consider all property obtained prior to the filing of the petition for dissolution of marriage. The trial court also did not abuse its discretion in awarding mother 60% of the marital estate. The Court of Appeals also rejected mother's request for appellate attorneys' fees.

F. ADOPTION/PATERNITY

1. *In re Paternity of A.R.S.*, 198 N.E.3d 423 (Ind. Ct. App. 2022). In June 2012, child was born. In 2013, father established paternity. In 2016, the trial court granted father primary physical custody of child and granted the parties joint legal custody. Mother was granted parenting time pursuant to the Indiana Parenting Time Guidelines. In October 2021, child told a friend at school that she had been molested. The Indiana Department of Child Services ("DCS") investigated, and child reported that her 11-year-old cousin had been having sexual contact with her, including sexual intercourse, at the grandparents' home. During the DCS interview, child failed to repeat her allegations of sexual abuse. Mother still believed child's initial claims of being molested. Child began to have suicidal thoughts and ideations and wrote in her journal her desire to kill herself. On October 19, 2021, child again reported to a teacher at school that her cousin had sexually abused her and DCS scheduled another forensic interview. The subsequent DCS report noted that father was upset by the molestation allegations and that he had made inconsistent statements about whether he planned to keep daughter away

from her cousin. Per DCS's request, mother arranged for child to attend counseling. DCS also referred the family to Ireland Homebased Services. The counselor at that facility recommended that child have a means of contacting both parents at all times. Accordingly, mother obtained a cell phone for child. Father did not agree with providing child with a cell phone, but the counselor told mother that she did not need father's permission to give the phone to child. While in father's care, child began to have issues at school, child disclosed to her friends that she had been sexually abused. Some of her friends then told their parents, who, inexplicably informed their children to avoid child. As a result, child was isolated and bullied at school and often would not go outside at recess. On October 22, 2021, mother filed a petition to modify custody, parenting time, and child support. At the modification hearing, father testified that he had difficulty "processing" child's allegations because of how close his family was. Father also testified that he had trouble believing that the allegations occurred, but that there may have been "consensual" activity between child and her cousin. Father also expressed doubts about whether the molestation began when child was four years old. At the conclusion of the evidence, the trial court stated from the bench that it would keep the current joint legal custody, with mother being the primary decisionmaker in the event of a dispute. The trial court also indicated that father would have Indiana Parenting Time Guidelines with overnights every other weekend and half the summer and that molestation should not be discussed. The next day, the Chronological Case Summary indicated that father's parenting time would be without overnight visits. Subsequently, the trial court, after mother's counsel did not submit a proposed order as directed, corrected the record that father would have overnight parenting time. Father appealed and the Indiana Court of Appeals affirmed. As for primary physical custody, neither party requested specific findings and conclusions, pursuant to Ind. Trial Rule 52(A). Ample evidence was presented from which the trial court could reasonably conclude that there had been substantial changes in one of the factors set forth in Ind. Code § 31-14-13-2. The Court of Appeals declined what effectively was little more than a request to reweigh the evidence filed by father. As to legal custody, the trial court ordered joint legal custody with mother being the final decisionmaker in areas of disagreement. The Court of Appeals noted that this unusual arrangement was not truly an award of joint legal custody, but that, had the trial court awarded mother sole legal custody of child, father would have no authority or responsibility for daughter's upbringing. Under the trial court's order, father had such authority and responsibility with mother having the final say in the event of a dispute. Although this was not truly joint legal custody, father made no argument that the trial court was without authority to modify legal custody in that manner. The trial court did not err by granting mother final decision-making authority when it came to child's upbringing.

2. *In re Adoption of A.G.*, 199 N.E.3d 1220 (Ind. Ct. App. 2022). On April 8, 2013, child was born. In 2016, the Indiana Department of Child Services ("DCS") removed child from mother's care because mother was using illegal drugs. The child was placed in relative care with father's sister and her husband ("guardians") and lived with guardians since her removal from mother. Over the years, guardians allowed child to visit with maternal grandmother on a regular basis and sometimes mother would be present during those visits. In June 2017, guardians established guardianship of child. On April 24, 2021, guardians filed for adoption of child. In that petition, guardians alleged that mother had little meaningful contact with child and had failed to provide any financial support. On October 19, 2021, the trial court

held a hearing regarding guardians' motion to dispense with mother's consent and granted the motion. On February 11, 2022, the trial court held a hearing on guardians' adoption petition. On March 14, 2022, the trial court granted guardians' petition and entered a decree of adoption. The trial court found child had been in guardians' care since she was three years-old and was, at the time of the decree, almost nine years old. The adoption decree also granted maternal grandmother two overnight visits with child each month. On April 14, 2022, mother filed a motion to correct in which she alleged there were "numerous errors of fact" in the home study submitted to the court. On April 27, 2022, the trial court denied mother's motion to correct error. Mother appealed and the Indiana Court of Appeals affirmed. The Court of Appeals observed that, generally, courts may not grant a petition for adoption by adopting consent of the child's biological parents. *See* Ind. Code § 31-19-9-1(a). However, there are exceptions to that general rule. Those exceptions are when a parent for a period of at least one year 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 the child when able to do so as required by law or judicial decree. *See* Ind. Code § 31-19-9-8(a)(2)(B). The trial court's findings supported its conclusion that mother failed to financially support child during the relevant time frames despite her ability to do so. The trial court also found that adoption was in child's best interest because guardians had cared for child for almost six years. There was sufficient evidence to support the trial court's finding that adoption was in child's best interest.

3. *In Re C.W.*, 202 N.E.3d 492 (Ind. Ct. App. 2023). On October 20, 2008, child was born. Mother and father executed a paternity affidavit and child remained in mother's custody until 2015 when child was adjudicated a CHINS. Father filed a petition to modify custody and, in 2016, the parties entered into an Agreed Order that provided for joint legal custody with father having primary physical custody of child. Father and child lived with stepmother for approximately three years. On September 12, 2020, father and stepmother married. Mother visited with child once or twice per month. Mother last saw child a few days after his birthday in October 2020. Mother then spoke with child the week before Christmas 2020 to make arrangements to see him for holidays, but mother received a text message from father indicating she would not be allowed to see or talk to child and that father was blocking her telephone number. Mother was unable to speak or see child since that time despite efforts to see child at his school and at father's residence. On May 3, 2021, in the underlying paternity action, mother filed a contempt petition alleging father had denied parenting time between mother and child. On May 10, 2021, stepmother filed a petition to adopt child. On June 4, 2021, mother filed a petition to contest the adoption. The trial court conducted an *in camera* interview of child and held an evidentiary hearing. On June 29, 2022, the trial court entered findings of fact and conclusions thereon granting the adoption petition and noting that mother had not seen or communicated with child for more than one year and had played a sporadic role in child's life. Mother and appealed and the Indiana Court of Appeals reversed. Mother contended that the trial court erred when it concluded that her consent was not required for the adoption. Ind. Code § 31-19-9-8 provides for situations when consent to adoption is not required. Mother challenged the trial court's finding that she abandoned child. The trial court erred by concluding that mother abandoned child for at least six months prior to the filing of the petition for adoption. Stepmother also argued that mother's consent was not required because she failed to

provide child support for child for at least one year. In 2016, mother and father entered into an Agreed Order in which no support was owed by either parent. Although the parties disputed the amount of items mother gave child, the trial court found that mother did provide some items to child. Stepmother was requesting that the Court of Appeals reweigh the evidence, which it could not do. Under the circumstances, the trial court did not err in concluding that mother did provide support to child and that consent was required on that basis.

4. *In re Adoption of E.E.*, 204 N.E.3d 340 (Ind. Ct. App. 2023). In 2020, pregnant mother asked 37-year-old E.C., who was the director of a daycare facility, to adopt E.E., who was mother's unborn female child. In June 2020, prior to E.E.'s birth, E.C. filed a petition to adopt E.E. According to the petition, mother had consented to the adoption and E.C. would file mother's written consent to the adoption following the birth of E.E. The petition further stated that E.E.'s father was unnamed. E.C. also filed a petition for temporary custody of E.E. In July 2020, E.E. was born. The following day, the trial court entered an order awarding E.C. temporary custody of E.E. E.E. resided in E.C.'s home since that time. Shortly after E.E.'s birth, 40-year-old father received notice of the pending adoption via publication and filed a motion to contest the adoption. In September 2020, E.C. filed a motion to waive the requirement of father's consent on the allegation that father was unfit and it was in E.E.'s best interest to dispense with his consent to adoption. The motion specifically alleged that father had a "substantial criminal history and addiction to illegal substances[.]" Father responded and the trial court scheduled a hearing on the consent issue. In October 2020, the trial court granted father supervised parenting time with E.E. pursuant to the Indiana Parenting Time Guidelines and ordered father to pay child support to E.C. In October and November 2020, father canceled six scheduled parenting time visits with E.E. and failed to pay E.C. child support. Father's last parenting time with E.E. was at the end of November 2020. Before the trial court held a hearing on E.C.'s motion, father told his counsel that he had decided to consent to the adoption. Father's counsel prepared the consent. On November 25, 2020, father signed the consent at his home. He did not have the consent notarized. After signing the consent, father e-mailed it to E.C. E.C. forwarded the consent to her counsel who filed in the trial court. Father and E.C. also signed a stipulation terminating child support. Following these events, father did not seek parenting time with E.E. or pay child support. The trial court scheduled a final adoption hearing for February 9, 2021. The day before the final adoption hearing, 75 days after father had signed the consent, father filed a request to withdraw his consent to adoption. In April 2021, E.C. filed a motion to dismiss or, in the alternative, for summary judgment on father's request to withdraw his consent to adoption. In May 2021, E.C. deposed father. Father acknowledged that he had signed a consent and identified his signature. The day before the hearing, father filed a response arguing that E.C.'s motion was untimely and there was an issue of material fact regarding the validity of his consent. In September 2021, the trial court entered a detailed order that provided in relevant part that father's consent was valid. E.C. then filed a motion asking the trial court to schedule the final adoption hearing. In January 2022, the Indiana Court of Appeals denied father's motion to accept the order on the validity of father's consent for interlocutory appeal. Subsequently, the trial court scheduled the final adoption hearing for March 2022. In February 2022, E.C. filed a motion to exclude father from the final adoption hearing. The trial court granted E.C.'s motion and conducted the final adoption hearing. Following the hearing,

the trial court entered an order granting E.C.'s petition to adopt E.E. Father appealed and the Court of Appeals affirmed. Father specifically argued that his consent was not valid because he did not sign in the presence of a notary or any of the other entities set forth in Ind. Code § 31-19-9-2. The Court of Appeals agreed with the trial court that *In re Adoption of Infant Child Baxter*, 799 N.E.2d 1057 (Ind. 2003) was dispositive. *Baxter* provides that if a written consent is not executed in the presence of any one of six specified statutory entities, the validity of the consent may nevertheless satisfied by evidence that the signature was authentic and genuine in all respects and manifested a present intention to give a child up for adoption. The Court of Appeals found that the trial court had evidence that revealed that it was father's signature and that he voluntarily signed a consent with a genuine and manifested present intention to give E.E. up for adoption.

5. *In re Estate of Peters*, 206 N.E.3d 434 (Ind. Ct. App. 2023). On March 30, 1966, Rodney Peters was born to Diana Peters. Diana and Edward Peters were not married at the time and the record did not show what surname Diana used when Rodney was born. Rodney's birth certificate stated that Edward was his father, and Rodney had used Edward's surname since he was a child. In 1968, Edward and Diana married. They had a child, Tina. In 1971, Edward and Diana divorced. During the divorce proceedings, Diana requested child support for Rodney and Tina, claiming that both "were born to [Diana] and [Edward]." In response, Edward filed an affidavit stating that Tina was the only child born of the marriage. In the decree of dissolution of marriage, the trial court did not mention Rodney. After the divorce, Rodney and Tina lived with Diana. Rodney continued to see Edward during his childhood, sometimes joining Tina at Edward's home when Edward exercised parenting time with her. On October 18, 2021, Edward died intestate. A funeral home prepared an obituary, using information provided by Tina, listing Rodney and Tina as Edward's children and Rodney's children and grandchild as Edward's heirs. On January 31, 2022, Tina petitioned to be appointed personal representative of Edward's unsupervised estate and stated that she was Edward's "sole heir-at-law." The trial court granted her petition. On February 22, 2022, Rodney filed three pleadings contesting this order and making a claim against Edward's estate. On April 4, 2022, the trial court held an evidentiary hearing on one of Rodney's petitions (that for heirship) and entered an order granting the petition and determining that Rodney was Edward's heir. The trial court noted it would consider Rodney's other pleadings at a later time. Tina filed a motion to correct error, which was denied without explanation. Tina appealed and the Indiana Court of Appeals affirmed. In rejecting the doctrine of *res judicata*, the Court of Appeals explained and determined that, in cases where the issue of whether a child is a child of the marriage is vigorously contested, divorce courts have the authority to follow the appropriate procedures for making paternity determinations. As to the potential application of collateral estoppel to the child-of-the-marriage and paternity determinations, the Indiana Supreme Court in *Russell v. Russell*, 682 N.E.2d 513 (Ind. 1997) held that when parties stipulate or otherwise expressly or implicitly agree that a child is a child of the marriage, the trial court's determination is the legal equivalent of a paternity determination. Similarly, *In Re the Paternity of J.W.L.*, 682 N.E.2d 519 (Ind. 1997), the Supreme Court summarily affirmed the Court of Appeals' determination that the divorce decision does not give a preclusive effect in a paternity case since paternity had not been fully litigated. A determination that a child is or is not a child of the marriage for the purpose of

custody, parenting time, and support is not *per se* a paternity determination. The trial court found that in the 1971 divorce action no evidence was presented that any genetic testing was ever done to determine Rodney's paternity. Likewise, Rodney was not a party to the 1971 divorce proceedings. The trial court did not abuse its discretion when it held that the 1971 divorce decree did not determine Rodney's paternity and did not bar Rodney's heirship petition. The Court of Appeals also rejected Tina's argument that the trial court's determination that Rodney was Edward's heir lacked sufficient evidentiary support. Additionally, the trial court acted within its discretion in denying Tina's motion to correct error because she made no showing that, with reasonable diligence, she could not have discovered and produced Diana's testimony at the hearing on Rodney's petition. As the mother of both Tina and Rodney, Diana was not only an obvious witness but, as Tina described, the "most relevant witness there is."

6. *H.P. and S.P. v. G.F.*, 210 N.E.3d 1286 (Ind. Ct. App. 2023). On September 2016, K.F. was born to mother and father. Grandfather and S.P. were child's biological paternal grandparents. Mother and father each had serious substance abuse issues, resulting in child becoming a ward of the state of Indiana through CHINS proceedings at the beginning of 2017. The Indiana Department of Child Services ("DCS") placed child in relative care with adoptive parents during the week and grandfather on the weekends. In September 2018, mother and father's parental rights were terminated. Following termination of parental rights, DCS continued child's placement in the homes of grandfather and adoptive parents. In November 2018, at a CHINS hearing at which grandfather attended, the trial court ordered a plan of adoption. Adoptive parents began steps to adopt child with the consent of DCS. On May 17, 2019, the adoption was granted without any notice to grandfather. Around August 2019, S.P. informed grandfather of the finalized adoption. Notwithstanding the adoption, adoptive parents continued to voluntarily give grandfather regular weekend visitation with child. Typical visitation was every weekend from Friday to Monday. Grandfather also traveled with child from time-to-time. Grandfather formed a strong bond with child throughout her young life and helped support her by providing clothing, shoes, play equipment, and other items. In the years after the adoption, child's biological parents died. Around the time of mother's death, though unrelated, adoptive parents began to develop concerns about grandfather's time with child. January 10, 2022, was the last visit they permitted between grandfather and child. On April 6, 2022, grandfather filed a motion to re-open adoption and intervene, arguing that he had a right to pursue grandparent visitation because he was not provided with proper notice of the adoption. On June 10, 2022, after a contested hearing, the trial court granted grandfather's motion to intervene. Grandfather then filed a motion for grandparent visitation, which adoptive parents opposed on the merits as well as on the basis that re-opening the adoption proceedings – nearly three years after the adoption was granted – was improper. On October 20, 2022, the trial court held an evidentiary hearing. On November 17, 2022, the trial court entered an order awarding visitation to grandfather on alternate weekends, from Friday after school until Monday morning, or 6:00 p.m. and 9:00 a.m., respectively, when school was not in session. Adoptive parents timely appealed and requested a stay from the Indiana Court of Appeals. On November 18, 2022, the Court of Appeals stayed the visitation order. That stay remained in effect following the denial of grandfather's motion to reconsider. The Indiana Court of Appeals subsequently reversed. Ind. Code § 31-17-5-1(a)(1) provides a grandparent with a right to seek

visitation if a child's mother or father is deceased, and pursuant to Ind. Code § 31-17-5-3(b) a petition for grandparent visitation must be filed, if at all, before an adoption decree is entered. When grandfather petitioned for visitation, child's adoptive parents were alive and had been parenting child for nearly three years. Further, when adoptive parents adopted child, child's biological parents were still alive but had no parental rights to child. Grandfather was no longer "the parent of child's parent" once his son's parental rights were terminated. *See In Re G.R.*, 863 N.E.2d 323 (Ind. Ct. App. 2017). Grandfather attempted to side-step the standing issue by taking aim on the adoption proceedings. Grandfather argued that, as a person having "lawful custody" of child, which he shared with adoptive parents during the CHINS proceedings, his written consent to the adoption was required and he was entitled to legal notice of the adoption proceedings. Grandfather reasoned that if he had received proper notice, he would have been able to timely petition for grandparent visitation before the adoption was granted. The Indiana Supreme Court has interpreted the term "lawful custody" as used in Ind. Code § 31-19-9-1(a)(3) to "encompass more circumstances and familial arrangements than court-ordered legal custody." *In Re Adoption of B.C.H.*, 22 N.E.3d 580, 585 (Ind. 2014). The determination of whether an individual has lawful custody of a child is fact-sensitive and must be decided case-by-case. Based on the consistent care and support throughout the CHINS proceedings and leading up to the adoption, the trial court determined that grandfather shared "lawful custody" of child with S.P. and that he had a right to notice and an opportunity to withhold his consent. Adoptive parents countered by arguing the grandfather had not been child's primary caregiver for some time. The Court of Appeals indicated that it did not believe that the Supreme Court intended that, to be considered a lawful custodian, a person must meet the statutory definition of a *de facto* custodian at the time the petition for adoption was brought, but the Court of Appeals did not need to determine whether the trial court properly concluded that child was in grandfather's lawful custody. Even assuming that grandfather was a lawful custodian of child and entitled to notice and an opportunity to contest the 2019 adoption, this 2022 challenge to the adoption decree was time-barred. Ind. Code § 31-19-14-4 provides limitations on direct or collateral attacks of adoption decrees. The outerbounds of a challenge are six months after the entry of the adoption decree or one year after the adoptive parents obtain custody of the child, whichever is later. *See* Ind. Code § 31-19-14-2. Grandfather's challenge to the adoption decree, nearly three years after it was entered, was far too late. The trial court erred by addressing the merits of grandfather's claim for grandparent visitation under the Act. While it might very well be that continued contact with grandfather was in child's best interest, at the point, such a determination must be left to her parents and not the court.

G. TERMINATION OF PARENTAL RIGHTS/CHINS

1. *In the Matter of Z.D*, 195 N.E.3d 412 (Ind. Ct. App. 2022). In May 2017, child was born to father and mother. On November 3, 2021, when child and her half-siblings were living with mother, the Indiana Department of Child Services ("DCS") filed a petition alleging that the children were CHINS. DCS claimed that mother was abusing drugs, that father's whereabouts were unknown, and that father could not keep child safe while in the care and custody of mother. On November 4, 2021, an initial hearing was held. Mother was present, but father had not been served with a Summons and was not present. The hearing was continued

until December 2, 2021. On that date, father still had not been served and was not present and the hearing was continued again until December 9, 2021. Father was served on December 3, 2021, but did not appear at the December 9, 2021, hearing. The trial court set another hearing for December 16, 2021 and father again failed to appear. The trial court set the fact-finding hearing for February 25, 2022. On December 22, 2021, DCS's attorney sent father a letter about the upcoming fact-finding hearing, notifying him of his presence and right to counsel. On February 16, 2022, DCS's attorney sent the letter again to father. On February 24, 2022, the fact-finding hearing was held as scheduled. Mother appeared via Webex and admitted that child was a CHINS. Father did not appear via Webex and the trial court proceeded with the fact-finding as to him. After the fact-finding hearing ended, at around 10:50 a.m., "the Bailiff notified the Court that [F]ather had appeared in person." The trial court then set another hearing for March 3, 2022, to address father's portion of the case. At that hearing, father explained that he received the letter about the February 24, 2022, fact-finding hearing but went to the courthouse instead of appearing virtually because he read only the first part of the order. At the dispositional hearing, father's attorney objected to proceeding with the disposition and asked the trial court to set a contested fact-finding hearing. Father arrived late for the hearing and the trial court declined to hold an evidentiary hearing, denied father's request for a contested fact-finding hearing, reaffirmed the CHINS adjudication, and ordered father to participate in the "Father's Engagement" program. Father appealed and the Indiana Court of Appeals reversed. While the Court of Appeals could not fault the trial court for entering a CHINS finding at the end of the fact-finding hearing when it believed father had skipped the hearing, father also argued that after the hearing the trial court erred by not conducting an evidentiary hearing on father's attendance at the fact-finding hearing to determine if he were entitled to a contested CHINS fact-finding hearing. The Court of Appeals disagreed with DCS that father invited any error by failing to read the pre-hearing letter in its entirety. The letter included a street address for the hearing and there was no reason to include the physical address of the trial court if appearing in person was not an option. Father arrived at the courthouse while the fact-finding hearing was in progress and neither the trial court nor DCS disputed that assertion. Father's in-person appearance at the courthouse was sufficient to preserve his Constitutional right to a contested fact-finding hearing. While courts and lawyers are well-aware that many proceedings that used to be held in person are now being held remotely, not all laypersons are. The trial court should have granted father's request to hold a new fact-finding hearing.

2. *In re A.R. and I.T.*, 196 N.E.3d 723 (Ind. Ct. App. 2022). On December 26, 2005 and May 20, 2014, children were born. On March 15, 2021, mother and children were traveling through Indiana on their way from their home in West Virginia to Arizona. Mother began to "feel ill" so she went to the Community Hospital Emergency Room in Indianapolis, Indiana. Mother reported to the emergency room staff that her dog had licked something in the parking lot that morning and shortly thereafter became bloated and died. Mother felt like she was having the same symptoms. During her initial assessment, mother would not answer questions and stared at the nurse for long periods of time. When medical personnel attempted to draw blood from mother's arm, she demanded the needle be removed and later expressed concern that the hospital staff used "animal euthanasia" on her. One child reported that mother had not slept in four to five days and that she had been acting highly paranoid. Mother called the

Indiana Department of Child Services ("DCS") and asked DCS to send someone to retrieve children. Hospital staff moved children to an adjacent room because of mother's behavior. DCS took children into emergency custody and mother continued to have hallucinations. On March 16, 2021, DCS filed petitions alleging children were CHINS. Based on exposure to domestic violence between mother and mother's boyfriend, unstable housing, and the fact that mother was placed on a mental health hold, on April 4, 2021, mother filed a motion to dismiss the CHINS action for lack of personal jurisdiction. Mother argued she and children were non-residents of Indiana and that Indiana did not have sufficient minimum contacts with the children. Also on April 4, 2021, mother filed a motion asking the trial court to immediately place children with mother at the family residence in West Virginia. On May 7, 2021, DCS filed a motion for the trial court to determine if Indiana were a convenient forum pursuant to Ind. Code § 31-21-5-8. On May 12, 2021, mother filed an amended motion to dismiss, which alleged the juvenile court did not have personal jurisdiction or subject matter jurisdiction under the Uniform Child Custody Jurisdiction Act ("UCCJA"). On May 12, 2021, the trial court held a fact-finding hearing on DCS's motion regarding convenient forum and mother's amended motion to dismiss. On May 17, 2021, the trial court issued its order denying mother's motion to dismiss. On June 25, 2021, the trial court held a hearing on DCS's motion for determination as a convenient forum. On June 28, 2021, the trial court determined Indiana was a convenient forum for the CHINS proceedings and ordered a fact-finding hearing for July 9, 2021. Mother filed a motion for specific findings and conclusions pursuant to Indiana Trial Rule 52(A). On July 9, 2021, the trial court held the CHINS fact-finding hearing. On August 11, 2021, the trial court issued its order adjudicating children as CHINS. That same day, the trial court issued an order declining continued exercise of jurisdiction and staying the proceedings, finding that West Virginia was the more appropriate forum for disposition of the matter. On September 9, 2021, DCS filed a motion for an expedited dispositional hearing and asked the trial court to set the hearing prior to or on September 15, 2021, because that date was thirty days from the CHINS adjudication. On September 11, 2021, mother filed a motion to dismiss because the trial court had not held a dispositional hearing as required by Ind. Code § 31-34-19-1. On September 14, 2021, the trial court entered separate orders denying mother's motion to dismiss and DCS's motion to correct error. On December 15, 2021, the trial court held a hearing that included the West Virginia trial court judge as well as other stakeholders in West Virginia and Indiana. West Virginia accepted jurisdiction of one child who had been placed with mother in West Virginia, however, West Virginia declined jurisdiction of the other child who remained in Indiana. Indiana retained jurisdiction over one child and the trial court lifted the stay of proceedings, ordered DCS to prepare a dispositional report as to the children, and set a dispositional hearing for January 12, 2022. On December 20, 2021, DCS filed its dispositional report. On January 13, 2022, the trial court held its dispositional hearing regarding the child remaining in Indiana. On February 8, 2022, the trial court issued an order terminating its wardship over the other child because the West Virginia court had assumed jurisdiction of the matter involving the other child. Mother appealed and the Indiana Court of Appeals affirmed. Mother argued that the Indiana trial court did not have subject matter over the CHINS proceeding under the UCCJA. The Court of Appeals disagreed and found that a court can retain jurisdiction as a convenient forum until it declines to do so because it is an inconvenient forum

under Ind. Code § 31-21-5-8(a). The trial court did not abuse its discretion when it concluded it had emergency jurisdiction over the CHINS matter. Mother also argued that the trial court abused its discretion when it determined Indiana was convenient forum for the CHINS proceeding. The trial court considered the factors listed in Ind. Code § 31-21-5-8(b) as well as other relevant factors. The trial court did not abuse its discretion when it determined Indiana was a convenient forum. Mother also contended that the trial court erred when it did not hold a dispositional hearing within thirty days of the CHINS adjudication as required by Ind. Code § 31-34-19-1. Throughout the proceedings, mother filed multiple motions asking the trial court to transfer the CHINS matter to West Virginia. Once Indiana determined it was no longer a convenient forum, it began the process of allowing the West Virginia court to determine if would exercise jurisdiction over the CHINS cases. Pursuant to the UCCJA, when the trial court determined it was no longer the convenient forum, it was required to stay all proceedings until West Virginia determined whether it would accept or decline jurisdiction. Mother's argument failed because under the UCCJA the trial court was not permitted to hold any hearing until West Virginia accepted or declined jurisdiction. The trial court held its dispositional hearing within the time frame required by Ind. Code § 31-14-19-1.

3. *In re A.C.*, 198 N.E.3d 1 (Ind. Ct. App. 2022). On May 11, 2021, the Indiana Department of Child Services ("DCS") received a report alleging that mother was verbally and emotionally abusing then-16-year-old child by using rude and demeaning language toward child regarding child's transgender identity. As a result, child had thoughts of self-harm. The DCS family case manager prepared a preliminary inquiry report, which noted that child had been suffering from an eating disorder for the past year but had yet to be evaluated by a medical professional, that parents had withdrawn child from school, and that child did not feel mentally and/or safe in the home, and that mother spoke improperly to child. On May 28, 2021, DCS filed a proposed CHINS petition alleging that child was a CHINS on two bases: child's mental and physical condition was seriously impaired or endangered due to the parents' neglect (CHINS-1) and/or child's physical or mental health was seriously in danger due to injury by the parents' acts or omissions (CHINS-2). On June 2, 2021, the trial court held a combined initial and detention hearing. Following the hearing, the trial court entered the initial/detention order finding that it was in child's best interest to be removed from parents' home. On October 26, 2021, DCS filed a motion for leave to amend the CHINS petition to add an allegation that child was substantially endangering child's own health (CHINS-6). On November 15, 2021, the trial court held a hearing at which the parties informed the court that they reached an agreement that DCS would dismissed the CHINS-1 and CHINS-2 allegations, unsubstantiate and expunge the record of any reports related to the parents, and proceed under the CHINS-6 statute. Child then admitted to being a CHINS-6, the parents verified that they had no objection to child's admission. The trial court found a factual basis for the admission, accepted the admission, and adjudicated child a CHINS. The trial court also found in its dispositional order that child needed services and that the parents' participation was necessary, including family therapy. The parents appealed and the Indiana Court of Appeals affirmed. The parents' appeal of the initial detention order was moot because of child and parent's admission that child was a CHIN-6. There was no basis to determine the moot issue under the public interest exception to the mootness doctrine. Likewise, the trial court's decision to continue child placement outside parents' home

was not clearly erroneous. The trial court explained its understanding of the case in detail and indicated its focus was on the ultimate goal of reuniting parents and child by ensuring that child receive services to return child to physical and psychological health and providing the family with the structure and support needed to deal constructively with their disagreement regarding child's transgender identity. The trial court specifically stated that a disagreement between parents and a child is not a reason to remove a child from the home. The trial court also had sufficient evidence to support the CHINS adjudication. The proper standard was a preponderance of the evidence rather than conclusive or uncontroverted evidence, and birth certificate cases were inapplicable to CHINS cases. The record contained evidence supporting child's placement outside the home. The Court of Appeals also rejected the parents' contention that the dispositional order violated their Constitutional right to the care, custody, and control of child. The dispositional order also did not violate the parents' rights to the free exercise of religion. The United States Supreme Court had observed that "neither rights of religion nor rights of parenthood are beyond limitation." *Prince v. Massachusetts*, 321 U.S. 158, 166-67 (1944). The trial court also properly imposed a temporary restriction on discussion of child's transgender identity between the parents and child outside of family therapy, rejecting the parents' claim that it was an improper restraint on their freedom of speech. The trial court's order focused solely on private speech rather than speech that was important to "the marketplace of ideas." Additionally, the trial court explained that the order reasonably furthered child's best interest and that the restriction was merely tailored to address the state's compelling interest of child's welfare.

4. *In re Matter of N.E.*, 198 N.E.3d 384 (Ind. Ct. App. 2022). Mother had two children. Father S.E. was the biological parent of one child. Father L.T. was the biological parent of the other child. Mother and father S.E. were married an lived together. At the time of the incident giving rise to the Indiana Department of Child Services' ("DCS") intervention, the couple was not residing at the house because they had no power, but instead were staying with a friend. After mother gave birth to N.E. she suffered from post-partum depression. Mother and father S.E. had a "verbal disagreement." Mother was walking back-and-forth, not making any sense, and talking about "demons" and "crazy stuff happening at the house." Father S.E. approached a neighbor and informed her that he feared mother was having a "psychotic break" and that he needed to get her help. The neighbor offered to take care of N.E. while father S.E. took mother to the hospital. Later that evening, a woman claiming to be mother's sister arrived at the neighbor's house and insisted on taking N.E. with her. The neighbor was not comfortable handing N.E. over and called the police. After the police officers arrived, they went to father S.E.'s house to see whether the family had returned. When the officers entered the house through the open front door, they were struck by an overwhelming, pungent odor of fecal matter that filled the downstairs toilet. The officers noticed that the home was without electricity and was extremely cluttered. The following day, DCS filed a petition alleging N.E. to be a CHINS due to the "argument/domestic violence incident" between mother and father S.E., the fact that mother's and father S.E.'s whereabouts were unknown, and the inadequacy of the family home. During the first six years of the other child's life, father L.T. lived outside of Indiana. In 2020, father L.T. moved to Vigo County, Indiana where he purchased property to store solar equipment for his limited liability company. In 2021, father L.T. commenced a paternity action

seeking sole custody after DCS investigated a report that mother's home was not suitable for child. Subsequently, DCS filed a petition alleging that child to be a CHINS due to mother's intoxication and father L.T.'s homelessness. On December 7 and 10, 2021, the trial court conducted a fact-finding hearing with respect to both children. On December 13, 2021, the trial court adjudicated both children to be CHINS. On January 7, 2022, the trial court issued a combined dispositional and parental participation order. Mother, father S.E., and father L.T. appealed, and the Indiana Court of Appeals, in a 2-1 decision, with a separate concurrence without opinion, reversed. Indiana law requires three elements to prove that a child is a CHINS under Ind. Code § 31-34-1-1: (1) that the parents' actions or inactions have seriously endangered the child, (2) that the child's needs are not met, and (3) that those needs are unlikely to be met without state coercion. *See, e.g., In re S.D.*, 2 N.E.3d 1283 (Ind. 2014). As to father S.E.'s child's CHINS adjudication, the Court of Appeals reaffirmed that Indiana law is clear that a parent's mental illness, without more, is not sufficient to support a CHINS determination. DCS had the burden to prove that this child was actually seriously endangered as a result of mother's mental illness. Mother and father S.E. presented uncontroverted evidence that the home was safe and that the utilities were working without the coercive intervention of the trial court or guidance by DCS. Likewise, the trial court's "concerns about the parties' present state of sobriety" was not proven. At best, the trial court was left with only questions, inchoate concerns, and speculation. Proper focus was on the condition of the child and not mother's or father S.E.'s conduct. DCS failed to prove that the children were actually seriously endangered as a result of mother's mental illness and DCS did not present evidence that the child had been harmed or endangered because of the inadequacy of the family home. As to the other child, the record reflected that the only reason DCS became involved with that child was because mother and father L.T. were concerned for that child's safety when she was with her paternal grandmother who had a sex offender living at her house. Talking rapidly was insufficient to establish intoxication, and DCS failed to present any evidence to support that mother had an active and ongoing substance abuse problem. Likewise, father L.T.'s actions or inactions did not seriously endanger that child's physical or mental condition. Again, the proper focus was on the condition of the child and not mother's or father L.T.'s conduct. Judge Bailey concurred without opinion. Judge Vaidik dissented, stating that given the deference afforded to trial courts in family law matters and DCS meeting its burden of proof she would affirm the trial court's determination that the children were CHINS.

5. *In re Ar.B.*, 199 N.E.3d 1232 (Ind. Ct. App. 2022). Mother and father had three children born between 2015 and 2018. Father had a history of abusing mother that dated back to 2011, which was four years prior to the parties' marriage. In December 2019, mother filed for divorce but the case was dismissed. Thereafter, mother and father reconciled off-and-on. On July 30, 2020, mother contacted the police to report that father "was drunk and was yelling at her" in the presence of the children. Prior to that call, nineteen calls had been made to the Allen County Sheriff's Department in the past year. Most of the calls involved domestic violence or fighting with neighbors. On August 17, 2020, father committed domestic battery against mother. On September 17, 2020, the trial court entered a no-contact order that prohibited father from contacting mother. On February 1, 2021, father violated the no-contact order by entering mother's home and battering mother. One child reported seeing his father throw mother

on the ground, causing a bruise on her arm. On February 5, 2021, the state of Indiana charged father with domestic battery with a prior conviction, domestic battery with bodily injury to a pregnant woman, and invasion of privacy. Another child also witnessed the incident. On April 6, 2021, the Indiana Department of Child Services ("DCS") filed a petition alleging that the children were CHINS. On April 8, 2021, mother was arrested for domestic battery against father's girlfriend. After mother's arrest, DCS took custody of the children. Two children were placed in foster care. While in foster care, one child, age four at the time, "cornered" the foster parents' three year-old daughter and "punched her in the face" and caused her nose to bleed. The children were later placed in relative care with their maternal great aunt. DCS recommended therapy for the child who punched the foster parents' daughter. On May 3, 2021, DCS filed an amended CHINS petition with concern about ongoing domestic violence issues. Over four days in May, June, and July 2021, the trial court held fact-finding hearings. On September 22, 2021, the trial court found that the children were CHINS. On February 28, 2022, the trial court held a dispositional hearing. The trial court issued its dispositional order in open court with mother's approval. Later that day, mother filed a motion to dismiss the CHINS case, which she argued that the dispositional hearing was untimely. The trial court entered its written dispositional order on March 3, 2022, which was 159 days after the trial court adjudicated the children as CHINS. The trial court did not hold a hearing on mother's motion to dismiss. Mother appealed and the Indiana Court of Appeals affirmed. The Court of Appeals rejected mother's argument that DCS presented insufficient evidence to support the CHINS adjudication. DCS needed to prove three elements for the trial court to adjudicate the children CHINS: (1) the children were under the age of eighteen; (2) that one of the eleven different statutory circumstances existed that would make the children CHINS; (3) the children needed care, treatment, or rehabilitation that they were not receiving and were unlikely to be provided or accepted without the coercive intervention of the court. The trial court properly found that the children were neglected. As to the timeliness of the dispositional hearing, the Court of Appeals determined that mother waived the argument. Ind. Code § 31-34-19-1(a) provides that a trial court shall complete a dispositional hearing not more than 30 days after the date that a court finds a child to be a CHINS. Recognizing that the Court of Appeals had not previously addressed whether a party waives his or her challenge to the timeliness of a dispositional hearing by failing to file a motion to dismiss prior to that hearing, the Court of Appeals noted that it had considered the issue under a similar statute (Ind. Code § 31-34-11-1) which required that a CHINS fact-finding hearing be held not more than 120 days after DCS filed a CHINS petition. *In re J.S.*, 130 N.E.3d 109, 112 (Ind. Ct. App. 2019) found that a party waived his or her challenge to the timeliness of a CHINS hearing under Ind. Code § 31-34-11-11 by failing to file a motion to dismiss prior to that hearing. The Court of Appeals found that case and other cases persuasive in the context of Ind. Code § 31-34-19-1, and held that mother's motion to dismiss was untimely and that she waived her challenge to the timeliness of the dispositional hearing.

6. *In Re D.C. and M.C.*, 201 N.E.3d 660 (Ind. Ct. App. 2022). On February 29, 2012, mother gave birth to D.C. On March 18, 2015, mother gave birth to M.C. On September 24, 2020, the Indiana Department of Child Services ("DCS") received a report that children were victims of neglect by mother, father, and stepfather. The report alleged mother and stepfather had unstable housing, food, and security, children did not regularly attend school,

and children were exposed to domestic violence and drug abuse. On November 16, 2020, DCS filed a CHINS petition. On January 15, 2021, mother admitted children were CHINS. On February 19, 2021, the trial court ordered mother to participate in several services. During the CHINS proceedings, mother was represented by appointed counsel. Mother did not consistently participate in services. On March 1, 2022, mother and father executed consents to children's adoptions by their foster placement. On March 29, 2022, mother revoked her consents to adoption. On May 12, 2022, DCS filed petitions to terminate mother's and father's parental rights to children, based on mother's noncompliance with services. On May 13, 2022, the trial court sent mother a document notifying her of the petition, the hearing, and the potential for a default judgment. On June 3, 2022, the trial court held an initial hearing on the termination petitions. Neither mother nor her appointed counsel attended. The trial court did not appoint new counsel for mother. The trial court set a "default hearing" for June 21, 2022. On June 21, 2022, the trial court held a hearing on the termination petitions. Neither mother nor her prior appointed attorney appeared. The trial court held a hearing without mother and without appointed counsel to represent mother and granted DCS's petition to involuntary terminate mother's parental rights to children. Mother appealed and the Indiana Court of Appeals reversed and remanded. Mother argued that the trial court violated her right to due process when it held the termination hearing without first appointing her counsel in the matter. The trial court appointed counsel to represent mother during the CHINS proceedings. On May 6, 2022, at what ultimately would be the last hearing of the CHINS proceedings, the trial court set a status hearing on the CHINS case for June 3, 2022, which was a date the appointed attorney indicated she was unavailable to attend. It was unclear from the record why the trial court set a CHINS status hearing on a date when mother's appointed counsel was unavailable. DCS filed petitions to terminate mother's rights to children less than a week later. The trial court set an initial hearing on the termination petitions on the same day it scheduled the CHINS hearing and when mother's appointed attorney was unavailable. While mother knew she was entitled to representation by counsel in the termination proceedings, the notice did not inform mother that her prior appointed attorney would no longer be her counsel, as DCS's proceedings regarding children continued or that mother needed to request new counsel. There was no indication elsewhere in the record that prior appointed counsel, the trial court, or DCS staff informed mother that her prior appointed counsel would not be her counsel in the termination proceedings. Instead, it appeared mother believed prior appointed counsel was her counsel during the termination proceedings because she contacted her after the trial court terminated her parental rights to request appointment of appellate counsel to challenge the trial court's ruling. The trial court violated mother's right to due process when it did not appoint counsel to represent her with respect to the state of Indiana's petition to involuntary terminate her parental rights to children.

7. *In re K.V.*, 201 N.E.3d 700 (Ind. Ct. App. 2023). In 2017 and 2018, children were born. In 2018, children were adjudicated CHINS and placed in foster parents' home as a foster placement. In August 2020, the parental rights of children's biological parents were terminated. On January 15, 2021, foster parents petitioned to adopt children. In November 2021, foster parents rejected the amount the state of Indiana offered in adoption assistance. On December 15, 2021, and Indiana Department of Child Services ("DCS") foster care case manager visited foster parents' home and was concerned regarding the home's condition. The

foster care case manager testified at the hearing that there had been ongoing concerns with the home conditions, but that December 15, 2021, was the worst conditions that she had seen. DCS and foster parents agreed to temporarily place children in a Respite Care home with another foster family for two or three weeks so that foster parents could have time to clean and organize their home. After three weeks, DCS determined that the children had made improvements in the Respite Care home. On December 7, 2022, DCS filed a petition to modify the dispositional decree and permanently place the children with the new foster family. Foster parents filed an objection and the trial court held a hearing. At the hearing, foster parents presented recent photographs of their home showing that since children's removal they had maintained a clean home. However, the family care case manager and court-appointed special advocate testified they believed a change of placement was in the best interest of the children. Following the hearing, the trial court entered an order terminating children's foster placement with foster parents and authorized the new foster family to be the permanent placement going forward. Foster parents filed a motion to correct error, a motion to intervene in the CHINS proceeding, and a motion to establish custody of the children. The trial court denied foster parents' motion to correct error and motion to intervene, but stayed foster parents' custody motion while the CHINS matters were pending. Foster parents appealed and the Indiana Court of Appeals affirmed. Foster parents argued that DCS was statutorily required to make a reasonable effort to reunify children with them and failed to do so. Ind. Code § 31-34-23-6 contains no provision that either reunification or a grace period for the improvement of circumstances had prompted the changes required prior to DCS initiating the change in the out-of-home placement of a child. Further, 465 I.A.C. 2-1.5-3 gives DCS the discretion to reevaluate a foster parent's ability to meet competency requirements at any time. The Court of Appeals concluded that a reasonable effort to reunify was not required and DCS was only required to show that the continued removal of children from the foster parents' home and subsequent placement in the new foster parents' home was in the children's best interest. The trial court did not err in denying foster parents' motion to correct error. Foster parents also argued that the trial court abused its discretion because it based its order on "future concerns rather than present facts." The trial court's order was not based solely on "future concerns" as foster parents claimed and was not an abuse of discretion. Granting a motion to intervene is within the discretion of a trial court and is reversible error only for an abuse of that discretion. Foster parents failed to demonstrate that their intervention was in the best interest of children and the trial court did not err by denying foster parents' motion to intervene. As to foster parents' motion to establish custody, pursuant to Ind. Code § 31-17-2-3(2),the custody action may be commenced by "a person other than a parent by filing the petition seeking a determination of custody of the child." Foster parents argued that the trial court erred by staying their custody petition. Child custody falls within the general class of proceedings within a trial court's jurisdiction. *See In re Custody of M.B.,* 51 N.E.3d 230 (Ind. 2016). Yet, having jurisdiction does not automatically mean that it is appropriate for a trial court to exercise that jurisdiction. Foster parents attempted to differentiate their case from *M.B.* because their motion to establish custody was filed in the same court as the CHINS proceeding. However, *M.B.* did not suggest that it would be appropriate for a CHINS proceeding and custody action to proceed simultaneously,

even if they were filed in the same court. The trial court did not err by staying foster parents' motion to establish custody until the CHINS proceeding was concluded.

8. *R.M. v. Indiana Dept. of Child Services*, 203 N.E.3d 559 (Ind. Ct. App. 2023). On June 12, 2013, the Indiana Department of Child Services ("DCS") received a report that R.M.'s two children "were exposed to domestic violence and unsafe living conditions and [children's] basic needs [were] not being met." DCS's investigation found "deplorable conditions" at the family's residence, which had been condemned by the health department. DCS filed a petition to adjudicate children as CHINS. On February 7, 2014, the trial court adjudicated children as CHINS. On June 5, 2015, the trial court changed children's permanency plan from reunification to adoption because of mother's failure to complete necessary services. At some point after that date and prior to the trial court's May 16, 2016, periodic review hearing, mother voluntarily relinquished her parental rights to children. Maternal grandmother adopted children. On December 3, 2021, R.M. filed a petition under Ind. Code § 31-33-27-5 to expunge DCS's substantiated reports about her. On January 13, 2022, the trial court, without conducting a hearing, denied R.M.'s petition to expunge DCS.'s substantiated reports about her. On January 26, 2022, R.M. filed a motion to correct error that the trial court denied. Mother appealed and the Indiana Court of Appeals affirmed. Mother argued that the trial court abused its discretion when it denied her petition to expunge DCS's substantiated reports about her. While eligible for expungement, mother was required to prove by clear and convincing evidence that she met the requirements that there was little likelihood that she would be a further perpetrator of child abuse or neglect and the information had insufficient current probative value to justify its retention in DCS's records for future reference. The trial court correctly found and concluded mother met the first prong of the test, but determined that there was probative value in retaining the records based on the standards set forth in the statute. Mother attempted to distinguish *G.E. v. Indiana Dept. of Child Services*, 29 N.E.3d 769 (Ind. Ct. App. 2015), but the Court of Appeals determined that the cases were similar enough and that the trial court did not abuse its discretion when it denied mother's petition to expunge DCS's substantiated reports about her.

9. *In Re T.M.*, 211 N.E.3d 43 (Ind. Ct. App. 2023). In 2018, child was born to mother and father. In July 2021, the Indiana Department of Child Services ("DCS") removed child from mother and father and filed a CHINS petition. DCS alleged, in part, that the family had been evicted from their unsanitary home due, in part, to bugs and dog feces, child was dirty and had a "repulsive odor," and father had been charged with molesting one of the other children in the home. Father admitted child was a CHINS and voluntarily relinquished his parental rights. In January 2022, a fact-finding hearing was held regarding mother and the trial court found that child was a CHINS. In February 2022, the trial court entered a dispositional decree that ordered mother to engage in various services. Three days later, however, DCS asked the trial court to make a finding under Ind. Code § 31-34-21-5.6 that DCS was not required to make reasonable efforts to reunify mother and child, based on the fact that mother's parental rights to child's siblings recently had been terminated. In March 2022, the trial court entered an order stating that reasonable efforts for reunification between the child and mother were not required. In June 2022, DCS filed a petition to terminate mother's parental rights. In September

2022, the trial court held a termination hearing. In October 2022, the trial court ordered mother's parental rights terminated. Mother appealed and the Indiana Court of Appeals affirmed and remanded. A petition to terminate a parent-child relationship involving a CHINS must allege the four statutory elements listed in Ind. Code § 31-35-2-4(b)(2)(A)-(D). If a trial court finds the allegations in that type of petition are true, it shall terminate the parent-child relationship. *See* Ind. Code § 31-35-2-8(a). The trial court entered conclusions of law addressing the four elements under the heading "CONCLUSIONS." Mother challenged only that the first conclusion was erroneous. The Court of Appeals agreed, but determined that the error did not require reversal. Mother argued that the erroneous six-month-removal conclusion required reversal of the termination order even there was "evidence adduced at trial" that would have been sufficient to sustain the decision on a different legal theory *(i.e.*, the existence of the reasonable-efforts-not-required finding). The presentation of evidence was not all that happened regarding the reasonable-efforts-not-required finding. DCS, in its termination petition, expressly and correctly alleged that such a finding had been entered during the CHINS case. Mother would have had the Court of Appeals reverse because that finding was not repeated under the "CONCLUSIONS" heading along with the trial court's other legal conclusions. While the findings certainly should have been repeated as a conclusion, to reverse on that basis would be to elevate form over substance, which the Court of Appeals seeks to avoid. *See Moryl v. Ransone*, 4 N.E.3d 1133, 1139 (Ind. 2014). The Court of Appeals affirmed the termination of mother's parental rights to child, but remanded to the trial court for the entry of a corrected order. The Court of Appeals made clear that its affirmance of the termination did not mean it was comfortable with the mishandling of the termination order by both DCS and the trial court. With the stakes in termination cases being so high, the findings of fact and conclusions of law must be precise so that the reasons for termination are clear to everyone involved. However, under the specific circumstances of this case, reversal was not required.

III. LEGISLATION

See attached legislation.

IV. PROPOSED REVISIONS TO INDIANA CHILD SUPPORT GUIDELINES

See proposed revisions to the Indiana Child Support Guidelines, to be effective January 1, 2024.

V. PROPOSED INDIANA GUARDIAN *AD LITEM* GUIDELINES

See proposed Indiana Guardian *Ad Litem* Guidelines.

VI. CONCLUSION

The Indiana Court of Appeals and Indiana Supreme Court continued their important work in addressing important family law issues, for the benefit of Indiana citizens and practitioners.

First Regular Session of the 123rd General Assembly (2023)

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 2022 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1560

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 31-19-2-2, AS AMENDED BY P.L.203-2021, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 2. (a) Except as provided in subsection (b), an individual who seeks to adopt a child less than eighteen (18) years of age must, by attorney of record, file a petition for adoption with the clerk of the court having probate jurisdiction in the county in which:

(1) the petitioner for adoption resides;

(2) a licensed child placing agency or governmental agency having custody of the child is located;

(3) the attorney maintains an office; or

(4) the child resides.

(b) A petition for adoption of a child less than eighteen (18) years of age may be filed with the clerk of a court having probate jurisdiction in any county in Indiana if either of the following is filed with the petition:

(1) A written consent to the adoption from each individual whose consent to the adoption is required under IC 31-19-9 that:

(A) is executed by the individual in compliance with IC 31-19-9 not less than thirty (30) days before the petition for adoption is filed; and

(B) is not subject to a motion to withdraw consent under

IC 31-19-10 filed by the individual less than ~~thirty (30)~~ **fifteen (15)** days after the consent is executed.

(2) A certified copy of a court order terminating the parental rights of each parent whose consent to the child's adoption is required under IC 31-19-9.

(c) The county in which the petition for adoption may be filed is a matter of venue and not jurisdiction.

(d) Subject to IC 31-19-9-3, if an individual who files a petition for adoption of a child:

(1) decides not to adopt the child; or

(2) is unable to adopt the child;

the petition for adoption may be amended or a second petition may be filed in the same action to substitute another individual who intends to adopt the child as the petitioner for adoption.

(e) If an amended petition or second petition is filed as described in subsection (d):

(1) the amended petition or second petition relates back to the date of the original petition; and

(2) a required notice that was provided with regard to the original petition satisfies the same notice requirement for the purposes of the second or amended petition.

SECTION 2. IC 31-19-9-1, AS AMENDED BY P.L.128-2012, SECTION 54, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 1. (a) Except as otherwise provided in this chapter, a petition to adopt a child who is less than eighteen (18) years of age may be granted only if written consent to adoption has been executed by the following:

(1) Each ~~living~~ parent of a child born in wedlock, including a man who is presumed to be the child's biological father under IC 31-14-7-1(1) if the man is the biological or adoptive parent of the child.

(2) The mother of a child born out of wedlock and the **biological** father of ~~a~~ **the** child ~~whose~~ **if the father's** paternity has been established by:

(A) a court proceeding other than the adoption proceeding, except as provided in IC 31-14-20-2; or

(B) a paternity affidavit executed under IC 16-37-2-2.1;

unless the putative father gives implied consent to the adoption under section 15 of this chapter.

(3) Each person, agency, or local office having lawful custody of the child whose adoption is being sought.

(4) The court having jurisdiction of the custody of the child if the

legal guardian or custodian of the person of the child is not empowered to consent to the adoption.

(5) The child to be adopted if the child is more than fourteen (14) years of age.

(6) The spouse of the child to be adopted if the child is married.

(7) A man who is not the biological father of the child, if:

(A) the man has proven to the court that it is in the best interest of the child to be adopted to require his consent; and

(B) the paternity of the child has been established by:

(i) a court proceeding other than the adoption proceeding, except as provided in IC 31-14-20-2; or

(ii) a paternity affidavit executed under IC 16-37-2-2.1;

unless the putative father gives implied consent to the adoption under section 15 of this chapter.

(b) A parent who is less than eighteen (18) years of age may consent to an adoption without the concurrence of:

(1) the individual's parent or parents; or

(2) the guardian of the individual's person;

unless the court, in the court's discretion, determines that it is in the best interest of the child to be adopted to require the concurrence.

SECTION 3. IC 31-19-9-2, AS AMENDED BY P.L.128-2012, SECTION 55, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 2. (a) The consent to adoption may be executed **or acknowledged** at any time after the birth of the child, either in the presence of:

(1) the court, **in person or by video conferencing;**

(2) a notary public or other person authorized to take acknowledgments; or

(3) an authorized agent of:

(A) the department; or

(B) a licensed child placing agency.

(b) The child's mother may not execute a consent to adoption before the birth of the child.

(c) The child's father may execute a consent to adoption before the birth of the child if the consent to adoption:

(1) is in writing;

(2) is signed by the child's father in the presence of a notary public; and

(3) contains an acknowledgment that:

(A) the consent to adoption is irrevocable; and

(B) the child's father will not receive notice of the adoption

proceedings.

(d) A child's father who consents to the adoption of the child under subsection (c) may not challenge or contest the child's adoption.

(e) Except as provided in subsection (f) or (g), a person who executes a written consent to the adoption of a child may not execute a second or subsequent written consent to have another person adopt the child unless one (1) or more of the following apply:

(1) Each original petitioner provides a written statement that the petitioner is not adopting the child.

(2) The person consenting to the adoption has been permitted to withdraw the first consent to adoption under IC 31-19-10.

(3) The court dismisses the petition for adoption filed by the original petitioner or petitioners for adoption based upon a showing, by clear and convincing evidence, that it is not in the best interests of the child that the petition for adoption be granted.

(4) The court denies the petition to adopt the child filed by the original petitioner or petitioners for adoption.

(f) The department may execute more than one (1) written consent to the adoption of a child if the department determines that the execution of more than one (1) written consent is in the best interests of the child.

(g) The parents of a child who is a ward of the department may execute a second or subsequent consent if:

(1) the court with jurisdiction over the child in need of services determines that adoption by the person to whom consents were originally signed is not in the child's best interest; or

(2) if the child's placement with the person who has petitioned or intends to petition to adopt the child is disrupted.

SECTION 4. IC 31-19-9-8, AS AMENDED BY P.L.142-2020, SECTION 35, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 8. (a) Consent to adoption, which may be required under section 1 of this chapter, is not required from any of the following:

(1) A parent or parents if the child is adjudged to have been abandoned or deserted for at least six (6) months immediately preceding the date of the filing of the petition for adoption.

(2) A parent of a child in the custody of another person if for a period of at least one (1) year the parent:

(A) fails without justifiable cause to communicate significantly with the child when able to do so; or

(B) knowingly fails to provide for the care and support of the child when able to do so as required by law or judicial decree.

(3) The biological father of a child born out of wedlock whose paternity has not been established:

(A) by a court proceeding other than the adoption proceeding; or

(B) by executing a paternity affidavit under IC 16-37-2-2.1.

(4) The biological father of a child born out of wedlock who was conceived as a result of:

(A) a rape for which the father was convicted under IC 35-42-4-1;

(B) child molesting (IC 35-42-4-3);

(C) sexual misconduct with a minor (IC 35-42-4-9); or

(D) incest (IC 35-46-1-3).

(5) The putative father of a child born out of wedlock if the putative father's consent to adoption is irrevocably implied under section 15 of this chapter.

(6) The biological father of a child born out of wedlock if the:

(A) father's paternity is established after the filing of a petition for adoption in a court proceeding or by executing a paternity affidavit under IC 16-37-2-2.1; and

(B) father is required to but does not register with the putative father registry established by IC 31-19-5 within the period required by IC 31-19-5-12.

(7) A parent who has relinquished the parent's right to consent to adoption as provided in this chapter.

(8) A parent after the parent-child relationship has been terminated under IC 31-35 (or IC 31-6-5 before its repeal).

(9) A parent judicially declared incompetent or mentally defective if the court dispenses with the parent's consent to adoption.

(10) A legal guardian or lawful custodian of the person to be adopted who has failed to consent to the adoption for reasons found by the court not to be in the best interests of the child.

(11) A parent if:

(A) a petitioner for adoption proves by clear and convincing evidence that the parent is unfit to be a parent; and

(B) the best interests of the child sought to be adopted would be served if the court dispensed with the parent's consent.

(12) A child's biological father who denies paternity of the child before or after the birth of the child if the denial of paternity:

(A) is in writing;

(B) is signed by the child's father in the presence of a notary public; and

(C) contains an acknowledgment that:

(i) the denial of paternity is irrevocable; and

(ii) the child's father will not receive notice of adoption proceedings.

A child's father who denies paternity of the child under this subdivision may not challenge or contest the child's adoption.

(13) A deceased person.

(b) If a parent has made only token efforts to support or to communicate with the child the court may declare the child abandoned by the parent.

SECTION 5. IC 31-19-9-12, AS AMENDED BY P.L.203-2021, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 12. A putative father's consent to adoption is irrevocably implied without further court action if the putative father:

(1) fails to file a motion to contest the adoption in accordance with IC 31-19-10 within ~~thirty (30)~~ **fifteen (15)** days after service of notice under IC 31-19-4 in the court in which the adoption is pending;

(2) files a motion to contest the adoption under IC 31-19-10 and the motion is dismissed by the court under IC 31-19-10-1.2(g) or is otherwise denied by the court;

(3) having filed a paternity action under IC 31-14 or in any other jurisdiction, fails to establish paternity in the action; or

(4) is required to but fails to register with the putative father registry established by IC 31-19-5 within the period under IC 31-19-5-12.

SECTION 6. IC 31-19-9-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 15. (a) The putative father's consent to adoption of the child is irrevocably implied without further court action if the father:

(1) fails to file a paternity action:

(A) under IC 31-14; or

(B) in a court located in another state that is competent to obtain jurisdiction over the paternity action;

not more than ~~thirty (30)~~ **fifteen (15)** days after receiving actual notice under IC 31-19-3 of the mother's intent to proceed with an adoptive placement of the child, regardless of whether the child is born before or after the expiration of the ~~thirty (30)~~ **fifteen (15)** day period; or

(2) files a paternity action:

(A) under IC 31-14; or

(B) in a court located in another state that is competent to obtain jurisdiction over the paternity action;

during the ~~thirty (30)~~ **fifteen (15)** day period prescribed by subdivision (1) and fails to establish paternity in the paternity proceeding under IC 31-14 or the laws applicable to a court of another state when the court obtains jurisdiction over the paternity action.

(b) This section does not prohibit a putative father who meets the requirements of section 17(b) of this chapter from establishing paternity of the child.

SECTION 7. IC 31-19-9-18, AS AMENDED BY P.L.203-2021, SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 18. (a) This section does not apply to the consent of an agency or local office that is served with notice under IC 31-19-4.5 and has lawful custody of a child whose adoption is being sought.

(b) The consent of a person who is served with notice under IC 31-19-4.5 to adoption is irrevocably implied without further court action if the person:

(1) fails to file a motion to contest the adoption under IC 31-19-10 not later than ~~thirty (30)~~ **fifteen (15)** days after service of notice under IC 31-19-4.5; or

(2) files a motion to contest the adoption under IC 31-19-10 and the motion is dismissed by the court under IC 31-19-10-1.2(g) or is otherwise denied by the court.

SECTION 8. IC 31-19-10-1, AS AMENDED BY P.L.203-2021, SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 1. (a) Except as provided in subsection (c), only a person entitled to notice of adoption under IC 31-19-4 or IC 31-19-4.5 may contest an adoption.

(b) A person contesting an adoption must file a motion to contest the adoption in writing with the court in which the petition for adoption is filed not later than ~~thirty (30)~~ **fifteen (15)** days after service of notice of the pending adoption. The motion must set forth the basis on which the person is contesting the adoption.

(c) A person seeking to withdraw consent to an adoption must file a motion to withdraw consent to the adoption in writing with the court in which the petition for adoption is filed. The motion must set forth the basis on which the person is seeking to withdraw consent.

SECTION 9. IC 31-19-10-3, AS AMENDED BY P.L.146-2007, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 3. (a) A consent to adoption may be withdrawn not later than ~~thirty (30)~~ **fifteen (15)** days after consent to adoption is signed if:

(1) the court finds, after notice and opportunity to be heard afforded to the petitioner for adoption, that the person seeking the withdrawal is acting in the best interest of the person sought to be adopted; and

(2) the court orders the withdrawal.

(b) A consent to adoption may not be withdrawn after:

(1) ~~thirty (30)~~ **fifteen (15)** days after the consent to adoption is signed;

(2) the person who signs the consent to adoption appears, in person or by telephonic communications or video conferencing, before a court in which the petition for adoption has been or will be filed and acknowledges that the person:

(A) understood the consequences of the signing of the consent to adoption;

(B) freely and voluntarily signed the consent to adoption; and

(C) believes that adoption is in the best interests of the person to be adopted; or

(3) the person who signs the consent to adoption appears, in person or by telephonic communications or video conferencing, before a court of competent jurisdiction if the parent is outside of Indiana and acknowledges that the person:

(A) understood the consequences of the signing of the consent to adoption;

(B) freely and voluntarily signed the consent to adoption; and

(C) believes that adoption is in the best interests of the person to be adopted;

whichever occurs first.

(c) If a hearing under this section is conducted by telephonic communication or video conferencing, the court shall ensure that the hearing is recorded.

SECTION 10. IC 31-19-10-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 5. **(a)** Whenever a motion to contest an adoption is filed, the court shall, before entering a decree under IC 31-19-11, set the matter for a hearing to contest the adoption.

(b) A court shall expedite a hearing under this section.

SECTION 11. IC 31-19-11-0.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: **Sec. 0.5. A court shall expedite all proceedings under this chapter.**

Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

GAL Guidelines for Civil Family Law Cases

Preamble: A Guardian ad Litem (GAL) is a qualified individual appointed by a court to represent the best interests of a child in civil family law cases, which include but are not limited to: custody and parenting time matters in dissolution of marriage cases and in paternity cases; guardianship cases; third party custody actions in dissolution of marriage cases and in paternity cases; adoptions, grandparent visitation cases, and third party visitation cases.

Rule 1—Qualifications

Rule 1.1: (a) A person may serve as a GAL if the person is:

1. a licensed attorney in good standing with the Indiana Bar;
2. a licensed mental health professional in good standing with the Indiana Behavioral Services and Human Health Licensing Board or the Indiana Department of Education;
3. employed by, or contracted with, a court-approved GAL services program; or
4. approved by the GAL Family Law Oversight Committee to operate independently based on their knowledge, skill, experience, training, education, or other qualifications; and

(b) meets the initial and ongoing training requirements outlined in these rules; and

(c) continuously meets the background, reporting and other requirements outlined in these rules.

Commentary: A GAL must have the necessary knowledge, skills, experience, training, education, or other qualification(s) the Court finds necessary to enable the GAL to conduct a thorough and impartial investigation and to effectively advocate for the best interests of the child.

Rule 1.2: A person may not serve as a GAL if they have been convicted of, or have charges pending for, a felony or misdemeanor involving a sex offense, child abuse or neglect, or related acts that would pose risks to children or to the GAL's credibility.

Commentary: A person wishing to serve as a GAL must pass a background check that specifically checks for the offenses noted in this rule. Criminal background checks should be conducted for any jurisdiction in which the person has lived in the past five years. If a person wishing to serve as a GAL is aware of a conviction on their record that does not

appear in a background check, the person is required to disclose the conviction and any related information to the GAL Family Law Oversight Committee.

Rule 1.3: A person may not serve as a GAL if they have any substantiated history of child abuse or neglect with the Indiana Department of Child Services or with a child protection agency in another state.

Commentary: A person wishing to serve as a GAL must pass a background check that specifically checks for child abuse and neglect substantiations or their equivalent in another jurisdiction. Child abuse/neglect background checks should be conducted for any jurisdiction in which the person has lived in the past fifteen years. If a person wishing to serve as a GAL is aware of a substantiation or equivalent finding on their record that does not appear in a background check, the person is required to disclose the substantiation or equivalent finding and any related information to the GAL Family Law Oversight Committee.

Rule 1.4: A GAL has an ongoing duty to notify the GAL Family Law Oversight Committee if the GAL falls out of qualified status, and no longer meets the minimum requirements.

Commentary: This includes, but is not limited to, new criminal convictions, new child abuse and neglect substantiations, and failure to maintain ongoing training requirements. The GAL must notify the GAL Family Law Oversight Committee within 10 days of any criminal convictions, child abuse and neglect substantiations, or other disqualifying events.

Rule 2—Training

Rule 2.1: Unless a person receives an approved waiver from the GAL Family Law Oversight Committee, a person must complete an initial GAL training course that provides a minimum of twelve (12) hours of training related to GAL services. An initial GAL training course must include training on:

(1) legal framework of relevant types of child-related cases, including laws, relevant standards, and other legal considerations;
(2) best interests assessment and advocacy;
(3) GAL investigative skills;
(4) interviewing skills, rapport building and communication, methods of questioning, and child-focused interview skills;
(5) appropriate GAL protocol;
(6) the roles and duties of a GAL in both their best interests advocacy and their roles and duties in court proceedings;
(7) diversity, economic diversity, and multicultural awareness;

(8) identification and treatment of child abuse and neglect;
(9) early childhood, child and adolescent development;
(10) family and child related issues, including family dynamics in the context of legal proceedings, substance abuse and its effects, and domestic violence and its effects;
(11) trauma informed care;
(12) GAL ethical obligations and the GAL Code of Ethics.

Commentary: A person seeking to become a GAL who has completed training to obtain or maintain their professional licensure or certification, and whose training meets some or all of the requirements outlined in Rule 2.1, may apply to use that training to completely or partially fulfill these requirements. Additionally, a person who has served as a GAL for at least three (3) years prior to passage of these rules may seek a waiver of the initial training requirement from the GAL Family Law Oversight Committee, and upon approval, may continue their services as a GAL without meeting the initial training requirements.

Rule 2.2: All persons who serve as a GAL, whether they are required to complete the initial training requirements or receive a waiver for the initial training requirements, must complete six (6) hours of ongoing training each year beginning the calendar year after they complete, or have waived, their initial training. A GAL who has completed training to obtain or maintain their professional licensure or certification can use that training to completely or partially fulfill these requirements if their professional training meets the Continuing GAL Training requirements.

Commentary: Courses which qualify for Continuing GAL Training must cover topics relevant to GAL services. Examples include, but are not limited to:

- The effects of trauma, trauma-informed care, and adverse childhood experiences;
- Childhood development;
- Education and education-related legal matters for children;
- Updated or advanced legal topics pertaining to children, family law, or other relevant matters;
- Availability of services for children addressing special needs, child welfare, family preservation, medical, mental health, and educational needs, including placement/evaluation/diagnostic treatment services;
- Other legal, psychological, or social based topics relating to children and families;
- Other topics relating to conflict resolution for children and families;
- Other topics relating to skills and development relevant to GAL practice.

Rule 2.3: A GAL who fails to complete the required amount of Continuing GAL Training is not qualified to serve as a GAL until the requirement is satisfied.

Rule 3—Roles and Responsibilities

Rule 3.1: A GAL is appointed to serve and represent a child's best interests in proceedings under IC 29-3, IC 31-14, IC 31-17, IC 31-19, and other civil family law matters relating to matters of child custody, parenting time, and visitation.

Commentary: A (GAL) is appointed by a court to represent the child's best interests in civil family law cases, which include, but are not limited to: custody and parenting time matters in dissolution of marriage cases and in paternity cases; guardianship cases; third party custody actions in dissolution of marriage cases and in paternity cases; adoptions, grandparent visitation cases, and third party visitation cases.

A GAL represents a child's best interests at all stages of the proceedings, from the time the GAL accepts the case until the end of their appointment. A GAL's appointment ends when the GAL is released from their appointment by the court, replaced by an appointment of a new GAL, or the court otherwise determines that termination of the appointment is appropriate.

Rule 3.2: A GAL must be appointed by a court in a written order.

Commentary: The court may appoint a GAL when the court finds that the child's best interests are not adequately protected by the parties and that separate representation of the child's best interests is necessary. The Court may make such appointment on its own motion at any stage of the proceeding. The parties to a case may agree to a GAL, subject to court approval.

A GAL may only be appointed by written court order. The GAL represents the child's best interests in a legal proceeding from appointment until termination of the appointment. Factors that a court may consider in appointing a GAL include, but are not limited to:

- the fundamental right of parents to the care, custody, and control of their children;
- the court's need for additional information and/or assistance;
- the financial impact on the parties and the ability of the parties to pay reasonable fees to the GAL;
- the cost and availability of alternative methods of obtaining the information and evidence necessary to resolve the issues in the proceeding without appointing a GAL;

- any alleged factors indicating a particular need for the appointment of a GAL, including:
  - the circumstances and needs of the child, including the child's age and developmental level;
  - any desire for representation or participation expressed by the child;
  - any inappropriate adult influence on or manipulation of the child;
  - the likelihood that the child may be called as a witness or be questioned by the court in chambers;
  - any excessive acrimony indicating the parties' lack of objectivity concerning the needs and best interests of the child;
  - any interference, or threatened interference, with custody, access, visitation, or parenting time, including abduction or risk of abduction of the child;
  - the likelihood of a geographic relocation of the child that could substantially reduce the child's time with a parent, a sibling, or another individual with whom the child has a close relationship;
  - any conduct or action during the exercise of parenting time by a party or an individual with whom a party associates that raises serious concerns;
  - any physical, educational, developmental, psychological, or educational needs of the child, parents or other relevant individuals that require investigation or advocacy;
  - whether the above referenced considerations and factors can be adequately addressed in a brief, focused, assessment or other limited appointment; and
  - any other factors necessary to address the best interests of the child.

Rule 3.3: An order appointing a GAL (Order of Appointment) must contain the following items:

(1) a statement appointing the GAL and naming the individual or organization who will serve as the GAL;
(2) the duties of the GAL in the case;
(3) the cost of services and/or apportionment of fees;
(4) the duration of the GAL appointment; and
(5) a statement requiring the GAL to adhere to the GAL Guidelines and the GAL Code of Ethics.

Commentary: The court will provide, in its Order of Appointment, as much detail and clarity as possible concerning the GAL duties in the case and will make the parties aware of the GAL Guidelines. Providing such specificity will assist the parties in understanding the role of the GAL and enable the court to exercise effective oversight of the GAL. If there are particular items the court wishes the GAL to investigate or make recommendations upon, the court should include these items in their order.

A GAL appointment should include a specific duration of time for the GAL to serve, such as until the final hearing on a pending petition or until a specific goal or service is accomplished. GAL appointments may be extended beyond this time by a court order indicating the necessity of the extension of the appointment. A GAL may be appointed to monitor a case, but such appointments should be for a limited rather than an indefinite period of time. It is not the role of a GAL to monitor a case for an ongoing, perpetual basis.

Rule 3.4: Once appointed, a GAL is a party to the case until they are released by the appointing court. A GAL is entitled to the same rights as a party, including the ability to retain counsel, use the compulsory process, present evidence, call witnesses, and be present at all stages of proceedings.

Commentary: A GAL has the status of a party to the case and can fully participate in every aspect of the court proceedings. A GAL may be represented by counsel or may proceed without counsel. The GAL or their counsel is authorized to engage in court proceedings and ancillary proceedings.

This includes, but is not limited to, the following:

- attending pretrial conferences;
- attending trials, mediations, negotiations, and other settlement processes;
- initiating negotiations and mediation (but not serving as the mediator) when appropriate and beneficial to the child;
- making discovery requests and receiving discovered information from other parties;
- filing pleadings, motions, and responsive pleadings in furtherance of the child's best interests;
- requesting hearings;
- being present in the courtroom for all aspects of the proceedings;
- subpoenaing witnesses;
- calling and cross-examining witnesses;
- submitting evidence, filing reports, and testifying;
- submitting findings of fact and conclusions of law;

- preserving issues for appeal, and initiating or participating in an appeal in appropriate circumstances; and
- taking such actions during the pre-trial, trial and post-trial proceedings as are necessary to advocate for the best interests of the child.

Rule 3.5: A GAL must advocate for the child's best interests at all stages of the proceedings.

Commentary: In determining a child's best interests, the GAL should use the objective criteria outlined under these rules. A GAL should avoid relying on subjective experiences or stereotypical views of individuals whose backgrounds differ from that of the GAL. A GAL must carefully consider each child's individual needs. The child's developmental level, including his or her sense of time, is relevant to an assessment of needs.

Rule 3.6: A GAL must be an independent actor, solely advocating for and influenced by the child's best interests.

Commentary: The GAL functions independently of all parties to the case and is a full and active participant in all stages of the proceedings. The GAL must investigate, assess, and evaluate the issues, and must advocate for the child's best interests.

The GAL must conduct a thorough, on-going, and independent investigation in accordance with advocacy for the child's best interests. The GAL must present the information obtained to the court and the parties with respect to the child's developmental, emotional, physical, psychological, and educational well-being.

Rule 3.7: The GAL must have a reasonable amount of in-person contact with the child. Reasonable contact is determined by the age of the child, the child's developmental needs, the child's physical and mental health, the facts and circumstances presented in the case, and any other relevant factors.

Commentary: Best interest representation must be child-centered and shall include spending time with the child, observing the child, talking with the child, and assessing the child's perspective and needs. Every child, including infants and children who do not engage in traditional communication, needs to be seen to ascertain their condition, the home environment, and the child's needs in order to make appropriate best interest recommendations. A GAL should have direct and sufficient contact with the child to complete an independent investigation of the child's circumstances and needs to be able to make sound, thorough and objective recommendations as to the child's best interests. This contact should occur in person to provide the GAL with firsthand knowledge of the child and his/her unique personality, abilities and needs.

If in-person contact cannot occur due to unusual circumstances, the GAL should request permission from the court to make virtual visits. In the rare instance in which contact with a child is not in the child's best interests, such as when a child's mental health is seriously endangered, the GAL shall notify the parties and the court of the concerns and seek further guidance from the court.

Rule 3.8: The GAL must investigate and make a written or oral report to the court. A written report must be filed on the order of the court. A GAL may prepare written reports and submit them to the court at any stage of the proceedings. A minimum of ten (10) days prior to hearing, a GAL must provide a report to the court and the opposing parties or their counsel, unless the time requirement is waived by all parties or good cause is shown.

Commentary: Best interest representation requires that GALs conduct a thorough, continuing and independent investigation of the case so that the GAL can make fact-based recommendations to the court. GALs may speak with all parties to the case without the presence of counsel.

A report to the Court may be oral or written unless the court orders otherwise. A GAL should make reasonable efforts to complete their investigation and report within the time allowed, and not cause delay in the progression of the case.

In making best interest recommendations, the GAL must ascertain the child's needs, including, at a minimum:

- Physical needs (food, clothing, shelter, medical care, safety, protection)
- Emotional needs (attachment between parent or caregiver and child, affection, safety)
- Developmental needs (social, education, appropriate support for children with disabilities, opportunity for adequate sleep)
- Psychological needs (access to counseling, testing, medications)
- Educational needs (social support, tutoring, testing, school sports, and activities)

A GAL may use the Checklist of Factors for Assessing Best Interest of Child and should consider factors related to parents' and caregivers' past conduct, observable present conduct, and related to future conduct as outlined in the Checklist.

A GAL's report does not prevent a GAL from testifying at any proceedings.

Rule 3.9: If a child expresses wishes or desires pertaining to the issues before the court, the GAL must convey those wishes or desires to the court, unless the child does not want them

conveyed or conveying them would compromise the child's safety. This Rule shall not be construed as a requirement for GALs to ask about a child's wishes or desires.

Commentary: In addition to the best interest assessment and recommendation, a GAL must present to the court the child's expressed wishes or desires, if any. If the child does not want those wishes or desires expressed to the court, a GAL is not required to include them. If a GAL has reasonable and legitimate concerns for the child's safety if the child's wishes and desires are disclosed to the court, the GAL may avoid disclosure of those wishes and desires or seek alternative methods of confidential disclosure, including seeking a protective order under the Indiana Trial Rules.

A GAL should not pressure a child to disclose their wishes and desires pertaining to the issues before the court. The GAL, as appropriate to the age and maturity of the child, should: (a) assure the child's views will be made known to the court even if inconsistent with the opinion of the GAL unless they fall into one of the exceptions outlined above; (b) ensure that the child is never compelled to choose between parents or placements; and (c) ensure that the child not be required to make choices about acrimonious issues.

Rule 3.10: Absent good cause, court order, or other law, a GAL must perform all actions necessary to carry out their duties as a GAL and a best interests advocate for the child.

Commentary: In fulfilling the role of the GAL, the GAL generally has the following duties:

- filing an Oath and Acceptance upon acceptance of the GAL appointment;
- reviewing the case file and all relevant pleadings and documents contained in the Court's case file;
- reviewing any non-confidential case files and documents of related cases;
- obtaining and reviewing records relevant to the case and the child's best interests;
- informing other parties or counsel of the GAL appointment, and that the GAL should be served with copies of all pleadings filed in the case and any discovery exchanges, and is entitled to notice of and to fully participate in all hearings related to the appointment;
- meeting with or observing the child as soon as practicable, unless there is compelling reason to forego doing so;
- tailoring all communications with the child to the child's age, level of education, cognitive and emotional development, cultural background, and degree of language acquisition, using an interpreter if necessary;
- informing the child in a developmentally appropriate manner about the GAL's role and duties;

- meeting with or observing the child with the parties, and meeting with or observing the child in a more private or neutral setting, where possible and necessary;
- communicating the child's expressed wishes and desires, even if those expressed wishes and desires stand in opposition to the GAL's best interests' recommendations;
- reviewing case-related records of social service agencies and other service providers;
- reviewing relevant medical, social, educational, psychiatric, law enforcement, and psychological evaluations or records;
- contacting, meeting with, and interviewing all the parties to a case;
- interviewing individuals who play a significant role in the child's life;
- identifying themselves to all persons interviewed as the GAL and explaining the role of the GAL as necessary;
- attending meetings involving issues within the scope of the GAL appointment;
- reviewing other evidence related to the best interests factors and other custody, parenting time, guardianship, third party custody, and grandparent visitation factors;
- filing a report with the court as requested in any appointment or subsequent orders;
- notifying the court in writing of any agreement with or opposition to any settlement agreement or mediated agreement, and the basis for that agreement or opposition;
- assisting the parties and the court in identifying and accessing services for the child and family and verifying implementation of such services;
- obtaining information regarding the child and the child's medical, psychiatric, educational, or other services provided to the child without obtaining the consent of the child's parents, guardians, or custodians; Obtaining the consent of the child with respect to gathering records and information regarding the child's medical, psychiatric, educational, or other provided services, if the child is of sufficient age and capable of forming rational and independent judgments;
- seeking court orders referring a child for any needed services;
- taking a position on any requests for in chambers interviews or requests for the child to testify, and filing motions or other pleadings to further that

position; Reporting child abuse and neglect to the Department of Child Services as required by Indiana Law;
- adhering to the GAL Code of Ethics.

With respect to the duty of taking a position on any requests for in chambers interview with or testimony from the child, the GAL should protect and shield the child from being required to testify or otherwise provide information in court proceedings. The potential negative impact of the child testifying in court shall be considered and the GAL should seek imposition of less harmful methods such as in-camera interviews when appropriate. This shall be construed in light of constitutional and statutory limitations.

Rule 3.11: If a party so requests, the GAL must make their file available to any requesting party or their counsel as is outlined in IC 31-17-2-12. A GAL may file a motion for a protective order under the Indiana Trial Rules.

Commentary: Upon request, the GAL must make their GAL file available to any party or counsel for party requesting the file as outlined in Indiana law. The GAL should produce underlying data and reports, complete texts of diagnostic reports made to and obtained by the GAL, and the names and contact information of all persons with whom the GAL consulted or interviewed. Any party or counsel for a party may seek copies of this information and that party or counsel is responsible for any costs pertaining to making such copies.

A GAL may seek a protective order to prevent disclosure of highly sensitive information in the GAL file. A GAL may also seek orders from the court protecting the GAL file if the GAL reasonably believes that a party is attempting to use the GAL as a vehicle to obtain information to which the party is not entitled, or if the GAL can reasonably demonstrate that a party is making multiple file requests in an effort to hinder the GAL's investigation.

Rule 3.12: A GAL report may not be excluded on hearsay grounds if:

(1) the report is timely submitted to court, parties or their counsel; and
(2) the GAL has properly maintained and made available their file, if requested pursuant to these rules.

Commentary: A GAL report may be received into evidence and may not be excluded on hearsay grounds if the GAL report is timely submitted to the court and the parties or their counsel, and if the GAL has properly maintained and provided their GAL file.

Rule 3.13: A GAL report should be an accurate reflection of their investigation and recommendations on behalf of the child's best interests.

Commentary: A GAL report should include information about the child, including the child's expressed wishes or desires, if the child expressed any and this information is not otherwise excluded pursuant to these rules. A report should also contain information from other parties, collateral sources, or the child pertaining to the child's best interests.

Other items which may be contained in a GAL report include, but are not limited to:

- names of all persons contacted, and the date they were last contacted;
- the dates and location that the child was seen;
- a summary of relevant interviews and conversations;
- a summary of relevant records and information obtained; and
- recommendations as to what is in the child's best interests as requested in the Order of Appointment and recommended services.

Rule 3.14: GAL reports shall be submitted to the court as a confidential document, pursuant to Indiana Rules on Access to Court Records, Rule 5.

Indiana Rules of Court
Child Support Rules and Guidelines

Revised Draft May 19, 2023

Adopted Effective October 1, 1989

Including Amendments Received Through January 1, 2020

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CHILD SUPPORT RULES

Support Rule 1. Adoption of Child Support Rules and Guidelines

The Indiana Supreme Court hereby adopts the Indiana Child Support Guidelines, as drafted by the Judicial Administration 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 Child Support Rules and Guidelines of this Court.

Support Rule 2. Presumption

In any proceeding for the award of child support, there shall be a rebuttable presumption that the amount of the award which would result from the application of the Indiana Child Support Guidelines is the correct amount of child support to be awarded.

Support Rule 3. Deviation from Guideline Amount

If the court concludes from the evidence in a particular case that the amount of the award reached through application of the guidelines would be unjust, the court shall enter a written finding articulating the factual circumstances supporting that conclusion.

INDIANA CHILD SUPPORT GUIDELINES

GUIDELINE 1. PREFACE

Guidelines to determine levels of child support and educational support were developed by the Judicial Administration Committee of the Judicial Conference of Indiana and adopted by the Indiana Supreme Court. The guidelines are consistent with the provisions of Indiana Code Title 31 which place a duty for child support and educational support upon parents based upon their financial resources and needs, the standard of living the child would have enjoyed had the marriage not been dissolved or had the separation not been ordered, the physical or mental condition of the child, and the child's educational needs.

The Guidelines have three objectives:

(1) To establish as state policy an appropriate standard of support for children, subject to the ability of parents to financially contribute to that support;

(2) To make awards more equitable by ensuring more consistent treatment of people in similar circumstances; and,

(3) To improve the efficiency of the court process by promoting settlements and giving courts and the parties guidelines in settling the level of awards.

The Indiana Child Support Guidelines are based on the Income Shares Model, developed by the Child Support Project of the National Center for State Courts. The Income Shares Model is predicated on the concept that the child should receive the same proportion of parental income that he or she would have received if the parents lived together. Because household spending on behalf of children is intertwined with spending on behalf of adults for most expenditure categories, it is difficult to determine the proportion allocated to children in individual cases, even with exhaustive financial information. However, a number of authoritative economic studies provide estimates of the average amount of household expenditure on children in intact households. These studies have found the proportion of household spending devoted to children is related to the level of household income and to the number and ages of children. The Indiana Child Support Guidelines relate the level of child support to income and the number of children. In order to provide simplicity in the use of the Guidelines, however, child support figures reflect a blend of all age categories weighted toward school age children.

Based on this economic evidence, the Indiana Child Support Guidelines calculate child support as the share of each parent's income estimated to have been spent on the child if the parents and child were living in an intact household. The calculated amount establishes the level of child support for both the custodial and non-custodial parent. Absent grounds for a deviation, the custodial parent should be required to make monetary payments of child support, if application of the parenting time credit would so require.

COMMENTARY

History of Development. *In June of 1985, the Judicial Reform Committee (now the Judicial Administration Committee) of the Judicial Conference of Indiana undertook the task of developing child support guidelines for use by Indiana judges. While the need had been long recognized in Indiana, the impetus for this project came from federal statutes requiring guidelines to be in place no later than October 1, 1987. P.L. 98-378. Paradoxically, guidelines did not need to be mandatory under the 1984 federal legislation to satisfy federal requirements; they were only required to be made available to judges and other officials with authority to establish child support awards. 45 CFR Ch. III, § 302.56.*

The final draft was completed by the Judicial Reform Committee on July 24, 1987, and was presented to the Judicial Conference of Indiana Board of Directors on September 17, 1987. The Board accepted the report of the Reform Committee, approved the Guidelines and recommended their use to the judges of Indiana in all matters of child support.

Family Support Act of 1988. *On October 13, 1988, the United States Congress passed the "Family Support Act of 1988," P.L. 100-485 amending the Social Security Act by deleting the original language which made application of the Guideline discretionary and inserted in its place the following language:*

"There shall be a rebuttable presumption, in any judicial or administrative proceeding for the award of child support, that the amount of the award which would result from the application of such guidelines is the correct amount of child support to be awarded. A written finding or specific finding on the record that the application of the guidelines would be unjust or inappropriate in a particular case, as determined under criteria established by the State, shall be sufficient to rebut the presumption in that case." P.L. 100-485, § 103(a)(2).

The original Guidelines that went into effect October 1, 1987 and their commentary were revised by the Judicial Administration Committee to reflect the requirement that child support guidelines be a rebuttable presumption. The requirement applies to all cases where support is set after October 1, 1989, including actions brought under Title IV-D of the Social Security Act (42 U.S.C.A. § 651-669). Also, after October 1, 1989, counties and individual courts may not opt to use alternate methods of establishing support. The Indiana Child Support Guidelines were required to be in use in all Indiana courts in all proceedings where child support is established or modified on and after October 1, 1989.

Periodic Review of Guidelines and Title IV-D Awards. *The "Family Support Act of 1988" also requires that the Guidelines be reviewed at least every four years "to assure their application results in the determination of appropriate child support award amounts." P.L. 100-485, § 103(b). Further, each state must develop a procedure to ensure that all Title IV-D awards are periodically reviewed to ensure that they comply with the Guidelines. P.L. 100-485, § 103(c).*

Compliance With State Law. *The Child Support Guidelines were developed specifically to comply with federal requirements, as well as Indiana law.*

Objectives of the Indiana Child Support Guidelines. *The following three objectives are specifically articulated in the Indiana Child Support Guidelines:*

1. To establish as state policy an appropriate standard of support for children, subject to the ability of parents to financially contribute to that support. When the Guidelines were first recommended for use by the Indiana Judicial Conference on September 17, 1987, many courts in the state had no guideline to establish support. Many judges had expressed the need for guidelines, but few had the resources to develop them for use in a single court system. The time, research and economic understanding necessary to develop meaningful guidelines were simply beyond the resources of most individual courts.

2. To make awards more equitable by ensuring more consistent treatment of people in similar circumstances. This consistency can be expected not only in the judgments of a particular court, but between jurisdictions as well. What is fair for a child in one court is fair to a similarly situated child in another court.

3. To improve the efficiency of the court process by promoting settlements and giving courts and the parties guidelines in settling the level of awards. In other words, when the outcome is predictable, there is no need to fight. Because the human experience provides an infinite number of variables, no guideline can cover every conceivable situation, so litigation is not completely forestalled in matters of support. If the Guidelines are consistently applied, however, those instances should be minimized.

Economic Data Used in Developing Guidelines. *What does it take to support a child? The question is simple, but the answer is extremely complex. Yet, the question must be answered if an adequate amount of child support is to be ordered by the court. Determining the cost attributable to children is complicated by intertwined general household expenditures. Rent, transportation, and grocery costs, to mention a few, are impossible to accurately apportion between family members. In developing these Guidelines, a great deal of reliance was placed on the research of Thomas J. Espenshade, (Investing In Children, Urban Institute Press, 1984) generally considered the most authoritative study of household expenditure patterns. Espenshade used data from 8,547 households and from that data estimated average expenditures for children present in the home. Espenshade's estimates demonstrate that amounts spent on the children of intact households rise as family income increases. They further demonstrate at constant levels of income that expenditures decrease for each child as family size increases. These principles are reflected in the Guideline Schedules for Weekly Support Payments, which are included in the Indiana Child Support Guidelines. By demonstrating how expenditures for each child decrease as family size increases, Espenshade should have put to rest the previous practice of ordering equal amounts of support per child when two or more children are involved. Subsequent guidelines reviews have considered more current economic studies of child-rearing expenditures (e.g., Mark Lino, Expenditures on Children by Families: 2006 Annual Report, United States Department of Agriculture, 2007; David Betson, State of Oregon Child Support Guidelines Review: Updated Obligation Scales and Other Considerations, report to State of Oregon Department of Justice, 2006). These periodic guidelines reviews have concluded that the Indiana Guidelines based on the Espenshade estimates are generally within the range of more current estimates of child-rearing expenditures. A notable exception at high incomes leveled off the child support schedule for combined weekly adjusted incomes above $4,000. In 2009 this exception was removed. The increase is now incorporated into the schedule up to combined weekly adjusted incomes of $10,000 and a formula is provided for incomes above that amount. Previously, a formula was provided for combined weekly adjusted incomes above $4,000.*

Income Shares Model. *After review of five approaches to the establishment of child support, the Income Shares Model was selected for the Indiana Guidelines. This model was perceived as the fairest approach for children because it is based on the premise that children should receive the same proportion of parental income after a dissolution that they would have received if the family had remained intact. Because it then apportions the cost of children between the parents based on their means, it is also perceived as being fair to parents. In applying the Guidelines, the following steps are taken:*

1. *The gross income of both parents is added together after certain adjustments are made. A percentage share of income for each parent is then determined.*
2. *The total is taken to the support tables, referred to in the Indiana Guidelines as the Guideline Schedules for Weekly Support Payments, to determine the total cost of supporting a child or children.*
3. *Work-related child care expenses and the weekly costs of health insurance premiums for the child(ren) are then added to the basic child support obligation.*
4. *The child support obligation is then prorated between the parents, based on their proportionate share of the weekly adjusted income, hence the name "income shares."*

The Income Shares Model was developed by The Institute for Court Management of the National Center for State Courts under the Child Support Guidelines Project. This approach was designed to be consistent with the Uniform Marriage and Divorce Act, the principles of which are consistent with IC 31-16-6-1. Both require the court to consider the financial resources of both parents and the standard of living the child would have enjoyed in an intact family.

Gross Versus Net Income. *One of the policy decisions made by the Judicial Administration Committee in the early stages of developing the Guidelines was to use a gross income approach as opposed to a net income approach. Under a net income approach, extensive discovery is often required to determine the validity of deductions claimed in arriving at net income. It is believed that the use of gross income reduces discovery. (See Commentary to Guideline 3A). While the use of gross income has proven controversial, this approach is used by the majority of jurisdictions and, after a thorough review, is considered the best reasoned.*

The basic support obligation would be the same whether gross income is reduced by adjustments built into the Guidelines or whether taxes are taken out and a net income option is used. A support guideline schedule consists of a column of income figures and a column of support amounts. In a gross income methodology, the tax factor is reflected in the support amount column, while in a net income guideline, the tax factor is applied to the income column. In devising the Indiana Guidelines, an average tax factor of 21.88 percent was used to adjust the support column.

Of course, taxes vary for different individuals. This is the case whether a gross or net income approach is used. Under the Indiana Guideline, where taxes vary significantly from the assumed rate of 21.88 percent, a trial court may choose to deviate from the guideline amount where the variance is substantiated by evidence at the support hearing.

~~Flexibility Versus~~Deviation from the Rebuttable Presumption. *The Child Support Rules create a ~~Although application of the Guideline yields a figure that becomes a~~ rebuttable presumption~~,~~ that the amount of the award which would result from the application of the Child Support Guidelines is the correct amount of child support to be awarded. The creation of a rebuttable presumption recognizes the existence of factors or circumstances which are unable to be incorporated in the formulas used under the Guidelines. ~~there is room for flexibility. Guidelines are not immutable, black letter law. A strict and totally inflexible application of the Guidelines to all cases can easily~~ In other cases, strict adherence to the Guidelines could lead to harsh and unreasonable results. If a judge believes ~~that~~ in a particular case application of the Guideline amount would be unreasonable, unjust~~,~~ or inappropriate, a finding must be made that sets forth the reason(s) ~~for~~supporting the deviati~~ng~~on from the Guideline amount. The finding need not be as formal as Findings of Fact and Conclusions of Law; the finding need only articulate the judge's reasoning. For example, if under the facts and circumstances of the case, the noncustodial parent would bear an inordinate financial burden, the following finding would justify a deviation:*

"Because the noncustodial parent suffers from a chronic medical condition requiring uninsured medical expenses of $3~~5~~97.00 per month, the Court believes that setting child support in the Guideline amount would be unjust and/or inappropriate under the circumstances. The Court

finds support should be ~~instead~~ set~~s support~~ in the amount of $____per week."

Any child support order deviating from the Guideline must include the Child Support Obligation Worksheet even if the support order is zero dollars ($0.00).

Agreed Orders submitted to the court must also comply with the "rebuttable presumption" requirement; that is, the order must recite why the order deviates from the Guideline amount. A reason for the deviation must be included; a simple statement the parties agree to the deviation is not sufficient under the Guidelines. A copy of the Child Support Obligation Worksheet setting forth the Guideline amount must be included.

1. ***Phasing in Support Orders.*** *Some courts may find it desirable in modification proceedings to gradually implement the Guideline order over a period of time, especially where support computed under the Guideline is considerably higher than the amount previously paid. Enough flexibility exists in the Guidelines to permit that approach, as long as the judge's rationale is explained with an entry such as:*

"The Guideline's support represents an increase of 40%, and the court finds that such an abrupt change in support obligation would render the obligor incapable of meeting his/her other established obligations. Therefore, the Court sets support in the amount of $_____ and, on October 1, 20___, it shall increase to $_____ and, on September 1, 20__, obligor shall begin paying the Guideline amount of $_____."

2. ***Situations Calling for Deviation***. *An infinite number of situations may ~~prompt~~persuade a judge to ~~deviate from~~to find the Guideline amount~~.~~ to be unjust or inappropriate and to deviate from the Guideline amount in awarding child support. For illustration only, and not as a complete list, the following examples are offered:*

- *One or both parties pay union dues as a condition of employment.*
- *A party provides support for an elderly parent.*
- ~~*The noncustodial parent purchases school clothes.*~~
- *The noncustodial parent has extraordinary personal medical expenses ~~for himself or herself~~.*
- *A parent is a member of the armed forces and the military provides housing.*
- ~~*The obligor is still making periodic payments to a former spouse pursuant to a prior Dissolution Decree.*~~
- *The parents share the controlled expenses of the child.*
- *The parent is on work release or a similar correctional program requiring payment of fees.*
- *The children spend different numbers of overnight parenting time with the noncustodial parent.*
- ~~*One of the parties is required to travel an unusually long distance in the course of employment on a regular or daily basis and incurs an unusually large expense for such travel, and*~~
- *The custodial or noncustodial parent incurs significant travel expense in exercising parenting time.*

~~*Again, no attempt has been made to define every possible situation that could conceivably arise*~~ *It is impossible to imagine every possible situation which may affect the ~~when~~ determin~~ing~~ation of child support and to prescribe a specific method of handling each of them. Practitioners must keep this in mind when advising clients and when arguing to the court. Many creative suggestions will undoubtedly result. All attempts to deviate from the Guideline amount must include submission of the Child Support Obligation Worksheet and reason(s) why use of the Guideline amount is unjust or inappropriate. Judges must also avoid the pitfall of blind adherence to the computation for support without giving careful consideration to the variables ~~that require~~requiring a ~~changing the~~ different result in order to do justice.*

GUIDELINE 2. USE OF THE GUIDELINES

The Guideline Schedules provide calculated amounts of child support. For obligors with a combined weekly adjusted income, as defined by these Guidelines, of less than $100.00, the Guidelines provide for case-by-case determination of child support. When a parent has extremely low income the amount of child support recommended by use of the Guidelines should be carefully scrutinized. The court should consider the obligor's income and living expenses to determine the maximum amount of child support that can reasonably be ordered without denying the obligor the means for self-support at a minimum subsistence level. A numeric amount of child support shall be ordered; however, there are situations where a $0.00 support order is appropriate.

Temporary maintenance may be awarded by the court not to exceed thirty-five percent (35%) of the obligor's weekly adjusted income. In no case shall child support and temporary maintenance exceed fifty percent (50%) of the obligor's weekly adjusted income. Temporary maintenance and/or child support may be ordered by the court either in dollar payments or "in-kind" payments of obligations.

Federal law requires the Indiana Child Support Guidelines be applied in every instance in which child support is established including, but not limited to, dissolutions of marriage, legal separations, paternity actions, juvenile proceedings, petitions to establish support and Title IV D proceedings.

Indiana requires worksheets, including a Child Support Obligation Worksheet, to assist judges, practitioners, and parents in calculating the presumptive amount of child support under the Guidelines.

COMMENTARY

Minimum Support. *The Guideline's schedules for weekly support payments do not provide an amount of support for couples with combined weekly adjusted income of less than $100.00. Consequently, the Guidelines do not establish a minimum support obligation. Instead the facts of each individual case must be examined and support set in such a manner that the obligor is not denied a means of self-support at a subsistence level. For example, (1) a parent who has a high parenting time credit; (2) a parent who suffers from debilitating mental illness; (3) a parent caring for a disabled child; (4) an incarcerated parent; (5) a parent or a family member with a debilitating physical health issue; or, (6) a natural disaster are significant but not exclusive factors for the court to consider in setting a child support order. The court should not automatically attribute minimum wage to parents who, for a variety of factors, are not capable of earning minimum wage.*

Where parents live together with the child and share expenses, a child support worksheet shall be completed and a $0.00 order may be entered as a deviation.

Temporary Maintenance. *It is recommended that temporary maintenance not exceed thirty-five percent (35%) of the obligor's weekly adjusted income. The maximum award should be reserved for those instances where the custodial spouse has no income or no means of support, taking into consideration that spouse's present living arrangement (i.e., whether or not he or she lives with someone who shares or bears the majority of the living expense, lives in the marital residence with little or no expense, lives in military housing, etc.).*

It is further recommended that the total of temporary maintenance and child support should not exceed fifty percent (50%) of the obligor's weekly adjusted income. In computing temporary maintenance, in-kind payments, such as the payment of utilities, house payments, rent, etc., should also be included in calculating the percentage limitations. Care must also be taken to ensure that the obligor is not deprived of the ability to support himself or herself.

Spousal Maintenance. *It should also be emphasized that the recommendations*

concerning maintenance apply only to temporary maintenance, not maintenance in the Final Decree. An award of spousal maintenance in the Final Decree must, of course, be made in accordance with Indiana statute. These Guidelines do not alter those requirements. Theoretically, when setting temporary maintenance, child support should come first. That is, if child support is set at forty percent (40%) of the obligor's weekly adjusted income, only a maximum of ten percent (10%) of the obligor's income would be available for maintenance. That distinction, however, makes little practical difference. As with temporary maintenance, care should be taken to leave the obligor with adequate income for subsistence. In many instances the court will have to review the impact of taxes on the obligor's income before entering an order for spousal maintenance in addition to child support to avoid injustice to the obligor.

The worksheet provides a deduction for spousal maintenance paid (Line 1D). Caution should be taken to assure that any credit taken is for maintenance and not for periodic payments as the result of a property settlement. No such deduction is given for amounts paid by an obligor as the result of a property settlement, although that is a factor the court may wish to consider in determining the obligor's ability to pay the scheduled amount of support at the present time. Again, flexibility was intended throughout the Guidelines and they were not intended to place the obligor in a position where he or she loses all incentive to comply with the orders of the court.

Guidelines to be Applied in all Matters of Child Support. *The Indiana Child Support Guidelines shall be applied in every instance in which child support is established including, but not limited to, dissolutions of marriage, legal separations, paternity actions, juvenile proceedings, petitions to establish support and Title IV-D proceedings.*

The Indiana legislature requires the Indiana Child Support Guidelines be applied and the Child Support Worksheet be used in determining the manner in which financial services to children that are CHINS (Child in Need of Services) or delinquent are to be repaid. Similarly, the legislature requires the court to use the Guidelines to determine the financial contribution required from each parent of a child or the guardian of the child's estate for costs associated with the institutional placement of a child.

GUIDELINE 3. DETERMINATION OF CHILD SUPPORT AMOUNT

A. Definition of Weekly Gross Income.

1. Definition of Weekly Gross Income (Line 1 of Worksheet). For purposes of these Guidelines, "weekly gross income" is defined as actual weekly gross income of the parent if employed to full capacity, potential income if unemployed or underemployed, and the value of "in-kind" benefits received by the parent. Weekly gross income of each parent includes income from any source, except as excluded below, and includes, but is not limited to, income from salaries, wages, commissions, bonuses, overtime, partnership distributions, dividends, severance pay, pensions, interest, trust income, annuities, structured settlements, capital gains, social security benefits, worker's compensation benefits, unemployment insurance benefits, disability insurance benefits, gifts, inheritance, prizes, and alimony or maintenance received.

Social Security disability benefits paid for the benefit of the child must be included in the disabled parent's gross income. The disabled parent is entitled to a credit for the amount of Social Security disability benefits paid for the benefit of the child.

Certain Exclusions from Income. Specifically excluded are benefits from means-tested public assistance programs, including, but not limited to, Temporary Aid to Needy Families (TANF), Supplemental Security Income, and Food Stamps. Also excluded are survivor benefits received by or for other children residing in either parent's home.

2. Self-Employment, Business Expenses, In-Kind Payments and Related Issues. Weekly Gross Income from self-employment, operation of a business, rent, and royalties is defined as gross receipts minus ordinary and necessary expenses. In general, these types of income and expenses from self-employment or operation of a business should be carefully reviewed to restrict the deductions to reasonable out-of-pocket expenditures necessary to produce income. These expenditures may include a reasonable yearly deduction for necessary capital expenditures. Weekly Gross Income from self-employment may differ from a determination of business income for tax purposes.

Expense reimbursements or in-kind payments received by a parent in the course of employment, self-employment, or operation of a business should be counted as income if they are significant and reduce personal living expenses. Such payments might include a company car, free housing, or reimbursed meals.

The self-employed shall be permitted to deduct that portion of their FICA tax payment that exceeds the FICA tax that would be paid by an employee earning the same Weekly Gross Income.

3. Unemployed, Underemployed and Potential Income. If a court finds a parent is voluntarily unemployed or underemployed without just cause, child support shall be calculated based on a determination of potential income. A determination of potential income shall be made by determining employment potential and probable earnings level based on the obligor's employment and earnings history, occupational qualifications, educational attainment, literacy, age, health, criminal record or other employment barriers, prevailing job opportunities, and earnings levels in the community. If there is no employment and earnings history and no higher education or vocational training, the facts of the case may indicate that Weekly Gross Income be set at least at the federal minimum wage level, provided the resulting child support amount is set in such a manner that the obligor is not denied a means of self-support at a subsistence level.

COMMENTARY TO GUIDELINE 3A

Weekly Gross Income.

1. Child Support Calculations Generally. *Weekly Gross Income, potential income, weekly adjusted income and basic child support obligation have very specific and well-defined meanings within the Indiana Child Support Guidelines. Their definitions are not repeated in the Commentary, but further explanation follows.*

2. Determination of Weekly Gross Income. *Weekly Gross Income is the starting point in determining the child support obligation, and it must be calculated for both parents. If one or both parents have no income, then potential income may be calculated and used as Weekly Gross Income. Likewise, imputed income may be substituted for, or added to, other income in arriving at Weekly Gross Income. It includes such items as free housing, a company car that may be used for personal travel, and reimbursed meals or other items received by the obligor that reduce his or her living expenses.*

The Child Support Obligation Worksheet does not include space to calculate Weekly Gross Income. It must be calculated separately and the result entered on the worksheet.

In calculating Weekly Gross Income, it is helpful to begin with total income from all sources. This figure may not be the same as gross income for tax purposes. Internal Revenue Code of 1986, § 61. Means-tested public assistance programs (those based on income) are excluded from the computation of Weekly Gross Income, but other government payments, such as Social Security benefits and veterans pensions/retired pay, should be included. However, survivor benefits paid to or for the benefit of their children are not included. In cases where a custodial parent is receiving, as a representative payee for a prior born child, Social Security survivor benefits because of the death of the prior born child's parent, the court should carefully consider Line 1 C of the basic child support obligation worksheet, Legal Duty of Support for Prior-born Children. Because the deceased parent's contribution for the support of the prior born child is being partially paid by Social Security

survivor benefits that are excluded from Weekly Gross Income, the court should not enter, on Line 1C, an amount that represents 100% of the cost of support for the prior born child. The income of the spouses of the parties is not included in Weekly Gross Income.

A court may not consider the incarceration of a parent as voluntary unemployment and his or her potential income should not be assessed for the establishment or modification of child support. I.C. 31-16-8-1 (d).

a. Self-Employment, Rent and Royalty Income. *Calculating Weekly Gross Income for the self-employed or for those who receive rent and royalty income presents unique problems, and calls for careful review of expenses. The principle involved is that actual expenses are deducted, and benefits that reduce living expenses (i.e. company cars, free lodging, reimbursed meals, etc.) should be included in whole or in part. It is intended that actual out-of-pocket expenditures for the self-employed, to the extent that they are reasonable and necessary for the production of income, be deducted. Reasonable deductions for capital expenditures may be included. While income tax returns may be helpful in arriving at Weekly Gross Income for a self-employed person, the deductions allowed by the Guidelines may differ significantly from those allowed for tax purposes.*

The self-employed pay FICA tax at twice the rate that is paid by employees. At present rates, the self-employed pay fifteen and thirty one-hundredths percent (15.30%) of their gross income to a designated maximum, while employees pay seven and sixty-five one-hundredths percent (7.65%) to the same maximum. The self-employed are therefore permitted to deduct one-half of their FICA payment when calculating Weekly Gross Income.

b. Overtime, Commissions, Bonuses and Other Forms of Irregular Income. *There are numerous forms of income that are irregular or nonguaranteed, which cause difficulty in accurately determining the gross income of a party. Overtime, commissions, bonuses, periodic partnership distributions, voluntary extra work and extra hours worked by a professional are all illustrations, but far from an all-inclusive list, of such items. Each is includable in the total income approach taken by the Guidelines, but each is also very fact sensitive.*

Each of the above items is sensitive to downturns in the economy. The fact that overtime, for example, has been consistent for three (3) years does not guarantee that it will continue in a poor economy. Further, it is not the intent of the Guidelines to require a party who has worked sixty (60) hour weeks to continue doing so indefinitely just to meet a support obligation that is based on that higher level of earnings. Care should be taken to set support based on dependable income, while at the same time providing children with the support to which they are entitled.

When the court determines that it is not appropriate to include irregular income in the determination of the child support obligation, the court should express its reasons. When the court determines that it is appropriate to include irregular income, an equitable method of treating such income may be to require the obligor to pay a fixed percentage of overtime, bonuses, etc., in child support on a periodic but predetermined basis (weekly, bi-weekly, monthly, quarterly) rather than by the process of determining the average of the irregular income by past history and including it in the obligor's gross income calculation.

One method of treating irregular income is to determine the ratio of the basic child support obligation (line 4 of the worksheet) to the combined weekly adjusted income (line 3 of the worksheet) and apply this ratio to the irregular income during a fixed period. For example, if the basic obligation was $110.00 and the combined income was $650.00, the ratio would be .169 ($110.00 / $650.00). The order of the court would then require the obligor to make a lump sum payment of .169 of the obligor's irregular income received during the fixed period.

The use of this ratio will not result in an exact calculation of support paid on a weekly basis. It will result in an overstatement of the additional support due, and particularly so when average irregular income exceeds $250.00 per week or exceeds 75% of the regular adjusted Weekly Gross

Income. In these latter cases the obligor may seek to have the irregular income calculation redetermined by the court.

Another form of irregular income may exist when an obligor takes a part-time job for the purpose of meeting financial obligations arising from a subsequent marriage, or other circumstances. Modification of the support order to include this income or any portion of it may require that the obligor continue with that employment just to meet an increased support obligation, resulting in a disincentive to work.

Judges and practitioners should be innovative in finding ways to include income that would have benefited the family had it remained intact, but be receptive to deviations where reasons justify them. The foregoing discussion should not be interpreted to exclude consideration of irregular income of the custodial parent.

c. Potential Income. *Potential income may be determined if a parent has no income, or only means-tested income, and is capable of earning income or capable of earning more. Obviously, a great deal of discretion will have to be used in this determination. One purpose of potential income is to discourage a parent from taking a lower paying job to avoid the payment of significant support. Another purpose is to fairly allocate the support obligation when one parent remarries and, because of the income of the new spouse, chooses not to be employed. However, attributing potential income that results in an unrealistic child support obligation may cause the accumulation of an excessive arrearage, and be contrary to the best interests of the child(ren). Research shows that on average more noncustodial parental involvement is associated with greater child educational attainment and lower juvenile delinquency. Ordering support for low-income parents at levels they can reasonably pay may improve noncustodial parent-child contact; and in turn, the outcomes for their children. The six examples which follow illustrate some of the considerations affecting attributing potential income to an unemployed or underemployed parent.*

(1) When a custodial parent with young children at home has no significant skills or education and is unemployed, he or she may not be capable of entering the work force and earning enough to even cover the cost of child care. Hence, it may be inappropriate to attribute any potential income to that parent. It is not the intention of the Guidelines to force all custodial parents into the work force. Therefore, discretion must be exercised on an individual case basis to determine if it is fair under the circumstances to attribute potential income to a particular nonworking or underemployed custodial parent. The need for a custodial parent to contribute to the financial support of a child must be carefully balanced against the need for the parent's full-time presence in the home.

(2) When a parent has some history of working and is capable of entering the work force, but without just cause voluntarily fails or refuses to work or to be employed in a capacity in keeping with his or her capabilities, such a parent's potential income shall be included in the gross income of that parent. The amount to be attributed as potential income in such a case may be the amount that the evidence demonstrates he or she was capable of earning in the past. If for example the custodial parent had been a nurse or a licensed engineer, it may be unreasonable to determine his or her potential at the minimum wage level. Discretion must be exercised on an individual case basis to determine whether under the circumstances there is just cause to attribute potential income to a particular unemployed or underemployed parent.

(3) Even though an unemployed parent has never worked before, potential income should be considered for that parent if he or she voluntarily remains unemployed without justification. Absent any other evidence of potential earnings of such a parent, the federal minimum wage should be used in calculating potential income for that parent. However, the court should not add child care expense that is not actually incurred.

(4) When a parent is unemployed by reason of involuntary layoff or job termination, it still

may be appropriate to include an amount in gross income representing that parent's potential income. If the involuntary layoff can be reasonably expected to be brief, potential income should be used at or near that parent's historical earning level. If the involuntary layoff will be extensive in duration, potential income may be determined based upon such factors as the parent's unemployment compensation, job capabilities, education and whether other employment is available. Potential income equivalent to the federal minimum wage may be attributed to that parent.

(5) When a parent is unable to obtain employment because that parent suffers from debilitating mental illness, a debilitating health issue, or is caring for a disabled child, it may be inappropriate to attribute any potential income to that parent.

(6) When a parent is incarcerated and has no assets or other source of income, potential income should not be attributed.

d. In-Kind Benefits. *Whether or not the value of in-kind benefits should be included in a parent's weekly gross income is fact-sensitive and requires careful consideration of the evidence in each case. It may be inappropriate to include as gross income occasional gifts received. However, regular and continuing payments made by a family member, subsequent spouse, roommate or live in friend that reduce the parent's costs for housing, utilities, or groceries, may be included as gross income. If there were specific living expenses being paid by a parent which are now being regularly and continually paid by that parent's current spouse or a third party, the value of those assumed expenses may be considered to be in-kind benefits and included as part of the parent's weekly gross income. The marriage of a parent to a spouse with sufficient affluence to obviate the necessity for the parent to work may give rise to a situation where either potential income or the value of in-kind benefits or both should be considered in arriving at gross income.*

e. Return from Individual Retirement Accounts and other retirement plans. *The annual return of an IRA, 401(K) or other retirement plan that is automatically reinvested does not constitute income. Where previous withdrawals from the IRA or 401(K) have been made to fund the parent's lifestyle choices or living expenses, these withdrawals may be considered "actual income" when calculating the parent's child support obligation. The withdrawals must have been received by the parent and immediately available for his or her use. The court should consider whether the early withdrawal was used to reduce the parent's current living expenses, whether it was utilized to satisfy on-going financial obligations, and whether the sums are immediately available to the parent. This is a fact-sensitive situation. Retirement funds which were in existence at the time of a dissolution and which were the subject of the property division would not be considered "income" when calculating child support.*

B. Income Verification.

1. Submitting Worksheet to Court. In all cases, a copy of the worksheet which accompanies these Guidelines shall be completed and filed with the court when the court is asked to order support. This includes cases in which agreed orders are submitted. Worksheets shall be signed by both parties, not their counsel, under penalties for perjury.

2. Documenting Income. Income statements of the parents shall be verified with documentation of both current and past income. Suitable documentation of current earnings includes paystubs, employer statements, or receipts and expenses if self-employed. Documentation of income may be supplemented with copies of tax returns.

COMMENTARY TO GUIDELINE 3B

Worksheet Documentation.

1. Worksheet Requirement. *Submission of the worksheet became a requirement in 1989 when use of the Guidelines became mandatory. The Family Support Act of 1988 requires that a*

written finding be made when establishing support. In Indiana, this is accomplished by submission of a child support worksheet. The worksheet memorializes the basis upon which the support order is established. Failure to submit a completed child support worksheet may, in the court's discretion, result in the court refusing to approve a child support order or result in a continuance of a hearing regarding child support until a completed worksheet is provided. At subsequent modification hearings the court will then have the ability to accurately determine the income claimed by each party at the time of the prior hearing.

If the parties disagree on their respective gross incomes, the court shall include in its order the gross income it determines for each party. When the court deviates from the Guideline amount, the order or decree should also include the reason or reasons for deviation. This information becomes the starting point to determine whether or not a substantial and continuing change of circumstance occurs in the future.

2. Verification of Income. *The requirement of income verification is not a change in the law but merely a suggestion to judges that they take care in determining the income of each party. One pay stub standing alone can be very misleading, as can other forms of documentation. This is particularly true for salesmen, professionals and others who receive commissions or bonuses, or others who have the ability to defer payments, thereby distorting the true picture of their income in the short term. When in doubt, it is suggested that income tax returns for the last two or three years be reviewed.*

C. Computation of Weekly Adjusted Income (Line 1E of Worksheet).

After Weekly Gross Income is determined, certain reductions are allowed in computing weekly adjusted income which is the amount on which child support is based. These reductions are specified below.

1. Adjustment for Subsequent-born or Legally Adopted Child(ren) (Line 1A of Worksheet). There shall be an adjustment to Weekly Gross Income of parents who have a legal duty or court order to support children (1) born or legally adopted subsequent to the birthdates(s) of the child(ren) subject of the child support order and (2) that parent is actually meeting or paying that obligation.

2. Court Orders for Prior-born Child(ren) (Line 1B of Worksheet). The amount(s) of any court order(s) for child support for prior-born children shall be deducted from Weekly Gross Income. This should include court ordered post-secondary education expenses calculated on an annual basis divided by 52 weeks. A credit shall not be given for any portion of the order addressing arrearages.

3. Legal Duty of Support for Prior-born Child(ren) When No Court Order Exists (Line 1C of Worksheet). Where a party has a legal duty to financially support children born prior to the child(ren) for whom support is being established, and no court order exists, an amount reasonably necessary for such support actually paid, or funds actually spent shall be deducted from weekly gross income to arrive at weekly adjusted income. This deduction is not allowed for step-children.

4. Alimony or Maintenance (Line 1D of Worksheet). The amount(s) of alimony ordered in decrees from foreign jurisdictions or maintenance should be deducted from Weekly Gross Income.

COMMENTARY TO GUIDELINE 3C

Determining Weekly Adjusted Income. *After Weekly Gross Income is determined, the next step is to compute weekly adjusted income (Line 1E of the Worksheet). Certain deductions, discussed below, are allowed from Weekly Gross Income in arriving at weekly adjusted income.*

1. Adjustment of Weekly Gross Income for Subsequent-born or Legally Adopted Child(ren). *The adjustment should be computed as follows:*

STEP 1: Determine the number of children born or legally adopted by the parents subsequent to the birthdate(s) of the child(ren) subject of the child support order and for whom the parent has a legal duty or court order to support. The parent seeking the adjustment has the burden to prove the support is actually paid if the subsequent child does not live in the respective parent's household.

STEP 2: Calculate the subsequent child credit by multiplying the parent's Weekly Gross Income by the appropriate factor listed in the table below and enter the product on Line 1A on the Worksheet.

Appropriate factors are:

1	*Subsequent child*	*.065*
2	*Subsequent children*	*.097*
3	*Subsequent children*	*.122*
4	*Subsequent children*	*.137*
5	*Subsequent children*	*.146*
6	*Subsequent children*	*.155*
7	*Subsequent children*	*.164*
8	*Subsequent children*	*.173*

EXAMPLE: A noncustodial parent has a Weekly Gross Income, before adjustment, of $500.00. The custodial parent has a Weekly Gross Income, before adjustment, of $300.00. An adjustment shall be made to the parents' respective Weekly Gross Incomes for the two (2) children born to the noncustodial parent after the birthdates(s) of the child(ren) subject of the child support order and the one (1) adopted child of the custodial parent, legally adopted after the birthdate(s) of the child(ren) subject of the child support order. The respective subsequent child adjustment to be entered on Line 1A of the Worksheet would be as follows:

Noncustodial.....$500.00 x .097 = $48.50 adjustment

Custodial.....$300.00 x .065 = $19.50 adjustment

2. Court Orders for Prior born Child(ren). *The party seeking the adjustment for the court ordered child support obligation bears the burden of establishing the actual existence of the order and the amount of the order.*

3. Legal Duty to Support for Prior-born Child(ren) When No Court Order Exists.

A. Prior Born Child(ren) Not in the Home. A deduction is allowed for reasonably necessary support actually paid, or funds actually spent, for the child(ren) born prior to the child(ren) for whom support is being established. This is true even though that obligation has not been reduced to a court order. The party seeking the deduction bears the burden of proving the obligation and satisfaction of the obligation.

The court may consider evidence of those funds paid or routinely spent on behalf of the prior born child(ren).

For example, paternity of the prior born child was established by execution of a paternity affidavit and the parents lived together for the first two years of the child's life. The parties then separated and negotiated an agreement for the ongoing financial support of the child, without seeking a court order. Father has routinely paid $50 per week to the mother of his prior born child and has evidence to support those payments.

B. Prior Born Child(ren) In the Home. A parent should be permitted to deduct his or her portion of the support obligation for prior born children living in his or her home. It is recommended that these guidelines be used to compute a deduction from weekly gross income.

i. ***Incomes of Both Parents Known****: If the actual incomes of both parents of the prior born child(ren) are known, then the actual incomes should be utilized in calculating the basic child support obligation for the prior born child(ren). In order to determine the adjustment to be applied, use the Indiana Child Support Guideline Schedules for Weekly Support Payments. The percentage share of the basic child support obligation attributable to the parent seeking the adjustment should be considered the legal duty of support for the prior born child(ren) and the amount placed in Line 1.C., Child Support Obligation Worksheet.*

ii. Income of a Parent Unknown: If actual income information for a parent of the prior-born child(ren) is unknown, the court should utilize the known income of the parent seeking the adjustment for the legal duty to support the prior born child(ren) and attribute zero ($0.00) income to the other parent. In order to determine the adjustment to be applied, use the Indiana Child Support Guideline Schedules for Weekly Support Payments as the amount placed in Line 1.C., Child Support Obligation Worksheet.

If the parent seeking the adjustment has prior born children with different non-custodial parents whose incomes are unknown, the basic child support obligation shall be calculated as if the prior born children have the same noncustodial parent and the adjustment for those prior born children shall be attributed as a single legal duty, rather than the total of two or more separate and distinct legal duties.

a. For example, the gross weekly income of the parent seeking the adjustment is $400.00 and there is one prior born child in the home. The gross weekly income for the other parent of the prior born child is unknown. The other parent's gross weekly income would be set at $0.00 to determine the legal duty to support that prior born child. The legal duty to support that prior born child for the parent seeking the adjustment would be $79.00 from the Guideline Schedules for Weekly Support Payments.

b. For example, the gross weekly income of the parent seeking the adjustment is $400.00 and there are two prior born children in the home with different parents. The gross weekly incomes for those other parents of the prior born children are unknown. Those other parents' gross weekly incomes would be set at $0.00 to determine the legal duty to support those prior born children. The legal duty to support those two prior born children for the parent seeking the adjustment would be $119.00 from the Guideline Schedules for Weekly Support Payments.

4. Alimony or Maintenance. *The final allowable deduction from Weekly Gross Income in arriving at weekly adjusted income is for alimony ordered in decrees from foreign jurisdictions or spousal maintenance. These amounts are allowable only if they arise as the result of a court order. This deduction is intended only for spousal maintenance, not for periodic payments from a property settlement although the court may consider periodic payments when determining whether or not to deviate from the guideline amount when ordering support. Refer to the discussion of temporary maintenance earlier in this commentary. (Line 1D of Worksheet).*

D. Basic Child Support Obligation (Worksheet Line 4).

The Basic Child Support Obligation should be determined using the attached Guideline Schedules for Weekly Support Payments. For combined weekly adjusted income amounts falling

between amounts shown in the schedule, basic child support amounts should be rounded to the nearest amount. The number of children refers to children for whom the parents share joint legal responsibility and for whom support is being sought, excluding children for whom Section Two of the Post-Secondary Education Worksheet is used to determine support.

COMMENTARY TO GUIDELINE 3D

Use of Guideline Schedules.

Combined Weekly Adjusted Income. *After reducing Weekly Gross Income by the deductions allowed above, weekly adjusted income is computed. The next step is to add the weekly adjusted income of both parties and take the combined weekly adjusted income to the Guideline schedules for weekly support payments. In selecting the appropriate column for the determination of the basic child support obligation, it should be remembered that the number of children refers only to the number of children of this marriage for whom support is being computed, excluding children for whom a Post-Secondary Education Worksheet is used to determine support.*

E. Additions to the Basic Child Support Obligation.

1. Work-Related Child Care Expense (Worksheet Line 4A). Child care costs incurred due to employment or job search of both parent(s) should be added to the basic obligation. It includes the separate cost of a sitter, day care, or like care of a child or children while the parent works or actively seeks employment. Such child care costs must be reasonable and should not exceed the level required to provide quality care for the children. Continuity of child care should be considered. Child care costs required for active job searches are allowable on the same basis as costs required in connection with employment.

The parent who contracts for the child care shall be responsible for the payment to the provider of the child care. For the purpose of designating this expense on the Child Support Obligation Worksheet (Line 4A), each parent's expense shall be calculated on an annual basis divided by 52 weeks. The combined amount shall be added to the Basic Child Support Obligation and each parent shall receive a credit equal to the expense incurred by that parent as an Adjustment (Line 7 of the Worksheet).

When potential income is attributed to a party, the court should not also attribute work-related child care expense which is not actually incurred.

2. Cost of Health Insurance for Child(ren) (Worksheet Line 4B). The weekly cost of health insurance premiums for the child(ren) should be added to the basic obligation whenever either parent actually incurs the premium expense or a portion of such expense. (Please refer to Guideline 7 for additional information regarding the treatment of Health Care Expenses)

3. Extraordinary Health Care Expense. Please refer to Support Guideline 7 for treatment of this issue.

4. Extraordinary Educational Expense. Please refer to Support Guideline 8 for treatment of this issue.

COMMENTARY TO GUIDELINE 3E

Additions to the Basic Child Support Obligation.

1. Work-Related Child Care Expense (Worksheet Line 4A). *One of the additions to the basic child support obligation is a reasonable child care expense incurred due to employment, or an attempt to find employment. This amount is added to the basic child support obligation in arriving at the total child support obligation.*

Work-related child care expense is an income-producing expense of the parent. Presumably,

if the family remained intact, the parents would treat child care as a necessary cost of the family attributable to the children when both parents work. Therefore, the expense is one that is incurred for the benefit of the child(ren) which the parents should share.

In circumstances where a parent claims the work-related child care credit for tax purposes, it would be appropriate to reduce the amount claimed as work-related child care expense by the amount of tax saving to the parent. The exact amount of the credit may not be known at the time support is set, but counsel should be able to make a rough calculation as to its effect.

When potential income is attributed to a party, the court should not also attribute a work-related child care expense which is not actually incurred because this expense is highly speculative and difficult to adequately verify.

2. Cost of Health Insurance for Child(ren) (Worksheet Line 4B). *The weekly out of pocket costs of health insurance premiums only for the child(ren) should be added to the basic obligation so as to apportion that cost between the parents. The parent who actually pays that cost then receives a credit towards his or her child support obligation on Line 7 of the Worksheet. (See Support Guideline 3G. Adjustments to Parent's Child Support Obligation). Only that portion of the cost actually paid by a parent is added to the basic obligation. If coverage is provided without cost to the parent(s), then zero should be entered as the amount. If health insurance coverage is provided through an employer or purchased through the private market, only the child(ren)'s portion should be added. If the insurance is eligible for a federal tax credit, the amount of the credit should be subtracted from the premiums paid by the parent. In determining the amount to be added, only the amount of the insurance cost attributable to the child(ren) subject of the child support order shall be included, such as the difference between the cost of insuring a single party versus the cost of family coverage. In circumstances where coverage is applicable to persons other than the child(ren) subject of the child support order, such as other child(ren) and/or a subsequent spouse, the total cost of the insurance premium shall be prorated by the number of persons covered to determine a per person cost.*

3. Total Child Support Obligation (Worksheet Line 5). *Adding work-related child care costs, and the weekly cost of health insurance premiums for the child(ren) to the basic child support obligation results in a figure called Total Child Support Obligation. This is the basic obligation of both parents for the support of the child(ren) of the marriage, or approximately what it would cost to support the child(ren) in an intact household, excluding extraordinary health care and/or extraordinary education expenses.*

F. Computation of Parent's Child Support Obligation (Worksheet Line 6).

Each parent's child support obligation is determined by multiplying his or her percentage share of total weekly adjusted income (Worksheet Line 2) times the Total Child Support Obligation (Worksheet Line 5).

1. Division of Obligation Between Parents (Worksheet Line 6). The total child support obligation is divided between the parents in proportion to their weekly adjusted income. A monetary obligation is computed for each parent. The custodial parent's share is presumed to be spent directly on the child. When there is near equal parenting time, and the custodial parent has significantly higher income than the noncustodial parent, application of the parenting time credit should result in an order for the child support to be paid from a custodial parent to a noncustodial parent, absent grounds for a deviation.

2. Deviation from Guideline Amount. If, after consideration of the factors contained in IC 31-16-6-1 and IC 31-16-6-2, the court finds that the Guideline amount is unjust or inappropriate in a particular case, the court shall state a factual basis for the deviation and proceed to enter a support amount that is deemed appropriate.

COMMENTARY TO GUIDELINE 3F

Computation of Child Support.

1. Apportionment of Support Between Parents. *After the total child support obligation is determined, it is necessary to apportion that obligation between the parents based on their respective weekly adjusted incomes. First, a percentage is formed by dividing the weekly adjusted income of each parent by the total weekly adjusted income (Line 1E of the Worksheet). The percentages are entered on Line 2 of the Worksheet. The total child support obligation is then multiplied by the percentages on Line 2 (the percentage of total weekly adjusted income that the weekly adjusted income of each parent represents) and the resulting figure is the child support obligation of each parent. The noncustodial parent is ordered to pay his or her proportionate share of support as calculated on Line 6 of the Worksheet. Custodial parents are presumed to be meeting their obligations by direct expenditures on behalf of the child, so a support order is not entered against the custodial parent.*

2. Apportionment of Support When Incapacitated Adult Child has Earned Income. *Under certain circumstances the earned income of a child may be considered in apportioning support. In calculating a support obligation with respect to an incapacitated adult child with earned income, the support obligation may be determined by apportioning the support based upon the relative amount earned by the parents and the child.*

3. Deviation from Guideline Amount. *If the court determines that the Guideline amount is unjust, inappropriate, or denies the obligor a means of self-support at a subsistence level, a written finding shall be made setting forth the factual basis for deviation from the Guideline amount. A simple finding such as the following is sufficient: "The court finds that the presumptive amount of support calculated under the Guidelines has been rebutted for the following reasons." A pro forma finding that the Guidelines are not appropriate does not satisfy the requirement for a specific finding of inappropriateness in a particular case, which is required in an order to deviate from the Guideline amount. For further discussion of deviation from the Guideline amount, see also the Commentary to Support Guideline 1.*

G. Adjustments to Parent's Child Support Obligation (Worksheet Line 7).

The parent's child support obligation (Worksheet Line 7) may be subject to four (4) adjustments.

1. Obligation from Post-Secondary Education Worksheet. If the parents have a child who is living away from home while attending school, his or her child support obligation will reflect the adjustment found on Line J of the Post-Secondary Education Worksheet (See Support Guideline 8).

2. Weekly Cost of Work-related Child Care Expenses. A parent who pays a weekly child care expense should receive a credit towards his or her child support obligation. This credit is entered on the space provided on the Worksheet Line 7. The total credits claimed by the parents must equal the total amount on Line 4A. (See Support Guideline 3E Commentary).

3. Weekly Cost of Health Insurance Premiums for Child(ren). The parent who pays the weekly premium cost for the child(ren)'s health insurance should receive a credit towards his or her child support obligation in most circumstances. This credit is entered on the space provided on the Worksheet Line 7 and will be in an amount equal to that entered on the Worksheet Line 4B (See Support Guideline 3E Commentary).

4. Parenting Time Credit. The court should grant a credit toward the total amount of calculated child support for either "duplicated" or "transferred" expenses incurred by the noncustodial parent. The proper allocation of these expenses between the parents shall be based on the calculation from a Parenting Time Credit Worksheet. (See Support Guideline 6 Commentary).

5. Effect of Social Security Benefits.

a. Current Support Obligation

1. Custodial parent: Social Security benefits received for a child based upon the disability of the custodial parent are not a credit toward the child support obligation of the noncustodial parent. The amount of the benefit is included in the custodial parent's income for the purpose of calculating the child support obligation, and the benefit is also a credit toward the custodial parent's child support obligation.

2. Noncustodial parent: Social Security benefits received by a custodial parent, as representative payee of the child, based upon the earnings or disability of the noncustodial parent shall be considered as a credit to satisfy the noncustodial parent's child support obligation as follows:

i. Social Security Retirement benefits may, at the court's discretion, be credited to the noncustodial parent's current child support obligation. The credit is not automatic. The presence of Social Security Retirement benefits is merely one factor for the court to consider in determining the child support obligation or modification of the obligation. Stultz v. Stultz, 659 N.E.2d 125 (Ind. 1995).

ii. Social Security Disability benefits shall be included in the Weekly Gross Income of the noncustodial parent and applied as a credit to the noncustodial parent's current child support obligation. The credit is automatic.

iii. Any portion of the benefit that exceeds the child support obligation shall be considered a gratuity for the benefit of the child(ren), unless there is an arrearage.

3. The filing of a petition to modify on grounds a Social Security Disability determination has been requested will not relieve the parent's obligation to pay the current support order while the disability application is pending. Filing of the petition to modify support may entitle the noncustodial parent to a retroactive reduction in support to the date of filing of the petition for modification and not the date of filing for the benefits. If the modification of support is granted, any lump sum payment of retroactive Social Security Disability benefits paid shall be credited toward the modified support obligation.

b. Arrearages

1. Credit for retroactive lump sum payment. A lump sum payment of retroactive Social Security Disability benefits shall be applied as a credit against an existing child support arrearage if the custodial parent, as representative payee, received a lump sum retroactive payment, without the requirement of a filing of a Petition to Modify Child Support. However, no credit should be allowed under the following circumstances:

i. A custodial parent should never be required to pay restitution to a disabled noncustodial parent for lump sum retroactive Social Security Disability benefits which exceed the amount of "court-ordered" child support. Any portion of lump sum payments of retroactive Social Security Disability benefits paid to children not credited against the existing child support arrearage is properly treated as a gratuity to the children. No credit toward future support should be granted.

ii. No credit shall be given for a lump sum disability payment paid directly to a child who is over the age of eighteen (18). The dependency benefits paid directly to a child who has reached the age of majority under the Social Security law, rather than to the custodial parent, as representative payee, do not fulfill the obligations of court-ordered child support.

2. Application of current Social Security Disability benefits. The amount of the benefit which exceeds the child support order may be treated as an ongoing credit toward an existing arrearage.

3. In Title IV-D cases there is no credit toward the monies owed to the State of Indiana unless the retroactive benefit is actually paid to the State of Indiana. The child's Social Security benefits received and used by the custodial parent will not reduce or be credited against the noncustodial parent's obligation to reimburse the State of Indiana for Title IV-A or Title IV-E benefits previously paid on behalf of the children.

4. Modification. The award of Social Security Disability benefits retroactive to a specific date does not modify a noncustodial parent's child support obligation to the same date. The noncustodial parent's duty to pay support cannot be retroactively modified earlier than the filing date of a petition to modify child support.IC 31-16-16-6.

COMMENTARY TO GUIDELINE 3G

It is important to remember the amount of the child's Social Security benefits that exceed the current child support order will not be reflected in ISETS as a credit toward an existing arrearage unless specified in the court order. Unless the credit is recognized in ISETS, there is a chance that an arrearage notice may be issued administratively and sanctions could be entered on that arrearage.

Social Security benefits paid to a parent for the benefit of a minor child are included in the disabled parent's Gross Weekly Income for purposes of determining child support regardless of which parent actually receives the payment. (See Guideline 3A). This section, 3G and its commentary, address adjustments to the recommended child support obligation. Although Social Security benefits are not reflected on Line 7 of the child support Worksheet, the benefit should be considered, and its effect and application shall be included in the written order for support of that child.

The Guidelines make no change in the law regarding an adjustment for Social Security Retirement benefits or Supplemental Security Income (SSI). The court has discretion to allow an adjustment to a parent's child support obligation based on the amount of Social Security Retirement benefits paid for the benefit of the child due to that parent's retirement. The retirement benefit is merely one of the factors that the court should consider when making an adjustment to the child support obligation. SSI is a means-tested program and the benefit is not included in either parent's gross income. It therefore should not be considered an adjustment to either parent's child support obligation.

In Brown v. Brown, 849 N.E.2d 610 (Ind. 2006), Social Security Disability (SSD)benefits paid to a child were clearly recognized as earnings of the disabled parent. Id. at 614. Social Security Disability benefits paid for a child are recognized as income of the disabled parent who earned the benefits and those benefits are included in the Weekly Gross Income of that parent. See Guideline 3A. It follows then that the payment received for the benefit of the child should be applied to satisfy the disabled parent's support obligation. The child support order should state that the SSD benefit received for the child is credited as payment toward the support obligation. Any portion of the SSD benefit in excess of the current support obligation is a gratuity, unless there is an arrearage.

The language in Guideline 3.G.5.b.2. directs that the excess SSD benefit may be applied as

payment toward an existing arrearage. Once the arrearage is satisfied, any portion of the SSD benefit that exceeds the current support obligation is considered a gratuity. The Guidelines also change the application of a lump sum SSD payment. SSD is, by definition, a substitution for a person's income lost due to a recognized disability. Further, under the Social Security Act, that individual may be entitled to a lump sum benefit retroactive to the date that his or her disability occurred and that caused the disruption in earnings. This lump sum payment is unique to SSD. The Guidelines now allow the courts to apply the lump sum SSD benefits toward an existing child support arrearage if the custodial parent, as representative payee, receives a lump sum payment. This credit is appropriate without the requirement of a filing of a Petition to Modify Child Support.

The Guidelines change the law regarding the application of SSD benefits. The holding in Hieston v. State, 885 N.E.2d 59 (Ind. Ct. App. 2008) and its progeny has been superseded by this change. The rationale is that the lump sum payment is merely a method of payment applied to a past support obligation not paid. The distinction is between modification of support which changes the rate of support, e.g. from $100.00 per week to $50.00 per week, as opposed to credit for an indirect payment. Modification of a child support obligation still requires the filing of a petition for modification as set forth in Guideline 4.

The lump sum payment is a method of payment that may not be specifically authorized by express court order but which should be recognized as a payment of support. Indiana case law establishes that credit can be allowed for payments that do not technically conform to the original support decree. For example, where the obligated parent makes payments directly to the custodial parent rather than through the clerk of the court, the Supreme Court has recognized these payments when there was sufficient proof to convince a trier of fact that the required payments were actually made. O'Neil v. O'Neil, 535 N.E.2d 523 (Ind. 1989), Nill v. Martin, 686 N.E.2d 116 (Ind. 1997). Proof of the lump sum SSD benefit payment is not difficult because the Social Security award certificate is a record easily admitted into evidence as an exception to the hearsay rule under IRE 803(6) and (8) (reports of a public agency setting forth its regularly recorded activity) and trial courts are rarely burdened with an evidentiary dispute about what was paid, when or to whom, once the Social Security records are shared. By contrast, the informal arrangement disputes between parties to modify and reduce the actual amount of weekly support below that ordered in the divorce decree are actual attempts to retroactively modify the amount of support, which are prohibited. Similar to the nonconforming payment, the lump sum payment shall be applied as a credit to an existing child support arrearage.

If there is no child support arrearage, the lump sum payment is considered gratuity. As long as there is an existing support order, there should never be an order entered that requires any excess payment of SSD or the lump sum payment to be paid back to the disabled parent.

The Guidelines exclude from the parent's Weekly Gross Income any survivor benefits received by or for other children residing in either parent's home based on the Social Security death benefits of a deceased parent of a prior-born child. See Commentary to Guideline 3(A).

GUIDELINE 4. MODIFICATION

The provisions of a child support order may be modified only if there is a substantial and continuing change of circumstances which makes the present order unreasonable or the amount of support ordered at least twelve (12) months earlier differs from the Guideline amount presently computed by more than twenty percent (20%).

COMMENTARY

Substantial and Continuing Change of Circumstances. *A change in circumstances may include the incarceration of a parent, a change in the income of the parents, the application of a parenting plan, the failure to comply with a parenting plan, or a change in the expense of child rearing specifically considered in the Guidelines.*

If the amount of support computed at the time of modification is significantly higher or significantly lower than that previously ordered and would require a drastic reduction in a parent's standard of living, consideration may be given to phasing in the change in support. This approach would allow the parent affected by the change time to make adjustments in his or her standard of living. Again, it is not the intent of the Guidelines to drive the parents into noncompliance by reducing their spendable income below subsistence level.

Retroactive Modification. *The modification of a support obligation may only relate back to the date the petition to modify was filed, and not an earlier date, subject to two exceptions: (1) when the parties have agreed to and carried out an alternative method of payment which substantially complies with the spirit of the decree; or (2) the obligated parent takes the child into the obligated parent's home and assumes custody, provides necessities, and exercises parental control for a period of time that a permanent change of custody is exercised.*

Emancipation: Support Orders for Two or More Children. *In child support orders issued under these Guidelines, support amounts for two or more children, are stated as an in gross or total amount rather than on a per child basis. Absent judicial modification of the order, the total obligation will not decrease when the oldest child reaches nineteen (19) years of age, or the child is emancipated after the occurrence of other events. Parents should seek to modify child support orders when the legal obligation to pay child support terminates for any child or any child is emancipated. See Ind. Code § 31-16-6-6.*

The concept of a pro rata delineation of support is generally inconsistent with the economic policy underlying the Guidelines (See "Economic Data Used in Developing Guidelines" in "Commentary" to Support Guideline 1). That policy recognizes that the amount of support required for two children is about 1.5 times that required to support one child. The multiplication factor decreases as the number of children increases. If support were reduced by one half when the first of two children was emancipated, the remaining amount of support would be significantly below the Guideline amount for one child at the same parental income levels.

Parents should seek to modify or terminate a support order when a child(ren) becomes emancipated under Indiana law.

GUIDELINE 5. FEDERAL STATUTES

These Guidelines have been drafted in an attempt to comply with, and should be construed to conform with applicable federal statutes.

COMMENTARY

Every attempt was made to draft Guidelines for the State of Indiana that would comply with applicable federal statutes and regulations. Likewise, careful attention was paid to state law.

GUIDELINE 6. PARENTING TIME CREDIT

A credit should be awarded for the number of overnights each year that the child(ren) spend with the noncustodial parent.

COMMENTARY

Analysis of Support Guidelines*. The Indiana Child Support Guidelines are based on the assumption the child(ren) live in one household with primary physical custody in one parent who undertakes all of the spending on behalf of the child(ren). There is a rebuttable presumption the support calculated from the Guideline support schedule is the correct amount of weekly child support to be awarded. The total amount of the anticipated average weekly spending is the Basic Child Support Obligation (Line 4 of the Worksheet).*

The Guideline support schedules do not reflect the fact, however, when both parents exercise

parenting time, out-of-pocket expenses will be incurred for the child(ren)'s care. These expenses were recognized previously by the application of a 10% visitation credit and a 50% abatement of child support during periods of extended visitation. The visitation credit was based on the regular exercise of alternate weekend visitation which is equivalent to approximately 14% of the annual overnights. With the adoption of the Indiana Parenting Time Guidelines, the noncustodial parent's share of parenting time, if exercised, is equivalent to approximately 27% of the annual overnights. As a result, these revisions provide a parenting credit based upon the number of overnights with the noncustodial parent ranging from 52 overnights annually to equal parenting time. As parenting time increases, a proportionally larger increase in the credit will occur.

***Analysis of Parenting Time Costs**. An examination of the costs associated with the sharing of parenting time reveals two types of expenses are incurred by both parents, transferred and duplicated expenses. A third category of expenses is controlled expenses, ~~such as the 6% uninsured health care expense~~ that remain~~s~~ the sole obligation of the parent for whom the parenting time credit is not calculated. This latter category is assumed to be equal to 15% of the Basic Child Support Obligation.*

***Transferred Expenses.** This type of expense is incurred only when the child(ren) reside(s) with a parent and these expenses are "transferred" with the child(ren) as they move from one parent's residence to the other. Examples of this type of expense are food and the major portion of spending for transportation. When spending is transferred from one parent to the other parent, the other parent should be given a credit against that parent's child support obligation since this type of expense is included in the support calculation schedules. When parents equally share in the parenting, an assumption is made that 35% of the Basic Child Support Obligation reflects "transferred" expenses. The amount of expenses transferred from one parent to the other will depend upon the number of overnights the child(ren) spend(s) with each parent.*

***Duplicated Fixed Expenses.** This type of expense is incurred when two households are maintained for the child(ren). An example of this type of expense is shelter costs which are not transferred when the child(ren) move(s) from one parent's residence to the other but remain fixed in each parent's household and represent duplicated expenditures. The fixed expense of the parent who has primary physical custody is included in the Guideline support schedules. However, the fixed expense of the other parent is not included in the support schedules but represents an increase in the total cost of raising the child(ren) attributed to the parenting time plan. Both parents should share in these additional costs.*

When parents equally share in the parenting, an assumption is made that 50% of the Basic Child Support Obligation will be "duplicated." When the child(ren) spend(s) less time with one parent, the percentage of duplicated expenses will decline.

***Controlled Expenses.** This type of expense for the child(ren) is typically paid by the custodial parent and is not transferred or duplicated. Controlled expenses are items like clothing, education, school books and supplies, ~~ordinary uninsured health care~~ and personal care. For example, the custodial parent buys a winter coat for the child. The noncustodial parent will not buy another one. The custodial parent controls this type of expense. "Education" expenses include ordinary costs assessed to all students, such as textbook rental, laboratory fees, and lunches, which should be paid by the custodial parent. The cost of participating in elective school activities such as sports, performing arts and clubs, as well as related extracurricular activities are "optional" activities covered by the paragraph on "Other Extraordinary Expenses" in Guideline 8.*

The controlled expenses account for 15% of the cost of raising the child. The parenting time credit is based on the more time the parents share, the more expenses are duplicated and transferred. The controlled expenses are not shared and remain with the parent that does not get the parenting time credit. Controlled expenses are generally not a consideration unless there is equal parenting time. These categories of expenses are not pertinent for litigation. They are presented only to explain the factors used in developing the parenting time credit formula. The

percentages were assigned to these categories after considering the treatment of joint custody by other states and examining published data from the Bureau of Labor Statistics' Consumer Expenditure Survey.

***Computation of Parenting Time Credit**. The computation of the parenting time credit will require a determination of the annual number of overnights of parenting time exercised by the parent who is to pay child support, the use of the standard Child Support Obligation Worksheet, a Parenting Time Table, and a Parenting Time Credit Worksheet.*

An overnight will not always translate into a twenty-four hour block of time with all of the attendant costs and responsibilities. It should include, however, the costs of feeding and transporting the child, attending to school work and the like. Merely providing a child with a place to sleep in order to obtain a credit is prohibited.

The Parenting Time Table (Table PT) begins at 52 overnights annually or the equivalent of alternate weekends of parenting time only. If the parenting plan is for fewer overnights because the child is an infant or toddler (Section II A of the Parenting Time Guidelines), the court may consider granting the noncustodial parent an appropriate credit for the expenses incurred when caring for the child. If the parenting plan is for fewer overnights due to a significant geographical distance between the parties, the court may consider granting an appropriate credit. The actual cost of transportation should be treated as a separate issue.

If the parents are using the Parenting Time Guidelines without extending the weeknight period into an overnight, the noncustodial parent will be exercising approximately 96-100 overnights. The actual number of overnights may vary based on differing school calendars.

***Parenting Time Table.** The TOTAL column represents the anticipated total out-of-pocket expenses expressed as a percentage of the Basic Child Support Obligation that will be incurred by the parent who will pay child support. The total expenses are the sum of transferred and duplicated expenses. The DUPLICATED column represents the duplicated expenses and reflects the assumption that when there is an equal sharing of parenting time, 50% of the Basic Child Support Obligation will be duplicated. The Number of Annual Overnights column will determine the particular fractions of TOTAL and DUPLICATED to be used in the Parenting Time Credit Worksheet.*

Table PT

Annual Overnights

FROM	TO	TOTAL	DUPLICATED
1	51	0.000	0.000
52	55	0.063~~0.062~~	0.011
56	60	0.071~~0.070~~	0.014
61	65	0.081~~0.080~~	0.020
66	70	0.094~~0.093~~	0.028
71	75	0.109~~0.108~~	0.038
76	80	0.129~~0.127~~	0.053~~0.052~~
81	85	0.152~~0.150~~	0.071~~0.070~~
86	90	0.180~~0.178~~	0.094~~0.093~~
91	95	0.213~~0.211~~	0.123~~0.122~~
96	**100**	**0.253~~0.250~~**	**0.158~~0.156~~**
101	105	0.297~~0.294~~	0.197~~0.195~~
106	110	0.344~~0.341~~	0.239~~0.237~~
111	115	0.392~~0.388~~	0.283~~0.280~~
116	120	0.438~~0.434~~	0.324~~0.321~~
121	125	0.481~~0.476~~	0.362~~0.358~~
126	130	0.518~~0.513~~	0.394~~0.390~~

FROM	TO	TOTAL	DUPLICATED
131	135	0.549~~0.544~~	0.421~~0.417~~
136	140	0.575~~0.570~~	0.442~~0.438~~
141	145	0.597~~0.591~~	0.459~~0.454~~
146	150	0.615~~0.609~~	0.472~~0.467~~
151	155	0.629~~0.623~~	0.481~~0.476~~
156	160	0.641~~0.634~~	0.488~~0.483~~
161	165	0.651~~0.644~~	0.493~~0.488~~
166	170	0.659~~0.652~~	0.496~~0.491~~
171	175	0.667~~0.660~~	0.499~~0.494~~
176	180	0.673~~0.666~~	0.500~~0.495~~
181	183	0.682~~0.675~~	0.505~~0.500~~

Parenting Time Credit Worksheet (Credit Worksheet). *In determining the credit, take the following steps:*

1. *Complete the Child Support Obligation Worksheet through Line 6.*
2. *Enter on Line 1PT of the Credit Worksheet the annual number of overnights exercised by the parent who will pay child support.*
3. *Enter on Line 2PT of the Credit Worksheet the Basic Child Support Obligation (Line 4 from the Child Support Obligation Worksheet).*
4. *Enter on Line 3PT of the Credit Worksheet the figure from the TOTAL column that corresponds to the annual overnights exercised by the parent who will pay child support.*
5. *Enter on Line 4PT of the Credit Worksheet the figure from the DUPLICATED column that corresponds to the annual number of overnights exercised by the parent who will pay child support.*
6. *Enter on Line 5PT of the Credit Worksheet the percentage share of the Combined Weekly Income of the parent who will pay child support (Line 2 of the Child Support Obligation Worksheet).*
7. *Complete Lines 6PT through 9PT to determine the allowable credit.*
8. *Enter the result from Line 9PT on Line 7 of the Child Support Obligation Worksheet as the Parenting Time Credit.*
9. *Apply the Line 7 Adjustments to determine the recommended Child Support Obligation (Line 8 of the Child Support Obligation Worksheet).*

PARENTING TIME CREDIT WORKSHEET

Line:		
1PT	Enter Annual Number of Overnights	
2PT	Enter Weekly Basic Child Support Obligation – BCSO (Enter Line 4 from Child Support Worksheet)	_____.__
3PT	Enter Total Parenting Time Expenses as a Percentage of the BCSO (Enter Appropriate TOTAL Entry from Table PT)	._____
4PT	Enter Duplicated Expenses as a Percentage of the BCSO (Enter Appropriate DUPLICATED Entry from Table PT)	._____
5PT	Parent's Share of Combined Weekly Income (Enter Line 2 from Child Support Worksheet)	._____

Line:		
6PT	Average Weekly Total Expenses during Parenting Time (Multiply Line 2PT times Line 3PT)	_____.___
7PT	Average Weekly Duplicated Expenses (Multiply Line 2PT times Line 4PT)	_____.___
8PT	Parent's Share of Duplicated Expenses (Multiply Line 5PT times Line 7PT)	_____.___
9PT	Allowable Expenses during Parenting Time (Line 6PT – Line 8PT)	_____.___
	Enter Line 9PT on Line 7 of the Child Support Worksheet as the Parenting Time Credit	

Application of Parenting Time Credit. *Parenting Time Credit is not automatic. The court should determine if application of the credit will jeopardize a parent's ability to support the child(ren). If such is the case, the court should consider a deviation from the credit.*

The Parenting Time Credit is earned by performing parental obligations as scheduled and is an advancement of weekly credit. The granting of the credit is based on the expectation the parties will comply with a parenting time order.

A parent who does not carry out the parenting time obligation may be subject to a reduction or loss of the credit, financial restitution, or any other appropriate remedy. However, missed parenting time because of occasional illness, transportation problems or other unforeseen events should not constitute grounds for a reduction or loss of the credit, or financial restitution.

Consistent with Parenting Time Guidelines, if court action is initiated to reduce the parenting time credit because of a failure to exercise scheduled parenting time, the parents shall enter mediation unless otherwise ordered by the court.

Contents of Agreements/Decrees. *Orders establishing custody and child support shall set forth the specifics of the parties' parenting time plan in all cases. A reference to the Indiana Parenting Time Guidelines will suffice if the parties intend to follow the Guidelines. All such entries shall be accompanied by a copy of the Child Support Obligation Worksheet and the Parenting Time Credit Worksheet.*

In every instance the court shall designate one parent who is receiving support and shall order payment of uninsured health care expenses. ~~be responsible for payment of the uninsured health care expenses up to 6% of the Basic Child Support Obligation~~.

If the court determines it is necessary to deviate from the parenting time credit, it shall state its reasons in the order.

Calculating Parenting Time Credit When a Parent Spends Different Number of Overnights With Their Children.

In families with multiple children, a noncustodial parent may not exercise equal amounts of overnight parenting with all the children. In this case, please use this methodology to calculate the parenting time credit.

Step 1: Determine the parenting time credit for the total number of children and each different set of overnights, assuming all the children are exercising the same number of overnights.

For example, if Mother makes $850.00 weekly and Father makes $600.00, there are three

children and child 1 spends 56 overnights, child 2 spends 120 overnights and child 3 spends 180 overnights, three parenting time credits will be determined for 3 children at 56 overnights (PTC), 120 overnights (PTC) and 180 overnights (PTC).

Step 2: Average the different overnight parenting time credit dollar amounts.

For example, $25.00 + $115.00 + $177.00 = $317.00 total, divided by 3. The resulting Parenting Time Credit is $106.00.

Step 3: The averaged parenting time credit shall then be entered on Line 7 of the Child Support Obligation Worksheet for the noncustodial parent.

The above procedure is consistent with the holding in Blanford v. Blanford, 937 N.E.2d 356 (Ind. Ct. App. 2010).

Split Custody and Child Support. *In those situations where each parent has physical custody of one or more children (split custody), ~~it is suggested that support be computed by completing the Child Support Obligation Worksheets in the following manner~~ the child support calculation will require two different worksheets in order to account for the fact the first child in each home is the most expensive to support, as discussed in the Commentary to Guideline 1.*

The suggested manner of computing the Child Support Obligation is as follows:

1. *First, ~~C~~compute the support ~~a~~ father would pay to ~~a~~ mother for the child(ren) in her custody as if there were no other child(ren). ~~they were the only children of the marriage.~~ Father should receive parenting time credit for his overnights with the child(ren) in mother's custody*

2. *Next, c~~C~~ompute the support ~~a~~ mother would pay to ~~a~~ father for the child(ren) in his custody as if ~~they were the only children of the marriage.~~there were no other child(ren). Mother should receive parenting time credit for her overnights with the child(ren) in father's custody.*

3. *Finally, ~~S~~subtract the lesser child support obligation from the greater child support obligation ~~amount~~. The parent who owes the remaining amount pays the difference to the other parent on a weekly basis. For example, if the first worksheet shows father should pay $100.00 per week to mother and the second worksheet shows mother should pay $75.00 per week, then father should pay mother $25.00 per week in child support.*

~~*This method of computation takes into account the fact that the first child in each home is the most expensive to support, as discussed in the Commentary to Guideline 1.*~~

Child Support When Parenting Time is Equally Shared. *A frequent source of confusion in determining child support arises in cases where parents equally share the parenting time with the children. Parenting time is considered equally shared when it is 181 to 183 overnights per year. To determine child support in these cases, either the mother or father must be designated as the parent who will pay the controlled expenses. Then, the other parent is given the parenting time credit. The controlled expenses remain the sole obligation of the parent for whom the parenting time credit is not calculated.*

When both parents equally share parenting time, the court must determine which parent will pay the controlled expenses. If, for example, father is the parent paying controlled expenses, the parenting time credit will be awarded to the mother.

Factors courts should use in assigning the controlled expenses to a particular parent include

the following areas of inquiry:

- *Which parent has traditionally paid these expenses.*
- *Which parent is more likely to be able to readily pay the controlled expenses.*
- *Which parent more frequently takes the child to the health care provider.*
- *Which parent has traditionally been more involved in the child's school activities (since much of the controlled expenses concern school costs, such as clothes, fees, supplies, and books).*

This determination requires a balancing of these and other factors. Once the court assigns responsibility for these controlled expenses, the court should award the other parent the parenting time credit. When the assignment of the controlled expenses occurs, calculation of the child support in shared custody situations is fairly basic, and is completed by application of the remainder of these Guidelines.

***Cost of Transportation for Parenting Time**. The Parenting Time Guidelines require the noncustodial parent to provide transportation for the child(ren) at the start of the scheduled parenting time, and the custodial parent to provide transportation for the child(ren) at the end of the scheduled parenting time. There is no specific provision in the Child Support Guidelines for an assignment of costs or a credit for transportation on the child support worksheet. Transportation costs are part of the transferred expenses. When transportation costs are significant, the court may address transportation costs as a deviation from the child support calculated by the Worksheet, or may address transportation as a separate issue from child support. Consideration should be given to the reason for the geographic distance between the parties and the financial resources of each party. The relocation statute provides that one factor in modifying child support in conjunction with parent relocation is the hardship and expense involved for the nonrelocating individual to exercise parenting time.*

GUIDELINE 7. HEALTH CARE / MEDICAL SUPPORT

The court shall order one or both parents to provide health insurance when accessible to the child at a reasonable cost. Health insurance may be public, for example, Medicaid, or Children's Health Insurance Program (CHIP), Hoosier Healthwise, or private, for example, Affordable Care Act (ACA) or employer-provided

Accessibility. Health insurance is accessible if it covers the geographic area in which the child lives. The court may consider other relevant factors such as provider network, comprehensiveness of covered services and likely continuation of coverage.

Reasonable cost. There is a rebuttable presumption that parents have health insurance available at a reasonable cost. The presumption may be rebutted by demonstrating that the lowest out of pocket cost of insuring the child(ren) is more than 5% of the parents' combined gross incomes. The lowest out of pocket cost health insurance available may be public insurance.

Cash medical support. When health insurance is not accessible to the child(ren) at a reasonable cost, federal law requires the court to order the parties to pay cash medical support. Cash medical support is an amount ordered for medical costs not covered by insurance. The uninsured medical expense apportionment calculation on the Child Support Obligation Worksheet, ~~"the 6% rule,"~~ satisfies this federal requirement for a cash medical support order, when incorporated into the court order.

~~**Explanation of 6% rule/u**~~**Uninsured health care expenses.** The data upon which the

Guideline schedules are based no longer include a component for ordinary health care expenses. The Guideline schedules have been adjusted accordingly. ~~Ordinary uninsured health care expenses are paid by the parent who is assigned to pay the controlled expenses (the parent for whom the parenting time credit is not calculated) up to six percent (6%) of the basic child support obligation (Line 4 of the Child Support Obligation Worksheet).~~ Routine non-prescription personal care expenses such as over-the-counter medications, bandages, and vitamins which do not travel with the child and are kept in the purchasing parent's home are paid by the parent exercising parenting time when the expense is incurred. The parents shall share responsibility for uninsured health care expenses in proportion to their incomes. Uninsured health care expenses are defined as any health care expenses remaining after a claim has been submitted to the child's health insurance carrier. Uninsured health care expenses may include, but are not limited to, claims applied to the policy's deductible, claims in excess of policy limits, or the patient's responsibility after payments or discounts from the insurance carrier have been applied.

To request contribution from the other parent, copies of all documentation relating to the insurance claim and expenses paid or incurred by a parent must be provided to the other parent within thirty (30) days of receipt or the expense may be ineligible for contribution. Expenses paid at the time of service shall be submitted within thirty (30) days of the receipt of service. ~~Extraordinary health care expenses are those uninsured expenses which are in excess of six percent (6%) of the basic obligation, and would include uninsured expenses for chronic or long term conditions of a child. Calculation of the apportionment of the health care expense obligation is a matter separate from the determination of the weekly child support obligation. These calculations shall be inserted in the space provided on the Worksheet.~~

Birth expense. Upon the establishment of paternity, ~~T~~the court shall ~~may~~ order the father to pay ~~a percentage~~at least fiftly perscent (50%) of the reasonable ~~and necessary~~ expenses of the mother's pregnancy and childbirth, as part of the court's decree in child support actions. The costs to be included in apportionment are pre-natal care, delivery, hospitalization, other necessary and reasonable and necessary expenses incurred in connection with the child's birth; ~~incurred in connecton with the child's birth,~~ post-partum expenses;~~,~~ and post-natal care. ~~The paternity statutes require the father to pay at least fifty percent (50%) of the mother's pregnancy and childbirth expenses.~~

COMMENTARY

Health Insurance Coverage and Costs.

The court is federally mandated to order parents to obtain health insurance if accessible at a reasonable cost. The rebuttable presumption that all children have insurance available at a reasonable cost recognizes (1) both public and private insurance can be used to satisfy the federal mandate to insure children, (2) the availability of guaranteed acceptance for policies, and (3) the availability of tax credits for the purpose of obtaining health insurance.

Health insurance coverage should normally be provided by the parent who can obtain the most comprehensive coverage at the least out of pocket cost. The parents bear the burden of demonstrating to the court the out of pocket cost of health insurance for the child(ren) exceeds 5% of the parents' combined gross incomes. A parent shall provide the court with proof of existing public or private health insurance for the child(ren) through an employer, a retirement plan, Tricare, a Veteran's Health Care Program, Medicaid, or the Children's Health Insurance Program (CHIP). If the child is not currently covered, the parent must provide the court with proof of the cost of health insurance. (Please refer to Guideline 3, E. 2. for additional information regarding determining the cost of insurance coverage.)

Where one or both parents have a history of changing jobs and/or health insurance providers both parents may be ordered to carry health insurance when it becomes available at a reasonable

cost to the parents. Where one parent has a history of maintaining consistent insurance coverage for the child(ren), there may be no need to order both parents to provide health insurance for the child(ren).

Parental Self-Monitoring and Compliance.

Parents should cooperate with one another to ensure the child(ren) remain insured at all times. The court should order the parent providing health insurance to show proof of coverage; provide insurance cards, claim forms, website addresses, and any other material to permit claims to be filed with the insurance carrier; and give notice of any coverage changes, including termination of coverage, to the other parent. See Indiana Parenting Time Guidelines I, D. paragraph 5.

Apportionment of Uninsured Health Care Expenses. ~~*Six percent (6%) of the support amount is for health care. The noncustodial parent is, in effect, prepaying health care expenses every time a support payment is made. Consequently, the Guidelines require that custodial parent bear the cost of uninsured health care expenses up to six percent (6%) of the Basic Child Support Obligation found on Line 4 of the Child Support Obligation Worksheet and, if applicable, the child support obligation attributable to a student living away from home (Section Two Line I of the Post-Secondary Education Worksheet).*~~

~~*That computation is made by multiplying the total of Line 4 and Line I by 52 (weeks) and multiplying the product of that multiplication by .06 to arrive at the amount the custodial parent must spend on the uninsured health care costs of the parties' child(ren) in any calendar year before the noncustodial parent is required to contribute toward payment of those uninsured costs. For example, if Line 4 is $150.00 per week and Line I is $25.00 per week, the calculation would be as follows: $150.00 + $25.00 = $175.00 x 52 = $9,100.00 x .06 = $546.00.*~~

~~*Thus, on an annual basis, the custodial parent is required to spend $546.00 for health care of the child(ren) before the noncustodial parent is required to contribute. The custodial parent must document the $546.00 spent on health care and provide the documentation to the noncustodial parent.*~~

~~*After the custodial parent's obligation for ordinary uninsured health care expenses is computed, provision should be made for the uninsured health care expenses that may exceed that amount. The excess costs should be apportioned between the parties according to the Percentage Share of Income computed on Line 2 of the Worksheet. Where imposing such percentage share of the uninsured costs may work an injustice, the court may resort to the time-honored practice of splitting uninsured health care costs equally, or by using other methods. The court may prorate the custodial parent's uninsured health care expense contribution when appropriate.*~~

An earlier economic model estimated uninsured health care expenses to be 6% of the Basic Child Support Obligation. That model is out-of-date and is no longer utilized in the development of the current Guideline support schedule. In addition, the former "6% Rule" often required burdensome record-keeping and proved to require excessive use of judicial resources to enforce. Consequently, the Guidelines require the parent exercising parenting time bear the cost of routine non-prescription personal care expenses which are not normally submitted to the child's health insurance carrier for payment or reimbursement. These expenses are part of the basic child support obligation and the parenting time credit. When a claim is submitted to the health insurance carrier, the parties should contribute to the uninsured portion of the claim in proportion to their incomes as shown in the Child Support Obligation Worksheet.

As a practical matter, it may be wise to spell out with specificity in the order what uninsured expenses are covered and a schedule for the periodic payment of these expenses. For example, a chronic long-term condition might necessitate weekly payments of the uninsured expense. The order may include any reasonable medical, dental, orthodontic, hospital, vision, pharmaceutical and psychological expenses deemed necessary for the health care of the child(ren). The order may exclude from contribution any claims rejected for failure to obtain preapproval for particular

procedures or health care providers. ~~*If it is intended that such things as aspirin, vitamins and band-aids be covered, the order should specifically state that such non-prescription health care items are covered.*~~

There are also situations where major health care costs are incurred which ~~*for a single event such as orthodonties or major injuries. For financial reasons, this*~~ *may require the* ~~*custodial*~~ *parents to pay the provider for the amount not covered by insurance* ~~*over a number of years*~~ *over time, for example, long term orthodontic treatment, major injuries or long-term chronic conditions.* ~~*The 6% rule applies*~~ *The apportionment of the uninsured health care expenses applies to expenses actually paid by the* ~~*custodial*~~ *parents.* ~~*each year.*~~

Birth expenses. *There is no statute of limitations barring recovery of birthing expenses, providing the paternity action* ~~*or child support action*~~ *is timely filed. The court should be very careful to be sure the claimed expenses are* ~~*both*~~ *reasonable* ~~*and necessary*~~*. Birthing expenses include both the expenses incurred by the child as well as by the mother, providing they are directly related to the child's birth. Under current law, both postpartum and postnatal expenses are now reimbursable, as well as* ~~*The court should distinguish between "postpartum expenses" and "postnatal expenses." "Postpartum" expenses are mother's expenses following the birth of the child. "Postnatal" expenses of the child are those expenses directly related to the child's birth. Between the two, only "postnatal" expenses are reimbursable.*~~ *other necessary and reasonable expenses incurred in connection with the child's birth. The father must be ordered to pay at least fifty percent (50%) of the expenses, although the court has discretion to order father to pay a higher percentage.*

GUIDELINE 8. EXTRAORDINARY EXPENSES

Extraordinary Educational Expenses.

The data upon which the Guideline schedules are based include a component for ordinary educational expenses. Any extraordinary educational expenses incurred on behalf of a child shall be considered apart from the total Basic Child Support Obligation.

Extraordinary educational expenses may be for elementary, secondary or post-secondary education, and should be limited to reasonable and necessary expenses for attending private or special schools, institutions of higher learning, and trade, business or technical schools to meet the particular educational needs of the child.

Commentary

Parents should consider whether an educational support order is necessary or appropriate to address educational needs prior to the child reaching nineteen (19) years of age.

a. Elementary and Secondary Education. If the expenses are related to elementary or secondary education, the court may want to consider whether the expense is the result of a personal preference of one parent or whether both parents concur; whether the parties would have incurred the expense while the family was intact; and whether or not education of the same or higher quality is available at less cost.

b. Post-Secondary Education. The authority of the court to award post-secondary educational expenses is derived from IC 31-16-6-2. It is discretionary with the court to award post-secondary educational expenses and in what amount. In making such a decision, the court should consider post-secondary education to be a group effort, and weigh the ability of each parent to contribute to payment of the expense, as well as the ability of the student to pay a portion of the expense.

When determining whether or not to award post-secondary educational expenses, the court should consider each parent's income, earning ability, financial assets and liabilities. If the expected

parental contribution is zero under Free Application for Federal Student Aid (FAFSA), the court should not award post-secondary educational expenses. If the court determines an award of post-secondary educational expenses would impose a substantial financial burden, an award should not be ordered.

If the court determines that an award of post-secondary educational expenses is appropriate, it should apportion the expenses between the parents and the child, taking into consideration the incomes and overall financial condition of the parents and the child, education gifts, education trust funds, and any other education savings program. The court should also take into consideration scholarships, grants, student loans, summer and school year employment and other cost-reducing programs available to the student. These latter sources of assistance should be credited to the child's share of the educational expense unless the court determines that it should credit a portion of any scholarships, grants and loans to either or both parents' share(s) of the education expense.

Current provisions of the Internal Revenue Code provide tax credits and preferences which will subsidize the cost of a child's post-secondary education. While tax planning on the part of all parties will be needed to maximize the value of these subsidies, no one party should disproportionately benefit from the tax treatment of post-secondary expenses. Courts may consider who may be entitled to claim various education tax benefits and tax exemptions for the minor child(ren) and the total value of the tax subsidies prior to assigning the financial responsibility of post-secondary expenses to the parents and the child.

A determination of what constitutes educational expenses will be necessary and will generally include tuition, books, lab fees, course related supplies, and student activity fees. Room and board may be included when the child does not reside with either parent.

The impact of an award of post-secondary educational expenses is substantial upon the custodial and non-custodial parent and a reduction of the Basic Child Support Obligation attributable to the child under the age of nineteen years will be required when the child does not reside with either parent.

The court should require that a student maintain a certain minimum level of academic performance to remain eligible for parental assistance and should include such a provision in its order. The court should also consider requiring the student or the custodial parent provide the noncustodial parent with a copy of the child's high school transcript and each semester or trimester post-secondary education grade report.

The court may limit consideration of college expenses to the cost of state supported colleges and universities or otherwise may require that the income level of the family and the achievement level of the child be sufficient to justify the expense of private school.

COMMENTARY

Time for Filing Petition for Post-Secondary Educational Expenses. *There is a distinct difference between an order for child support and an order for post-secondary educational expenses. An order for educational expenses can continue after an order for child support has ended. If an order for child support was issued before July 1, 2012, a petition for educational support can be filed until the child reaches twenty-one (21) years of age. If an order for child support was issued or modified after June 30, 2012, a petition for educational support must be filed before the child reaches nineteen (19) years of age.*

c. Use of Post-Secondary Education Worksheet.

The Worksheet makes two calculations. Section One calculates the contribution of each parent for payment of post-secondary education expenses based upon his or her percentage share of the weekly adjusted income from the Child Support Obligation Worksheet after contribution from the student toward those costs. Notwithstanding this calculation, the court retains discretion to award and determine the allocation of these expenses taking into consideration the ability of each parent to

meet these expenses and the child's reasonable ability to contribute to his or her educational expenses. The method of paying such contribution should be addressed in the court's order.

In situations when the student, under age nineteen (19), remains at home with the custodial parent while attending an institution of higher learning, generally no reduction to the noncustodial parent's support obligation will occur and Section Two of the Worksheet need not be completed.

Section Two determines the amount of each parent's weekly support obligation for the student who does not live at home year round. The amount attributable to the student while at home has been annualized to avoid weekly variations in the order. It further addresses the provisions of IC 31-16-6-2(b) which require a reduction in the child support obligation when the court orders the payment of educational expenses which are duplicated or would otherwise be paid to the custodial parent. In determining the reduction, the student is treated as emancipated. This treatment recognizes that the diminishing marginal effect of additional children is due to economies of scale in consumption and not the age of the children. A second child becomes the "first child" in terms of consumption and the custodial parent will receive Guideline child support on that basis.

Section Two applies when the parties' only child attending school does not reside with the custodial parent while attending school, as well as when the parties have more than one child and one resides away from home while attending school and the other child(ren) remain at home.

Line E of the Worksheet determines the percentage of the year the student lives at home. Line F is used to enter the Basic Child Support Obligation, from the Guideline Schedules for all of the children of the parties including the student who does not live at home year round. Line G is used to enter the amount of support for those children who are not living away from home. If the student is the only child, Line G will be $0.00. The difference between Lines F and G is the total support obligation attributable to the student. This is entered on Line H. By multiplying the percentage of the year the student lives at home, times the support obligation attributable to the student, the Worksheet pro rates to a weekly basis the total support obligation attributed to the student. This is computed on Line I and the result is included in the uninsured health care expense calculation. The parents' pro rata share of this obligation is computed in Line J. This result is included in section 7 of the Child Support Obligation Worksheet.

1. The One Child Situation. When the parties' only child is a student who does not live at home with the custodial parent while attending school, Section Two establishes the weekly support obligation for that child on Line I. The regular Child Support Obligation Worksheet should be completed through Line 5 for that child and the annualized obligation from Line J of the Post-secondary Education Worksheet is entered on Line 7 with an explanation of the deviation in the order or decree.

2. The More Than One Child Situation. When the parties have more than one child, Section Two requires the preparation of a regular Child Support Obligation Worksheet applicable only to the child(ren) who regularly reside with the custodial parent, and for a determination of that support obligation. The annualized obligation from Line J of the Post-Secondary Education Worksheet is then inserted on Line 7 of the regular support Worksheet as an addition to the Parent's Child Support Obligation on Line 6. An explanation of the increase in the support obligation should then appear in the order or decree.

In both situations the Child Support Obligation Worksheet and the Post-Secondary Education Worksheet must be filed with the court. This includes cases in which agreed orders are submitted.

When more than one child lives away from home while attending school, Section One of the Post-Secondary Education Worksheet should be prepared for each child. However, Section Two should be completed once for all children living away from home while attending school. The number used to fill in the blank in Line E should be the average number of weeks these children live at home. For example, if one child lives at home for ten (10) weeks and another child lives at home for sixteen (16) weeks, the average number of weeks will be thirteen (13). This number would then be inserted in

the blank on Line E which is then divided by 52 (weeks).

COMMENTARY

With the modification of the age of emancipation from age twenty-one (21) to age nineteen (19), Section Two of the Post-Secondary Education Worksheet will only be applicable in a limited number of cases. However, it remains a valuable tool to calculate child support for a child under age nineteen (19) who does not reside with either parent during the school year but returns to the home of the custodial parent during school breaks and recess. Section Two of the Post-Secondary Education Worksheet should not be utilized once the child attains age nineteen (19).

Other Extraordinary Expenses. The economic data used in developing the Child Support Guideline Schedules do not include components related to those expenses of an "optional" nature such as costs related to summer camp, soccer leagues, scouting and the like. When both parents agree that the child(ren) may participate in optional activities, the parents should pay their pro rata share of these expenses from line 2 of the Child Support Obligation Worksheet. In the absence of an agreement relating to such expenses, assigning responsibility for the costs should take into account factors such as each parent's ability to pay, which parent is encouraging the activity, whether the child(ren) has/have historically participated in the activity, and the reasons a parent encourages or opposes participation in the activity. If the parents or the court determine that the child(ren) may participate in optional activities, the method of sharing the expenses shall be set forth in the entry.

COMMENTARY

The costs of participating in elective school activities such as sports, performing arts and clubs, including the costs of participating in related extracurricular activities, are "Other Extraordinary Expenses."

GUIDELINE 9. ACCOUNTABILITY, TAX EXEMPTIONS, ROUNDING SUPPORT AMOUNTS

Accountability of the Custodial Parent for Support Received. Quite commonly noncustodial parents request, or even demand, that the custodial parent provide an accounting for how support money is spent. While recognizing that in some instances an accounting may be justified, the Committee does not recommend that it be routinely used in support orders. The Indiana Legislature recognized that an accounting may sometimes be needed when it enacted IC 31-16-9-6.

At the time of entering an order for support, or at any time thereafter, the court may make an order, upon a proper showing of the necessity, requiring the spouse or other person receiving such support payments to render an accounting to the court of future expenditures upon such terms and conditions as the court shall decree.

It is recommended that an accounting be ordered upon a showing of reasonable cause to believe that child support is not being used for the support of the child. This provision is prospective in application and discretionary with the court. An accounting may not be ordered as to support payments previously paid.

A custodial parent may be able to account for direct costs (clothing, school expenses, music lessons, etc.) but it should be remembered that it is extremely difficult to compile indirect costs (a share of housing, transportation, utilities, food, etc.) with any degree of accuracy. If a court found that a custodial parent was diverting support for his or her own personal use, the remedy is not clear. Perhaps, the scrutiny that comes with an accounting would itself resolve the problem.

Tax Exemptions. Development of these Guidelines did not take into consideration the awarding of the income tax exemption. Instead, it is required each case be reviewed on an individual basis and that a decision be made in the context of each case. Judges and practitioners should be aware that under current law the court cannot award an exemption to a parent, but the court may

order a parent to release or sign over the exemption for one or more of the children to the other parent pursuant to Internal Revenue Code § 152(e). To effect this release, the parent releasing the exemption must sign and deliver to the other parent I.R.S. Form 8332, Release of Claim to Exemption for Child of Divorced or Separated Parents. The parent claiming the exemption must then file this form with his or her tax return. The release may be made, pursuant to the Internal Revenue Code, annually, for a specified number of years or permanently. Courts shall include in the support order that a parent may only claim an exemption if the parent has paid at least ninety-five percent (95%) of their court ordered support for the calendar year in which the exemption is sought by January 31 of the following year. Shifting the exemption for dependents does not alter the filing status of either parent.

A court is required to specify in a child support order which parent may claim the child(ren) as dependents for tax purposes. In determining when to order a release of exemptions, it is required that the following factors be considered:

(1) the value of the exemption at the marginal tax rate of each parent;
(2) the income of each parent;
(3) the age of the child(ren) and how long the exemption will be available;
(4) the percentage of the cost of supporting the child(ren) borne by each parent;
(5) the financial aid benefit for post-secondary education for the child(ren);
(6) the financial burden assumed by each parent under the property settlement in the case; and
(7) any other relevant factors,(including health insurance tax subsidies or tax penalties under the Affordable Care Act).

COMMENTARY

Under the Affordable Care Act, premium tax subsidies, dependent tax exemptions, and tax penalties for failure to provide health insurance are inextricably linked. Problems can arise when a parent purchases health insurance through the health insurance marketplace under the Affordable Care Act and needs access to premium tax subsidies in order to make the insurance affordable. Only the parent who claims a child as a dependent on a federal tax return is eligible for the subsidies and liable for the tax penalties.

Rounding child support amounts. The amount of child support entered as an order may be expressed as an even amount, by rounding to the nearest dollar. For example, $50.50 is rounded to $51.00 and $50.49 is rounded to $50.00.

Additional Documents

- Child Support Obligation Worksheet (CSOW)
- Parenting Time Credit Worksheet
- Post-Secondary Education Worksheet (PSEW)
- Guideline Schedules for Weekly Support Payments

Worksheet – Child Support Obligation

Each party shall complete ~~that~~ their portion of the worksheet ~~that applies to him or her~~, sign the form and file it with the court. This worksheet is required in all proceedings establishing or modifying child support.

IN RE:

CASE NO:
FATHER:
MOTHER:

CHILD SUPPORT OBLIGATION WORKSHEET (CSOW)

Children	DOB	Children	DOB

		FATHER	MOTHER	
1.	**WEEKLY GROSS INCOME**			
	A. Subsequent Children Multiplier Credit (.065 .097 .122 .137 .146 .155 .164 .173)			
	B. Child Support (Court Order for Prior Born)			
	C. Child Support (Legal Duty for Prior Born)			
	D. Maintenance Paid			
	E. WEEKLY ADJUSTED INCOME (WAI) Line 1 minus 1A, 1B, 1C and 1D			
2.	**PERCENTAGE SHARE OF TOTAL WAI**	%	%	
3.	**COMBINED WEEKLY ADJUSTED INCOME** (Line 1E)			
4.	**BASIC CHILD SUPPORT OBLIGATION** Apply CWAI to Guideline Schedules			
	A. Weekly Work-Related Child Care Expense of each parent			
	B. Weekly Health Insurance Premium – (Children's portion)			
5.	**TOTAL CHILD SUPPORT OBLIGATION** (Line 4 plus 4A and 4B)			
6.	**PARENT'S CHILD SUPPORT OBLIGATION** (Line 2 times Line 5)			
7.	**ADJUSTMENTS**			
	A. ( ) Obligation from Post-Secondary Education Worksheet Line J.	+	+	
	B. ( ) Payment of work-related child care by each parent. (Same amount as Line 4A)	-	-	
	C. ( ) Weekly Health Insurance Premium (Children's portion)	-	-	
	D. ( ) Parenting Time Credit from Parenting Time Credit Worksheet(s)	-	-	
8.	**RECOMMENDED CHILD SUPPORT OBLIGATION**			

I affirm under penalties for perjury that the foregoing representations are true.

Dated:	**Father:**
	Mother:

~~**UNINSURED HEALTH CARE EXPENSE CALCULATION**~~ Uninsured Health Care Expense to be paid _____ **% by Father;** _____ **% by Mother.**

~~A. Custodial Parent Annual Obligation: (CSOW Line 4 Total) $_____ + (PSEW § Two, Line I) $_____ = $_____ x 52 weeks x .06 = $_____.~~

~~B. Balance of Annual Expenses to be Paid: (Line 2) _____ % by Father; _____ % by Mother.~~

Section Nine

Mediation Tips

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Section Nine

Mediation Tips…….... Ryan H. Cassman
Linda Peters Chrzan
Kelly A. Lonnberg
Jordyn Katzman McAfee
Andrew C. Mallor

Mediation Engagement Letter – Ryan H. Cassman

Mediation ADR Engagement Letter – Kelly A. Lonnberg

Mediation Confirmation Letter – Andrew C. Mallor

Mediation Agreement – Linda Peters Chrzan

Mediation Agreement – Jordyn Katzman AcAfee

Rules for Alternative Dispute Resolution – Rule 2. Mediation

Enforcement

Virtual Mediation (Attorneys)

Zoom Etiquette

Coots, Henke & Wheeler
ATTORNEYS AT LAW

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Brandi A. Gibson*
Ryan H. Cassman*
Alex Emerson
Jenna Bailey
Betsy Sommers*
Jenna Heavner*
*Registered Mediator

Retired:
Steven H. Henke

_____, 2023

VIA EMAIL
Mr. or Ms.
c/o attorney's name
attorney's email address

RE: The Marriage of
Cause No.
Subject: Mediation
Our File No.:

Dear Mr. or Ms.:

Under the Indiana Rules for Alternative Dispute Resolution, I have been selected to mediate the above-referenced matter. I will be mediating this case on _____ **2023, at 9:30 a.m.** I encourage you and your attorney to submit confidential pre-mediation statements to me prior to _____, 2023.

Rule 2.7 requires that you be advised of certain matters before the commencement of mediation, and they are set out below:

1. Definition of Mediation. Mediation is a process in which a neutral third person, called a mediator, acts to encourage and to assist in the resolution of a dispute between two or more parties. This is an informal and non-adversarial process. The objective is to help disputing parties reach a mutually acceptable agreement between or among themselves on all or any part of the issues in dispute. Decision-making authority rests with the parties, not the mediator. The mediator assists the parties in identifying issues, fostering joint problem-solving, exploring settlement alternatives, and in other ways consistent with these activities.

2. Mediator Neutrality. As your mediator, I am completely neutral and do not represent or have any personal, financial or other relationship with any of the parties that could result in bias or conflict of interest.

3. Confidentiality. Mediation shall be regarded as confidential, and I will ask you to agree, among other things, that I shall never be subject to service of process (being subpoenaed to testify in court) by you requiring the disclosure of any matter discussed during the mediation. I will further ask you to agree that this confidentiality may not be waived by you.

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A Professional Corporation

4. Independent Legal Advice. You should consider independent legal advice. Since you are represented by counsel, and since they will be in attendance at the mediation session, I conclude this condition has been satisfied.

5. Time and Place of Mediation. The mediation session will be conducted at The Center, within the offices of Coots, Henke & Wheeler **on Wednesday, _____, 2023, at 9:30 a.m.** The mediation session is set for one full day.

6. Anticipated Cost of Mediation. My services shall be billed at the rate of $350.00 per hour. Unless otherwise agreed or ordered by the court, the fees shall be divided equally between the parties participating in the mediation. I will record the time that I expend in scheduling the mediation session, reviewing pre-mediation confidential statements supplied by you and your counsel, the actual mediation session, and the time required after the mediation has concluded, including the preparation of a mediator's report to the court. Based upon my hourly rate, the estimated cost of a full-day mediation session is $2,800.00.

7. Retainer Fee. Unless prior arrangements are made, a $600.00 retainer must be paid to my office no later than _____, 2023. Mediation retainers can be paid electronically using our secure online payment system, located at:

https://secure.lawpay.com/pages/chwlaw/trust.

Please enter your first and last name and file number: in the Reference section.

You may also pay by phone at (317) 844-4693. Ask to speak with Cathey Jackson to pay the retainer by debit or credit card. **Payment in full of any balance is expected on _____, 2023, at the conclusion of the mediation session.**

At the end of the mediation process, I may prepare a letter or agreement outlining the terms of any agreement reached for the parties and counsel to sign. If the mediation is court-ordered, I will submit a report to the court stating whether or not an agreement was reached by the parties.

I look forward to working with each of you and your attorneys. Should this document accurately reflect our understanding, please complete the attached form, sign where indicated, and return it to my office with your retainer.

Sincerely,

COOTS, HENKE & WHEELER, P.C.

/s/ Ryan H. Cassman
Ryan H. Cassman

rcassman@chwlaw.com

RHC/

READ, UNDERSTOOD, AND AGREED:

_____
Mediation Client Name

Address: _____

_____

_____
Telephone Number

_____
Email Address

Date of Birth: _____

Date:

Kelly A. Lonnberg
DIRECT DIAL: (812) 452-3505
kelly.lonnberg@skofirm.com

One Main Street
Suite 201
Evansville, IN 47708
Phone: (812) 425-1591
Fax: (812) 421-4936

September 12, 2018

NAME
ADDRESS

NAME
ADDRESS

RE: PARTIES
Vanderburgh Superior Court Cause _____

Dear Names:

Thank you very much for agreeing to utilize my services as a Mediator. Pursuant to Alternative Dispute Resolution Rule 2.2 of the Indiana Supreme Court, I wish to advise you of the following:

My understanding of the billing arrangements is that the parties will equally divide my mediation fees of $300.00 per hour ($150.00 per party). A retainer of $1,500.00 ($750.00 per party) will be required at the start of mediation. A mediation bill will be issued to the parties if the mediation expenses exceed the retainer, and a refund will be issued if the expenses are less than the retainer. If I have misunderstood the terms, please advise.

The process of mediation involves face-to-face meetings between the attorneys and their clients with the Mediator. Generally after the Mediator hears all sides present their views, the Mediator meets with each side separately to discuss with them other aspects of the case and their expectations as to a settlement. The Mediator, after meeting separately with one of the parties, does not divulge to the other parties any information learned from the adverse parties when the request is made to keep the information confidential.

The mediation process is confidential and privileged. None of the information imparted at the mediation is admissible in evidence against any party. There is an exception to what information is not privileged and may be subject to disclosure. For example, child abuse is one such area. Also be aware of the fact the rule as to privilege does not require exclusion when the

evidence is offered for another purpose such as proving bias or prejudice of a witness on negating a contention of undue delay. Please see Alternative Dispute Resolution Rule 2.12.

The Mediator does not attempt to force any party to accept any settlement proposal. Instead, the Mediator merely explains to them the alternatives if mediation does not resolve the situation.

I know of no relationships or any personal, financial or other interest which could result in bias or a conflict of interest on my part. I do not represent any of the parties.

I also want to explain that Stoll represents many other companies and individuals. It is possible that, while I am providing mediation services for you, some of our present or future clients may (a) have business or other interest that compete with you; or (b) seek to engage Stoll in connection with an actual or potential transaction, pending or potential litigation, or other dispute resolution proceeding in which such client's interest are, or potentially may become, adverse to your interest. We therefore ask for your consent in advance to Stoll's representation of existing or new clients in any matter (transactional, litigation, or otherwise) adverse to you, so long as such other matter directly adverse to you is not substantially related to your mediation matter. In so agreeing, you will be waiving any conflict of interest that exists or might be asserted to exist that might preclude, challenge or otherwise disqualify Stoll in any representation of any other client with respect to any such matter.

Please note that, even if you do not sign and return this letter, you are instructing us to provide mediation services by scheduling and attending mediation will constitute your full acceptance of the terms set forth herein, including the advance waiver set forth above and all other terms herein.

In the event that agreement is reached, it is expected there will be a written agreement signed by all parties. This, of course, may be introduced into evidence.

I call Rule 2.7(C) to your attention. Any party may submit to me a confidential statement of the case, <u>not to exceed ten pages</u>, before the mediation conference. I strongly urge you to submit such statement. Your attorney may be submitting one on your behalf.

The parties have agreed that the mediation will commence on **DAY, DATE, at TIME** at the law offices of Stoll Keenon Ogden, PLLC, One Main Street, Suite 201, Evansville, Indiana. I look forward to a productive and successful mediation.

Sincerely,

Kelly A. Lonnberg
Stoll Keenon Ogden PLLC

KAL/dlf

Approved:

_____ _____
[Name] [Name]

MALLOR | GRODNER
Attorneys

Andrew C. Mallor
Diplomate, American College of Family Trial Lawyers
Fellow, American Academy of Matrimonial Lawyers
Certified Family Law Specialist, by the Family Law Certification Board
Registered Family Law Mediator

acmallor@lawmg.com

October 27, 2023

[Attorney for Petitioner]
Address
City, State Zip
Email

[Attorney for Respondent]
Address
City, State Zip
Email

RE: The Matter of The Marriage of [Title]
Cause No. _____
Our File No. _____
Mediation Date: _____

Dear Counsel:

This letter confirms our meditation conference has been scheduled for [Date], beginning at 9:30 a.m., at my Indianapolis office, located at 101 W. Ohio Street, Ste. 1600, Indianapolis, IN 46204.

The mediation will be conducted in accordance with Rule 2.7 of the Rules of Alternative Dispute Resolution. Enclosed is a copy of the rule, along with an acknowledgment of Indiana Alternative Dispute Resolution Rule 2.7, which will be executed at the time of the mediation.

To assist me and to facilitate the conduct of the conference, lead counsel for each side shall submit a "Confidential Statement of the Case" to me at least three (3) days prior to the conference which briefly states the following:

1. The case number and case name.

2. A short description of the case including:
   a. Date of marriage;

b. Date of separation;
c. Date of divorce filing;
d. Names, ages, occupations and current annual income of the parties; and
e. Names and ages of children (if any).

3. A marital balance sheet with the appropriate backup information and proposed distributions or solutions to the problem areas.

4. A statement of the legal issues to be resolved (be specific).

5. Copies of any of the following which would be helpful to me:
   a. Pertinent case law;
   b. Relevant statutes;
   c. Pleadings;
   d. Essential exhibits; and
   e. Substantive orders.

6. A statement as to whether discovery is completed or not completed, and, if not completed, a list of all remaining discovery with an explanation as to how such discovery would aid mediation.

7. A list of any pending dispositive motions with a statement as to how any such pending motions might impair the mediation process.

8. An estimate of costs and attorneys fees through trial.

9. The last offer made to opposing parties.

10. Any suggestions and other information which would be helpful to me.

11. The signature of the trial attorney providing the information, followed by name, law firm, address and telephone number, and the capacity of the party providing the information.

12. A statement as to what agreement the parties have reached concerning the payment of fees and expenses for mediation if other than equal.

If other persons (other than parties) are critical to affecting a complete resolution of this controversy, you are encouraged to identify those other persons to me.

Non-parties to the matter may only be present at mediation if their presence does not hinder the mediation process. I will use my discretion to determine if a non-party is impeding the process, and if so, I may ask them to leave.

It is understood that I am not employed to, nor expected to, make any decision for the parties. I am not acting as a judge. It is agreed that I will have the same immunity and protection from suits for damage and other relief as a judge of a state court in Indiana. No promise is made that this process will result in a settlement.

My fees for mediation are $___ per hour, plus reasonable and necessary expenses incurred for conducting the mediation conference. ***A retainer of $ is required from each party, for a total of $, prior to mediation***. Should my office not receive the retainer fee from both parties on or before the start of mediation, the mediation will be cancelled and rescheduled after payment is received.

Fees will be allocated with any Court Order regarding mediation expenses OR as agreed to by the parties and in the absence of an agreement, split 50/50 between the parties participating in mediation and will be paid to me within thirty (30) days from the close of the mediation process or by the finalization of the dissolution action, whichever occurs first, unless other arrangements are identified in writing by all parties. In the event the bill is not paid timely the parties acknowledge that I shall be allowed to intervene in the pending action and provide notice at the address for the parties provided at the time of the mediation session.

Due to the problems with cancellations of mediations in my office I am now charging a nonrefundable cancellation fee of $___ regardless of the reason. The fee will be taken from the advance payment of the mediation fee. This covers the administrative overhead of setting up the file, conflicts checks, and scheduling. Once a mediation date has been scheduled and I have sent out confirmation letters, it will require the agreement of both parties' counsel or an order of the court to cancel or postpone that date.

The parties are further advised as follows:

1. The mediation process is not to be considered therapy or marriage counseling, and the parties shall not receive services in that regard through this process.

2. Based on the hourly rate, if the mediation is scheduled for one half day, the estimated cost is $___ and a full day is estimated at $___. A full day is from 9:30 a.m. to 5:00 p.m. This amount can vary depending on the actual amount engaged in mediation and any final charge will be pursuant to the hourly rate set forth above multiplied by the number of hours engaged in mediation, including preliminary matters as well as the actual mediation session and travel.

3. The mediator does not represent either of the parties.

4. The mediator will not misrepresent any material, fact or circumstance nor promise a specific result or imply partiality as part of this mediation. The mediator will preserve confidentiality of all proceedings except as otherwise provided and required by law.

5. The mediator will promote the mutual respect among the participants throughout the process and require that the parties act in a respectful and proper manner throughout.

6. The mediator must avoid any appearance of impropriety and cannot have an interest in the outcome of the dispute, cannot be an employee of any of the parties or attorneys involved, and cannot be related to any of the parties or attorneys involved. If you are aware of any such fact, please bring that to my attention immediately.

7. The mediator shall not be obligated to complete a mediation where he deems a proposed resolution to be unconscionable.

8. The mediator will not make a substantive decision for any party except as provided by the rules.

9. The mediation process is used to attempt the settlement of issues which might otherwise be the subject of litigation. Statements made by either party during mediation should be taken as being in advancement of settlement and are not admissible in court. Neither party may request the production of any notes or documents made by me, subpoena or request me to testify in court regarding the mediation process, or attempt to make me disclose confidential information disclosed to me by the other party.

10. It is contemplated that if an agreement is reached in whole or in part, the agreement will be reduced to writing and signed by the parties. Any agreement not signed by the parties will be unenforceable and the parties shall not assume or believe that any settlement is reached unless and until a document is signed.

11. The parties agree that, in the event a full Marital Settlement Agreement, Waiver of Hearing, Decree and other related documents are executed, both parties and counsel will be deemed to be the drafter of the documents and that the actions of the mediator do not constitute representation of either party or create an attorney-client relationship between the mediator and any party or counsel.

Each party shall sign this letter and return a copy to me indicating their agreement, together with their retainer. Mediation will not begin until both parties have paid a retainer and signed this agreement.

I look forward to working with you.

Yours truly,

Andrew C. Mallor

The above is a four-page letter dated October 27, 2023, which accurately reflects my understanding of and agreement to the terms of this mediation.

Date: _____

_____
[Petitioner]

Address of Party:

_____

_____

Date of Birth: _____

Date: _____

_____
[Respondent]

Address of Party:

_____

_____

_____

Date of Birth: _____

Indiana Alternative Dispute Resolution Rule 2.7

The parties and their attorneys are advised that ADR Rule 2.7 provides, in part, as follows:

(A) Advisement of Participants. The mediator shall:

(1) advise the parties of all persons whose presence at mediation might facilitate settlement; and

(2) in child related matters, ensure that the parties consider fully the best interests of the children and that the parties understand the consequences of any decision they reach concerning the children; and

(3) inform all parties that the mediator (a) is not providing legal advice, (b) does not represent either party, (c) cannot assure how the court would apply the law or rule in the parties' case, or what the outcome of the case would be if the dispute were to go before the court, and (d) recommends that the parties seek or consult with their own legal counsel if they desire, or believe they need legal advice; and

(4) explain the difference between a mediator's role and a lawyer's role when a mediator knows or reasonably should know that a party does not understand the mediator's role in the matter; and

(5) not advise any party (i) what that party should do in the specific case, or (ii) whether a party should accept an offer.

(B) Mediation Conferences.

(1) The parties and their attorneys shall be present at all mediation sessions involving domestic relations proceedings unless otherwise agreed. At the discretion of the mediator, non-parties to the dispute may also be present.

(2) All parties, attorneys with settlement authority, representatives with settlement authority, and other necessary individuals shall be present at each mediation conference to facilitate settlement of a dispute unless excused by the court.

(3) A child involved in a domestic relations proceeding, by agreement of the parties or by order of the court, may be interviewed by the mediator out of the presence of the parties or attorneys.

(4) Mediation sessions are not open to the public.

In the mediation process, the mediator may meet jointly or separately with the parties and may express an evaluation of the case to one or more of the parties or their representatives. This evaluation may be expressed in the form of settlement ranges rather than exact amounts.

The foregoing has been presented to me at the beginning of the mediation conference, and I have read it.

Dated: _____

_____	_____
Petitioner	Respondent
_____	_____
Attorney for Petitioner	Attorney for Respondent

_____
Andrew C. Mallor
Mediator

RE: The Matter of The Marriage of [Title]
Cause No. _____
Our File No. _____
Mediation Date: _____

_____ _____
Signature Date

_____
Printed Name

Address: _____
(Street Address)

_____
(City, State, Zip Code)

Phone Number: _____

Email Address: _____

Type of Card (please circle):

VISA MasterCard American Express Discover

Credit Card Account Number: _____

Expiration Date: _____ Security Code: _____

*date

Petitioner's Attorney's name
Firm Name SENT VIA E-MAIL:
Street address
City, State & Zip

Respondent's Attorney's name
Firm Name SENT VIA E-MAIL:
Street address
City, State & Zip

RE: *(PETITIONER) and *(RESPONDENT)
In the Allen * Court
Cause No.: *

Dear Counsel:

This letter is to confirm that the referenced action has been scheduled for [a **half (1/2) day** or an **all-day**] [mediation session on ***[DAY OF THE WEEK], *[DATE],** to commence at **[time] *.M.** at Chrzan Law, LLC, 701 S. Clinton Street, Suite 210, Fort Wayne, IN 46802.

Enclosed, please find an Agreement To Mediate. A retainer of Four Hundred Eighty Dollars ($480.00) is required from **EACH** party. This retainer **MUST** be received by *[day of the week, ***[date three (3) days before mediation date]**, or the mediation session is subject to cancellation. Please submit a confidential statement at least five (5) days prior to the scheduled mediation.

Thank you for selecting me to assist your clients. I am looking forward to working hard to facilitate a mutually beneficial resolution to their legal issues. If you have questions or I can be of assistance before *[date of mediation session], please do not hesitate to call me. In my absence, please feel free to speak with my legal assistant, Naomi L. Mertens.

Thank you.

Very truly yours,

CHRZAN LAW, LLC

LINDA PETERS CHRZAN

LPC/nlm
Enclosure

STATE OF INDIANA	)	IN THE ALLEN SUPERIOR/CIRCUIT COURT
	) §:	[FAMILY RELATIONS DIVISION]
COUNTY OF ALLEN	)	CAUSE NO.: *

IN RE: THE MARRIAGE OF:

*,

Petitioner,

AND

*,

Respondent.

AGREEMENT TO MEDIATE

This Agreement to Mediate (hereinafter referred to as "Agreement") is entered into this _____ day of _____, 2022, by and between Linda Peters Chrzan (hereinafter referred to as "Mediator"), ***(BOLD)** and ***(BOLD)** (hereinafter referred to as "Participants").

The Mediator and Participants agree as follows:

1. **MEDIATOR**:

1.1 The Mediator shall provide mediation services to the Participants in the above litigation pursuant to the Indiana Supreme Court Rules of Alternative Dispute Resolution (herein after referred to as "ADR Rules").

1.2 The Participants acknowledge that the Mediator has no authority beyond that described by this Agreement and/or the ADR Rules.

1.3 The Mediator shall not give legal advice or legal representation to either party during this mediation process, nor shall she act as an advocate for either Participant.

2. **MEDIATION PROCEDURE**:

2.1 Mediation sessions shall be schedule at everyone's convenience. The number, and length, of each session may vary depending upon the circumstances and complexities of the issues to be mediated. Sessions may be conducted with everyone present; or the Mediator may meet individually with each Participant.

2.2 The Mediator has no power to continue/reschedule a mediation session at the request of one party; only if all the parties agree.

2.3 Each Participant is encouraged to submit a Confidential Statement under ADR Rule 2.7 (C), which is not more than ten (10) pages in length and which may include the following:

a. Legal and factual issues;

b. Marital Balance Sheet with backup documentation and proposed distribution;

c. Custody, visitation, support, medical expense and tax exemption consideration;

d. Settlement posture; and,

e. Expected strengths and weaknesses.

2.4 The Statement shall be regarded as privileged and confidential pursuant to ADR Rule 2.11

2.5 At the end of the mediation process, if the Participants settle all or a portion of the outstanding issues, the Mediator shall prepare a proposed Memorandum of Mediation Agreement for the review and signature of both Participants.

2.6 A signed Mediation Agreement may be introduced into evidence.

2.7 According to ADR Rules, any statement made during the mediation process shall be considered confidential.

2.8 By signing this Agreement, Participants are barred from: testifying to any statement made by the other person during mediation; requesting the production of any notes, documents or tapes made during mediation; or, requesting the testimony of the Mediator with regard to any party of the mediation process in Court or any other legal procedure.

2.9 The Participants acknowledge that the purpose of this mediation process is to resolve disputes and not for therapy or marriage counseling.

3. **FEE AGREEMENT**:

3.1 The Participants agree to pay the Mediator Two Hundred Forty Dollars ($240.00) per hour for her services and One Hundred Twenty-five Dollars ($125.00) per hour for her paralegal's services. The Mediator and/or paralegal shall charge for time in scheduling the mediation session, preparing for mediation session, drafting correspondence, drafting mediated agreements, including drafting a Verified Waiver of Final Hearing, Mediated Marital Settlement Agreements and Decree of Dissolution. The Mediator shall also charge for time spent, by agreement of the Participants, with their attorneys in furtherance of the mediation process.

3.2 Each party shall pay Four Hundred Eighty Dollars ($480.00) to the Mediator in advance of the first mediation session as a retainer fee. This

retainer is non-refundable once earned and shall be applied to the services rendered by the Mediator in this matter. Mediation may be canceled if the retainer is not paid at least forty-eight (48) hours before the scheduled mediation session.

3.3 The payment of all mediation services shall be shared equally by the Participants, unless the parties agree to a different allocation of the mediation fees.

3.4 If there is a Court Order allocating the fees on an income share basis or an allocation other than a fifty/fifty percentage (50%/50%), it is the parties' obligation to agree upon the income share and notify the Mediator thereof. Absent such an agreement and notification, 3.3 shall govern the allocation of fees by the Mediator.

3.5 If the parties agree, or are ordered to, divide the mediation fees on a percentage basis other than fifty/fifty (50/50), the Mediator is not bound by that percentage division with regard to the retainer. If one party overpays their agreed upon or ordered percentage share, then they shall look to the other party for reimbursement, not the Mediator.

3.6 If payment of the bill is not timely, the Mediator reserves the right to not schedule and/or suspend future mediation sessions until the account is current.

3.7 An unpaid balance of thirty (30) days or more shall be subject to interest charges of one and a half percent (1.5%) per month, or eighteen percent

(18%) per annum. The Mediator shall also be entitled to recover all costs and expenses of collection, including reasonable attorney fees.

3.8 If the fees are not paid in full within sixty (60) days after the final report is filed with the Court, then the Mediator reserves the right to file a Motion to Intervene with the court in which she shall ask the Court to issue orders regarding the amount due from each Participant and/or such other orders as are just and proper in the premises.

4. **THE ROLE OF ATTORNEYS IN MEDIATION**:

4.1 The Participants acknowledge their right to obtain independent legal counsel to assist them in the mediation process. The Participants agree that any needed legal advice shall be sought from their attorneys rather than from the Mediator, and that any drafting and filing of pleadings and agreements with the Court shall be done by the Participants' attorneys, unless the Mediator is specifically authorized to do so by all Participants.

5. **IMPASSE**:

5.1 If the Participants are unable to reach an agreement about any or all issues, the Participants and the Mediator shall discuss options for resolution of those issues. These options may include: separate sessions with the Mediator, referral of a particular issue to other professionals, suspension or termination of the mediation session or family arbitration of some issues.

5.2 If a Participant fails to engage in mediation in good faith, sanctions may be imposed, pursuant to ADR Rule 2.10, upon motion by either

Participant. This includes a failure to appear at a previously scheduled mediation session.

6. **MISCELLANEOUS**:

6.1 **Binding Agreement**. This Agreement shall bind and inure to the benefit of the Participants and their respective representatives (but not their attorneys), heirs, successors, and assigns.

6.2 **Invalid Provision/Severability**. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions of it; and this Agreement shall be construed in all respects as if such invalid or unenforceable provision was omitted.

6.3 **Amendments**. No amendments, modifications, alterations, or additions to this Agreement shall be binding unless made in writing and signed by the Participants and Mediator.

6.4 **Governing Law**. This Agreement shall be governed in all respects whether as to validity, construction, capacity, performance, or otherwise by the law of the state of Indiana.

6.5 **Entire Agreement**. This Agreement constitutes the entire agreement of the Participants, all prior negotiations and agreements, whether written or oral, having been merged into this Agreement.

6.6 **Review By Counsel**. Each Participant has had the opportunity to have this Agreement reviewed by their respective counsel before singing it.

PARTICIPANTS:

*, Petitioner	*, Respondent
Street Address	Street Address
City, State and Zip Code	City, State and Zip Code
E-mail	E-mail

MEDIATOR:

CHRZAN LAW, LLC

By: _____

LINDA PETERS CHRZAN, #10894-02
701 S. Clinton Street, Suite 210
Fort Wayne, IN 46802
Telephone: (260) 407-1049
Facsimile: (260) 424-5311
E-mail: linda@chrzanlaw.com

ALVIN J. KATZMAN
MARIELLEN KATZMAN
ERIN M. MUNDY
DANIEL T. MCAFEE
JORDYN KATZMAN MCAFEE

ALAN H. GOLDSTEIN, SENIOR *OF COUNSEL*
MAREK GRABOWSKI, *OF COUNSEL*

November 3, 2023
Via Email Only

_____ (Party Name)
c/o _____ (Counsel's Name)
Email: _____

_____ (Party Name)
c/o _____ (Counsel's Name)
Email: _____

Re: In Re the Marriage of _____ and _____
Cause No.: _____

Dear Counsel:

Under the Indiana Rules for Alternative Dispute Resolution, I have been selected to mediate your pending matter. Mediation is scheduled to commence on _____. I will send out the Zoom information the day before mediation. If necessary, subsequent sessions may be scheduled.

Mediation is a process in which a neutral third person, called a mediator, acts to facilitate the resolution of a dispute between two (2) or more parties. Mediation is designed to be an informal and non-adversarial process, with its objective being to help the disputing parties reach a mutually acceptable agreement. The decision-making authority rests with you, the parties, not with me. I will assist you in identifying issues, working toward joint problem-solving, and exploring settlement alternatives. For your reference, I have enclosed a copy of Rule 2.7 of the Indiana Rules of Alternative Dispute Resolution. That rule requires that I advise of certain matters as follows:

1. Anticipated Cost of Mediation. My services will be billed at the rate of $300.00 per hour. A flat $100.00 administrative fee will be charge for setting up your file, correspondence with counsel to schedule your mediation, preparation of your mediation agreement, copies, etc. Unless otherwise agreed, my fees will be divided equally between the parties participating in mediation. My fees will include the time I spend before the commencement of mediation, time actually expended at the mediation, and time required after the mediation is concluded, including preparing and filing of final documents and my Mediator's Report to Court. **Full payment is due immediately at the conclusion of each mediation session**. **Credit card information will be collected along with this executed Mediation Agreement**.

2. Mediator Neutrality. As the mediator, I do not represent either of you, nor do I represent both of you. I remain neutral, and to the best of my knowledge, I do not have any relationship with either of the parties. I have no personal, financial, or any other interests which could result in a bias conflict of interest. I have no authority beyond that conferred on me by your agreement.

3. Independent Legal Advice. You both understand that as a mediator, I will not give legal advice or legal representation to either of you in the mediation process. You will have an opportunity to consider the independent legal advice of your attorneys, both during the mediation and before any final agreement is reached.

4. Confidentiality. The mediation process is confidential. Both of you expressly understand and agree that any statements made during the mediation process and any information I obtain from each of you during the mediation process is privileged and confidential. I will not disclose it to the other party unless a disclosure is authorized. However, information disclosed in the mediation process which is discoverable from other sources is not confidential.

Further, you understand and agree that insofar as the mediation process is directed toward the settlement of issues which might otherwise be the subject of litigation, statements made by either party during the process are intended to be taken as being in furtherance of settlement and, therefore, are not admissible as evidence in court. In signing this agreement, each of you understands and agrees to be foreclosed and barred from: requesting the production of any notes and documents made by the mediator; subpoenaing or otherwise requesting me to testify in court regarding the mediation process; and, neither of you will attempt in any way to force me to disclose confidential matters revealed to me by the other party.

At the end of the mediation process, I may prepare a stipulation sheet outlining the terms of the agreement reached for the parties and counsel to sign. In the alternative, your attorney may draft a proposed settlement agreement for signature and approval by the Court, which will be revised throughout the mediation session.

I look forward to working with you both. In acknowledgment of this agreement, please sign where indicated, and return the signature page. Should you have any questions concerning the process or this letter, please do not hesitate to contact your attorney. For your reference, I am also including a copy of the ADR Rules with this letter.

Sincerely,

KATZMAN & KATZMAN, P.C.

Jordyn Katzman McAfee
jmcafee@k2lawfirm.com

I agree to the above terms of mediation, as specified.

_____	_____
Printed Name: _____	**Printed Name:** _____
Date: _____	**Date:** _____

I request and authorize Katzman & Katzman, P.C., to run my credit card for my portion of the mediation fees immediately following the completion of mediation.

Printed Name on Card: _____

DOB: _____ SSN: _____

_____ _____ _____
Client VISA/MC/DISCOVER Number Exp. Date Security Code

_____
Complete Billing Address

_____
Phone Number

Indiana Rules of Court
Rules for Alternative Dispute Resolution

Including Amendments Received Through January 1, 2019

TABLE OF CONTENTS

Preamble

These rules are adopted in order to bring some uniformity into **alternative dispute resolution** with the view that the interests of the parties can be preserved in settings other than the traditional judicial dispute resolution method.

RULE 1. GENERAL PROVISIONS

Rule 1.1. Recognized Alternative Dispute Resolution Methods

Alternative dispute resolution methods which are recognized include settlement negotiations, non-binding arbitration, mediation, conciliation, facilitation, mini-trials, summary jury trials, private judges and judging, convening or conflict assessment, neutral evaluation and fact-finding, multi-door case allocations, and negotiated rulemaking.

Rule 1.2. Scope of These Rules

Alternative dispute resolution methods which are governed by these rules are (1) Mediation, (2) Arbitration, (3) Mini-Trials, (4) Summary Jury Trials, and (5) Private Judges.

Rule 1.3. Alternative Dispute Resolution Methods Described

(A) Mediation. This is a process in which a neutral third person, called a mediator, acts to encourage and to assist in the resolution of a dispute between two (2) or more parties. This is an informal and nonadversarial process. The objective is to help the disputing parties reach a mutually acceptable agreement between or among themselves on all or any part of the issues in dispute. Decision-making authority rests with the parties, not the mediator. The mediator assists the parties in identifying issues, fostering joint problem-solving, exploring settlement alternatives, and in other ways consistent with these activities.

(B) Arbitration. This is a process in which a neutral third person or a panel, called an arbitrator or an arbitration panel, considers the facts and arguments which are presented by the parties and renders a decision. The decision may be binding or nonbinding. Only non-binding arbitration is governed by these rules.

(C) Mini-Trials. A mini-trial is a settlement process in which each side presents a highly abbreviated summary of its case to senior officials who are authorized to settle the case. A neutral advisor may preside over the proceeding and give advisory opinions or rulings if invited to do so. Following the presentation, the officials seek a negotiated settlement of the dispute.

(D) Summary Jury Trials. This is an abbreviated trial with a jury in which the litigants present their evidence in an expedited fashion. The litigants and the jury are guided by a neutral who acts as a presiding official who sits as if a judge. After an advisory verdict from the jury, the presiding official may assist the litigants in a negotiated settlement of their controversy.

(E) Private Judges. This is a process in which litigants employ a private judge, who is a former judge, to resolve a pending lawsuit. The parties are responsible for all expenses involved in these matters, and they may agree upon their allocation.

Rule 1.4. Application of Alternative Dispute Resolution

These rules shall apply in all civil and domestic relations litigation filed in all Circuit, Superior, County, Municipal, and Probate Courts in the state.

Rule 1.5. Immunity for Persons Acting Under This Rule
A registered or court approved mediator; arbitrator; person acting as an advisor or conducting, directing, or assisting in a mini-trial; a presiding person conducting a summary jury trial and the members of its advisory jury; and a private judge; shall each have immunity in the same manner and to the same extent as a judge in the State of Indiana.

Rule 1.6. Discretion in Use of Rules
Except as herein provided, a presiding judge may order any civil or domestic relations proceeding or selected issues in such proceedings referred to mediation, non-binding arbitration or mini-trial. The selection criteria which should be used by the court are defined under these rules. Binding arbitration and a summary jury trial may be ordered only upon the agreement of the parties as consistent with provisions in these rules which address each method.

Rule 1.7. Jurisdiction of Proceeding
At all times during the course of any alternative dispute resolution proceeding, the case remains within the jurisdiction of the court which referred the litigation to the process. For good cause shown and upon hearing on this issue, the court at any time may terminate the alternative dispute resolution process.

Rule 1.8. Recordkeeping
When a case has been referred for alternative dispute resolution, the Clerk of the court shall note the referral and subsequent entries of record in the Chronological Case Summary under the case number initially assigned. The case file maintained under the case number initially assigned shall serve as the repository for papers and other materials submitted for consideration during the alternative dispute resolution process. The court shall report on the Quarterly Case Status Report the number of cases resolved through alternative dispute resolution processes.

Rule 1.9. Service of Papers and Orders
The parties shall comply with Trial Rule 5 of the Rules of Trial Procedure in serving papers and other pleadings on parties during the course of the alternative dispute resolution process. The Clerk of the Circuit Court shall serve all orders, notices, and rulings under the procedure set forth in Trial Rule 72(D).

Rule 1.10. Other Methods of Dispute Resolution
These rules shall not preclude a court from ordering any other reasonable method or technique to resolve disputes.

Rule 1.11. Alternative Dispute Resolution Plans.
A county desiring to participate in an alternative dispute resolution program pursuant to IC 33-23-6 must develop and submit a plan to the Indiana Judicial Conference, and receive approval of said plan from the Chief Administrative Officer (CAO) of the Indiana Office of Judicial Administration.

RULE 2. MEDIATION

Rule 2.1. Purpose
Mediation under this section involves the confidential process by which a neutral, acting as a mediator, selected by the parties or appointed by the court, assists the litigants in reaching a mutually acceptable agreement. The role of the mediator is to assist in identifying the issues, reducing misunderstanding, clarifying priorities, exploring areas of compromise, and finding points of agreement as well as legitimate points of disagreement. Any agreement reached by the parties is to be based on the autonomous decisions of the parties and not the decisions of the mediator. It is anticipated that an agreement may not resolve all of the disputed issues, but the process can reduce points of contention. Parties and their representatives are required to mediate in good faith, but are not compelled to reach an agreement.

Rule 2.2. Case Selection/Objection
At any time fifteen (15) days or more after the period allowed for peremptory change of judge under Trial Rule 76(B) has expired, a court may on its own motion or upon motion of any party refer a civil or domestic relations case to mediation. After a motion referring a case to mediation is granted, a party may object by filing a written objection within seven (7) days in a domestic relations case or fifteen (15) days in a civil case. The party must specify the grounds for objection. The court shall promptly consider the objection and any response and determine whether the litigation should then be mediated or not. In this decision, the court shall consider the willingness of the parties to mutually resolve their dispute, the ability of the parties to participate in the mediation process, the need for discovery and the extent to which it has been conducted, and any other factors which affect the potential for fair resolution of the dispute through the mediation process. If a case is ordered for mediation, the case shall remain on the court docket and the trial calendar.

Rule 2.3. Listing of Mediators: Commission Registry of Mediators
Any person who wishes to serve as a registered mediator pursuant to these rules must register with the Indiana Supreme Court Commission for Continuing Legal Education (hereinafter "Commission") on forms supplied by the Commission. The registrants must meet qualifications as required in counties or court districts (as set out in Ind. Administrative Rule 3(A)) in which they desire to mediate and identify the types of litigation which they desire to mediate. All professional licenses must be disclosed and identified in the form which the Commission requires.

The registration form shall be accompanied by a fee of $50.00 for each registered area (Civil or Domestic). An annual fee of $50.00 shall be due the second December 31st following initial registration. Registered mediators will be billed at the time their annual statements are sent. No fee shall be required of a full-time, sitting judge.

The Commission shall maintain a list of registered mediators including the following information: (1) whether the person qualified under A.D.R. Rule 2.5 to mediate domestic relations and/or civil cases; (2) the counties or court districts in which the person desires to mediate; (3) the type of litigation the person desires to mediate; and (4) whether the person is a full-time judge.

The Commission may remove a registered mediator from its registry for failure to meet or to maintain the requirements of A.D.R. Rule 2.5 for non-payment of fees. A registered mediator must maintain a current business and residential address and telephone number with the Commission. Failure to maintain current information required by these rules may result in removal from the registry.

For the billing of calendar year 2011, when this Rule becomes effective, registered mediators must pay the $50.00 annual fee and a one-time fee of $25.00 for the time period July 1, 2011-December 31, 2011, for a total of $75.00 per registration area. The annual fee shall be $50.00 per calendar year per registration area thereafter.

On or before October 31 of each year, each registered mediator will be sent an annual statement showing the mediator's educational activities that have been approved for mediator credit by the Commission.

Rule 2.4. Selection of Mediators

Upon an order referring a case to mediation, the parties may within seven (7) days in a domestic relations case or within fifteen (15) days in a civil case: (1) choose a mediator from the Commission's registry, or (2) agree upon a non-registered mediator, who must be approved by the trial court and who serves with leave of court. In the event a mediator is not selected by agreement, the court will designate three (3) registered mediators from the Commission's registry who are willing to mediate within the Court's district as set out in Admin. R. 3 (A). Alternately, each side shall strike the name of one mediator. The side initiating the lawsuit will strike first. The mediator remaining after the striking process will be deemed the selected mediator.

A person selected to serve as a mediator under this rule may choose not to serve for any reason. At any time, a party may request the court to replace the mediator for good cause shown. In the event a mediator chooses not to serve or the court decides to replace a mediator, the selection process will be repeated.

Rule 2.5. Qualifications of Mediators

(A) Civil Cases: Educational Qualifications.

(1) Subject to approval by the court in which the case is pending, the parties may agree upon any person to serve as a mediator.

(2) In civil cases, a registered mediator must be an attorney in good standing with the Supreme Court of Indiana.

(3) To register as a civil mediator, a person must meet all the requirements of this rule and must have either: (1) taken at least forty (40) hours of Commission approved civil mediation training in the three (3) years immediately prior to submission of the registration application, or (2) completed forty (40) hours of Commission approved civil mediation training at any time and taken at least six (6) hours of approved Continuing Mediation Education in the three (3) years immediately prior to submission of the registration application.

(4) However, a person who has met the requirements of A.D.R. Rule 2.5(B)(2)(a), is registered as a domestic relations mediator, and by December 31 of the second full year after meeting those requirements completes a Commission approved civil crossover mediation training program may register as a civil mediator.

(5) As part of a judge's judicial service, a judicial officer may serve as a mediator in a case pending before another judicial officer.

(B) Domestic Relations Cases: Educational Qualifications.

(1) Subject to approval of the court, in which the case is pending, the parties may agree upon any person to serve as a mediator.

(2) In domestic relations cases, a registered mediator must be either: (a) an attorney, in good standing with the Supreme Court of Indiana; (b) a person who has a bachelor's degree or advanced degree from an institution recognized by a U.S. Department of Education approved accreditation organization, e.g. The Higher Learning Commission of the North Central Association of Colleges and Schools. Notwithstanding the provisions of (2)(a) and (b) above, any licensed professional whose professional license is currently suspended or revoked by the respective licensing agency, or has been relinquished voluntarily while a disciplinary action is pending, shall not be a registered mediator.

(3) To register as a domestic relations mediator, a person must meet all the requirements of this rule and must have either: (1) taken at least forty (40) hours of Commission approved domestic relations mediation training in the

three (3) years immediately prior to submission of the registration application, or (2) taken at least forty (40) hours of Commission approved domestic relations mediation training at any time, and taken at least six (6) hours of approved Continuing Mediation Education in the three (3) years immediately prior to submission of the registration application.

(4) However, if a person is registered as a civil mediator and by December 31 of the second full year after meeting those requirements completes a Commission approved domestic relations crossover mediation training program (s)he may register as a domestic relations mediator.

(5) As part of a judicial service, a judicial officer may serve as a mediator in a case pending before another judicial officer.

(C) Reasons to Delay or Deny Registration. The Commission may delay (pending investigation) or deny registration of any applicant seeking to register as a mediator pursuant to A.D.R. 2.5(A) or 2.5(B) based on any of the grounds listed in A.D.R. Rule 7.1.

(D) Continuing Mediation Education ("CME") Requirements for All Registered Mediators. A registered mediator must complete a minimum of six hours of Commission approved continuing mediation education anytime during a three-year educational period. A mediator's initial educational period commences January 1 of the first full year of registration and ends December 31 of the third full year. Educational periods shall be sequential, in that once a mediator's particular three-year period terminates, a new three-year period and six hour minimum shall commence. Mediators registered before the effective date of this rule shall begin their first three-year educational period January 1, 2004.

(E) Basic and Continuing Mediation Education Reporting Requirements. Subsequent to presenting a Commission approved basic or continuing mediation education training course, the sponsor of that course must forward a list of attendees to the Commission. An attendance report received more than thirty (30) days after a program is concluded must include a late processing fee as approved by the Indiana Supreme Court. Received, in the context of an application, document(s), and/or other item(s) which is or are requested by or submitted to the Commission, means delivery to the Commission; mailed to the Commission by registered, certified or express mail return receipt requested or deposited with any third-party commercial carrier for delivery to the Commission within three (3) calendar days, cost prepaid, properly addressed. Sending by registered or certified mail and by third-party commercial carrier shall be complete upon mailing or deposit. This list shall include for each attendee: full name; attorney number (if applicable); residence and business addresses and phone numbers; and the number of mediation hours attended. A course approved for CME may also qualify for CLE credit, so long as the course meets the requirements of Admission and Discipline Rule 29. For courses approved for both continuing legal education and continuing mediation education, the sponsor must additionally report continuing legal education, speaking and professional responsibility hours attended.

(F) Accreditation Policies and Procedures for CME.

(1) *Approval of courses.* Applications must be accompanied by an application fee as approved by the Indiana Supreme Court. An "application" means a completed application form, with all required attachments and fees, signed and dated by the Applicant. Applications received more than thirty (30) days after the conclusion of a course must include a late processing fee. The Commission shall approve the course, including law school classes, if it determines that the course will make a significant contribution to the professional competency of mediators who attend. In determining if a course, including law school classes, meets this standard the Commission shall consider whether:

(a) the course has substantial content dealing with alternative dispute resolution process;

(b) the course deals with matters related directly to the practice of alternative dispute resolution and the professional responsibilities of neutrals;

(c) the course deals with reinforcing and enhancing alternative dispute resolution and negotiation concepts and skills of neutrals;

(d) the course teaches ethical issues associated with the practice of alternative dispute resolution;

(e) the course deals with other professional matters related to alternative dispute resolution and the relationship and application of alternative dispute resolution principles;

(f) the course deals with the application of alternative dispute resolution skills to conflicts or issues that arise in settings other than litigation, such as workplace, business, commercial transactions, securities, intergovernmental, administrative, public policy, family, guardianship and environmental; and,

(g) in the case of law school classes, in addition to the standard set forth above the class must be a regularly conducted class at a law school accredited by the American Bar Association.

(2) Credit will be denied for the following activities:

(a) Legislative, lobbying or other law-making activities.

(b) In-house program. The Commission shall not approve programs which it determines are primarily designed for the exclusive benefit of mediators employed by a private organization or mediation firm. Mediators within related companies will be considered to be employed by the same organization or law firm for purposes of this rule. However, governmental entities may sponsor programs for the exclusive benefit of their mediator employees.

(c) [Reserved].

(d) Courses or activities completed by self-study.

(e) Programs directed to elementary, high school or college student level neutrals.

(3) *Procedures for Sponsors.* Any sponsor may apply to the Commission for approval of a course. The application must:

(a) be received by the Commission at least thirty (30) days before the first date on which the course is to be offered;

(b) Include the nonrefundable application fee in order for the application to be reviewed by the Commission. Courses presented by non-profit sponsors which do not require a registration fee are eligible for an application fee waiver.

Courses presented by bar associations, Indiana Continuing Legal Education Forum (ICLEF) and government or academic entities will not be assessed an application fee, but are subject to late processing fees.

Applications received less than thirty (30) days before a course is presented must also include a late processing fee in order to be processed by the Commission.

Either the provider or the attendee must pay all application and late fees before a mediator may receive credit.

Fees may be waived in the discretion of the Commission upon a showing of good cause.

(c) contain the information required by and be in the form set forth in the application approved by the Commission and available upon request;

(d) be accompanied by the written course outline and brochure used by the Sponsor to furnish information about the course to mediators; and

(e) be accompanied by an affidavit of the mediator attesting that the mediator attended the course together with a certification of the course Sponsor as to the mediator's attendance. If the application for course approval is made before attendance, this affidavit and certification requirement shall be fulfilled within 5 thirty (30) days after course attendance. Attendance reports received more than thirty (30) days after the conclusion of a course must include a late processing fee.

Course applications received more than (1) one year after a course is presented may be denied as untimely.

(4) *Procedure for Mediators.* A mediator may apply for credit of a live course either before or after the date on which it is offered. The application must:

(a) be received by the Commission at least thirty (30) days before the date on which the course is to be offered if they are seeking approval before the course is to be presented. If the applicant is seeking accreditation, the Sponsor must apply within thirty (30) days of the conclusion of the course.

(b) include the nonrefundable application fee in order for the application to be reviewed by the Commission. Courses presented by non-profit sponsors which do not require a registration fee are eligible for an application fee waiver.

Either the provider or the attendee must pay all application and late fees before a mediator may receive credit.

Fees may be waived in the discretion of the Commission upon a showing of good cause.

(c) contain the information required by and be in the form set forth in the application approved by the Commission and available upon request;

(d) be accompanied by the written course outline and brochure used by the Sponsor to furnish information about the course to mediators; and

(e) be accompanied by an affidavit of mediator attesting that the mediator attended the course together with a certification of the course Sponsor as to the mediator's attendance. If the application for course approval is made before attendance, this affidavit and certification must be received by the Commission within thirty (30) days after course attendance. An attendance report received more than thirty (30) days after the conclusion of a course must include a late processing fee.

Course applications received more than one (1) year after a course is presented may be denied as untimely.

(G) Procedure for Resolving Disputes. Any person who disagrees with a decision of the Commission and is unable to resolve the disagreement informally, may petition the Commission for a resolution of the dispute. Petitions must be received by the Commission within thirty (30) days of notification by the Commission of the Commission's decision and shall be considered by the Commission at its next regular meeting, provided that the petition is received by the Commission at least ten (10) business days before such meeting. The person filing the petition shall have the right to attend the Commission meeting at which the petition is considered and to present relevant evidence and arguments to the Commission. The rules of pleading and practice in civil cases shall not apply, and the proceedings shall be informal as directed by the Chair. The determination of the Commission shall be final subject to appeal directly to the Supreme Court.

(H) Confidentiality. Filings with the Commission shall be confidential. These filings shall not be disclosed except in furtherance of the duties of the Commission or upon the request, by the mediator involved, or as directed by the Supreme Court.

(I) Rules for Determining Education Completed.

(1) *Formula.* The number of hours of continuing mediation education completed in any course by a mediator shall be computed by:

(a) Determining the total instruction time expressed in minutes;

(b) Dividing the total instruction time by sixty (60); and

(c) Rounding the quotient up to the nearest one-tenth (1/10).

Stated in an equation the formula is:

$$\frac{\text{Total Instruction time (in minutes)}}{\text{Sixty (60)}} = \text{Hours completed (rounded up the nearest 1/10)}$$

(2) *Instruction Time Defined.* Instruction time is the amount of time when a course is in session and presentations or other educational activities are in progress. Instruction time does not include time spent on:

(a) Introductory remarks;

(b) Breaks; or

(c) Business meetings

(3) A registered mediator who participates as a teacher, lecturer, panelist or author in an approved continuing mediation education course will receive credit for:

(a) Four (4) hours of approved continuing mediation education for every hour spent in presentation.

(b) One (1) hour of approved continuing mediation education for every four (4) hours of preparation time for a contributing author who does not make a presentation relating to the materials prepared.

(c) One (1) hour of approved continuing mediation education for every hour the mediator spends in attendance at sessions of a course other than those in which the mediator participates as a teacher, lecturer or panel member.

(d) Mediators will not receive credit for acting as a speaker, lecturer or panelist on a program directed to elementary, high school or college student level neutrals, or for a program that is not approved under Alternative Dispute Resolution Rule 2.5(E).

Rule 2.6. Mediation Costs

Absent an agreement by the parties, including any guardian ad litem, court appointed special advocate, or other person properly appointed by the court to represent the interests of any child involved in a domestic relations case, the court may set an hourly rate for mediation and determine the division of such costs by the parties. The costs should be predicated on the complexity of the litigation, the skill levels needed to mediate the litigation, and the litigants' ability to pay. Unless otherwise agreed, the parties shall pay their mediation costs within thirty (30) days after the close of each mediation session.

Rule 2.7. Mediation Procedure

(A) Advisement of Participants. The mediator shall:

(1) advise the parties of all persons whose presence at mediation might facilitate settlement; and

(2) in child related matters, ensure that the parties consider fully the best interests of the children and that the parties understand the consequences of any decision they reach concerning the children; and

(3) inform all parties that the mediator (a) is not providing legal advice, (b) does not represent either party, (c) cannot determine how the court would apply the law or rule in the parties' case, or what the outcome of the case would be if the dispute were to go before the court, and (d) recommends that the parties seek or consult with their own legal counsel if they desire, or believe they need legal advice; and

(4) explain the difference between a mediator's role and a lawyer's role when a mediator knows or reasonably should know that a party does not understand the mediator's role in the matter; and

(5) not advise any party (i) what that party should do in the specific case, or (ii) whether a party should accept an offer; and

(6) advise a party who self-identifies or who the mediator identifies as a victim after screening for domestic or family violence, also known as intimate partner violence or abuse, or coercive control (hereinafter, "domestic violence") that the party will only be required to be present at mediation sessions in accordance with Rule 2.7(B)(1) below.

(B) Mediation Conferences.

(1) The parties and their attorneys shall be present at all mediation sessions involving domestic relations proceedings unless otherwise agreed. At the discretion of the mediator, non-parties to the dispute may also be present. A party who self-identifies or who the mediator identifies as a victim after screening for domestic violence shall be permitted to have a support person present at all mediation sessions. The mediator may terminate the mediation at any time when a participant becomes disruptive to the mediation process.

(2) All parties, attorneys with settlement authority, representatives with settlement authority, and other necessary individuals shall be present at each mediation conference to facilitate settlement of a dispute unless excused by the court.

(3) A child involved in a domestic relations proceeding, by agreement of the parties or by order of the court, may be interviewed by the mediator out of the presence of the parties or attorneys.

(4) Mediation sessions are not open to the public.

(5) The mediator may meet jointly or separately with the parties and may express an evaluation of the case to one or more of the parties or their representatives. The mediator shall advise the parties that the mediator's evaluation is not legal advice.

(C) Confidential Statement of Case. Each side may submit to the mediator a confidential statement of the case, not to exceed ten (10) pages, prior to a mediation conference, which shall include:

(1) the legal and factual contentions of the respective parties as to both liability and damages;

(2) the factors considered in arriving at the current settlement posture; and

(3) the status of the settlement negotiations to date.

A confidential statement of the case may be supplemented by damage brochures, videos, and other exhibits or evidence. The confidential statement of the case shall at all times be held privileged and confidential from other parties unless agreement to the contrary is provided to the mediator.

(D) Termination of Mediation.

(1) The mediator shall terminate or decline mediation whenever the mediator believes:

(a) that of the meditation process would harm or prejudice one or more of the parties or the children;

(b) the ability or willingness of any party to participate meaningfully in mediation is so lacking that a reasonable agreement is unlikely;

(c) due to conflict of interest or bias on the part of the mediator;

(d) or mediation is inappropriate for other reasons

(2) At any time after two (2) sessions have been completed, any party may terminate mediation.

(3) The mediator shall not state the reason for terminating or declining mediation except to report to the court, without further comment, that the mediator is terminating or declining mediation.

(E) Report of Mediation: Status.

(1) Within ten (10) days after the mediation, the mediator shall submit to the court, without comment or recommendation, a report of mediation status. The report shall indicate that an agreement was or was not reached in whole or in part or that the mediation was extended by the parties. If the parties do not reach any agreement as to any matter as a result of the mediation, the mediator shall report the lack of any agreement to

the court without comment or recommendation. With the consent of the parties, the mediator's report may also identify any pending motions or outstanding legal issues, discovery process, or other action by any party which, if resolved or completed, would facilitate the possibility of a settlement.

(2) If an agreement is reached, in whole or in part, it shall be reduced to writing and signed by the parties and their counsel. In domestic relations matters, the agreement shall then be filed with the court. If the agreement is complete on all issues, a joint stipulation of disposition shall be filed with the court. In all other matters, the agreement shall be filed with the court only by agreement of the parties.

(3) In the event of any breach or failure to perform under the agreement, upon motion, and after hearing, the court may impose sanctions, including entry of judgment on the agreement.

(F) Mediator's Preparation and Filing of Documents in Domestic Relations Cases.

At the request and with the permission of all parties in a domestic relations case, a Mediator may prepare or assist in the preparation of documents as set forth in this paragraph (F).

The Mediator shall inform an unrepresented party that he or she may have an attorney of his or her choosing (1) be present at the mediation and/or (2) review any documents prepared during the mediation. The Mediator shall also review each document drafted during mediation with any unrepresented parties. During the review the Mediator shall explain to unrepresented parties that they should not view or rely on language in documents prepared by the Mediator as legal advice. When the document(s) are finalized to the parties' and any counsel's satisfaction, and at the request and with the permission of all parties and any counsel, the Mediator may also tender to the court the documents listed below when the mediator's report is filed.

The Mediator may prepare or assist in the preparation of only the following documents:

(1) A written mediated agreement reflecting the parties' actual agreement, with or without the caption in the case and "so ordered" language for the judge presiding over the parties' case;

(2) An order approving a mediated agreement, with the caption in the case, so long as the order is in the form of a document that has been adopted or accepted by the court in which the document is to be filed;

(3) A summary decree of dissolution, with the caption in the case, so long as the decree is in the form of a document that has been adopted or accepted by the court in which the document is to be filed and the summary decree reflects the terms of the mediated agreement;

(4) A verified waiver of final hearing, with the caption in the case, so long as the waiver is in the form of a document that has been adopted or accepted by the court in which the document is to be filed;

(5) A child support calculation, including a child support worksheet and any other required worksheets pursuant to the Indiana Child Support Guidelines or Parenting Time Guidelines, so long as the parties are in agreement on all the entries included in the calculations;

(6) An income withholding order, with the caption in the case, so long as the order is in the form of a document that has been adopted or accepted by the court in which the document is to be filed and the order reflects the terms of the mediated agreement.

Rule 2.8. Rules of Evidence

With the exception of privileged communications, the rules of evidence do not apply in mediation, but factual information having a bearing on the question of damages should be supported by documentary evidence whenever possible.

Rule 2.9. Discovery

Whenever possible, parties are encouraged to limit discovery to the development of information necessary to facilitate the mediation process. Upon stipulation by the parties or as ordered by the court, discovery may be deferred during mediation pursuant to Indiana Rules of Procedure, Trial Rule 26(C).

Rule 2.10. Sanctions

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

Rule 2.11. Confidentiality and Admissibility

(A) Confidentiality.

(1) Mediation sessions shall be confidential and closed to all persons other than the parties of record, their legal representatives, and persons invited or permitted by the mediator.

(2) The confidentiality of mediation may not be waived.

(3) A mediator shall not be subject to process requiring the disclosure of any matter occurring during the mediation except in a separate matter as required by law.

(4) This Rule shall not prohibit the disclosure of information authorized or required by law.

(B) Admissibility.

(1) Mediation shall be regarded as settlement negotiations governed by Indiana Evidence Rule 408.

(2) Evidence discoverable outside of mediation shall not be excluded merely because it was discussed or presented in the course of mediation.

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

ENFORCEMENT: The parties acknowledge and agree to the execution of this instrument on the date signed. The parties agree that this document shall be submitted to the Court, in its present form, upon the expiration of the 60-day waiting period as required by Indiana law [or on or after January 2, 2023]. The parties acknowledge and agree that it is their intention to be bound by the terms of this agreement pursuant to the principles of of contract law upon the execution of this document. The parties further acknowledge and agree that the agreements contained herein are supported by their mutual agreements contained herein and other good and valuable consideration and by their partial performance of the agreements contained herein. The parties acknowledge and agree that neither party may alter, modify or withdraw from this agreement whether before or after it is submitted to the Court for approval, without express written consent of the other.

Should either party be found to have violated the terms of this agreement, the party violating terms shall be responsible for the reasonable attorney fees incurred by the enforcing party.

The general Our Family Wizard ("OFW") guidelines, as follows, should be followed by the parties: The parties shall visit the OFW website () and enroll in the program for at least a one-year subscription no later than ten calendar days from the date of this Order. The parties shall utilize Our Family Wizard (OFW) Co-Parenting Application for all nonemergency communication, calendaring, and exchange of expenses. The parents shall put children's doctor's appointments on OFW, as well as special events and extracurricular events for the children. The parties should utilize the Messaging feature only when information cannot be conveyed in the Calendar, Expense, and Info Bank features. (For example, a medical appointment should be placed on the OFW calendar, rather than communicated via a message). The journal entries on the Calendar should be used to document what occurs at school, medical appointments, etc. to inform the other parent. If an entry requires a response, the receiving parent shall respond within 24 hours unless the entry itself indicates a longer time frame is acceptable. The parties should not communicate by telephone or text messaging except regarding matters of an emergency nature regarding a child that must be acted upon in less than 24 hours. In the case of such an emergency the subject and general content of any such communication should be confirmed by a Journal entry in the Calendar feature. The parties should utilize the expense feature to record and formalize all potentially reimbursable expenses (such as an uninsured medical expense or an extracurricular activity expense) in order to mitigate the necessity to litigate in the future over such matters. An electronic file of the receipt for payment must be attached to each request or record. Each parent should preserve the original of any scanned or photographed document posted. All parties should elect to receive text or email alerts about new activity using the Daily Digest or an Action option (and contact the Help line if there is difficulty setting this up). The parties should communicate using a business-like tone. When using the messaging system, the parties should only communicate **who, what, when, and where**, to remove the emotion from their communication. The parties should only use **how** and **why** on a limited basis. The subject line of a message should be descriptive of the subject matter (such as "Child not feeling well", not just "kids", or

"you"), and any continued communication on this same issue should be submitted as a "reply" to the Message rather than a new message. This allows the parties to see the entire exchange on that subject by opening the most recent communication, and allows the threads related to one subject to stay linked together within the App. The parties should allow their attorneys, Parenting Coordinator or the GAL professional access to OFW if there is ongoing litigation. Generally only the parties, not their significant others, spouses, or other third parties, should message using the OFW. In an event there is a necessity for communication from third parties, the significant others or family members should be added as users and only send messages from their own name. The parties should use Tone Meter on their account. Neither party shall fail to renew the annual subscription to OFW without a signed stipulation or Court Order.

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MALLOR | GRODNER
Attorneys

Virtual Mediation (Attorneys)

Thank you for selecting us to conduct your mediation. Unless arranged otherwise, this mediation will be conducted virtually using Zoom as the platform. You have been sent a link to join our virtual mediation. Please let us know if you did not receive the invitation. We conduct our mediations confidentially and we do our best to make this process as comfortable as possible.

Privacy:

Each attorney and his or her client will be in separate, designated, private "breakout rooms." At the beginning of the mediation, you will be invited in, separately, and directed to the breakout room without seeing the other parties. Do not be alarmed if you are not admitted for a few minutes after the mediation start time. If, for any reason, you have not "joined" the meeting within 10 minutes, then there is a problem. Disconnect and contact the Mediator at 812-332-5000.

Once everyone is admitted to the mediation, the Mediator will join the rooms for an introduction and roadmap for the mediation. Attorney and client will know when the Mediator is entering the room and able to hear or see. Arrangements will be made to ensure the Mediator is able know when to come and go and communicate with the parties.

As you prepare for the mediation please consider this helpful information. You and your clients do NOT need a paid version of the App/Program. We recommend using as large a screen as you can. Ensure your internet speed is at its maximum. Turn off devices in your location not being used but connected to the internet.

Download the Zoom app/program prior to the mediation. Practice using software. Check to make sure your microphone and speakers are working with the software. To "join" the meeting, connect by clicking on the link we sent.

A few housekeeping matters:

1. Prior to the start of mediation, please let us know the screen name for the attorney and client so that we may know whom to admit.

2. Please provide us with the email address for you and your client that we can utilize for electronic signature when the Agreement is reached.

3. Please review the Mediation Contract we sent. Ensure that the retainer is paid at least seven (7) days prior to the mediation date.

4. On the day of mediation, please be prepared to pay for mediation immediately upon conclusion. We can take debit or credit cards and get you and immediate receipt. We won't be able to accept cash or checks.

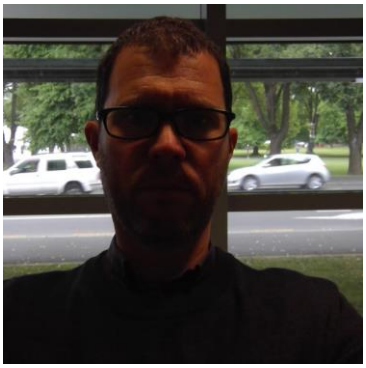
MALLOR | GRODNER
Attorneys

Zoom Etiquette

Think of a Zoom (or WebEx) Meeting, Mediation, or Hearing as a face-to-face meeting and conduct yourself as you would if all were present in the same room. In addition, there are some additional useful tips below to observe to help ensure the Zoom experience goes smoothly for all involved:

- If you are new to Zoom, download Zoom the application well prior to the day of the to familiarize yourself with the features you will need to use on the day (mute/unmute microphone, stop/start video, screenshare). Conduct a trial run with your attorney/client to ensure you both can navigate the platform together.
- **Join early** – up to 5 minutes before the meeting start time
- Have your video on unless you are experiencing connection issues
- Find a quiet space without interruptions / background noise, and preferably seated at a desk or table
- Have a plain background – avoid backlight from bright windows
- Have good lighting on your face so you can be seen clearly
- Adjust your camera to be at around eye level if possible – especially take note of the angle of your laptop screen if using the built-in camera.

Good lighting, good angle, plain background



Poor lighting, backlit by window, busy background

- Mute your microphone when not talking
- **Try to avoid talking over / at the same time as other participants. Especially important for attending hearings, if you are not being asked questions, please be quiet and do not talk.**
- Be aware you are on camera and try to avoid doing other tasks, eating, drinking, smoking, checking emails, looking at your phone, talking to other people, etc.
- Wear appropriate and conservative dress, as if you were attending the event in person.
- **Do not IM or send messages through the Zoom feature. If you need to communicate to your attorney, please email or text using an alternate device.**

Section Ten

Family Law:
Evidence Insights

Hon. William J. Hughes
Hamilton Superior Court 3
Noblesville, Indiana

Section Ten

Family Law:
Evidence Insights…….. Hon. William J. Hughes

Slide Presentation

Family Law: Evidence Insights

NOVEMBER 2, 2023

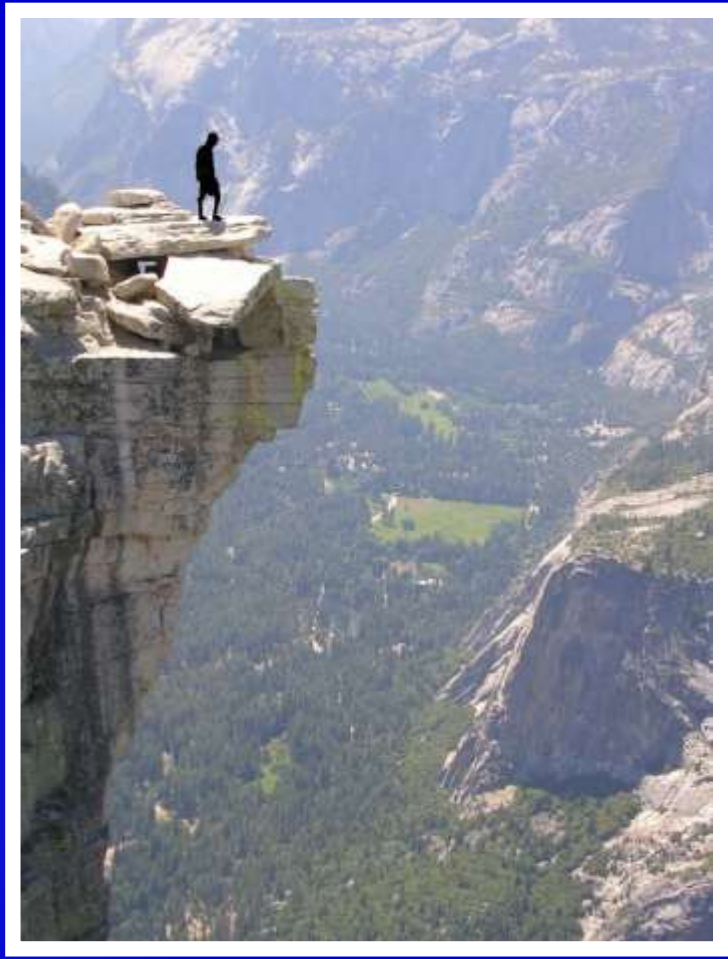
WILLIAM HUGHES

Preliminary Issues of Admissibility – Rule 104(a)

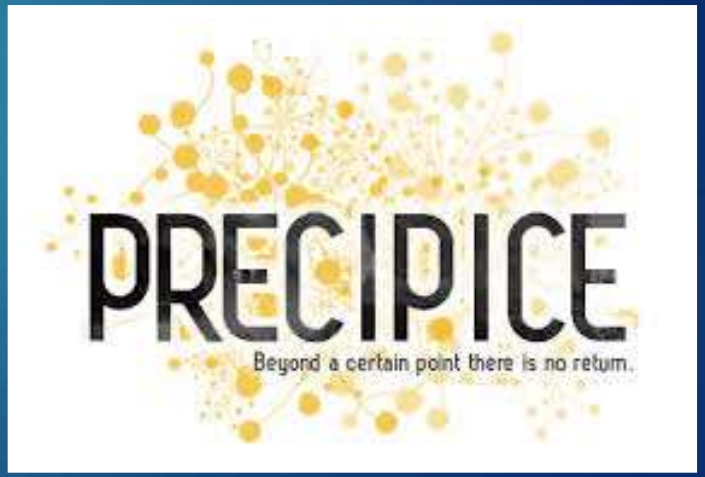
The rules, except privilege, do not apply to preliminary questions about

- Witness qualifications
- Existence of privilege
- **Admissibility of evidence**

BEWARE!!!!!!!!!



The further you stray from the rules the more likely you are to commit error.



Making the Record

TO PRESERVE THE RECORD FOR REVIEW ON APPEAL THE RECORD MUST CONTAIN

- An Objection
  - Specific
  - Timely
  - No response needed

OR

Making the Record

- Motion to Strike
  - Unexpected improper answer
  - Evidence not "connected-up"
  - Improper remarks by counsel

Elephant in the Room problem

AND

Making the Record

- Offer to Prove
  - IF evidence is excluded
  - To make substance of the evidence known

Offer to Prove

- Record of the offer and ruling
  - Court **may** add a further statement about
    - Character of evidence
    - Form of offer
    - Objection made
    - Ruling
    - May direct how offer is made

Definitive Ruling

- Rule 103 (b) - Effective 1/1/2014
- Once Court rules definitively "on the record at trial" a party does not need to renew an objection or offer to preserve record.
- Differs from the Federal Rule "at or before trial"
- Indiana Cases: *K.G. vs State, (Ind App. 2017) 81 N.E.3d 1078; Laird v State (Ind App 2018) 103 N.E.3d 1171*

RELEVANCE

What is Relevancy?

- Logical relationship
- Probative value
- More or Less
- **NOT** Best or Least
- Do not confuse Relevance with The Best Evidence Rule- the requirement of the original of a writing, recording or photograph to prove contents – Rule 1002.

RULE 401

- Evidence having **ANY** tendency to make the existence of a material fact more probable or less probable than without the evidence

RULE 402

- Relevant evidence is ADMISSIBLE –
- Irrelevant evidence is NOT ADMISSIBLE

RULE 403

- The Court may exclude relevant evidence if its PROBATIVE VALUE is substantially outweighed by on of more of:
  - **Unfair** Prejudice
  - Confusing the Issues
  - Misleading to Jury
  - Undue Delay
  - Needlessly Presenting Cumulative Evidence

Relevance Analysis

1. 401 – Relevance = more or less probable
2. 402 – If relevant then admit
3. 403 – Balance test

A Memory Jogger

- COWCUD
- C - confusion
- O - obfuscation
- W - waste
- C - cumulative
- U - unfair prejudice
- D - delay

CHARACTER EVIDENCE

- Rule 404
- A) evidence of a persons character is NOT admissible to prove that on a particular occasion the person acted in accordance (CONFORMITY) with that character or trait.
  - **Except three limited exceptions for criminal cases**
  - **Except for witnesses then must uses 607, 608 or 609**
- B) evidence of a crime, wrong or other act is not admissible to prove on a particular occasion the person acted in accordance (CONFORMITY) with the character.
- "…**may** be admissible for other purposes such as proof of motive, intent, preparation, plan, knowledge, identity, absence of mistake or accident.."

RULE 607

- Any PARTY including the party who called the witness may attack the witnesses credibility.

Rule 608 – A Witness's Character for Truthfulness

- Attack or support by reputation evidence or opinion evidence only
- Supporting credibility of witness by evidence of truthfulness admissible only after witness's character for truthfulness has been attacked.
- Except for crimes under 609, extrinsic not admissible to support or attach truthfulness
- On cross of a character witness MAY allow specific instances if they are probative of character of person witness has testified about.

RULE 609

- Rule 609 – Prior convictions
- Limited to specific types of crimes
- 10 year time limit from later of conviction or release, unless
  - Meets special 403 balance test – probative value, supported by specific facts and circumstances SUBSTANTIALLY outweighs its prejudicial effect.
  - Prior notice to adverse party by proponent to provide fair opportunity to contest use of the conviction

Other Crimes Wrongs and Acts 404 (b)

may be admissible for **other purposes** such as

- Motive
- Opportunity
- Intent
- Preparation
- Plan
- Knowledge
- Absence of mistake
- Absence of accident

What is "Other"

- Common scheme or plan
- Crimes inextricably intertwined
- Opportunity or capacity
- Consciousness of guilt
- Support or rebut entrapment claim
- Rebut claim of duress

Rule of Inclusion

- Smorgasbord of reasons to enter
- So long as not for CONFORMITY
- **DANGER DANGER:** the jury may make the forbidden inference

Not Just Crimes

- Often called other crimes evidence
- Covers more
  - Arrest not required
  - Conviction not required
  - May have occurred after current charge

Prior Notice

- The procedural aspect – PRIOR NOTICE
- In Criminal trial Prosecution **must give**
  - Reasonable notice
    - Pretrial preferred
    - During trial in judge's discretion
  - General nature of the evidence

Procedure

- Conditional relevancy under 104(b) – need to find a reasonable jury could conclude by a preponderance that the Defendant did the act
- Be specific – It's a smorgasbord but limit your intake
- If admitted with a jury - **LIMITING INSTRUCTION**
- Safest to admit only after issue raised at trial

Striking The Balance

- Before admission must pass 403 test
- Factors to consider
  - Reliability: strength of evidence of other act
  - Need
  - Proximity in time
  - Degree of similarity
  - Efficacy of limiting instruction

RULE 405 – Proving Character

- On Direct proof is permitted by Reputation or Opinion not by Specific instance.
- On cross of a Character Witness the Court may allow inquiry into relevant specific instances of the persons character.
- Where a person's character or character trait is an ESSENTIAL element of a charge, claim or defense, the character or trait may also be proved by relevant specific instances of the persons conduct.

Relevancy – Specific Rules of Admissibility

- Habit - *406*
- Remedial Measures - *407*
- Offers of compromise - *408*
- Medical expense Payment - *409*
- Guilty pleas - *410*
- Liability Insurance - *411*
- Rape Shield Law – *412*
- *Medical Evidence - 413*

The Exceptional Law of Hearsay

CAN WE HEAR WHAT THEY SAY?

What is Hearsay?

- Out-of-court statement
- Offered in Court
- Offered for "***the truth of the matter asserted***"

Hearsay - 801

- 801(A): A "statement" is:
  - (1) an oral or written assertion;
    or
  - (2) nonverbal conduct of a person, if it is intended by the person as an assertion.

The Rule – 802

- Hearsay is not admissible – except as provided:
  - Rules of Evidence
  - Law

Hearsay Analysis

- Non-hearsay 801(d)
  - Made under oath previously
  - Prior consistent statement
  - Statement of identity
  - Statement by party opponent
  - Statement by agent
  - Statement by co-conspirator
- not offered for truth

Hearsay Analysis

- Hearsay – does an exception apply
- 803 – exceptions – 23 unavailability is not required – (except in Criminal cases)
- 804 – exceptions – unavailability is required
- 806 - hearsay to rebut hearsay

WHAT IS IT

- "Jim told me he signed the contract without making any changes"
- "I signed the contract without making any changes."
- "Jim told me the contract would be signed at the bank so I went to the bank."
- "I asked Jim if he made any changes and he shook his head from side to side."
- " When I asked Jim where I should go to sign the contract he pointed at the bank."

You Be the Judge

- Counsel has marked medical records to introduce which have been certified by a business record affidavit.
- They contain medical diagnoses
- Opposing counsel objects, hearsay

Do You

A. Admit them
B. Exclude them
C. Admit them but promise to not consider the diagnoses
D. Have counsel redact them

Rule 806 – Business records

- A record made at or near the time by – or from information transmitted by - someone with knowledge
- Record kept in the course of a regularly conducted activity of a business, organization, occupation or calling. Profit on non-profit
- Making the record a regular practice of that activity,
- Foundation by custodian, other qualified witness or certification
- Neither the source, method or circumstances of record creation indicate a lack of trustworthiness

RULE 804: Statements for Medical Diagnosis or Treatment

- Statement made by a person seeking medical diagnosis or treatment.
- Made for - -and is reasonably pertinent to - medical diagnosis or treatment, AND
- Describes medical history, past or present symptoms, pain or sensations, their inception, or their general cause.

Rule 805 – Recorded Recollection

- Regarding a matter the witness once knew but now cannot recall well enough to testify fully and accurately;
- Was made or adopted by the witness when the matter was fresh in the witness's memory, AND
- Accurately reflects the witness's knowledge.
- IF ADMITTED READ INTO THE RECORD but is received as an exhibit ONLY IF offered by the opposing party.
- Throwback to "The Ten Commandments"

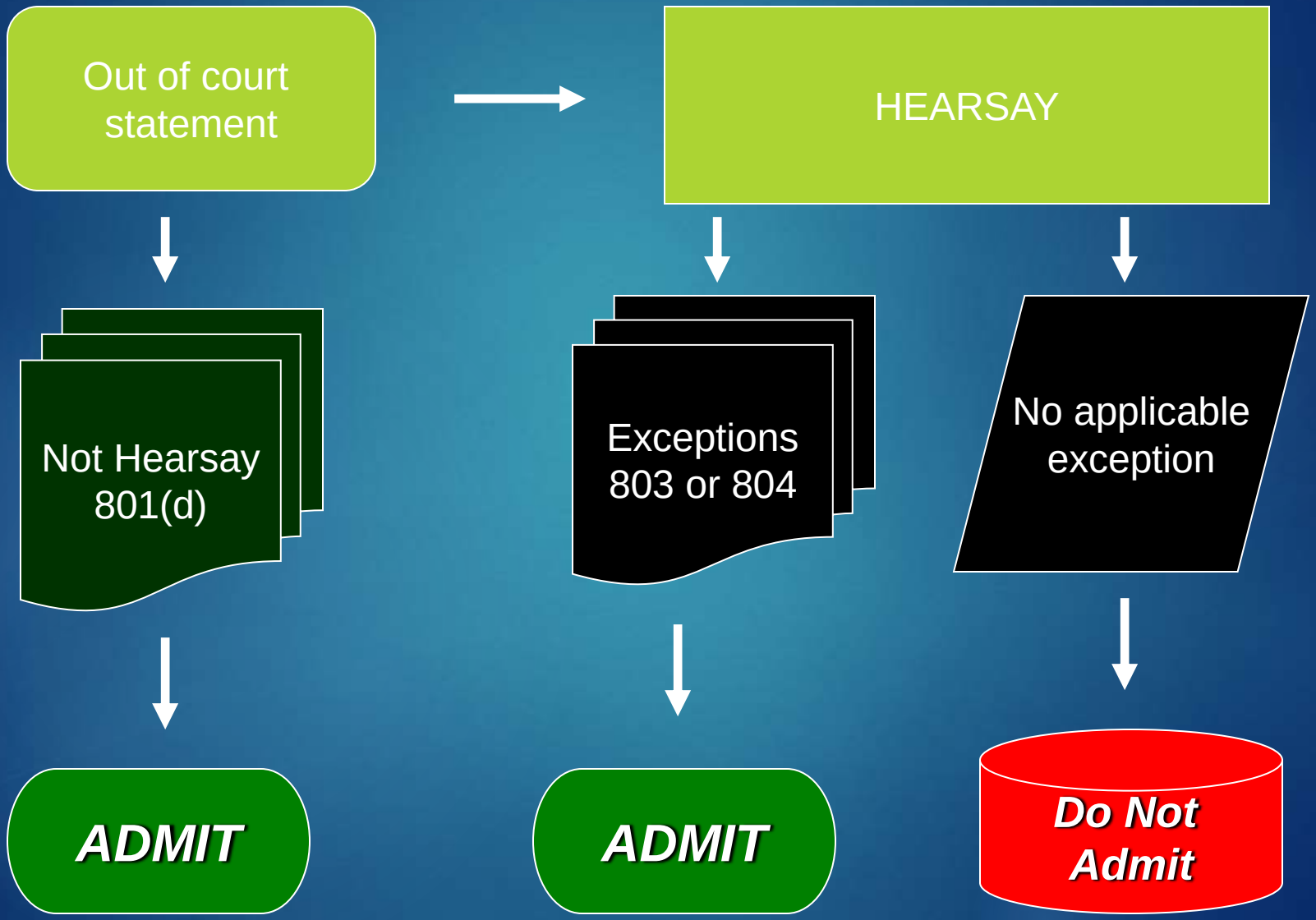
Hearsay on Direct Exam of Expert

- …Hospital records may not be excluded as hearsay simply because they include opinions or diagnoses. But, and it is a substantial but, for medical opinions and diagnoses to be admitted into evidence, they must meet the requirements for expert opinions set forth in Evid. R. 702, *Schloot v Guinevere*, 697 N.E.2d 1273 (1998)
- A Chiropractor can not testify to the medical diagnosis contained in medical records he relied upon in making his admissible chiropractic opinion. *Faulkner v Markkay of Indiana,* 663 N.E.2d 798 (1996)

Refreshing Recollection

- Item used not admissible on direct
- Item may be admitted on cross examination
- What can you use?

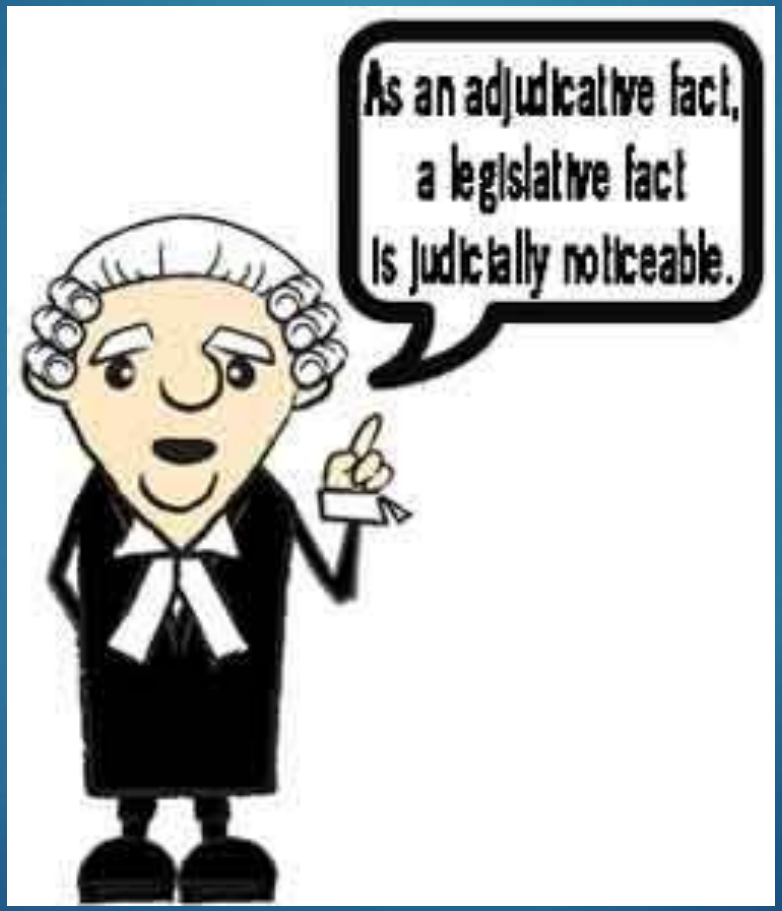
Hearsay Analysis



Refreshing Recollection

- Establish failure of memory
- Show refreshing item
- "Read it to yourself"
- Is your memory refreshed?
- Remove refreshing item
- Re-ask question

JUDICIAL NOTICE



Judicial Notice - 201

- FACT – IF:
  - Generally known
  - Or certain verification
- Court may take notice without request
- Court shall take notice with proper request

Judicial Notice - 201

- LAW – IF
  - Decisional, constitutional or statutory
  - Rules of court
  - Published regulation of Gov. Agency
  - Codified Municipal Ordinance
  - Record of court of this State
  - Laws of governmental subdivisions of US or any State

Judicial Notice – cont'd

- Upon timely request and opportunity to be heard as to:
  - Propriety of taking
  - Tenor of matter noticed
  - Timely after taken if no prior notice
- May take at any time in proceeding

Ethical Dimension

- Rule 2.9 of the Code of Judicial Conduct:
  - (C) a judge shall not investigate facts in a matter independently, and shall consider only the evidence presented and any facts that may properly be judicially noticed.

Ethical Dimension

- Rule 2.9(C) Comment (6):
  - The prohibition against a judge investigating the facts in a matter extends to information available in all mediums, including electronic.

Making a Record

- Digital Trial Court Records – Now easy for the Court to access by computer case management system actual documents in files of another court.
- How do you make a record of what you are looking at for appellate review?
  - Cite the record reviewed where, how accessed and summarize what is says.
  - Print the record and make an exhibit in the file
  - Read into the record that which you are considering