

Notre Dame Law School

## NDLScholarship

---

Indiana Continuing Legal Education Forum  
2020

Indiana Continuing Legal Education Forum

---

2020

### Challenges in family law

Indiana Continuing Legal Education Forum (ICLEF)

Follow this and additional works at: [https://scholarship.law.nd.edu/iclef\\_2020](https://scholarship.law.nd.edu/iclef_2020)

---

#### Recommended Citation

Indiana Continuing Legal Education Forum (ICLEF), "Challenges in family law" (2020). *Indiana Continuing Legal Education Forum 2020*. 22.

[https://scholarship.law.nd.edu/iclef\\_2020/22](https://scholarship.law.nd.edu/iclef_2020/22)

This Article is brought to you for free and open access by the Indiana Continuing Legal Education Forum at NDLScholarship. It has been accepted for inclusion in Indiana Continuing Legal Education Forum 2020 by an authorized administrator of NDLScholarship. For more information, please contact [lawdr@nd.edu](mailto:lawdr@nd.edu).

# Challenges in Family Law

December 16, 2020

## Index

---

|  |            |
|--|------------|
| ICLEF Electronic Publications. . . . .   | 4          |
| Our Family Wizard. . . . .   | 5          |
| MANUAL - Challenges in Family Law December 16, 2020. . . . .   | 6          |
| Agenda. . . . .  | 9          |
| Faculty. . . . .   | 10         |
| Faculty bios. . . . .  | 11         |
| Manual table of contents. . . . .  | 17         |
| <b>Section-1-Magistrate-Andrew-R-Bloch-Andrew-J-Bartelt. . . . .</b>                                 | <b>25</b>  |
| Section 1 - Magistrate Andrew R. Bloch - Andrew J. Bartelt. . . . .                                  | 25         |
| Table of Contents. . . . .   | 27         |
| PowerPoint - Dealing with Self-Representation. . . . .   | 28         |
| Indiana Civil Legal Needs Study and Legal Aid System Scan. . . . .                                   | 30         |
| Some Statistics for your Consideration. . . . .  | 32         |
| More Statistics - Domestic Relations. . . . .  | 33         |
| More Statistics - Protective Orders. . . . .   | 35         |
| Code of Judicial Conduct Rule 2.2. . . . .   | 37         |
| "Ripped from the Headline Examples". . . . .   | 40         |
| You be the Judge!. . . . .   | 41         |
| Beware the Sovereign Citizen. . . . .  | 43         |
| <b>Section-2-Timothy-M-Sledd. . . . .</b>  | <b>44</b>  |
| Section 2 - Timothy M. Sledd. . . . .  | 44         |
| Table of Contents. . . . .   | 46         |
| PowerPoint - THE KISS AND MAKE-UP... HOW RECONCILIATION AGREEMENTS CAN PROTECT OUR CLIENTS. . . . .  | 47         |
| ALL THAT WORK. . . . .   | 48         |
| Reconciliation Agreements?. . . . .  | 49         |
| However. . . . .   | 50         |
| The Law. . . . .   | 51         |
| Best Practices. . . . .  | 53         |
| Sample Letter Re: Reconciliation Agreement/ Confidential. . . . .                                    | 56         |
| RECONCILIATION AGREEMENT. . . . .  | 58         |
| § 2:7.Checklist for considerations for antenuptial agreement. . . . .                                | 67         |
| <b>Section-3-Dr-Michael-J-Jenuwine-JD-PhD. . . . .</b>   | <b>70</b>  |
| Section 3 - Dr. Michael J. Jenuwine, J.D., Ph.D.. . . . .  | 70         |
| Table of Contents. . . . .   | 72         |
| ETHICAL PRINCIPLES OF PSYCHOLOGISTS AND CODE OF CONDUCT. . . . .                                     | 73         |
| AMERICAN ACADEMY OF PSYCHIATRY AND THE LAW - ETHICS GUIDELINES FOR THE PRACTICE OF FORENSIC PSYCHIAT | 91         |
| The National Association of Social Workers (NASW) - Code of Ethics. . . . .                          | 95         |
| Specialty Guidelines for Forensic Psychology. . . . .  | 103        |
| <b>Section-4-Jaimie-L-Cairns. . . . .</b>  | <b>116</b> |
| Section 4 - Jaimie L. Cairns. . . . .  | 116        |
| Table of Contents. . . . .   | 118        |
| PowerPoint - PARENTING COORDINATION ISSUES. . . . .  | 119        |
| HISTORY OF PARENTING COORDINATION. . . . .   | 120        |
| PARENTING COORDINATION ADDED TO IPTG. . . . .  | 121        |
| CASE LAW SINCE PASSAGE OF IPTG. . . . .  | 122        |
| MADDEN V. PHELPS, 152 N.E.3D 602 (IND. CT. APP. 2020). . . . .                                       | 123        |
| WHAT IS PARENTING COORDINATION?. . . . .   | 124        |
| HIGH CONFLICT PARTIES. . . . .   | 125        |
| QUALIFICATIONS OF A PC (IPTG V(B)). . . . .  | 126        |
| HOW TO GET PC APPOINTED. . . . .   | 127        |
| PC ORDER. . . . .  | 128        |
| WHAT HAPPENS AFTER THE PC IS APPOINTED?. . . . .   | 129        |
| PARENTING COORDINATOR'S ROLE. . . . .  | 130        |
| ROLE CONTINUED. . . . .  | 131        |
| PARENTING COORDINATOR DON'TS. . . . .  | 132        |

# Challenges in Family Law

December 16, 2020

## Index

---

|  |            |
|--|------------|
| AGREEMENTS REACHED DURING PC PROCESS .....   | 133        |
| PC RECOMMENDATIONS .....   | 134        |
| OBJECTING TO A PC'S RECOMMENDATIONS .....  | 135        |
| PARENTING COORDINATION FEES .....  | 136        |
| TERMINATION OF PC .....  | 137        |
| <b>Section-5-Magistrate-Andrew-R-Bloch-Chief-Magistrate-Marie-L-Kern .....</b>               | <b>139</b> |
| Section 5 - Magistrate Andrew R. Bloch - Chief Magistrate Marie L. Kern .....                | 139        |
| Table of Contents .....  | 141        |
| PowerPoint - Supervised Parenting Time .....   | 142        |
| Fundamentals .....   | 143        |
| Prince v. Massachusetts .....  | 144        |
| Wisconsin v. Yoder .....   | 145        |
| Troxel v. Granville .....  | 146        |
| Indiana Code 31-17-4-1 .....   | 147        |
| Types of Restrictions .....  | 148        |
| Examples of Supervised Parenting Time .....  | 149        |
| How Long can Supervised Parenting Time Last? .....   | 150        |
| Parenting Time will Cause Emotional or Physical Harm .....                                   | 151        |
| You be the Judge! .....  | 154        |
| Questions? .....   | 158        |
| <b>Section-6-Timothy-M-Sledd .....</b>   | <b>159</b> |
| Section 6 - Timothy M. Sledd .....   | 159        |
| Table of Contents .....  | 161        |
| I. Introduction .....  | 163        |
| II. Selecting a Mediator .....   | 163        |
| III. Preparing Yourself .....  | 163        |
| IV. Preparing Your Client for Mediation .....  | 165        |
| V. Counseling Your Client During Mediation .....   | 168        |
| VI. Procedural Issues of Mediation .....   | 168        |
| VII. Role of the Mediator .....  | 170        |
| VIII. Confidentiality .....  | 170        |
| IX. Checklists (Tab 1) .....   | 172        |
| X. Forms (Tab 2) .....   | 172        |
| Checklists .....   | 173        |
| BASIC MEDIATION EDUCATION FOR CLIENT CHECKLIST .....   | 173        |
| SETTLEMENT VALUE WORKSHEET .....   | 174        |
| Mediation Checklist .....  | 176        |
| Forms .....  | 181        |
| A. Proposed Division of Assets Spreadsheet for Discussion Fact Pattern .....                 | 181        |
| B. Alimony Calculation Spreadsheet for Discussion Fact Pattern .....                         | 182        |
| C. Initial Letter to Parties/Attorneys and Fee Agreement .....                               | 183        |
| D. Letter to Attorneys Confirming Scheduled Mediation and ADR Rule 2.7 Acknowledgement ..... | 191        |
| E. Wife's Mediation Statement and Child Support Worksheet for Discussion Fact Pattern .....  | 196        |
| F. Agreement on Alternative Dispute Resolution .....   | 200        |
| G. Summary Decree of Dissolution .....   | 203        |
| H. Report of Mediator – Notice to Court of Mediation Outcome .....                           | 205        |
| I. Verified Waiver of Final Hearing .....  | 206        |
| J. Mediated Final Settlement Agreement .....   | 207        |
| PowerPoint - MAXIMIZE MEDIATION .....  | 249        |
| YOU ARE NOT MY CLIENTS .....   | 250        |
| ROADMAP .....  | 251        |
| KNOW YOUR CLIENT .....   | 252        |
| KNOW YOUR MEDIATOR .....   | 253        |
| KNOW YOUR OPPOSING COUNSEL .....   | 254        |
| PREPARE THE BATTLEFIELD .....  | 255        |

# Challenges in Family Law

December 16, 2020

## Index

---

|   |     |
|---|-----|
| PREPARE THE AGREEMENT - THUMBNAIL ..... | 256 |
| PREPARE THE AGREEMENT - SUBSTANCE ..... | 257 |
| COVER YOUR B__ (BASES).....             | 259 |
| Zoom Etiquette .....                    | 260 |



## ICLEF Electronic Publications

*Feature Release 4.1*  
August 2020

To get the most out of your *ICLEF Electronic Publication*, download this material to your PC and use Adobe Acrobat® to open the document. The most current version of the Adobe® software may be found and installed by clicking on one of the following links for either the free [Adobe Acrobat Reader®](#) or the full retail version of [Adobe Acrobat®](#).

Feature list:

1. **Searchable** – All ICLEF Electronic Publications are word searchable. To begin your search, click on the “spyglass” icon at the top of the page while using the Adobe® software.
1. **Bookmarks** – Once the publication is opened using the Adobe Acrobat® software a list of bookmarks will be found in a column located on the left side of the page. Click on a bookmark to advance to that place in the document.
2. **Hypertext Links** – All of the hypertext links provided by our authors are active in the document. Simply click on them to navigate to the information.
3. **Book Index** – We are adding an INDEX at the beginning of each of our publications. The INDEX provides “jump links” to the portion of the publication you wish to review. Simply left click on a topic / listing within the INDEX page(s) to go to that topic within the materials. To return to the INDEX page either select the “INDEX” bookmark from the top left column or right-click with the mouse within the publication and select the words “*Previous View*” to return to the spot within the INDEX page where you began your search.

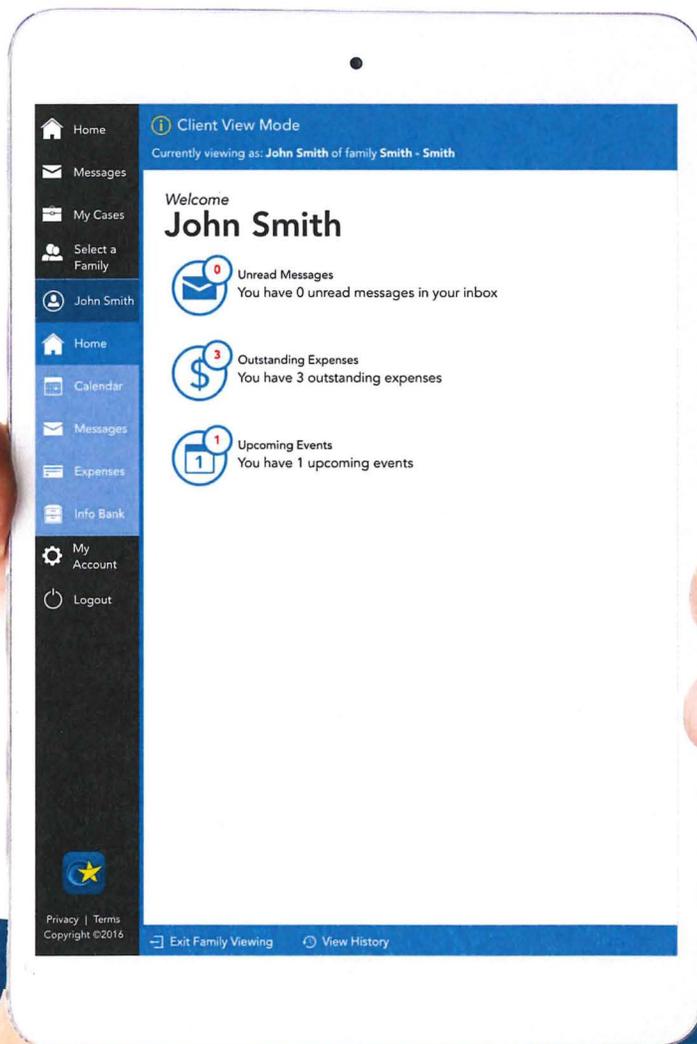
Please feel free to contact ICLEF with additional suggestions on ways we may further improve our electronic publications. Thank you.

Indiana Continuing Legal Education Forum (ICLEF)  
230 East Ohio Street, Suite 300  
Indianapolis, Indiana 46204  
Ph: 317-637-9102 // Fax: 317-633-8780 // email: [iclef@iclef.org](mailto:iclef@iclef.org)  
URL: <https://iclef.org>

# compassionate, fair and convenient

**Get the free Family Law Practitioner's app to make using your complimentary professional account even easier.**

- Work directly with clients through OFW.
- Setup and link to families to eliminate duplication of efforts.
- Easy preparation of court approved records.
- Improve client outcomes and shield the children.



our   
**family**<sup>®</sup>  
wizard  
helping families since 2001

Attorneys, mediators, judges and other family law professionals can gain free professional access to work with clients directly through the website or app.

**Get started today at  
[OurFamilyWizard.com/pro](http://OurFamilyWizard.com/pro)**



# **CHALLENGES IN FAMILY LAW**

December 16, 2020

[www.ICLEF.ORG](http://www.ICLEF.ORG)

*Copyright 2020 by Indiana Continuing Legal Education Forum*

## **DISCLAIMER**

The information and procedures set forth in this practice manual are subject to constant change and therefore should serve only as a foundation for further investigation and study of the current law and procedures related to the subject matter covered herein. Further, the forms contained within this manual are samples only and were designed for use in a particular situation involving parties which had certain needs which these documents met. All information, procedures and forms contained herein should be very carefully reviewed and should serve only as a guide for use in specific situations.

The Indiana Continuing Legal Education Forum and contributing authors hereby disclaim any and all responsibility or liability, which may be asserted or claimed arising from or claimed to have arisen from reliance upon the procedures and information or utilization of the forms set forth in this manual, by the attorney or non-attorney.

Attendance of ICLEF presentations does not qualify a registrant as an expert or specialist in any discipline of the practice of law. The ICLEF logo is a registered trademark and use of the trademark without ICLEF's express written permission is prohibited. ICLEF does not certify its registrants as specialists or expert practitioners of law. ICLEF is an equal opportunity provider of continuing legal education that does not discriminate on the basis of gender, race, age, creed, handicap, color or national origin. ICLEF reserves the right to refuse to admit any person or to eject any person, whose conduct is perceived to be physically or emotionally threatening, disruptive or disrespectful of ICLEF registrants, faculty or staff.

# INDIANA CONTINUING LEGAL EDUCATION FORUM

## OFFICERS

**TERESA L. TODD**

President

**LYNNETTE GRAY**

Vice President

**HON. ANDREW R. BLOCH**

Secretary

**SARAH L. BLAKE**

Treasurer

**ALAN M. HUX**

Appointed Member

**LINDA K. MEIER**

Appointed Member

## DIRECTORS

James H. Austen

Sarah L. Blake

Hon. Andrew R. Bloch

Melanie M. Dunajeski

Mark A. Foster

Lynnette Gray

Alan M. Hux

Dr. Michael J. Jenuwine

Dean Jonna Kane MacDougall

Thomas A. Massey

Linda K. Meier

Richard S. Pitts

Jeffrey P. Smith

Teresa L. Todd

Inge Van der Cruysse

## ICLEF

**SCOTT E. KING**

Executive Director

James R. Whitesell  
Senior Program Director

Jeffrey A. Lawson  
Program Director

# CHALLENGES IN FAMILY LAW

## Agenda



- 8:30 A.M. Registration**
- 8:50 A.M. Welcome and Introduction  
- Timothy M. Sledd, Chair
- 9:00 A.M. Dealing with Self-Representation  
- Magistrate Andrew R. Bloch & Andrew J. Bartelt
- 10:00 A.M. Coffee Break
- 10:15 A.M. Reconciliation Issues  
- Timothy M. Sledd
- 11:15 A.M. Mental Health Professionals in Family Law Cases  
- Michael Jenuwine, J.D., Ph.D.
- 12:15 P.M. Lunch (on your own)
- 1:15 P.M. Parenting Coordinators Issues (1 CME)  
- Jaimie L. Cairns
- 2:15 P.M. Supervised Parenting Time  
- Magistrate Andrew R. Bloch & Magistrate Marie L. Kern
- 3:15 P.M. Refreshment Break
- 3:30 P.M. Preparation and Advocacy for and During Mediation  
and Settlement Conferences  
- Timothy M. Sledd
- 4:30 P.M. Adjournment**

December 16, 2020

[WWW.ICLEF.ORG](http://WWW.ICLEF.ORG)

# CHALLENGES IN FAMILY LAW

## Faculty



**Timothy M. Sledd - Chair**

Mallor Grodner LLP  
511 Woodscrest Drive  
Bloomington, IN 47401  
(812) 332-5000  
tsledd@lawmg.com

**Andrew J. Bartelt**

Connell, Michael, Kerr LLP  
550 Congressional Blvd., Suite 115  
Carmel, IN 46032  
(317) 343-4482  
andrew@cmklawfirm.com

**Dr. Michael J. Jenuwine, J.D., Ph.D.**

University of Notre Dame Law School  
725 Howard Street  
South Bend, IN 46617  
574-631-7795  
michael.j.jenuwine.1@nd.edu

**Magistrate Andrew R. Bloch**

Hamilton County Superior Court  
One Hamilton County Square, Suite 313  
Noblesville, IN 46060  
(317) 776-8589  
Andrew.Bloch@hamiltoncounty.in.gov

**Chief Magistrate Marie L. Kern**

Master Commissioner  
Marion County Circuit Court  
200 East Washington Street, #W-506  
Indianapolis, IN 46204  
(317) 327-4005  
marie.kern@indy.gov

**Jaimie L. Cairns**

Cairns Law LLC  
6161 N. College Avenue  
Indianapolis, IN 46220  
(317)616-1100  
jaimie@myindylawyer.com

December 16, 2020

WWW.ICLEF.ORG

## **Timothy M. Sledd**

Mallor Grodner LLP, Bloomington



*Timothy M. Sledd* is an attorney in our family law division. Prior to joining Mallor Grodner, Tim sat as the Juvenile Law Judge (Referee) in Lawrence County where he presided over paternity, custody, child support, protective order, and CHINS cases. From that experience on the bench, he honed an ability to see the many sides of complex legal issues and how to formulate cases to be most effectively heard by the Court.

Tim spent 6 years as the Chief Deputy Prosecuting Attorney in Lawrence County Indiana in a courtroom almost every day, advocating, arguing, and litigating a wide variety of cases. In this role, it was very important to be able to balance the interests and needs of victims of crime with the full power of the law and its ability to punish offenders.

Tim is a registered mediator for both civil matters and family law matters. He has mediated close to 300 cases using patience, creativity, effective communication, and a 'stay in the fight' attitude to help parties come to an agreed resolution of their legal issues. He believes in helping clients craft the outcome of their cases, and mediation is a great tool for doing this and avoiding the risks of the courtroom.

Tim is able to help you with your family law, adoption, guardianship, wills, or criminal defense needs.

Tim is an aggressive competitor. He holds the esteemed rank of 2<sup>nd</sup> degree black belt in Brazilian Jiu Jitsu having trained in that martial art for over 20 years. He has owned two Jiu Jitsu gyms and traveled to many states and foreign countries to teach the art. Tim takes his determination to succeed in competition and applies it to his cases and clients.

**Hon. Andrew Bloch**

Magistrate, Hamilton County Superior Court



*Andrew Bloch* is a Certified Family Law Specialist (Family Law Certification Board). He is also a trained collaborative lawyer, as trained by the Central Indiana Association of Collaborative Professionals, of which he is a member. Drew has been named by Super Lawyers as a "Rising Star" in the area of Family Law in 2010, 2011, 2012, 2013, 2014, 2015, & 2016 as published in Indianapolis Monthly. Drew previously served on the Executive Committee of the Muncie Bar Association, and is an active member of the Indiana State Bar Association, Indianapolis Bar Association (of which he is a member of the Family Law Executive Committee), and Hamilton County Bar Association. Drew also serves on the Board of the Indiana Continuing Legal Education Forum.

Drew has been sought after to be a presenter a number of seminars for the National Business Institute, Muncie Bar Association and the Indiana Continuing Legal Education Forum.

Drew has represented professional athletes, medical, legal, accounting, financial, closely held business owners, family farms, executives and other professionals and spouses. Drew understands and appreciates that the best way to be successful in any family law matter is to work as a team with his client by maintaining an open line of communication with his clients and opposing counsel. Drew has helped a number of clients with their legal matters all over the state of Indiana. Drew has also assisted clients living in Texas, California, Florida, Washington, Idaho, Illinois, New York, South Carolina, North Carolina, Ohio and Kentucky with matters pending in Indiana.

Before joining Cross, Pennamped, Woolsey & Glazier, P.C., Drew practiced at other firms primarily in the area of family law. He also served as a Commissioner of the Marion Circuit Court – Paternity division for over three years, hearing custody, visitation, and child support cases.

**Honorable Marie Kern**

Magistrate, Marion County Circuit Court, Indianapolis



*Marie Kern* became a Master Commissioner in June 2008 and has been assigned to Marion Circuit Court, Paternity Division since April 1, 2010. On January 1, 2015, she became the Chief Magistrate in the Paternity Division. Prior to becoming a judicial officer, Marie began her career as a full-time public defender with the Marion County Public Defender Agency in 1998. That experience allowed her to become an associate at Kiefer & McGoff in 2001, before establishing her own legal practice that focused on criminal defense and family law, while simultaneously resuming her position as a public defender, on a part-time basis for the Marion County Public Defender Agency. Marie obtained her Bachelor's degree from Indiana University in Bloomington, Indiana in 1994 and then returned to law school in 1995 at Indiana University School of Law-Indianapolis. She has been admitted to the Indiana Bar since October 1998.

**Andrew J. Bartelt**

Emswiller, Williams, Noland, & Clarke LLC, Indianapolis



*Andy Bartelt* is an attorney at Emswiller, Williams, Noland, & Clarke, where he practices in the areas of family law, criminal defense and civil litigation. Andy is a graduate of Indiana University-Bloomington, where he earned degrees in Economics and Political Science, as well as a minor in Spanish. He also graduated from the Indiana University Robert H. McKinney School of Law and is admitted to practice in all state courts in Indiana and the federal United States District Court for the Southern District of Indiana. Andy has been rated by Indiana Super Lawyers as a “Rising Star” in the legal profession.

Andy is an experienced trial lawyer and primarily focuses his practice in family law, representing clients in family law matters including divorce, legal separation, child custody, child support, parenting time, post-decree enforcement, post-decree modifications, guardianships, adoptions, paternity, emancipations, spousal maintenance, relocations, protective orders, grandparent rights, and other family law issues. In addition to his practice in family law, Andy is also experienced in civil litigation and criminal defense matters.

Andy is trained in collaborative law, an increasingly popular alternative to litigation, and he is a Board Member of the Central Indiana Association of Collaborative Professionals and member of the International Academy of Collaborative Professionals.

## **Jaimie Cairns**

Cairns Law LLC, Indianapolis



From working at Baker & Daniels to opening her own practice in 2013, Jaimie has exclusively represented family law clients for over 10 years. She has represented clients at all levels of Indiana trial courts, including successfully arguing in front of the Indiana Supreme Court. Jaimie enjoys being a family law attorney because she is passionate about finding creative solutions for difficult problems and helping people even when they are at their worst. She grew up in Brownsburg, Indiana, has spent most of her life as a proud Hoosier, and resides with her husband, two children, and dog in Fishers.

### **EDUCATION**

- George Washington Law School  
Juris Doctor with Honors, 2008
- Indiana State University  
B.A., Legal Studies, 2005  
Summa Cum Laude

### **ACTIVITIES & AFFILIATIONS**

- Volunteer, Kids' Voice of Indiana
- Indianapolis Bar Association – Bar Leader Series Class X, Bench Bar Committee (Social Chair and Member)
- Registered Domestic Mediator
- Guardian ad Litem
- Parenting Coordinator
- Rising Star, Super Lawyers (2015-2019)

### **BAR ADMISSION**

- Indiana

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

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.

# **Table of Contents**

**Section One**

**Dealing with Self-Representation..... Magistrate Andrew R. Bloch  
Andrew J. Bartelt**

PowerPoint Presentation

## Section Two

**Reconciliation Issues..... Timothy M. Sledd**

PowerPoint Presentation

Letter Re: Reconciliation Agreement/Confidential

Reconciliation Agreement

Checklist for Considerations for Antenuptial Agreement

## **Section Three**

### **Mental Health Professionals in Family Law Cases..... Dr. Michael J. Jenuwine, J.D., Ph.D.**

Ethical Principles of Psychologists and Code of Conduct

American Academy of Psychiatry and the Law – Ethics Guidelines for the Practice  
of Forensic Psychiatry

The National Association of Social Workers (NASW) - Code of Ethics

Specialty Guidelines for Forensic Psychology

## Section Four

**Parenting Coordination Issues..... Jaimie L. Cairns**

PowerPoint Presentation

**Section Five**

**Supervised Parenting Time..... Magistrate Andrew R. Bloch  
Chief Magistrate Marie L. Kern**

PowerPoint Presentation

## Section Six

### **Maximize Mediation: How to Counsel Your Client in Preparation for and During Mediation.....Timothy M. Sledd**

|       |   |    |
|-------|---|----|
| I.    | Introduction .....                            | 1  |
| II.   | Selecting a Mediator .....                    | 1  |
| III.  | Preparing Yourself .....                      | 1  |
| IV.   | Preparing Your Client for Mediation .....     | 3  |
| V.    | Counseling Your Client During Mediation ..... | 6  |
| VI.   | Procedural Issues of Mediation .....          | 6  |
| VII.  | Role of the Mediator.....                     | 8  |
| VIII. | Confidentiality.....                          | 8  |
| IX.   | Checklists (Tab 1) .....                      | 10 |
| X.    | Forms (Tab 2) .....                           | 10 |

#### Checklists

|    |  |    |
|----|--|----|
| 1. | Basic Mediation Education for Client Checklist ..... | 11 |
| 2. | Settlement Value Worksheet.....                      | 12 |
| 3. | Mediation Checklist .....                            | 14 |

#### Forms

|    |   |    |
|----|---|----|
| A. | Proposed Division of Assets Spreadsheet for Discussion Fact Pattern .....                   | 19 |
| B. | Alimony Calculation Spreadsheet for Discussion Fact Pattern .....                           | 20 |
| C. | Initial Letter to Parties/Attorneys and Fee Agreement .....                                 | 21 |
| D. | Letter to Attorneys Confirming Scheduled Mediation and ADR Rule<br>2.7 Acknowledgement..... | 29 |
| E. | Wife's Mediation Statement and Child Support Worksheet for<br>Discussion Fact Pattern ..... | 34 |

F. Agreement on Alternative Dispute Resolution..... 38

G. Summary Decree of Dissolution ..... 41

H. Report of Mediator – Notice to Court of Mediation Outcome ..... 43

I. Verified Waiver of Final Hearing..... 44

J. Mediated Final Settlement Agreement ..... 45

PowerPoint Presentation

Zoom Etiquette

# **Section One**

# Dealing with Self-Representation

**Magistrate Andrew R. Bloch**  
Hamilton County Superior Court  
Noblesville, Indiana

**Andrew J. Bartelt**  
Connell, Michael, Kerr LLP  
Carmel, Indiana

## **Section One**

**Dealing with Self-Representation..... Magistrate Andrew R. Bloch  
Andrew J. Bartelt**

PowerPoint Presentation

2020 Challenges in Family Law

# DEALING WITH SELF-REPRESENTATION

Special Thanks  
Hon. Kimberly S. Dowling  
Professor Victor D. Quintanilla

# Indiana Civil Legal Needs Study and Legal Aid System Scan

2017 Statewide Study to assess legal needs throughout the state of Indiana.

If you're interested in reading the full study it can be found here:

<https://www.in.gov/judiciary/iocs/files/cca-civil-legal-needs-study.pdf>

Approximately 212,000 households in Indiana have family incomes below 125% of the federal poverty line.

1 in 5 Hoosier families live in low-income households.

80% of those low-income families experienced one civil legal problem, which accounted for more than 765,000 legal problems in 2016.

# Indiana Civil Legal Needs Study and Legal Aid System Scan

Most common legal problems:

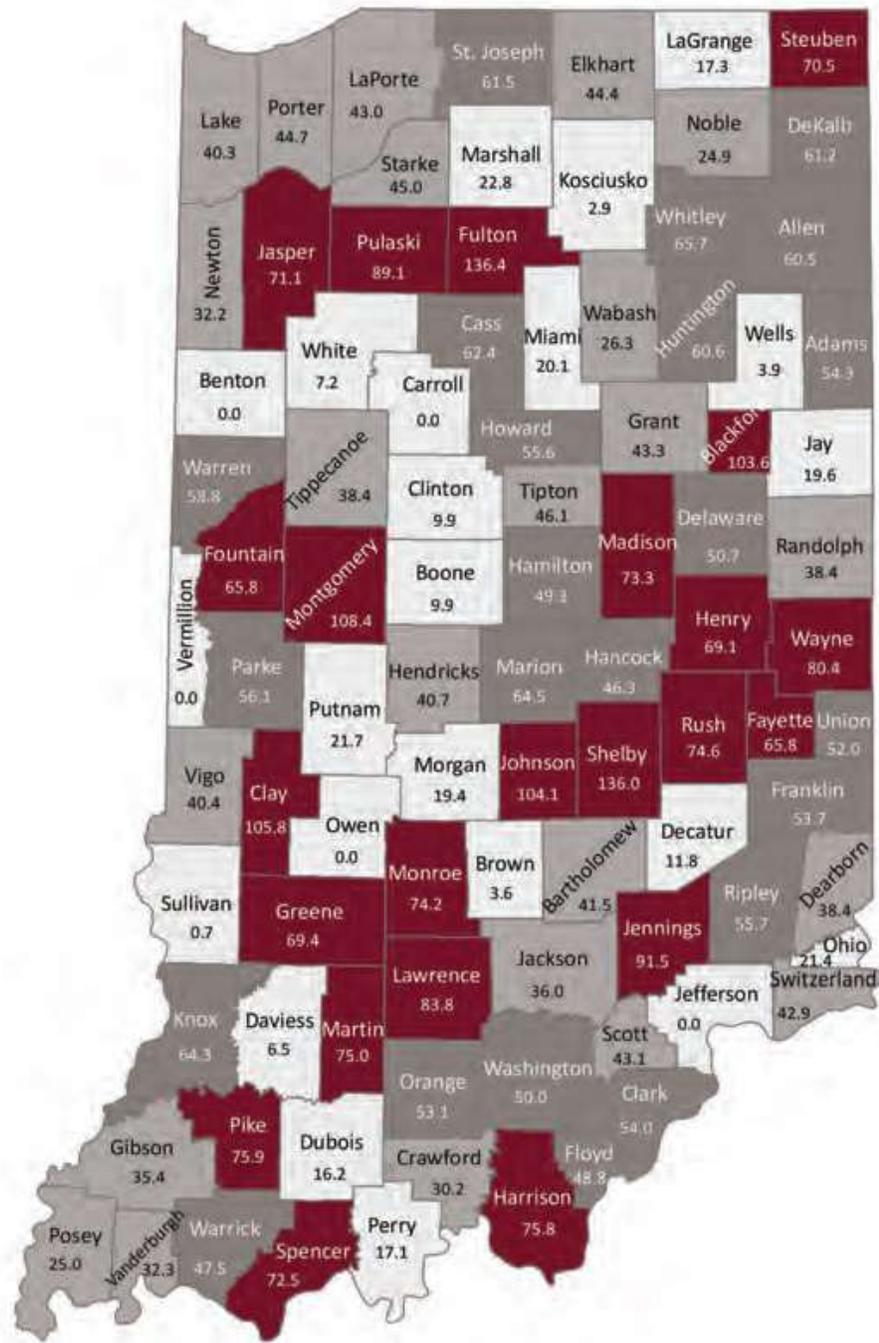
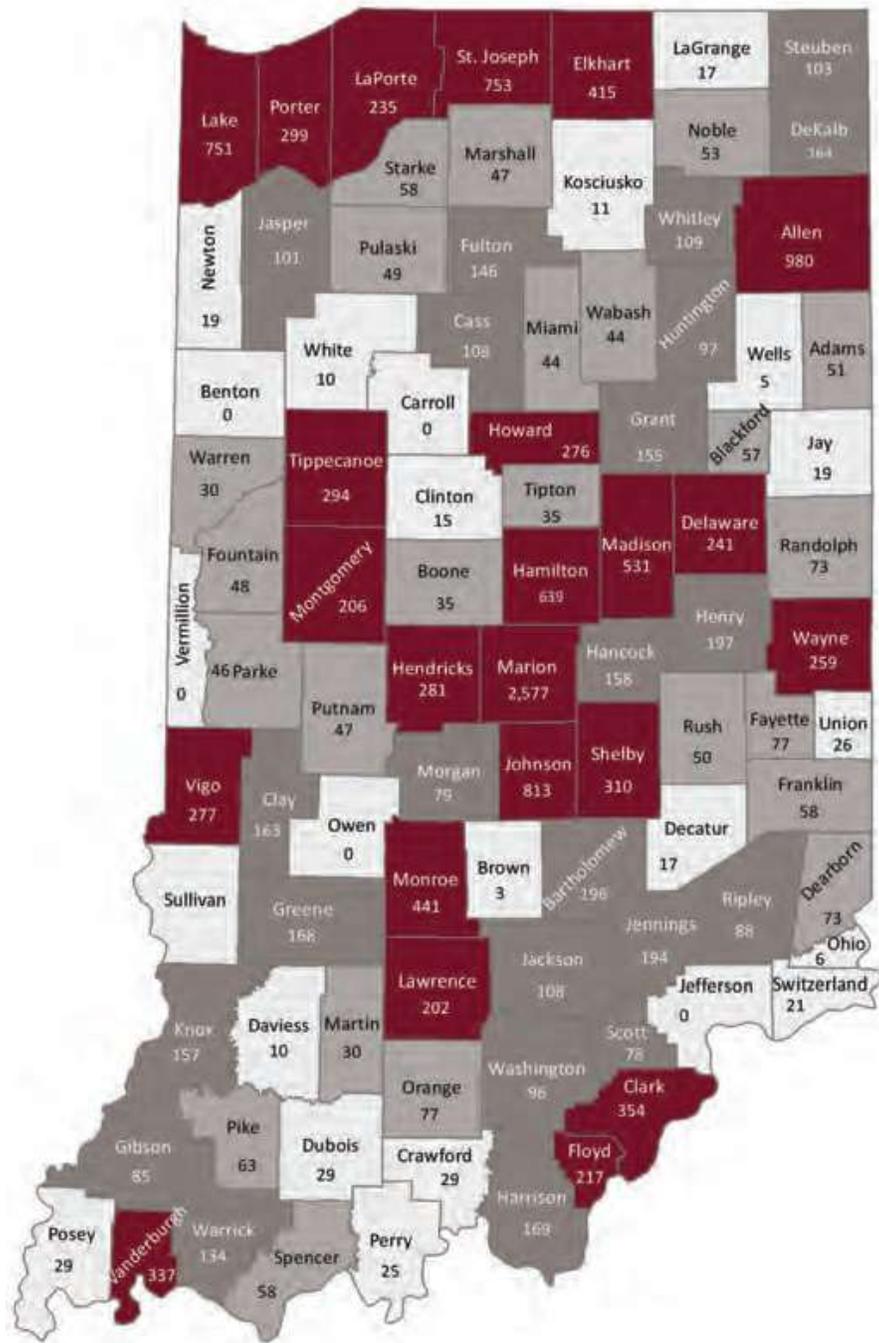
- Healthcare
- Consumer and finance issues
- Employment
- Family Law Matters.
- All of these issues could tie into your family law case.

# Some Statistics for your Consideration

- Office of Court Services reports that 51.5% of all family law cases in Indiana involve an unrepresented party.
- Other jurisdictions around the country are seeing at least one unrepresented party in 76% of the family law cases, filed.
- Marion, Allen, St. Joseph, Lake, Madison and Monroe counties have the greatest number of cases with unrepresented parties. These counties also have the highest concentration of low-income individuals.

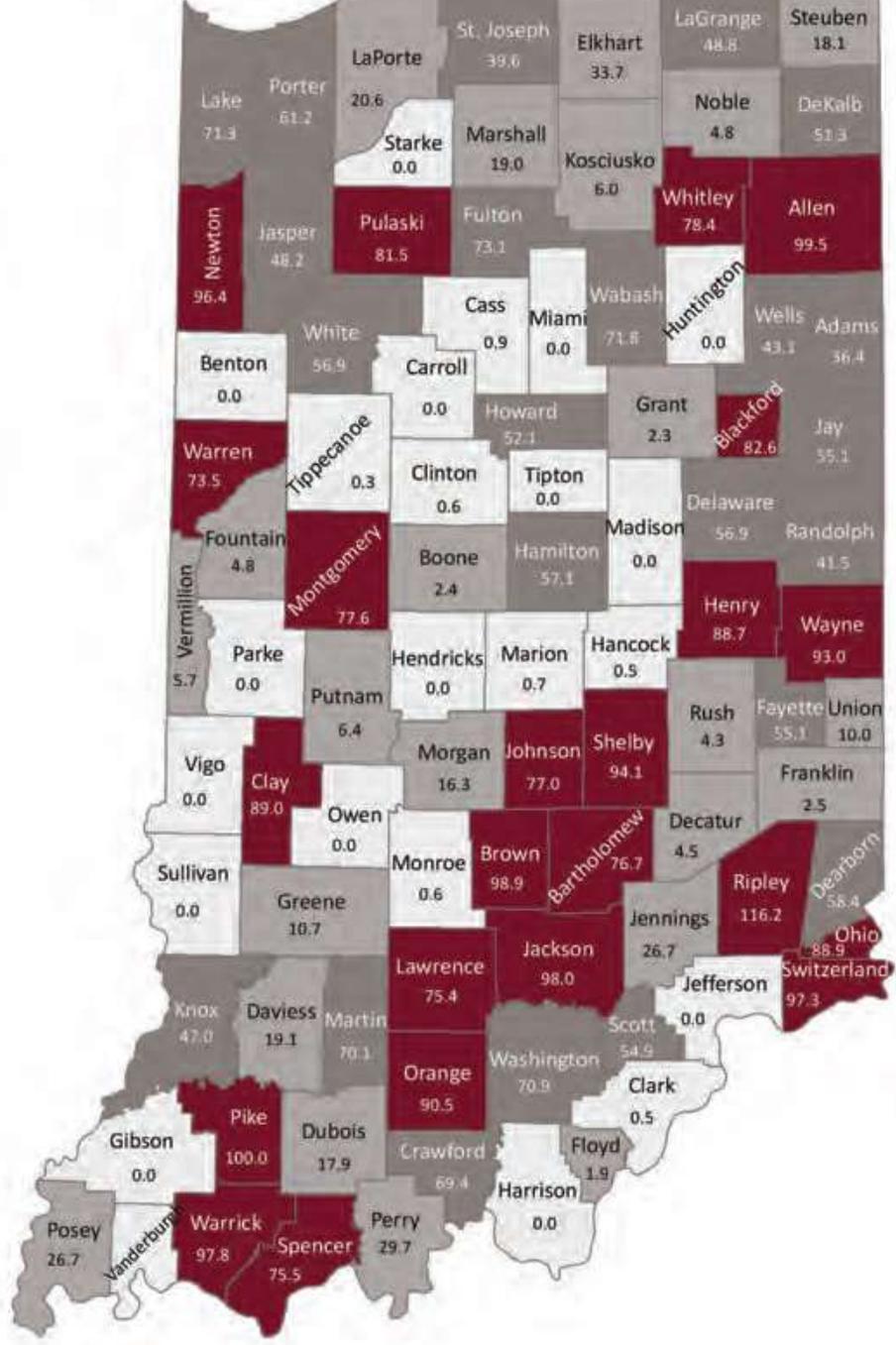
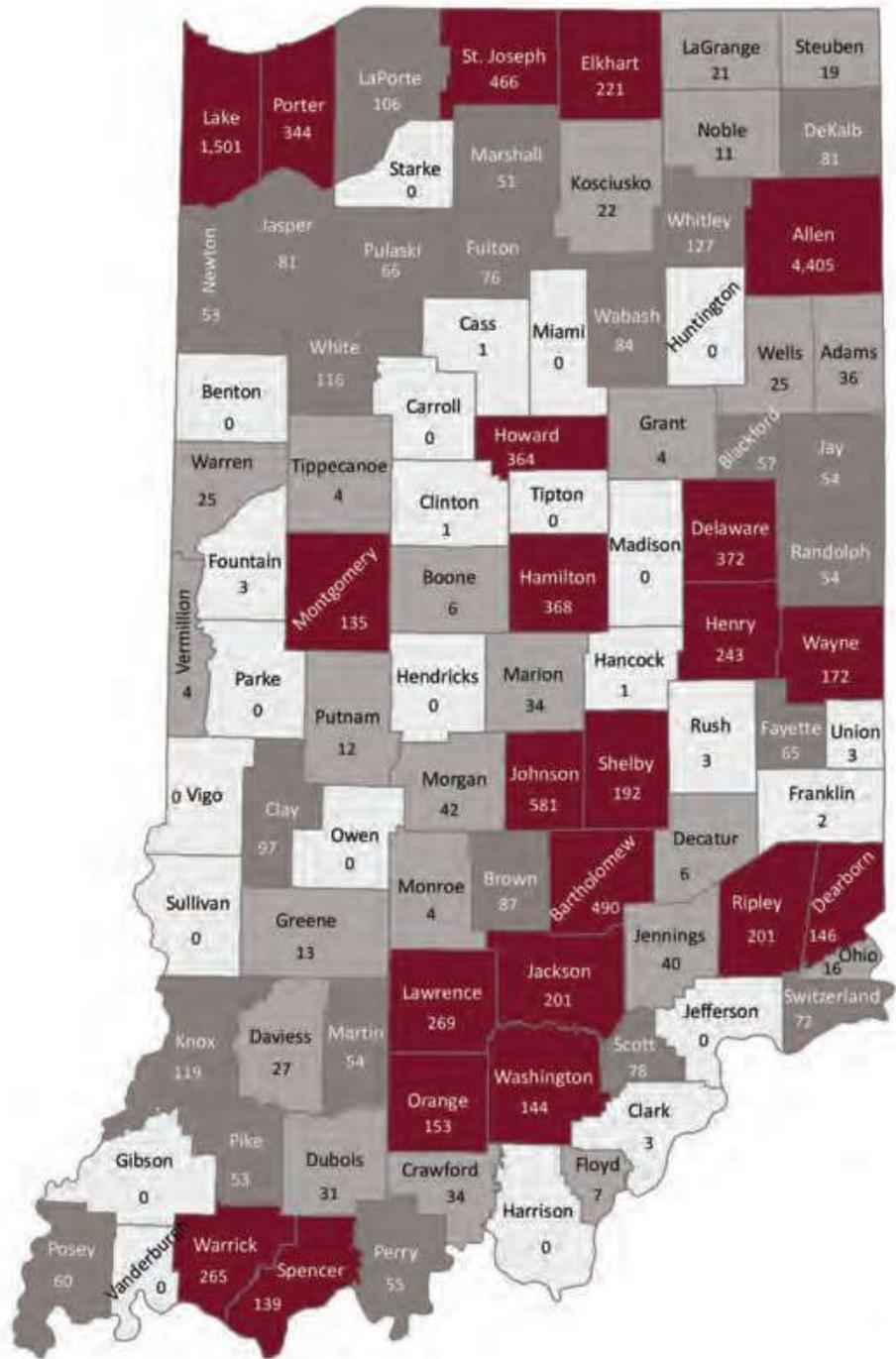
# More Statistics – Domestic Relations

- In the year 2016:
- Hamilton County had 639 Domestic Relations cases filed involving an unrepresented person, or 49.3% of Domestic Relations Cases filed that year.
- Marion County had 2,577 Domestic Relations cases filed involving an unrepresented person, or 64.5% of Domestic Relations Cases.
- Hendricks County had 283 Domestic Relations cases filed involving an unrepresented person, or 40.7% of Domestic Relations Cases.
- Johnson County had 813 Domestic Relations cases filed involving an unrepresented person, or 104.1% of Domestic Relations Cases.
- Boone County had 35 Domestic Relations cases filed involving an unrepresented person, or 9.9% of Domestic Relations Cases.



# More Statistics – Protective Orders

- In the year 2016:
- Hamilton County had 368 Protective Order Requests filed involving an unrepresented person, or 57.1% of all Protective Orders requested that year.
- Shelby County had 192 Protective Order Requests filed involving an unrepresented person, or 94.1% of all Protective Orders requested that year.
- Johnson County had 581 Protective Order Requests filed involving an unrepresented person, or 77.0% of all Protective Orders requested that year.
- Lake County had 1,501 Protective Order Requests filed involving an unrepresented person, or 71.3% of all Protective Orders requested that year.



# Code of Judicial Conduct Rule 2.2

- Indiana has now adopted Rule 2.2
- The Rule
  - A Judge may make reasonable efforts, consistent with the law and rules to facilitate ability of all litigants, including SRLs to be fairly heard

# Code of Judicial Conduct Rule 2.2

## Comment 5:

- Construe pleadings liberally
- Provide information about proceedings
- Explain legal concepts in plain language
- Ask neutral questions
- Modify traditional order of taking evidence
- Permit narrative testimony
- Refer litigants to resources
- Inform litigants of what happens next and what is expected of them

# Code of Judicial Conduct Rule 2.2

- Can a Judicial Officer deny the admission of otherwise objectionable evidence if there is no objection by the Self-Represented Party?
- The Answer appears to be: Yes.
- The key is that a Court MAY make accommodations for a Self-Represented Party, it is not required.
- This new rule affects how you as an attorney prepare for a case against a Self-Represented Party.
- Know your Judicial Officers.

# “Ripped from the Headline Examples”

- The following are real pro se filings:
- I DON'T WANT THIS DIVORCE!!! SHE CAN'T KEEP MY STUFF! – filed in a dissolution.
- This child isn't mine – filed in a Paternity.
- I owe him the money, but I can't pay – child support contempt.
- I don't want to appear in front of you, you're not fair – filed in response to a Petition to Modify.
- I know we can't afford college, but I want my ex to pay for college – filed in a Petition to Modify.

# You Be the Judge!

- You receive the following motion. The dissolution has been concluded since 2018. There is one child of the marriage:
- “By Assistance Accomodation Respondent means nothing of any legal matter, merely access and copy of court records. Solemnly sworn, Litigant”
- If you’re the Judge, what do you do with this pleading?
- If you’re the lawyer, do you file a response?

# You Be the Judge!

- In a post dissolution action, you receive the following pleading. There are three children of the marriage:
- “In light of the Indiana Commission on Judicial Qualifications having found probable cause to warrant formal charges of judicial and attorney misconduct upon Respondent, John Smith”
- In light of the Indiana Commission on Judicial Qualifications having found probable cause to warrant formal charges of attorney misconduct upon Respondent, Brian Jones”
- “I give notice of my intention to file and I ask the Court for determination on matter subject to forthcoming motion.”

# Beware the Sovereign Citizen

- According to the Federal Bureau of Investigation, sovereign citizens live in the United States, but don't identify as party of the Country.
- They identify themselves as Ambassador, or Diplomatic Agent, or Representative of the Estate of .....". They may carry identification cards and badges.
- They do not answer to any taxing entities, government authority, including courts, motor vehicle departments, or law enforcement.
- Oddly, they use the services of your County Recorder.
- They will often refuse to participate in a hearing or litigation other than to identify themselves as "In personam of the Estate of ....". They typically will not take any oath administered by the Court. Sovereign Citizens have been known to file confusing pleadings, requesting proof of insurance from the Judicial Officer, requesting attorney and Judicial Oath's of office, among other requests.
- Sovereign Citizens have been known to place liens on property owned by litigants, attorneys, and Judges in their cases.
- Approach these cases with caution.

# **Section Two**

# Reconciliation Issues

**Timothy M. Sledd**  
Mallor Grodner LLP  
Bloomington, Indiana

## Section Two

**Reconciliation Issues..... Timothy M. Sledd**

PowerPoint Presentation

Letter Re: Reconciliation Agreement/Confidential

Reconciliation Agreement

Checklist for Considerations for Antenuptial Agreement

# CHALLENGES IN FAMILY LAW

---

THE KISS AND MAKE-UP...

HOW RECONCILIATION AGREEMENTS CAN PROTECT OUR CLIENTS

# ALL THAT WORK...

---

- You've counseled through the sobbing
- You've surgically evaluated the division of assets; the parenting time arrangements; who gets the dog.
- You've prepared your arguments for trial.
- And then then call, "I think we need to put this thing on pause. This weekend we talked, we went for a walk, we rustled in the sheets, and well, WE ARE IN LOVE!"
- Truthfully, we want our client's happy, safe, and content. So, why not just drop the mic?
- Good advocacy may mean one more step.

# Reconciliation Agreements?

- Prenuptial Agreements are easy to understand: Prior to becoming a legally bound unit, let's define what is mine and what is yours before everything becomes "ours."
- Anti-nuptial agreements are less favored under the law and are ripe for problems:
  - Duress
  - Unconscionability
  - Unjust enrichment
  - End-runs around the law and expectations of people who are getting married.

# However:

---

- If a reconciliation agreement is done well, "harmony" can be reached.
  - Accounts defined.
  - Property assigned.
  - Obligations toward debts if dissolution occurs in the future.
  - Expectations on how business of the marriage will be communicated and accounted for in the future.
  - Eventual Estate Distributions (Step-Children Issues)
- All in all, reconciliation agreements are contract law, need clear documentation of the process, the consideration, the level of comprehension, and fair opportunity to sit with the notions and agree.

# The Law

---

- "It has long been held that antinuptial agreements are valid and binding so long as they are entered into freely and without fraud, duress, or misrepresentation and are not, under the particular circumstances of the case, unconscionable. (...) the same should apply to reconciliation agreements made between parties in order to preserve the marriage." *Buskirk v. Buskirk*, 86 N.E.3d 217 (2017)
- The parties must be in a real state of separation, dissolution preferred but not required. WHY? The reconciliation agreement must be for the purpose of reconciliation.
- For validity, "the proper inquiry is whether the agreement was executed in order to preserve and extend a marriage that otherwise would have been dissolved but for the execution of the agreement." *Id.*

# The Law

---

- There must be consideration. Mutual releases; mutual promises; can count as adequate consideration.
- For it to be binding, there needs to be clear evidence that it is being done freely, without duress, without fraud, and without misrepresentation.
- It cannot be unconscionable.
- Best option is for both parties to be represented.

# Best Practices

---

- Create Schedules of the Parties' Property and Assets
- Cover your bases with a letter to your client regarding the risks and vulnerabilities of such an agreement.
- See Sample Letter

Date

Client Name  
1234 Happily Ever After Park  
Indianapolis, Indiana 46239

**Re: Reconciliation Agreement/ Confidential**

Dear \_\_\_\_:

Please review this letter for a summary of your *Reconciliation Agreement* with important information and reminders of the effect and impact of reconciliation agreements. Indiana's law provides little guidance on how and when reconciliation agreements are appropriate which means they are subject to various potential challenges.

1. Your *Reconciliation Agreement* explains the reasons you and \_\_\_\_ desire to identify what property belongs to you and what property belongs to him. It sets apart your property from \_\_\_\_'s by including schedules and explaining what is viewed as yours and what is viewed as his. The *Reconciliation Agreement* provides for a predictable process for how the property should be divided, managed, or retained in the event of a death or divorce.

2. Indiana law requires that a reconciliation agreement must be made between married people for the purpose of preserving, prolonging, and protecting their marriage.

3. If either you or your husband file for divorce or legal separation after the signing of this *Reconciliation Agreement*, the length of time between the signing of the agreement and the filing of the case in court will be important in the Court's determination of whether or not your *Reconciliation Agreement* had been made for the required purpose of "preserving, prolonging, and protecting" the marriage. At this time, the Courts have not specified what length of time is necessary for a court find the required purpose to have been fulfilled, rather than being concerned about fraud.

4. Your *Reconciliation Agreement* is viewed as a contract. Legal "consideration" is the exchange of value that makes an agreement a two-way street. As of the signing of your *Reconciliation Agreement*, the "mutual releases" contained in the document satisfy courts that the required exchange of value took place. As Indiana law continues to develop regarding reconciliation agreements, the courts' level of satisfaction could change. This issue is one that could potentially be raised as a challenge to the validity of your *Reconciliation Agreement*.

5. There are ways you can lose the benefits drafted in the agreement. Your *Reconciliation Agreement's* terms are to be followed and maintained. If you do something, or allow your husband to do something with money, property or specific items listed on your schedules as "separate property," that deviates from the terms of the *Reconciliation Agreement*, your actions can change the nature of your property or cause a court to determine that you have

Client Name  
Date December 2, 2020  
Page 2

amended your agreement. For example, if you and \_\_\_\_ combine money that is defined as "separate" in your agreement with money that is defined as "joint," the formerly separate money may be considered to have become joint property.

Your *Reconciliation Agreement* is meant to assist you with preserving your marriage while clearly defining the rights to, possession of, and authority over the property you and \_\_\_\_ share, or hold individually. It cannot be stressed enough how important it is for you to maintain strict compliance to the terms of the agreement. If you wish to deviate from the *Reconciliation Agreement* or change the nature of any particular asset, contact us so that we can help guide you through amending the document legally while maintaining protection of your interests.

Yours truly,

Enclosure

# Best Practices

---

- Once the Reconciliation Agreement is signed, correspond with opposing counsel attaching a copy of the signed agreement.
- Encourage safe-keeping of your client's copy of the agreement (Bank Lock Box, fireproof box; attached to Last Will and Testament).
- Review your client's estate planning documents to make sure they comport with the terms of the agreement to avoid conflict and complex litigation later.

Date

Client Name

1234 Happily Ever After Park  
Indianapolis, Indiana 46239

**Re: Reconciliation Agreement/ Confidential**

Dear \_\_\_\_:

Please review this letter for a summary of your *Reconciliation Agreement* with important information and reminders of the effect and impact of reconciliation agreements. Indiana's law provides little guidance on how and when reconciliation agreements are appropriate which means they are subject to various potential challenges.

1. Your *Reconciliation Agreement* explains the reasons you and \_\_\_\_ desire to identify what property belongs to you and what property belongs to him. It sets apart your property from \_\_\_\_'s by including schedules and explaining what is viewed as your and what is viewed as his. The *Reconciliation Agreement* provides for a predictable process for how the property should be divided, managed, or retained in the event of a death or divorce.

2. Indiana law requires that a reconciliation agreement must be made between married people for the purpose of preserving, prolonging, and protecting their marriage.

3. If either you or your husband file for divorce or legal separation after the signing of this *Reconciliation Agreement*, the length of time between the signing of the agreement and the filing of the case in court will be important in the Court's determination of whether or not your *Reconciliation Agreement* had been made for the required purpose of "preserving, prolonging, and protecting" the marriage.. At this time, the Courts have not specified what length of time is necessary for a court find the required purpose to have been fulfilled, rather than being concerned about fraud.

4. Your *Reconciliation Agreement* is viewed as a contract. Legal "consideration" is the exchange of value that makes an agreement a two-way street. As of the signing of your *Reconciliation Agreement*, the "mutual releases" contained in the document satisfy courts that the required exchange of value took place. As Indiana law continues to develop regarding reconciliation agreements, the courts' level of satisfaction could change. This issue is one that could potentially be raised as a challenge to the validity of your *Reconciliation Agreement*.

5. There are ways you can lose the benefits drafted in the agreement. Your *Reconciliation Agreement's* terms are to be followed and maintained. If you do something, or allow your husband to do something with money, property or specific items listed on your schedules as "separate property," that deviates from the terms of the *Reconciliation Agreement*, your actions can change the nature of your property or cause a court to determine that you have

Client Name

Date December 2, 2020

Page 2

amended your agreement. For example, if you and \_\_\_\_\_ combine money that is defined as “separate” in your agreement with money that is defined as “joint,” the formerly separate money may be considered to have become joint property.

Your *Reconciliation Agreement* is meant to assist you with preserving your marriage while clearly defining the rights to, possession of, and authority over the property you and \_\_\_\_\_ share, or hold individually. It cannot be stressed enough how important it is for you to maintain strict compliance to the terms of the agreement. If you wish to deviate from the *Reconciliation Agreement* or change the nature of any particular asset, contact us so that we can help guide you through amending the document legally while maintaining protection of your interests.

Yours truly,

Enclosure

## **RECONCILIATION AGREEMENT**

THIS RECONCILIATION AGREEMENT (“Agreement”) is made in duplicate in Bloomington, Indiana, on this \_\_\_day of \_\_\_, 20\_\_\_, by and between NAME, a resident of \_\_\_\_\_, Indiana, and NAME, also a resident of \_\_\_\_\_ County, Indiana. These individuals are collectively referred to in this Agreement as the “parties.”

### **INTENTIONS/PREFACE**

- A. Date of Marriage and Children.** The parties were married on DOM. There are no children of the marriage. Each has children from prior marriages.
- B. Reasons for Agreement.** The parties have experienced recent marital difficulties. The parties have been living separately because of these difficulties. Both parties desire to resolve their marital difficulties and to maintain the marriage by attempting to re-establish a marital relationship based on trust. It is the intention of the parties that this Agreement provides the terms by which the parties’ marriage may be preserved and extended and serves as a prerequisite to the parties’ reconciliation.

To enable their reconciliation, the parties desire to fix and determine, now and forever, the mutual rights of each in and to the property, estate, and income of the other, past, present and future, and to accept irrevocably the provisions of this Agreement in full discharge and satisfaction of all property rights that would arise or have arisen as a result of their marriage, by operation of law, by statute, or otherwise.

In particular, the parties desire that this Agreement shall include terms governing the ownership, maintenance, and disposition of certain property owned by the parties, in accordance with the parties’ wishes, in addition to the other rights determined by this Agreement.

NAME and NAME expressly acknowledge that this Agreement is not entered into for the purpose of facilitating a separation or dissolution of their marriage to each other, but is entered into for the purpose of promoting reconciliation, preventing strife, and settling questions of marital rights and property, thus removing a frequent cause of family dispute and securing peace and enhancing the prospects of marital harmony.

- C.** Both NAME and NAME agree they have made a fair disclosure of the character and approximate value of their property. Each state under oath that the disclosure has been full and fair, and both have had a full opportunity to ask any questions regarding the assets, liabilities or income of the other. No additional questions of value, amount, or existence of assets, liabilities or income remain. Each has been given the opportunity to ascertain through valuation or otherwise any value they

desired to verify. Neither party desires any other valuation or to review any other documents.

- D.** Prior to their reconciliation, NAME and NAME desire to settle their respective rights to present and/or future property of the other (including, but not limited to, maintenance, support, property, attorney fees and inheritance rights) in the event of death or dissolution. Dissolution as used in this Agreement means the filing of a petition for legal separation, dissolution of marriage, annulment, or void or voidable marriage, or of any other legal action affecting the rights, relationship, or marital status of the parties.
- E.** Both are residents of Indiana but agree that if they should change their state of residence, Indiana law will control the effect of this Agreement.
- F.** NAME and NAME each understand his and her respective rights in the property of the other in the event of the subsequent death of either party or the dissolution of their marriage. Further, each understands their statutory rights and other rights, with a reconciliation agreement and without a reconciliation agreement, upon death or the dissolution of their marriage.
- G.** NAME and NAME intend that all of the property owned by NAME and NAME in their individual names, by their respective estates, by any revocable trusts, or otherwise, now or in the future, to be free of any and all rights which one party might acquire by marriage, except as set forth in this Agreement.
- H.** NAME and NAME intend that this Agreement will be binding and enforceable in any decedent's estate or dissolution of marriage proceeding regardless of any change of personal or financial circumstances between the time of this Agreement and the death of either of them or the dissolution of their marriage.
- I.** NAME and NAME willingly enter into this Agreement. By this Agreement, both intend to promote and enhance their marriage. They also acknowledge that their mutual peace of mind will be preserved by this Agreement. Each acknowledges that this Agreement is fair and equitable.

### **AGREEMENT**

In consideration of the promise of reconciliation between NAME and NAME and the mutual promises and agreements contained in the following provisions of this Agreement, NAME and NAME agree as follows:

- 1. Incorporation of Intentions/Preface.** The above Intentions/Preface are incorporated as material terms of this Agreement.
- 2. Disclosure.** The parties agree that the values in Schedules A and B are estimates. Each has had the opportunity to have assets formally valued, but upon signing this Agreement, each

specifically acknowledges their desire not to have assets formally valued. Each indicates that even without a formal valuation, which may have resulted in higher or lower values than estimated, this Agreement would have been executed. Further, the income as disclosed has been considered by both parties, and they have each had the opportunity to discuss the same with counsel and the impact such income or increases/decreases in the same might have upon dissolution of their marriage or upon death.

- 3. Establishment of Separate Property.** Each party agrees that the property identified below shall remain the “Separate Property” of the party who owns the same, free and clear of any claim of the other party, except as expressly provided otherwise in this Agreement.
  - 3.1. Property on Schedules A and B.** All property, whether real or personal, owned by either party at the effective date of this Agreement, including, but not limited to, that property set forth in Schedules A and B attached, and incorporated by reference.
  - 3.2. Increase in Assets on Schedules.** Any increase or appreciation in the value of assets listed above, whether passive or by personal effort.
  - 3.3. Income from Assets on Schedules.** Any income, dividends, interest, stock splits or other generated revenue or increases, whether passive or active, from the property described in this Agreement.
  - 3.4. Credit for NAME’s Equitable Contribution.** Any equity taken from NAME’s separate property and applied toward purchase of a marital residence shall be credited as Separate Property and not considered as merged into Marital Property, which is titled in joint names, in the event of dissolution.
  - 3.5. Substituted Assets or Asset Exchanges.** Any interest in any partnership, limited liability companies, corporations, assets, replacement personal or real property or increments in value of such assets, or the exchange of such asset for another. Accordingly, if any asset currently owned by either party is sold, transferred or exchanged for a new asset, then the new asset shall remain the separate property of the party whose original asset was sold, transferred or exchanged, even if acquired subsequent to the marriage/reconciliation.
  - 3.6. Other Income and Investments.** All earnings and accumulations resulting from personal services, skill, efforts, and work, including any new real estate partnerships or ventures started in whole or in part by either party, together with all property acquired or income derived from it, shall be maintained as the Separate Property of such party to whom the earnings, income, or other receipts are attributable. Each party understands that without this Agreement the earnings and accumulations from the personal services, skill, efforts and work of one of them throughout their marriage could be subject to legal or equitable rights of the other party. By this Agreement, all such earnings and accumulations during their marriage are made the

Separate Property of the person to whom such accumulations are attributable. In this regard, each party may maintain separate checking and savings or similar accounts.

- 3.7. Inherited Property.** All inheritance received by either party during the marriage. “Inheritance” for purposes of this Agreement shall mean any respective bequests, inheritance, gifts, contractual or insurance beneficial distributions, intestate distributions, or trust distributions received by either party, including but not limited to, distributions from any trust established by either party’s parents, siblings, grandparents or any other relative, and any and all other inheritance of any kind whatsoever, received by either party, together with any substitution in such inheritance, and all income and increases in value arising from the inheritance during marriage regardless of the reason for the income or increase. Inheritance shall also include any assets acquired by a party with proceeds of an inheritance, but only if such assets remain separately owned.
- 3.8. Gifts.** Any and all gifts received by either party during the marriage.
- 3.8. Waiver and Release of Benefits.** Except as may be otherwise provided herein, each party (as “Releasee”) hereby elects, and the other party (as “Releasor”) hereby consents to, a waiver and release of any and all statutory rights and benefits of the Releasor, including, without limitation, to any Individual Retirement Account governed by Section 408 and/or 408A of the Internal Revenue Code, of which the Releasee currently contributes, intends to establish and make contributions. If requested, the Releasor shall consent in writing, in any form requested by the Releasee, to any such election. The spousal consent of the Releasor set forth herein is irrevocable. Except as otherwise provided herein, the Releasor acknowledges and hereby consents to the Releasee’s election that upon the Releasee’s death such Individual retirement Account will be paid to such beneficiary as the Releasee may have designated at any time before the execution of this Agreement or may designate from time to time hereafter, in Releasee’s sole and unfettered discretion. If the Releasor shall receive any part of Releasee’s Individual Retirement Account, other than pursuant to a beneficiary designation executed after the date hereof by the Releasee, which designation expressly names the Releasor as a beneficiary, the Releasor shall promptly turn same over to the Releasee or if the Releasee is not then living, to his or her designated beneficiary identified on a designated beneficiary form, or in default of a named designated beneficiary to the Releasee’s estate.
- 3.9 Spousal Consent.** Each hereby agrees to execute any documentation as may be required in the future to evidence such consent to waiver of rights to the Releasor’s interest in the Releasee’s Individual Retirement Account.

In order to make the waivers and releases contained in this Article effective, the parties agree that, no later than thirty (30) days from the date on which they establish an Individual Retirement Account they will sign a separate document which contains the releases, waivers and acknowledgements set forth in this Article.

**3.10. Separate Property Rights.** Each party shall have the absolute and unrestricted right to manage, control, dispose of, lease, sell, exchange, convey, encumber, receive the rents and income from, give, devise and bequeath his or her assets and any inheritance or otherwise deal with his or her Separate Property, including gifts and inheritance, free from any claim that may be made by the other party by reason of their marriage, without interference of the other party, and with the same effect as if Name and Name never married.

Each party hereby waives, discharges and releases all right, title and interest in and to any assets or any gifts or inheritance acquired by the other party after the execution of this Agreement or acquired from the proceeds of any such assets or inheritance or any statutory rights to request a court to provide additional benefits/assets/income due to active participation in asset growth, appreciation, or income or due to the payment of expenses or taxes associated with such property or income.

- 4. Division of Current Marital Property.** The parties do not wish to retain any joint marital property, with the possible exception of a residence which may be purchased in the future. Any equity contributed to the purchase of a marital residence by NAME shall not be considered Marital Property and a credit in the amount contributed shall be given to NAME as his/her Separate Property.
- 5. Marital Property.** Each party agrees that all property not defined as Separate Property shall constitute Marital Property. If any property becomes Marital Property at any time during the marriage, it shall continue to be Marital Property unless otherwise agreed upon in writing by the parties. However, if NAME applies equity from any Separate Property toward the purchase of a marital residence, she shall be given credit for that equity amount as Separate Property.
- 6. Payment of Expenses.** Unless specified otherwise herein, each party shall be responsible for his or her own individual expenses and hold the other party harmless therefrom. The parties shall alternate monthly paying for the joint household groceries, with Husband paying one month and Wife paying the next. Husband, without acquiring an equity interest or any interest in the real property, shall contribute \$500.00 per month toward general expenses.
- 7. Rights Upon Death of a Party.** If the marriage is terminated as a result of the death of either party, NAME and NAME agree upon their property rights as follows:
  - 7.1.** Upon the death of one party, the other shall have full survivor rights in each and every asset owned jointly with rights of survivorship. Any asset held as tenants in common shall be distributed to the surviving party in the amount of their respective percentage ownership.

- 7.2. If WifeNAME should die leaving HusbandNAME as her surviving spouse, HusbandNAME agrees that he will make no claim to any of Wife's Separate Property in her estate, other than as Wife may have provided for by her last will and testament or other valid estate planning document. Husband waives and relinquishes all statutory rights to the real estate, personal property, or other property that was Wife's Separate Property at the date of her death and all claims and legal rights to share in any of Wife's Separate Property as a surviving spouse, heir at law, or otherwise, including, but not limited to, survivor's allowance, family allowance, homestead and exempt property rights, distribution in intestacy and right of election to take against the will, and right to serve as personal representative of Wife's estate, excepting only as a beneficiary under her last will and testament if he be so designated at the time of her death.
- 7.3. If HusbandNAME should die leaving WifeNAME as his surviving spouse, Wife agrees that she will make no claim to any of Husband's Separate Property in his estate, other than as Husband may have provided for by his last will and testament or other valid estate planning document. Wife waives and relinquishes all statutory rights to the real estate, personal property, or other property that was Husband's Separate Property at the date of his death and all claims and legal rights to share in any of Husband's Separate Property as a surviving spouse, heir at law, or otherwise, including, but not limited to, survivor's allowance, family allowance, homestead and exempt property rights, distribution in intestacy and right of election to take against the will, and right to serve as personal representative of Husband's estate, excepting only as a beneficiary under his last will and testament if she be so designated at the time of his death.
- 7.4. Indiana's statutory waiver of rights to a spouse's property at his or her death is articulated in Ind. Code 29-1-3-6. NAME and NAME agree to be bound by such a waiver. They also intend to be bound by this waiver regardless of revision to the statute, or NAME and NAME's relocation to another jurisdiction.

## **8. Disposition of Property on Termination of Marriage.**

- 8.1 **Wife's Separate Property.** In the event the marriage of NAME and NAME is terminated other than by death of one of them, or in the event of legal separation, or dissolution, Husband agrees to waive all rights to Wife's Separate Property. All of Wife's Separate Property shall be and remain her sole and Separate Property, free and clear of all claims by Husband.

In the event of dissolution or legal separation, Wife shall assume responsibility for all debts and liabilities on Wife's Separate Property or that are in her name alone.

**8.2 Husband's Separate Property.** In the event the marriage of NAME and NAME is terminated other than by death of one of them, or in the event of legal separation, or dissolution, Wife agrees to waive all rights to Husband's Separate Property. All of Husband's Separate Property shall be and remain his sole and Separate Property, free and clear of all claims by Wife.

In the event of dissolution or legal separation, Husband shall assume responsibility for all debts and liabilities on Husband's Separate Property or that are in his name alone.

**8.3 Marital Property.** In the event the marriage of NAME and NAME is terminated other than by death of one of them (e.g., by dissolution of their marriage), the parties' Marital Property, as defined by this Agreement, shall be divided equally between NAME and NAME. All debts on Marital Property shall also be divided equally between NAME and NAME. During the pendency of a dissolution of the parties' marriage, the regular payments of debts on Marital Property shall be shared equally by NAME and NAME.

- 9. Maintenance, Alimony, Costs, Limitation, and Fees.** In the event either party files for a dissolution of the parties' marriage, or for a legal separation, each party agrees not to seek from the other any post-dissolution maintenance, spousal support or alimony. The parties further agree that they shall seek no attorneys' fees, experts' fees, litigation costs, or court costs relating to, or arising from, such proceedings.
- 10. Release of Each Party From All Other Claims and Liabilities.** Each party agrees to release the other party from all claims and liabilities, except as established in this Agreement.
- 11. Agreement to Join in Execution of Other Instruments.** Both parties promise that they shall, at the request of either party, or his or her successors or assigns, execute, deliver, and properly acknowledge whatever additional instruments may be required to carry out the intention of this Agreement, and shall execute, deliver, and properly acknowledge any deeds or other documents so that good and marketable title to any property can be conveyed by one party free from any claim of the other party. Each party also specifically appoints the other party to act as attorney-in-fact for purposes of executing any documents necessary to evidence the release of such rights, and this Agreement shall be construed as a durable power of attorney, not affected by the disability of the party granting the power, for purposes of executing such documents, including waivers of statutory survivor rights.
- 12. Acknowledgment of Legal Advice.** NAME and NAME acknowledge that each is familiar with the rights conferred by law upon him/her in the property and estate of the other by virtue of their marriage; that each has had an opportunity to be advised by independent legal counsel of his or her choice; and that it is the desire of both parties that their respective rights to share in the property and estate of the other in the event of the termination of their marriage by dissolution or death shall be governed by this Agreement, and that, upon

reconciliation, this Agreement shall bind their respective successors, assigns, heirs, and legal representatives.

13. **Representation.** Wife is represented by \_\_\_\_\_, and Husband is represented by \_\_\_\_\_, [ or, if an unrepresented party: “though having conferred with an attorney, is unrepresented in this matter and acknowledges that he received no legal advice from **(Drafting attorney)**.]
14. **Recovery of Disputed Costs and Contest.** If either party defaults as to any obligation or covenant in this Agreement, the other party shall be entitled to recover all reasonable expenses, including, but not limited to, attorney’s fees, litigation expenses, and court costs, in enforcing or protecting such other party's rights, whether or not a suit is filed.
15. **Entire and Integrated Agreement.** This Agreement contains the entire understanding of the parties, and no other representations, commitments or promises have been made that are inconsistent with this Agreement. This is an integrated agreement.
16. **Severability.** If any provision of this Agreement is determined to be invalid by a court of competent jurisdiction, such invalidity shall not affect the other provisions of this Agreement, which shall remain in full force and effect.
17. **Joint Tax Filing.** The parties may elect to file joint tax returns during their marriage. The election to file joint tax returns shall have no impact on the terms, effectiveness, validity, and/or enforceability of this Agreement. If the parties do elect to file a joint tax return, the tax burden and contribution towards the payment of taxes for either party shall be no greater than the tax each party would have paid if an individual return had been filed instead. If the parties receive any refund from a joint tax return, each party’s proportional share of that refund shall be treated as Separate Property. A party’s “proportional share” of a refund shall be no less than the party would have received if they had filed an individual tax return. Any additional refund amount will be allocated between the parties in a proportional manner based on each party’s taxable income.
18. **Confidentiality.** Each party agrees that the financial disclosures included as schedules to this Agreement shall remain confidential and shall not be disclosed to any person other than the parties or their designated representatives, except in litigation to enforce this Agreement, to terminate the parties’ marriage, or to probate the estate of either party.
19. **Forfeiture of Claims.** Upon entering this Agreement, each party forfeits and waives all claims he or she may have against the other party based on cohabitation, unjust enrichment, *quantum meruit*, partnership, and all other similar theories or doctrine.
20. **Modification.** This Agreement shall be modified or revoked only by a writing signed by both parties.

**21. Captions and Headings.** Captions and headings of articles and sections are for convenience and reference and in no way define, limit, extend, or describe the scope of this Agreement or the intent of any provisions of the Agreement.

**22. Effective Date.** This Agreement shall become effective immediately upon the parties affixing their signatures to this agreement.

IN WITNESS WHEREOF, NAME and NAME have executed this Agreement on the day and year first above written.

\_\_\_\_\_  
NAME, Husband

\_\_\_\_\_  
NAME, Wife

STATE OF INDIANA                    )  
  ) SS:  
COUNTY OF MONROE                )

Before me, a notary public in and for the State of Indiana, appeared \_\_\_\_\_, who acknowledged his execution of the foregoing Reconciliation Agreement as his voluntary act and deed this \_\_\_\_\_ day of \_\_\_\_\_.

Witness by hand and Notarial Seal.

My commission expires:  
August 25, 2022

\_\_\_\_\_  
, Notary Public

County of Residence:  
Monroe

STATE OF INDIANA                    )  
  ) SS:  
COUNTY OF MONROE                )

Before me, a notary public in and for the State of Indiana, appeared \_\_\_\_\_, who acknowledged her execution of the foregoing Reconciliation Agreement as her voluntary act and deed this \_\_\_\_\_.

Witness by hand and Notarial Seal.

My commission expires:  
August 25, 2022

\_\_\_\_\_  
, Notary Public

County of Residence:  
Monroe

Reconciliation Agreement between  
NAME and NAME

## 14 Ind. Prac., Family Law § 2:7

Indiana Practice Series TM | November 2019 Update

### Family Law

J. Eric Smithburn<sup>a0</sup>, Pocket Part By J. Eric Smithburn,<sup>a1</sup> Ann-Carol Nash,<sup>a2</sup> Graham Polando,<sup>a3</sup>

### Chapter 2. Antenuptial Agreements and Agreements of Unmarried Couples

#### B. Formation and Requirements

### § 2:7. Checklist for considerations for antenuptial agreement

#### Antenuptial agreement to be effective upon death?

- (1) Spouse to waive right to take against the will.
- (2) Support, care, education and maintenance of spouse's children, spouse, or children of the marriage.
- (3) Support, care, education and maintenance of minor children upon the death of the spouse or natural parent.
- (4) Inheritance by children upon the death of spouse.
- (5) Adoption of intended spouse's children and the effect upon death.
- (6) Religious upbringing of any children of the intended marriage.
- (7) Annuity or trust set up for spouse.
- (8) Spouse's share of real property.
- (9) Spouse's share of personal property.
- (10) Spouse's share of intangible property (stocks, bonds, etc.)
- (11) Spouse's share of liabilities.
- (12) Spouse's share of pension plan.
- (13) Life insurance to be provided for spouse.
- (14) Spouse's estate's obligation to provide for support, maintenance and education of spouse and spouse's children.

#### Antenuptial agreement to be effective upon divorce/dissolution?

- (1) Alimony or maintenance for spouse.
- (2) Division of marital property (after acquired).
- (3) Division of separate property (held separately).
- (4) Division of specific property (inheritance, jewelry).
- (5) Division of income.
- (6) Division of growth, increase in value, accretions, accumulations.
- (7) Support of spouse's children (care, support, education).
- (8) Support and education of the children of the marriage.
- (9) Who gets tax exemption for children.
- (10) Who pays attorney's fees.
- (11) Disposition of jointly held business.
- (12) Determination of fair market value of businesses owned.
- (13) Disposition of retirement and pension benefits, IRA's.
- (14) Disposition of profit sharing, ESOP.
- (15) Disposition of intellectual properties (patents, copyrights).
- (16) Education of spouse.
- (17) Disposition of liabilities.
- (18) Property distributed to third party.
- (19) Provisions for life insurance for spouse/children.
- (20) Possession of pets.

- (21) Disposition of tax refunds and whether joint returns to be filed.
- (22) Disposition of inheritance/gifts.

Provisions upon Separation.

- (1) Attorney's fees.
- (2) Temporary maintenance.
- (3) Possession of property (including marital home).
- (4) Is there a right to change beneficiary on life insurance?

Future Termination of Agreement.

- (1) Progressive changes from the passage of time.
- (2) Full termination upon passage of time.
- (3) Termination upon happening of some event (birth of child).

Provisions for Husband's and Wife's roles, relations and responsibilities during the marriage.

- (1) Care for spouse's children.
- (2) Obligation for each spouse to provide for percentage of household maintenance.
- (3) Time to be spent with own children from previous marriage.
- (4) Education of spouse.
- (5) Obligation to provide life insurance.

Documents for Disclosure.

- (1) 3 years of tax returns (full returns).
- (2) 12 months of bank statements.
- (3) 12 months of brokerage statements.
- (4) Copies of trust agreements.
- (5) Prior divorce decrees.
- (6) Records regarding liabilities.
- (7) Life insurance information.
- (8) Pension/benefits summary and statements.
- (9) Profit and loss statements for business, tax returns.
- (10) Partnership agreements and K-1's.
- (11) Buy/Sell agreements.
- (12) Appraisals of any property.
- (13) Any document used to complete disclosure balance sheet.

**Notes**

**Source of Form:** Form prepared by James A. Buck and James A. Reed, Indianapolis, Indiana. Reprinted with permission of Indiana Continuing Legal Education Forum. © 1988.

Westlaw. © 2019 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

- a0 Professor Of Law, Notre Dame Law School, Notre Dame, Indiana
- a1 Member Of The Indiana Bar.
- a2 Member Of The Indiana Bar.
- a3 Magistrate of the Saint Joseph Probate Court, South Bend, Indiana.

End of Document

© 2020 Thomson Reuters. No claim to original U.S. Government Works.

# **Section Three**

# **Mental Health Professionals in Family Law Cases**

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

## Section Three

### **Mental Health Professionals in Family Law Cases..... Dr. Michael J. Jenuwine, J.D., Ph.D.**

Ethical Principles of Psychologists and Code of Conduct

American Academy of Psychiatry and the Law – Ethics Guidelines for the Practice  
of Forensic Psychiatry

The National Association of Social Workers (NASW) - Code of Ethics

Specialty Guidelines for Forensic Psychology

# ETHICAL PRINCIPLES OF PSYCHOLOGISTS AND CODE OF CONDUCT

---

Adopted August 21, 2002

Effective June 1, 2003

(With the 2010 Amendments  
to Introduction and Applicability  
and Standards 1.02 and 1.03,  
Effective June 1, 2010)

With the 2016 Amendment  
to Standard 3.04

Adopted August 3, 2016

Effective January 1, 2017

# ETHICAL PRINCIPLES OF PSYCHOLOGISTS AND CODE OF CONDUCT

## CONTENTS

|  |                                    |  |                      |  |
|--|------------------------------------|--|----------------------|--|
| <b>INTRODUCTION AND APPLICABILITY</b>  | 4.02                               | Discussing the Limits of Confidentiality   | 8.04                 | Client/Patient, Student, and Subordinate Research Participants                             |
| <b>PREAMBLE</b>  | 4.03                               | Recording  | 8.05                 | Dispensing With Informed Consent for Research  |
| <b>GENERAL PRINCIPLES</b>  | 4.04                               | Minimizing Intrusions on Privacy   | 8.06                 | Offering Inducements for Research Participation  |
| Principle A: Beneficence and Nonmaleficence  | 4.05                               | Disclosures  | 8.07                 | Deception in Research  |
| Principle B: Fidelity and Responsibility   | 4.06                               | Consultations  | 8.08                 | Debriefing   |
| Principle C: Integrity   | 4.07                               | Use of Confidential Information for Didactic or Other Purposes                                       | 8.09                 | Humane Care and Use of Animals in Research   |
| Principle D: Justice   | <b>5.</b>                          | <b>Advertising and Other Public Statements</b>   | 8.10                 | Reporting Research Results   |
| Principle E: Respect for People's Rights and Dignity                                   | 5.01                               | Avoidance of False or Deceptive Statements   | 8.11                 | Plagiarism   |
| <b>ETHICAL STANDARDS</b>   | 5.02                               | Statements by Others   | 8.12                 | Publication Credit   |
| <b>1. Resolving Ethical Issues</b>   | 5.03                               | Descriptions of Workshops and Non-Degree-Granting Educational Programs                               | 8.13                 | Duplicate Publication of Data  |
| 1.01 Misuse of Psychologists' Work   | 5.04                               | Media Presentations  | 8.14                 | Sharing Research Data for Verification   |
| 1.02 Conflicts Between Ethics and Law, Regulations, or Other Governing Legal Authority | 5.05                               | Testimonials   | 8.15                 | Reviewers  |
| 1.03 Conflicts Between Ethics and Organizational Demands                               | 5.06                               | In-Person Solicitation   | <b>9. Assessment</b> |  |
| 1.04 Informal Resolution of Ethical Violations   | <b>6. Record Keeping and Fees</b>  |  | 9.01                 | Bases for Assessments  |
| 1.05 Reporting Ethical Violations  | 6.01                               | Documentation of Professional and Scientific Work and Maintenance of Records                         | 9.02                 | Use of Assessments   |
| 1.06 Cooperating With Ethics Committees  | 6.02                               | Maintenance, Dissemination, and Disposal of Confidential Records of Professional and Scientific Work | 9.03                 | Informed Consent in Assessments  |
| 1.07 Improper Complaints   | 6.03                               | Withholding Records for Nonpayment   | 9.04                 | Release of Test Data   |
| 1.08 Unfair Discrimination Against Complainants and Respondents                        | 6.04                               | Fees and Financial Arrangements  | 9.05                 | Test Construction  |
| <b>2. Competence</b>   | 6.05                               | Barter With Clients/Patients   | 9.06                 | Interpreting Assessment Results  |
| 2.01 Boundaries of Competence  | 6.06                               | Accuracy in Reports to Payors and Funding Sources  | 9.07                 | Assessment by Unqualified Persons  |
| 2.02 Providing Services in Emergencies   | 6.07                               | Referrals and Fees   | 9.08                 | Obsolete Tests and Outdated Test Results   |
| 2.03 Maintaining Competence  | <b>7. Education and Training</b>   |  | 9.09                 | Test Scoring and Interpretation Services   |
| 2.04 Bases for Scientific and Professional Judgments                                   | 7.01                               | Design of Education and Training Programs  | 9.10                 | Explaining Assessment Results  |
| 2.05 Delegation of Work to Others  | 7.02                               | Descriptions of Education and Training Programs  | 9.11                 | Maintaining Test Security  |
| 2.06 Personal Problems and Conflicts   | 7.03                               | Accuracy in Teaching   | <b>10. Therapy</b>   |  |
| <b>3. Human Relations</b>  | 7.04                               | Student Disclosure of Personal Information   | 10.01                | Informed Consent to Therapy  |
| 3.01 Unfair Discrimination   | 7.05                               | Mandatory Individual or Group Therapy  | 10.02                | Therapy Involving Couples or Families  |
| 3.02 Sexual Harassment   | 7.06                               | Assessing Student and Supervisee Performance   | 10.03                | Group Therapy  |
| 3.03 Other Harassment  | 7.07                               | Sexual Relationships With Students and Supervisees   | 10.04                | Providing Therapy to Those Served by Others  |
| 3.04 Avoiding Harm   | <b>8. Research and Publication</b> |  | 10.05                | Sexual Intimacies With Current Therapy Clients/Patients                                    |
| 3.05 Multiple Relationships  | 8.01                               | Institutional Approval   | 10.06                | Sexual Intimacies With Relatives or Significant Others of Current Therapy Clients/Patients |
| 3.06 Conflict of Interest  | 8.02                               | Informed Consent to Research   | 10.07                | Therapy With Former Sexual Partners  |
| 3.07 Third-Party Requests for Services   | 8.03                               | Informed Consent for Recording Voices and Images in Research   | 10.08                | Sexual Intimacies With Former Therapy Clients/Patients                                     |
| 3.08 Exploitative Relationships  |                                    |  | 10.09                | Interruption of Therapy  |
| 3.09 Cooperation With Other Professionals  |                                    |  | 10.10                | Terminating Therapy  |
| 3.10 Informed Consent  |                                    |  |                      |  |
| 3.11 Psychological Services Delivered to or Through Organizations                      |                                    |  |                      |  |
| 3.12 Interruption of Psychological Services  |                                    |  |                      |  |
| <b>4. Privacy and Confidentiality</b>  |                                    |  |                      |  |
| 4.01 Maintaining Confidentiality   |                                    |  |                      |  |

**AMENDMENTS TO THE 2002  
"ETHICAL PRINCIPLES OF  
PSYCHOLOGISTS AND CODE OF  
CONDUCT" IN 2010 AND 2016**

## INTRODUCTION AND APPLICABILITY

The American Psychological Association's (APA's) Ethical Principles of Psychologists and Code of Conduct (hereinafter referred to as the Ethics Code) consists of an Introduction, a Preamble, five General Principles (A-E), and specific Ethical Standards. The Introduction discusses the intent, organization, procedural considerations, and scope of application of the Ethics Code. The Preamble and General Principles are aspirational goals to guide psychologists toward the highest ideals of psychology. Although the Preamble and General Principles are not themselves enforceable rules, they should be considered by psychologists in arriving at an ethical course of action. The Ethical Standards set forth enforceable rules for conduct as psychologists. Most of the Ethical Standards are written broadly, in order to apply to psychologists in varied roles, although the application of an Ethical Standard may vary depending on the context. The Ethical Standards are not exhaustive. The fact that a given conduct is not specifically addressed by an Ethical Standard does not mean that it is necessarily either ethical or unethical.

This Ethics Code applies only to psychologists' activities that are part of their scientific, educational, or professional roles as psychologists. Areas covered include but are not limited to the clinical, counseling, and school practice of psychology; research; teaching; supervision of trainees; public service; policy development; social intervention; development of assessment instruments; conducting assessments; educational counseling; organizational consulting; forensic activities; program design and evaluation; and administration. This Ethics Code applies to these activities across a variety of contexts, such as in person, postal, telephone, Internet, and other electronic transmissions. These activities shall be distinguished from the purely private conduct of psychologists, which is not within the purview of the Ethics Code.

Membership in the APA commits members and student affiliates to comply with the standards of the APA Ethics Code and to the rules and procedures used to enforce them. Lack of awareness or misunderstanding of an Ethical Standard is not itself a defense to a charge of unethical conduct.

The procedures for filing, investigating, and resolving complaints of unethical conduct are described in the current Rules and Procedures of the APA Ethics Committee. APA may impose sanctions on its members for violations of the standards of the Ethics Code, including termination of APA membership, and may notify other bodies and individuals of its actions. Actions that violate the standards of the Ethics Code may also lead to the imposition of sanctions on psychologists or students whether or not they are APA members by bodies other than APA, including state psychological associations, other professional groups, psychology boards, other state or federal agencies, and payors for health services.

In addition, APA may take action against a member after his or her conviction of a felony, expulsion or suspension from an affiliated state psychological association, or suspension or loss of licensure. When the sanction to be imposed by APA is less than expulsion, the 2001 Rules and Procedures do not guarantee an opportunity for an in-person hearing, but generally provide that complaints will be resolved only on the basis of a submitted record.

The Ethics Code is intended to provide guidance for psychologists and standards of professional conduct that can be applied by the APA and by other bodies that choose to adopt them. The Ethics Code is not intended to be a basis of civil liability. Whether a psychologist has violated the Ethics Code standards does not by itself determine whether the psychologist is legally liable in a court action, whether a contract is enforceable, or whether other legal consequences occur.

---

The American Psychological Association's Council of Representatives adopted this version of the APA Ethics Code during its meeting on August 21, 2002. The Code became effective on June 1, 2003. The Council of Representatives amended this version of the Ethics Code on February 20, 2010, effective June 1, 2010, and on August 3, 2016, effective January 1, 2017. (see p. 16 of this pamphlet). Inquiries concerning the substance or interpretation of the APA Ethics Code should be addressed to the Office of Ethics, American Psychological Association, 750 First St. NE, Washington, DC 20002-4242. This Ethics Code and information regarding the Code can be found on the APA website, <http://www.apa.org/ethics>. The standards in this Ethics Code will be used to adjudicate complaints brought concerning alleged conduct occurring on or after the effective date. Complaints will be adjudicated on the basis of the version of the Ethics Code that was in effect at the time the conduct occurred.

The APA has previously published its Ethics Code, or amendments thereto, as follows:

- American Psychological Association. (1953). *Ethical standards of psychologists*. Washington, DC: Author.
  - American Psychological Association. (1959). Ethical standards of psychologists. *American Psychologist*, 14, 279-282.
  - American Psychological Association. (1963). Ethical standards of psychologists. *American Psychologist*, 18, 56-60.
  - American Psychological Association. (1968). Ethical standards of psychologists. *American Psychologist*, 23, 357-361.
  - American Psychological Association. (1977, March). Ethical standards of psychologists. *APA Monitor*, 22-23.
  - American Psychological Association. (1979). *Ethical standards of psychologists*. Washington, DC: Author.
  - American Psychological Association. (1981). Ethical principles of psychologists. *American Psychologist*, 36, 633-638.
  - American Psychological Association. (1990). Ethical principles of psychologists (Amended June 2, 1989). *American Psychologist*, 45, 390-395.
  - American Psychological Association. (1992). Ethical principles of psychologists and code of conduct. *American Psychologist*, 47, 1597-1611.
  - American Psychological Association. (2002). Ethical principles of psychologists and code of conduct. *American Psychologist*, 57, 1060-1073.
  - American Psychological Association. (2010). 2010 amendments to the 2002 "Ethical Principles of Psychologists and Code of Conduct." *American Psychologist*, 65, 493.
  - American Psychological Association. (2016). Revision of ethical standard 3.04 of the "Ethical Principles of Psychologists and Code of Conduct" (2002, as amended 2010). *American Psychologist*, 71, 900.
- Request copies of the APA's Ethical Principles of Psychologists and Code of Conduct from the APA Order Department, 750 First St. NE, Washington, DC 20002-4242, or phone (202) 336-5510.

The modifiers used in some of the standards of this Ethics Code (e.g., *reasonably*, *appropriate*, *potentially*) are included in the standards when they would (1) allow professional judgment on the part of psychologists, (2) eliminate injustice or inequality that would occur without the modifier, (3) ensure applicability across the broad range of activities conducted by psychologists, or (4) guard against a set of rigid rules that might be quickly outdated. As used in this Ethics Code, the term *reasonable* means the prevailing professional judgment of psychologists engaged in similar activities in similar circumstances, given the knowledge the psychologist had or should have had at the time.

In the process of making decisions regarding their professional behavior, psychologists must consider this Ethics Code in addition to applicable laws and psychology board regulations. In applying the Ethics Code to their professional work, psychologists may consider other materials and guidelines that have been adopted or endorsed by scientific and professional psychological organizations and the dictates of their own conscience, as well as consult with others within the field. If this Ethics Code establishes a higher standard of conduct than is required by law, psychologists must meet the higher ethical standard. If psychologists' ethical responsibilities conflict with law, regulations, or other governing legal authority, psychologists make known their commitment to this Ethics Code and take steps to resolve the conflict in a responsible manner in keeping with basic principles of human rights.

## **PREAMBLE**

Psychologists are committed to increasing scientific and professional knowledge of behavior and people's understanding of themselves and others and to the use of such knowledge to improve the condition of individuals, organizations, and society. Psychologists respect and protect civil and human rights and the central importance of freedom of inquiry and expression in research, teaching, and publication. They strive to help the public in developing informed judgments and choices concerning human behavior. In doing so, they perform many roles, such as researcher, educator, diagnostician, therapist, supervisor, consultant, administrator, social interventionist, and expert witness. This Ethics Code provides a common set of principles and standards upon which psychologists build their professional and scientific work.

This Ethics Code is intended to provide specific standards to cover most situations encountered by psychologists. It has as its goals the welfare and protection of the individuals and groups with whom psychologists work and the education of members, students, and the public regarding ethical standards of the discipline.

The development of a dynamic set of ethical standards for psychologists' work-related conduct requires a

personal commitment and lifelong effort to act ethically; to encourage ethical behavior by students, supervisees, employees, and colleagues; and to consult with others concerning ethical problems.

## **GENERAL PRINCIPLES**

This section consists of General Principles. General Principles, as opposed to Ethical Standards, are aspirational in nature. Their intent is to guide and inspire psychologists toward the very highest ethical ideals of the profession. General Principles, in contrast to Ethical Standards, do not represent obligations and should not form the basis for imposing sanctions. Relying upon General Principles for either of these reasons distorts both their meaning and purpose.

### **Principle A: Beneficence and Nonmaleficence**

Psychologists strive to benefit those with whom they work and take care to do no harm. In their professional actions, psychologists seek to safeguard the welfare and rights of those with whom they interact professionally and other affected persons, and the welfare of animal subjects of research. When conflicts occur among psychologists' obligations or concerns, they attempt to resolve these conflicts in a responsible fashion that avoids or minimizes harm. Because psychologists' scientific and professional judgments and actions may affect the lives of others, they are alert to and guard against personal, financial, social, organizational, or political factors that might lead to misuse of their influence. Psychologists strive to be aware of the possible effect of their own physical and mental health on their ability to help those with whom they work.

### **Principle B: Fidelity and Responsibility**

Psychologists establish relationships of trust with those with whom they work. They are aware of their professional and scientific responsibilities to society and to the specific communities in which they work. Psychologists uphold professional standards of conduct, clarify their professional roles and obligations, accept appropriate responsibility for their behavior, and seek to manage conflicts of interest that could lead to exploitation or harm. Psychologists consult with, refer to, or cooperate with other professionals and institutions to the extent needed to serve the best interests of those with whom they work. They are concerned about the ethical compliance of their colleagues' scientific and professional conduct. Psychologists strive to contribute a portion of their professional time for little or no compensation or personal advantage.

### **Principle C: Integrity**

Psychologists seek to promote accuracy, honesty, and truthfulness in the science, teaching, and practice of

psychology. In these activities psychologists do not steal, cheat, or engage in fraud, subterfuge, or intentional misrepresentation of fact. Psychologists strive to keep their promises and to avoid unwise or unclear commitments. In situations in which deception may be ethically justifiable to maximize benefits and minimize harm, psychologists have a serious obligation to consider the need for, the possible consequences of, and their responsibility to correct any resulting mistrust or other harmful effects that arise from the use of such techniques.

### **Principle D: Justice**

Psychologists recognize that fairness and justice entitle all persons to access to and benefit from the contributions of psychology and to equal quality in the processes, procedures, and services being conducted by psychologists. Psychologists exercise reasonable judgment and take precautions to ensure that their potential biases, the boundaries of their competence, and the limitations of their expertise do not lead to or condone unjust practices.

### **Principle E: Respect for People's Rights and Dignity**

Psychologists respect the dignity and worth of all people, and the rights of individuals to privacy, confidentiality, and self-determination. Psychologists are aware that special safeguards may be necessary to protect the rights and welfare of persons or communities whose vulnerabilities impair autonomous decision making. Psychologists are aware of and respect cultural, individual, and role differences, including those based on age, gender, gender identity, race, ethnicity, culture, national origin, religion, sexual orientation, disability, language, and socioeconomic status, and consider these factors when working with members of such groups. Psychologists try to eliminate the effect on their work of biases based on those factors, and they do not knowingly participate in or condone activities of others based upon such prejudices.

## **ETHICAL STANDARDS**

### **1. Resolving Ethical Issues**

#### **1.01 Misuse of Psychologists' Work**

If psychologists learn of misuse or misrepresentation of their work, they take reasonable steps to correct or minimize the misuse or misrepresentation.

#### **1.02 Conflicts Between Ethics and Law, Regulations, or Other Governing Legal Authority**

If psychologists' ethical responsibilities conflict with law, regulations, or other governing legal authority, psychologists clarify the nature of the conflict, make known their commitment to the Ethics Code, and take reasonable

steps to resolve the conflict consistent with the General Principles and Ethical Standards of the Ethics Code. Under no circumstances may this standard be used to justify or defend violating human rights.

#### **1.03 Conflicts Between Ethics and Organizational Demands**

If the demands of an organization with which psychologists are affiliated or for whom they are working are in conflict with this Ethics Code, psychologists clarify the nature of the conflict, make known their commitment to the Ethics Code, and take reasonable steps to resolve the conflict consistent with the General Principles and Ethical Standards of the Ethics Code. Under no circumstances may this standard be used to justify or defend violating human rights.

#### **1.04 Informal Resolution of Ethical Violations**

When psychologists believe that there may have been an ethical violation by another psychologist, they attempt to resolve the issue by bringing it to the attention of that individual, if an informal resolution appears appropriate and the intervention does not violate any confidentiality rights that may be involved. (See also Standards 1.02, Conflicts Between Ethics and Law, Regulations, or Other Governing Legal Authority, and 1.03, Conflicts Between Ethics and Organizational Demands.)

#### **1.05 Reporting Ethical Violations**

If an apparent ethical violation has substantially harmed or is likely to substantially harm a person or organization and is not appropriate for informal resolution under Standard 1.04, Informal Resolution of Ethical Violations, or is not resolved properly in that fashion, psychologists take further action appropriate to the situation. Such action might include referral to state or national committees on professional ethics, to state licensing boards, or to the appropriate institutional authorities. This standard does not apply when an intervention would violate confidentiality rights or when psychologists have been retained to review the work of another psychologist whose professional conduct is in question. (See also Standard 1.02, Conflicts Between Ethics and Law, Regulations, or Other Governing Legal Authority.)

#### **1.06 Cooperating with Ethics Committees**

Psychologists cooperate in ethics investigations, proceedings, and resulting requirements of the APA or any affiliated state psychological association to which they belong. In doing so, they address any confidentiality issues. Failure to cooperate is itself an ethics violation. However, making a request for deferment of adjudication of an ethics complaint pending the outcome of litigation does not alone constitute noncooperation.

## **1.07 Improper Complaints**

Psychologists do not file or encourage the filing of ethics complaints that are made with reckless disregard for or willful ignorance of facts that would disprove the allegation.

## **1.08 Unfair Discrimination Against Complainants and Respondents**

Psychologists do not deny persons employment, advancement, admissions to academic or other programs, tenure, or promotion, based solely upon their having made or their being the subject of an ethics complaint. This does not preclude taking action based upon the outcome of such proceedings or considering other appropriate information.

## **2. Competence**

### **2.01 Boundaries of Competence**

(a) Psychologists provide services, teach, and conduct research with populations and in areas only within the boundaries of their competence, based on their education, training, supervised experience, consultation, study, or professional experience.

(b) Where scientific or professional knowledge in the discipline of psychology establishes that an understanding of factors associated with age, gender, gender identity, race, ethnicity, culture, national origin, religion, sexual orientation, disability, language, or socioeconomic status is essential for effective implementation of their services or research, psychologists have or obtain the training, experience, consultation, or supervision necessary to ensure the competence of their services, or they make appropriate referrals, except as provided in Standard 2.02, Providing Services in Emergencies.

(c) Psychologists planning to provide services, teach, or conduct research involving populations, areas, techniques, or technologies new to them undertake relevant education, training, supervised experience, consultation, or study.

(d) When psychologists are asked to provide services to individuals for whom appropriate mental health services are not available and for which psychologists have not obtained the competence necessary, psychologists with closely related prior training or experience may provide such services in order to ensure that services are not denied if they make a reasonable effort to obtain the competence required by using relevant research, training, consultation, or study.

(e) In those emerging areas in which generally recognized standards for preparatory training do not yet exist, psychologists nevertheless take reasonable steps to ensure the competence of their work and to protect clients/patients, students, supervisees, research participants, organizational clients, and others from harm.

(f) When assuming forensic roles, psychologists are

or become reasonably familiar with the judicial or administrative rules governing their roles.

### **2.02 Providing Services in Emergencies**

In emergencies, when psychologists provide services to individuals for whom other mental health services are not available and for which psychologists have not obtained the necessary training, psychologists may provide such services in order to ensure that services are not denied. The services are discontinued as soon as the emergency has ended or appropriate services are available.

### **2.03 Maintaining Competence**

Psychologists undertake ongoing efforts to develop and maintain their competence.

### **2.04 Bases for Scientific and Professional Judgments**

Psychologists' work is based upon established scientific and professional knowledge of the discipline. (See also Standards 2.01e, Boundaries of Competence, and 10.01b, Informed Consent to Therapy.)

### **2.05 Delegation of Work to Others**

Psychologists who delegate work to employees, supervisees, or research or teaching assistants or who use the services of others, such as interpreters, take reasonable steps to (1) avoid delegating such work to persons who have a multiple relationship with those being served that would likely lead to exploitation or loss of objectivity; (2) authorize only those responsibilities that such persons can be expected to perform competently on the basis of their education, training, or experience, either independently or with the level of supervision being provided; and (3) see that such persons perform these services competently. (See also Standards 2.02, Providing Services in Emergencies; 3.05, Multiple Relationships; 4.01, Maintaining Confidentiality; 9.01, Bases for Assessments; 9.02, Use of Assessments; 9.03, Informed Consent in Assessments; and 9.07, Assessment by Unqualified Persons.)

### **2.06 Personal Problems and Conflicts**

(a) Psychologists refrain from initiating an activity when they know or should know that there is a substantial likelihood that their personal problems will prevent them from performing their work-related activities in a competent manner.

(b) When psychologists become aware of personal problems that may interfere with their performing work-related duties adequately, they take appropriate measures, such as obtaining professional consultation or assistance, and determine whether they should limit, suspend, or terminate their work-related duties. (See also Standard 10.10, Terminating Therapy.)

### **3. Human Relations**

#### **3.01 Unfair Discrimination**

In their work-related activities, psychologists do not engage in unfair discrimination based on age, gender, gender identity, race, ethnicity, culture, national origin, religion, sexual orientation, disability, socioeconomic status, or any basis proscribed by law.

#### **3.02 Sexual Harassment**

Psychologists do not engage in sexual harassment. Sexual harassment is sexual solicitation, physical advances, or verbal or nonverbal conduct that is sexual in nature, that occurs in connection with the psychologist's activities or roles as a psychologist, and that either (1) is unwelcome, is offensive, or creates a hostile workplace or educational environment, and the psychologist knows or is told this or (2) is sufficiently severe or intense to be abusive to a reasonable person in the context. Sexual harassment can consist of a single intense or severe act or of multiple persistent or pervasive acts. (See also Standard 1.08, Unfair Discrimination Against Complainants and Respondents.)

#### **3.03 Other Harassment**

Psychologists do not knowingly engage in behavior that is harassing or demeaning to persons with whom they interact in their work based on factors such as those persons' age, gender, gender identity, race, ethnicity, culture, national origin, religion, sexual orientation, disability, language, or socioeconomic status.

#### **3.04 Avoiding Harm**

(a) Psychologists take reasonable steps to avoid harming their clients/patients, students, supervisees, research participants, organizational clients, and others with whom they work, and to minimize harm where it is foreseeable and unavoidable.

(b) Psychologists do not participate in, facilitate, assist, or otherwise engage in torture, defined as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person, or in any other cruel, inhuman, or degrading behavior that violates 3.04a.

#### **3.05 Multiple Relationships**

(a) A multiple relationship occurs when a psychologist is in a professional role with a person and (1) at the same time is in another role with the same person, (2) at the same time is in a relationship with a person closely associated with or related to the person with whom the psychologist has the professional relationship, or (3) promises to enter into another relationship in the future with the person or a person closely associated with or related to the person.

A psychologist refrains from entering into a multiple relationship if the multiple relationship could reasonably be expected to impair the psychologist's objectivity, competence, or effectiveness in performing his or her functions as a psychologist, or otherwise risks exploitation or harm to the person with whom the professional relationship exists.

Multiple relationships that would not reasonably be expected to cause impairment or risk exploitation or harm are not unethical.

(b) If a psychologist finds that, due to unforeseen factors, a potentially harmful multiple relationship has arisen, the psychologist takes reasonable steps to resolve it with due regard for the best interests of the affected person and maximal compliance with the Ethics Code.

(c) When psychologists are required by law, institutional policy, or extraordinary circumstances to serve in more than one role in judicial or administrative proceedings, at the outset they clarify role expectations and the extent of confidentiality and thereafter as changes occur. (See also Standards 3.04, Avoiding Harm, and 3.07, Third-Party Requests for Services.)

#### **3.06 Conflict of Interest**

Psychologists refrain from taking on a professional role when personal, scientific, professional, legal, financial, or other interests or relationships could reasonably be expected to (1) impair their objectivity, competence, or effectiveness in performing their functions as psychologists or (2) expose the person or organization with whom the professional relationship exists to harm or exploitation.

#### **3.07 Third-Party Requests for Services**

When psychologists agree to provide services to a person or entity at the request of a third party, psychologists attempt to clarify at the outset of the service the nature of the relationship with all individuals or organizations involved. This clarification includes the role of the psychologist (e.g., therapist, consultant, diagnostician, or expert witness), an identification of who is the client, the probable uses of the services provided or the information obtained, and the fact that there may be limits to confidentiality. (See also Standards 3.05, Multiple relationships, and 4.02, Discussing the Limits of Confidentiality.)

#### **3.08 Exploitative Relationships**

Psychologists do not exploit persons over whom they have supervisory, evaluative or other authority such as clients/patients, students, supervisees, research participants, and employees. (See also Standards 3.05, Multiple Relationships; 6.04, Fees and Financial Arrangements; 6.05, Barter with Clients/Patients; 7.07, Sexual Relationships with Students and Supervisees; 10.05, Sexual Intima-

cies with Current Therapy Clients/Patients; 10.06, Sexual Intimacies with Relatives or Significant Others of Current Therapy Clients/Patients; 10.07, Therapy with Former Sexual Partners; and 10.08, Sexual Intimacies with Former Therapy Clients/Patients.)

### **3.09 Cooperation with Other Professionals**

When indicated and professionally appropriate, psychologists cooperate with other professionals in order to serve their clients/patients effectively and appropriately. (See also Standard 4.05, Disclosures.)

### **3.10 Informed Consent**

(a) When psychologists conduct research or provide assessment, therapy, counseling, or consulting services in person or via electronic transmission or other forms of communication, they obtain the informed consent of the individual or individuals using language that is reasonably understandable to that person or persons except when conducting such activities without consent is mandated by law or governmental regulation or as otherwise provided in this Ethics Code. (See also Standards 8.02, Informed Consent to Research; 9.03, Informed Consent in Assessments; and 10.01, Informed Consent to Therapy.)

(b) For persons who are legally incapable of giving informed consent, psychologists nevertheless (1) provide an appropriate explanation, (2) seek the individual's assent, (3) consider such persons' preferences and best interests, and (4) obtain appropriate permission from a legally authorized person, if such substitute consent is permitted or required by law. When consent by a legally authorized person is not permitted or required by law, psychologists take reasonable steps to protect the individual's rights and welfare.

(c) When psychological services are court ordered or otherwise mandated, psychologists inform the individual of the nature of the anticipated services, including whether the services are court ordered or mandated and any limits of confidentiality, before proceeding.

(d) Psychologists appropriately document written or oral consent, permission, and assent. (See also Standards 8.02, Informed Consent to Research; 9.03, Informed Consent in Assessments; and 10.01, Informed Consent to Therapy.)

### **3.11 Psychological Services Delivered to or Through Organizations**

(a) Psychologists delivering services to or through organizations provide information beforehand to clients and when appropriate those directly affected by the services about (1) the nature and objectives of the services, (2) the intended recipients, (3) which of the individuals are clients, (4) the relationship the psychologist will have with each person and the organization, (5) the probable uses of services

provided and information obtained, (6) who will have access to the information, and (7) limits of confidentiality. As soon as feasible, they provide information about the results and conclusions of such services to appropriate persons.

(b) If psychologists will be precluded by law or by organizational roles from providing such information to particular individuals or groups, they so inform those individuals or groups at the outset of the service.

### **3.12 Interruption of Psychological Services**

Unless otherwise covered by contract, psychologists make reasonable efforts to plan for facilitating services in the event that psychological services are interrupted by factors such as the psychologist's illness, death, unavailability, relocation, or retirement or by the client's/patient's relocation or financial limitations. (See also Standard 6.02c, Maintenance, Dissemination, and Disposal of Confidential Records of Professional and Scientific Work.)

## **4. Privacy and Confidentiality**

### **4.01 Maintaining Confidentiality**

Psychologists have a primary obligation and take reasonable precautions to protect confidential information obtained through or stored in any medium, recognizing that the extent and limits of confidentiality may be regulated by law or established by institutional rules or professional or scientific relationship. (See also Standard 2.05, Delegation of Work to Others.)

### **4.02 Discussing the Limits of Confidentiality**

(a) Psychologists discuss with persons (including, to the extent feasible, persons who are legally incapable of giving informed consent and their legal representatives) and organizations with whom they establish a scientific or professional relationship (1) the relevant limits of confidentiality and (2) the foreseeable uses of the information generated through their psychological activities. (See also Standard 3.10, Informed Consent.)

(b) Unless it is not feasible or is contraindicated, the discussion of confidentiality occurs at the outset of the relationship and thereafter as new circumstances may warrant.

(c) Psychologists who offer services, products, or information via electronic transmission inform clients/patients of the risks to privacy and limits of confidentiality.

### **4.03 Recording**

Before recording the voices or images of individuals to whom they provide services, psychologists obtain permission from all such persons or their legal representatives. (See also Standards 8.03, Informed Consent for Recording Voices and Images in Research; 8.05, Dispensing with Informed Consent for Research; and 8.07, Deception in Research.)

#### **4.04 Minimizing Intrusions on Privacy**

(a) Psychologists include in written and oral reports and consultations, only information germane to the purpose for which the communication is made.

(b) Psychologists discuss confidential information obtained in their work only for appropriate scientific or professional purposes and only with persons clearly concerned with such matters.

#### **4.05 Disclosures**

(a) Psychologists may disclose confidential information with the appropriate consent of the organizational client, the individual client/patient, or another legally authorized person on behalf of the client/patient unless prohibited by law.

(b) Psychologists disclose confidential information without the consent of the individual only as mandated by law, or where permitted by law for a valid purpose such as to (1) provide needed professional services; (2) obtain appropriate professional consultations; (3) protect the client/patient, psychologist, or others from harm; or (4) obtain payment for services from a client/patient, in which instance disclosure is limited to the minimum that is necessary to achieve the purpose. (See also Standard 6.04e, Fees and Financial Arrangements.)

#### **4.06 Consultations**

When consulting with colleagues, (1) psychologists do not disclose confidential information that reasonably could lead to the identification of a client/patient, research participant, or other person or organization with whom they have a confidential relationship unless they have obtained the prior consent of the person or organization or the disclosure cannot be avoided, and (2) they disclose information only to the extent necessary to achieve the purposes of the consultation. (See also Standard 4.01, Maintaining Confidentiality.)

#### **4.07 Use of Confidential Information for Didactic or Other Purposes**

Psychologists do not disclose in their writings, lectures, or other public media, confidential, personally identifiable information concerning their clients/patients, students, research participants, organizational clients, or other recipients of their services that they obtained during the course of their work, unless (1) they take reasonable steps to disguise the person or organization, (2) the person or organization has consented in writing, or (3) there is legal authorization for doing so.

### **5. Advertising and Other Public Statements**

#### **5.01 Avoidance of False or Deceptive Statements**

(a) Public statements include but are not limited to paid or unpaid advertising, product endorsements, grant applications, licensing applications, other credentialing applications, brochures, printed matter, directory listings, personal resumes or curricula vitae, or comments for use in media such as print or electronic transmission, statements in legal proceedings, lectures and public oral presentations, and published materials. Psychologists do not knowingly make public statements that are false, deceptive, or fraudulent concerning their research, practice, or other work activities or those of persons or organizations with which they are affiliated.

(b) Psychologists do not make false, deceptive, or fraudulent statements concerning (1) their training, experience, or competence; (2) their academic degrees; (3) their credentials; (4) their institutional or association affiliations; (5) their services; (6) the scientific or clinical basis for, or results or degree of success of, their services; (7) their fees; or (8) their publications or research findings.

(c) Psychologists claim degrees as credentials for their health services only if those degrees (1) were earned from a regionally accredited educational institution or (2) were the basis for psychology licensure by the state in which they practice.

#### **5.02 Statements by Others**

(a) Psychologists who engage others to create or place public statements that promote their professional practice, products, or activities retain professional responsibility for such statements.

(b) Psychologists do not compensate employees of press, radio, television, or other communication media in return for publicity in a news item. (See also Standard 1.01, Misuse of Psychologists' Work.)

(c) A paid advertisement relating to psychologists' activities must be identified or clearly recognizable as such.

#### **5.03 Descriptions of Workshops and Non-Degree-Granting Educational Programs**

To the degree to which they exercise control, psychologists responsible for announcements, catalogs, brochures, or advertisements describing workshops, seminars, or other non-degree-granting educational programs ensure that they accurately describe the audience for which the program is intended, the educational objectives, the presenters, and the fees involved.

#### **5.04 Media Presentations**

When psychologists provide public advice or comment via print, Internet, or other electronic transmission,

they take precautions to ensure that statements (1) are based on their professional knowledge, training, or experience in accord with appropriate psychological literature and practice; (2) are otherwise consistent with this Ethics Code; and (3) do not indicate that a professional relationship has been established with the recipient. (See also Standard 2.04, Bases for Scientific and Professional Judgments.)

### **5.05 Testimonials**

Psychologists do not solicit testimonials from current therapy clients/patients or other persons who because of their particular circumstances are vulnerable to undue influence.

### **5.06 In-Person Solicitation**

Psychologists do not engage, directly or through agents, in uninvited in-person solicitation of business from actual or potential therapy clients/patients or other persons who because of their particular circumstances are vulnerable to undue influence. However, this prohibition does not preclude (1) attempting to implement appropriate collateral contacts for the purpose of benefiting an already engaged therapy client/patient or (2) providing disaster or community outreach services.

## **6. Record Keeping and Fees**

### **6.01 Documentation of Professional and Scientific Work and Maintenance of Records**

Psychologists create, and to the extent the records are under their control, maintain, disseminate, store, retain, and dispose of records and data relating to their professional and scientific work in order to (1) facilitate provision of services later by them or by other professionals, (2) allow for replication of research design and analyses, (3) meet institutional requirements, (4) ensure accuracy of billing and payments, and (5) ensure compliance with law. (See also Standard 4.01, Maintaining Confidentiality.)

### **6.02 Maintenance, Dissemination, and Disposal of Confidential Records of Professional and Scientific Work**

(a) Psychologists maintain confidentiality in creating, storing, accessing, transferring, and disposing of records under their control, whether these are written, automated, or in any other medium. (See also Standards 4.01, Maintaining Confidentiality, and 6.01, Documentation of Professional and Scientific Work and Maintenance of Records.)

(b) If confidential information concerning recipients of psychological services is entered into databases or systems of records available to persons whose access has not been consented to by the recipient, psychologists use coding or other techniques to avoid the inclusion of personal identifiers.

(c) Psychologists make plans in advance to facilitate the appropriate transfer and to protect the confidentiality of records and data in the event of psychologists' withdrawal from positions or practice. (See also Standards 3.12, Interruption of Psychological Services, and 10.09, Interruption of Therapy.)

### **6.03 Withholding Records for Nonpayment**

Psychologists may not withhold records under their control that are requested and needed for a client's/patient's emergency treatment solely because payment has not been received.

### **6.04 Fees and Financial Arrangements**

(a) As early as is feasible in a professional or scientific relationship, psychologists and recipients of psychological services reach an agreement specifying compensation and billing arrangements.

(b) Psychologists' fee practices are consistent with law.

(c) Psychologists do not misrepresent their fees.

(d) If limitations to services can be anticipated because of limitations in financing, this is discussed with the recipient of services as early as is feasible. (See also Standards 10.09, Interruption of Therapy, and 10.10, Terminating Therapy.)

(e) If the recipient of services does not pay for services as agreed, and if psychologists intend to use collection agencies or legal measures to collect the fees, psychologists first inform the person that such measures will be taken and provide that person an opportunity to make prompt payment. (See also Standards 4.05, Disclosures; 6.03, Withholding Records for Nonpayment; and 10.01, Informed Consent to Therapy.)

### **6.05 Barter with Clients/Patients**

Barter is the acceptance of goods, services, or other nonmonetary remuneration from clients/patients in return for psychological services. Psychologists may barter only if (1) it is not clinically contraindicated, and (2) the resulting arrangement is not exploitative. (See also Standards 3.05, Multiple Relationships, and 6.04, Fees and Financial Arrangements.)

### **6.06 Accuracy in Reports to Payors and Funding Sources**

In their reports to payors for services or sources of research funding, psychologists take reasonable steps to ensure the accurate reporting of the nature of the service provided or research conducted, the fees, charges, or payments, and where applicable, the identity of the provider, the findings, and the diagnosis. (See also Standards 4.01, Maintaining Confidentiality; 4.04, Minimizing Intrusions on Privacy; and 4.05, Disclosures.)

## **6.07 Referrals and Fees**

When psychologists pay, receive payment from, or divide fees with another professional, other than in an employer-employee relationship, the payment to each is based on the services provided (clinical, consultative, administrative, or other) and is not based on the referral itself. (See also Standard 3.09, Cooperation with Other Professionals.)

## **7. Education and Training**

### **7.01 Design of Education and Training Programs**

Psychologists responsible for education and training programs take reasonable steps to ensure that the programs are designed to provide the appropriate knowledge and proper experiences, and to meet the requirements for licensure, certification, or other goals for which claims are made by the program. (See also Standard 5.03, Descriptions of Workshops and Non-Degree-Granting Educational Programs.)

### **7.02 Descriptions of Education and Training Programs**

Psychologists responsible for education and training programs take reasonable steps to ensure that there is a current and accurate description of the program content (including participation in required course- or program-related counseling, psychotherapy, experiential groups, consulting projects, or community service), training goals and objectives, stipends and benefits, and requirements that must be met for satisfactory completion of the program. This information must be made readily available to all interested parties.

### **7.03 Accuracy in Teaching**

(a) Psychologists take reasonable steps to ensure that course syllabi are accurate regarding the subject matter to be covered, bases for evaluating progress, and the nature of course experiences. This standard does not preclude an instructor from modifying course content or requirements when the instructor considers it pedagogically necessary or desirable, so long as students are made aware of these modifications in a manner that enables them to fulfill course requirements. (See also Standard 5.01, Avoidance of False or Deceptive Statements.)

(b) When engaged in teaching or training, psychologists present psychological information accurately. (See also Standard 2.03, Maintaining Competence.)

### **7.04 Student Disclosure of Personal Information**

Psychologists do not require students or supervisees to disclose personal information in course- or program-related activities, either orally or in writing, regarding

sexual history, history of abuse and neglect, psychological treatment, and relationships with parents, peers, and spouses or significant others except if (1) the program or training facility has clearly identified this requirement in its admissions and program materials or (2) the information is necessary to evaluate or obtain assistance for students whose personal problems could reasonably be judged to be preventing them from performing their training- or professionally related activities in a competent manner or posing a threat to the students or others.

### **7.05 Mandatory Individual or Group Therapy**

(a) When individual or group therapy is a program or course requirement, psychologists responsible for that program allow students in undergraduate and graduate programs the option of selecting such therapy from practitioners unaffiliated with the program. (See also Standard 7.02, Descriptions of Education and Training Programs.)

(b) Faculty who are or are likely to be responsible for evaluating students' academic performance do not themselves provide that therapy. (See also Standard 3.05, Multiple Relationships.)

### **7.06 Assessing Student and Supervisee Performance**

(a) In academic and supervisory relationships, psychologists establish a timely and specific process for providing feedback to students and supervisees. Information regarding the process is provided to the student at the beginning of supervision.

(b) Psychologists evaluate students and supervisees on the basis of their actual performance on relevant and established program requirements.

### **7.07 Sexual Relationships with Students and Supervisees**

Psychologists do not engage in sexual relationships with students or supervisees who are in their department, agency, or training center or over whom psychologists have or are likely to have evaluative authority. (See also Standard 3.05, Multiple Relationships.)

## **8. Research and Publication**

### **8.01 Institutional Approval**

When institutional approval is required, psychologists provide accurate information about their research proposals and obtain approval prior to conducting the research. They conduct the research in accordance with the approved research protocol.

### **8.02 Informed Consent to Research**

(a) When obtaining informed consent as required in Standard 3.10, Informed Consent, psychologists inform participants about (1) the purpose of the research, expect-

ed duration, and procedures; (2) their right to decline to participate and to withdraw from the research once participation has begun; (3) the foreseeable consequences of declining or withdrawing; (4) reasonably foreseeable factors that may be expected to influence their willingness to participate such as potential risks, discomfort, or adverse effects; (5) any prospective research benefits; (6) limits of confidentiality; (7) incentives for participation; and (8) whom to contact for questions about the research and research participants' rights. They provide opportunity for the prospective participants to ask questions and receive answers. (See also Standards 8.03, Informed Consent for Recording Voices and Images in Research; 8.05, Dispensing with Informed Consent for Research; and 8.07, Deception in Research.)

(b) Psychologists conducting intervention research involving the use of experimental treatments clarify to participants at the outset of the research (1) the experimental nature of the treatment; (2) the services that will or will not be available to the control group(s) if appropriate; (3) the means by which assignment to treatment and control groups will be made; (4) available treatment alternatives if an individual does not wish to participate in the research or wishes to withdraw once a study has begun; and (5) compensation for or monetary costs of participating including, if appropriate, whether reimbursement from the participant or a third-party payor will be sought. (See also Standard 8.02a, Informed Consent to Research.)

### **8.03 Informed Consent for Recording Voices and Images in Research**

Psychologists obtain informed consent from research participants prior to recording their voices or images for data collection unless (1) the research consists solely of naturalistic observations in public places, and it is not anticipated that the recording will be used in a manner that could cause personal identification or harm, or (2) the research design includes deception, and consent for the use of the recording is obtained during debriefing. (See also Standard 8.07, Deception in Research.)

### **8.04 Client/Patient, Student, and Subordinate Research Participants**

(a) When psychologists conduct research with clients/patients, students, or subordinates as participants, psychologists take steps to protect the prospective participants from adverse consequences of declining or withdrawing from participation.

(b) When research participation is a course requirement or an opportunity for extra credit, the prospective participant is given the choice of equitable alternative activities.

### **8.05 Dispensing with Informed Consent for Research**

Psychologists may dispense with informed consent only (1) where research would not reasonably be assumed to create distress or harm and involves (a) the study of normal educational practices, curricula, or classroom management methods conducted in educational settings; (b) only anonymous questionnaires, naturalistic observations, or archival research for which disclosure of responses would not place participants at risk of criminal or civil liability or damage their financial standing, employability, or reputation, and confidentiality is protected; or (c) the study of factors related to job or organization effectiveness conducted in organizational settings for which there is no risk to participants' employability, and confidentiality is protected or (2) where otherwise permitted by law or federal or institutional regulations.

### **8.06 Offering Inducements for Research Participation**

(a) Psychologists make reasonable efforts to avoid offering excessive or inappropriate financial or other inducements for research participation when such inducements are likely to coerce participation.

(b) When offering professional services as an inducement for research participation, psychologists clarify the nature of the services, as well as the risks, obligations, and limitations. (See also Standard 6.05, Barter with Clients/Patients.)

### **8.07 Deception in Research**

(a) Psychologists do not conduct a study involving deception unless they have determined that the use of deceptive techniques is justified by the study's significant prospective scientific, educational, or applied value and that effective nondeceptive alternative procedures are not feasible.

(b) Psychologists do not deceive prospective participants about research that is reasonably expected to cause physical pain or severe emotional distress.

(c) Psychologists explain any deception that is an integral feature of the design and conduct of an experiment to participants as early as is feasible, preferably at the conclusion of their participation, but no later than at the conclusion of the data collection, and permit participants to withdraw their data. (See also Standard 8.08, Debriefing.)

### **8.08 Debriefing**

(a) Psychologists provide a prompt opportunity for participants to obtain appropriate information about the nature, results, and conclusions of the research, and they take reasonable steps to correct any misconceptions that participants may have of which the psychologists are aware.

(b) If scientific or humane values justify delaying or withholding this information, psychologists take reasonable measures to reduce the risk of harm.

(c) When psychologists become aware that research procedures have harmed a participant, they take reasonable steps to minimize the harm.

### **8.09 Humane Care and Use of Animals in Research**

(a) Psychologists acquire, care for, use, and dispose of animals in compliance with current federal, state, and local laws and regulations, and with professional standards.

(b) Psychologists trained in research methods and experienced in the care of laboratory animals supervise all procedures involving animals and are responsible for ensuring appropriate consideration of their comfort, health, and humane treatment.

(c) Psychologists ensure that all individuals under their supervision who are using animals have received instruction in research methods and in the care, maintenance, and handling of the species being used, to the extent appropriate to their role. (See also Standard 2.05, Delegation of Work to Others.)

(d) Psychologists make reasonable efforts to minimize the discomfort, infection, illness, and pain of animal subjects.

(e) Psychologists use a procedure subjecting animals to pain, stress, or privation only when an alternative procedure is unavailable and the goal is justified by its prospective scientific, educational, or applied value.

(f) Psychologists perform surgical procedures under appropriate anesthesia and follow techniques to avoid infection and minimize pain during and after surgery.

(g) When it is appropriate that an animal's life be terminated, psychologists proceed rapidly, with an effort to minimize pain and in accordance with accepted procedures.

### **8.10 Reporting Research Results**

(a) Psychologists do not fabricate data. (See also Standard 5.01a, Avoidance of False or Deceptive Statements.)

(b) If psychologists discover significant errors in their published data, they take reasonable steps to correct such errors in a correction, retraction, erratum, or other appropriate publication means.

### **8.11 Plagiarism**

Psychologists do not present portions of another's work or data as their own, even if the other work or data source is cited occasionally.

### **8.12 Publication Credit**

(a) Psychologists take responsibility and credit, in-

cluding authorship credit, only for work they have actually performed or to which they have substantially contributed. (See also Standard 8.12b, Publication Credit.)

(b) Principal authorship and other publication credits accurately reflect the relative scientific or professional contributions of the individuals involved, regardless of their relative status. Mere possession of an institutional position, such as department chair, does not justify authorship credit. Minor contributions to the research or to the writing for publications are acknowledged appropriately, such as in footnotes or in an introductory statement.

(c) Except under exceptional circumstances, a student is listed as principal author on any multiple-authored article that is substantially based on the student's doctoral dissertation. Faculty advisors discuss publication credit with students as early as feasible and throughout the research and publication process as appropriate. (See also Standard 8.12b, Publication Credit.)

### **8.13 Duplicate Publication of Data**

Psychologists do not publish, as original data, data that have been previously published. This does not preclude republishing data when they are accompanied by proper acknowledgment.

### **8.14 Sharing Research Data for Verification**

(a) After research results are published, psychologists do not withhold the data on which their conclusions are based from other competent professionals who seek to verify the substantive claims through reanalysis and who intend to use such data only for that purpose, provided that the confidentiality of the participants can be protected and unless legal rights concerning proprietary data preclude their release. This does not preclude psychologists from requiring that such individuals or groups be responsible for costs associated with the provision of such information.

(b) Psychologists who request data from other psychologists to verify the substantive claims through reanalysis may use shared data only for the declared purpose. Requesting psychologists obtain prior written agreement for all other uses of the data.

### **8.15 Reviewers**

Psychologists who review material submitted for presentation, publication, grant, or research proposal review respect the confidentiality of and the proprietary rights in such information of those who submitted it.

## **9. Assessment**

### **9.01 Bases for Assessments**

(a) Psychologists base the opinions contained in their recommendations, reports, and diagnostic or evaluative statements, including forensic testimony, on informa-

tion and techniques sufficient to substantiate their findings. (See also Standard 2.04, Bases for Scientific and Professional Judgments.)

(b) Except as noted in 9.01c, psychologists provide opinions of the psychological characteristics of individuals only after they have conducted an examination of the individuals adequate to support their statements or conclusions. When, despite reasonable efforts, such an examination is not practical, psychologists document the efforts they made and the result of those efforts, clarify the probable impact of their limited information on the reliability and validity of their opinions, and appropriately limit the nature and extent of their conclusions or recommendations. (See also Standards 2.01, Boundaries of Competence, and 9.06, Interpreting Assessment Results.)

(c) When psychologists conduct a record review or provide consultation or supervision and an individual examination is not warranted or necessary for the opinion, psychologists explain this and the sources of information on which they based their conclusions and recommendations.

## 9.02 Use of Assessments

(a) Psychologists administer, adapt, score, interpret, or use assessment techniques, interviews, tests, or instruments in a manner and for purposes that are appropriate in light of the research on or evidence of the usefulness and proper application of the techniques.

(b) Psychologists use assessment instruments whose validity and reliability have been established for use with members of the population tested. When such validity or reliability has not been established, psychologists describe the strengths and limitations of test results and interpretation.

(c) Psychologists use assessment methods that are appropriate to an individual's language preference and competence, unless the use of an alternative language is relevant to the assessment issues.

## 9.03 Informed Consent in Assessments

(a) Psychologists obtain informed consent for assessments, evaluations, or diagnostic services, as described in Standard 3.10, Informed Consent, except when (1) testing is mandated by law or governmental regulations; (2) informed consent is implied because testing is conducted as a routine educational, institutional, or organizational activity (e.g., when participants voluntarily agree to assessment when applying for a job); or (3) one purpose of the testing is to evaluate decisional capacity. Informed consent includes an explanation of the nature and purpose of the assessment, fees, involvement of third parties, and limits of confidentiality and sufficient opportunity for the client/patient to ask questions and receive answers.

(b) Psychologists inform persons with questionable

capacity to consent or for whom testing is mandated by law or governmental regulations about the nature and purpose of the proposed assessment services, using language that is reasonably understandable to the person being assessed.

(c) Psychologists using the services of an interpreter obtain informed consent from the client/patient to use that interpreter, ensure that confidentiality of test results and test security are maintained, and include in their recommendations, reports, and diagnostic or evaluative statements, including forensic testimony, discussion of any limitations on the data obtained. (See also Standards 2.05, Delegation of Work to Others; 4.01, Maintaining Confidentiality; 9.01, Bases for Assessments; 9.06, Interpreting Assessment Results; and 9.07, Assessment by Unqualified Persons.)

## 9.04 Release of Test Data

(a) The term *test data* refers to raw and scaled scores, client/patient responses to test questions or stimuli, and psychologists' notes and recordings concerning client/patient statements and behavior during an examination. Those portions of test materials that include client/patient responses are included in the definition of *test data*. Pursuant to a client/patient release, psychologists provide test data to the client/patient or other persons identified in the release. Psychologists may refrain from releasing test data to protect a client/patient or others from substantial harm or misuse or misrepresentation of the data or the test, recognizing that in many instances release of confidential information under these circumstances is regulated by law. (See also Standard 9.11, Maintaining Test Security.)

(b) In the absence of a client/patient release, psychologists provide test data only as required by law or court order.

## 9.05 Test Construction

Psychologists who develop tests and other assessment techniques use appropriate psychometric procedures and current scientific or professional knowledge for test design, standardization, validation, reduction or elimination of bias, and recommendations for use.

## 9.06 Interpreting Assessment Results

When interpreting assessment results, including automated interpretations, psychologists take into account the purpose of the assessment as well as the various test factors, test-taking abilities, and other characteristics of the person being assessed, such as situational, personal, linguistic, and cultural differences, that might affect psychologists' judgments or reduce the accuracy of their interpretations. They indicate any significant limitations of their interpretations. (See also Standards 2.01b and c, Boundaries of Competence, and 3.01, Unfair Discrimination.)

### **9.07 Assessment by Unqualified Persons**

Psychologists do not promote the use of psychological assessment techniques by unqualified persons, except when such use is conducted for training purposes with appropriate supervision. (See also Standard 2.05, Delegation of Work to Others.)

### **9.08 Obsolete Tests and Outdated Test Results**

(a) Psychologists do not base their assessment or intervention decisions or recommendations on data or test results that are outdated for the current purpose.

(b) Psychologists do not base such decisions or recommendations on tests and measures that are obsolete and not useful for the current purpose.

### **9.09 Test Scoring and Interpretation Services**

(a) Psychologists who offer assessment or scoring services to other professionals accurately describe the purpose, norms, validity, reliability, and applications of the procedures and any special qualifications applicable to their use.

(b) Psychologists select scoring and interpretation services (including automated services) on the basis of evidence of the validity of the program and procedures as well as on other appropriate considerations. (See also Standard 2.01b and c, Boundaries of Competence.)

(c) Psychologists retain responsibility for the appropriate application, interpretation, and use of assessment instruments, whether they score and interpret such tests themselves or use automated or other services.

### **9.10 Explaining Assessment Results**

Regardless of whether the scoring and interpretation are done by psychologists, by employees or assistants, or by automated or other outside services, psychologists take reasonable steps to ensure that explanations of results are given to the individual or designated representative unless the nature of the relationship precludes provision of an explanation of results (such as in some organizational consulting, preemployment or security screenings, and forensic evaluations), and this fact has been clearly explained to the person being assessed in advance.

### **9.11 Maintaining Test Security**

The term *test materials* refers to manuals, instruments, protocols, and test questions or stimuli and does not include *test data* as defined in Standard 9.04, Release of Test Data. Psychologists make reasonable efforts to maintain the integrity and security of test materials and other assessment techniques consistent with law and contractual obligations, and in a manner that permits adherence to this Ethics Code.

## **10. Therapy**

### **10.01 Informed Consent to Therapy**

(a) When obtaining informed consent to therapy as required in Standard 3.10, Informed Consent, psychologists inform clients/patients as early as is feasible in the therapeutic relationship about the nature and anticipated course of therapy, fees, involvement of third parties, and limits of confidentiality and provide sufficient opportunity for the client/patient to ask questions and receive answers. (See also Standards 4.02, Discussing the Limits of Confidentiality, and 6.04, Fees and Financial Arrangements.)

(b) When obtaining informed consent for treatment for which generally recognized techniques and procedures have not been established, psychologists inform their clients/patients of the developing nature of the treatment, the potential risks involved, alternative treatments that may be available, and the voluntary nature of their participation. (See also Standards 2.01e, Boundaries of Competence, and 3.10, Informed Consent.)

(c) When the therapist is a trainee and the legal responsibility for the treatment provided resides with the supervisor, the client/patient, as part of the informed consent procedure, is informed that the therapist is in training and is being supervised and is given the name of the supervisor.

### **10.02 Therapy Involving Couples or Families**

(a) When psychologists agree to provide services to several persons who have a relationship (such as spouses, significant others, or parents and children), they take reasonable steps to clarify at the outset (1) which of the individuals are clients/patients and (2) the relationship the psychologist will have with each person. This clarification includes the psychologist's role and the probable uses of the services provided or the information obtained. (See also Standard 4.02, Discussing the Limits of Confidentiality.)

(b) If it becomes apparent that psychologists may be called on to perform potentially conflicting roles (such as family therapist and then witness for one party in divorce proceedings), psychologists take reasonable steps to clarify and modify, or withdraw from, roles appropriately. (See also Standard 3.05c, Multiple Relationships.)

### **10.03 Group Therapy**

When psychologists provide services to several persons in a group setting, they describe at the outset the roles and responsibilities of all parties and the limits of confidentiality.

#### **10.04 Providing Therapy to Those Served by Others**

In deciding whether to offer or provide services to those already receiving mental health services elsewhere, psychologists carefully consider the treatment issues and the potential client's/patient's welfare. Psychologists discuss these issues with the client/patient or another legally authorized person on behalf of the client/patient in order to minimize the risk of confusion and conflict, consult with the other service providers when appropriate, and proceed with caution and sensitivity to the therapeutic issues.

#### **10.05 Sexual Intimacies with Current Therapy Clients/Patients**

Psychologists do not engage in sexual intimacies with current therapy clients/patients.

#### **10.06 Sexual Intimacies with Relatives or Significant Others of Current Therapy Clients/Patients**

Psychologists do not engage in sexual intimacies with individuals they know to be close relatives, guardians, or significant others of current clients/patients. Psychologists do not terminate therapy to circumvent this standard.

#### **10.07 Therapy with Former Sexual Partners**

Psychologists do not accept as therapy clients/patients persons with whom they have engaged in sexual intimacies.

#### **10.08 Sexual Intimacies with Former Therapy Clients/Patients**

(a) Psychologists do not engage in sexual intimacies with former clients/patients for at least two years after cessation or termination of therapy.

(b) Psychologists do not engage in sexual intimacies with former clients/patients even after a two-year interval except in the most unusual circumstances. Psychologists who engage in such activity after the two years following cessation or termination of therapy and of having no sexual contact with the former client/patient bear the burden of demonstrating that there has been no exploitation, in light of all relevant factors, including (1) the amount of time that has passed since therapy terminated; (2) the nature, duration, and intensity of the therapy; (3) the circumstances of termination; (4) the client's/patient's personal history; (5) the client's/patient's current mental status; (6) the likelihood of adverse impact on the client/patient; and (7) any statements or actions made by the therapist during the course of therapy suggesting or inviting the possibility of a posttermination sexual or romantic relationship with the client/patient. (See also Standard 3.05, Multiple Relationships.)

#### **10.09 Interruption of Therapy**

When entering into employment or contractual relationships, psychologists make reasonable efforts to provide for orderly and appropriate resolution of responsibility for client/patient care in the event that the employment or contractual relationship ends, with paramount consideration given to the welfare of the client/patient. (See also Standard 3.12, Interruption of Psychological Services.)

#### **10.10 Terminating Therapy**

(a) Psychologists terminate therapy when it becomes reasonably clear that the client/patient no longer needs the service, is not likely to benefit, or is being harmed by continued service.

(b) Psychologists may terminate therapy when threatened or otherwise endangered by the client/patient or another person with whom the client/patient has a relationship.

(c) Except where precluded by the actions of clients/patients or third-party payors, prior to termination psychologists provide pretermination counseling and suggest alternative service providers as appropriate.

# AMENDMENTS TO THE 2002 “ETHICAL PRINCIPLES OF PSYCHOLOGISTS AND CODE OF CONDUCT” IN 2010 AND 2016

## 2010 Amendments

### Introduction and Applicability

If psychologists’ ethical responsibilities conflict with law, regulations, or other governing legal authority, psychologists make known their commitment to this Ethics Code and take steps to resolve the conflict in a responsible manner. ~~If the conflict is unresolvable via such means, psychologists may adhere to the requirements of the law, regulations, or other governing authority in keeping with basic principles of human rights.~~

### 1.02 Conflicts Between Ethics and Law, Regulations, or Other Governing Legal Authority

If psychologists’ ethical responsibilities conflict with law, regulations, or other governing legal authority, psychologists clarify the nature of the conflict, make known their commitment to the Ethics Code, and take reasonable steps to resolve the conflict consistent with the General Principles and Ethical Standards of the Ethics Code. ~~If the conflict is unresolvable via such means, psychologists may adhere to the requirements of the law, regulations, or other governing legal authority, Under no circumstances may this standard be used to justify or defend violating human rights.~~

### 1.03 Conflicts Between Ethics and Organizational Demands

If the demands of an organization with which psychologists are affiliated or for whom they are working are in conflict with this Ethics Code, psychologists clarify the nature of the conflict, make known their commitment to the Ethics Code, and to the extent feasible, resolve the conflict in a way that permits adherence to the Ethics Code. take reasonable steps to resolve the conflict consistent with the General Principles and Ethical Standards of the Ethics Code. Under no circumstances may this standard be used to justify or defend violating human rights.

---

## 2016 Amendment

### 3.04 Avoiding Harm

(a) Psychologists take reasonable steps to avoid harming their clients/patients, students, supervisees, research participants, organizational clients, and others with whom they work, and to minimize harm where it is foreseeable and unavoidable.

(b) Psychologists do not participate in, facilitate, assist, or otherwise engage in torture, defined as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person, or in any other cruel, inhuman, or degrading behavior that violates 3.04a.



AMERICAN  
PSYCHOLOGICAL  
ASSOCIATION

750 First Street, NE  
Washington, DC 20002-4242

[www.apa.org](http://www.apa.org)

Printed in the United States of America

**AMERICAN ACADEMY OF PSYCHIATRY AND THE LAW**  
**ETHICS GUIDELINES FOR THE PRACTICE OF FORENSIC PSYCHIATRY**

Adopted May 2005

**I. Preamble**

The American Academy of Psychiatry and the Law (AAPL) is dedicated to the highest standards of practice in forensic psychiatry. Recognizing the unique aspects of this practice, which is at the interface of the professions of psychiatry and the law, the Academy presents these guidelines for the ethical practice of forensic psychiatry.

**Commentary**

Forensic Psychiatry is a subspecialty of psychiatry in which scientific and clinical expertise is applied in legal contexts involving civil, criminal, correctional, regulatory or legislative matters, and in specialized clinical consultations in areas such as risk assessment or employment. These guidelines apply to psychiatrists practicing in a forensic role.

These guidelines supplement the Annotations Especially Applicable to Psychiatry of the American Psychiatric Association to the Principles of Medical Ethics of the American Medical Association.

Forensic psychiatrists practice at the interface of law and psychiatry, each of which has developed its own institutions, policies, procedures, values, and vocabulary. As a consequence, the practice of forensic psychiatry entails inherent potentials for complications, conflicts, misunderstandings and abuses.

Psychiatrists in a forensic role are called upon to practice in a manner that balances competing duties to the individual and to society. In doing so, they should be bound by underlying ethical principles of respect for persons, honesty, justice, and social responsibility. However, when a treatment relationship exists, such as in correctional settings, the usual physician-patient duties apply.

**II. Confidentiality**

Respect for the individual's right of privacy and the maintenance of confidentiality should be major concerns when performing forensic evaluations. Psychiatrists should maintain confidentiality to the extent possible, given the legal context. Special attention should be paid to the evaluatee's understanding of medical confidentiality. A forensic evaluation requires notice to the evaluatee and to collateral sources of reasonably anticipated limitations on confidentiality. Information or reports derived from a forensic evaluation are subject to the rules of confidentiality that apply to the particular evaluation, and any disclosure should be restricted accordingly.

**Commentary**

The practice of forensic psychiatry often presents significant problems regarding confidentiality. Psychiatrists should be aware of and alert to those issues of privacy and confidentiality presented by the particular forensic situation. Notice of reasonably anticipated limitations to confidentiality should be given to evaluatees, third parties, and other appropriate individuals. Psychiatrists should indicate for whom they are conducting the examination and what they will do with the information

obtained. At the beginning of a forensic evaluation, care should be taken to explicitly inform the evaluatee that the psychiatrist is not the evaluatee's "doctor." Psychiatrists have a continuing obligation to be sensitive to the fact that although a warning has been given, the evaluatee may develop the belief that there is a treatment relationship. Psychiatrists should take precautions to ensure that they do not release confidential information to unauthorized persons.

When a patient is involved in parole, probation, conditional release, or in other custodial or mandatory settings, psychiatrists should be clear about limitations on confidentiality in the treatment relationship and ensure that these limitations are communicated to the patient. Psychiatrists should be familiar with the institutional policies regarding confidentiality. When no policy exists, psychiatrists should attempt to clarify these matters with the institutional authorities and develop working guidelines.

### **III. Consent**

At the outset of a face-to-face evaluation, notice should be given to the evaluatee of the nature and purpose of the evaluation and the limits of its confidentiality. The informed consent of the person undergoing the forensic evaluation should be obtained when necessary and feasible. If the evaluatee is not competent to give consent, the evaluator should follow the appropriate laws of the jurisdiction.

#### **Commentary**

Informed consent is one of the core values of the ethical practice of medicine and psychiatry. It reflects respect for the person, a fundamental principle in the practices of psychiatry and forensic psychiatry.

It is important to appreciate that in particular situations, such as court-ordered evaluations for competency to stand trial or involuntary commitment, neither assent nor informed consent is required. In such cases, psychiatrists should inform the evaluatee that if the evaluatee refuses to participate in the evaluation, this fact may be included in any report or testimony. If the evaluatee does not appear capable of understanding the information provided regarding the evaluation, this impression should also be included in any report and, when feasible, in testimony.

Absent a court order, psychiatrists should not perform forensic evaluations for the prosecution or the government on persons who have not consulted with legal counsel when such persons are: known to be charged with criminal acts; under investigation for criminal or quasi-criminal conduct; held in government custody or detention; or being interrogated for criminal or quasi-criminal conduct, hostile acts against a government, or immigration violations. Examinations related to rendering medical care or treatment, such as evaluations for civil commitment or risk assessments for management or discharge planning, are not precluded by these restrictions. As is true for any physician, psychiatrists practicing in a forensic role should not participate in torture.

Consent to treatment in a jail or prison or in other criminal justice settings is different from consent for a forensic evaluation. Psychiatrists providing treatment in such settings should be familiar with the jurisdiction's regulations governing patients' rights regarding treatment.

### **IV. Honesty and Striving for Objectivity**

When psychiatrists function as experts within the legal process, they should adhere to the principle of honesty and should strive for objectivity. Although they may be retained by one party to a civil or criminal matter, psychiatrists should adhere to these principles when conducting evaluations, applying clinical data to legal criteria, and expressing opinions.

#### Commentary

The adversarial nature of most legal processes presents special hazards for the practice of forensic psychiatry. Being retained by one side in a civil or criminal matter exposes psychiatrists to the potential for unintended bias and the danger of distortion of their opinion. It is the responsibility of psychiatrists to minimize such hazards by acting in an honest manner and striving to reach an objective opinion.

Psychiatrists practicing in a forensic role enhance the honesty and objectivity of their work by basing their forensic opinions, forensic reports and forensic testimony on all available data. They communicate the honesty of their work, efforts to attain objectivity, and the soundness of their clinical opinion, by distinguishing, to the extent possible, between verified and unverified information as well as among clinical "facts," "inferences," and "impressions."

Psychiatrists should not distort their opinion in the service of the retaining party. Honesty, objectivity and the adequacy of the clinical evaluation may be called into question when an expert opinion is offered without a personal examination. For certain evaluations (such as record reviews for malpractice cases), a personal examination is not required. In all other forensic evaluations, if, after appropriate effort, it is not feasible to conduct a personal examination, an opinion may nonetheless be rendered on the basis of other information. Under these circumstances, it is the responsibility of psychiatrists to make earnest efforts to ensure that their statements, opinions and any reports or testimony based on those opinions, clearly state that there was no personal examination and note any resulting limitations to their opinions.

In custody cases, honesty and objectivity require that all parties be interviewed, if possible, before an opinion is rendered. When this is not possible, or is not done for any reason, this should be clearly indicated in the forensic psychiatrist's report and testimony. If one parent has not been interviewed, even after deliberate effort, it may be inappropriate to comment on that parent's fitness as a parent. Any comments on the fitness of a parent who has not been interviewed should be qualified and the data for the opinion clearly indicated.

Contingency fees undermine honesty and efforts to attain objectivity and should not be accepted. Retainer fees, however, do not create the same problems in regard to honesty and efforts to attain objectivity and, therefore, may be accepted.

Psychiatrists who take on a forensic role for patients they are treating may adversely affect the therapeutic relationship with them. Forensic evaluations usually require interviewing corroborative sources, exposing information to public scrutiny, or subjecting evaluatees and the treatment itself to potentially damaging cross-examination. The forensic evaluation and the credibility of the practitioner may also be undermined by conflicts inherent in the differing clinical and forensic roles. Treating psychiatrists should therefore generally avoid acting as an expert witness for their patients or performing evaluations of their patients for legal purposes.

Treating psychiatrists appearing as “fact” witnesses should be sensitive to the unnecessary disclosure of private information or the possible misinterpretation of testimony as “expert” opinion. In situations when the dual role is required or unavoidable (such as Workers’ Compensation, disability evaluations, civil commitment, or guardianship hearings), sensitivity to differences between clinical and legal obligations remains important.

When requirements of geography or related constraints dictate the conduct of a forensic evaluation by the treating psychiatrist, the dual role may also be unavoidable; otherwise, referral to another evaluator is preferable.

## **V. Qualifications**

Expertise in the practice of forensic psychiatry should be claimed only in areas of actual knowledge, skills, training, and experience.

### **Commentary**

When providing expert opinion, reports, and testimony, psychiatrists should present their qualifications accurately and precisely. As a correlate of the principle that expertise may be appropriately claimed only in areas of actual knowledge, skill, training and experience, there are areas of special expertise, such as the evaluation of children, persons of foreign cultures, or prisoners, that may require special training or expertise.

## **VI. Procedures for Handling Complaints of Unethical Conduct**

The American Academy of Psychiatry and the Law does not adjudicate complaints that allege unethical conduct by its members or nonmembers. If received, such complaints will be returned to the complainant for referral to the local district branch of the American Psychiatric Association (APA), the state licensing board, and/or the appropriate national psychiatric organization of foreign members. If the APA or the psychiatric association of another country expels or suspends a member, AAPL will also expel or suspend that member upon notification of such action. AAPL will not necessarily follow the APA or other organizations in other sanctions.

### **Commentary**

General questions regarding ethical practice in forensic psychiatry are welcomed by the Academy and should be submitted to the Ethics Committee.

The Committee may issue opinions on general or hypothetical questions but will not issue opinions on the ethical conduct of specific forensic psychiatrists or about actual cases.

The Academy, through its Ethics Committee, or in any other way suitable, is available to the local or national committees on ethics of the American Psychiatric Association, to state licensing boards or to ethics committees of psychiatric organizations in other countries to aid them in their adjudication of complaints of unethical conduct or the development of guidelines of ethical conduct as they relate to forensic psychiatric issues.

# The National Association of Social Workers (NASW) Code of Ethics

## Preamble

The primary mission of the social work profession is to enhance human well-being and help meet basic human needs of all people, with particular attention to the needs and empowerment of people who are vulnerable, oppressed, and living in poverty. A historic and defining feature of social work is the profession's focus on individual well-being in a social context and the well-being of society. Fundamental to social work is attention to the environmental forces that create, contribute to, and address problems in living.

Social workers promote social justice and social change with and on behalf of clients. "Clients" is used inclusively to refer to individuals, families, groups, organizations, and communities. Social workers are sensitive to cultural and ethnic diversity and strive to end discrimination, oppression, poverty, and other forms of social injustice. These activities may be in the form of direct practice, community organizing, supervision, consultation, administration, advocacy, social and political action, policy development and implementation, education, and research and evaluation. Social workers seek to enhance the capacity of people to address their own needs. Social workers also seek to promote the responsiveness of organizations, communities, and other social institutions to individual's needs and social problems.

The mission of the social work profession is rooted in a set of core values. These core values, embraced by social workers throughout the profession's history, are the foundation of social work's unique purpose and perspective.

- Service
- Social justice
- Dignity and worth of the person
- Importance of human relationships
- Integrity
- Competence

This constellation of core values reflects what is unique to the social work profession. Core values, and the principles that flow from them, must be balanced within the context and complexity of the human experience.

## **Purpose of the NASW Code of Ethics**

Professional ethics are at the core of social work. The profession has an obligation to articulate its basic values, ethical principles, and ethical standards. The *NASW Code of Ethics* sets forth these values, principles, and standards to guide social workers' conduct. The *Code* is relevant to all social workers and social work students, regardless of their professional functions, the settings in which they work, or the populations they serve.

The *NASW Code of Ethics* serves six purposes:

1. The *Code* identifies core values on which social work's mission is based.
2. The *Code* summarizes broad ethical principles that reflect the profession's core values and establishes a set of specific ethical standards that should be used to guide social work practice.
3. The *Code* is designed to help social workers identify relevant considerations when professional obligations conflict or ethical uncertainties arise.
4. The *Code* provides ethical standards to which the general public can hold the social work profession accountable.
5. The *Code* socializes practitioners new to the field to social work's mission, values, ethical principles, and ethical standards.
6. The *Code* articulates standards that the social work professional itself can use to assess whether social workers have engaged in unethical conduct. NASW has formal procedures to adjudicate ethics complaints filed against its members<sup>1</sup>. In subscribing to this *Code*, social workers are required to cooperate in its implementation, participate in NASW adjudication proceedings, and abide by any NASW disciplinary rulings for sanctions based on it.

The *Code* offers a set of values, principles, and standards to guide decision making and conduct when ethical issues arise. It does not provide a set of rules that prescribe how social workers should act in all situations. Specific applications of the *Code* must take into account the context in which it is being considered and the possibility of conflicts among the *Code's* values, principles, and standards. Ethical responsibilities flow from all human relationships, from the personal and familial to the social and professional.

Further, the *NASW Code of Ethics* does not specify which values, principles, and standards are most important and ought to outweigh others in instances when they conflict. Reasonable differences of opinion can and do exist among social workers with respect to the ways in which values, ethical principles, and ethical standards should be rank ordered when they conflict. Ethical decision making in a given situation must apply the informed judgment of the individual social worker and should also consider how the issues would be judged in a peer review process where the ethical standards of the profession would be applied.

Ethical decision making is a process. There are many instances in social work where simple answers are not available to resolve complex ethical issues. Social workers should take into consideration all the values, principles, and standards in this *Code* that are relevant to any situation in which ethical judgment is warranted. Social workers' decisions and actions should be consistent with the spirit as well as the letter of this *Code*.

In addition to this *Code*, there are many other sources of information about ethical thinking that may be useful. Social workers should consider ethical theory and principles generally, social work theory and research, laws, regulations, agency policies, and other relevant codes of ethics, recognizing that among codes of ethics social workers should consider the *NASW Code of Ethics* as their primary source. Social workers also should be aware of the impact on ethical decision making of their clients' and their own personal values and cultural and religious beliefs and practices. They should be aware of any conflicts between personal and professional values and deal with them responsibly.

For additional guidance social workers should consult the relevant literature on professional ethics and ethical decision making and seek appropriate consultation when faced with ethical dilemmas. This may involve consultation with an agency-based or social work organization's ethics committee, a regulatory body, knowledgeable colleagues, supervisors, or legal counsel.

Instances may arise when social worker's ethical obligations conflict with agency policies or relevant laws or regulations. When such conflicts occur, social workers must make a responsible effort to resolve the conflict in a manner that is consistent with the values, principles, and standards expressed in this *Code*. If a reasonable resolution of the conflict does not appear possible, social workers should seek proper consultation before making a decision.

The *NASW Code of Ethics* is to be used by NASW and by individuals, organizations, and bodies (such as licensing and regulatory boards, professional liability insurance providers, courts of law, agency boards of directors, government agencies, and other professional groups) that choose to adopt it or use it as a frame of reference. Violation of standards in this *Code* does not automatically imply legal liability or violation of the law. Such determination can only be made in the context of legal and judicial proceedings. Alleged violations of the *Code* would be subject to a peer review process. Such processes are generally separate from legal or administrative procedures and insulated from legal review or proceedings to allow the profession to counsel and discipline its own members.

A code of ethics cannot guarantee ethical behavior. Moreover, a code of ethics cannot resolve all ethical issues or disputes or capture the richness and complexity involved in striving to make responsible choices within a moral community. Rather, a code of ethics sets forth values, ethical principles, and ethical standards to which professionals aspire and by which their actions can be judged. Social workers' ethical behavior should result from their personal commitment to engage in ethical practice. The *NASW Code of Ethics* reflects the commitment of all social workers to uphold the profession's values and to act ethically. Principles and standards must be applied by individuals of good character who discern moral questions and, in good faith, seek to make reliable ethical judgments.

## **Ethical Principles**

The following broad ethical principles are based on social work's core values of service, social justice, dignity and worth of the person, importance of human

<sup>1</sup> For information on NASW adjudication procedures, see *NASW Procedures for the Adjudication of Grievances*.

relationships, integrity, and competence. These principles set forth ideals to which all social workers should aspire.

**Value:** Service

**Ethical Principle:** Social workers' primary goal is to help people in need and to address social problems. Social workers elevate service to others above self-interest. Social workers draw on their knowledge, values, and skills to help people in need and to address social problems. Social workers are encouraged to volunteer some portion of their professional skills with no expectation of significant financial return (pro bono service).

**Value:** Social Justice

**Ethical Principle:** Social workers challenge social injustice. Social workers pursue social change, particularly with and on behalf of vulnerable and oppressed individuals and groups of people. Social workers' social change efforts are focused primarily on issues of poverty, unemployment, discrimination, and other forms of social injustice. These activities seek to promote sensitivity to and knowledge about oppression and cultural and ethnic diversity. Social workers strive to ensure access to needed information, services, and resources; equality of opportunity; and meaningful participation in decision making for all people.

**Value:** Dignity and Worth of the Person

**Ethical Principle:** Social workers respect the inherent dignity and worth of the person. Social workers treat each person in a caring and respectful fashion, mindful of individual differences and cultural and ethnic diversity. Social workers promote clients' socially responsible self-determination. Social workers seek to enhance clients' capacity and opportunity to change and to address their own needs. Social workers are cognizant of their dual responsibility to clients' interests and the broader society's interests in a socially responsible manner consistent with the values, ethical principles, and ethical standards of the profession.

**Value:** Importance of Human Relationships

**Ethical Principle:** Social workers recognize the central importance of human relationships. Social workers understand that relationships between and among people are an important vehicle for change. Social workers engage people as partners in the helping process. Social workers seek to strengthen relationships among people in a purposeful effort to promote, restore, maintain, and enhance the well-being of individuals, families, social groups, organizations, and communities.

**Value:** Integrity

**Ethical Principle:** Social workers behave in a trustworthy manner. Social workers are continually aware of the profession's mission, values, ethical principles, and ethical standards and practice in a manner consistent with them. Social workers act honestly and responsibly and promote ethical practices on the part of the organizations with which they are affiliated.

**Value:** Competence

**Ethical Principle:** Social workers practice within their areas of competence and develop and enhance their professional expertise. Social workers continually strive to increase their professional knowledge and skills and to apply them in practice. Social workers should aspire to contribute to the knowledge base of the profession.

### **Ethical Standards**

The following ethical standards are relevant to the professional activities of all social workers. These standards concern (1) social workers' ethical responsibilities to clients, (2) social workers' ethical responsibilities to colleagues, (3) social workers' ethical responsibilities in practice settings, (4) social workers' ethical responsibilities as professionals, (5) social workers' ethical responsibilities to the social work profession, and (6) social workers' ethical responsibilities to the broader society. Some of the standards that follow are enforceable guidelines for professional conduct, and some are aspirational. The extent to which each standard is enforceable is a matter of professional judgment to be exercised by those responsible for reviewing alleged violations of ethical standards.

## **1. SOCIAL WORKERS' ETHICAL RESPONSIBILITIES TO CLIENTS**

### **1.01 Commitment to Clients**

Social workers' primary responsibility is to promote the well-being of clients. In general, clients' interests are primary. However, social

workers' responsibility to the larger society or specific legal obligations may on limited occasions supersede the loyalty owed clients, and clients should be so advised. (Examples include when a social worker is required by law to report that a client has abused a child or has threatened to harm self or others.)

### **1.02 Self-Determination**

Social workers respect and promote the right of clients to self-determination and assist clients in their efforts to identify and clarify their goals. Social workers may limit clients' right to self-determination when, in the social workers' professional judgment, clients' actions or potential actions pose a serious, foreseeable, and imminent risk to themselves or others.

### **1.03 Informed Consent**

- (a) Social workers should provide services to clients only in the context of a professional relationship based, when appropriate, on valid informed consent. Social workers should use clear and understandable language to inform clients of the purpose of the services, risks related to the services, limits to services because of the requirements of a third-party payer, relevant costs, reasonable alternatives, clients' right to refuse or withdraw consent, and the time frame covered by the consent. Social workers should provide clients with an opportunity to ask questions.
- (b) In instances when clients are not literate or have difficulty understanding the primary language used in the practice setting, social workers should take steps to ensure clients' comprehension. This may include providing clients with a detailed verbal explanation or arranging for a qualified interpreter or translator whenever possible.
- (c) In instances when clients lack the capacity to provide informed consent, social workers should protect clients' interests by seeking permission from an appropriate third party, informing clients consistent with the clients' level of understanding. In such instances social workers should seek to ensure that the third party acts in a manner consistent with clients' wishes and interests. Social workers should take reasonable steps to enhance such clients' ability to give informed consent.
- (d) In instances when clients are receiving services involuntarily, social workers should provide information about the nature and extent of services and about the extent of clients' right to refuse service.
- (e) Social workers who provide services via electronic media (such as computer, telephone, radio, television) should inform recipients of the limitations and risks associated with such services.
- (f) Social workers should obtain clients' informed consent before audiotaping or videotaping clients or permitting observation of services to clients by a third party.

### **1.04 Competence**

- (a) Social workers should provide services and represent themselves as competent only within the boundaries of their education, training, license, certification, consultation received, supervised experience, or other relevant professional experience.
- (b) Social workers should provide services in substantive areas or use intervention techniques or approaches that are new to them only after engaging in appropriate study, training, consultation, and supervision from people who are competent in those interventions or techniques.
- (c) When generally recognized standards do not exist with respect to an emerging area of practice, social workers should exercise careful judgment and take responsible steps (including appropriate education, research, training, consultation, and supervision) to ensure the competence of their work and to protect clients from harm.

### **1.05 Cultural Competence and Social Diversity**

- (a) Social workers should understand culture and its function in human behavior and society, recognizing the strengths that exist in all cultures.
- (b) Social workers should have a knowledge base of their clients' cultures and be able to demonstrate competence in the provision of services that are sensitive to clients' cultures and to differences among people and cultural groups.
- (c) Social workers should obtain education about and seek to understand the nature of social diversity and oppression with respect to race, ethnicity, national origin, color, sex, sexual orientation, age, marital status, political belief, religion, and mental or physical disability.

#### 1.06 Conflicts of Interest

- (a) Social workers should be alert to and avoid conflicts of interest that interfere with the exercise of professional discretion and impartial judgment. Social workers should inform clients when real or potential conflict of interest arises and take reasonable steps to resolve the issue in a manner that makes the clients' interests primary and protects clients' interests to the greatest extent possible. In some cases, protecting clients' interests may require termination of the professional relationship with proper referral of the client.
- (b) Social workers should not take unfair advantage of any professional relationship or exploit others to further their personal, religious, political, or business interests.
- (c) Social workers should not engage in dual or multiple relationships with clients or former clients in which there is a risk of exploitation or potential harm to the client. In instances when dual or multiple relationships are unavoidable, social workers should take steps to protect clients and are responsible for setting clear, appropriate, and culturally sensitive boundaries. (Dual or multiple relationships occur when social workers relate to clients in more than one relationship, whether professional, social, or business. Dual or multiple relationships can occur simultaneously or consecutively).
- (d) When social workers provide services to two or more people who have a relationship with each other (for example, couples, family members), social workers should clarify with all parties which individuals will be considered clients and the nature of social workers' professional obligations to the various individuals who are receiving services. Social workers who anticipate a conflict of interest among the individuals receiving services or who anticipate having to perform in potentially conflicting roles (for example, when a social worker is asked to testify in a child custody dispute or divorce proceedings involving clients) should clarify their role with the parties involved and take appropriate action to minimize any conflict of interest.

#### 1.07 Privacy and Confidentiality

- (a) Social workers should respect clients' right to privacy. Social workers should not solicit private information from clients unless it is essential to providing services or conducting social work evaluation or research. Once private information is shared, standards of confidentiality apply.
- (b) Social workers may disclose confidential information when appropriate with valid consent from a client or a person legally authorized to consent on behalf of a client.
- (c) Social workers should protect the confidentiality of all information obtained in the course of professional service, except for compelling professional reasons. The general expectation that social workers will keep information confidential does not apply when disclosure is necessary to prevent serious, foreseeable, and imminent harm to a client or other identifiable person or when laws or regulations require disclosure without a client's consent. In all instances, social workers should disclose the least amount of confidential

information necessary to achieve the desired purpose; only information that is directly relevant to the purpose for which the disclosure is made should be revealed.

- (d) Social workers should inform clients, to the extent possible, about the disclosure of confidential information and the potential consequences, when feasible before the disclosure is made. This applies whether social workers disclose confidential information on the basis of a legal requirement or client consent.
- (e) Social workers should discuss with clients and other interested parties the nature of confidentiality and limitations of clients' right to confidentiality. Social workers should review with clients circumstances where confidential information may be requested and where disclosure of confidential information may be legally required. This discussion should occur as soon as possible in the social worker-client relationship and as needed throughout the course of the relationship.
- (f) When social workers provide counseling services to families, couples, or groups, social workers should seek agreement among the parties involved concerning each individual's right to confidentiality and obligation to preserve the confidentiality of information shared by others. Social workers should inform participants in family, couples, or group counseling that social workers cannot guarantee that all participants will honor such agreements.
- (g) Social workers should inform clients involved in family, couples, marital, or group counseling of the social worker's, employer's, and agency's policy concerning the social worker's disclosure of confidential information among the parties involved in the counseling.
- (h) Social worker should not disclose confidential information to third-party payers unless clients have authorized such disclosure.
- (i) Social workers should not discuss confidential information in any setting unless privacy can be ensured. Social workers should not discuss confidential information in public or semipublic areas such as hallways, waiting rooms, elevators, and restaurants.
- (j) Social workers should protect the confidentiality of clients during legal proceedings to the extent permitted by law. When a court of law or other legally authorized body orders social workers to disclose confidential or privileged information without a client's consent and such disclosure could cause harm to the client, social workers should request that the court withdraw the order or limit the order as narrowly as possible or maintain the records under seal, unavailable for public inspection.
- (k) Social workers should protect the confidentiality of clients when responding to requests from members of the media.
- (l) Social workers should protect the confidentiality of clients' written and electronic records and other sensitive information. Social workers should take reasonable steps to ensure that clients' records are stored in a secure location and that clients' records are not available to others who are not authorized to have access.
- (m) Social workers should take precautions to ensure and maintain the confidentiality of information transmitted to other parties through the use of computers, electronic mail, facsimile machines, telephones and telephone answering machines, and other electronic or computer technology. Disclosure of identifying information should be avoided whenever possible.
- (n) Social workers should transfer or dispose of clients' records in a manner that protects clients' confidentiality and is consistent with state statutes governing records and social work licensure.

- (o) Social work should take reasonable precautions to protect client confidentiality in the event of the social worker's termination of practice, incapacitation, or death.
- (p) Social workers should not disclose identifying information when discussing clients for teaching or training purposes unless the client has consented to disclosure of confidential information.
- (q) Social workers should not disclose identifying information when discussing clients with consultants unless the client has consented to disclosure of confidential information or there is a compelling need for such disclosure.
- (r) Social workers should protect the confidentiality of deceased clients consistent with the preceding standards.

#### 1.08 Access to Records

- (a) Social workers should provide clients with reasonable access to records concerning the clients. Social workers who are concerned that clients' access to their records could cause serious misunderstanding or harm to the client should provide assistance in interpreting the records and consultation with the client regarding the records. Social workers should limit clients' access to their records, or portions of their records, only in exceptional circumstances when there is compelling evidence that such access would cause serious harm to the client. Both clients' requests and the rationale for withholding some or all of the record should be documented in clients' files.
- (b) When providing clients with access to their records, social workers should take steps to protect the confidentiality of other individuals identified or discussed in such records.

#### 1.09 Sexual Relationships

- (a) Social workers should under no circumstances engage in sexual activities or sexual contact with current clients, whether such contact is consensual or forced.
- (b) Social workers should not engage in sexual activities or sexual contact with clients' relatives or other individuals with whom clients maintain a close personal relationship when there is a risk of exploitation or potential harm to the client. Sexual activity or sexual contact with clients' relatives or other individuals with whom clients maintain a personal relationship has the potential to be harmful to the client and may make it difficult for the social worker and client to maintain appropriate professional boundaries. Social workers—not their clients, their clients' relatives, or other individuals with whom the client maintains a personal relationship—assume the full burden for setting clear, appropriate, and culturally sensitive boundaries.
- (c) Social workers should not engage in sexual activities or sexual contact with former clients because of the potential for harm to the client. If social workers engage in conduct contrary to this prohibition or claim that an exception to this prohibition is warranted because of extraordinary circumstances, it is social workers—not their clients—who assume the full burden of demonstrating that the former client has not been exploited, coerced, or manipulated, intentionally or unintentionally.
- (d) Social workers should not provide clinical services to individuals with whom they have had a prior sexual relationship. Providing clinical services to a former sexual partner has the potential to be harmful to the individual and is likely to make it difficult for the social worker and individual to maintain appropriate professional boundaries.

#### 1.10 Physical Contact

Social workers should not engage in physical contact with clients when there is a possibility of psychological harm to the client as a result of the contact (such as cradling or caressing clients.) Social workers who engage in appropriate

physical contact with clients are responsible for setting clear, appropriate, and culturally sensitive boundaries that govern such physical contact.

#### 1.11 Sexual Harassment

Social workers should not sexually harass clients. Sexual harassment includes sexual advances, sexual solicitation, requests for sexual favors, and other verbal or physical conduct of a sexual nature.

#### 1.12 Derogatory Language

Social workers should not use derogatory language in their written or verbal communications to or about clients. Social workers should use accurate and respectful language in all communications to and about clients.

#### 1.13 Payment for Services

- (a) When setting fees, social workers should ensure that the fees are fair, reasonable, and commensurate with the service performed. Consideration should be given to clients' ability to pay.
- (b) Social workers should avoid accepting goods or services from clients as payment for professional services. Bartering arrangements, particularly involving services, create the potential for conflicts of interest, exploitation, and inappropriate boundaries in social workers' relationships with clients. Social workers should explore and may participate in bartering only in very limited circumstances when it can be demonstrated that such arrangements are an accepted practice among professionals in the local community, considered to be essential for the provision of services, negotiated without coercion, and entered into at the client's initiative and with the client's informed consent. Social workers who accept goods or services from clients as payment for professional services assume the full burden of demonstrating that this arrangement will not be detrimental to the client or the professional relationship.
- (c) Social workers should not solicit a private fee or other remuneration for providing services to clients who are entitled to such available services through the social workers' employer or agency.

#### 1.14 Clients Who Lack Decision-Making Capacity

When social workers act on behalf of clients who lack the capacity to make informed decisions, social workers should take reasonable steps to safeguard the interests and rights of those clients.

#### 1.15 Interruption of Services

Social workers should make reasonable efforts to ensure continuity of services in the event that services are interrupted by factors such as unavailability, relocation, illness, disability, or death.

#### 1.16 Termination of Services

- (a) Social workers should terminate services to clients and professional relationships with them when such services and relationships are no longer required or no longer serve the clients' needs or interests.
- (b) Social workers should take reasonable steps to avoid abandoning clients who are still in need of services. Social workers should withdraw services precipitously only under unusual circumstances, giving careful consideration to all factors in the situation and taking care to minimize possible adverse effects. Social workers should assist in making appropriate arrangements for continuation of services when necessary.
- (c) Social workers in fee-for-service settings may terminate services to clients who are not paying an overdue balance if the financial contractual arrangements have been made clear to the client, if the client does not pose an imminent danger to self or

others, and if the clinical and other consequences of the current nonpayment have been addressed and discussed with the client.

- (d) Social workers should not terminate services to pursue a social, financial, or sexual relationship with a client.
- (e) Social workers who anticipate the termination or interruption of services to clients should notify clients promptly and seek the transfer, referral, or continuation of services in relation to the clients' needs and preferences.
- (f) Social workers who are leaving an employment setting should inform clients of appropriate options for the continuation of services and of the benefits and risks of the options.

## 2. SOCIAL WORKERS' ETHICAL RESPONSIBILITIES TO COLLEAGUES

### 2.01 Respect

- (a) Social workers should treat colleagues with respect and should represent accurately and fairly the qualifications, views, and obligations of colleagues.
- (b) Social workers should avoid unwarranted negative criticism of colleagues in communications with clients or with other professionals. Unwarranted negative criticism may include demeaning comments that refer to colleagues' level of competence or to individuals' attributes such as race, ethnicity, national origin, color, sex, sexual orientation, age, marital status, political belief, religion, and mental or physical disability.
- (c) Social workers should cooperate with social work colleagues and with colleagues of other professions when such cooperation services the well-being of clients.

### 2.02 Confidentiality

Social workers should respect confidential information shared by colleagues in the course of their professional relationships and transactions. Social workers should ensure that such colleagues understand social workers' obligations to respect confidentiality and any exceptions related to it.

### 2.03 Interdisciplinary Collaboration

- (a) Social workers who are members of an interdisciplinary team should participate in and contribute to decisions that affect the well-being of clients by drawing on the perspectives, values, and experiences of the social work profession. Professional and ethical obligations of the interdisciplinary team as a whole and of its individual members should be clearly established.
- (b) Social workers for whom a team decision raises ethical concerns should attempt to resolve the disagreement through appropriate channels. If the disagreement cannot be resolved, social workers should pursue other avenues to address their concerns consistent with client well-being.

### 2.04 Disputes Involving Colleagues

- (a) Social workers should not take advantage of a dispute between a colleague and an employer to obtain a position or otherwise advance the social workers' own interests.
- (b) Social workers should not exploit clients in disputes with colleagues or engage clients in any inappropriate discussion of conflicts between social workers and their colleagues.

### 2.05 Consultation

- (a) Social workers should seek the advice and counsel of colleagues whenever such consultation is in the best interests of clients.
- (b) Social workers should keep themselves informed about colleagues' areas of expertise and competencies. Social workers should seek consultation only from colleagues who

have demonstrated knowledge, expertise, and competence related to the subject of the consultation.

- (c) When consulting with colleagues about clients, social workers should disclose the least amount of information necessary to achieve the purposes of the consultation.

### 2.06 Referral for Services

- (a) Social workers should refer clients to other professionals when the other professionals' specialized knowledge or expertise is needed to service clients fully or when social workers believe that they are not being effective or making reasonable progress with clients and that additional service is required.
- (b) Social workers who refer clients to other professionals should take appropriate steps to facilitate an orderly transfer of responsibility. Social workers who refer clients to other professionals should disclose, with clients' consent, all pertinent information to the new service providers.
- (c) Social workers are prohibited from giving or receiving payment for a referral when no professional service is provided by the referring social worker.

### 2.07 Sexual Relationships

- (a) Social workers who function as supervisors or educators should not engage in sexual activities or contact with supervisees, students, trainees, or other colleagues over whom they exercise professional authority.
- (b) Social workers should avoid engaging in sexual relationships with colleagues when there is potential for a conflict of interest. Social workers who become involved in, or anticipate becoming involved in, a sexual relationship with a colleague have a duty to transfer professional responsibilities, when necessary, to avoid a conflict of interest.

### 2.08 Sexual Harassment

Social workers should not sexually harass supervisees, students, trainees, or colleagues. Sexual harassment includes sexual advances, sexual solicitation, requests for sexual favors, and other verbal or physical conduct of a sexual nature.

### 2.09 Impairment of Colleagues

- (a) Social workers who have direct knowledge of a social work colleague's impairment that is due to personal problems, psychosocial distress, substance abuse, or mental health difficulties and that interferes with practice effectiveness should consult with that colleague when feasible and assist the colleague in taking remedial action.
- (b) Social workers who believe that a social work colleague's impairment interferes with practice effectiveness and that the colleague has not taken adequate steps to address the impairment should take action through appropriate channels established by employers, agencies, NASW, licensing and regulatory bodies, and other professional organizations.

### 2.10 Incompetence of Colleagues

- (a) Social workers who have direct knowledge of a social work colleague's incompetence should consult with that colleague when feasible and assist the colleague in taking remedial action.
- (b) Social workers who believe that a social work colleague is incompetent and has not taken adequate steps to address the incompetence should take action through appropriate channels established by employers, agencies, NASW, licensing and regulatory bodies, and other professional organizations.

### 2.11 Unethical Conduct of Colleagues

- (a) Social workers should take adequate measures to discourage, prevent, expose, and correct the unethical conduct of colleagues.

- (b) Social workers should be knowledgeable about established policies and procedures for handling concerns about colleagues' unethical behavior. Social workers should be familiar with national, state, and local procedures for handling ethics complaints. These include policies and procedures created by NASW, licensing and regulatory bodies, employers, agencies, and other professional organizations.
- (c) Social workers who believe that a colleague has acted unethically should seek resolution by discussing their concerns with the colleague when feasible and when such discussion is likely to be productive.
- (d) When necessary, social workers who believe that a colleague has acted unethically should take action through appropriate formal channels (such as contacting a state licensing board or regulatory body, an NASW committee on inquiry, or other professional ethics committees).
- (e) Social workers should defend and assist colleagues who are unjustly charged with unethical conduct.

### 3. SOCIAL WORKER'S ETHICAL RESPONSIBILITIES IN PRACTICE SETTINGS

#### 3.01 Supervision and Consultation

- (a) Social workers who provide supervision or consultation should have the necessary knowledge and skill to supervise or consult appropriately and should do so only within their areas of knowledge and competence.
- (b) Social workers who provide supervision or consultation are responsible for setting clear, appropriate, and culturally sensitive boundaries.
- (c) Social workers should not engage in any dual or multiple relationships with supervisees in which there is a risk of exploitation of or potential harm to the supervisee.
- (d) Social workers who provide supervision should evaluate supervisees' performance in a manner that is fair and respectful.

#### 3.02 Education and Training

- (a) Social workers who function as educators, field instructors for students, or trainers should provide instruction only within their areas of knowledge and competence and should provide instruction based on the most current information and knowledge available in the profession.
- (b) Social workers who function as educators or field instructors for students should evaluate students' performance in a manner that is fair and respectful.
- (c) Social workers who function as educators or field instructors for students should take reasonable steps to ensure clients are routinely informed when services are being provided by students.
- (d) Social workers who function as educators or field instructors for students should not engage in any dual or multiple relationships with students in which there is a risk of exploitation or potential harm to the student. Social work educators and field instructors are responsible for setting clear, appropriate, and culturally sensitive boundaries.

#### 3.03 Performance Evaluation

Social workers who have responsibility for evaluating the performance of others should fulfill such responsibility in a fair and considerate manner and on the basis of clearly stated criteria.

#### 3.04 Client Records

- (a) Social workers should take reasonable steps to ensure that documentation in records is accurate and reflects the services provided.

- (b) Social workers should include sufficient and timely documentation in records to facilitate the delivery of services and to ensure continuity of services provided to clients in the future.
- (c) Social workers' documentation should protect clients' privacy to the extent that is possible and appropriate and should include only information that is directly relevant to the delivery of services.
- (d) Social workers should store records following the termination of services to ensure reasonable future access. Records should be maintained for the number of years required by state statutes or relevant contracts.

#### 3.05 Billing

Social workers should establish and maintain billing practices that accurately reflect the nature and extent of services provided and that identify who provided the service in the practice setting.

#### 3.06 Client Transfer

- (a) When an individual who is receiving services from another agency or colleague contacts a social worker for services, the social worker should carefully consider the client's needs before agreeing to provide services. To minimize possible confusion and conflict, social workers should discuss with potential clients the nature of the clients' current relationship with other service providers and the implications, including possible benefits or risks, of entering into a relationship with a new service provider.
- (b) If a new client has been served by another agency or colleague, social workers should discuss with the client whether consultation with the previous service provider is in the client's best interest.

#### 3.07 Administration

- (a) Social work administrators should advocate within and outside their agencies for adequate resources to meet clients' needs.
- (b) Social workers should advocate for resource allocation procedures that are open and fair. When not all clients' needs can be met, an allocation procedure should be developed that is nondiscriminatory and based on appropriate and consistently applied principles.
- (c) Social workers who are administrators should take reasonable steps to ensure that adequate agency or organizational resources are available to provide appropriate staff supervision.
- (d) Social work administrators should take reasonable steps to ensure that the working environment for which they are responsible is consistent with and encourages compliance with the *NASW Code of Ethics*. Social work administrators should take reasonable steps to eliminate any conditions in their organizations that violate, interfere with, or discourage compliance with the *Code*.

#### 3.08 Continuing Education and Staff Development

Social work administrators and supervisors should take reasonable steps to provide or arrange for continuing education and staff development for all staff for whom they are responsible. Continuing education and staff development should address current knowledge and emerging developments related to social work practice and ethics.

#### 3.09 Commitments to Employers

- (a) Social workers generally should adhere to commitments made to employers and employing organizations.
- (b) Social workers should work to improve employing agencies' policies and procedures and the efficiency and effectiveness of their service.

- (c) Social workers should take reasonable steps to ensure that employers are aware of social workers' ethical obligations as set forth in the *NASW Code of Ethics* and of the implications of those obligations for social work practice.
- (d) Social workers should not allow an employing organization's policies, procedures, regulations, or administrative orders to interfere with their ethical practice of social work. Social workers should take reasonable steps to ensure that their employing organizations' practices are consistent with the *NASW Code of Ethics*.
- (e) Social workers should act to prevent and eliminate discrimination in the employing organization's work assignments and in its employment policies and practices.
- (f) Social workers should accept employment or arrange student field placements only in organizations that exercise fair personnel practices.
- (g) Social workers should be diligent stewards of the resources of their employing organizations, wisely conserving funds where appropriate and never misappropriating funds or using them for unintended purposes.

### 3.10 Labor-Management Disputes

- (a) Social workers may engage in organized action, including the formation of and participation in labor unions, to improve services to clients and working conditions.
- (b) The actions of social workers who are involved in labor-management disputes, job actions, or labor strikes should be guided by the profession's values, ethical principles, and ethical standards. Reasonable differences of opinion exist among social workers concerning their primary obligation as professionals during an actual or threatened labor strike or job action. Social workers should carefully examine relevant issues and their possible impact on clients before deciding on a course of action.

## 4. SOCIAL WORKERS' ETHICAL RESPONSIBILITIES AS PROFESSIONALS

### 4.01 Competence

- (a) Social workers should accept responsibility or employment only on the basis of existing competence or the intention to acquire the necessary competence.
- (b) Social workers should strive to become and remain proficient in professional practice and the performance of professional functions. Social workers should critically examine and keep current with emerging knowledge relevant to social work. Social workers should routinely review the professional literature and participate in continuing education relevant to social work practice and social work ethics.

### 4.02 Discrimination

Social workers should not practice, condone, facilitate, or collaborate with any form of discrimination on the basis of race, ethnicity, national origin, color, sex, sexual orientation, age, marital status, political belief, religion, or mental or physical disability.

### 4.03 Private Conduct

Social workers should not permit their private conduct to interfere with their ability to fulfill their professional responsibilities.

### 4.04 Dishonesty, Fraud, and Deception

Social workers should not participate in, condone, or be associated with dishonesty, fraud, or deception.

### 4.05 Impairment

- (a) Social workers should not allow their own personal problems, psychosocial distress, legal problems, substance abuse, or mental health difficulties to interfere with their professional

judgment and performance or to jeopardize the best interests of people for whom they have a professional responsibility.

- (b) Social workers whose personal problems, psychosocial distress, legal problems, substance abuse, or mental health difficulties interfere with their professional judgment and performance should immediately seek consultation and take appropriate remedial action by seeking professional help, making adjustments in workload, terminating practice, or taking any other steps necessary to protect clients and others.

### 4.06 Misrepresentation

- (a) Social workers should make clear distinctions between statements made and actions engaged in as a private individual and as a representative of the social work profession, a professional social work organization, or the social workers' employing agency.
- (b) Social workers who speak on behalf of professional social work organizations should accurately represent the official and authorized positions of the organizations.
- (c) Social workers should ensure that their representations to clients, agencies, and the public of professional qualifications, credentials, education, competence, affiliations, services provided, or results to be achieved are accurate. Social workers should claim only those relevant professional credentials they actually possess and take steps to correct any inaccuracies or misrepresentations of their credentials by others.

### 4.07 Solicitations

- (a) Social workers should not engage in uninvited solicitation of potential clients who, because of their circumstances, are vulnerable to undue influence, manipulation, or coercion.
- (b) Social workers should not engage in solicitation of testimonial endorsements (including solicitation of consent to use a client's prior statement as a testimonial endorsement of their particular circumstances, are vulnerable to undue influence.

### 4.08 Acknowledging Credit

- (a) Social workers should take responsibility and credit, including authorship credit, only for work they have actually performed and to which they have contributed.
- (b) Social workers should honestly acknowledge the work of and the contributions made by others.

## 5. SOCIAL WORKERS' ETHICAL RESPONSIBILITIES TO THE SOCIAL WORK PROFESSION

### 5.01 Integrity of the Profession

- (a) Social workers should work toward the maintenance and promotion of high standards of practice.
- (b) Social workers should uphold and advance the values, ethics, knowledge, and mission of the profession. Social workers should protect, enhance, and improve the integrity of the profession through appropriate study and research, active discussion, and responsible criticism of the profession.
- (c) Social workers should contribute time and professional expertise to activities that promote respect for the value, integrity, and competence of the social work profession. These activities may include teaching, research, consultation, service, legislative testimony, presentations in the community, and participation in their professional organizations.
- (d) Social workers should contribute to the knowledge base of social work and share with colleagues their knowledge related to practice, research, and ethics. Social workers should seek to contribute to the profession's literature and to share their knowledge at professional meetings and conferences.

- (e) Social workers should act to prevent the unauthorized and unqualified practice of social work.

#### 5.02 Evaluation and Research

- (a) Social workers should monitor and evaluate policies, the implementation of programs, and practice interventions.
- (b) Social workers should promote and facilitate evaluation and research to contribute to the development of knowledge.
- (c) Social workers should critically examine and keep current with emerging knowledge relevant to social work and fully use evaluation and research evidence in their professional practice.
- (d) Social workers engaged in evaluation or research should carefully consider possible consequences and should follow guidelines developed for the protection of evaluation and research participants. Appropriate institutional review boards should be consulted.
- (e) Social workers engaged in evaluation or research should obtain voluntary and written informed consent from participants, when appropriate, without any implied or actual deprivation or penalty for refusal to participate; without undue inducement to participate; and with due regard for participants' well-being, privacy, and dignity. Informed consent should include information about the nature, extent, and duration of the participation requested and disclosure of the risks and benefits of participation in the research.
- (f) When evaluation or research participants are incapable of giving informed consent, social workers should provide an appropriate explanation to the participants, obtain the participants' assent to the extent they are able, and obtain written consent from an appropriate proxy.
- (g) Social workers should never design or conduct evaluation or research that does not use consent procedures, such as certain forms of naturalistic observation and archival research, unless rigorous and responsible review of the research has found it to be justified because of its prospective scientific, educational, or applied value and unless equally effective alternative procedures that do not involve waiver of consent are not feasible.
- (h) Social workers should inform participants of their right to withdraw from evaluation and research at any time without penalty.
- (i) Social workers should take appropriate steps to ensure that participants in evaluation and research have access to appropriate supportive services.
- (j) Social workers engaged in evaluation or research should protect participants from unwarranted physical or mental distress, harm, danger, or deprivation.
- (k) Social workers engaged in the evaluation of services should discuss collected information only for professional purposes and only with people professionally concerned with this information.
- (l) Social workers engaged in evaluation or research should ensure the anonymity of confidentiality of participants and of the data obtained from them. Social workers should inform participants of any limits of confidentiality, the measures that will be taken to ensure confidentiality, and when any records containing research data will be destroyed.
- (m) Social workers who report evaluation and research results should protect participants' confidentiality by omitting identifying information unless proper consent has been obtained authorizing disclosure.
- (n) Social workers should report evaluation and research findings

accurately. They should not fabricate or falsify results and should take steps to correct any errors later found in published data using standard publication methods.

- (o) Social workers engaged in evaluation or research should be alert to and avoid conflicts of interest and dual relationships with participants, should inform participants when a real or potential conflict of interest arises, and should take steps to resolve the issue in a manner that makes participants' interests primary.
- (p) Social workers should educate themselves, their students, and their colleagues about responsible research practices.

### 6. SOCIAL WORKERS' ETHICAL RESPONSIBILITIES TO THE BROADER SOCIETY

#### 6.01 Social Welfare

Social workers should promote the general welfare of society, from local to global levels, and the development of people, their communities, and their environments. Social workers should advocate for living conditions conducive to the fulfillment of basic human needs and should promote social, economic, political, and cultural values and institutions that are compatible with the realization of social justice.

#### 6.02 Public Participation

Social workers should facilitate informed participation by the public in shaping social policies and institutions.

#### 6.03 Public Emergencies

Social workers should provide appropriate professional services in public emergencies to the greatest extent possible.

#### 6.04 Social and Political Action

- (a) Social workers should engage in social and political action that seeks to ensure that all people have equal access to the resources, employment, services, and opportunities they require to meet their basic human needs and to develop fully. Social workers should be aware of the impact of the political arena on practice and should advocate for changes in policy and legislation to improve social conditions in order to meet basic human needs and promote social justice.
- (b) Social workers should act to expand choice and opportunity for all people, with special regard for vulnerable, disadvantaged, oppressed, and exploited people and groups.
- (c) Social workers should promote conditions that encourage respect for cultural and social diversity within the United States and globally. Social workers should promote policies and practices that demonstrate respect for difference, support the expansion of cultural knowledge and resources, advocate for programs and institutions that demonstrate cultural competence, and promote policies that safeguard the rights of and confirm equity and social justice for all people.
- (d) Social workers should act to prevent and eliminate domination of, exploitation of, and discrimination against any person, group, or class on the basis of race, ethnicity, national origin, color, sex, sexual orientation, age, marital status, political belief, religion, or mental or physical disability.

---

# Specialty Guidelines for Forensic Psychology

---

American Psychological Association

---

In the past 50 years forensic psychological practice has expanded dramatically. The American Psychological Association (APA) has a division devoted to matters of law and psychology (APA Division 41, the American Psychology–Law Society), a number of scientific journals devoted to interactions between psychology and the law exist (e.g., *Law and Human Behavior*; *Psychology, Public Policy, and Law*; *Behavioral Sciences & the Law*), and a number of key texts have been published and undergone multiple revisions (e.g., Grisso, 1986, 2003; Melton, Petrila, Poythress, & Slobogin, 1987, 1997, 2007; Rogers, 1988, 1997, 2008). In addition, training in forensic psychology is available in predoctoral, internship, and postdoctoral settings, and APA recognized forensic psychology as a specialty in 2001, with subsequent recertification in 2008.

Because the practice of forensic psychology differs in important ways from more traditional practice areas (Mohan, 1980) the “Specialty Guidelines for Forensic Psychologists” were developed and published in 1991 (Committee on Ethical Guidelines for Forensic Psychologists, 1991). Because of continued developments in the field in the ensuing 20 years, forensic practitioners’ ongoing need for guidance, and policy requirements of APA, the 1991 “Specialty Guidelines for Forensic Psychologists” were revised, with the intent of benefiting forensic practitioners and recipients of their services alike.

The goals of these Specialty Guidelines for Forensic Psychology (“the Guidelines”) are to improve the quality of forensic psychological services; enhance the practice and facilitate the systematic development of forensic psychology; encourage a high level of quality in professional practice; and encourage forensic practitioners to acknowledge and respect the rights of those they serve. These Guidelines are intended for use by psychologists when engaged in the practice of forensic psychology as described below and may also provide guidance on professional conduct to the legal system and other organizations and professions.

For the purposes of these Guidelines, *forensic psychology* refers to professional practice by any psychologist working within any subdiscipline of psychology (e.g., clinical, developmental, social, cognitive) when applying the scientific, technical, or specialized knowledge of psychology to the law to assist in addressing legal, contractual, and administrative matters. Application of the Guidelines does not depend on the practitioner’s typical areas of practice or expertise, but rather, on the service provided in the case at hand. These Guidelines apply in all matters in which psychologists provide expertise to judicial, administrative, and

educational systems including, but not limited to, examining or treating persons in anticipation of or subsequent to legal, contractual, or administrative proceedings; offering expert opinion about psychological issues in the form of amicus briefs or testimony to judicial, legislative, or administrative bodies; acting in an adjudicative capacity; serving as a trial consultant or otherwise offering expertise to attorneys, the courts, or others; conducting research in connection with, or in the anticipation of, litigation; or involvement in educational activities of a forensic nature.

Psychological practice is not considered forensic solely because the conduct takes place in, or the product is presented in, a tribunal or other judicial, legislative, or administrative forum. For example, when a party (such as a civilly or criminally detained individual) or another individual (such as a child whose parents are involved in divorce proceedings) is ordered into treatment with a practitioner, that treatment is not necessarily the practice of forensic psychology. In addition, psychological testimony that is solely based on the provision of psychotherapy and does not include psycholegal opinions is not ordinarily considered forensic practice.

For the purposes of these Guidelines, *forensic practitioner* refers to a psychologist when engaged in the practice of forensic psychology as described above. Such professional conduct is considered forensic from the time the practitioner reasonably expects to, agrees to, or is legally mandated to provide expertise on an explicitly psycholegal issue.

The provision of forensic services may include a wide variety of psycholegal roles and functions. For example, as

---

This article was published Online First October 1, 2012.

These Specialty Guidelines for Forensic Psychology were developed by the American Psychology–Law Society (Division 41 of the American Psychological Association [APA]) and the American Academy of Forensic Psychology. They were adopted by the APA Council of Representatives on August 3, 2011.

The previous version of the Guidelines (“Specialty Guidelines for Forensic Psychologists”; Committee on Ethical Guidelines for Forensic Psychologists, 1991) was approved by the American Psychology–Law Society (Division 41 of APA) and the American Academy of Forensic Psychology in 1991. The current revision, now called the “Specialty Guidelines for Forensic Psychology” (referred to as “the Guidelines” throughout this document), replaces the 1991 “Specialty Guidelines for Forensic Psychologists.”

These guidelines are scheduled to expire August 3, 2021. After this date, users are encouraged to contact the American Psychological Association Practice Directorate to confirm that this document remains in effect.

Correspondence concerning these guidelines should be addressed to the Practice Directorate, American Psychological Association, 750 First Street, NE, Washington, DC 20002-4242.

researchers, forensic practitioners may participate in the collection and dissemination of data that are relevant to various legal issues. As advisors, forensic practitioners may provide an attorney with an informed understanding of the role that psychology can play in the case at hand. As consultants, forensic practitioners may explain the practical implications of relevant research, examination findings, and the opinions of other psycholegal experts. As examiners, forensic practitioners may assess an individual's functioning and report findings and opinions to the attorney, a legal tribunal, an employer, an insurer, or others (APA, 2010b, 2011a). As treatment providers, forensic practitioners may provide therapeutic services tailored to the issues and context of a legal proceeding. As mediators or negotiators, forensic practitioners may serve in a third-party neutral role and assist parties in resolving disputes. As arbiters, special masters, or case managers with decision-making authority, forensic practitioners may serve parties, attorneys, and the courts (APA, 2011b).

These Guidelines are informed by APA's "Ethical Principles of Psychologists and Code of Conduct" (hereinafter referred to as the EPPCC; APA, 2010a). The term *guidelines* refers to statements that suggest or recommend specific professional behavior, endeavors, or conduct for psychologists. Guidelines differ from standards in that standards are mandatory and may be accompanied by an enforcement mechanism. Guidelines are aspirational in intent. They are intended to facilitate the continued systematic development of the profession and facilitate a high level of practice by psychologists. Guidelines are not intended to be mandatory or exhaustive and may not be applicable to every professional situation. They are not definitive, and they are not intended to take precedence over the judgment of psychologists.

As such, the Guidelines are advisory in areas in which the forensic practitioner has discretion to exercise professional judgment that is not prohibited or mandated by the EPPCC or applicable law, rules, or regulations. The Guidelines neither add obligations to nor eliminate obligations from the EPPCC but provide additional guidance for psychologists. The modifiers used in the Guidelines (e.g., *reasonably*, *appropriate*, *potentially*) are included in recognition of the need for professional judgment on the part of forensic practitioners; ensure applicability across the broad range of activities conducted by forensic practitioners; and reduce the likelihood of enacting an inflexible set of guidelines that might be inapplicable as forensic practice evolves. The use of these modifiers, and the recognition of the role of professional discretion and judgment, also reflects that forensic practitioners are likely to encounter facts and circumstances not anticipated by the Guidelines and they may have to act upon uncertain or incomplete evidence. The Guidelines may provide general or conceptual guidance in such circumstances. The Guidelines do not, however, exhaust the legal, professional, moral, and ethical considerations that inform forensic practitioners, for no complex activity can be completely defined by legal rules, codes of conduct, and aspirational guidelines.

The Guidelines are not intended to serve as a basis for disciplinary action or civil or criminal liability. The standard of care is established by a competent authority, not by the Guidelines. No ethical, licensure, or other administrative action or remedy, nor any other cause of action, should be taken *solely* on the basis of a forensic practitioner acting in a manner consistent or inconsistent with these Guidelines.

In cases in which a competent authority references the Guidelines when formulating standards, the authority should consider that the Guidelines attempt to identify a high level of quality in forensic practice. Competent practice is defined as the conduct of a reasonably prudent forensic practitioner engaged in similar activities in similar circumstances. Professional conduct evolves and may be viewed along a continuum of adequacy, and "minimally competent" and "best possible" are usually different points along that continuum.

The Guidelines are designed to be national in scope and are intended to be consistent with state and federal law. In cases in which a conflict between legal and professional obligations occurs, forensic practitioners make known their commitment to the EPPCC and the Guidelines and take steps to achieve an appropriate resolution consistent with the EPPCC and the Guidelines.

The format of the Guidelines is different from most other practice guidelines developed under the auspices of APA. This reflects the history of the Guidelines as well as the fact that the Guidelines are considerably broader in scope than any other APA-developed guidelines. Indeed, these are the only APA-approved guidelines that address a complete specialty practice area. Despite this difference in format, the Guidelines function as all other APA guideline documents.

This document replaces the 1991 "Specialty Guidelines for Forensic Psychologists," which were approved by the American Psychology–Law Society (Division 41 of APA) and the American Board of Forensic Psychology. The current revision has also been approved by the Council of Representatives of APA. Appendix A includes a discussion of the revision process, enactment, and current status of these Guidelines. Appendix B includes definitions and terminology as used for the purposes of these Guidelines.

## **1. Responsibilities**

### ***Guideline 1.01: Integrity***

Forensic practitioners strive for accuracy, honesty, and truthfulness in the science, teaching, and practice of forensic psychology and they strive to resist partisan pressures to provide services in any ways that might tend to be misleading or inaccurate.

### ***Guideline 1.02: Impartiality and Fairness***

When offering expert opinion to be relied upon by a decision maker, providing forensic therapeutic services, or teaching or conducting research, forensic practitioners strive for accuracy, impartiality, fairness, and independence (EPPCC Standard 2.01). Forensic practitioners rec-

ognize the adversarial nature of the legal system and strive to treat all participants and weigh all data, opinions, and rival hypotheses impartially.

When conducting forensic examinations, forensic practitioners strive to be unbiased and impartial, and avoid partisan presentation of unrepresentative, incomplete, or inaccurate evidence that might mislead finders of fact. This guideline does not preclude forceful presentation of the data and reasoning upon which a conclusion or professional product is based.

When providing educational services, forensic practitioners seek to represent alternative perspectives, including data, studies, or evidence on both sides of the question, in an accurate, fair and professional manner, and strive to weigh and present all views, facts, or opinions impartially.

When conducting research, forensic practitioners seek to represent results in a fair and impartial manner. Forensic practitioners strive to utilize research designs and scientific methods that adequately and fairly test the questions at hand, and they attempt to resist partisan pressures to develop designs or report results in ways that might be misleading or unfairly bias the results of a test, study, or evaluation.

### **Guideline 1.03: Avoiding Conflicts of Interest**

Forensic practitioners refrain from taking on a professional role when personal, scientific, professional, legal, financial, or other interests or relationships could reasonably be expected to impair their impartiality, competence, or effectiveness, or expose others with whom a professional relationship exists to harm (EPPCC Standard 3.06).

Forensic practitioners are encouraged to identify, make known, and address real or apparent conflicts of interest in an attempt to maintain the public confidence and trust, discharge professional obligations, and maintain responsibility, impartiality, and accountability (EPPCC Standard 3.06). Whenever possible, such conflicts are revealed to all parties as soon as they become known to the psychologist. Forensic practitioners consider whether a prudent and competent forensic practitioner engaged in similar circumstances would determine that the ability to make a proper decision is likely to become impaired under the immediate circumstances.

When a conflict of interest is determined to be manageable, continuing services are provided and documented in a way to manage the conflict, maintain accountability, and preserve the trust of relevant others (also see Guideline 4.02 below).

## **2. Competence**

### **Guideline 2.01: Scope of Competence**

When determining one's competence to provide services in a particular matter, forensic practitioners may consider a variety of factors including the relative complexity and specialized nature of the service, relevant training and experience, the preparation and study they are able to devote to the matter, and the opportunity for consultation with a professional of established competence in the sub-

ject matter in question. Even with regard to subjects in which they are expert, forensic practitioners may choose to consult with colleagues.

### **Guideline 2.02: Gaining and Maintaining Competence**

Competence can be acquired through various combinations of education, training, supervised experience, consultation, study, and professional experience. Forensic practitioners planning to provide services, teach, or conduct research involving populations, areas, techniques, or technologies that are new to them are encouraged to undertake relevant education, training, supervised experience, consultation, or study.

Forensic practitioners make ongoing efforts to develop and maintain their competencies (EPPCC Standard 2.03). To maintain the requisite knowledge and skill, forensic practitioners keep abreast of developments in the fields of psychology and the law.

### **Guideline 2.03: Representing Competencies**

Consistent with the EPPCC, forensic practitioners adequately and accurately inform all recipients of their services (e.g., attorneys, tribunals) about relevant aspects of the nature and extent of their experience, training, credentials, and qualifications, and how they were obtained (EPPCC Standard 5.01).

### **Guideline 2.04: Knowledge of the Legal System and the Legal Rights of Individuals**

Forensic practitioners recognize the importance of obtaining a fundamental and reasonable level of knowledge and understanding of the legal and professional standards, laws, rules, and precedents that govern their participation in legal proceedings and that guide the impact of their services on service recipients (EPPCC Standard 2.01).

Forensic practitioners aspire to manage their professional conduct in a manner that does not threaten or impair the rights of affected individuals. They may consult with, and refer others to, legal counsel on matters of law. Although they do not provide formal legal advice or opinions, forensic practitioners may provide information about the legal process to others based on their knowledge and experience. They strive to distinguish this from legal opinions, however, and encourage consultation with attorneys as appropriate.

### **Guideline 2.05: Knowledge of the Scientific Foundation for Opinions and Testimony**

Forensic practitioners seek to provide opinions and testimony that are sufficiently based upon adequate scientific foundation, and reliable and valid principles and methods that have been applied appropriately to the facts of the case.

When providing opinions and testimony that are based on novel or emerging principles and methods, forensic practitioners seek to make known the status and limitations of these principles and methods.

### **Guideline 2.06: Knowledge of the Scientific Foundation for Teaching and Research**

Forensic practitioners engage in teaching and research activities in which they have adequate knowledge, experience, and education (EPPCC Standard 2.01), and they acknowledge relevant limitations and caveats inherent in procedures and conclusions (EPPCC Standard 5.01).

### **Guideline 2.07: Considering the Impact of Personal Beliefs and Experience**

Forensic practitioners recognize that their own cultures, attitudes, values, beliefs, opinions, or biases may affect their ability to practice in a competent and impartial manner. When such factors may diminish their ability to practice in a competent and impartial manner, forensic practitioners may take steps to correct or limit such effects, decline participation in the matter, or limit their participation in a manner that is consistent with professional obligations.

### **Guideline 2.08: Appreciation of Individual and Group Differences**

When scientific or professional knowledge in the discipline of psychology establishes that an understanding of factors associated with age, gender, gender identity, race, ethnicity, culture, national origin, religion, sexual orientation, disability, language, socioeconomic status, or other relevant individual and cultural differences affects implementation or use of their services or research, forensic practitioners consider the boundaries of their expertise, make an appropriate referral if indicated, or gain the necessary training, experience, consultation, or supervision (EPPCC Standard 2.01; APA, 2003, 2004, 2011c, 2011d, 2011e).

Forensic practitioners strive to understand how factors associated with age, gender, gender identity, race, ethnicity, culture, national origin, religion, sexual orientation, disability, language, socioeconomic status, or other relevant individual and cultural differences may affect and be related to the basis for people's contact and involvement with the legal system.

Forensic practitioners do not engage in unfair discrimination based on such factors or on any basis proscribed by law (EPPCC Standard 3.01). They strive to take steps to correct or limit the effects of such factors on their work, decline participation in the matter, or limit their participation in a manner that is consistent with professional obligations.

### **Guideline 2.09: Appropriate Use of Services and Products**

Forensic practitioners are encouraged to make reasonable efforts to guard against misuse of their services and exercise professional discretion in addressing such misuses.

## **3. Diligence**

### **Guideline 3.01: Provision of Services**

Forensic practitioners are encouraged to seek explicit agreements that define the scope of, time-frame of, and

compensation for their services. In the event that a client breaches the contract or acts in a way that would require the practitioner to violate ethical, legal or professional obligations, the forensic practitioner may terminate the relationship.

Forensic practitioners strive to act with reasonable diligence and promptness in providing agreed-upon and reasonably anticipated services. Forensic practitioners are not bound, however, to provide services not reasonably anticipated when retained, nor to provide every possible aspect or variation of service. Instead, forensic practitioners may exercise professional discretion in determining the extent and means by which services are provided and agreements are fulfilled.

### **Guideline 3.02: Responsiveness**

Forensic practitioners seek to manage their workloads so that services can be provided thoroughly, competently, and promptly. They recognize that acting with reasonable promptness, however, does not require the forensic practitioner to acquiesce to service demands not reasonably anticipated at the time the service was requested, nor does it require the forensic practitioner to provide services if the client has not acted in a manner consistent with existing agreements, including payment of fees.

### **Guideline 3.03: Communication**

Forensic practitioners strive to keep their clients reasonably informed about the status of their services, comply with their clients' reasonable requests for information, and consult with their clients about any substantial limitation on their conduct or performance that may arise when they reasonably believe that their clients expect a service that is not consistent with their professional obligations. Forensic practitioners attempt to keep their clients reasonably informed regarding new facts, opinions, or other potential evidence that may be relevant and applicable.

### **Guideline 3.04: Termination of Services**

The forensic practitioner seeks to carry through to conclusion all matters undertaken for a client unless the forensic practitioner–client relationship is terminated. When a forensic practitioner's employment is limited to a specific matter, the relationship may terminate when the matter has been resolved, anticipated services have been completed, or the agreement has been violated.

## **4. Relationships**

Whether a forensic practitioner–client relationship exists depends on the circumstances and is determined by a number of factors which may include the information exchanged between the potential client and the forensic practitioner prior to, or at the initiation of, any contact or service, the nature of the interaction, and the purpose of the interaction.

In their work, forensic practitioners recognize that relationships are established with those who retain their services (e.g., retaining parties, employers, insurers, the

court) and those with whom they interact (e.g., examinees, collateral contacts, research participants, students). Forensic practitioners recognize that associated obligations and duties vary as a function of the nature of the relationship.

#### **Guideline 4.01: Responsibilities to Retaining Parties**

Most responsibilities to the retaining party attach only after the retaining party has requested and the forensic practitioner has agreed to render professional services and an agreement regarding compensation has been reached. Forensic practitioners are aware that there are some responsibilities, such as privacy, confidentiality, and privilege, that may attach when the forensic practitioner agrees to consider whether a forensic practitioner–retaining party relationship shall be established. Forensic practitioners, prior to entering into a contract, may direct the potential retaining party not to reveal any confidential or privileged information as a way of protecting the retaining party’s interest in case a conflict exists as a result of pre-existing relationships.

At the initiation of any request for service, forensic practitioners seek to clarify the nature of the relationship and the services to be provided including the role of the forensic practitioner (e.g., trial consultant, forensic examiner, treatment provider, expert witness, research consultant); which person or entity is the client; the probable uses of the services provided or information obtained; and any limitations to privacy, confidentiality, or privilege.

#### **Guideline 4.02: Multiple Relationships**

A multiple relationship occurs when a forensic practitioner is in a professional role with a person and, at the same time or at a subsequent time, is in a different role with the same person; is involved in a personal, fiscal, or other relationship with an adverse party; at the same time is in a relationship with a person closely associated with or related to the person with whom the forensic practitioner has the professional relationship; or offers or agrees to enter into another relationship in the future with the person or a person closely associated with or related to the person (EPPCC Standard 3.05).

Forensic practitioners strive to recognize the potential conflicts of interest and threats to objectivity inherent in multiple relationships. Forensic practitioners are encouraged to recognize that some personal and professional relationships may interfere with their ability to practice in a competent and impartial manner and they seek to minimize any detrimental effects by avoiding involvement in such matters whenever feasible or limiting their assistance in a manner that is consistent with professional obligations.

#### **Guideline 4.02.01: Therapeutic–Forensic Role Conflicts**

Providing forensic and therapeutic psychological services to the same individual or closely related individuals involves multiple relationships that may impair objectivity and/or cause exploitation or other harm. Therefore, when requested or ordered to provide either concurrent or se-

quential forensic and therapeutic services, forensic practitioners are encouraged to disclose the potential risk and make reasonable efforts to refer the request to another qualified provider. If referral is not possible, the forensic practitioner is encouraged to consider the risks and benefits to all parties and to the legal system or entity likely to be impacted, the possibility of separating each service widely in time, seeking judicial review and direction, and consulting with knowledgeable colleagues. When providing both forensic and therapeutic services, forensic practitioners seek to minimize the potential negative effects of this circumstance (EPPCC Standard 3.05).

#### **Guideline 4.02.02: Expert Testimony by Practitioners Providing Therapeutic Services**

Providing expert testimony about a patient who is a participant in a legal matter does not necessarily involve the practice of forensic psychology even when that testimony is relevant to a psycholegal issue before the decision maker. For example, providing testimony on matters such as a patient’s reported history or other statements, mental status, diagnosis, progress, prognosis, and treatment would not ordinarily be considered forensic practice even when the testimony is related to a psycholegal issue before the decision maker. In contrast, rendering opinions and providing testimony about a person on psycholegal issues (e.g., criminal responsibility, legal causation, proximate cause, trial competence, testamentary capacity, the relative merits of parenting arrangements) would ordinarily be considered the practice of forensic psychology.

Consistent with their ethical obligations to base their opinions on information and techniques sufficient to substantiate their findings (EPPCC Standards 2.04, 9.01), forensic practitioners are encouraged to provide testimony only on those issues for which they have adequate foundation and only when a reasonable forensic practitioner engaged in similar circumstances would determine that the ability to make a proper decision is unlikely to be impaired. As with testimony regarding forensic examinees, the forensic practitioner strives to identify any substantive limitations that may affect the reliability and validity of the facts or opinions offered, and communicates these to the decision maker.

#### **Guideline 4.02.03: Provision of Forensic Therapeutic Services**

Although some therapeutic services can be considered forensic in nature, the fact that therapeutic services are ordered by the court does not necessarily make them forensic.

In determining whether a therapeutic service should be considered the practice of forensic psychology, psychologists are encouraged to consider the potential impact of the legal context on treatment, the potential for treatment to impact the psycholegal issues involved in the case, and whether another reasonable psychologist in a similar position would consider the service to be forensic and these Guidelines to be applicable.

Therapeutic services can have significant effects on current or future legal proceedings. Forensic practitioners

are encouraged to consider these effects and minimize any unintended or negative effects on such proceedings or therapy when they provide therapeutic services in forensic contexts.

#### **Guideline 4.03: Provision of Emergency Mental Health Services to Forensic Examinees**

When providing forensic examination services an emergency may arise that requires the practitioner to provide short-term therapeutic services to the examinee in order to prevent imminent harm to the examinee or others. In such cases the forensic practitioner is encouraged to limit disclosure of information and inform the retaining attorney, legal representative, or the court in an appropriate manner. Upon providing emergency treatment to examinees, forensic practitioners consider whether they can continue in a forensic role with that individual so that potential for harm to the recipient of services is avoided (EPPCC Standard 3.04).

### **5. Fees**

#### **Guideline 5.01: Determining Fees**

When determining fees forensic practitioners may consider salient factors such as their experience providing the service, the time and labor required, the novelty and difficulty of the questions involved, the skill required to perform the service, the fee customarily charged for similar forensic services, the likelihood that the acceptance of the particular employment will preclude other employment, the time limitations imposed by the client or circumstances, the nature and length of the professional relationship with the client, the client's ability to pay for the service, and any legal requirements.

#### **Guideline 5.02: Fee Arrangements**

Forensic practitioners are encouraged to make clear to the client the likely cost of services whenever it is feasible, and make appropriate provisions in those cases in which the costs of services is greater than anticipated or the client's ability to pay for services changes in some way.

Forensic practitioners seek to avoid undue influence that might result from financial compensation or other gains. Because of the threat to impartiality presented by the acceptance of contingent fees and associated legal prohibitions, forensic practitioners strive to avoid providing professional services on the basis of contingent fees. Letters of protection, financial guarantees, and other security for payment of fees in the future are not considered contingent fees unless payment is dependent on the outcome of the matter.

#### **Guideline 5.03: Pro Bono Services**

Forensic psychologists recognize that some persons may have limited access to legal services as a function of financial disadvantage and strive to contribute a portion of their professional time for little or no compensation or personal advantage (EPPCC Principle E).

## **6. Informed Consent, Notification, and Assent**

Because substantial rights, liberties, and properties are often at risk in forensic matters, and because the methods and procedures of forensic practitioners are complex and may not be accurately anticipated by the recipients of forensic services, forensic practitioners strive to inform service recipients about the nature and parameters of the services to be provided (EPPCC Standards 3.04, 3.10).

#### **Guideline 6.01: Timing and Substance**

Forensic practitioners strive to inform clients, examinees, and others who are the recipients of forensic services as soon as is feasible about the nature and extent of reasonably anticipated forensic services.

In determining what information to impart, forensic practitioners are encouraged to consider a variety of factors including the person's experience or training in psychological and legal matters of the type involved and whether the person is represented by counsel. When questions or uncertainties remain after they have made the effort to explain the necessary information, forensic practitioners may recommend that the person seek legal advice.

#### **Guideline 6.02: Communication With Those Seeking to Retain a Forensic Practitioner**

As part of the initial process of being retained, or as soon thereafter as previously unknown information becomes available, forensic practitioners strive to disclose to the retaining party information that would reasonably be anticipated to affect a decision to retain or continue the services of the forensic practitioner.

This disclosure may include, but is not limited to, the fee structure for anticipated services; prior and current personal or professional activities, obligations, and relationships that would reasonably lead to the fact or the appearance of a conflict of interest; the forensic practitioner's knowledge, skill, experience, and education relevant to the forensic services being considered, including any significant limitations; and the scientific bases and limitations of the methods and procedures which are expected to be employed.

#### **Guideline 6.03: Communication With Forensic Examinees**

Forensic practitioners inform examinees about the nature and purpose of the examination (EPPCC Standard 9.03; American Educational Research Association, American Psychological Association, & National Council on Measurement in Education [AERA, APA, & NCME], in press). Such information may include the purpose, nature, and anticipated use of the examination; who will have access to the information; associated limitations on privacy, confidentiality, and privilege including who is authorized to release or access the information contained in the forensic practitioner's records; the voluntary or involuntary nature of participation, including potential consequences of par-

ticipation or nonparticipation, if known; and, if the cost of the service is the responsibility of the examinee, the anticipated cost.

**Guideline 6.03.01: Persons Not Ordered or Mandated to Undergo Examination**

If the examinee is not ordered by the court to participate in a forensic examination, the forensic practitioner seeks his or her informed consent (EPPCC Standards 3.10, 9.03). If the examinee declines to proceed after being notified of the nature and purpose of the forensic examination, the forensic practitioner may consider postponing the examination, advising the examinee to contact his or her attorney, and notifying the retaining party about the examinee's unwillingness to proceed.

**Guideline 6.03.02: Persons Ordered or Mandated to Undergo Examination or Treatment**

If the examinee is ordered by the court to participate, the forensic practitioner can conduct the examination over the objection, and without the consent, of the examinee (EPPCC Standards 3.10, 9.03). If the examinee declines to proceed after being notified of the nature and purpose of the forensic examination, the forensic practitioner may consider a variety of options including postponing the examination, advising the examinee to contact his or her attorney, and notifying the retaining party about the examinee's unwillingness to proceed.

When an individual is ordered to undergo treatment but the goals of treatment are determined by a legal authority rather than the individual receiving services, the forensic practitioner informs the service recipient of the nature and purpose of treatment, and any limitations on confidentiality and privilege (EPPCC Standards 3.10, 10.01).

**Guideline 6.03.03: Persons Lacking Capacity to Provide Informed Consent**

Forensic practitioners appreciate that the very conditions that precipitate psychological examination of individuals involved in legal proceedings can impair their functioning in a variety of important ways, including their ability to understand and consent to the evaluation process.

For examinees adjudicated or presumed by law to lack the capacity to provide informed consent for the anticipated forensic service, the forensic practitioner nevertheless provides an appropriate explanation, seeks the examinee's assent, and obtains appropriate permission from a legally authorized person, as permitted or required by law (EPPCC Standards 3.10, 9.03).

For examinees whom the forensic practitioner has concluded lack capacity to provide informed consent to a proposed, non-court-ordered service, but who have not been adjudicated as lacking such capacity, the forensic practitioner strives to take reasonable steps to protect their rights and welfare (EPPCC Standard 3.10). In such cases, the forensic practitioner may consider suspending the pro-

posed service or notifying the examinee's attorney or the retaining party.

**Guideline 6.03.04: Evaluation of Persons Not Represented by Counsel**

Because of the significant rights that may be at issue in a legal proceeding, forensic practitioners carefully consider the appropriateness of conducting a forensic evaluation of an individual who is not represented by counsel. Forensic practitioners may consider conducting such evaluations or delaying the evaluation so as to provide the examinee with the opportunity to consult with counsel.

**Guideline 6.04: Communication With Collateral Sources of Information**

Forensic practitioners disclose to potential collateral sources information that might reasonably be expected to inform their decisions about participating that may include, but may not be limited to, who has retained the forensic practitioner; the nature, purpose, and intended use of the examination or other procedure; the nature of and any limits on privacy, confidentiality, and privilege; and whether their participation is voluntary (EPPCC Standard 3.10).

**Guideline 6.05: Communication in Research Contexts**

When engaging in research or scholarly activities conducted as a service to a client in a legal proceeding, forensic practitioners attempt to clarify any anticipated use of the research or scholarly product, disclose their role in the resulting research or scholarly products, and obtain whatever consent or agreement is required.

In advance of any scientific study, forensic practitioners seek to negotiate with the client the circumstances under and manner in which the results may be made known to others. Forensic practitioners strive to balance the potentially competing rights and interests of the retaining party with the inappropriateness of suppressing data, for example, by agreeing to report the data without identifying the jurisdiction in which the study took place. Forensic practitioners represent the results of research in an accurate manner (EPPCC Standard 5.01).

## **7. Conflicts in Practice**

In forensic psychology practice, conflicting responsibilities and demands may be encountered. When conflicts occur, forensic practitioners seek to make the conflict known to the relevant parties or agencies, and consider the rights and interests of the relevant parties or agencies in their attempts to resolve the conflict.

**Guideline 7.01: Conflicts With Legal Authority**

When their responsibilities conflict with law, regulations, or other governing legal authority, forensic practitioners make known their commitment to the EPPCC, and take steps to resolve the conflict. In situations in which the

EPPCC or the Guidelines are in conflict with the law, attempts to resolve the conflict are made in accordance with the EPPCC (EPPCC Standard 1.02).

When the conflict cannot be resolved by such means, forensic practitioners may adhere to the requirements of the law, regulations, or other governing legal authority, but only to the extent required and not in any way that violates a person's human rights (EPPCC Standard 1.03).

Forensic practitioners are encouraged to consider the appropriateness of complying with court orders when such compliance creates potential conflicts with professional standards of practice.

### **Guideline 7.02: Conflicts With Organizational Demands**

When the demands of an organization with which they are affiliated or for whom they are working conflict with their professional responsibilities and obligations, forensic practitioners strive to clarify the nature of the conflict and, to the extent feasible, resolve the conflict in a way consistent with professional obligations and responsibilities (EPPCC Standard 1.03).

### **Guideline 7.03: Resolving Ethical Issues With Fellow Professionals**

When an apparent or potential ethical violation has caused, or is likely to cause, substantial harm, forensic practitioners are encouraged to take action appropriate to the situation and consider a number of factors including the nature and the immediacy of the potential harm; applicable privacy, confidentiality, and privilege; how the rights of the relevant parties may be affected by a particular course of action; and any other legal or ethical obligations (EPPCC Standard 1.04). Steps to resolve perceived ethical conflicts may include, but are not limited to, obtaining the consultation of knowledgeable colleagues, obtaining the advice of independent counsel, and conferring directly with the client.

When forensic practitioners believe there may have been an ethical violation by another professional, an attempt is made to resolve the issue by bringing it to the attention of that individual, if that attempt does not violate any rights or privileges that may be involved, and if an informal resolution appears appropriate (EPPCC Standard 1.04). If this does not result in a satisfactory resolution, the forensic practitioner may have to take further action appropriate to the situation, including making a report to third parties of the perceived ethical violation (EPPCC Standard 1.05). In most instances, in order to minimize unforeseen risks to the party's rights in the legal matter, forensic practitioners consider consulting with the client before attempting to resolve a perceived ethical violation with another professional.

## **8. Privacy, Confidentiality, and Privilege**

Forensic practitioners recognize their ethical obligations to maintain the confidentiality of information relating to a client or retaining party, except insofar as disclosure is

consented to by the client or retaining party, or required or permitted by law (EPPCC Standard 4.01).

### **Guideline 8.01: Release of Information**

Forensic practitioners are encouraged to recognize the importance of complying with properly noticed and served subpoenas or court orders directing release of information, or other legally proper consent from duly authorized persons, unless there is a legally valid reason to offer an objection. When in doubt about an appropriate response or course of action, forensic practitioners may seek assistance from the retaining client, retain and seek legal advice from their own attorney, or formally notify the drafter of the subpoena or order of their uncertainty.

### **Guideline 8.02: Access to Information**

If requested, forensic practitioners seek to provide the retaining party access to, and a meaningful explanation of, all information that is in their records for the matter at hand, consistent with the relevant law, applicable codes of ethics and professional standards, and institutional rules and regulations. Forensic examinees typically are not provided access to the forensic practitioner's records without the consent of the retaining party. Access to records by anyone other than the retaining party is governed by legal process, usually subpoena or court order, or by explicit consent of the retaining party. Forensic practitioners may charge a reasonable fee for the costs associated with the storage, reproduction, review, and provision of records.

### **Guideline 8.03: Acquiring Collateral and Third Party Information**

Forensic practitioners strive to access information or records from collateral sources with the consent of the relevant attorney or the relevant party, or when otherwise authorized by law or court order.

### **Guideline 8.04: Use of Case Materials in Teaching, Continuing Education, and Other Scholarly Activities**

Forensic practitioners using case materials for purposes of teaching, training, or research strive to present such information in a fair, balanced, and respectful manner. They attempt to protect the privacy of persons by disguising the confidential, personally identifiable information of all persons and entities who would reasonably claim a privacy interest; using only those aspects of the case available in the public domain; or obtaining consent from the relevant clients, parties, participants, and organizations to use the materials for such purposes (EPPCC Standard 4.07; also see Guidelines 11.06 and 11.07 of these Guidelines).

## **9. Methods and Procedures**

### **Guideline 9.01: Use of Appropriate Methods**

Forensic practitioners strive to utilize appropriate methods and procedures in their work. When performing examinations, treatment, consultation, educational activities, or scholarly investigations, forensic practitioners seek to

maintain integrity by examining the issue or problem at hand from all reasonable perspectives and seek information that will differentially test plausible rival hypotheses.

**Guideline 9.02: Use of Multiple Sources of Information**

Forensic practitioners ordinarily avoid relying solely on one source of data, and corroborate important data whenever feasible (AERA, APA, & NCME, in press). When relying upon data that have not been corroborated, forensic practitioners seek to make known the uncorroborated status of the data, any associated strengths and limitations, and the reasons for relying upon the data.

**Guideline 9.03: Opinions Regarding Persons Not Examined**

Forensic practitioners recognize their obligations to only provide written or oral evidence about the psychological characteristics of particular individuals when they have sufficient information or data to form an adequate foundation for those opinions or to substantiate their findings (EPPCC Standard 9.01). Forensic practitioners seek to make reasonable efforts to obtain such information or data, and they document their efforts to obtain it. When it is not possible or feasible to examine individuals about whom they are offering an opinion, forensic practitioners strive to make clear the impact of such limitations on the reliability and validity of their professional products, opinions, or testimony.

When conducting a record review or providing consultation or supervision that does not warrant an individual examination, forensic practitioners seek to identify the sources of information on which they are basing their opinions and recommendations, including any substantial limitations to their opinions and recommendations.

## **10. Assessment**

**Guideline 10.01: Focus on Legally Relevant Factors**

Forensic examiners seek to assist the trier of fact to understand evidence or determine a fact in issue, and they provide information that is most relevant to the psycholegal issue. In reports and testimony, forensic practitioners typically provide information about examinees' functional abilities, capacities, knowledge, and beliefs, and address their opinions and recommendations to the identified psycholegal issues (American Bar Association & American Psychological Association, 2008; Grisso, 1986, 2003; Heilbrun, Marczyk, DeMatteo, & Mack-Allen, 2007).

Forensic practitioners are encouraged to consider the problems that may arise by using a clinical diagnosis in some forensic contexts, and consider and qualify their opinions and testimony appropriately.

**Guideline 10.02: Selection and Use of Assessment Procedures**

Forensic practitioners use assessment procedures in the manner and for the purposes that are appropriate in light of

the research on or evidence of their usefulness and proper application (EPPCC Standard 9.02; AERA, APA, & NCME, in press). This includes assessment techniques, interviews, tests, instruments, and other procedures and their administration, adaptation, scoring, and interpretation, including computerized scoring and interpretation systems.

Forensic practitioners use assessment instruments whose validity and reliability have been established for use with members of the population assessed. When such validity and reliability have not been established, forensic practitioners consider and describe the strengths and limitations of their findings. Forensic practitioners use assessment methods that are appropriate to an examinee's language preference and competence, unless the use of an alternative language is relevant to the assessment issues (EPPCC Standard 9.02).

Assessment in forensic contexts differs from assessment in therapeutic contexts in important ways that forensic practitioners strive to take into account when conducting forensic examinations. Forensic practitioners seek to consider the strengths and limitations of employing traditional assessment procedures in forensic examinations (AERA, APA, & NCME, in press). Given the stakes involved in forensic contexts, forensic practitioners strive to ensure the integrity and security of test materials and results (AERA, APA, & NCME, in press).

When the validity of an assessment technique has not been established in the forensic context or setting in which it is being used, the forensic practitioner seeks to describe the strengths and limitations of any test results and explain the extrapolation of these data to the forensic context. Because of the many differences between forensic and therapeutic contexts, forensic practitioners consider and seek to make known that some examination results may warrant substantially different interpretation when administered in forensic contexts (AERA, APA, & NCME, in press).

Forensic practitioners consider and seek to make known that forensic examination results can be affected by factors unique to, or differentially present in, forensic contexts including response style, voluntariness of participation, and situational stress associated with involvement in forensic or legal matters (AERA, APA, & NCME, in press).

**Guideline 10.03: Appreciation of Individual Differences**

When interpreting assessment results, forensic practitioners consider the purpose of the assessment as well as the various test factors, test-taking abilities, and other characteristics of the person being assessed, such as situational, personal, linguistic, and cultural differences that might affect their judgments or reduce the accuracy of their interpretations (EPPCC Standard 9.06). Forensic practitioners strive to identify any significant strengths and limitations of their procedures and interpretations.

Forensic practitioners are encouraged to consider how the assessment process may be impacted by any disability an examinee is experiencing, make accommodations as

possible, and consider such when interpreting and communicating the results of the assessment (APA, 2011d).

#### **Guideline 10.04: Consideration of Assessment Settings**

In order to maximize the validity of assessment results, forensic practitioners strive to conduct evaluations in settings that provide adequate comfort, safety, and privacy.

#### **Guideline 10.05: Provision of Assessment Feedback**

Forensic practitioners take reasonable steps to explain assessment results to the examinee or a designated representative in language they can understand (EPPCC Standard 9.10). In those circumstances in which communication about assessment results is precluded, the forensic practitioner explains this to the examinee in advance (EPPCC Standard 9.10).

Forensic practitioners seek to provide information about professional work in a manner consistent with professional and legal standards for the disclosure of test data or results, interpretation of data, and the factual bases for conclusions.

#### **Guideline 10.06: Documentation and Compilation of Data Considered**

Forensic practitioners are encouraged to recognize the importance of documenting all data they consider with enough detail and quality to allow for reasonable judicial scrutiny and adequate discovery by all parties. This documentation includes, but is not limited to, letters and consultations; notes, recordings, and transcriptions; assessment and test data, scoring reports and interpretations; and all other records in any form or medium that were created or exchanged in connection with a matter.

When contemplating third party observation or audio/video-recording of examinations, forensic practitioners strive to consider any law that may control such matters, the need for transparency and documentation, and the potential impact of observation or recording on the validity of the examination and test security (Committee on Psychological Tests and Assessment, American Psychological Association, 2007).

#### **Guideline 10.07: Provision of Documentation**

Pursuant to proper subpoenas or court orders, or other legally proper consent from authorized persons, forensic practitioners seek to make available all documentation described in Guideline 10.05, all financial records related to the matter, and any other records including reports (and draft reports if they have been provided to a party, attorney, or other entity for review), that might reasonably be related to the opinions to be expressed.

#### **Guideline 10.08: Record Keeping**

Forensic practitioners establish and maintain a system of record keeping and professional communication (EPPCC Standard 6.01; APA, 2007), and attend to relevant laws and rules. When indicated by the extent of the rights, liberties,

and properties that may be at risk, the complexity of the case, the amount and legal significance of unique evidence in the care and control of the forensic practitioner, and the likelihood of future appeal, forensic practitioners strive to inform the retaining party of the limits of record keeping times. If requested to do so, forensic practitioners consider maintaining such records until notified that all appeals in the matter have been exhausted, or sending a copy of any unique components/aspects of the record in their care and control to the retaining party before destruction of the record.

## **11. Professional and Other Public Communications**

#### **Guideline 11.01: Accuracy, Fairness, and Avoidance of Deception**

Forensic practitioners make reasonable efforts to ensure that the products of their services, as well as their own public statements and professional reports and testimony, are communicated in ways that promote understanding and avoid deception (EPPCC Standard 5.01).

When in their role as expert to the court or other tribunals, the role of forensic practitioners is to facilitate understanding of the evidence or dispute. Consistent with legal and ethical requirements, forensic practitioners do not distort or withhold relevant evidence or opinion in reports or testimony. When responding to discovery requests and providing sworn testimony, forensic practitioners strive to have readily available for inspection all data which they considered, regardless of whether the data supports their opinion, subject to and consistent with court order, relevant rules of evidence, test security issues, and professional standards (AERA, APA, & NCME, in press; Committee on Legal Issues, American Psychological Association, 2006; Bank & Packer, 2007; Golding, 1990).

When providing reports and other sworn statements or testimony in any form, forensic practitioners strive to present their conclusions, evidence, opinions, or other professional products in a fair manner. Forensic practitioners do not, by either commission or omission, participate in misrepresentation of their evidence, nor do they participate in partisan attempts to avoid, deny, or subvert the presentation of evidence contrary to their own position or opinion (EPPCC Standard 5.01). This does not preclude forensic practitioners from forcefully presenting the data and reasoning upon which a conclusion or professional product is based.

#### **Guideline 11.02: Differentiating Observations, Inferences, and Conclusions**

In their communications, forensic practitioners strive to distinguish observations, inferences, and conclusions. Forensic practitioners are encouraged to explain the relationship between their expert opinions and the legal issues and facts of the case at hand.

### **Guideline 11.03: Disclosing Sources of Information and Bases of Opinions**

Forensic practitioners are encouraged to disclose all sources of information obtained in the course of their professional services, and to identify the source of each piece of information that was considered and relied upon in formulating a particular conclusion, opinion, or other professional product.

### **Guideline 11.04: Comprehensive and Accurate Presentation of Opinions in Reports and Testimony**

Consistent with relevant law and rules of evidence, when providing professional reports and other sworn statements or testimony, forensic practitioners strive to offer a complete statement of all relevant opinions that they formed within the scope of their work on the case, the basis and reasoning underlying the opinions, the salient data or other information that was considered in forming the opinions, and an indication of any additional evidence that may be used in support of the opinions to be offered. The specific substance of forensic reports is determined by the type of psycholegal issue at hand as well as relevant laws or rules in the jurisdiction in which the work is completed.

Forensic practitioners are encouraged to limit discussion of background information that does not bear directly upon the legal purpose of the examination or consultation. Forensic practitioners avoid offering information that is irrelevant and that does not provide a substantial basis of support for their opinions, except when required by law (EPPCC Standard 4.04).

### **Guideline 11.05: Commenting Upon Other Professionals and Participants in Legal Proceedings**

When evaluating or commenting upon the work or qualifications of other professionals involved in legal proceedings, forensic practitioners seek to represent their disagreements in a professional and respectful tone, and base them on a fair examination of the data, theories, standards, and opinions of the other expert or party.

When describing or commenting upon clients, examinees, or other participants in legal proceedings, forensic practitioners strive to do so in a fair and impartial manner.

Forensic practitioners strive to report the representations, opinions, and statements of clients, examinees, or other participants in a fair and impartial manner.

### **Guideline 11.06: Out of Court Statements**

Ordinarily, forensic practitioners seek to avoid making detailed public (out-of-court) statements about legal proceedings in which they have been involved. However, sometimes public statements may serve important goals such as educating the public about the role of forensic practitioners in the legal system, the appropriate practice of forensic psychology, and psychological and legal issues that are relevant to the matter at hand. When making public statements, forensic practitioners refrain from releasing

private, confidential, or privileged information, and attempt to protect persons from harm, misuse, or misrepresentation as a result of their statements (EPPCC Standard 4.05).

### **Guideline 11.07: Commenting Upon Legal Proceedings**

Forensic practitioners strive to address particular legal proceedings in publications or communications only to the extent that the information relied upon is part of a public record, or when consent for that use has been properly obtained from any party holding any relevant privilege (also see Guideline 8.04).

When offering public statements about specific cases in which they have not been involved, forensic practitioners offer opinions for which there is sufficient information or data and make clear the limitations of their statements and opinions resulting from having had no direct knowledge of or involvement with the case (EPPCC Standard 9.01).

## **REFERENCES**

- American Bar Association & American Psychological Association. (2008). *Assessment of older adults with diminished capacity: A handbook for psychologists*. Washington, DC: American Bar Association and American Psychological Association.
- American Educational Research Association, American Psychological Association, & National Council on Measurement in Education. (in press). *Standards for educational and psychological testing* (3rd ed.). Washington, DC: Authors.
- American Psychological Association. (2002). Criteria for practice guideline development and evaluation. *American Psychologist, 57*, 1048–1051. doi:10.1037/0003-066X.57.12.1048
- American Psychological Association. (2003). Guidelines on multicultural education, training, research, practice, and organizational change for psychologists. *American Psychologist, 58*, 377–402. doi:10.1037/0003-066X.58.5.377
- American Psychological Association. (2004). Guidelines for psychological practice with older adults. *American Psychologist, 59*, 4, 236–260. doi:10.1037/0003-066X.59.4.236
- American Psychological Association. (2007). Record keeping guidelines. *American Psychologist, 62*, 993–1004. doi:10.1037/0003-066X.62.9.993
- American Psychological Association. (2010a). *Ethical principles of psychologists and code of conduct (2002, Amended June 1, 2010)*. Retrieved from <http://www.apa.org/ethics/code/index.aspx>
- American Psychological Association. (2010b). Guidelines for child custody evaluations in family law proceedings. *American Psychologist, 65*, 863–867. doi:10.1037/a0021250
- American Psychological Association. (2011a). *Guidelines for psychological evaluations in child protection matters*. Washington, DC: Author. (*American Psychologist, 2013, 68*, 20–31. doi:10.1037/a0029891)
- American Psychological Association. (2011b). *Guidelines for the practice of parenting coordination*. Washington, DC: Author. (*American Psychologist, 2012, 67*, 63–71. doi:10.1037/a0024646)
- American Psychological Association. (2011c). *Guidelines for the evaluation of dementia and age related cognitive change*. Washington, DC: Author. (*American Psychologist, 2012, 67*, 1–9. doi:10.1037/a0024643)
- American Psychological Association. (2011d). *Guidelines for assessment of and intervention with persons with disabilities*. Washington, DC: Author. (*American Psychologist, 2012, 67*, 43–62. doi:10.1037/a0025892)
- American Psychological Association. (2011e). *Guidelines for psychological practice with lesbian, gay, and bisexual clients*. Washington, DC: Author. (*American Psychologist, 2012, 67*, 10–42. doi:10.1037/a0024659)
- Bank, S., & Packer, R. (2007). Expert witness testimony: Law, ethics, and

- practice. In A. M. Goldstein (Ed.), *Forensic psychology: Emerging topics and expanding roles* (pp. 421–445). Hoboken, NJ: Wiley.
- Committee on Ethical Guidelines for Forensic Psychologists. (1991). Specialty guidelines for forensic psychologists. *Law and Human Behavior, 15*, 655–665.
- Committee on Legal Issues, American Psychological Association. (2006). Strategies for private practitioners coping with subpoenas or compelled testimony for client records or test data. *Professional Psychology: Research and Practice, 37*, 215–222. doi:10.1037/0735-7028.37.2.215
- Committee on Psychological Tests and Assessment, American Psychological Association. (2007). *Statement on third party observers in psychological testing and assessment: A framework for decision making*. Washington, DC: Author. Retrieved from <http://www.apa.org/science/programs/testing/third-party-observers.pdf>
- Golding, S. L. (1990). Mental health professionals and the courts: The ethics of expertise. *International Journal of Law and Psychiatry, 13*, 281–307. doi:10.1016/0160-2527(90)90023-V
- Grisso, T. (1986). *Evaluating competencies: Forensic assessments and instruments*. New York, NY: Plenum.
- Grisso, T. (2003). *Evaluating competencies: Forensic assessments and instruments* (2nd ed.). New York, NY: Kluwer/Plenum.
- Heilbrun, K., Marczyk, G., DeMatteo, D., & Mack-Allen, J. (2007). A principles-based approach to forensic mental health assessment: Utility and update. In A. M. Goldstein (Ed.), *Forensic psychology: Emerging topics and expanding roles* (pp. 45–72). Hoboken, NJ: Wiley.
- Melton, G., Petrila, J., Poythress, N., & Slobogin, C. (1987). *Psychological evaluations for the courts: A handbook for mental health professionals and lawyers*. New York, NY: Guilford Press.
- Melton, G., Petrila, J., Poythress, N., & Slobogin, C. (1997). *Psychological evaluations for the courts: A handbook for mental health professionals and lawyers* (2nd ed.). New York, NY: Guilford Press.
- Melton, G., Petrila, J., Poythress, N., & Slobogin, C. (2007). *Psychological evaluations for the courts: A handbook for mental health professionals and lawyers* (3rd ed.). New York, NY: Guilford Press.
- Monahan, J. (Ed.). (1980). *Who is the client? The ethics of psychological intervention in the criminal justice system*. Washington, DC: American Psychological Association. doi:10.1037/10051-000
- Rogers, R. (Ed.). (1988). *Clinical assessment of malingering and deception*. New York, NY: Guilford Press.
- Rogers, R. (Ed.). (1997). *Clinical assessment of malingering and deception* (2nd ed.). New York, NY: Guilford Press.
- Rogers, R. (Ed.). (2008). *Clinical assessment of malingering and deception* (3rd ed.). New York, NY: Guilford Press.

## Appendix A

### Revision Process of the Guidelines

This revision of the Guidelines was coordinated by the Committee for the Revision of the Specialty Guidelines for Forensic Psychology (“the Revisions Committee”), which was established by the American Academy of Forensic Psychology and the American Psychology–Law Society (Division 41 of the American Psychological Association [APA]) in 2002 and which operated through 2011. This committee consisted of two representatives from each organization (Solomon Fulero, PhD, JD; Stephen Golding, PhD, ABPP; Lisa Piechowski, PhD, ABPP; Christina Studebaker, PhD), a chairperson (Randy Otto, PhD, ABPP), and a liaison from Division 42 (Psychologists in Independent Practice) of APA (Jeffrey Younggren, PhD, ABPP).

This document was revised in accordance with APA Rule 30.08 and the APA policy document “Criteria for Practice Guideline Development and Evaluation” (APA, 2002). The Revisions Committee posted announcements regarding the revision process to relevant electronic discussion lists and professional publications (i.e., the Psy-Law-L e-mail listserv of the American Psychology–Law Society, the American Academy of Forensic Psychology listserv, the American Psychology–Law Society Newslet-

ter). In addition, an electronic discussion list devoted solely to issues concerning revision of the Guidelines was operated between December 2002 and July 2007, followed by establishment of an e-mail address in February 2008 (sgfp@yahoo.com). Individuals were invited to provide input and commentary on the existing Guidelines and proposed revisions via these means. In addition, two public meetings were held throughout the revision process at biennial meetings of the American Psychology–Law Society.

Upon development of a draft that the Revisions Committee deemed suitable, the revised Guidelines were submitted for review to the Executive Committee of the American Psychology–Law Society (Division 41 of APA) and the American Board of Forensic Psychology. Once the revised Guidelines were approved by these two organizations, they were submitted to APA for review, commentary, and acceptance, consistent with APA’s “Criteria for Practice Guideline Development and Evaluation” (APA, 2002) and APA Rule 30-8. They were subsequently revised by the Revisions Committee and were adopted by the APA Council of Representatives on August 3, 2011.

(Appendices continue)

## Appendix B

### Definitions and Terminology

For the purposes of these Guidelines:

**Appropriate**, when used in relation to conduct by a forensic practitioner means that, according to the prevailing professional judgment of competent forensic practitioners, the conduct is apt and pertinent and is considered befitting, suitable, and proper for a particular person, place, condition, or function. **Inappropriate** means that, according to the prevailing professional judgment of competent forensic practitioners, the conduct is not suitable, desirable, or properly timed for a particular person, occasion, or purpose; and may also denote improper conduct, improprieties, or conduct that is discrepant for the circumstances.

**Agreement** refers to the objective and mutual understanding between the forensic practitioner and the person or persons seeking the professional service and/or agreeing to participate in the service. See also Assent, Consent, and Informed Consent.

**Assent** refers to the agreement, approval, or permission, especially regarding verbal or nonverbal conduct, that is reasonably intended and interpreted as expressing willingness, even in the absence of unmistakable consent. Forensic practitioners attempt to secure assent when consent and informed consent cannot be obtained or when, because of mental state, the examinee may not be able to consent.

**Consent** refers to agreement, approval, or permission as to some act or purpose.

**Client** refers to the attorney, law firm, court, agency, entity, party, or other person who has retained, and who has a contractual relationship with, the forensic practitioner to provide services.

**Conflict of Interest** refers to a situation or circumstance in which the forensic practitioner's objectivity, impartiality, or judgment may be jeopardized due to a relationship, financial, or any other interest that would reasonably be expected to substantially affect a forensic practitioner's professional judgment, impartiality, or decision making.

**Decision Maker** refers to the person or entity with the authority to make a judicial decision, agency determination, arbitration award, or other contractual determination after consideration of the facts and the law.

**Examinee** refers to a person who is the subject of a forensic examination for the purpose of informing a decision maker or attorney about the psychological functioning of that examinee.

**Forensic Examiner** refers to a psychologist who examines the psychological condition of a person whose psychological condition is in controversy or at issue.

**Forensic Practice** refers to the application of the scientific, technical, or specialized knowledge of psychol-

ogy to the law and the use of that knowledge to assist in resolving legal, contractual, and administrative disputes.

**Forensic Practitioner** refers to a psychologist when engaged in forensic practice.

**Forensic Psychology** refers to all forensic practice by any psychologist working within any subdiscipline of psychology (e.g., clinical, developmental, social, cognitive).

**Informed Consent** denotes the knowledgeable, voluntary, and competent agreement by a person to a proposed course of conduct after the forensic practitioner has communicated adequate information and explanation about the material risks and benefits of, and reasonably available alternatives to, the proposed course of conduct.

**Legal Representative** refers to a person who has the legal authority to act on behalf of another.

**Party** refers to a person or entity named in litigation, or who is involved in, or is witness to, an activity or relationship that may be reasonably anticipated to result in litigation.

**Reasonable** or **Reasonably**, when used in relation to conduct by a forensic practitioner, denotes the conduct of a prudent and competent forensic practitioner who is engaged in similar activities in similar circumstances.

**Record** or **Written Record** refers to all notes, records, documents, memorializations, and recordings of considerations and communications, be they in any form or on any media, tangible, electronic, handwritten, or mechanical, that are contained in, or are specifically related to, the forensic matter in question or the forensic service provided.

**Retaining Party** refers to the attorney, law firm, court, agency, entity, party, or other person who has retained, and who has a contractual relationship with, the forensic practitioner to provide services.

**Tribunal** denotes a court or an arbitrator in an arbitration proceeding, or a legislative body, administrative agency, or other body acting in an adjudicative capacity. A legislative body, administrative agency, or other body acts in an adjudicative capacity when a neutral official, after the presentation of legal argument or evidence by a party or parties, renders a judgment directly affecting a party's interests in a particular matter.

**Trier of Fact** refers to a court or an arbitrator in an arbitration proceeding, or a legislative body, administrative agency, or other body acting in an adjudicative capacity. A legislative body, administrative agency, or other body acts in an adjudicative capacity when a neutral official, after the presentation of legal argument or evidence by a party or parties, renders a judgment directly affecting a party's interests in a particular matter.

# **Section Four**

# Parenting Coordination Issues

**Jaimie L. Cairns**  
Cairns Law LLC  
Indianapolis, Indiana

## Section Four

**Parenting Coordination Issues..... Jaimie L. Cairns**

PowerPoint Presentation

The background features a dark blue gradient with faint, light blue circular patterns. On the left side, there is a vertical scale with numerical markings from 140 to 260 in increments of 10. Several circular elements, some solid and some dashed, are scattered across the background, some containing curved lines or arrows.

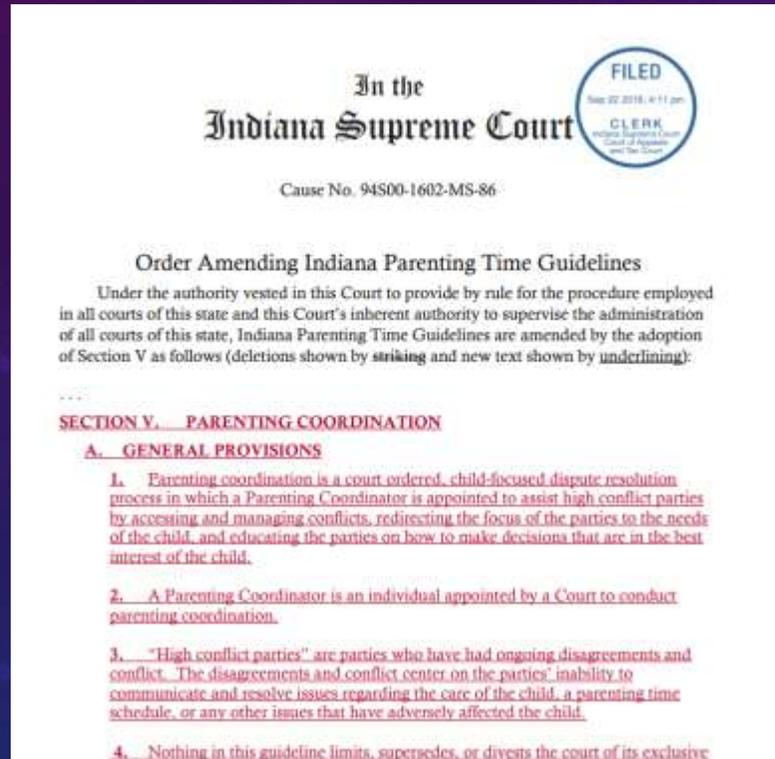
# PARENTING COORDINATION ISSUES

JAIMIE CAIRNS  
CAIRNS LAW, LLC

# HISTORY OF PARENTING COORDINATION

- Before January 1, 2017
  - No codified guidelines (i.e., nothing in IPTG, statute, etc.)
  - Levels of PC
  - Vague requirements for PC training
  - Unclear standard for when a Court could appoint a PC, particularly if the parties did not agree on need for appointment

# PARENTING COORDINATION ADDED TO IPTG



- September 2, 2016 – Supreme Court passed PC guidelines, effective January 1, 2017
- First Supreme Court approved guidelines
- Changed requirements for qualifications of PC and ability of Court to appoint a PC
- Apply to all PC appointments made after the effective date of the adoption of these guidelines and do not modify an existing parenting coordination order.

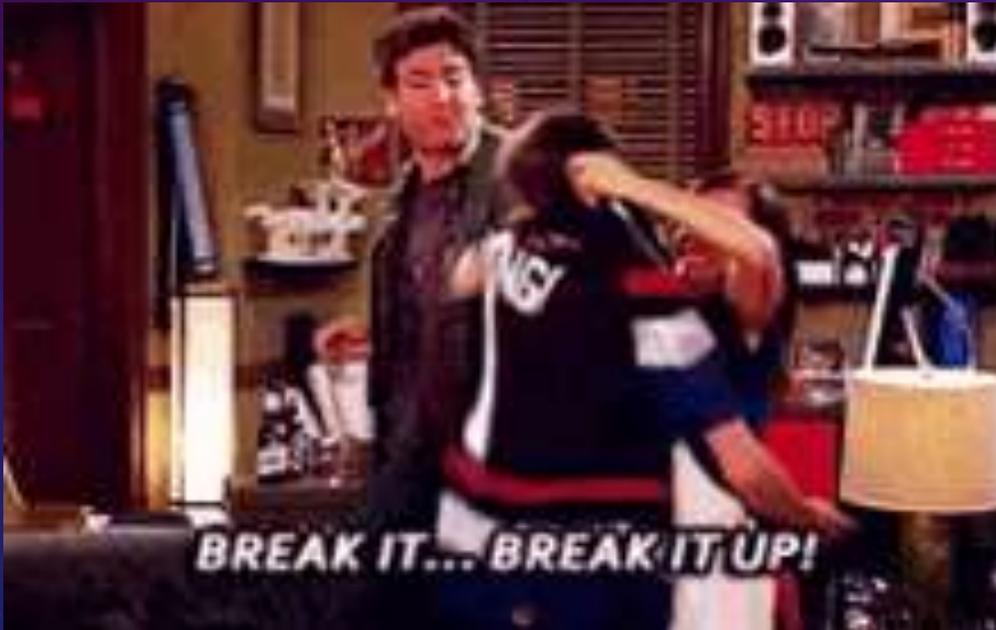
# CASE LAW SINCE PASSAGE OF IPTG

- *TAS v. JS*, 102 N.E.3d 346 (Ind. Ct. App. 2018) – upholds modification of custody in part due to Father’s non-cooperation with
- *TJW v. KMW*, 144 N.E.3d 223 (Ind. Ct. App. 2020) – PC made recommendation about child’s education plan siding with father; trial court made same recommendation; COA upheld.
- *Jones v. Gruca*, 150 N.E.3d 632 (Ind. Ct. App. 2020) - Mother argued that the trial court denied her Indiana constitutional rights when it ordered her to take future issues to PC before litigating them. Father agreed on appeal that this was an error. But the COA did not agree. The COA found, “Mother's argument that the trial court erred does not challenge the factual basis for the above findings. Rather, she simply asserts that *any* restriction on her right to file a motion for modification is *per se* contrary to law. Mother is incorrect. And, insofar as Mother asserts that the trial court improperly delegated its judicial power by requiring the parties to first try to resolve their disputes out of court with the PC, Mother's argument is not supported by cogent reasoning, and we do not consider it”

## *MADDEN V. PHELPS*, 152 N.E.3D 602 (IND. CT. APP. 2020)

- PC order provided that PC fees were to be split but also ordered that PC had the authority to “charge either party separately for individual contacts with that party or joint contacts made necessary by that party’s behavior.” PC recommended Mother pay her outstanding fees and trial court ordered so. Mother appealed. COA affirmed because PC had the authority to charge mother more than father per the order appointing the PC.
- Mother also challenged trial court's finding that PC recommended primary physical custody rest with Father. Mother argued that trial court should not have considered PC’s recommendation because “[b]y offering a custody evaluation, she acted on her bias against ... Mother and violated her own charge from the [c]ourt in making a custody evaluation.” (Note most PC orders provide that the PC cannot also serve as a custody evaluator include the order in this case). COA affirmed holding that order preventing PC from serving as a custody evaluator did not prevent PC from forming an opinion about custody and sharing it with the Court/parties. Also interesting discussion of bias as PC had admitted to being biased against Mother after she had filed a motion to remove the PC – COA found no issue with this because trial court was aware of that and could consider that in weighing the evidence.

# WHAT IS PARENTING COORDINATION?



- Parenting coordination is a court ordered, child-focused dispute resolution process in which a PC is appointed to assist high conflict parties by accessing and managing conflicts, redirecting the focus of the parties to the needs of the child, and educating the parties on how to make decisions that are in the best interest of the child. (IPTG V(A)(1))

# HIGH CONFLICT PARTIES

Parties who have had ongoing disagreements and conflict. The disagreements and conflict center on the parties' inability to communicate and resolve issues regarding the care of the child, a parenting time schedule, or any other issues that have adversely affected the child. (IPTG V(A)(3))

# QUALIFICATIONS OF A PC (IPTG V(B))

- Must be a registered Indiana Domestic Relations Mediator PLUS have additional training or experience in parenting coordination satisfactory to the court making the appointment.
- An individual who does not meet the mediation registration requirements of B(1), but has served as a PC in Indiana prior to the addition to guidelines, may obtain a waiver from the court in which the person served. However, **a person receiving such a waiver shall fully comply with all qualification requirements within (2) years from the date these guidelines are adopted.**

# HOW TO GET PC APPOINTED

- By agreement or order of the Court
  - Agree to who PC is
  - Get a panel
- When the court on its own motion appoints a PC without the consent of both parties, the order appointing a PC must include a written explanation why the appointment is appropriate in the case.
- Specify in the PC order how the PC is being paid

# PC ORDER

- Proposed order provided in materials
- A court order is necessary to provide the Parenting Coordinator authority under these guidelines to obtain information, and serve and make recommendations as specified in the order.
- The parties may agree on the length of appointment, but an initial term of appointment shall not exceed two years. For good cause shown, the court may extend the appointment of the Parenting Coordinator.

# WHAT HAPPENS AFTER THE PC IS APPOINTED?

- Send PC order appointing them if they aren't served
- Contract between PC and Parties
  - Required by IPTG: In addition to the court order for Parenting Coordination, a written agreement between the parties and the PC shall be used to detail specific issues not contained in the court order, such as fee payments, billing practices and retainers. The court has the discretion to apportion the fee between the parties absent an agreement. (IPTG V(C)(6))
- Intake
- Initial meeting (call or in-person)

# PARENTING COORDINATOR'S ROLE

- **Assess the family and the litigation history; educate the parties as to the impact their behavior has on the child; facilitate conflict management; and assist the parties in the development of parenting plans and alternative resolutions to other disputes.**
- A PC shall comply with the requirements of and act in accordance with the appointment order issued by the court.
- Can communicate with parties, their counsel of record, the child or children involved, and the court.
- PC shall have the right to review documents that are pertinent to the parenting coordination process. The PC shall request a release from the parties, or an order of the court, when necessary.
- If unable to resolve between parties, PC is empowered to make reports or recommendations to the parties and the court for further consideration as discussed later

# ROLE CONTINUED

- **PC** has an ongoing duty to report any activity, criminal or otherwise, that adversely affects the PC's ability to perform the functions of a PC.
- A PC shall report child abuse or neglect as obligated by law. The PC shall inform the parties that he/she will report any suspected child abuse or neglect and any apparent serious risk of harm to a family member or a third party to child protective services, law enforcement, or other appropriate authority.
- A PC shall maintain independence; objectivity; and impartiality, including avoiding the appearance of partiality, in dealings with parties and professionals, both in and out of the courtroom.

# PARENTING COORDINATOR DON'TS

- Do not have ex parte communications with the appointing court regarding substantive matters or issues on the merits of the case.
- Do not offer legal advice to the parents
- Do not serve in multiple roles in a case that creates a conflict of interest.
- Avoid any clear conflict of interest arising from any relationship or activity, including but not limited to those of employment or business or from professional or personal contacts with parties or others involved in the case.

# AGREEMENTS REACHED DURING PC PROCESS

A written agreement, which seeks to **modify a court order**, signed by the parties and the Parenting Coordinator shall be submitted to the court for consideration within twenty (20) days of the agreement being signed. Copies of the document submitted shall be provided to the parties and their counsel. There shall be no ex parte communication with the court. (IPTG (V)(E)(1))

# PC RECOMMENDATIONS

- Last resort by a PC when parties cannot resolve issue
- Recommendations cannot make custody modifications, substantial changes to parenting time, or contradict orders in any other way
- Many PC orders require that any reports be served on the parties/counsel a number of days before they are filed
- A PC's recommendations, which are not agreed to by the parties, may be submitted by the PC as a written report to the court for consideration. The written report shall include an explanation as to how the recommended change is expected to benefit the family as a whole.

# OBJECTING TO A PC'S RECOMMENDATIONS

- Objection filed by any party (served on opposing party/counsel AND PC) within ten (10) days after the report is filed with the court (or within another time as the court may direct)
- Responses to the objections shall be filed with the court and served on the PC and all other parties within ten (10) days after the objection is served.
- Court has three options:
  - If the court finds that time is of the essence, the court may approve the recommendation and immediately adopt it as an interim order of the court. However, if a party files an objection to the recommendation, the court shall set an expedited hearing to consider the recommendation and arguments of the parties in favor of and opposing the recommendation.
  - The court may reject the recommendation in whole or in part. However, if a party files an objection to the recommendation or objects to the court's rejection of all or part of the recommendation, the court shall set a hearing to consider the recommendation and arguments of the parties in favor of and opposing the recommendation.
  - The court may take no immediate action upon the recommendation. Upon the court's own motion or upon the request of any party, the court may set a hearing regarding the recommendation on the court's calendar.
- The PC shall submit a written report to the parties and their counsel at the completion of the PC's services, and may also submit interim reports as appropriate.
- Note: All submissions to the court shall comply with Administrative Rule 9.

# PARENTING COORDINATION FEES

- Order from Court typically governs basics (division of cost overall and fee shifting)
- Contract between PC and parents determines majority of details
- Marion County and surrounding donut counties do not have court subsidized programs
  - Kids Voice has one in Marion County for free/reduced cost but it is full
- Fees and retainers will vary from PC to PC

# TERMINATION OF PC

- The court may terminate the service of the PC at any time upon finding that there is no longer a need for the services or for other good cause.
  - Good cause may include a finding that domestic violence issues or other circumstances exist that appear to compromise the safety of any person or the integrity of the process.
  - The appointment may be terminated if further efforts by the PC would be contrary to the best interests of the child; the child has reached the age of majority; or the child no longer lives with a party.
- The PC may provide notice to the parties and the court of his or her intent to resign at any time. The court may approve the resignation and discharge the PC without a hearing unless a party files a written objection within 10 days of the notice and requests a hearing.
- No party may terminate the services of a court appointed PC without an order of the court. Absent egregious abuse of discretion or a substantial and unexpected change in circumstances, no party may request a judicial review of the appointment within the first six months of the appointment. Nevertheless, the court may terminate the appointment of a PC at any time.
- After the initial six-month period, a party may petition the court for termination of the appointment. Upon a finding that the PC has exceeded his or her mandate; has acted in a manner inconsistent with this guideline; has demonstrated bias; or for other good cause the court may terminate the appointment.

# QUESTIONS?

Contact information:

Jaimie Cairns

[Jaimie@myindylawyer.com](mailto:Jaimie@myindylawyer.com)

(317)632-4711

# Section Five

# Supervised Parenting Time

**Magistrate Andrew R. Bloch**  
Hamilton County Superior Court  
Noblesville, Indiana

**Chief Magistrate Marie L. Kern**  
Master Commissioner  
Marion County Circuit Court  
Indianapolis, Indiana

**Section Five**

**Supervised Parenting Time..... Magistrate Andrew R. Bloch  
Chief Magistrate Marie L. Kern**

PowerPoint Presentation

2020 Challenges in Family Law

# SUPERVISED PARENTING TIME

# Fundamentals

Know the Big 3 Cases,:

- Price v. Massachusetts, 321 U.S. 804, 64 S.Ct. 784 (1944)
- Wisconsin v. Yoder, 406 U.S. 205, 232, 92 S.Ct., 1526 (1972)
- Troxel v. Granville, 530 U.S. 57, 120 S. Ct. 2054 (2000).
- All are worth reading, if you're going to take a request for supervised parenting time trial. However, the overarching theme is: Parents have a fundamental right to raise their children.
- Indiana has followed these lines of cases, notably in Duncan v. Duncan, 843 N.E. 2d 966, 969 (Ind. Ct. App. 2006, trans. Denied. "... right of non-custodial parent to visit his or her children is a precious privilege".

# Prince v. Massachusetts

- Sarah Prince was convicted of furnishing an infant with magazines, knowingly the infant would sell them on the streets illegally.
- Sarah Prince was a Jehovah's witness, and the Aunt of the nine-year-old in question.
- Conviction was affirmed, with the Court holding: "It is cardinal with us that the custody, care, and nurture of the child reside first in the parents, whose primary function and freedom include the preparation for obligations the state can neither supply nor hinder".
- The Court states at the end, that this decision extends no further and is reserved only for the facts herein.

# Wisconsin v. Yoder

- Yoder's found guilty of violating Wisconsin's compulsory education law. Wisconsin Supreme Court reversed that decision, and the United States Supreme Court Affirmed.
- "The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. The primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition.

# Troxel v. Granville

- Paternal Grandparents sought visitation with their grandchild in a paternity action. The trial court awarded visitation, The Washington Court of Appeals reversed, which the Washington Supreme Court affirmed. United States Supreme Court affirmed the decision.
- ...'the interest of parents in the care, custody, and control of their children, is perhaps the oldest of the fundamental liberty interests recognized by this Court.
- There is a spirited concurring opinion by Justice Souter as well as an equally spirited dissenting opinion by Justice Stevens.

# Indiana Code 31-17-4-1

- (a) Subject to subsections (d) and (e), a parent . . . is entitled to reasonable parenting time rights unless the court finds, after a hearing, that parenting time by the noncustodial parent **might** endanger the child's physical health or significantly impair the child's emotional development.
- (d) Except as provided in subsection (e), if a court grants parenting time rights to a person who has been convicted of:
  - (1) child molesting (IC 35-42-4-3); or
  - (2) child exploitation (IC 35-42-4-4(b) or IC 35-42-4-4(c));
  - there is a **rebuttable presumption** that the parenting time with the child must be supervised.
- (e) If a court grants parenting time rights to a person who has been convicted of:
  - (1) child molesting (IC 35-42-4-3); or
  - (2) child exploitation (IC 35-42-4-4(b) or IC 35-42-4-4(c));
  - within the previous five (5) years, the court **shall order** that the parenting time with the child **must be** supervised.

# Types of Restrictions

- Parenting time that falls below the Indiana Parenting Time Guidelines
  - Perkinson v. Perkinson, 989 N.E.2d 758, 761 (Ind. 2013). See also Indiana Parenting Time Guidelines
- Supervised Parenting Time by the Parent
- Supervised Parenting Time by a 3<sup>rd</sup> Party
  - Therapeutic Supervised Parenting Time
  - Facility Supervised Parenting Time

# Examples of Supervised Parenting Time

- Safety concerns in a parent's home
- Domestic Violence
- Mental health issues
- Prolonged periods of absence
- History of absconding
- Addiction or short periods of sobriety
- Refusal to honor medical recommendations
- Others?

# How Long can Supervised Parenting Time Last?

- Case law suggests that it should last the least amount of time possible.
- Supervised Parenting Time Orders should rely on ways for the parent to remove the restrictions in place as they cure the situation that led to the implantation of the restriction. This includes, therapy, phased in parenting time, and other methods of reducing the restriction back to unsupervised parenting time.
- Courts should be wary of delegating this authority to facilities and therapists. See *In Re the Paternity of A.R.R.* 634 N.E.2d 786 (Ind. Ct. App. 1994). “Court impermissibly endowed the agency with judicial powers”.

# Parenting time will cause emotional or physical harm

- Indiana Code says “may”, but the case law has routinely held that “may” means “will” or “would” in this case.
- Court must make a specific finding. *Farrell v. Littell*, 790 N.E.2d 612, 618 (Ind. Ct. App. 2003)
- Some examples:
  - *D.B. v. M.B.V.*, 913, N.E.2d 1271 (Ind. Ct. App. 2009). “Termination of parenting relationship not permitted under statute because reunification has proved unusually challenging”. Appellate Court recommended that Supervised Parenting Time be ordered on remand to protect Father from aggressive actions and baseless allegations of children.
  - *Strong v. Snowden*, 87 N.E.3d 1170 (Ind. App. 2017). Supervised parenting time permitted as child experienced vomiting, difficulty concentrating, crying, and sleeplessness after visits. Father refused to work with child’s therapist to alleviate child’s concerns.
  - *In Re Paternity of P.B.*, 932 N.E.2d. 712 (Ind. Ct. App. 2010). Termination of parenting time was improper despite the fact that Father held a gun to child’s head and engaged in sexual gratification in child’s presence.

# Parenting time will cause emotional or physical harm

- There must be true harm. Extraordinary circumstances must exist to deny parenting time to a parent. *S. m. v. A.A.*, 136 N.E.3d 227 (Ind. App. 2019).
- Misconduct so egregious that it places a child's mental or physical welfare at stake. *Maddux v. Maddux*, 40 N.E.3d 971, 979, (Ind. Ct. App. 2015).
- Just because a parent's conduct is contemptuous, does not mean it warrants supervised time.
  - Cooperation or lack of cooperation is alone not a basis for modifying custody *In Re Pat of M.P.M.W.*, 908 N.E.2d 1205, 1208 (Ind. Ct. App. 2009).

# Parenting time will cause emotional or physical harm

- Applies in Guardianship cases as well:
- Prater v. Wineland, 2020 WL 7019325 (November 30, 2020).
  - Citing Manis v. McNabb, 104 N.E. 3d 611, 621 (Ind. Ct. App. 2018), “a trial court has the authority to determine whether parenting time is warranted and order reasonable parenting time for a parent whose child is place in a guardianship”.
  - Court should make a parenting time order and not leave it to the Guardian and parent to agree. “...it cannot allow the guardian, who often has a personal stake in the matter, to determine a parent’s parenting time... during the course of the guardianship”. See also Blankenship v. Duke, 132 N.E. 3d 410, 413 (Ind. Ct. App. 2019).

# You Be the Judge!

- There is one minor child (aged 4), between the parties. Father owns a stake in a legal hemp farm and produces CBD. During trips to Colorado, he often meets with other hemp farm owners and takes part in “testing” the various products available from other farms. Mother sees this on Facebook, and files a motion to modify parenting time to restrict Father’s parenting time to supervised. Assume Father is otherwise a good parent with two “C” misdemeanor convictions for possession, which he plead guilty too before the child was born. How do you rule?

# You Be the Judge!

- Assume same facts but that Father also manufactures CBD gummies in his home for his private use and the enjoyment of his invited guests. The Gummies and production equipment are locked in a cabinet out of the reach of the child Father exercises parenting time. How do you rule?
- Same facts, but Father doesn't lock the cabinet and he makes deliveries of CBD gummies to his friends with child in the car. How do you rule?

# You Be the Judge!

- Parties are divorced with two children (ages 5 and 6). Six months after divorce is final, Father begins relationship with “Susan” who has a conviction for child seduction (of a male minor who was 16 at the time) that occurred fifteen years ago. Susan has been spending the night at Father’s and been picking the children up from school. Mother files to modify parenting time, how do you rule?
- Assume same facts, but that the children are both boys and ages 15 & 16. How do you rule?

# You Be the Judge!

- Parties are divorced two children (age 15 and age 17). Mother begins dating an exotic dancer who lives with her, named Dolly. Mother and Dolly go to various parties where drugs and alcohol are consumed by both. Mother leaves the minor children to cook, clean, and keep after themselves during parenting time as she is either partying or sleeping. Father files a motion to suspend parenting time. How do you rule?
- Assume same facts, but Mother only engages in parties (and associated activity) on her non-parenting time weekends. She is otherwise an attentive Mother during her parenting time. How do you rule?
- Assume that Dolly is a ballet dancer living in a relationship with Mother full time, and that Mother is otherwise an attentive Mother. How do you rule?

# Questions?

- Any Questions from the Audience?

# **Section Six**

# MAXIMIZE MEDIATION:

## How to Counsel Your Client in Preparation for and During Mediation

---

**Timothy M. Sledd**  
Mallor | Grodner LLP  
511 Woodcrest Drive  
Bloomington, Indiana 47401

## Section Six

### **Maximize Mediation: How to Counsel Your Client in Preparation for and During Mediation.....Timothy M. Sledd**

|       |  |    |
|-------|--|----|
| I.    | Introduction.....                            | 1  |
| II.   | Selecting a Mediator.....                    | 1  |
| III.  | Preparing Yourself.....                      | 1  |
| IV.   | Preparing Your Client for Mediation.....     | 3  |
| V.    | Counseling Your Client During Mediation..... | 6  |
| VI.   | Procedural Issues of Mediation.....          | 6  |
| VII.  | Role of the Mediator.....                    | 8  |
| VIII. | Confidentiality.....                         | 8  |
| IX.   | Checklists (Tab 1).....                      | 10 |
| X.    | Forms (Tab 2).....                           | 10 |

#### Checklists

|    |   |    |
|----|---|----|
| 1. | Basic Mediation Education for Client Checklist..... | 11 |
| 2. | Settlement Value Worksheet.....                     | 12 |
| 3. | Mediation Checklist.....                            | 14 |

#### Forms

|    |  |    |
|----|--|----|
| A. | Proposed Division of Assets Spreadsheet for Discussion Fact Pattern.....                 | 19 |
| B. | Alimony Calculation Spreadsheet for Discussion Fact Pattern.....                         | 20 |
| C. | Initial Letter to Parties/Attorneys and Fee Agreement.....                               | 21 |
| D. | Letter to Attorneys Confirming Scheduled Mediation and ADR Rule 2.7 Acknowledgement..... | 29 |
| E. | Wife's Mediation Statement and Child Support Worksheet for Discussion Fact Pattern.....  | 34 |

F. Agreement on Alternative Dispute Resolution ..... 38

G. Summary Decree of Dissolution ..... 41

H. Report of Mediator – Notice to Court of Mediation Outcome ..... 43

I. Verified Waiver of Final Hearing ..... 44

J. Mediated Final Settlement Agreement..... 45

PowerPoint Presentation

Zoom Etiquette

## **I. Introduction**

Mediation is a critical and permanent part of family law. In fact, many jurisdictions across Indiana now require mediation in family law matters before the court will hear your matter. You cannot be an effective family law attorney without being skilled in mediation. To benefit your client, you must treat mediation as seriously as you would a trial. Effective representation requires mastering the facts of the case, understanding both parties' strengths and weaknesses, and rigorously preparing your client.

## **II. Selecting a Mediator**

Selecting a mediator is the first step in advocating for your client during the mediation process. Selecting a mediator with an approach and personality that will work well for your case, your client, and with the opposition, can determine whether or not the case ultimately settles at mediation. Evaluate potential mediators early in your case and propose several potential mediators on which you and opposing counsel may agree. By agreeing to a mediator, you avoid the court appointing a mediator, or a panel of potential mediators, that may not be a good fit for your particular case. In the event that a mediator is appointed, research the mediator and gather multiple perspectives on their approach to properly prepare yourself and your client.

## **III. Preparing Yourself**

You should prepare a draft provisional agreement, dissolution settlement agreement, waiver of final hearing, and decree; or modification agreement prior to mediation and have it available on a laptop computer for editing. The draft will assist with preparation for mediation, much like preparing findings of fact and conclusions of law as you prepare for trial, and it will also accelerate mediation if and when a settlement is reached. Be careful that the mediated agreement

is enforceable when signed by both parties, not when approved by the Court. Because mediation involves constant modifications, you should also have all necessary documents available in electronic format to edit throughout mediation, such as a balance sheet,<sup>1</sup> an alimony calculation spreadsheet that allows you to calculate the present value of any extended future payments<sup>2</sup>, and/or an electronic child support obligation worksheet.<sup>3</sup>

It is, of course, essential to be well versed in both the facts of the case and the relevant law. You should have a mediation notebook available with supporting documents for every figure on your balance sheet and every position you take. Compiling all of the supporting documents will require significant cooperation from your client, but this work will ensure that both you and your client are prepared for mediation. Your notebook should also include a memorandum of law, or at a minimum, the relevant cases that support your positions.

Poorly prepared attorneys can cause enormous harm to their clients during mediation. It is essential to review and fully understand the basis for all appraisals and valuations prior to mediation, if applicable. An attorney who does not understand all of the assets incorporated into a business valuation risks committing many errors, such as “double counting” the same asset when negotiating a settlement, or being persuaded a figure did not include marketability or other forms of discounts, when in fact it did. In contrast, well prepared attorneys increase the likelihood that a case will settle because they know both sides’ strengths and weaknesses, they have explored potential settlement proposals and counter proposals, and they have evaluated likely outcomes if the case proceeds to trial.

You should have all of your experts available for consultation during the mediation. In

---

<sup>1</sup> See Proposed Division of Assets spreadsheet attached as Tab 2(A).

<sup>2</sup> See Alimony Calculation spreadsheet attached as Tab 2(B)

<sup>3</sup> See Child Support Obligation Worksheet attached as Tab 2(E).

cases where you know in advance that particular issues will arise concerning your expert's work, it may be advisable to have them attend with the mediator's permission. Having the expert present can sometimes tilt an issue in your client's favor or allow you to explore a nuance not previously contemplated. Your client has already paid for the majority of these experts' work and is entitled to the full benefit of their advocacy. Depending on the case, these experts may include: (1) business appraisers, (2) real estate appraisers, (3) pension evaluators, (4) certified public accountants, (5) tax attorneys, and (6) transactional attorneys.

Professionals with information relating to the issues to be mediated should also be available for consultation during mediation and may include financial advisors, accountants, insurance providers, lenders, and the Guardian *ad litem*. Helpful information provided from these external resources can include timelines for transferring assets or obtaining financing, non-legal implications of a settlement offer, additional options for reaching a desired outcome, and identifying other resources that may be helpful to your client

#### **IV. Preparing Your Client for Mediation**

Preparing your client for mediation is as important as preparing him or her for trial. Mediation presents the opportunity for your client to shape the outcome of the case rather than leaving it up to the judge's discretion. Your client can also obtain certain things through mediation, such as alimony, that cannot be ordered by a judge. Reaching settlement prior to trial will also save considerable time and money. Unless your client understands these benefits and appreciates that settling the case may be in his or her best interest, these opportunities can be lost. As a result, it is essential to communicate all of the potential benefits of mediation and meet with your client to thoroughly prepare for mediation.

You must clearly define your client's needs prior to mediation, understand his or her

primary concerns and lesser priorities, and clarify his or her bottom line. Your client should understand the strengths and weaknesses of his or her case, as well as both parties' likely best and worst-case scenarios in mediation and trial. Going through likely settlement offers, as well as the emotions that may be invoked by the potential offers, is imperative to a successful mediation. Your client should also be prepared to leave mediation feeling that the mediator pushed them to reconsider their positions, that they made significant concessions, and knowing that they may feel some "buyer's remorse" in the days following mediation.

An attorney should inform the client of the likely obstacles to reaching settlement at mediation. If the opposing party is angry, spiteful, or not thinking of his or her best interests, those facts will all affect the mediation. Similarly, opposing counsel's approach to mediation will greatly affect how the mediation proceeds and whether or not settlement can be reached. In order to adequately prepare your client, you should discuss all these matters in advance, so that he or she will understand what is going on during mediation and will be able to participate as effectively as possible.

Ideally, you should know the mediator well, and you should discuss the mediator's approach and personality with your client when you meet to prepare. If you do not know a mediator, do your research just as you would prior to walking into a new court. Your client should also be well versed in all the materials that will be provided to the mediator. Your client should understand that everything conveyed to the mediator could be shared with the other side unless you tell the mediator otherwise. It is imperative that you instruct the mediator not to share the contents of the confidential mediation statement, including any attachments, with the opposing party or their counsel until you indicate otherwise. Your client should know that the mediator, while disinterested in the outcome, will be using the information received from both the parties in

an effort to guide them to a settlement.

Finally, make sure your client understands that mediation can produce an extremely long day and that he or she is prepared to stay very late. Explain that there will be significant amounts of time spent waiting for responses from the opposing side. Parties are often unwilling, or emotionally unable, to make realistic offers or seriously negotiate at the start of a mediation session. As a result, it may feel like nothing is accomplished during the initial stage of mediation. Further, once negotiations are progressing, opposing parties will spend significant amounts of time conferring with the mediator as well as meeting privately with his or her attorneys before responding to offers. Preparing your client for these delays will increase the likelihood of a successful mediation. It is vital that you inform your client that the time spent with the opposing party is not indicative of the outcome of the process or that the mediator is biased toward one side. Additionally, your client must remain alert and engaged even after the parties have reached resolution so that a final agreement can be reduced to writing and carefully reviewed before it is finally signed.

Advising your client to dress comfortably, bring additional layers of clothing, and to pack food and drinks can help minimize discomfort throughout the day. Your client should also bring their computer or tablet, any documents they may need to refer to during mediation, and contact information for any professionals they may need to consult during mediation. If your case involves children, sharing photos of the kids prior to the start of mediation, and referring back to those photos during the mediation process, can start the mediation off on the right foot and help your client refocus as the day goes on. While many of these suggestions may seem overly simplistic or obvious to you as the attorney, it is important to remember many clients have never been through a mediation. Simply walking your client through the mechanics of how mediation works may

relieve a tremendous amount of anxiety.

## **V. Counseling Your Client During Mediation**

Be prepared to go over all of the same things during mediation that you already covered during your preparation meeting(s) with your client. Your client will forget things that were previously explained, may become extremely emotional, and may also become confused. One of the challenges of family law mediation is to help your client to think rationally enough to make the choices that will serve his or her best interests. Meeting this challenge will likely require you to repeatedly address and clarify many of the same issues, and remind a client about his or her objectives that were established prior to the mediation. You will also have to do your best to convince your client to think of divorce as a set of financial decisions, rather than emotional ones. You can use the time between your sessions with the mediator to help keep your client focused and manage the emotional aspect of mediation. Taking a short walk, having your client listen to music, or having them engage in another brief activity they enjoy may help refresh and refocus your client. Giving your client tasks to do, such as contacting a financial advisor, lender, or insurance provider during mediation can also help your client to feel like progress is still being made even when the mediator is meeting with the other side.

If your client wishes to have a support person, other than a professional directly related to the case, attend mediation, you should get permission from the mediator. Think carefully before agreeing to have support persons present for mediation because they can often create additional obstacles during negotiations. However, they may be helpful in some cases. Likewise, phone calls and text messages to family, friends, and other support persons can help with or exacerbate the emotional aspect of mediation, so be sure to monitor outside influences to keep things on track.

## **VI. Procedural Issues of Mediation**

Signing the written agreement is essential to successfully completing mediation. A mediated settlement must be reduced to writing and signed by the parties to be enforceable.<sup>4</sup> While oral agreements generally are enforceable under Indiana law, mediated settlements are an exception.<sup>5</sup> An oral agreement alone will not be enforced as a mediated settlement.<sup>6</sup>

Parties must understand that they are bound by the terms of the mediated settlement agreement from the time they sign it. Indiana courts encourage mediated settlements with a primary goal of enforceability.<sup>7</sup> Consistent with that goal, signing the mediator's handwritten notes is sufficient to produce an enforceable agreement.<sup>8</sup> However, as tempting as this may be after a long mediation, it is not recommended as there are numerous potential striking points that inevitably arise when working through settlement agreements. A party who signs the mediator's notes and later refuses to sign a formal typewritten copy of the mediated settlement will be bound by the agreement nonetheless.<sup>9</sup> Further, a mediated settlement becomes binding at the time it is signed. Although the agreement may not be accepted and incorporated into a dissolution decree until a later date, a party cannot repudiate the agreement in the time between signing and the issuance of the decree.<sup>10</sup> Finally, a party may potentially be bound by a mediated settlement agreement signed by his or her attorney, even when the party fails to attend the mediation and sign the agreement him or herself.<sup>11</sup>

As a final note, application of the Alternative Dispute Resolution ("ADR") provisions is

---

<sup>4</sup> *Vernon v. Acton*, 732 N.E.2d 805, 810 (Ind. 2000); *Spencer v. Spencer*, 752 N.E.2d 661, 663 (Ind. Ct. App. 2001).

<sup>5</sup> A.D.R. 2.7(E)(2) "If an agreement is reached, 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."

<sup>6</sup> *Vernon*, 732 N.E.2d at 810.

<sup>7</sup> *Vernon*, 732 N.E.2d at 810; *Reno v. Halter*, 734 N.E.2d 1095, 1098 (Ind. Ct. App. 2000).

<sup>8</sup> *Reno v. Halter*, 734 N.E.2d 1095, 1101 (Ind. Ct. App. 2000).

<sup>9</sup> *Id.* at 1101.

<sup>10</sup> *Id.*

<sup>11</sup> *Georgos v. Jackson*, 790 N.E.2d 448, 455 (Ind. Ct. App. 2003) (recognizing that proceedings governed by the ADR rules qualify as "in court" and implicate the doctrine that an attorney appearing in court has inherent authority to settle the case).

mandatory only for domestic relations cases that have already been filed in the state courts.<sup>12</sup> If parties wish to mediate disputes prior to initiating any court proceedings, and they wish for the ADR provisions, including the confidentiality requirements, to apply to their mediation, they must enter into an agreement explicitly providing for ADR.<sup>13</sup>

## **VII. Role of the Mediator**

In large asset cases, well-prepared mediators often conduct a confidential pre-mediation conference with the attorneys. This practice helps to isolate the major issues in advance. A pre-mediation conference requires the attorneys to develop their cases further in advance, ensures that the mediator will be well educated with the case, and consequently improves the quality of the mediation.

Consistent with the rest of Indiana's child custody rules, in child related matters, mediators must ensure the parties fully consider the best interests of the children and that they understand the consequences of any decisions made concerning the children.<sup>14</sup>

## **VIII. Confidentiality**

All matters discussed in mediation are treated as confidential under the ADR provisions. The confidentiality requirement applies to the mediator as well as the parties, and it cannot be waived.<sup>15</sup> The ADR confidentiality requirements further treat oral settlements identically to compromise settlement negotiations; they are inadmissible to demonstrate the existence of an

---

<sup>12</sup> A.D.R. 1.4; *Vernon*, 732 N.E.2d at 808 n.5.

<sup>13</sup> A.D.R. 8.1; *Vernon*, 732 N.E.2d at 808. See sample Agreement for Pre-Suit Mediation attached as Tab 2(I).

<sup>14</sup> A.D.R. 2.7(A)(2).

<sup>15</sup> *Marchal v. Craig*, 681 N.E.2d 1160, 1163 (Ind. Ct. App. 1997) (ADR rules "strictly prohibit mediators from providing evidence in the cases they have attempted to mediate"); A.D.R. 2.11 "Mediators shall not be subject to process requiring the disclosure of any matter discussed during the mediation, but rather, such matter shall be considered confidential and privileged in nature. The confidentiality requirement may not be waived by the parties, and an objection to the obtaining of testimony or physical evidence from mediation may be made by any party or by the mediator."

agreement.<sup>16</sup> Consequently, both a mediator's written report stating that an oral agreement was reached during mediation, as well as party testimony that an oral agreement was reached, violate ADR confidentiality requirements and are inadmissible.<sup>17</sup>

The confidentiality rules concerning settlements and offers to compromise prohibit evidence used "to prove liability for or invalidity of the claim or its amount."<sup>18</sup> The rule, however, "does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution."<sup>19</sup>

Courts have concluded that defending a legal malpractice claim qualifies as "evidence offered for another purpose." Consequently, the ADR confidentiality requirements give way to defending legal malpractice claims, and mediators are permitted to testify as witnesses in that context.<sup>20</sup> Although Indiana courts have not addressed the matter of mediation confidentiality in the context of legal malpractice claims, they have concluded under the Rules of Professional Conduct that attorneys can breach the attorney-client privilege to defend such claims.<sup>21</sup> Because the same rationale supports waiving the privilege in the attorney-client privilege situation, as in the mediation confidentiality situation, it would be reasonable to expect Indiana courts to reach the same conclusion if faced with the latter issue.

---

<sup>16</sup> A.D.R. 2.11; Evidence Rule 408; *Vernon*, 732 N.E.2d at 810.

<sup>17</sup> *Vernon*, 732 N.E.2d at 809-810. The court, in *Vernon*, explained that without a guarantee of confidentiality, "mediation participants might be less candid, not knowing whether a controversy later would erupt over an oral agreement."

<sup>18</sup> Evid. R. 408.

<sup>19</sup> *Id.*

<sup>20</sup> *Alford v. Bryant*, 137 S.W.3d 916, 922 (Tex. Ct. App. 2004) (error under ADR to exclude mediator testimony in legal malpractice case, plaintiff cannot pursue claim while also invoking attorney-client privilege or mediation confidentiality); *Lehr v. Afflitto*, 889 A.2d 462, 473 (N.J. 2006) (no privilege for a mediation communication that is sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice based on conduct occurring during a mediation). See also Uniform Mediation Act § 6.

<sup>21</sup> See *Rosby Corp. v. Townsend et al.*, 800 N.E.2d 661, 666 (Ind. Ct. App. 2003) ("whenever a client sues an attorney for malpractice, the attorney may utilize confidential information revealed by the client to defendant against the claim, see Ind. Professional Conduct Rule 1.6(b)(2)").

**IX. Checklists (Tab 1)**

1. Client's Basic Mediation Education
2. Settlement Value Worksheet
3. Mediation Checklist

**X. Forms (Tab 2)**

- A. Proposed Division of Assets Spreadsheet for Discussion Fact Pattern
- B. Alimony Calculation Spreadsheet for Discussion Fact Pattern
- C. Initial letter to parties/attorneys and Fee Agreement
- D. Letter to attorneys confirming scheduled mediation and ADR Rule 2.7  
Acknowledgement
- E. Wife's Mediation Statement and Child Support Worksheet for Discussion Fact  
Pattern
- F. Agreement on Alternative Dispute Resolution;
- G. Summary Decree of Dissolution
- H. Report of Mediator – notice to Court of mediation outcome
- I. Verified Waiver of Final Hearing
- J. Mediated Final Settlement Agreement

# 1

## **BASIC MEDIATION EDUCATION FOR CLIENT CHECKLIST**

### Mediation Generally

- Standard part of dissolution proceedings
- Recognized as being in parties' best interest
- Governed by clear set of rules (Rules for Alternative Dispute Resolution)
- Does not require you to be in the same room with opposing party -- you typically spend entire time in separate room with your own attorney

### Benefits of Mediation

- Presents opportunity to shape the outcome of your case, rather than leaving to jury award or judge's discretion
- Can provide things a judge cannot order, such as alimony
- Eliminates substantial cost of trial
- Keeps litigation much more within your control, it is up to you whether to agree to settle case or not
- Is confidential, neither side, nor the mediator, can disclose matters that occur during mediation

### What We Will Do Prior to Mediation

- Prepare our case in great detail so that we know everything that is at issue
- Clearly define your needs, concerns, and strategies for achieving them in mediation
- Review likely strategies of other side
- Discuss possible outcomes if no settlement and case goes to trial
- Continually address any questions you might have at each stage

### Mediator

- Individual specifically qualified for the task (satisfies formal requirements of Rules for Alternative Dispute Resolution)
- Will be provided with an organized set of materials that we have gone over in advance, so that he or she will clearly understand the case
- Disinterested, no stake in outcome
- Will, nonetheless, be trying to reach agreement

### Basic Procedure

- Each side has uninterrupted time to meet with mediator
- Each side can spend time meeting privately with attorney without mediator
- Do not need to rush with response to other side
- Must always ask if you do not understand something, entire point is for you to make educated choices
- Be prepared for long day

# 2

## SETTLEMENT VALUE WORKSHEET

### ASSESS THE FACTS

| <b>STEP 1 After assessing the probable size of the Marital Estate</b><br><br>List the major factual issues upon which the trier's decision will probably turn on when deciding the division of property. | <b>STEP 2</b><br><br>Assign a percentage reflecting the probability that the issue will be resolved in your favor. |
|--|--|
|  | %  |
|  | %  |
|  | %  |
|  | %  |
|  | %  |
|  | %  |
|  | %  |

### ASSESSING THE LEGAL ISSUES

| <b>STEP 3</b><br><br>List the major legal issues: substantive, procedural and evidentiary on which the trier's decision will probably turn. | <b>STEP 4</b><br><br>Assign a percentage reflecting the probability that the issue will be resolved in your favor. |
|---|--|
|   | %  |
|   | %  |
|   | %  |
|   | %  |

**ASSESSING DIVISION**

| <b>STEP 5</b>  | <b>STEP 6</b>  |
|--|--|
| <p>List the most likely division that might result from trial.</p> <p>\$ _____</p> <p>\$ _____</p> <p>\$ _____</p> | <p>Assign a percentage reflecting the probability of a particular amount being the trial result.</p> <p>\$ _____</p> <p>\$ _____</p> <p>\$ _____</p> |

# 3

## Mediation Checklist

### 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
- What is contingency plan if not sold in a certain time frame
- Consideration of Auctioning

Commercial Leases:

- Mitigating Damages

Farms

- Valuation issues
- Ability to sell
- Hidden costs to sell - taxes
- Equipment on farm
- Livestock
- Crops

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, etc.
- Holiday decorations
- Computers – copying drives
- Storage units
- Lock boxes at banks – have parties gone there together



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 client
  - Requirement to close or to remove names
  - Last date for charging items or responsible
  - Points and Mileage – assignment, valuation and transfer
- G. Property Settlement as Alimony
- Amount
  - Timeframe
  - Deductible to payor/includable to payee’s income
  - 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
  - Deductible to payor
  - Considerations re: a monthly amount to live 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 costs
  - Litigation fees (depositions, private service, etc)
  
- L. Health Insurance Coverage
  - Is Cobra available or other options
  - Who pays
  - Deductible to payor
  - 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 taxes
  - Joint
  - Married Filing Separately
  - Holding Decree 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

**(A)**

**[Insert Proposed Division]**

**(B)**

**[Insert Alimony Calculation]**

(C)

**Timothy M. Sledd**

Attorney at Law  
Registered Family Law Mediator  
Registered Civil Mediator

tsledd@lawmg.com

December 4, 2020

Attorney for Petitioner  
Firm Name  
Address  
City, State Zip

Attorney for Respondent  
Firm Name  
Address  
City, State Zip

**Re: The Marriage of John and Carole Smith  
Cause No. 00D00-0000-DR-0000**

Dear Counsel:

I have been selected as a mediator in the above-titled case, and I want to confirm the scheduling of our mediation conference for September 1, 2020, beginning at 8:30 a.m. for the day. At the time of our mediation conference, the parties should be present at my office located at 511 S. Woodcrest, Bloomington, Indiana 47401.

To assist the mediator and to facilitate the conduct of the conference, lead counsel for each side shall submit a ten (10) page maximum "Confidential Statement of the Case" to the mediator at least five (5) days prior to the conference which briefly states:

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;
- e. Names and ages of children (if any); and
- f. Positions on custody, visitation and support, whether the parties are in agreement or not.

3. **A marital balance sheet with the appropriate backup information should be provided including 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 the Mediator(s):
  - 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 attorney's fees through trial.

9. The last offer made to opposing parties.

10. Any suggestions and other information which would be helpful to the Mediator(s).

11. A statement as to what agreement the parties have reached concerning the payment of fees and expenses for mediation.

If other entities (other than parties) are critical to affecting a complete resolution of this controversy, you are encouraged to identify those other persons to me.

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 \$200 per hour, plus reasonable and necessary expenses incurred for conducting the mediation conference. **A retainer of \$500 is required from each party, prior to mediation.** 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 party acknowledges that the Mediator shall be allowed to intervene in the pending action and provide notice at the parties' address at the time of the mediation session.**

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 of the mediator, if the mediation is scheduled for one half day, the estimated cost is \$800, and a full day is estimated at \$1,600. 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 services, including preliminary matters as well as the actual mediation session.

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. Also, the mediator 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. Lastly, 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.

10. The parties agree that, in the event a full Marital Settlement Agreement, Waiver of Final Hearing, and Decree of Dissolution of Marriage, 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.

I look forward to working with you.

Sincerely,

Timothy M. Sledd

The above is a four-page letter dated December 4, 2020, which accurately reflects my understanding of and agreement to the terms of this mediation.

Date: \_\_\_\_\_

\_\_\_\_\_  
[Name of Petitioner]

Address of Party: \_\_\_\_\_

\_\_\_\_\_  
Date of Birth: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
[Name of Respondent]

Address of Party: \_\_\_\_\_

\_\_\_\_\_  
Date of Birth: \_\_\_\_\_

*This form was adapted from an original form from Douglas E. Johnson. The author thanks Mr. Johnson for the use of this form.*

**Timothy M. Sledd**  
Attorney at Law  
Registered Family Law Mediator  
Registered Civil Mediator

tsledd@lawmg.com

December 4, 2020

Petitioner  
c/o Attorney for Petitioner  
Firm Name  
Address  
City, State Zip

Respondent  
c/o Attorney for Respondent  
Firm Name  
Address  
City, State Zip

**Re: The Marriage of John and Carole Smith  
Cause No. 00D00-000-DR-0000**

Dear Mediation Participants:

I have been selected as a mediator pursuant to the Indiana Rules for Alternative Dispute Resolution to attempt mediation of your pending dissolution of marriage. I would like to advise you of the following matters:

1. Mediation Date, Time and Location. The mediation session will begin at **8:30 a.m.** on **September 1, 2020**, at the offices of Mallor Grodner LLP, located at 101 W. Ohio St., Ste. 1600, Indianapolis, IN 46204. I have reserved 8 hours for the mediation although it may not be necessary to use all of that time.

2. Mediation Defined. “Mediation” is the process by which a neutral third person, called a mediator, acts to encourage and assist in the resolution of a dispute between two 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 exclusively with you, the parties, and not with me. I will assist you in identifying issues, working toward joint problem solving, and exploring

settlement alternatives. My primary request of you is to enter the mediation session open-minded to settlement ideas that you may not have previously considered.

3. Anticipated Cost of Mediation. My services will be billed at the rate of \$300 per hour. An administrative retainer fee of \$1,200 is due prior to the date of mediation. One-half of this fee will also be the cancellation fee should the mediation need to be cancelled for any reason within 72 hours of the scheduled date with the balance to be refunded. This fee includes the initial scheduling, correspondence and pleadings associated with the mediation. One half of the administrative retainer fee is due from each party prior to the date of the mediation.

Unless otherwise agreed, the fees for the mediation session will be divided equally between the parties. My fees will include the preparation time I spend before the commencement of mediation, time actually expended at the mediation, and, if necessary, time required after the mediation has concluded. Mediation costs shall be paid within thirty (30) days after receipt of the mediation bill.

4. Mediator Neutrality. As your mediator, I do not represent both of you as a whole or either of you individually. I remain neutral. To the best of my knowledge, I do not have any prior relationship with either of the parties. (If you believe this to be mistaken, please inform your attorney as soon as possible.) I have no personal, financial, or any other interest which could result in a bias or conflict of interest.

5. Independent Legal Advice. I encourage each of you to consult and consider your independent legal counsel, both during the mediation and before reaching any final agreement.

6. Expense of Collection. If I or my firm must take any action whatsoever to collect the mediation fees from you, you hereby agree to pay for its services in collecting the fees and enforcing this agreement, at the hourly rate set forth above in this letter.

7. Cancellation. If you schedule mediation and cancel within 72 hours, there will be no charge. However, if you cancel at any time after that, there will be a charge for the day scheduled in the amount of \$600, which the administrative retainer fee will be applied to.

8. Confidentiality. Mediation is regarded as confidential and I will ask you to agree, 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 mediation. I further ask that you agree this confidentiality may not be waived.

Should you have any questions concerning the mediation process or this letter, please contact your attorney. I appreciate the opportunity to be of service, and I look forward to a successful mediation.

Sincerely,

Timothy M. Sledd

TMS:nbe

I HAVE READ AND AGREE TO THE ABOVE TERMS OF MEDIATION AS SPECIFIED IN THIS LETTER.

\_\_\_\_\_  
Petitioner

\_\_\_\_\_  
Respondent

Address:\_\_\_\_\_

Address:\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Dated:\_\_\_\_\_

Dated:\_\_\_\_\_

PRE-MEDIATION INVOICE

Case: The Marriage of John and Carole Smith  
Cause No. 00D00-0000-DR-0000  
Mediator: Timothy M. Sledd

| Mediation Date: | Description:                | Total:  | Fee Split:    |
|-----------------|-----------------------------|---------|---------------|
| _____           | Administrative Retainer Fee | \$1,000 | \$500.00 each |

The Administrative Retainer Fee is due prior to the date of mediation and will be credited toward the Mediator's final invoice.

If the scheduled mediation is cancelled with less than 72 hours advance notice there will be a charge for the day scheduled in the amount of \$500.00, which the administrative retainer fee will be applied to.

**Please have each of your clients submit \$500.00 prior to the mediation session referenced above.**

**(D)**

**Timothy M. Sledd**

Attorney at Law  
Registered Family Law Mediator  
Registered Civil Mediator

tsledd@lawmg.com

December 4, 2020

Attorney for Petitioner  
Firm Name  
Address  
City, State Zip

Attorney for Respondent  
Firm Name  
Address  
City, State Zip

**Re: The Marriage of John and Carole Smith  
Cause No. 00D00-0000-DR-0000**

Dear Counsel:

The mediation session for this matter is scheduled to begin at **8:30 a.m.**, on **September 1, 2020**, at the offices of Mallor Grodner LLP, located at 101 W. Ohio St., Ste 1600, Indianapolis, IN 46204. In accordance with the Indiana Rules for Alternative Dispute Resolution, I have enclosed the following letter to be forwarded to your clients. If there is any problem with the letter, please contact me.

The fee for my services is \$300.00 an hour. Please send the administrative retainer pursuant to paragraph 3 of the letter. I have enclosed an Order Confirming Mediation. The original Order is mailed to the Petitioner's counsel for signature and is then to be forwarded to the Respondent's counsel for signature. Respondent's counsel is to return it to me for my signature and filing with the Court. A copy of the Order was mailed to the Respondent's counsel.

The mediation will be conducted in accordance with Rule 2.7 of the Rules of Alternative Dispute Resolution. So that I have the opportunity to prepare, please provide me with a confidential statement no later than the day before the mediation.

Also enclosed is a copy of an acknowledgment of Indiana Alternative Dispute Resolution Rule 2.7, which will be executed at the time of the mediation.

Sincerely,

Timothy M. Sledd

TMS:nbe

STATE OF INDIANA  
IN THE \_\_\_\_\_ CIRCUIT/SUPERIOR COURT  
CAUSE NO. 00D00-0000-DR-0000

IN RE THE MARRIAGE OF:

JOHN SMITH,  
                    Petitioner,  
            and  
CAROLE SMITH,  
                    Respondent.

**Order Confirming Mediation**

Timothy M. Sledd ("Mediator"), of **Mallor Grodner LLP**, is appointed and shall act as a Mediator. The Mediator has immunity in the same manner and to the same extent as a Judge in the State of Indiana pursuant to Rule 1.5 of the Indiana Rules for Alternative Dispute Resolution. The Mediator's hourly rate shall be Two Hundred Dollars (\$200.00) per hour with each party to pay a Five Hundred Dollars (\$500.00) retainer due on or before the mediation date. The mediation cost shall be split by the parties with the Petitioner paying Fifty (50%) percent and the Respondent paying Fifty (50%) percent. In accordance with Rule 2.6 of the Indiana Rules for Alternate Dispute Resolution, the mediation costs shall be paid in full within thirty (30) days after the close of mediation. Any party failing to pay their mediation costs may be found in contempt of Court.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 202\_.

\_\_\_\_\_  
Judge, \_\_\_\_\_ Circuit/Superior Court

APPROVED AS TO FORM:

\_\_\_\_\_  
Attorney for Petitioner  
Address  
City, State Zip

\_\_\_\_\_  
Attorney for Respondent  
Address  
City, State Zip

\_\_\_\_\_  
Timothy M. Sledd #24541-49  
Mediator  
**Mallor Grodner LLP**  
511 S. Woodcrest Drive  
Bloomington, Indiana 47401

## **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

\_\_\_\_\_  
Timothy M. Sledd, Mediator

**(E)**

December 4, 2020

Timothy M. Sledd  
Mallor Grodner LLP  
511 S. Woodscrest Drive  
Bloomington, Indiana 47401

**Re: The Marriage of John and Carole Smith  
Cause No. 00D00-0000-DR-0000**

**Wife's Confidential Mediation Statement**

Dear Tim:

Mediation will be conducted on September 1, 2020, beginning at 8:30 a.m., in your office. I represent Carole Smith, and Seldom Compromises represents John Smith. Unless otherwise indicated or authorized, please do not share this letter or the contents of it with John or his counsel.

A final hearing has not been scheduled and no hearings are pending.

**ISSUES**

- Value of the marital estate
- Overall division of the marital estate
- Parenting Time
- Child Support
- Attorney Fees and Expenses

**FACTUAL BACKGROUND**

Date of Marriage: January 1, 1982

Date of Filing: September 1, 2016.

John was born and raised in Discourse, Indiana. He graduated from University of Strings in 1978 with an Associate's degree in Contemporary American Puppetry and Marionette Construction. Carole and John met on the town square while she was attending one of John's puppet master performances. Carole moved to Discourse to be with John and attend the University of Strings. In 1981 she received her Associate's degree in Theater Production. The parties married the following January of 1982.

Following their marriage, the parties moved to Fulfillment, Indiana. Carole and John both worked. Carole and John put on plays and performances. They opened a small business and theater together

called Pup Love, Inc.

John and Carole have four children: Rosie, born March 28, 1989; Abby, born April 11, 1992; Alice, born May 15, 2000; and Johnny, born June 20, 2002. Rosie and Abby are both married adults and do not live with John and Carole. Alice is 17 and plans to eventually attend Indiana University. Johnny is 15 and is a sophomore at Fulfillment West High School.

Johnny was diagnosed with Muscular Dystrophy at an early age. Carole worked hard to help him with his homework and to help him overcome his challenges. She works with him afterschool and uses theater techniques to teach him new material. Carole is also responsible for all meetings with doctors, teachers, and school officials to review his progress.

Carole has been a stay at home mother since Rosie was born. She occasionally helped with the accounting for the business, but only worked from home. John and Carole both agreed that it would be most beneficial for the children if Carole remained at home to care for them. She attended all of children's parent teacher conferences. Carole has taken Johnny to all of his appointments for testing and evaluations, cared for the children when they were sick, and managed all aspects of the children extracurricular activities. John has had very little involvement in the care of the children and primarily stayed at the theater running the business.

John was very absent after the children were born. He very rarely spent the night in their home. He would occasionally be out of communication with Carole for three or four days. He always claimed that his phone was lost for a while. John made it known to Carole that the business was more important because that was how the children are fed and clothed.

The parties tried couples counseling, but were unable to work through their problems. John would not attend half of the meetings. John filed his Verified Petition for Dissolution of Marriage, for Provisional Hearing and Order, and Affidavit in Support on September 1, 2016. A copy of the petition is attached.

Carole later found out that John had a girlfriend and that she worked at the theater. Carole also found out that John purchased a 2016 Cadillac Escalade through the business for his girlfriend to drive. He denied that he purchased it for her, and stated that it was a company vehicle.

John's theater business has been extremely successful. Pup Love, Inc. was last valued at \$2,200,000 and has no outstanding debt. John also receives bonuses from various plays. Last year John received an extra \$50,000 in bonuses.

The parties acquired two pieces of real estate during the marriage. The marital residence and 40 acres are titled in the names of the parties. The other real estate is owned by Pup Love, Inc.. This land consists of 50 acres and a playhouse where Pup Love, Inc. operates from. Both pieces of real estate were appraised for \$1,300,000 and \$1,000,000 respectively, and there is no dispute as to those values. There is no debt against any of the real estate.

Provisionally, John requested a 50/50 parenting time schedule. Due to Johnny's health issues and John not really having much contact with Alice and Johnny, Carole would not agree to a shared parenting time schedule. The parties were able to reach an agreement on all provisional issues

except for parenting time. A provisional hearing was held on May 19, 2016. Judge Justice ordered John to have parenting time pursuant to the Indiana Parenting Time Guidelines. A copy of the Provisional Order is attached.

### **MARITAL ESTATE**

The marital estate is shown on the attached Marital Balance Sheet. The parties are expecting to receive a complete personal property appraisal Wednesday morning at which time the spreadsheet will be updated.

### **WIFE'S PROPOSED DISTRIBUTION**

Carole requests a 60/40 division of the marital estate. Although this is a large marital estate, Carole has been out of the workforce for nearly 28 years now. It would also be difficult for her to seek full time employment given Johnny's medical needs. Since, as set forth below, Carole will likely be the primary physical custodian of the remaining minor children, she needs the flexibility to be able to take Johnny to his appointments, to go to school in the event she is needed, to attend extracurricular activities, etc. Under any circumstances, Carole's earning potential as compared to John's is much less. This is even truer, though, given the time she must devote to Johnny's special needs, preventing her from seeking any kind of full time employment.

The amount of maintenance Carole will accept is dependent upon the property distribution negotiations.

### **CHILDREN'S ISSUES**

#### **Custody and Parenting Time**

It is not anticipated that there will be any issues regarding custody and parenting time. Carole's proposal is that the parties continue to follow the provisional order of the Court, giving them joint legal custody of the children with Carole having physical custody subject to John's parenting time pursuant to the Indiana Parenting Time Guidelines.

#### **Child Support**

John earns a base salary of \$250,000 per year. Carole is currently unemployed, but it is expected that she will be able to receive a significant amount of investment income from her share of the marital estate. Although it is not likely she will immediately receive all of her share, it seems that she could earn approximately \$100,000 per year from her investments.

Using base amounts for John of \$250,000 and \$100,000 for Carole, John should pay support in the amount of \$393.00 per week as shown on the attached Indiana Child Support Worksheet. In the event John receives any other bonuses from any source, he will be obligated to provide Carole with eight percent (8%) of the gross amount received within 5 days of receiving same.

#### **Health Insurance**

John shall continue to maintain health insurance on the children. John shall supply Carole with any information regarding the policies. John shall arrange for Carole to have permission to speak with the insurance carriers regarding the children so that she can contact the insurance carriers with questions or request information regarding coverage.

Carole shall pay the first \$2,149.00, an amount equal to six percent (6%) of the total basic child support, of any deductible or uninsured medical, dental, orthodontia, optical, ophthalmological, and prescription expenses for the children. The parents shall thereafter divide any additional uninsured or deductible costs with Father paying 71% and Mother paying 29%.

### **Tax Exemption**

Carole proposes that John be entitled to declare Johnny as a tax exemption for federal and state income tax purposes and that she be entitled to declare Alice as a tax exemption for federal and state income tax purposes.

## **SETTLEMENT NEGOTIATIONS**

Before the mediation the parties have both communicated their opening offers to each other. Currently John is proposing a 50/50 division of the marital estate based on the appraised values while Carole is proposing a 60/40 division of the marital estate based on the appraised values.

## **MISCELLANEOUS**

### **Final Hearing**

No final hearing date has been set.

Sincerely,

Always Reasonable

AR:nb

Enclosures

**(F)**

STATE OF INDIANA  
IN THE \_\_\_\_\_ CIRCUIT/SUPERIOR COURT  
CAUSE NO. 00D00-0000-DR-0000

IN RE THE MARRIAGE OF:

JOHN SMITH,  
                    Petitioner,  
            and  
CAROLE SMITH,  
                    Respondent.

**Agreement for Alternative Dispute Resolution**

This Agreement for Alternative Dispute Resolution is entered into by and between the above-listed parties, through their respective counsel, and Timothy M. Sledd, the selected Mediator:

1. Timothy M. Sledd is selected as Mediator to conduct mediation over this case pursuant to ADR Rule 2.
2. All parties shall complete sufficient discovery to engage in meaningful mediation and shall prepare and file with the Mediator a Confidential Statement of the case under ADR Rule 2.7(C) no later than three (3) days prior to the scheduled date of mediation, unless the Mediator modifies that amount of time. The Confidential Statement shall not exceed ten (10) pages in length but may be supplemented with discovery documents referenced in the Confidential Statement, or as otherwise agreed to by the Mediator.
3. All parties and their attorneys shall be present for the mediation conference unless previously excused by the Mediator. Additionally, non-parties may also be present at the discretion of the Mediator.

4. In the event the parties request the Mediator interview any child of the parties, they shall notify the Mediator of such request prior to the mediation conference. The Mediator will not interview a child of the parties unless both parties consent or unless ordered by the Court.

5. The Mediator shall proceed under ADR Rule 2.7, may schedule and continue conferences, enlarge or shorten times, conduct mediation, and, on completion of mediation, shall file with the Court such reports as the Mediator deems proper.

6. The Mediator shall be compensated for services at the rate of \$200 for each hour the Mediator devotes to mediation services.

7. Each party shall pay to the Mediator, at the time of scheduling the mediation, the sum of \$500 to be held in trust by the Mediator pending completion of mediation and as a deposit against mediation services. If the sums paid exceed the amount of charges to which the Mediator is entitled, upon completion of the mediation the Mediator shall refund excess sums rateably to each party. If the Mediator's fees and expenses exceed that sum, each party shall pay equally (unless otherwise ordered by the Court or agreed upon by the parties) the amounts incurred by the Mediator on receiving a statement, and no later than thirty (30) days after the close of the mediation session. If mediation is successful and the parties reach a settlement agreement, the allocation of the mediation cost shall be incorporated into the terms of the settlement agreement. If an agreement is not reached and the Mediator files a report to that effect with the Court, he shall report the total costs of the mediation, itemizing his hours and other expenses, indicating what amount of the costs have been paid by each party, and the Court shall determine whether and to what extent those costs should be taxed as costs in this action to a party. If a party fails to pay the initial deposit or such sums as the Mediator requires during the course of the mediation, the Mediator shall file a report seeking appropriate relief. Service of any such report shall be made on the parties by mailing the report to the parties at the following address (unless the Mediator is informed in writing by a

party of a different address at which the parties may be served):

\_\_\_\_\_  
Petitioner  
\_\_\_\_\_  
Address  
\_\_\_\_\_  
City, State Zip

\_\_\_\_\_  
Respondent  
\_\_\_\_\_  
Address  
\_\_\_\_\_  
City, State Zip

8. Failure to comply with Rule 2 of the Rules for Alternate Dispute Resolution may result in imposition of sanctions as provided for in Rule 2.10 on motion by either party to the Court.

\_\_\_\_\_  
Timothy M. Sledd, Mediator  
Date: \_\_\_\_\_

\_\_\_\_\_  
Attorney for Petitioner  
Date: \_\_\_\_\_

\_\_\_\_\_  
Attorney for Respondent  
Date: \_\_\_\_\_

*This form came from Ed Beck and has been modified slightly.*

(G)

STATE OF INDIANA  
IN THE \_\_\_\_\_ CIRCUIT/SUPERIOR COURT  
CAUSE NO. 00D00-0000-DR-0000

IN RE THE MARRIAGE OF:

JOHN SMITH,  
                    Petitioner,  
          and  
CAROLE SMITH,  
                    Respondent.

**Summary Decree of Dissolution**

The parties, John Smith (the "Husband") and Carole Smith (the "Wife"), have filed with the Court a verified pleading containing a written waiver of final hearing and a statement that a written agreement made in accordance with Indiana Code section 31-15-2-17 settles all issues between the parties, and the Court, being duly advised, now makes the following findings of fact and enters the following decree:

The Husband and Wife were married on January 1, 1982, and final separation as defined by statute occurred the date of filing of the Verified Petition for Dissolution in this action on September 1, 2019. Four children were born of this marriage. The Wife is not now pregnant.

The Husband and Wife resided in \_\_\_\_\_ County, Indiana, for more than six (6) consecutive months prior to the filing of the petition for dissolution in this action. The Court has jurisdiction of both parties and of this action. The Court now finds that the parties' marriage is irretrievably broken down; there is no reasonable possibility of reconciliation; and the marriage of these persons should now be dissolved.

The Husband and Wife have negotiated a Mediated Final Settlement Agreement (the "Agreement"), resolving all rights and claims that either party may have against the other respecting marital property. The Agreement, having been freely negotiated without coercion or undue influence, resolves these issues in a just and reasonable manner. The Agreement should now be approved and incorporated and merged into this Summary Decree of Dissolution.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED as follows:

1. The marriage of John Smith and Carole Smith is dissolved, and the parties are restored to the status of unmarried persons.

2. The parties' Mediated Final Settlement Agreement, dated \_\_\_\_\_, is approved and incorporated and merged into this Summary Decree of Dissolution, and the Court identifies the Agreement and its approval thereof by fixing its signature to page 2 of the Agreement.

Costs paid.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge, [Court]

Copies to:

Attorney for Petitioner  
Address

Attorney for Respondent  
Address

Timothy M. Sledd #24541-49  
Mediator  
**Mallor Grodner LLP**  
511 S. Woodcrest Drive  
Bloomington, Indiana 47401

**(H)**

STATE OF INDIANA  
IN THE \_\_\_\_\_ CIRCUIT/SUPERIOR COURT  
CAUSE NO. 00D00-0000-DR-0000

IN RE THE MARRIAGE OF:

JOHN SMITH,  
                    Petitioner,  
            and  
CAROLE SMITH,  
                    Respondent.

**Report of Mediator**

Pursuant to Rule 2.7(D) of the Indiana Rules for Alternative Dispute Resolution, the mediator appointed herein, Timothy M. Sledd, reports to the Court that on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, the mediation process was/was not completed successfully.

**Mallor Grodner LLP**

\_\_\_\_\_  
Timothy M. Sledd #24541-49  
Mediator

**Certificate of Service**

The undersigned hereby certifies pursuant to Rule 5 of the Indiana Rules of Trial Procedure that a copy of the foregoing motion or pleading was served in person or by United States First Class Mail, postage prepaid, upon all parties or their counsel of record this \_\_\_\_\_ day of August, 2019, to:

Attorneys of Record

\_\_\_\_\_  
Timothy M. Sledd #24541-49

**Mallor Grodner LLP**  
511 S. Woodcrest Drive  
Bloomington, Indiana  
(812) 332-5000

**(I)**

STATE OF INDIANA  
IN THE \_\_\_\_\_ CIRCUIT/SUPERIOR COURT  
CAUSE NO. XXXXX-XXXX-XX-XXXX

IN RE THE MARRIAGE OF:

JOHN SMITH,  
                    Petitioner,  
            and  
CAROLE SMITH,  
                    Respondent.

**Verified Waiver of Final Hearing**

Pursuant to Indiana Code section 31-15-2-13, the parties, John Smith and Carole Smith, waive a final hearing in the above-captioned action and request the Court to enter a summary dissolution decree without holding a final hearing. The written settlement agreement of the parties made in accordance with Indiana Code section 31-15-2-17, incorporated herein by reference, is simultaneously being tendered to the Court, and such agreement settles all issues between the parties.

**AFFIRMED UNDER THE PENALTIES FOR PURJURY** this \_\_\_\_ day of \_\_\_\_\_,  
20\_\_.

\_\_\_\_\_  
John Smith, Petitioner

\_\_\_\_\_  
Carole Smith, Respondent

(J)

STATE OF INDIANA  
IN THE \_\_\_\_\_ CIRCUIT/SUPERIOR COURT  
CAUSE NO. 00D00-0000-DR-0000

IN RE THE MARRIAGE OF:

JOHN SMITH,  
                    Petitioner,  
          and  
CAROLE SMITH,  
                    Respondent.

**DECREE OF DISSOLUTION OF MARRIAGE, WAIVER OF FINAL HEARING, AND MEDIATED SETTLEMENT AGREEMENT**

This Cause is submitted to the Court by *Waiver of Final Hearing* (“*Waiver*”) under Indiana Code section 31-15-2-13, having been more than sixty (60) days after the filing of the *Verified Petition for Dissolution of Marriage* (“*Petition*”). The Court NOW FINDS as follows:

- A. The allegations of the *Petition* are true.
- B. The residency requirements of Indiana Code section 31-15-2-6 have been proven.
- C. The existing marital relationship is irretrievably broken and should be dissolved.
- D. The parties have waived the right to a final hearing.

The Court FURTHER FINDS that the parties have entered into the following written *Settlement Agreement* (“*Agreement*”).

**MEDIATED SETTLEMENT AGREEMENT**

This *Agreement* is made between HUSBAND (“NAME” or “Father”) and WIFE (“NAME” or “Mother”), both of COUNTY County, Indiana, and arises out of the following circumstances:

- A. The parties were married on DATE [and entered into a premarital agreement on the \_\_\_\_\_, prior to the date of their marriage].
- B. There were \_\_\_#\_\_\_ children born to the marriage, namely \_\_\_\_\_ (“NAME”), age \_\_\_\_\_, \_\_\_\_\_ (“NAME”), age \_\_\_\_\_, \_\_\_#\_\_\_ of whom is/are emancipated.
- C. WIFE is not now pregnant.
- D. The parties, by participating in mediation, have agreed on a settlement of their rights in and to the property owned by them jointly, severally, or by the entireties, custody issues, and other matters set forth in this *Agreement*.
- E. Each party represents to the other that they have relied on the full and complete disclosure of the other person upon entering into this *Agreement*.

OR

\_\_\_\_\_ acknowledges that although he/she is represented by [Firm] in this matter, \_\_\_\_\_ and \_\_\_\_\_ have reached this agreement by negotiations between themselves personally, without the assistance of counsel. No discovery has taken place, and \_\_\_\_\_ specifically acknowledges the inability of [Firm], absent such discovery, to advise \_\_\_\_\_ as to the fairness of the terms of this agreement.

OR

\_\_\_\_\_ and \_\_\_\_\_ have had the opportunity to obtain full financial information regarding their assets and liabilities. Each party has made to the other a full and complete disclosure of their assets, liabilities and overall financial conditions. Both parties understand and acknowledge that they have the right to investigative discovery and appraisal procedures to determine the nature, extent and value of their real and personal property, including retirement assets, employment benefits and investments. [Nonetheless \_\_\_\_\_ and \_\_\_\_\_ have each determined not to engage in further investigative discovery or appraisal procedures available to

them, instead relying on the validity of the other's disclosures and their own knowledge of assets and liabilities in entering into this Agreement.] OR [Write in discovery procedures utilized by the parties.]

F. The parties believe this *Agreement* is fair and equitable. They agree to submit it to the Court and request the Court accept the *Agreement*. They understand that the *Agreement* is binding when signed pursuant to the ADR rules and will be approved by the court as the Decree of Marriage Dissolution (the "Decree").

G. Pursuant to Indiana Code section 31-15-2-13, the parties waive the right to a final hearing. They represent that this *Agreement* settles any and all contested issues arising out of the dissolution of their marriage. There are no other contested issues in this action.

H. Both parties acknowledge that they have received a copy of the Indiana Parenting Time Guidelines, consisting of 27 typewritten pages as adopted by the Indiana Supreme Court including amendments received through January 1, 2017.

In light of the facts set forth above, and to carry out the intent of the parties, HUSBAND and WIFE agree as follows:

### **PARENTING PROVISIONS**

**1. Custody.** The parties agree that \_\_\_\_ shall have legal and primary physical custody of the children, NAME(S), subject to \_\_\_\_\_'s parenting time.

**OR** The parties agree they shall share joint legal custody of the children, \_\_NAMES\_\_, as defined in Indiana Code section 31-9-2-67, with \_\_\_\_ having primary physical custody subject to \_\_\_\_\_'s parenting time.

**2. Parenting Time.** [noncustodial PARENT] shall have parenting time with the children in accordance with Section II of [or Section III if distance is a factor] the Indiana Parenting

Time Guidelines (“IPTG”). All ancillary provisions of Section I of the IPTG shall apply and are incorporated by reference.

**OR** [noncustodial PARENT] shall have parenting time as the parties agree or, if the parties cannot agree, according to Section I of [or Section III if distance is a factor] the Indiana Parenting Time Guidelines (“IPTG”). Holidays and extended parenting time shall be by agreement of the parties, but, if no agreement can be reached, as set forth in Section II of [or Section III if distance is a factor] the IPTG. All ancillary provisions of Section I of the IPTG shall apply and are incorporated by reference.

**3. Illness.** In the event the child/children is/are ill on a parenting time day, [custodial PARENT] shall notify [noncustodial PARENT] as soon as possible and an alternative day or days shall be agreed upon.

**4. Notice of Canceled Parenting Time.** Whenever possible, [noncustodial PARENT] shall give a minimum of three days notice of the intent not to utilize any of his/her scheduled parenting time. Where an emergency makes three days notice impossible, the maximum notice possible and the reasons for the late notice shall be given. The [custodial PARENT] shall give the same type of notice when good cause exists making the cancellation of [noncustodial PARENT]’s scheduled parenting time necessary.

**5. Move.** [custodial PARENT] shall not move the children’s residence outside of \_\_\_\_\_ County without the written consent of [PARENT] or without the prior approval of the Court.] Both parties must comply with the provisions of Indiana Code section 31-1.7-2.2-1 by filing the notice required before any intended move.

**6. Passport.** The parents agree to sign all required documents in order for either one to apply for a passport for the children. They further agree to waive the requirements of Indiana Code section 31-17-2-24, so no notice shall be filed with the Clerk of the Court or the other party.

OR

[Custodial Parent] agrees to notify [noncustodial parent] if she/he intends to apply for a passport for the children. The parties agree to waive the requirements of Indiana Code section 31-17-2-24, so no notice shall be filed with the Clerk of the Court or the other party.

**7. Continuing Jurisdiction of the Court.** The custody and parenting time provisions provided for in this *Agreement* are subject to the continuing jurisdiction of the Court and may be reviewed from time to time upon petition of either party as circumstances and the best interests of the children may require.

**8. Mediation.** Conflicts regarding parenting time and custody which cannot be resolved by and between the parties through direct communication shall be submitted to mediation prior to either party applying to the Court for relief, unless an emergency exists.

a. **Selection of Mediator.** The parties shall mutually agree upon a mediator, but if the parties cannot agree, then upon petition to the Court, the Court shall appoint a mediator, or present a list of three qualified persons, and the parties can alternatively strike a name.

b. **Duties and Responsibilities of Mediator.** The mediator shall have the duty to assist the parties to resolve the issues submitted to mediation in a fair and impartial manner.

c. **Costs.** The parties shall share equally the mediator's costs unless mutually agreed otherwise.

d. **Confidentiality.** Discussions during mediation shall remain confidential. The mediator shall not participate as a witness, collateral contact or attorney in a custody or parenting time study or inquiry involving either party. Further, neither party may call

the mediator as a witness to testify in any proceeding involving their children or the subject matter of the mediation.

### **CHILD SUPPORT**

**9. Payment of Child Support.** [PARENT] or [PARENT] 's estate, shall pay child support to [PARENT], commencing on the first Friday following the approval of this *Agreement* by the Court, and each Friday thereafter. Pursuant to the Indiana Child Support Rules and Guidelines, the child support obligation is \*\*\* (\$ ) per week. All support payments shall be paid to [PARENT] through the Indiana State Central Collection Unit (“the ISCCU”). An Indiana Child Support Rules and Guidelines (the "Guidelines") worksheet is attached and incorporated by reference.

[PARENT] is ordered to pay the annual fee, so long as any support order shall remain in force and effect in this cause. Mother and Father are both ordered to file with the Court Clerk's office and Indiana State Central Collection Unit their current addresses, social security number, and any other information required, and are further ordered to immediately advise the Clerk's office and Indiana State Central Collection Unit of any change of address. As long [PARENT] remains substantially current in [his/her] support payments, an Income Withholding Order is waived. If [PARENT] becomes more than three (3) weeks behind in child support, an Income Withholding Order shall be issued.

*OPTION FOR HIGH INCOME:* At the conclusion of each calendar year, starting with 20\_\_, [PARENT]’s weekly child support obligation shall be adjusted and recalculated by taking the amount of [his/her] gross annual income from his/her tax return for that year, dividing it by 52 weeks, and using this amount at line 1 of Exhibit 1, with all other factors remaining the same for purposes of calculating [PARENT]’s adjusted child support obligation. [PARENT] shall pay the difference between his/her weekly adjusted child support obligation of \$\_\_\_\_.00, multiplied by 52

weeks, to [PARENT] by May 1<sup>st</sup> of each year. Mother and Father shall each provide the other with a copy of [his/her] federal income tax return along with all attachments and schedules thereto no later than April 30.

Bonus Income. In addition to the weekly child support obligation set forth above, [PARENT] shall also pay to [PARENT] as child support ,\_\_\_\_% [THIS IS THE RATIO OF WORKSHEET LINE 4 TO LINE 3] of the gross amount of any bonus or extraordinary income [he/she] receives, payable to [PARENT] within ten (10) days of [PARENT]'s receipt of the bonus or extraordinary income. [PARENT] will also concurrently provide documentation of [his/her] bonus to [PARENT], and the means by which the support percentage was calculated.

**10. Deviation from Guidelines.** The parents agree to deviate from the Guidelines and use a support amount of AMOUNT for the following reasons:

- a. The noncustodial parent provides child care;
- b. The noncustodial parent purchases school clothes;
- c. Both parents are members of the armed forces and the military provides housing;
- d. The child spends substantially more time with the noncustodial parent than in the average case that is not taken into consideration on the worksheet;
- e. The custodial parent has moved a substantial distance away and the noncustodial parent will incur significant travel expenses in visiting with the child;
- f. The obligor is making periodic payments to a former spouse pursuant to a prior dissolution decree.
- g. [PARENT] is in the highest tax bracket and the Guidelines are premised on a tax payor who pays 21.88% income.

**11. Health Insurance.** [PARENT] shall maintain health insurance on the child/children. [PARENT] shall provide [PARENT] with a copy of the medical insurance policy in effect at the time of the *Decree* and at such time as there may be any modification of the policy. [PARENT] shall also provide [PARENT] with an insurance card and claim forms within thirty days of the *Decree*. In the event that [PARENT] becomes ineligible for such insurance coverage and [OTHER PARENT] is able to obtain comparable insurance coverage, that coverage shall be immediately obtained. In the event that neither party is able to obtain group health insurance, the provisions of Indiana Child Support Guideline 7 shall apply with respect to obtaining health insurance for the children.

OR

[PARENT] shall maintain health insurance for the children [through his/her employment] as long as he/she has an obligation to pay child support [or so long as the children are allowed to be claimed as dependants on the insurance policy]. Commencing [DATE], [PARENT] shall pay to [OTHER PARENT] \_\_\_% of the premium cost for the children, or \$\_\_\_ per month as his/her contribution to [PARENT's] medical insurance coverage for the child/children.

OR

In the event that [PARENT] becomes ineligible for such insurance coverage and [OTHER PARENT] is able to obtain comparable insurance coverage, that coverage shall be immediately obtained. In the event that neither party is able to obtain group health insurance, the parties shall negotiate the responsibility of providing insurance for the benefit of the children. During this interim period, the party who previously carried the children on his/her policy shall have the responsibility to obtain comparable coverage and the cost of the premiums incurred during any lapses in insurance coverage shall be the responsibility of that party.

**12. Qualified Medical Child Support Order.** [PARENT's] obligation to provide insurance coverage for the minor children shall also be referenced by a separate order for dependent insurance coverage to be entered within thirty days after the approval by the Court. The separate order shall be forwarded to [PARENT's] employer/union by \_\_\_\_ and shall require [PARENT's] employer/union to release to [OTHER PARENT] information on dependent coverage including the name of the insurer, and shall require the employer/union to enroll the children as beneficiaries of the available health and dental insurance plans and withhold any required premiums from [PARENT's] income.

**13. Uninsured Medical Expenses.** [PARENT] shall pay the first \$\$\$\$\$, an amount equal to six percent (6%) of the total basic child support, of any deductible or uninsured medical, dental, orthodontia, optical, ophthalmological, and prescription expenses for the children. The parents shall thereafter divide any additional uninsured or deductible costs with Father paying PERCENT and Mother paying PERCENT. This sum shall be computed annually, with the date for computation being the calendar year (pro rated for this year only). [PARENT] shall reimburse [PARENT] for [PARENT] 's share of uninsured medical expenditures within fifteen (15) days of receiving documentation from [PARENT] which verifies that [PARENT] has exceeded the first 6% for which [he/she] is responsible and that all bills for which [he/she] seeks reimbursement have been paid in full.

Provided, however, except in an emergency, neither party shall incur on behalf of the children an uninsured medical expense in excess of \$500 without notice to and the consent of the other.

**14. Extracurricular Expenses.** The costs of agreed upon extracurricular activities for the children, including but not limited to camps, lessons, sports and athletics, fees, uniforms, and

tutors shall be divided between the parties in proportion to their incomes, with Father paying \_\_\_\_\_% of such expenses and Mother paying \_\_\_\_\_%.

**OR**

The parties shall discuss the extracurricular activities the children would like to participate in, and if the parties agree, Father shall be responsible for \_\_\_% of the cost and Mother shall be responsible for \_\_\_% of the cost in addition to the child support obligation.

**15. College Expenses.** The parties agree that each of the children shall be responsible for contributing \_\_\_\_ of the cost of [his/her/their] college education through scholarships, grants, fellowships, student loans, and work study or other employment. The remaining costs of each child’s undergraduate college education, after applying any available grants, scholarships, or fellowships, that exceed the child’s share shall be divided between the parties, with Mother paying \_\_\_% and Father paying \_\_%. The “cost of college” is defined as tuition, room and board, required fees, and textbooks. The parties’ obligations for the cost of the children’s undergraduate college educations shall be limited to the residential costs of an Indiana state-supported institution, shall be limited to four (4) consecutive years per child, and shall continue only so long as the child maintains a cumulative grade point average equivalent to a “\_\_” or better.

**OR**

The parents have already set aside funds for their children’s college education. It is anticipated that these funds will be sufficient to pay of college for the [child/children]. However, if these amounts are not sufficient, the parents agree to pay, pro-rata, based on the Guidelines, the college education of the children as follows:

[INSERT CUSTOM PLAN]

**OR**

The parents agree that it is too early to determine the appropriate contribution of each parent and of the children for post-high school education. The parents agree to make a good faith effort to determine, at the time of the child's entry into the final year of high school, the contribution each parent and the child shall make, based upon the aptitudes and abilities of the child, the availability of scholarship, loan or grant funds, and the needs and resources of the child and of each parent. If an agreement is not reached, this issue may be presented to the Court by either party.

**16. Tax Exemption.** [PARENT] is entitled to declare CHILD NAME(S) as a tax exemption for federal and state income tax purposes, and [PARENT] is entitled to declare NAME(S) as a tax exemption for federal and state income tax purposes, during the time that this support order is in effect, for each year in which [PARENT] is 95% current in his/her child support obligation as of January 31 of the next year, in all support and educational expense obligations hereunder. When there is only one unemancipated child remaining the parents shall alternate the tax exemption with Father claiming in odd-numbered years and Mother claiming in even-numbered years. [Parent] shall execute and deliver any forms required by the taxing authorities to effectuate this provision including IRS form 8332, Release of Claim for Exemption of Child of Divorced or Separate Parents. If [Parent] fails or refuses to execute and deliver the required forms, and there is no valid reason for the failure to execute said form, if the other party incurs additional taxes, penalties, or attorney's fees, then and in that event, the party not in compliance shall be obligated to reimburse the other party for the same.

**OR**

So long as [PARENT] is 95% current in his/her child support obligation as of January 31 of the next year, he/she shall be entitled to claim \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_ for state and federal income tax purposes beginning in tax year \_\_\_\_\_. [Parent] shall execute and deliver any

forms required by the taxing authorities to effectuate this provision including IRS form 8332, Release of Claim for Exemption of Child of Divorced or Separate Parents. If [Parent] fails or refuses to execute and deliver the required forms, and there is no valid reason for the failure to execute said form, if the other party incurs additional taxes, penalties, or attorney's fees, then and in that event, the party not in compliance shall be obligated to reimburse the other party for the same.

OR

[PARENT] shall claim the child as an exemption for income tax purposes until such time as [PARENT] is gainfully employed and able to claim the exemption. Upon proof to [PARENT] that [PARENT] has sufficient income to claim the child, [PARENT] shall be entitled to claim the child for that tax year. Thereafter, the parents shall alternate the exemption for the child.

**17. Duty to Maintain Life Insurance.** Mother and Father shall keep in full force and effect a life insurance policy in a minimum amount of at least AMOUNT and shall name a trust for the child's/children's as the irrevocable beneficiary. This obligation shall terminate when the children [is/are] emancipated. Each shall provide the other proof of such insurance on an annual basis. Neither party shall borrow against such policy until the child/each child [has] completed an undergraduate education or is emancipated.

OR

As and for security for the outstanding obligation of child support, [PARENT] shall name [OTHER PARENT] as the sole beneficiary on the following policies of life insurance on his/her life:

[list the policy number and the insurance policy and face value]

[OTHER PARENT] has the right to obtain information regarding the insurance policy and the beneficiaries from time to time upon his/her reasonable request. Upon entry of the Decree,

[PARENT] shall sign an insurance authorization authorizing [OTHER PARENT] and/or his/her attorney to verify that the requirements of this paragraph remain in full force and effect.

[PARENT] may not pledge, borrow or hypothecate said policies. If the policies required herein are not in full force and effect at the time of [PARENT's] death, or are insufficient to fulfill the obligations herein, [OTHER PARENT] and/or the children shall have a creditor's claim and lien against [PARENT's] estate for the amount owed.

**OR**

[PARENT] shall obtain and/or maintain in full force and effect a policy or policies of life insurance on himself/herself, naming [OTHER PARENT] as the beneficiary thereon in the sum of \$\_\_\_\_\_ which has been computed as the present value of [PARENT's] future child support obligation until he/she is not longer obligated to pay child support.

**OR**

As long as there is an obligation to pay child support, [PARENT] shall maintain his/her current life insurance policy or such similar policies (or as is provided to him/her on a group basis through his/her present or future employer) for the purpose of providing continued child support in the event of his/her death. To secure the payments of child support, [PARENT] shall create a life insurance trust funded from the life insurance policy. The terms of the trust shall provide that [OTHER PARENT] shall receive monthly payments from the trust in an amount equal to the children support obligation which would have otherwise been imposed upon [PARENT]. At such time as there is no longer any obligation to pay child support, the remaining trust balance shall be distributed to the children in equal shares.

**OR**

[PARENT] has the right to reduce the face value of the policies from time to time if the outstanding obligation for support is reduced as long as the face value of the policy is not less than

the outstanding obligations. However, the reduction must be agreed upon in writing between the parties and absent an agreement, by order of the Court.

**18. Death of [PARENT].** In the event of the death of [PARENT], [PARENT]'s estate shall continue to be obligated under the provisions of this *Agreement*, or any modifications by the Court, to provide support for the children. Provided, however, that the financial obligation of [PARENT]'s estate shall be reduced dollar for dollar by any life insurance proceeds actually received directly by [PARENT] or paid to [PARENT] by the trustee of a trust established by [PARENT] to satisfy his/her obligations hereunder.

**19. Children's Assets.** All personal property, securities, bank accounts, beneficial interests in trusts and other assets belonging to the children of the marriage (whether held directly in [his/her/their] name or by one or both parents as custodian or under the Uniform Transfers to minors Act or by a third party in trust) shall be and remain the separate property of the child/children and, if applicable, shall be delivered to the child/children by the parents not later than the date the child attains the age of twenty-four (24) years or, if earlier, upon graduation from college.

#### **PROPERTY DIVISION**

**20. Real Property. [Award to one party]** [PARTY] is awarded all right, title and interest in the marital residence of the parties, located at \_\_\_\_\_, \_\_\_\_\_ County, Indiana, free and clear on the part of [OTHER PARTY], and legally described as follows:

[insert legal description]

The award is subject to any and all outstanding encumbrances against the property including, but not limited to, mortgage, taxes, insurance, which shall be paid in a timely manner solely by [PARTY]. [PARTY] shall indemnify and hold [OTHER PARTY] harmless therefrom.

Upon entry of the Decree, [OTHER PARTY] shall execute and deliver a Quit Claim Deed, to be prepared by [Party]'s attorney, transferring his/her interest in the real property to [PARTY].

**21. Real Property. [Sale of property—tenants in common]** The parties are awarded, as tenants in common, all right, title and interest in the marital residence, located at \_\_\_\_\_, in \_\_\_\_\_ County, Indiana, and legally described as follows:

[insert legal description]

The entry of the Decree shall sever the parties' joint tenancy. The parties shall cooperate and place the property on the market for sale with a mutually agreeable realtor. Upon the sale, the proceeds shall be paid as follows:

- A. Expenses of sale, which means the usual and customary expenses of the sale such as attorneys' fees, points, real estate commissions, abstract fees and other normal costs of closing.
- B. Payment of the mortgage encumbering the property.
- C. Any fix-up costs paid by one or the other party pursuant to the recommendation of the realtor shall be reimbursed to the party having made those payments.
- D. The remaining proceeds shall be divided equally between the parties.

Pending the sale, [PARTY] shall have the exclusive use, possession and occupancy of the premises until the sale is closed and possession is delivered to the purchaser. [PARTY] shall be responsible for the mortgage, interest, taxes and insurance, and normal maintenance on the property and any other expenses relating to the occupancy of the property.

**22. Real Property. [award to one party, subject to lien interest by the other]** [PARTY] is awarded all right, title and interest in the marital residence of the parties, located at \_\_\_\_\_, \_\_\_\_\_ County, Indiana, and legally described as follows:

[insert legal description]

subject to all encumbrances of record and subject to a lien in favor of [OTHER PARTY] in an amount as set out below from the Net Proceeds, as defined below.

A. [PARTY] shall be solely liable for normal maintenance and all payments of principal, interest, taxes and insurance on the residence, and shall make timely payments and shall indemnify and hold [OTHER PARTY] harmless from any liability or obligation to make any payments whatsoever regarding the residence. As long as [OTHER PARTY's] name is on the mortgage note, [PARTY] shall notify [OTHER PARTY] at any time [PARTY] is at least 60 days in arrears in paying the mortgage payment. [OTHER PARTY] may then take whatever steps are necessary to protect his/her credit.

B. Upon the happening of any of the events enumerated herein, [OTHER PARTY's] lien shall become immediately due and the residence shall be placed on the market for sale at a price and upon terms to be mutually agreed upon by the parties, and the "net proceeds" from the sale shall be divided as set forth below, thereby satisfying [OTHER PARTY's] lien in full.

C. The conditions upon which the sale shall occur and the lien shall come due are as follows:

1. [PARTY's] remarriage.
2. Any unrelated adult of the opposite sex residing in the residence.
3. [PARTY] moving from the residence.
4. Sale of the residence.
5. [PARTY's] death.

6. The youngest child of the parties attaining the age of 18 years or graduating from high school but not beyond age 20, whichever last occurs, or when such child is emancipated, married, in the armed services of the United States, or deceased.

7. [PARTY] becoming more than 60 days in arrears on the monthly payments of principal, interest, taxes or insurance on the residence.

D. The “net proceeds” shall be defined as the amount remaining after the following have been subtracted from the sale price [OR appraised value (if either party is buying the other’s interest)] of the residence:

1. Expenses of sale, which means the usual and customary expenses of the sale such as attorneys’ fees, points, real estate commissions, abstract fees, and other normal costs of closing.

2. Payment of the mortgage encumbering the property.

3. A credit payable to either party for payments either party made for the amount of principal reduction of the mortgage from the date of entry of the Decree to the date of sale [or appraisal].

4. A credit payable to [PARTY] for any capital improvements or major repairs made by him/her from the date of the entry of the Decree to the date of the sale [or appraisal] over \$\_\_\_\_\_, provided that he/she received written agreement by [OTHER PARTY] prior to making the improvements. Consent shall not be unreasonable withheld. Any other home improvement shall be [PARTY’s] responsibility and considered under general maintenance.

5. Any foreclosure or other related fees, penalties and interest for any arrearage due to [PARTY's] failure to make timely payments shall be deducted from [PARTY's] share of the net proceeds.

6. The remaining proceeds shall be divided as follows: \_\_\_% to [PARTY] and \_\_\_% to [OTHER PARTY]. Receipt of [OTHER PARTY's] share of the net proceeds shall be considered payment in full of his/her lien on the property.

E. [OTHER PARTY] shall execute and deliver a satisfaction of lien or Quit Claim Deed, prepared by [Party's] attorney, to [PARTY], upon full satisfaction of the lien.

F. [PARTY] shall have the right to purchase [OTHER PARTY's] lien interest at any time prior to the happening of the events triggering the sale. If the parties are unable to agree on the market value of the residence and the amount of net proceeds, the parties shall agree upon a mutual appraiser who shall estimate the fair market value of the property, and the parties shall be bound by the neutral appraisal. If the parties are unable to agree on a mutual appraiser, the parties shall each pick an appraiser and the two appraisers shall then agree on one third neutral appraiser to appraise the property. If the property is to be purchased by one party, no expenses of sale shall be deducted, such as non-existent real estate commissions, etc. [OR expenses of sale shall be defined, for purposes of this paragraph only, to mean a credit payable to [PARTY] equal to \_\_\_% of the fair market value of the property.]

**23. Real Property.** [specific lien amount] [PARTY] is awarded all right, title and interest and equity in and to the marital residence, located at \_\_\_\_\_, \_\_\_\_\_ County, Indiana, and legally described as follows:

[insert legal description]

Subject to any and all encumbrances and liabilities, on the property, which [PARTY] shall pay and indemnify and hold [OTHER PARTY] harmless from, and further subject to [OTHER PARTY's] lien in the amount of \$\_\_\_\_\_.

A. [PARTY's] lien shall accrue interest at the rate of \_\_\_% per annum until said lien is paid in full and shall be secured by the [OTHER PARTY] executing a mortgage, deed and note to be drafted by [PARTY's] attorney within 30 days following entry of the Decree.

B. Monthly/annual installments per the amortization schedule attached hereto as Exhibit \_\_\_ shall be paid on the \_\_\_ day of each month/year, commencing \_\_\_\_\_, 20\_\_\_, and continuing until the lien is satisfied in full. [OTHER PARTY] shall have the right to prepay all or a portion of the principal and accrued interest, without penalty. Payments shall be credited first to interest and then remainder to principal. In the event the real estate is sold, the remaining balance of the principal and any accrued interest thereon, shall become due and payable from the proceeds of the sale.

C. [PARTY's] lien shall be satisfied in full on or before \_\_\_\_\_ OR within sixty days of [OTHER PARTY's] death, remarriage, relocation from the property, or upon commencement of foreclosure proceedings, whichever first occurs.

D. [OTHER PARTY] shall execute and deliver a satisfaction of lien or Quit Claim Deed, prepared by [Party's] attorney to [PARTY], upon full satisfaction of the lien.

**24. Motor Vehicles.** \_\_\_\_ shall become the sole owner of the [list vehicle] and \_\_\_\_\_ shall become the sole owner of the [list vehicle]. Each party shall be responsible for the debt, insurance, registration, taxes, repair, and maintenance for his or her respective vehicles and shall hold the other party harmless therefrom. Each party shall cooperate and shall take all steps necessary to remove his or her name from the title to any vehicle awarded to the other party under the terms of this *Agreement*.

**25. Wife's Personal Property.** \_\_\_\_ agrees that the parties have divided their personal property between them to their mutual satisfaction. \_\_\_\_\_ shall have and retain exclusive legal title, free and clear of any claim of \_\_\_\_\_, to her clothing, wearing apparel, jewelry, household goods, furnishings, and other personal property currently in her possession.

**26. Husband's Personal Property.** \_\_\_\_ agrees that the parties have divided their personal property between them to their mutual satisfaction. \_\_\_\_\_ shall have and retain exclusive legal title, free and clear of any claim of \_\_\_\_\_, to his clothing, wearing apparel, jewelry, household goods, furnishings, and other personal property currently in his possession.

OR

**27. Household Goods and Furnishings.** The household goods and furnishings of the parties shall be divided between them as they agree. However, if disputes arise as to the division of the household goods and furnishings, within 45 days of entry of the Decree, the parties shall submit the dispute to binding arbitration with a mutually agreeable arbitrator. The decision as to value and award of this property shall be binding upon the parties. Each party shall be responsible for one-half of the cost of the arbitration.

**28. Bank Accounts.** \_\_\_\_ shall receive exclusive title, free and clear of any claim of \_\_\_\_\_, to the joint \_\_\_\_\_ Bank account and all savings and checking accounts and deposits in his individual name. \_\_\_\_\_ shall receive exclusive title, free and clear of any claim

of \_\_\_\_\_, to the joint \_\_\_\_\_ Bank account and all checking and savings accounts and deposits in her individual name.

**29. Investment Assets.** The parties agree that \_\_\_\_\_ shall have all right, title, and interest in the \_\_\_\_\_ (XXXX \_\_\_\_\_), brokerage accounts, free and clear of any claim of \_\_\_\_\_.

**30. Retirement Accounts.** The parties have the following retirement accounts which shall be divided as follows:

\_\_\_\_\_ IRA, with an account balance of \$ \_\_\_\_\_ as of \_\_\_\_\_.  
\$ \_\_\_\_\_ [or \_\_\_\_%] is awarded to and \$ \_\_\_\_\_ [or \_\_\_\_%] is awarded to \_\_\_\_\_.  
\_\_\_\_\_ 401(k), with an account balance of \$ \_\_\_\_\_ as of \_\_\_\_\_. \$ \_\_\_\_\_  
[or \_\_\_\_%] is awarded to and \$ \_\_\_\_\_ [or \_\_\_\_%] is awarded to \_\_\_\_\_.  
\_\_\_\_\_ Savings Plan, with an account balance of \$ \_\_\_\_\_ as of \_\_\_\_\_.  
\$ \_\_\_\_\_ [or \_\_\_\_%] is awarded to and \$ \_\_\_\_\_ [or \_\_\_\_%] is awarded to \_\_\_\_\_.

The retirement accounts shall be divided by IRA Transfer Order or Qualified Domestic Relations Order (“QDRO”), [prepared by [Party’s] attorney] as the case may be, so that each party bears the same benefit or risk of market gain or loss on that portion of the total he/she receives from \_\_\_\_\_ to the date of actual transfer.

Husband hereby waives any entitlement to survivor or a beneficiary right under Wife’s IRA or retirement accounts listed herein.

Wife hereby waives any entitlement to survivor or a beneficiary right under Husband’s IRA or retirement accounts listed herein.

**Did you have survivor’s annuity valued? If you represent the spouse, you may want survivor’s annuity.**

The parties shall share equally the cost of any administrative fees to supplement the division of the accounts.

The parties agree that the Court shall retain jurisdiction of this matter in order to effectuate the division of the retirement benefits.

**31. Retirement Benefits (Defined Benefit Plan).** PENSION HOLDER has a fully vested interest in the [Name of defined benefit plan]. HOLDER's interest in the Plan shall be allocated between the parties as follows:

To RECIPIENT, a sum equal to PERCENTAGE of the [MARITAL PORTION/ACTUAL PRESENT VALUE] of PENSION HOLDER's vested accrued benefit valued as of DATE OF FILING, with distribution to occur on the earliest date permitted pursuant to the terms of the Pension Plan; and

To PENSION HOLDER, the remaining balance of the vested accrued benefit under the Pension Plan, including all sums not otherwise allocated to RECIPIENT, and all contributions and accruals (and losses) to the vested accrued benefit on or after DATE OF FILING.

[If applicable] The Marital Portion shall be determined by multiplying PENSION HOLDER's Accrued Benefit by a fraction (less than 1.0), the numerator of which is the number of months of the PENSION HOLDER's participation in the Pension Plan earned during the marriage from THE LATER OF (1) PENSION HOLDER'S INITIAL PARTICIPATION IN PLAN and (2) DATE OF MARRIAGE, to DATE OF FILING and the denominator of which is the total number of months of PENSION HOLDER's participation in the Pension Plan as of the earliest of date of cessation of benefit accruals, retirement, termination, disability, death, or the date that PENSION HOLDER commences benefits thereunder.

Recipient hereby waives any entitlement to survivor or any other beneficiary right under Pension Holder's Defined Benefit Retirement Plan. **[If you represent spouse, you may want survivor's annuity.]**

The foregoing allocation to RECIPIENT shall be implemented pursuant to the terms of a Qualified Domestic Relations Order under the Retirement Equity Act of 1984. The parties shall share equally the cost of any administrative fees to implement the division of the retirement benefits.

The parties agree that the Court shall retain jurisdiction of this matter in order to effectuate the division of the defined benefit retirement plan.

**32. Stock Options.** [PARTY] has an interest in \_\_\_\_\_ stock options. The parties agree to divide these options as follows:

\_\_\_\_\_ and \_\_\_\_\_ are each awarded one-half of the \_\_\_\_\_ Corporation stock options in \_\_\_\_\_'s name, vested as of [date of separation/dissolution]. For those options vesting after the date of separation/dissolution, [OTHER PARTY] shall receive a percentage of the \_\_\_\_\_ Corporation Stock Options received since [PARTY's] date of hire, held in [PARTY's] name, which results when 50% is multiplied by a fraction, the numerator of which is the number of months of marriage since the issuance of the option and the denominator of which is the total number of months during which the options vest, subject to all restrictions imposed by the Stock Option Plans and federal and state law. To the extent possible, one-half of the options will be transferred to [OTHER PARTY]. If the options cannot be transferred to [OTHER PARTY], then [PARTY] will hold up to one-half of the options in constructive trust for [OTHER PARTY] per the formula set forth above. [PARTY] will exercise the options upon [OTHER PARTY's] written request. [OTHER PARTY] will be solely responsible for any costs incurred to exercise the options and any income taxes incurred as a result of the exercise. If the income taxes must be reported on [PARTY's] income tax return, then 35%, or the estimated amount of withholding under current

tax laws, will be paid by [OTHER PARTY] upon written verification by [PARTY] of the actual income tax owed due to the exercise of the option. The exercise cost, the number of shares times the exercise price plus the withholding for federal and state income taxes and social security shall be paid by [OTHER PARTY] to [PARTY], who will then perform the transaction.

**33. Business Interests.** \_\_\_\_ shall have all right, title and interest in \_\_\_\_\_, and \_\_\_\_\_, free and clear of any claim of \_\_\_\_\_, and subject to any indebtedness thereon.

**34. Other Property.** Except as otherwise specifically provided in this Settlement Agreement, all money, rights, property, assets, and liabilities of every nature, real or personal, tangible or intangible, now owned by either \_\_\_\_\_ or \_\_\_\_\_ shall become the separate and exclusive property of the party now owning it, divested of any right of dower, courtesy, descent, or encumbrances, or any other right of the other party heretofore existing or arising out of the marital relationship of the parties. Any property owned as joint tenants or as tenants by the entireties which is not expressly covered by the provisions of this Agreement shall, upon the entering of the Decree of Dissolution of Marriage, vest in the \_\_\_\_\_ and \_\_\_\_\_, equally, as tenants in common.

**35. Subsequently Discovered Property. (only use if an issue and you represent non-property spouse)** In addition to the items listed in this *Agreement*, if any undisclosed property or interests in property is discovered subsequently, and a court of competent jurisdiction determines it to be marital property of the parties, such discovery and determination shall not invalidate this *Agreement*, but the property or the interest in it shall at the election of the discovering party (i) be divided equally in kind, or (ii) be accounted for by the party in possession who may pay to the discovering party a sum of money equal to one-half of the present value of the property or one-half of the value of the property at the date of discovery, or at the date of the

Court's determination, whichever sum is greater. Provided, however, that if the existence of that property was knowingly concealed or misrepresented by one of the parties, that property shall be the sole property of the other, and the concealing party shall pay all costs, fees, and attorney's fees occasioned by the failure to disclose. This *Agreement* shall not limit or impair the availability in a Court of competent jurisdiction of any other remedy arising out of such undisclosed property or interest in property.

**36. Life Insurance.** Each party shall have all right, title and interest in his or her respective life insurance policies and any cash value relating thereto, subject to the provisions and requirements of this Agreement regarding securing the support and education obligations of the parties' children and property settlement.

**37. Death of Spouse.** In the event of the death of \_\_\_\_\_, \_\_\_\_\_'s estate shall continue to be obligated under the provisions of this section. Provided, however, that the financial obligation of \_\_\_\_\_'s estate shall be reduced by any life insurance proceeds actually received directly by \_\_\_\_\_.

**LIABILITIES**

**38. Current Responsibility.** Each of the parties shall be responsible for the following debts and liabilities, and each shall hold the other harmless for the payment:

| Responsible Party: | Creditor: | Approximate Balance: |
|--------------------|-----------|----------------------|
|                    |           |                      |
|                    |           |                      |

Each party warrants that he or she has not incurred any debts or liabilities, which are unpaid, other than those disclosed above. Any outstanding debt or liability not disclosed shall be the responsibility of the person who incurred it, and that party shall hold the other harmless for its payment.

**39. Credit Cards and Charge Accounts.** Any credit cards and charge accounts held solely in \_\_\_\_\_'s name shall remain his sole property. \_\_\_\_ shall be solely responsible for the payment of all charges incurred by him on any such accounts. \_\_\_\_\_ shall indemnify and hold \_\_\_\_\_ harmless from any liability relating to such accounts.

Any credit cards and charge accounts held solely in \_\_\_\_\_'s name shall remain her sole property. \_\_\_\_\_ shall be solely responsible for the payment of all charges incurred by her on any such accounts. \_\_\_\_\_ shall indemnify and hold \_\_\_\_ harmless from any liability relating to such accounts. The parties agree to cancel all joint credit cards.

OR

The parties believe there are no joint credit cards. If any joint credit card is subsequently discovered, the person responsible for the charges shall immediately pay the balance, finance charges, and any other fees or costs and the card(s) shall be immediately closed.

**40. After Acquired Debts.** Each party is responsible for any debt or liability incurred by him or her after the date of separation, each party holding the other harmless for its payment.

**41. Future Responsibility.** Neither party shall charge upon the credit of the other, without specific permission to do so. Neither party shall contract any indebtedness or incur any liability for which the other may be held liable.

**42. Hold Harmless.** Each party agrees that in undertaking to pay certain obligations contained in this *Agreement*, including receiving any property subject to any debt or encumbrances, that party shall fully defend and hold the other harmless for principal, interest, court costs and reasonable attorney's fees, together with any judgment rendered against the innocent party by virtue of the party obligated to pay failing to fulfill that obligation and an action being brought against the innocent party.

**43. Division of Assets and Liabilities.** Each party agrees that, in light of all of the circumstances and factors enumerated in Indiana Code section 31-15-7-5, it is just and reasonable to divide the marital estate by setting aside approximately \_\_\_% to Husband and approximately \_\_\_% to Wife. Each party has discussed this division with separate counsel and each agrees to the division. This is because of [list reasons...eg. disparity in income].

**44. Property Equalization Payment.** By agreement of the parties, PAYOR shall pay to PAYEE the sum of AMOUNT as property equalization between the parties and not as alimony. This payment shall be made \_\_\_\_\_. This payment is in full and complete discharge of the PAYOR's obligation to PAYEE in order to equalize the disposition of the net marital assets of the parties. If it is not paid by \_\_\_\_\_, it shall become a judgment ...

**OR**

As property equalization, and in full settlement of all property rights, PAYOR shall pay to PAYEE the amount of AMOUNT. This amount shall be secured by a second mortgage on the marital residence. Additionally, PAYEE shall be named as beneficiary on a term life insurance policy, the proceeds of which shall be sufficient to pay off the judgment if PAYOR dies. The interest rate is RATE, which is the going interest rate for treasury notes payable in the year this *Decree* was entered. The payments shall be made for NUMBER months, as property settlement, in the amount of AMOUNT per month. Payments shall be made on the first day of each month.

**45. Cash Payments.** In full satisfaction of PAYOR's legal obligations to PAYEE, PAYOR or PAYOR's estate, shall make the following cash payments to PAYEE:

- a. Lump Sum: Within thirty days of the event of dissolution of marriage, a lump sum payment of AMOUNT.
- b. Periodic Payments: Commencing on the first day of the first calendar month following the event of dissolution of marriage, NUMBER equal monthly payments of

AMOUNT each. Provided, however, that all payments required to be made by PAYOR under this paragraph to or for the benefit of PAYEE shall (i) be payable regardless of the remarriage of PAYEE, and (ii) continue in the event of the death of either party. Such payments shall not be includable in PAYEE's gross income under section 71 of the Internal Revenue Code, nor be deductible by PAYOR from gross income under section 215 of the Internal Revenue Code. PAYOR may prepay at any time all or any part of the periodic payments, without penalty, provided, however, any such prepayments shall be [in increments, be applied to the last payment due, not defer or otherwise change the unpaid amounts due monthly; and be reduced to reflect the time use of money, using an INDEX]. The obligation of PAYOR's estate for the payments under this paragraph shall be reduced by any life insurance proceeds actually received directly by PAYEE or paid to PAYEE by the trustee of a trust established by PAYOR to satisfy obligations hereunder.

### **SECURITY**

\_\_\_\_\_'s obligation to \_\_\_\_\_ under \_\_\_\_ shall be secured by life insurance and real estate mortgages as set forth below.

**46. Required Insurance.** As partial security for the payment of \_\_\_\_\_'s obligations under this section, \_\_\_\_\_ shall pay the premiums on and keep in force life insurance in an amount equal to not less than the present value, from time to time, of \_\_\_\_\_'s obligations to \_\_\_\_\_ under this section ("Required Insurance"), which required insurance shall be unencumbered until the earlier of (i) \_\_\_\_\_'s death, or (ii) satisfaction of \_\_\_\_\_'s obligation under \_\_\_\_, with \_\_\_\_\_ named as beneficiary. Reasonable evidence acceptable to \_\_\_\_\_ that such insurance is in force and that the premiums are current shall be provided by \_\_\_\_\_ to \_\_\_\_\_ within thirty days of the event of dissolution of marriage and on or before each December 31st thereafter.

**47. Real Estate Mortgages.** As additional security for the payment of \_\_\_\_\_'s obligations under \_\_\_\_, \_\_\_\_\_ or \_\_\_\_\_'s estate shall, until satisfaction of \_\_\_\_\_'s obligations to \_\_\_\_\_ under \_\_\_\_, provide to \_\_\_\_\_ second mortgages against encumbered real estate owned by \_\_\_\_\_ for the balance, such mortgages to be on real estate with an unencumbered value, in the aggregate, of not less than \_\_\_\_\_ percent (\_0%) of the present value, from time to time, of \_\_\_\_\_'s obligations to \_\_\_\_\_ under \_\_\_\_.

### **SPOUSAL MAINTENANCE/ALIMONY**

**48. Amount.** PAYOR shall pay directly to RECIPIENT as alimony and support the sum of AMOUNT in cash per month for NUMBER OF MONTHS, beginning on DATE and continuing on the NUMBER day of each month thereafter.

**49. Termination of Contingency.** The payments set out above shall be made by PAYOR until the first to occur of the following events:

- a. The payment of NUMER OF PAYMENTS payments, or
- b. Death of RECIPIENT.

**50. Tax Purposes.** The parties intend that by the payment of these amounts, PAYOR is entitled to deduct them for income tax purposes and they are taxable to RECIPIENT. RECIPIENT agrees to report such payments as income on federal and state tax returns. If, because of a determination by any judicial or taxing authority or because of a change in the law, PAYOR is no longer permitted to deduct such payments, then retroactive to the date of the first payment so affected, the payments shall be reduced so that they shall be equal to the amount PAYOR would have retained after the payment of federal and state income tax liability had there been one imposed.

**51.** As and for additional spousal maintenance, [PARTY] shall pay on behalf of [OTHER PARTY] the medical [and dental] insurance premium comparable to the policies presently in effect with respect to the amount of deductible and the terms of coverage, up to a maximum of \$\_\_\_\_ per month. [PARTY's] obligation to pay the insurance premiums on behalf of [OTHER PARTY] shall continue until the earlier of the following events:

[OTHER PARTY's] remarriage.

Either party's death.

[OTHER PARTY] has comparable health insurance available to him/her through him/her own employment.

[PARTY] makes \_\_\_\_ consecutive monthly payments.

**52. Notification.** Each party shall promptly notify the other in writing in the event that the Internal Revenue Service proposes to take any action which would alter the tax consequences intended by this section, and RECIPIENT and PAYOR shall each cooperate and act in good faith to preserve and obtain the intended tax consequences.

**53. Non-Modifiable.** The parties intend alimony to be non-modifiable; that is, no change in future circumstances by either RECIPIENT or PAYOR shall serve to reduce or enlarge the amount or duration of the monthly alimony payments.

**54. Security for Spousal Maintenance/Alimony.** PAYOR's obligation to RECIPIENT under this section shall be secured by life insurance or real estate mortgages or other security as set forth below:

a. **Required Insurance.** As partial security for the payment of PAYOR's obligations under this section, PAYOR shall pay the premiums on and keep in force life insurance in an amount equal to not less than fifty percent (50%) of the present value, from time to time, of PAYOR's obligations to RECIPIENT under this section ("Required

Insurance”), which Required Insurance shall be unencumbered until the earlier of (i) PAYOR’s death, or (ii) satisfaction of PAYOR’s obligation under SECTION, with RECIPIENT named as beneficiary. Provided, however, that PAYOR may create a trust agreement, with a banking institution as trustee, under the terms of which the proceeds of such life insurance shall be held in trust and shall be applied toward payment of PAYOR’s obligations under SECTION. Reasonable evidence acceptable to RECIPIENT that such insurance is in force and that the premiums are current shall be provided by PAYOR to RECIPIENT within thirty (30) days of the event of dissolution of marriage and on or before each December 31st thereafter. In the event PAYOR shall predecease RECIPIENT and RECIPIENT is named a direct beneficiary of such Required Insurance, RECIPIENT shall receive the proceeds of such Required Insurance. Provided, however, that regardless of whether RECIPIENT is named as a direct beneficiary of such Required Insurance, or as a beneficiary of a trust established to satisfy PAYOR’s obligations under SECTION, if the amount of Required Insurance in effect at PAYOR’s death is more than the then-present value of PAYOR’s obligation under SECTION, RECIPIENT’s interest in the Required Insurance and the proceeds thereof shall be reduced by the amount such Required Insurance exceeds the present value of PAYOR’s obligation. In such event, RECIPIENT or RECIPIENT’s estate shall take such steps to effect the transfer of ownership of such policies and/or any such excess proceeds to PAYOR’s estate as may be reasonably necessary or desirable. Upon the satisfaction of PAYOR’s obligations to RECIPIENT, RECIPIENT’s right, title and interest in and to the Required Insurance shall be and become the sole property of PAYOR or PAYOR’s estate, and PAYOR shall have the right to continue such insurance in force, to name or change the beneficiaries, or to terminate such insurance, as PAYOR chooses. The premiums paid by PAYOR for the Required Insurance

shall not be includable in RECIPIENT's gross income under Section 71 of the Internal Revenue Code, nor deductible by PAYOR from gross income under Section 215 of the Internal Revenue Code.

b. Real Estate Mortgages. As additional security for the payment of PAYOR's obligations under SECTION, PAYOR or PAYOR's estate shall, until satisfaction of PAYOR's obligations to RECIPIENT, provide to RECIPIENT (i) first mortgages on unencumbered real estate owned by PAYOR, to the extent of PAYOR's unencumbered real estate, and (ii) second mortgages against encumbered real estate owned by PAYOR for the balance, such mortgages to be on real estate with an unencumbered value, in the aggregate, of not less than fifty percent (50%) of the present value, from time to time, of PAYOR's obligations to RECIPIENT under SECTION. Provided, however, PAYOR may substitute for such first or second real estate mortgages other security reasonably acceptable to RECIPIENT. PAYOR shall have the right to remove, encumber, sell or otherwise transfer any parcel of real estate or other property given as security under this section, and RECIPIENT shall be obligated, upon written request by PAYOR to release any such mortgage or such other security upon the provision by PAYOR of other first or second real estate mortgages or other security reasonably acceptable to RECIPIENT which, in the aggregate, are in amounts sufficient to provide continued compliance with the requirements of this section. Upon PAYOR's written request from time to time, RECIPIENT shall also release in full or in part such real estate mortgages or such other security so as to reflect the decreasing balance of PAYOR's obligations to RECIPIENT under SECTION. The value of any new real estate on which mortgages are given pursuant to this section shall be determined by the purchase price paid for such real estate.

## TAXES

**55. Income Taxes.** The parties shall file separate income tax returns for the calendar year YEAR and thereafter. Each party shall pay his or her own respective interest, taxes and penalties, if applicable, and each party shall receive and be the sole and separate owner of his or her respective tax refunds, if applicable. Each party shall pay for the cost of preparing his or her own tax returns. Each party shall indemnify the other and hold the other free from any liability or loss on account of any taxes, interest, and penalty on income previously earned by the indemnifying party on their joint returns filed during the course of the parties' marriage. Each party shall be the sole owner of any refunds for all joint returns for all prior calendar years applicable to their respective income. Each party agrees to fully cooperate with the other in any and all claims for refunds, or in defending against any and all deficiencies which may be determined with respect to any joint federal or state income tax returns filed for the calendar year YEAR and prior years including, without limitation, the making, executing and filing of amended income tax returns, applications for refunds, protests, and other such instruments and documents as may be required in connection therewith. The parties shall share all costs, additional tax, refunds, interest, penalties and expenses equally incurred incident thereto on a pro-rata basis, based upon each party's share of contribution to the cumulative gross income for the year in question.

### **OR**

The parties shall file separate tax returns for calendar year \_\_\_\_\_. [PARTY] shall be allowed the interest and real estate tax deduction for the marital residence through the month of \_\_\_\_\_ and [OTHER PARTY] shall be allowed the deduction for interest and taxes for the remainder of the year on his/her separate tax return. Each party shall be solely responsible for his or her own tax liability and be awarded the total refund from his or her separate tax return.

### **56. OR**

**57.** The parties shall file joint tax returns for the calendar year YEAR. The tax return shall be prepared by a certified public accountant at their joint expense. The proportionate share of the tax liability of each of the parties on the joint returns shall be determined by computing the amount of income, including interest, dividends, capital gains, or other income actually received by each of them, which would be reportable on separate returns of each party if the parties had filed separate returns, and dividing the sum by the total of same for both parties. Each party shall be given credit for any withholding or estimated payments made by him or her. Estimated payments made out of joint property shall be treated as having been contributed fifty percent (50%) by each. Such withholdings or estimated payments by each party shall be credited to each party in determining the amount owed by him or her or the amount of his or her share of any refund, as the case may be. In any event, neither party shall be required to pay a larger amount of tax for such years, including withholdings and estimated taxes paid, than he or she would have paid had he or she filed a separate return for that year. The cost of hiring a CPA to determine the amount of the tax payable on each party's separate return shall be shared equally.

**58. Tax Treatment of Property Division.** In accordance with current status of tax law, neither party shall consider the division of any of the assets of their marriage as a taxable event. Both parties believe that no tax is due as a result of this property settlement division. Each party understands that they are acquiring the assets that they are accumulating under this *Decree* with a tax basis which the property had prior to this dissolution of marriage. Both parties will prepare their respective state and federal tax returns consistent with this paragraph. In the event that property received as a result of this *Agreement* is sold or exchanged the party receiving that property in this *Agreement* shall be responsible for any tax due and shall hold the other party harmless from any and all tax liability, including interest and penalties. The parties will exchange

complete information to allow knowledgeable preparation of income tax returns. Specifically, they will provide income tax basis or cost basis of their respective assets.

**59. Prior Tax Liabilities.** In connection with any joint federal income tax returns previously filed by the parties, if there is a deficiency assessment, the amount ultimately determined to be due thereon shall be borne by either or both the parties depending on whether the deficiency arose out of the individual income, deduction, or misreporting of one or the other parties (and if so, to what extent), or out of a joint income or deduction. Each party represents and warrants to the other that all federal income tax returns during the marriage are, in all respects, true, correct and complete and fully and accurately reflect income and deduction for those years. The parties agree to file a joint income tax return for YEAR if such is allowed under the Internal Revenue Code and agree that any refund will be divided equally. Both parties realize that they may have liability to the Internal Revenue Service from such a joint filing that may transcend any provisions of this Agreement.

OR

**Tax Liability.**

A. Prior Joint Returns. \_\_\_\_\_ and \_\_\_\_\_ filed joint federal and state tax returns during their marriage including \_\_\_\_\_. There has been a notice of deficiency for \_\_\_\_\_. The parties agree to nominate \_\_\_\_\_, CPA to represent them in investigating this matter. To the extent that any deficiency exists, each party will be responsible for one-half of the deficiency and any CPA costs. Either party may defend a proposed deficiency of tax with respect to any joint return upon notice to the other party, and liability for any deficiency assessment, together with interest, penalties, and reasonable costs and expenses of the defense, shall be allocated evenly between the parties unless the item(s) creating the deficiency are attributable to either party in which event that party shall pay the same.

Any state or federal refunds or liabilities shall be divided evenly between \_\_\_\_ and \_\_\_\_\_.

The parties agree to have \_\_\_\_\_ prepare a tax return for \_\_\_\_\_. \_\_\_\_\_ agrees to provide to \_\_\_\_\_ all necessary documentation so he/she can promptly file the \_\_\_\_ state and federal tax returns. Each party will equally divide any fees from \_\_\_\_\_.

B. Cooperation.

i. Each party agrees to cooperate fully with the other in furnishing information in a timely manner for use in connection with any examination of claim for refund with respect to any joint return.

ii. The parties acknowledge that assets received by one from the other may be subject to a carryover tax basis (and any unused loss carryovers), subject to all liens and/or encumbrances existing at the time of the transfer. The transferor of each asset shall provide the transferee with basis information as required by the Internal Revenue Code and underlying Treasury regulations, or shall state that no basis data is available to the transferring party.

iii. Each party agrees not to assert any position in or with respect to any tax return filed by him or her which is inconsistent with any terms of this Agreement and a party who violates this provision shall indemnify and hold the other party harmless from any resultant tax liability (together with interest, penalties, and defense costs) incurred by the other party.

iv. If the IRS or state sends a joint refund check to either party, such party shall immediately notify the other party of its receipt and make arrangements for promptly cashing the check and dividing the funds as herein provided.

C. Indemnification. The party responsible hereunder for paying all or a portion of any tax liability (including interest, penalties, and defense costs) with respect to any tax year shall indemnify and hold the other party harmless from any liability for same. If either party pays (including

as a result of an IRS collection action) any tax liability allocated to the other party hereunder, the obligor shall reimburse the payor as provided in this Section.

### **ATTORNEY FEES AND COSTS**

**60. Attorney Fees.** Each of the parties shall be solely responsible for paying his and her respective attorney's fees and costs, including mediator's fees, incurred in connection with the negotiation and preparation of this *Agreement* and obtaining the final *Decree*. Neither party shall have any obligations whatsoever for any attorney's fees or costs incurred by the other party. OR [Party] shall be solely responsible for all mediator's fees.

If, after the *Decree* has been entered, either party shall default in the performance of any of the obligations of this *Agreement*, or of any order of judgment, the other party shall recover his or her reasonable attorney's fees and costs.

### **OR**

PAYOR shall pay to FIRM, attorneys for RECIPIENT, the sum of AMOUNT, constituting full satisfaction of PAYOR's obligations for PAYOR's contributive share of RECIPIENT's attorney's fees and costs, incurred by or on behalf of RECIPIENT in connection with the negotiation and preparation of this *Agreement* and all proceedings related to the *Decree*.

If, after the *Decree* has been entered, either party shall default in the performance of any of the obligations of this *Agreement*, or of any order of judgment, the other party shall recover his or her reasonable attorney's fees and costs.

Attorney Fee Option #2

### **MISCELLANEOUS PROVISIONS**

**61. Modification or Waiver.** No modification of any of the terms of this *Agreement* shall be valid unless in writing, signed by the parties, and approved by the Court. No waiver of any breach or default shall be deemed a waiver of that breach or default nor any subsequent breach or default.

**62. Cobra.**

a. Pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985 (more commonly known as COBRA), the [INSURED PARTY], his/her employer, and insurance carrier shall maintain health and medical insurance for the benefit of the [OTHER PARTY] to the extent such coverage is currently available.

b. [INSURED PARTY] shall notify the health insurance provider that he/she and [OTHER PARTY] are now divorced and that he/she seeks continuation coverage.

c. The costs and/or premiums in connection with such continuation shall be the responsibility of [PARTY].

OR

[PARTY] shall be responsible for his/her own medical insurance. [OTHER PARTY] shall be responsible for his/her own medical insurance.

OR

**63. Mutual Release.** Subject to the full compliance of this *Agreement*, each of the parties in all respects is released and fully discharged of any liability, claims, or obligations of any kind or character whatsoever, whether arising out of the marital relationship or otherwise, and this *Agreement* constitutes a full, final and complete settlement in lieu of any other provisions respecting maintenance and any other distribution of property. However, this *Agreement* does not operate to bar [PARTY] from commencing a separate inter-spousal tort claim against [OTHER PARTY] in the future for certain acts arising during the marriage.

**64. Legal Representation.** HUSBAND/WIFE is represented with respect to this action for dissolution of marriage by \_\_\_\_\_, of the law firm of \_\_\_\_\_. HUSBAND/WIFE understands that he/she has the right to be represented by an attorney with respect of this action for dissolution of marriage and that such representation may be in his/her best interest. HUSBAND/WIFE affirms that she/he has had the opportunity to retain counsel, and that he/she has elected not to obtain the advice of counsel.

**OR**

HUSBAND and WIFE each acknowledges entering freely and voluntarily into this *Agreement*, each having been separately represented and advised by independent counsel of his or her own choosing in the negotiation for and preparation of this *Agreement*. Each party and counsel has had an opportunity to conduct a complete examination and review of all related records and documents, and each party has had this *Agreement* fully explained to him or her by counsel and is fully aware of its contents and its legal effects.

**65. Documents.** Each party shall immediately execute and deliver to the other all documents necessary to carry out the terms and intent of this *Agreement*.

**66. Waiver of Beneficiary Status.** Absent an express provision in this agreement to the contrary, each party waives any beneficiary interest that he or she may have in any life insurance policies, annuities, brokerage accounts, pay-on-death bank accounts, individual retirement accounts, or other instruments containing a beneficiary designation that are now owned by the other party.

**67. Complete Agreement.** Both parties acknowledge that no representations, warranties, promises, covenants or undertakings of any kind have been made to him or her as an inducement to enter into this *Agreement*. This *Agreement* is intended to be, and is, the complete agreement of the parties.

**68. Future Interpretation.** Headings are for convenience only. They are not part of the *Agreement* and shall not be used in its construction. With respect to the form of the *Agreement*, both parties assume joint responsibility for the form and composition of each paragraph, and they agree that this *Agreement* shall be interpreted as though each of the parties participated equally in the composition of each and every part of this *Agreement*. This *Agreement* is not to be strictly construed for or against either of the parties. It shall be interpreted simply and fairly to both parties. If any portion of this *Agreement* is held to be invalid or unenforceable, all other provisions shall nevertheless continue in full force and effect.

**69. Provisional Order.** The parties acknowledge and agree that each has fully complied with the Provisional Order issued herein and there exists no outstanding obligations arising from that Order.

**70. Applicable Law.** [IF THERE ARE CHILDREN]

The parties agree that any interpretation of this *Agreement*, or any legal actions to enforce this *Agreement*, shall be governed by the applicable laws of the State of Indiana as they exist on the date of the execution of this *Agreement*, with the exception that any modifications in matters pertaining to child support and related issues, shall be governed by the laws of the State of Indiana applicable at the time of any such modification action.

[IF THERE ARE NO CHILDREN] The parties agree that any interpretation of this *Agreement*, or any legal actions to enforce this *Agreement*, shall be governed by the applicable laws of the State of Indiana as they exist on the date of the execution of this *Agreement*.

**71. Mail and Correspondence.** Each of the parties agree to promptly forward by mail to the other all mail and correspondence hereafter received which is addressed to the other.

**72. Restoration of Name.** WIFE's former name of \_\_\_\_ shall be restored to her.

## Verification

I affirm under the penalties for perjury that the representations contained in the foregoing *Agreement* are true, all to the best of my knowledge and belief.

\_\_\_\_\_  
Petitioner  
Date: \_\_\_\_\_

\_\_\_\_\_  
Respondent  
Date: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
Attorney for Petitioner

\_\_\_\_\_  
Attorney for Respondent

**IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED** that:

The Court FINDS that the Court should accept this Settlement Agreement and each of the parties should be bound by the terms and conditions as an Order of this Court.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that:

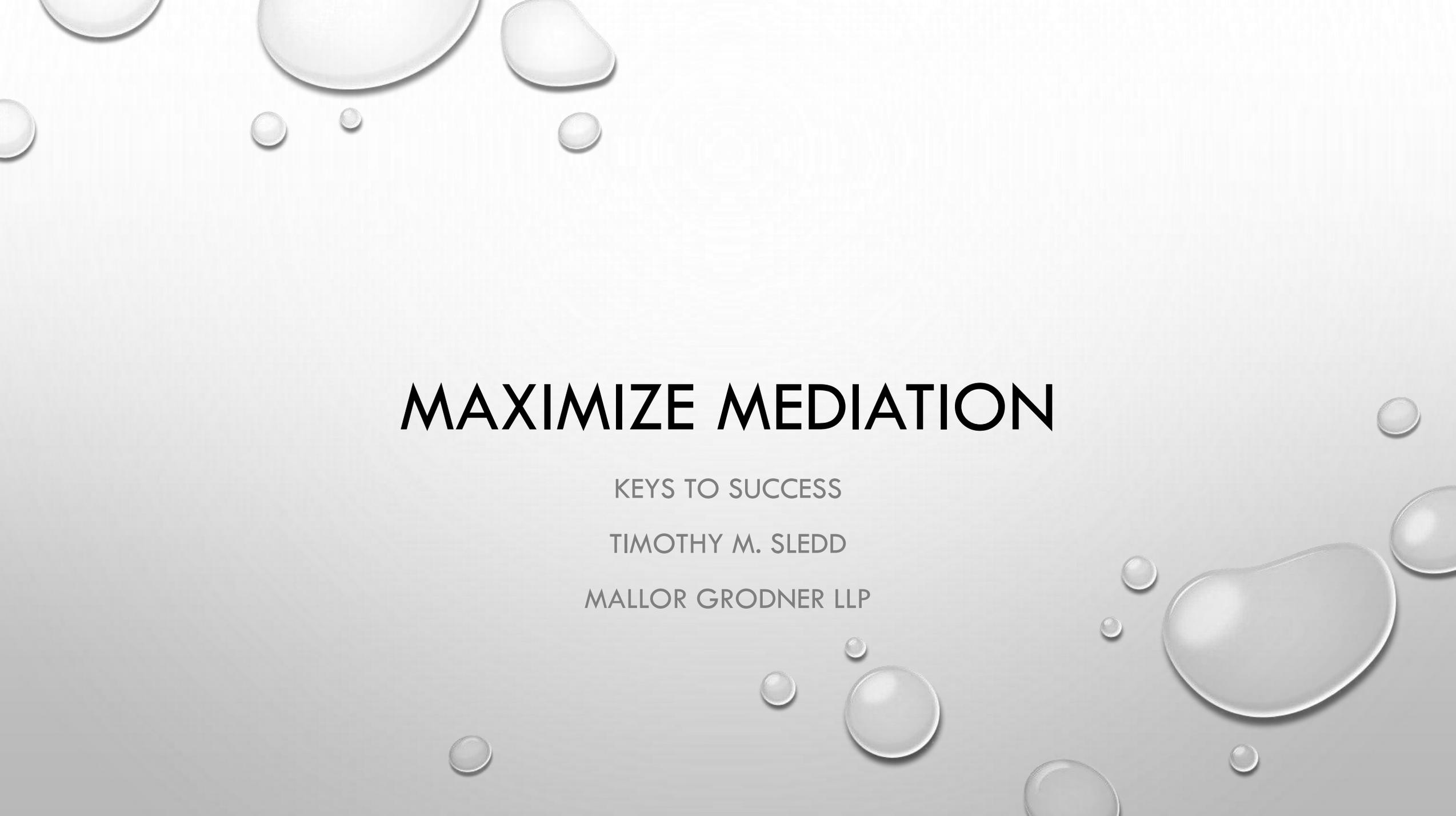
- A. The existing marital relationship is irretrievably broken and dissolved and the parties are restored to the state of unmarried persons;
- B. The above division of property and debts is hereby approved and made the Order of the Court and each party is hereby Ordered to execute whatever documents are necessary to carry out the terms of said division of property and debts;
- C. The above Agreement is ratified, approved and made a part of this Decree. Each of the parties is bound by the terms and conditions of the Settlement Agreement as an Order of this Court and Judgment is hereby entered thereon;
- D. The Petitioner/Respondent’s former name of \_\_\_\_\_ shall be restored to her.
- E. The Clerk of the Court shall enter this Order in the Record of Judgments and Orders; (RJO); and
- F. Costs of this action are now paid.

**SO ORDERED** this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Copies to:  
Attorney for Petitioner  
Address

Attorney for Respondent  
Address

Timothy M. Sledd #24541-49  
Mediator  
**Mallor Grodner LLP**  
511 S. Woodscrest  
Bloomington, Indiana 47401

The background of the slide is a light gray gradient with several realistic water droplets of various sizes scattered across it. The droplets have highlights and shadows, giving them a three-dimensional appearance. The largest droplet is in the bottom right corner, while others are smaller and more numerous in the top left and bottom center areas.

# MAXIMIZE MEDIATION

KEYS TO SUCCESS

TIMOTHY M. SLEDD

MALLOR GRODNER LLP

# YOU ARE NOT MY CLIENTS

- WE HAVE PROVIDED YOU MATERIALS TO REVIEW:
  - TIMOTHY M. SLEDD HAS USED HIS BEST EFFORTS TO INCLUDE ACCURATE AND UP-TO-DATE INFORMATION IN HIS MATERIALS FOR THIS PROGRAM. STATUTORY PROVISION OR CASES FROM JURISDICTIONS OUTSIDE INDIANA ARE CITED OR INCLUDED FOR ILLUSTRATIVE PURPOSES AND NOT AS DEFINITIVE STATEMENTS ABOUT THE LAW IN THOSE OTHER JURISDICTIONS. THE AUTHOR MAKES NO WARRANTIES ABOUT THE LEGAL CONCLUSIONS STATED OR IMPLICIT IN THESE MATERIALS. THESE MATERIALS ARE NOT INTENDED AS LEGAL ADVICE TO ANY SPECIFIC INDIVIDUALS OR FIDUCIARIES. THE SAMPLE FORMS AND CHECKLISTS ARE OFFERED MERELY AS ILLUSTRATIVE GUIDANCE FOR DRAFTING.

# ROADMAP

- KNOW YOUR CLIENT
- KNOW YOUR MEDIATOR
- KNOW OPPOSING COUNSEL
- PREPARE THE BATTLEFIELD
- PREPARE THE AGREEMENT (THUMBNAIL/SUBSTANCE)
- COVER YOUR B... (BASES)

# KNOW YOUR CLIENT

- SEND YOUR CLIENT A LETTER AS EARLY AS POSSIBLE LAYING OUT THE MEDIATION PROCESS (SEE MEDIATOR'S LETTER)
- SIT DOWN WITH THE CLIENT
  - MUCH OF PREPARING YOUR CLIENT FOR MEDIATION IS UNDERSTANDING THEIR EXPECTATIONS
    - HAVE THEY MEDIATED BEFORE (IF YES, LEARN THEIR EXPERIENCE)
    - HAVE THEY REVIEWED DISCOVERY REQUESTS/RESPONSES
  - DETERMINE WHAT THE CLIENT'S EMOTIONAL STATE WILL BE UNDER THE STRESS OF MEDIATION
    - DO THEY NEED A FIRM MEDIATOR WHO WILL CUT TO THE CHASE
    - DO THEY NEED A GENTLE MEDIATOR WHO WILL HOLD THEIR HAIR WHILE THEY VOMIT
    - DO THEY NEED A COMPANION OR TO HAVE SOMEONE ON "PHONE A FRIEND"
  - GUIDE THEIR EXPECTATIONS
    - THIS WILL BE A PROCESS OF RISK ASSESSMENT
    - HAVE THE CLIENT ARTICULATE THEIR IDEA OF WHAT SUCCESS CAN LOOK LIKE; EDUCATE THEM ON ALTERNATIVES

# KNOW YOUR MEDIATOR

- IS THE MEDIATOR “IN FOR THE HAUL” OR “CALL IT QUILTS AT NOON?”
- DO YOUR RESEARCH
  - VISIT THEIR WEBSITE
  - ASK OTHER ATTORNEYS
  - TELEPHONE THE MEDIATOR
    - ASK FOR A BRIEF CALL TO ACQUAINT YOURSELF
    - LEARN THE MEDIATOR’S PHILOSOPHY
    - ASK WHAT THE MEDIATOR LIKES TO HAVE IN PREPARING FOR THE MEDIATION
    - PREPARE THE MEDIATOR FOR ANY QUIRKS OR PECULIARITIES YOUR CLIENT MAY HAVE

# KNOW YOUR OPPOSING COUNSEL

- REVIEW THEIR WEBSITE
- ASK AROUND ABOUT THEIR APPROACH TO MEDIATION/SETTLEMENT
- GIVE THEM A COURTESY CALL
  - DISCUSS DISCOVERY AND YOUR NEED FOR ANYTHING LEFT OUTSTANDING
  - FIND OUT WHAT THE FOCAL POINTS OF THE OTHER PARTY ARE
  - DISCUSS DATES FOR THE NEXT HEARING (PROVISIONAL/STATUS/FINAL)

# PREPARE THE BATTLEFIELD

- PREPARE A CONFIDENTIAL MEDIATION STATEMENT (SEE TAB E)
  - BE ACCURATE
  - BE CONCISE
  - BE CLEAR
  - ACKNOWLEDGE STRENGTHS/WEAKNESSES OF BOTH SIDES
  - INCLUDE ORDERS/RULINGS (ESPECIALLY THOSE FAVORABLE TO YOUR CLIENT)
- PRIME THE PUMP: A MEDIATOR WANTS TO CUT TO THE HEART OF ISSUES AND YOUR VERSION WILL SET THE STAGE.
- REVIEW THIS STATEMENT WITH YOUR CLIENT, THOROUGHLY, PRIOR TO SENDING

# PREPARE THE AGREEMENT THUMBNAIL

- PRIOR TO ARRIVAL AT MEDIATION
  - DRAFT THE AGREEMENT BASED ON YOUR MEDIATION STATEMENT
  - SEND THE MEDIATOR A COPY OF THE PROPOSED AGREEMENT (NOTING CONFIDENTIALITY) SHORTLY BEFORE MEDIATION
    - ALLOWS FOR MEDIATOR TO HAVE A DRAFT FROM WHICH TO BEGIN EDITING
    - CREATES A PATH OF LEAST RESISTANCE
    - CREATES A DOCUMENT THAT YOUR EYES ARE USED TO ANALYZING FOR ACCURACY AND CONTENT
  - HAVE A PAPER COPY PRINTED TO ALLOW THE MEDIATOR TO TAKE TO OPPOSING COUNSEL DURING MEDIATION

# PREPARE THE AGREEMENT SUBSTANCE

- DISCOVERY/COMPLETENESS/ WAIVER
- PARENTING TIME PROVISIONS
  - ANY DEVIATION FROM IPTGS
  - ANY FACTOR THAT WAS CONTESTED AND NEGOTIATED IN MEDIATION (SPELL IT OUT)
- CHILD SUPPORT
  - CREATE CSOW
  - OUTLINE DEVIATIONS
  - EXTRACURRICULAR EXPENSES
  - POST-SECONDARY EDUCATION EXPENSES
  - TAX EXEMPTIONS/CREDITS/DEDUCTIONS
  - LIFE INSURANCE

# PREPARE THE AGREEMENT SUBSTANCE

- PROPERTY DIVISIONS
  - REAL PROPERTY
    - SALE V. REFINANCE
    - QUITCLAIM DEED
  - RETIREMENT (IRA AND 401K)
    - EXCHANGE OF PLAN DOCUMENTS
    - DISCUSSION OF WHO WILL CREATE QDRO
  - CELL PHONE/BANK ACCOUNTS/ EMAILS/ SOCIAL MEDIA ACCOUNTS
  - SUBSEQUENTLY DISCOVERED PROPERTY
  - EQUALIZATION PAYMENTS
    - HOW MUCH
    - HOW
    - WHEN

# COVER YOUR B\_\_\_\_\_ (BASES)

- PRIOR TO ANY SIGNING OF THE AGREEMENT
  - CLIENT NEEDS TO UNDERSTAND BINDING NATURE
  - CLIENT NEEDS TO UNDERSTAND NATURE OF BUYER'S REMORSE
  - CLIENT NEEDS TO BE ABLE TO ARTICULATE THE RISK ANALYSIS
- IF CLIENT IS GOING AGAINST YOUR ADVICE
  - DOCUMENT IT IMMEDIATELY IN WRITING (AN EMAIL TO THE CLIENT/ A HANDWRITTEN STATEMENT/ TYPE IT OUT AND HAVE THEM SIGN)
  - FOLLOW UP MEDIATION WITH A LETTER
- IMMEDIATELY AFTER THE MEDIATION WRITE YOUR CLIENT A SUMMARY LETTER
  - LIST THEIR DUTIES AND OBLIGATIONS
  - PROVIDE CLEAR DATES AND VALUES
  - PROVIDE STATUTORY LANGUAGE FOR MODIFIABLE PROVISIONS
  - ATTACH COPIES OF THE SIGNED DOCUMENTS EVEN IF NOT FILE MARKED
  - INSTRUCT CLIENT TO KEEP SAFE (SAFE DEPOSIT BOX/SCAN AND STORE IN SECURE CLOUD)

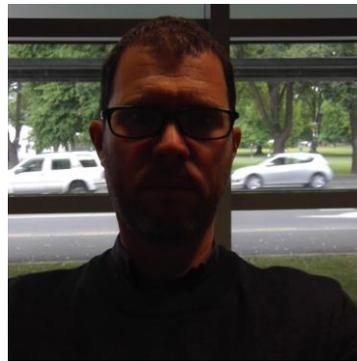
## Zoom Etiquette

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.**