

# Family Law Newsletter

**WATERS TYLER SCOTT HOFMANN & DOANE, LLC**

## Health insurance after divorce

With the on-going health insurance reform debate, we thought you may want to know how divorce may impact your coverage.



As part of a married couple, you may have been covered by your spouse's health plan. If so, you may be worried that because your marriage is ending, your health insurance coverage will be ending too. Fortunately, laws exist that may protect your rights so your options may not be as limited as you think.

In general, when your marriage ends, there are

four ways to get health insurance coverage:

### 1. COBRA

The Consolidated Omnibus Reconciliation Act of 1986 (COBRA) is a federal law designed to protect employees and their dependents from losing coverage as a result of job loss or divorce. If your former spouse maintained family health coverage through work, you may continue this group coverage for up to 36 months after the divorce. But you will have to pay for this coverage.

### 2. Divorce Settlement

When you are negotiating a divorce settlement, ask that your spouse be required to maintain health insurance coverage for you. This may not work if you can

easily get health insurance through your own employer. But if you're an older homemaker or self-employed, you may have a better chance of receiving this as part of your settlement.

### 3. Employer Insurance

If you work and your employer offers health insurance, sign up for it. Unless your spouse is paying your health insurance as part of your divorce settlement, this is likely the least expensive alternative.

### 4. Purchase insurance

In some cases, this may be your only option, especially after your right to COBRA ends. If you have to pay your own premiums, try to compensate for this in your divorce settlement.

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## WTSHD launches Divorce Law Indiana blog



In our continued commitment to provided southern Indiana with honest, caring, affordable, quality family law services, **Waters, Tyler, Scott, Hofmann & Doane, LLC** is proud to introduce the Divorce Law Indiana blog. This site is intended to provide helpful information about Indiana divorce and family law issues.

Divorce Law Indiana is the first of its kind in southern Indiana in that it is devoted entirely to news, information and analysis on divorce and family law in Indiana. You can visit the interactive blog at **[www.divorce-law-indiana.blogspot.com](http://www.divorce-law-indiana.blogspot.com)**. Of course, you can also still find us at **[www.wtshdlaw.com](http://www.wtshdlaw.com)**.

## Tips for telling the children about your divorce



How to tell your children about the divorce is important. Here are some guidelines to consider:

- Wait until the decision to divorce is definite
- Let the kids hear it from both parents together
- Tell all the kids together so they can support one another
- Provide a basic reason for the divorce. Don't go into details or talk about blame
- Provide them with some basics about – how they will see each parent, when the parent will leave the house, where the parent will live and other changes in their lives
- Reassure them that they will still have two loving parents and the divorce isn't their fault
- Encourage them to ask questions and share their feelings and concerns

The key is to provide them with an abundance of reassurance about both parents' continued love for them.

## Impact of social networking web-sites in divorce

**Beware: The popularity of Facebook, MySpace and Twitter are becoming a treasure trove for divorce lawyers.**



In many instances, social media web-sites have provided critical evidence. Tweeting or Facebooking during a divorce can impact the court's decisions about custody, visitation and property. Most what is posted becomes permanent and readily available for public consumption. Tweets, Facebook updates and any other information on such social networking sites are there for everyone to see including your spouse and their attorney.

For example, a parent who is prohibited from taking a child out-of-state might post photos of visiting Florida or another destination with the child. A parent may deny drug use, but

the background on the MySpace page features marijuana leaves. Someone's LinkedIn profile may contain evidence of earning capacity or job prospects that can be helpful in establishing child support. The examples are endless.

If you are going through a divorce you should change your passwords so your spouse cannot create a false profile for you or modify your information on the social sites to portray you in a negative light. You do not want to visit your MySpace page to find out that your marital status has changed and your are now dating.

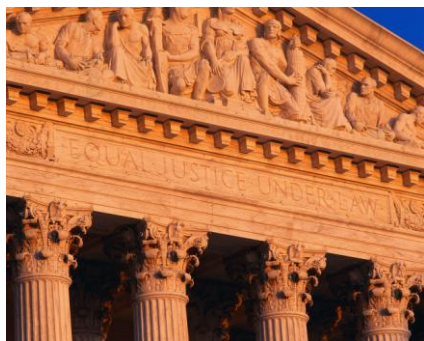
Social web-sites may be filled with damaging messages and embarrassing photos that quickly lead to a divorce settlement. A suspicious spouse may be armed with damaging information obtained from a social networking site. Twitter can be rife with damaging messages because of its spontaneity. It is so easy to tweet something from a cell phone that you may likely regret later. For example, tweeting during court hearings with comments about the judge or your spouse can be devastating. You must remember that messages on your wall are seen by everyone.

TIME magazine recently suggested five things you shouldn't do when visiting social networking sites while going through a divorce:

1. Showing Off. Photos or discussions of new purchases or vacations are fun to post, but they may impact the court's view of your finances and earning ability.
2. Letting It All Hang Out. If you are in a custody battle, your spouse's attorney will present you as an unstable parent. Delete the crazy party photos.
3. Venting. You should not talk smack or trash about the lawyers, judge and especially your spouse. Such discussion will hurt your case in court and remember your kids use the computer too.
4. Getting Tagged. Not only do you have to worry about your page, but make sure your friends' photos of them cannot be used against you as well.
5. Cutting Off Everyone at Once. You should not "de-friend" your in-laws or spouse's friends immediately. Everyone needs time to adjust.

The age of online-social-networking has made its way into divorce court. Spouse's tweets and blogs mean you could be airing dirty laundry for the whole world to see. As the saying goes, forewarned is forearmed.

# Changes to the Indiana Child Support Guidelines



The Indiana Supreme Court has amended the state's Child Support Guidelines. The revisions take effect January 1, 2010 and they come with a bit of controversy.

It appears the controversy stems from a belief that the changes overrule the rebuttable presumption that neither parent owes the other support in situations where the Child Support Obligation Worksheet calculated a negative amount for the non-custodial parent's child support payment (the negative amount is caused by the Parenting Time Credit). With the changes to the guidelines, there will now be a rebuttable presumption that the custodial parent must make child support payments to the non-custodial a parent equal to the negative amount.

So what does this mean? Well, it may mean that you could have custody of the kids and still have to pay your spouse child support if the worksheet calculates his or her support payments to be negative where before neither parent paid.

It should be noted that Justices Sullivan and Rucker on Indiana Supreme Court dissented in the order adopting the changes. The fact there are dissenting opinions confirms the controversial nature of some changes. They wrote: "We believe that the Guidelines' presumption in such circumstances should continued to be that neither parent owes the other support." They further observed that the trial court may already deviate from the Guidelines and order neither parent to pay support if the trial court finds it would be unjust not to do so. In other words, the trial judge can order no child support even if recommended by the guidelines.

The new guidelines also warn against attributing potential incomes that result in unrealistic child support payments and ultimately, excessive arrears.

Some other notable changes to the Indiana Child Support Guidelines include:

- The Health Care and Medical Support, and Extraordinary Expenses are now figured into new separate guidelines.
- There is a revised low-income adjustment that sets the support payment for combined weekly incomes of \$100 at \$12 for one child; the existing Guidelines assign \$25 per week.
- The schedules for weekly support payments now include combined weekly

adjusted income between \$4,000 and \$10,000 (previously a formula had to be used for those earning more than \$4,000).

- The Social Security Disability benefits paid for a child are now considered as income of the disabled parent who earned the benefits and those benefits are included in the Weekly Gross Income of that parent (this changes existing law).

## Case Law Update

In a case of first impression in the State of Indiana, the Court of Appeals in *Hardebeck v. Hardebeck* held that a spouse may not refuse to sign a joint income tax return. The Court reasoned that failure to do so is dissipation of marital assets since it caused the husband to incur nearly \$8,000 in additional taxes.

The Indiana Court of Appeals ruled that a father was not required to take the kids to church during his parenting time. In *Finnerty v. Clutter*, the Court reasoned that since the father had joint legal custody it was his "prerogative" as to whether the children attend church on his weekend.

## Dividing up the retirement and pension benefits



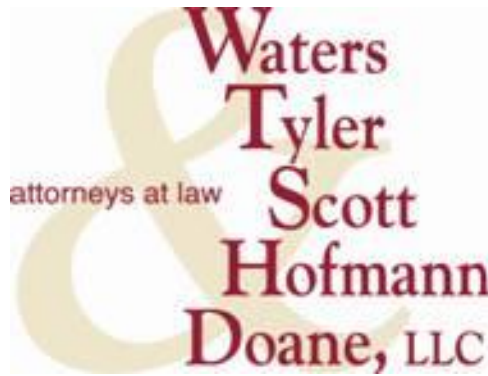
Aside from equity in their home, the biggest assets many couples have are their retirement benefits.

If a person has been working at Ford, GE, etc, he or she will likely have accumulated fairly sizable amount of money in their pension, retirement plan, defined benefit plan, employee stock ownership plan, defined contribution plan, savings and security plan, 401(k), annuity, etc.

Marriage during all or part of the employee's tenure likely will make some or all of these funds marital in nature. Portions of the funds may be non-marital.

A qualified family law attorney should be able to explain to you what portion, if any, of your retirement or your spouse's retirement is marital property.





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Waters, Tyler, Scott, Hofmann & Doane, LLC, is committed to providing honest, caring, affordable, quality family law services. We understand the emotional nature of family legal matters and realize how important it is that each client receives individual attention to his or her matter in a timely, cost-efficient manner, to help you navigate through the legal process and find the best possible outcome to difficult situations.



Les Merkley in our firm primarily focuses his practice in the area of family law including divorce, custody, support, visitation, paternity, guardianships and domestic violence. We encourage you to contact him for straight answers to your questions.

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**SMALL ENOUGH TO KNOW YOUR NAME"**

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*Please be advised that this newsletter provides general information only and should not be construed as legal advice.*

## Avoiding conflict: exchange kids at neutral site

Many times there is so much conflict between parents, that it is best to exchange the children for visitation without the parents having any contact whatsoever.

While the Indiana Parenting Time Guidelines recommends the parent taking possession of the child should be responsible for transportation, sometimes circumstances warrant exchanging the child at a neutral site. Such neutral exchange sites will eliminate the tension and conflict in the presence of your children. As a parent you may want to avoid direct conflict with the other parent by extending weekends from Friday after school or daycare to Monday morning. If it is a high-conflict relationship, the less direct contact between the parents

the better.

You may also consider doing a curbside exchange – where one parent remains in the car and blows the horn, while the other remains in the residence and the child comes out. Of course, this arrangement only works if the child is older.

Finally, another option is to exchange the children at a public place such as a shopping center, gas station or restaurant. Hopefully with lots of people around, there is a greater likelihood each parent will behave.

The key is to avoid as much confrontation as possible. As a parent you are the adult and should act like one.

### Give your child your time this holiday season

The holidays are upon us. Would you like to give your child the perfect gift, one that could change his or her whole outlook on family life?

The American Academy of Matrimonial Lawyers offers some important concepts in the hope that you will read it with your children to help them understand that a divorce does not have to ruin their loving relationships with either parent. Check out the *Children's Bill of Rights* at [www.aaml.org](http://www.aaml.org).

Children's lives go by a light of speed. Give them a gift of your time this holiday season. Before you know it, their childhood will be gone and will be too late.