

# Family Law Newsletter

**WATERS TYLER HOFMANN & SCOTT, LLC**

## Avoid placing children in loyalty conflicts



Children of battling parents usually feel caught in the middle. They sometimes develop painful loyalty conflicts or loyalty binds. Several studies show loyalty conflicts as more damaging to the children's emotional well-being than open conflict. Loyalty conflicts make children feel as if they are being torn apart by the two people they love most in the world.

Unfortunately, parents put children in loyalty conflict in many ways. You should avoid putting your children in the middle of the divorce.

Here are some suggestions as ways to avoid putting kids in the middle:

- ✓ Don't pump a child for information about the other parent.
- ✓ Don't ask a child to be a message carrier or go-between.
- ✓ Don't ask a child to spy on the other parent.
- ✓ Don't pressure a child to take your side or to prefer you.
- ✓ Don't badmouth the other parent.
- ✓ Do give your child permission to love the other parent.

No matter how tempted you are, never place your children in loyalty conflicts.

*Source: "Divorce & New Beginnings",  
Genevieve Clapp, PhD*

**Spring 2010  
Volume 2, Issue 2**

### Inside this issue:

*Indiana Case Law Update:  
Retroactive child support*  
Page 2

*How does Indiana  
calculate child support?*  
Page 2

*Summer visitation tips for  
divorced parents*  
Page 3

*Exercise: great way to help  
with divorce stress*  
Page 3

*Benefits of domestic  
partnership agreements*  
Page 4

## WTHS now offers family law mediation services



**Waters, Tyler, Hofmann & Scott, LLC** now offers family law mediation. As your mediator, we are committed to solving problems without court intervention. We can be of service to those who want to avoid the cost or delay of a contested hearing, those who want the matter settled privately rather than in open court, and those who have a relationship that must continue long after the divorce.

If you need a knowledgeable, fair-minded family law mediator, **Waters, Tyler, Hofmann & Scott, LLC** can help you. Contact us today – (812) 949-1114. Our offices are located in New Albany, Indiana. From this location we serve clients throughout southern Indiana.

## Indiana Case Law Update: Retroactive child support

The Indiana Court of Appeals in **Boone v. Boone** held for the first time that the court cannot order child support retroactive to a date prior to filing for divorce.

In **Boone**, mother and father had been separate for nearly five years before father filed for divorce. At the final hearing, mother requested father be ordered to pay child support for the 17 months before the divorce was filed. The trial judge granted her request reasoning that

parents have a common law duty to support their children.

While the Indiana Court of Appeals agreed a parent has the duty to support their children, it found the trial court lacked authority to order child support to a date prior to the date of filing for divorce. The Court noted that Indiana courts have the authority to order child support to date of filing; however, this was the first time the courts had been asked to determine whether the child

support order can predate the filing for divorce.

The Court reasoned that the divorce court has no authority over the marriage until the divorce is filed. Therefore, it cannot order child support until a petition for dissolution of marriage is filed. The decision firmly establishes the general rule in Indiana that retroactive child support is prohibited except where explicitly authorized by statute such as in paternity cases.

## How does Indiana calculate child support?

**Child support in Indiana is calculated pursuant to the Indiana Child Support Guidelines.**



The guidelines are available at [www.in.gov/judiciary/rules/child\\_support/index.html](http://www.in.gov/judiciary/rules/child_support/index.html).

Obligations are to be set in accordance with the guidelines table unless extraordinary circumstances exist. Extraordinary situations are to be handled at the discretion of the court.

The Indiana Supreme Court provides all the information and

forms you need to do a rough calculation of child support obligations in your situation. Visit [www.in.gov/judiciary/childsupport/](http://www.in.gov/judiciary/childsupport/) for forms, worksheets and help with calculations.

To determine the amount of child support obligation, Indiana uses a worksheet, based on the Indiana Child Support Guidelines, to calculate the proposed obligation. The worksheet uses the income of both the custodial parent and the non-custodial parent and considers other factors such as medical insurance, maintenance payments, child care and support for prior born children.

The Child Support Guidelines table is used to complete child support calculations, applying the parties' combined joint weekly incomes (adjusted for their contributions toward health insurance, maintenance payments, child care expenses, support for older children from other relationships, etc.)

Once an obligation has been

established by the Court or the parties' agreement is incorporated into a Court order, child support can later be modified. However, there are certain minimum requirements for making such changes.

- ✚ The reduced or increased child support must reflect at least a 20% change (plus or minus) and
- ✚ The changes in circumstances must be "substantial and continuing."

These requirements deter constant litigation on child support. For example, a lay-off or job termination, for instance, may not be considered "continuing" as the parent is expected to seek and obtain other employment or to return from lay-off. On the other hand, retirement or a permanent health condition which prevents a parent from working (long-term disability) may be a justification for modifying the parties' respective child support obligations.

## Summer visitation tips for divorced parents



School's out and summer visitation with the non-custodial parent means a change in your children's normal routine. You can ease the transition and make things go smoother by using some of the following tips:

### **Setting your mind at ease**

When your child is preparing to go away for summer visitation, do some advance planning that will help you feel comfortable with the vacation or the trip. Find out where your child is going and get the contact information. Ask questions so you know what the plan is. If your child will be traveling, get the details of the itinerary. Make sure your ex understands your child's capabilities when it comes to swimming, hiking, or other

activities. If your child is going to another state to stay with your ex, find out who will provide child care while your ex is at work.

### **Stay in touch**

If your child is in elementary school, this might be a good time get him or she a cell phone. That way, you can call directly without having to go through your ex and you will have the peace of mind knowing you can call at any time. Stay in touch, but do not call several times a day. You have to let go a little and let your child and ex have time together without you involved. Find out if your child will have internet access. If so, set up an instant message account so you can reach other that way. If not, you could send your child with some stamps and stationary so he or she could send you a note or a drawing.

### **Pack well**

Help your child pack for the time away. Make sure all essentials are included, including prescription medications, glasses, retainers, rubber bands for

braces, summer reading requirements, sunscreen, special stuffed animals, favorite toys, clothing appropriate for the weather, and personal care items. If your child will be traveling, do not assume your ex will think to pack children's pain reliever, dental floss, water shoes, or other important items. Talk with your ex about making sure your child follows his or her routine and takes the meds, brushes the teeth, wears sunscreen and so on.

### **Prepare your child**

Depending on the age of your child and whether he or she has been away from you before, this could be a difficult separation. Remind your child that he or she is going to be with the other parent who loves them and is so excited to be able to spend time. Tell the child you will miss him or her, but you will be together again very soon. Do not dwell on how hard the separation will be for you.

### **Prepare yourself**

If you have not been away from your child for extended periods of time, the time apart during summer visitation can be difficult for you to adjust to. Think ahead about how you will use your time. It is a great chance to tackle some big projects around the house or at work. It is also a great time to do something for yourself, like a wine tasting class, audition for a play, or do some traveling of your own. You will miss your child, but you may find you enjoy the time to yourself as well.

Source: [www.womensdivorce.com](http://www.womensdivorce.com)

### *Exercise: great way to help with divorce stress*



Divorce is very stressful. It is important you find a constructive way to deal with your stress. One of the best ways is exercise. While it may not be very popular, a regular exercise program helps you deal with the physical and psychological toll of divorce. It relaxes you while boosting your energy level. Studies show that regular exercise improves your self-esteem while reducing depression.

---

# Waters & Tyler attorneys at law Hofmann & Scott, LLC

1947 East Spring St.  
New Albany, Indiana 47150  
**Phone:** (812) 949-1114  
**Fax:** (812) 949-2189  
**E-mail:** lmerkley@wtshdlaw.com

**Waters, Tyler, Hofmann & Scott, 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.

*"BIG ENOUGH TO MEET YOUR NEEDS,*

*SMALL ENOUGH TO KNOW YOUR NAME"*

Visit us on the Web  
[www.wtshdlaw.com](http://www.wtshdlaw.com)

***THIS IS AN ADVERTISEMENT***

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

---

## Benefits of domestic partnership agreements

Indiana does not recognize common law marriages. Neither does Indiana recognize same-gender marriages or gay and lesbian marriages performed in other states. Unfortunately, many issues and problems arise when people have significant others or life partners and live together without a legal marriage.

Traditionally, unmarried domestic partners (whether opposite sexes or same sex) have not enjoyed property rights that resemble those available to married couples. Indiana law defines rights and duties for married couples, but there is no such law for unmarried couples including same sex relationships. Generally, if there is no written domestic partnership agreement, you will need a family law attorney to protect your rights.

Domestic partners should consider entering into a written domestic partnership agreement prepared by an attorney knowledgeable about such matters. Oral agreements may be valid and enforceable, but litigating these is often difficult and expensive since they are usually tough to provide or disprove. The domestic partnership agreement sets out in detail the parties' respective rights and duties on the various matters including how the property and debts will be divided when the relationship ends.

