

# Family Law Newsletter

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

## Pros and Cons of going to court



In the old days (40 years ago), divorce clients were at the mercy of the judicial system as there were few if any options to full-blown, no-holds barred litigation. This method is expensive, lengthy and exhausting for everyone involved. The divorce litigants have relatively little control over the outcome and their attorneys must go to the ends of the earth to provide their case to the Court.

If you and your spouse cannot settle

your divorce, it will go to trial. There you and your spouse each tell your story to the judge. It is told through your testimony, the testimony of other witnesses, and documents called "exhibits".

A divorce trial will be expensive. However, it may be the only alternative to never-ending, unreasonable settlement demands or a party's refusal to negotiate in good faith. Still, trials are risky. No divorce lawyer can predict the outcome of a trial because every divorce is different. A judge – a stranger who likely has a viewpoint, temperament and values different from yours – unilaterally decides how you and your spouse are going to rearrange your lives, divides your income and assets and dictates when each of you may see your children. In other words, you lose control of your life.

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### Inside this issue:

*Custody battles: Working mom vs. stay-at-home dad*  
Page 2

*Requesting maintenance or spousal support*  
Page 2

*Family law legislative update and analysis*  
Page 3

*Impact of divorce on your social security benefits*  
Page 3

*Tax Season: considering divorce implications*  
Page 4

*Study: living together prior to marriage increases divorce odds*  
Page 4

## Expanded family law web pages, divorce seminar



Be sure to check out our new and expanded divorce and family law pages. You can find them under practice areas at [www.wtshdlaw.com](http://www.wtshdlaw.com). There you will find information on topics such as divorce, child custody, visitation, child support and property division.

We are also proud to offer our first Family Law Seminar – **"Surviving Divorce"** – to help guide you through your divorce. Again, visit [www.wtshdlaw.com](http://www.wtshdlaw.com) for more details. You will learn that much of what is required to survive your divorce has nothing to do with the law.

## Custody battles: Working mom vs. stay-at-home dad



In Indiana, the Courts are not to favor either the father or mother when awarding custody. But in reality it does not always work that way, especially when the traditional roles of the parents are changing.

Are more women facing the impossible choice between keeping a career that pays the bills and living with their children? When it comes to heartbreaking custody wars, people inside and outside the courts say that the

growing number of stay-at-home days and breadwinner moms, means working mothers are fighting an unprecedented uphill battle.

Meanwhile, there is the dad's story. There is a new generation of fathers fighting for custody and a fair shake.

For more on this topic visit [www.workingmother.com](http://www.workingmother.com) or [www.dadsrights.org](http://www.dadsrights.org)

## Requesting maintenance or spousal support

**Your standard of living will change after your divorce. What are the factors the court considers when awarding maintenance?**



In Indiana maintenance is "spousal support" paid by one spouse to another (similar to alimony in other states). While it is rare for the divorce court to award maintenance, there are circumstances where it may be warranted.

You must clearly understand that after your divorce, you and your spouse will not have as high a standard living as you each had while married, especially if you are both employed at vastly different incomes. However, the

courts long ago stated, "The Duchess should not be required to live on the wags of the scullery maid" after a divorce.

What was the standard of living established during your marriage? "Standard of living" is basically a function of income and spending and a picture of how you lived. Your divorce attorney must therefore know how much money you both earned each year and how much you spent. Again, be accurate.

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**"The Duchess should not be required to live on the wags of the scullery maid."**

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Get out your checkbook register, your tax returns, and your credit card statements. With that information in hand, your divorce attorney can help you gather the

information and the supporting documentation needed to address your maintenance claims.

When considering a maintenance request, the Indiana divorce court will consider these factors:

- Do you have a serious medical condition which requires on-going medical treatment?
- Are you learning disabled?
- Are you disabled in any other way?
- Are you receiving therapy, counseling or psychological care?
- Are you continuing your education?
- Are you a displaced homemaker?
- Will you require vocational rehabilitation before you can enter the job market?

Also, the Court will consider your spouse's ability to pay maintenance. You may qualify for maintenance, but your spouse may not have the financial resources to make the payments.

## Statehouse: family law legislative update and analysis



The Indiana legislature is in session and here is a look at some of the bills that may impact divorce and family law:

### Ending child support sooner

There is a bill introduced in the Indiana House that would have ended child support at age 19. Indiana is one of a handful of states where a parent's child support obligation continues to age 21. However, the bill died in committee. It is very possible this issue will arise again considering so many other states terminate child support earlier than Indiana. We get this question from many clients in southern Indiana since the State of Kentucky ends child support at the age of 18.

### Great-Grandparent visitation

There is a bill in the House that would amend the grandparent visitation statute to include visitation with great-grandchildren. These days more and more grandparents and now great-grandparents are so involved in the raising of the kids. It makes sense that the legislature updates the grandparent visitation law.

### Paternity affidavits establishing custody and visitation

The legislature is considering a bill that would allow the father of a child born out of wedlock to have joint legal custody and visitation per the Indiana Parenting Time Guidelines just by signing the paternity affidavit at the hospital. Right now signing the affidavit gives the mother sole custody and the father must go to court to get visitation. Many fathers are shocked when told they have no rights to see the child absent a court order.

If this bill passes, it would be a significant change in existing

practice. It will also be interesting to see its impact. The change would greatly increase the importance of the paternity affidavit – a document that now merely serves as a rebuttable presumption of paternity. The original intent of the affidavit was for the father to accept financial responsibility for the child without having a paternity test. This law would make the affidavit a source of both custodial and parental rights without the assistance of legal counsel. Meanwhile, some mothers may be hesitant to declare the name of the father if it means joint legal custody and visitation.

### Casino winnings seized for unpaid child support

Gamblers who are significantly behind on child support payments would have to forfeit jackpots at Indiana casinos, under proposed legislation backed by Gov. Mitch Daniels. This is the latest effort by the State of Indiana to crack down on deadbeat parents and bring the state's child support collection efforts in line with federal regulations and laws.

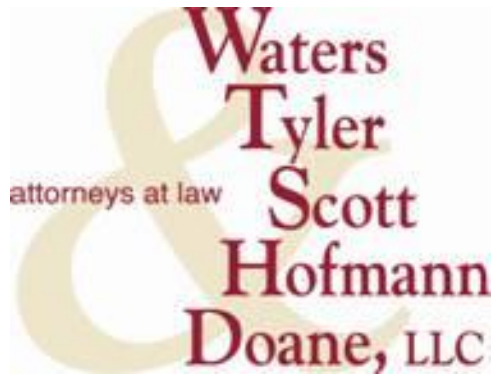
## *Impact of divorce on your social security benefits...*



If you were married for at least ten years prior to your divorce becoming final, you may be eligible for spousal Social Security benefits when you reach age 62, if you do not remarry or for survivor benefits if your former spouse dies. This will not affect your former spouse's benefits nor will it matter if he or she has remarried.

Check with your local Social Security office for details and to compare this benefit to your own Social Security entitlement from your own employment. For more information visit the official website of the U.S. Social Security Administration at [www.ssa.gov](http://www.ssa.gov).

You should also notify the Social Security Administration if your name changed as a result of the divorce.



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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.

*"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.*

## Tax Season: considering divorce implications

Taxes are a huge subject in divorce. With April 15<sup>th</sup> quickly approaching, here are some things to remember:

- ✚ Who is going to be responsible for taxes on this year's income?
- ✚ Who is going to claim the children as exemptions on this year's taxes?
- ✚ Should the parties file jointly or separately (assuming they are still technically married on December 31<sup>st</sup>)?
- ✚ What will happen to the refund on last year's or this year's tax returns?
- ✚ Who will be responsible for preparing this year's tax return?
- ✚ Will maintenance be taxable to the recipient and deductible to the paying party?
- ✚ Will one party indemnify the other from liability on state, federal and local taxes? (Particularly if there is a business enterprise involved).

These are only a few questions to review with your attorney during the divorce process. If you have a complex financial situation, you should consult with a Certified Public Accountant.

### **Study: living together prior to marriage increases divorce odds**

In a new study recently released, the National Center for Health Statistics found that couples living together before marriage are less likely to stay married. The odds the marriage would last a decade or more decreased by six percentage points if the couple had lived together first. Meanwhile, the study concluded that a couple's chances are better if they were already engaged when they started cohabitating. For the complete study go visit [www.cdc.gov](http://www.cdc.gov).