2020

CME for family mediators

Indiana Continuing Legal Education Forum (ICLEF)

CME for Family Mediators
September 24, 2020
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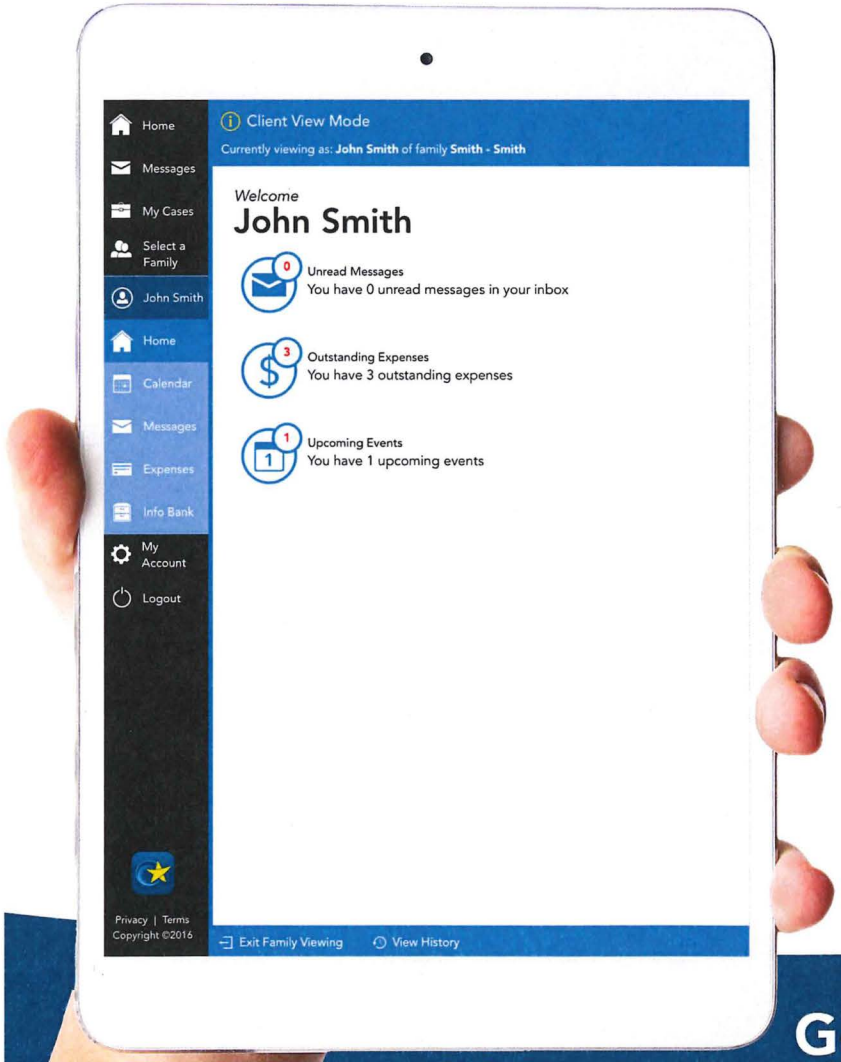

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CME FOR FAMILY MEDIATORS

Agenda

8:30 A.M. **Registration and Coffee**

8:50 A.M. Welcome and Introduction
- *Lana Pendoski*, Program Chair

9:00 A.M. Sticking Points: Problems and How to Handle Them
- *Kathryn Hillebrands Burroughs, Jill Goldenberg, Greg Noland, Robert N. Reimondo, Robert E. Shive*

11:00 A.M. **Coffee Break**

11:15 A.M. Key Financial Issues Encountered in Moderate to High Asset Divorces
- *Mark Hildebrand, Jason Llewellyn, Mark Idzik*

12:15 P.M. **Lunch (on your own)**

1:15 P.M. Child Support Calculation Nuances
- *James Reed, Mark A. Glazier*

2:15 P.M. **Refreshment Break**

2:30 P.M. Incorporating Custody Evaluation Recommendations in Divorce Mediation
- *Dr. Kevin Byrd*

3:30 P.M. Mental Health and Addiction Issues in Divorce Cases
- *Dr. Michael Jenuwine*

4:30 P.M. **Adjourn**

September 24, 2020

CME FOR FAMILY MEDIATORS

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September 24, 2020

Lana Lennington Pendoski

Lana practices in all areas of family law and domestic relations including dissolution, property division, paternity, custody modification, child support, premarital agreements, guardianships, and property settlement. Lana is trained as a Parenting Coordinator and provides Parenting Coordination services in high conflict divorce and custody cases. Lana is also a registered domestic relations mediator. She is the Chair of the Indiana Continuing Legal Education (ICLEF) CLE/CME for Family Law Mediators and has lectured extensively to both attorneys and mental health professionals on the issues of divorce, child support, property division, record production, child custody, ethical issues and other family law issues. Her seminar materials on the topics of Preparing Your Client for a Custody Evaluation and 10 Hot Tips on QDRO's (Qualified Domestic Relations Orders) have been published by ICLEF Law Tips Blog. Lana is a member of the Hamilton County, Indianapolis, Indiana State, and Tennessee State Bar Associations, and a member of the Association of the Family and Conciliation Courts (AFCC). Lana serves as the Treasurer of the Indiana State Bar Association Family Law & Juvenile Law Section. She is also a member of Grievance Committee B of the Indianapolis Bar Association. Her past community activities include previously serving as a Board Member of the Hands of Hope Adoption and Orphan Care Ministry, former member of the Professional Advisory Committee for Buchanan Pastoral Counseling, and a member of the executive committee of the Women and the Law Division of the Indianapolis Bar Association. She attended Ball State University (B.S., cum laude, 1998); legal education, Valparaiso University (J.D., 1997).

Kathryn Hillebrands Burroughs
Cross Glazier Burroughs, Carmel

Kathryn Hillebrands Burroughs concentrates her practice in matrimonial and family law including premarital agreements; cohabitation agreements; dissolution of marriage; child custody, parenting time and support; and interstate disputes and modifications.

Ms. Burroughs became a Certified Family Law Specialist in 2002, the first year it was available in Indiana. Kathryn is the immediate past chair of the Indiana State Bar Association, Family and Juvenile Law Section. She also serves as a board member of the State of Indiana Independent Certification Organization, which certifies family law specialists.

Kathryn presently serves as a member of the Indiana Board of Law Examiners by appointment of the Indiana Supreme Court. She also serves on the Indiana Child Custody and Support Advisory Committee, a committee created by statute to make recommendations to the Indiana Supreme Court on the Child Support Guidelines and other terms relating to the welfare of children of families no longer intact.

Kevin R. Byrd, Ph.D., HSPP
Carmel Psychology, Carmel

Kevin Byrd became a licensed psychologist in 1992, and went on to build and maintain successful full-time practices in Nebraska and Ohio before arriving in Indianapolis in 2010. In addition, he has been extensively involved in university research and teaching.

In conducting assessments, whether administering custody/parenting time evaluations, psychoeducational batteries, or psychodiagnostic assessments, his work is always based on up-to-date science and practice. He taught Psychological Assessment and Developmental Psychology at the University of Nebraska at Kearney for 13 years, which allows him to bring to each case a uniquely comprehensive and detailed expertise on test use across a broad range of age groups. At the same, he strives to integrate assessment findings with a sensitive and thorough understanding of each client as an individual.

Mark A. Glazier
Cross Glazier Burroughs, Carmel

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

Mark Hildebrand
Holistic Financial Partners LLC, Indianapolis

Mark Hildebrand graduated from Liberty University in 2004 with a Bachelor's degree in Business. Shortly after graduation, he decided to pursue credentials that would enable him to provide a more comprehensive advisory service to his clients. In 2010 he earned his Certified Public Accountant (CPA) license and in 2012 he earned both his Certified Financial Planner™ (CFP®) and his Certified Divorce Financial Analyst® (CDFA®) licenses. He is also a trained Financial Professional in the area of Collaborative Law and serves as Secretary of the Central Indiana Association of Collaborative Professionals.

Mark Idzik
Holistic Financial Partners LLC, Indianapolis

Mark graduated from Indiana University in 1999 with Bachelor's degrees in Accounting and Finance from the Kelley School of Business in Bloomington. After graduation, Mark joined a national accounting firm where he focused on business valuation and litigation support with an emphasis on divorce and estate planning engagements. In addition to receiving his Certified Public Accountant (CPA) license in 2003, Mark has also held the Accredited in Business Valuation (ABV) and Accredited Senior Appraiser (ASA) designations, demonstrating knowledge and expertise in the valuation of various assets (each of which licenses are inactive at this time). From there, Mark went on to serve in multiple corporate financial planning roles for two of the fastest-growing companies in central Indiana.

Dr. Michael J. Jenuwine, J.D., Ph.D.
University of Notre Dame Law School, Notre Dame

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.

Jason C. Llewellyn
Holistic Financial Partners LLC, Indianapolis

Jason Llewellyn graduated from Ball State University in 1999 with a Bachelor's degree in Accounting and received his Certified Public Accountant (CPA) license in 2002. After graduating, Jason specialized in providing high-level tax and financial solutions with a national accounting firm where he advised individuals, families, and companies for 10 years. During his time there, he co-founded the financial services division of the firm for the Indianapolis area, helping to build the division from the ground up.

From there, Jason went on to serve as a financial advisor at a nationally recognized brokerage firm for 7 years. During this time, he received his Certified Divorce Financial Analyst license (CDFA®). The insight and expertise he gained during that process is critical to the advocacy he provides clients going through divorce.

Today Jason is actively engaged in helping the legal community understand the financial needs of their clients, especially those navigating the complexities of divorce. He is a regular speaker at the Indiana Continuing Legal Education Forum and the Indianapolis Bar Association.

Greg L. Noland
Emswiller Williams Noland & Clarke LLC, Indianapolis

Gregory L. Noland concentrates his practice in the areas of family law and family law mediation. He is a member of the Indianapolis Bar Association, the Hamilton County Bar Association, and an Indiana Bar Foundation Distinguished Fellow. He is also a registered family law mediator. Since receiving his mediation training and registration in 2005, Greg has mediated over four hundred family law cases and continues to average two family law mediations per week. Greg devotes the majority of his practice to family law and family law mediation. He currently serves on the executive committee of the Alternative Dispute Resolution Section of the Indianapolis Bar Association. Greg holds an AV rating from Martindale & Hubbell and was recognized in 2004, 2005, 2006, 2007, and 2008 as a Super Lawyer in the family law area by the Law & Politics and publishers of Indianapolis Monthly.

AREAS OF PRACTICE
- Family Law
- Family Law Mediation

EDUCATION
- Indiana University School of Law, Indianapolis, Indiana

    - J.D. - 1979

- Texas Christian University

    - M.B.A. - 1975

- Indiana University

    - B.S. - 1974

HONORS AND AWARDS
- AV Rating from Martindale & Hubbell and was Recognized, 2004 - 2008
- Super Lawyer - every year since 2004

PROFESSIONAL ASSOCIATIONS AND MEMBERSHIPS
- Indianapolis Bar Association, Member
- Hamilton County Bar Association, Member

James A. Reed
Dentons Bingham Greenebaum LLP, Indianapolis

Jim Reed has concentrated his practice in the legal aspect of relationship transitions of all types since graduating from law school. He has been involved in divorce cases with some of the largest marital estates in Indiana. He represents many professionals (medical, legal, accounting, financial), business owners and executives, community leaders, high-profile individuals in entertainment, sports and politics, and the spouses/partners of these individuals. Because of his experience and the personal nature of the practice, Jim has helped individuals and families find solutions to complex relationship and legal transitions. His practice includes counseling cohabitating partners in implementing plans for estate transitions, health care decision making, joint ownership and survivorship, as well as representing partners in the conclusion of relationships, custody and support of their children, and the division of property and assets. Jim approaches the representation of his clients with years of diverse experience and from a broad perspective.

Robert N. Reimondo
Capper Tulley & Reimondo, Crawfordsville

Robert N. Reimondo is an experienced civil and criminal litigator. With over fifteen years of experience, Mr. Reimondo is a tenacious advocate for his clients and is responsive to their needs. Mr. Reimondo has applied his experience to a number of areas of the law, including family law matters, criminal cases, will and estate planning, personal injury cases, wrongful death cases, worker's compensation death cases, business organization, and general civil litigation. Mr. Reimondo has been successful in farm sales and other real estate matters as well.

Mr. Reimondo is also an experienced civil and family law mediator. Mr. Reimondo's insight and guidance as a mediator has helped resolve many complex cases that were thought to be too contentious to be settled. Mr. Reimondo's office layout and helpful staff assist in the mediation process.

Jill E. Goldenberg Schuman
Cohen Garelick & Glazier, Indianapolis

Jill is certified by the Indiana Certifying Organization of the Indiana Bar Association as an Indiana Certified Family Law Specialist. She is a registered domestic mediator. Since undergoing mediation training in 2002, she has mediated 100's of cases. She has also served as a family law arbitrator. Ms. Goldenberg Schuman devotes the majority of her practice to family law matters or mediations and arbitrations involving family law matters. She has been a lecturer in various family law and alternative dispute resolution topics for the Indiana Continuing Legal Education Forum and has several published family law appellate decisions. She was recognized in 2007 - 2016 as a Best Lawyer in her field of family law and was also recognized in 2008-2016 as a Super Lawyer in her field. From 2011-2016 she was selected as one of Indiana's Top 50 Super Lawyers and in 2009-2016 as one of Indiana's Top 25 Women Super Lawyers.

Robert E. Shive
Emswiller Williams Noland & Clarke LLC, Indianapolis

Robert E. Shive blends a full litigation practice with substantial involvement in mediation, arbitration, parenting coordination and collaborative law. While maintaining a primary practice of high asset, high conflict family law cases, Rob also practices general civil litigation, criminal defense, and business law.

Rob also has significant experience in dealing with cases involving DCS/CPS, including CHINS actions, administrative appeals, and judicial review of DCS reports.

This breadth of experience provides Rob with the background to handle complicated legal matters from a variety of angles and seek the best possible approach for his clients. Having represented radio and television stations, internet businesses, local restaurants, national corporations, scientific laboratories, real estate developers and other commercial enterprises, he brings that experience into complicated divorce disputes and custody battles.

Rob is also a registered civil and domestic mediator having successfully mediated divorce actions, paternity cases, modifications, contempt actions, international custody disputes, property divisions, real estate litigations and construction cases. As a part of the movement towards out-of-court resolutions, Rob is also a family law arbitrator, parenting coordinator, and is trained as a collaborative law professional. He has also been a private and volunteer guardian ad litem.

Rob has been listed as a Super Lawyer since 2014 in the area of Family Law.

AREAS OF PRACTICE
- 60% Family Law
- 10% Civil Litigation
- 5% Criminal Law
- 25% Mediation/ADR

LITIGATION PERCENTAGE
- 80% of Practice Devoted to Litigation

BAR ADMISSIONS
- Indiana, 1995

EDUCATION
Indiana University Robert H. McKinney School of Law, Indianapolis, Indiana

- J.D.

Indiana University, Bloomington, Indiana

- B.A.
- Major: English & History
- Minor: Psychology

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Section Five

Mental Health and Addiction Issues in Divorce Cases..... Dr. Michael J. Jenuwine J.D., Ph.D.

Section One

Sticking Points: Problems and How to Handle Them

Panel

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

Jill E. Goldenberg Schuman
Cohen Garelick & Glazier
Indianapolis, Indiana

Gregory L. Noland
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Section One

Sticking Points: Problems and How to Handle Them…… Kathryn Hillebrands Burroughs
Jill E. Goldenberg Schuman
Gregory L. Noland
Robert N. Reimondo
Robert E. Shive

CME FOR FAMILY LAW MEDIATORS

THURSDAY, SEPTEMBER 24, 2020

II. STICKING POINTS: PROBLEMS AND HOW TO HANDLE THEM

Mediator Panelists: Kathryn Burroughs, Jill Goldenberg, Greg Noland, Robert N. Reimondo, Robert E. Shive

**Disclaimer: Any scenarios discussed today are works of fiction. Names, characters, businesses, places, events and incidents are either the products of the panelist's imagination or used in a fictitious manner. Any resemblance to actual persons, living or dead, or actual cases is purely coincidental.

1. What if anything needs to be performed by the mediator or her/his staff BEFORE a mediation is scheduled?
2. Scheduling a mediation – if you have a case with four (4) days of contested hearing you should consider more than one day of mediation + not schedule the mediation in close proximity to the final contested hearing date.
3. Pre-Mediation Telephonic Conference with attorneys. If the facts of the case are complex with numerous issues – property + child related – you should consider having a pre-mediation telephonic conference with the attorneys for the parties.
4. What "effective" mediators do to prepare for mediations.
5. How to salvage something from an unsuccessful mediation.
6. How to handle lawyers who ask mediators to leave for private conversation with their clients.
7. How to handle third parties who would like to attend mediations or do attend mediations.
8. How to handle the distribution of personal property when there is not an appraisal.
9. How to handle a mediation when there is a veteran family law lawyer and the other side is not so experienced or pro se.
10. How to handle a mediation when one side continues to conduct discovery during the mediation or is obviously unprepared.
11. CASE SCENARIOS – SPECIFIC ISSUES – contributions by each party to college expenses – including 529 issues; the continuation of joint legal custody even when the parties cannot agree upon education issues; is there really a statutory basis for a deviation from the presumptive 50/50 division of the marital estate, etc.

Setting Mediation

Pre-Mediation Conference

Third Parties

Mediation Prep when no statements are received

Personalization at the start of a mediation

Joint Legal Custody

Parenting Coordinators

School Choice

Repudiation

College

Dissipation

Discovery issues

Getting asked to leave

Dealing with non-family law attorneys

Ideas for handling impasses and salving any form of settlement

Second Sessions

MEDIATION IMPASSE SUGGESTIONS FOR FAMILY LAW CASES

1. QDRO retirement dollars to pay (a) marital debt or (b) attorney fees
2. Sell assets
3. Lease or rent a house to a spouse
4. Have a side agreement on terms of sale of a house not to be introduced into court
5. Joint legal custody (a) split issues by giving one medical and the other education or (b) spell out the issues in the settlement agreement such as the children shall attend ** school or shall continue to use ** as his or her medical provider.
6. If alcohol or prescription drugs or other damaging allegations are involved consider a side agreement to be executed but held and not filed with the Court and only to be filed with the Court in the event of an alleged breach.
7. Adding oversight language for dealing with drugs or alcohol
8. Adding stepped in or phased in parenting plans
9. Adding time frames for review for certain issues
10. If an issue cannot be resolved and is not ripe (such as where the child attends kindergarten the next year or should it be at age 5 or 6) – add in a clause for family law arbitration of the issue within a certain time frame
11. Prioritize goals
12. Allow a party to vent and show empathy
13. Create enforceable plans to "earn" more time with the children
14. Mediator's suggestion. Even after the parties and attorneys leave
15. Bracketing
16. Lawyer's only conferences
17. Temporary Joint Ventures
18. Apologies

APPENDIX

Zoom Mediation Rules

Mediation Checklist

Letter to Clients who will be participating in Mediation

Mediation Letter & Rules

COHEN GARELICK & GLAZIER, P.C.

A Professional Corporation of Attorneys at Law

CGG Rules for Mediations beginning June 1, 2020

At Cohen Garelick & Glazier, we are having to do what everyone else is doing during this health crisis – adjust to a new reality every day, as we all learn more about the threat posed by COVID-19.

For the time being, we will have face-to-face mediations only when required; all other mediations will be conducted by Zoom. When a face-to-face mediation is scheduled, we will take every precaution to protect everyone's safety. Here is how it will work:

- **If you are experiencing symptoms (coughing, fever, fatigue, shortness of breath) or if you have been exposed to someone believed to have COVID-19, please inform your attorney so that your mediation can be postponed until a proper quarantine period has passed. This is important in order to keep everyone safe.**
- You should wait in your car until your scheduled mediation time – our reception/waiting area is closed, and parties may not arrive early, unless it is worked out in advance with the mediator.
- You should also wait for your attorney, so you and your attorney can come up to the office together.
- You should not bring anyone else with you. If someone drives you to the meeting, the driver will need to wait outside the building.
- You will be required to bring and wear a mask during your in-office mediation. Please inform your attorney if you do not have a mask, and we will provide you with a disposable surgical mask. You may wear gloves if desired.
- Your attorney will also be required to wear a mask during the mediation.
- When visiting our office, you will notice that we are maintaining social distancing. This means we will not be shaking hands, hugging or touching anyone.
- Before and after each meeting in our conference rooms, all hard surfaces will be cleaned with antibacterial wipes, and Lysol will be used on soft surfaces.
- Areas that are touched frequently (door handles, tables, etc.) are being disinfected multiple times a day.
- Our staff is practicing personal hygiene by washing their hands often and using hand sanitizer that meets CDC recommendations.
- Our employees are prohibited from coming into work if they are feeling unwell or experiencing symptoms or have been exposed to anyone believed to have COVID-19.

Please review these four questions. If your answer is Yes to any of them, please contact your attorney to reschedule mediation.

1. In the last 72 hours, have you had a fever or chills and/or taken medication for a fever? (If you are unsure, please utilize a thermometer for an accurate reading. A temperature of 100.4 or higher constitutes a fever according to medical professionals.)
2. Do you have COVID-19 symptoms such as new or worsening cough, shortness of breath, sore throat or loss of taste or smell?
3. In the past 14 days have you been in close contact (within 6 feet for longer than 15 minutes without protective equipment) with a person known/suspected to have COVID-19 and/or have you been diagnosed with COVID-19?
4. Have you or anyone in your household been tested for COVID-19 and are still awaiting test results?

Please bear with us. Meeting your legal needs is as important to us as ever. But it is just as important to keep you, and us, healthy.

Zoom mediation information:

- I have established separate breakout rooms for each party and counsel. When each person joins the meeting, they will be automatically placed in a waiting room, and I will control when they join the meeting. I will bring parties and counsel in and out of their separate breakout rooms into the meeting, so there is no interaction between parties during the mediation. When you are in a breakout room, you will be able to communicate with the other person that is in the breakout with you (party/attorney). Neither party will have access to the other party's breakout room.
- I do not record my mediations.
- You need to have your camera turned on while I am in the room.
- I need to know if there is anyone else in the room or within listening distance.
- If you get disconnected or I inadvertently disconnect you, get back on the Zoom link to rejoin the meeting. You will be routed to the waiting room and I will be notified when you arrive.
- I do not recommend that you use the Zoom "chat" function as I believe everyone can see the "chat" if it is not marked private. If you wish to communicate between party and counsel during your mediation while I am not in your room, either stay in the breakout room together so you can speak freely or call/email one another. If you wish to communicate with me during the mediation when I am in the other breakout room, text me so I know you need me, and I will come back to your room. There is also a button on the bottom of the screen that says "Ask for Help". You can click on that button and I will be notified that you want me to return to your breakout room.
- I will send the attorneys my cell phone number and ask that each attorney provide me theirs, in case we have any connection issues during the mediation. Make sure you have your client's cell number in case you get disconnected from them.

- Prior to the mediation, please email me balance sheets, relevant documents or emails and any proposals that have gone back and forth so I have time to review before we begin mediation.
- If we reach an agreement, we can finalize the written documents by email and/or by screen sharing through Zoom. I can bring both attorneys on screen to see and approve changes and/or we can email redlines back and forth. I will circulate a final agreement by email for signature, and Lisa will handle filing everything.
- Prior to mediation, please return the signed mediation agreement to Lisa's attention. Each party pays a $700 retainer prior to mediation unless the parties have worked out alternate arrangements. I will give the parties the final balance at the end of mediation before charging the cards, and the parties will receive an email receipt.

Please let me know if you have any questions.

Mediation Checklist**

** Problem Solving for Attorneys and Mediators

I. Property Issues:

A. Real Estate:

Marital Residence:

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

•Date of possession

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

•Who claims mortgage interest deduction

•Who claims Real Estate taxes

•Is there a requirement to refinance

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

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

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

•Foreclosure issues and debt forgiveness

If listing:

•Choose Realtor

•Date to list real estate

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

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

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

•payment of inspection and repairs

•Division of net proceeds

•Payment of mortgage, taxes and insurance pending sale

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

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

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

•Consideration of Auctioning?

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

Commercial Leases:

•Mitigating Damages

Farms

•valuation issues

•ability to sell?

•hidden costs to sell - taxes

•equipment on farm

•livestock

Vacation Homes:

•payment of local counsel to draft and file deeds

•transfer costs associated with deeds in other states

Time shares:

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

•Other ways to sell – Internet sources

☐ B. Retirement Accounts:

•Valuation date

•How to treat loans

•How to treat contributions after date of filing

•QDROs – who drafts?

•Have attorneys reviewed the model QDRO and QDRO procedures

•Payment of administrative fees

•Timeframe for drafting

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

•IRAs – IRA Transfer Orders

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

☐ C. Household Goods and Furnishings

•Value assigned?

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

•Engagement ring and jewelry

•Photos and videos of the kids

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

•Holiday decorations

•Computers – copying drives

•Storage units

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

☐ D. Vehicles/Boats/Motorcycles:

•Transfer of titles

•Requirement to refinance?

•Requirement to sell if cannot refinance?

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

•Contingencies for failure to timely pay lease or loan?

☐ E. Financial and Bank Accounts

•Who keeps

•Requirement to transfer or remove names?

•Requirement to close accounts – time frame

•overdraft fees

•stocks/bonds

☐ F. Credit Card Debt

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

•Requirement to close or to remove names

•Last date for charging items or responsible?

•Points and Mileage – assignment, valuation and transfer

☐ G. Property Settlement/Maintenance/Structure

•amount

•timeframe

•prepayment option

•termination clause

•modifiable?

•Security

☐ H. Business Interests

•Valuation methodology

•Valuation Date

•Division

•Buy outs

•liquidation

☐ I. Rehabilitative Maintenance

•time frame

•payment directly to party or creditor

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

☐ J. Stock Options

•Transferability

•Vesting Date

•valuation

•"under water" v. "in the money"

•methodology if non-transferable

☐ K. Payment of Fees

•Attorney Fees

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

•Expert Fees

•Court cost

•Litigation fees (depositions, private service, etc)

☐ L. Health Insurance Coverage

•is Cobra available or other options?

•Who pays

•Timeframe

☐ M. Life Insurance

•Use as security for property settlement obligations

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

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

•Payment of accountant fee

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

•address payment of tax liability from prior year

•address audit situation

☐ O. Family Pets

☐ P. Filing Status for this year

•Joint

•Married Filing Separately

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

☐ Q. Security for Property Settlement or Maintenance

•life insurance

•liens/mortgages

•stock

•retirement accounts

☐ R. Bankruptcy

II. Financial Child Related Issues:

☐ A. Child Support.

•Must attach worksheet. If deviating explain deviation

•for high income earners consider tax effecting

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

•how to treat distributions from tax return

•imputing income

•treatment of bonuses

•treatment of irregular income

•annual exchange of information?

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

•who covers

•contingency in event one loses coverage?

•6% Rule

•definition of uninsured medical expenses

•treatment of orthodontia

•treatment of counseling expenses

•treatment of health savings accounts

☐ C. Payment of Agreed Upon Extracurricular Expenses

☐ D. Private School

☐ E. Requirement to carry life insurance

☐ F. Educational Needs Order

•payment of college and parameters

•Filing Financial Aid forms

•Obligation to Pay Student loans

•application of 529 accounts or children accounts

☐ G. Claiming the Children on Taxes

•Exemption

•Child Tax Credit

•Dependent Care Credit

•Head of Household Status

•Education Tax Credits

☐ H. Filing Status

•Head of Household status

☐ I. QDROs for Arrearages or Child Related Obligations

III. Child Related Issues:

☐ A. Custody:

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

☐ Physical

☐ B. Parenting Issues:

☐ Co-parenting Classes

☐ Parenting Coordinator

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

☐ K. Relocation

Mediation Letter to send clients participating in mediation

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

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

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

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

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

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

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

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

4. Final words of advice.

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

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

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

COHEN GARELICK & GLAZIER, P.C.

A Professional Corporation of Attorneys at Law

Jill Goldenberg Schuman
E-Mail: jgoldenberg@cgglawfirm.com
Telephone: (317) 573-8888
*Registered Family Law Mediator
*Indiana Certified Family Law Specialist, as certified by the Family Law Certification Board

AGREEMENT TO MEDIATE AND RULES OF MEDIATION

Via Electronic Mail Only

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

Dear Mediation Participants:

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

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

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

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

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

or by the mediator.

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

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

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

7. Mediation Conferences:

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

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

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

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

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

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

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

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

Very truly yours,

COHEN GARELICK & GLAZIER, P.C.

Jill E. Goldenberg

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

READ, UNDERSTOOD, AND AGREED:

_____ _____

Signature Date

_____

Printed Name

Address: _____

(street address)

_____

(city, state, zip code)

Phone Number: _____

Email Address: _____

Date of Birth: _____ SSN:_____

Type of Card (please circle):

VISA MasterCard American Express Discover

Credit card account number:_____

Expiration date:_____ Security Code:_____

Indiana Rules of Court
Rules for Alternative Dispute Resolution

Including Amendments Received Through January 1, 2019

TABLE OF CONTENTS

Preamble

These rules are adopted in order to bring some uniformity into **alternative dispute resolution** with the view that the interests of the parties can be preserved in settings other than the traditional judicial dispute resolution method.

RULE 1. GENERAL PROVISIONS

Rule 1.1. Recognized Alternative Dispute Resolution Methods

Alternative dispute resolution methods which are recognized include settlement negotiations, non-binding arbitration, mediation, conciliation, facilitation, mini-trials, summary jury trials, private judges and judging, convening or conflict assessment, neutral evaluation and fact-finding, multi-door case allocations, and negotiated rulemaking.

Rule 1.2. Scope of These Rules

Alternative dispute resolution methods which are governed by these rules are (1) Mediation, (2) Arbitration, (3) Mini-Trials, (4) Summary Jury Trials, and (5) Private Judges.

Rule 1.3. Alternative Dispute Resolution Methods Described

(A) Mediation. This is a process in which a neutral third person, called a mediator, acts to encourage and to assist in the resolution of a dispute between two (2) or more parties. This is an informal and nonadversarial process. The objective is to help the disputing parties reach a mutually acceptable agreement between or among themselves on all or any part of the issues in dispute. Decision-making authority rests with the parties, not the mediator. The mediator assists the parties in identifying issues, fostering joint problem-solving, exploring settlement alternatives, and in other ways consistent with these activities.

(B) Arbitration. This is a process in which a neutral third person or a panel, called an arbitrator or an arbitration panel, considers the facts and arguments which are presented by the parties and renders a decision. The decision may be binding or nonbinding. Only non-binding arbitration is governed by these rules.

(C) Mini-Trials. A mini-trial is a settlement process in which each side presents a highly abbreviated summary of its case to senior officials who are authorized to settle the case. A neutral advisor may preside over the proceeding and give advisory opinions or rulings if invited to do so. Following the presentation, the officials seek a negotiated settlement of the dispute.

(D) Summary Jury Trials. This is an abbreviated trial with a jury in which the litigants present their evidence in an expedited fashion. The litigants and the jury are guided by a neutral who acts as a presiding official who sits as if a judge. After an advisory verdict from the jury, the presiding official may assist the litigants in a negotiated settlement of their controversy.

(E) Private Judges. This is a process in which litigants employ a private judge, who is a former judge, to resolve a pending lawsuit. The parties are responsible for all expenses involved in these matters, and they may agree upon their allocation.

Rule 1.4. Application of Alternative Dispute Resolution
These rules shall apply in all civil and domestic relations litigation filed in all Circuit, Superior, County, Municipal, and Probate Courts in the state.

Rule 1.5. Immunity for Persons Acting Under This Rule
A registered or court approved mediator; arbitrator; person acting as an advisor or conducting, directing, or assisting in a mini-trial; a presiding person conducting a summary jury trial and the members of its advisory jury; and a private judge; shall each have immunity in the same manner and to the same extent as a judge in the State of Indiana.

Rule 1.6. Discretion in Use of Rules
Except as herein provided, a presiding judge may order any civil or domestic relations proceeding or selected issues in such proceedings referred to mediation, non-binding arbitration or mini-trial. The selection criteria which should be used by the court are defined under these rules. Binding arbitration and a summary jury trial may be ordered only upon the agreement of the parties as consistent with provisions in these rules which address each method.

Rule 1.7. Jurisdiction of Proceeding
At all times during the course of any alternative dispute resolution proceeding, the case remains within the jurisdiction of the court which referred the litigation to the process. For good cause shown and upon hearing on this issue, the court at any time may terminate the alternative dispute resolution process.

Rule 1.8. Recordkeeping
When a case has been referred for alternative dispute resolution, the Clerk of the court shall note the referral and subsequent entries of record in the Chronological Case Summary under the case number initially assigned. The case file maintained under the case number initially assigned shall serve as the repository for papers and other materials submitted for consideration during the alternative dispute resolution process. The court shall report on the Quarterly Case Status Report the number of cases resolved through alternative dispute resolution processes.

Rule 1.9. Service of Papers and Orders
The parties shall comply with Trial Rule 5 of the Rules of Trial Procedure in serving papers and other pleadings on parties during the course of the alternative dispute resolution process. The Clerk of the Circuit Court shall serve all orders, notices, and rulings under the procedure set forth in Trial Rule 72(D).

Rule 1.10. Other Methods of Dispute Resolution
These rules shall not preclude a court from ordering any other reasonable method or technique to resolve disputes.

Rule 1.11. Alternative Dispute Resolution Plans.
A county desiring to participate in an alternative dispute resolution program pursuant to IC 33-23-6 must develop and submit a plan to the Indiana Judicial Conference, and receive approval of said plan from the Chief Administrative Officer (CAO) of the Indiana Office of Judicial Administration.

RULE 2. MEDIATION

Rule 2.1. Purpose
Mediation under this section involves the confidential process by which a neutral, acting as a mediator, selected by the parties or appointed by the court, assists the litigants in reaching a mutually acceptable agreement. The role of the mediator is to assist in identifying the issues, reducing misunderstanding, clarifying priorities, exploring areas of compromise, and finding points of agreement as well as legitimate points of disagreement. Any agreement reached by the parties is to be based on the autonomous decisions of the parties and not the decisions of the mediator. It is anticipated that an agreement may not resolve all of the disputed issues, but the process can reduce points of contention. Parties and their representatives are required to mediate in good faith, but are not compelled to reach an agreement.

Rule 2.2. Case Selection/Objection
At any time fifteen (15) days or more after the period allowed for peremptory change of judge under Trial Rule 76(B) has expired, a court may on its own motion or upon motion of any party refer a civil or domestic relations case to mediation. After a motion referring a case to mediation is granted, a party may object by filing a written objection within seven (7) days in a domestic relations case or fifteen (15) days in a civil case. The party must specify the grounds for objection. The court shall promptly consider the objection and any response and determine whether the litigation should then be mediated or not. In this decision, the court shall consider the willingness of the parties to mutually resolve their dispute, the ability of the parties to participate in the mediation process, the need for discovery and the extent to which it has been conducted, and any other factors which affect the potential for fair resolution of the dispute through the mediation process. If a case is ordered for mediation, the case shall remain on the court docket and the trial calendar.

Rule 2.3. Listing of Mediators: Commission Registry of Mediators
Any person who wishes to serve as a registered mediator pursuant to these rules must register with the Indiana Supreme Court Commission for Continuing Legal Education (hereinafter "Commission") on forms supplied by the Commission. The registrants must meet qualifications as required in counties or court districts (as set out in Ind. Administrative Rule 3(A)) in which they desire to mediate and identify the types of litigation which they desire to mediate. All professional licenses must be disclosed and identified in the form which the Commission requires.

The registration form shall be accompanied by a fee of $50.00 for each registered area (Civil or Domestic). An annual fee of $50.00 shall be due the second December 31st following initial registration. Registered mediators will be billed at the time their annual statements are sent. No fee shall be required of a full-time, sitting judge.

The Commission shall maintain a list of registered mediators including the following information: (1) whether the person qualified under A.D.R. Rule 2.5 to mediate domestic relations and/or civil cases; (2) the counties or court districts in which the person desires to mediate; (3) the type of litigation the person desires to mediate; and (4) whether the person is a full-time judge.

The Commission may remove a registered mediator from its registry for failure to meet or to maintain the requirements of A.D.R. Rule 2.5 for non-payment of fees. A registered mediator must maintain a current business and residential address and telephone number with the Commission. Failure to maintain current information required by these rules may result in removal from the registry.

For the billing of calendar year 2011, when this Rule becomes effective, registered mediators must pay the $50.00 annual fee and a one-time fee of $25.00 for the time period July 1, 2011-December 31, 2011, for a

total of $75.00 per registration area. The annual fee shall be $50.00 per calendar year per registration area thereafter.

On or before October 31 of each year, each registered mediator will be sent an annual statement showing the mediator's educational activities that have been approved for mediator credit by the Commission.

Rule 2.4. Selection of Mediators

Upon an order referring a case to mediation, the parties may within seven (7) days in a domestic relations case or within fifteen (15) days in a civil case: (1) choose a mediator from the Commission's registry, or (2) agree upon a non-registered mediator, who must be approved by the trial court and who serves with leave of court. In the event a mediator is not selected by agreement, the court will designate three (3) registered mediators from the Commission's registry who are willing to mediate within the Court's district as set out in Admin. R. 3 (A). Alternately, each side shall strike the name of one mediator. The side initiating the lawsuit will strike first. The mediator remaining after the striking process will be deemed the selected mediator.

A person selected to serve as a mediator under this rule may choose not to serve for any reason. At any time, a party may request the court to replace the mediator for good cause shown. In the event a mediator chooses not to serve or the court decides to replace a mediator, the selection process will be repeated.

Rule 2.5. Qualifications of Mediators

(A) Civil Cases: Educational Qualifications.

(1) Subject to approval by the court in which the case is pending, the parties may agree upon any person to serve as a mediator.

(2) In civil cases, a registered mediator must be an attorney in good standing with the Supreme Court of Indiana.

(3) To register as a civil mediator, a person must meet all the requirements of this rule and must have either: (1) taken at least forty (40) hours of Commission approved civil mediation training in the three (3) years immediately prior to submission of the registration application, or (2) completed forty (40) hours of Commission approved civil mediation training at any time and taken at least six (6) hours of approved Continuing Mediation Education in the three (3) years immediately prior to submission of the registration application.

(4) However, a person who has met the requirements of A.D.R. Rule 2.5(B)(2)(a), is registered as a domestic relations mediator, and by December 31 of the second full year after meeting those requirements completes a Commission approved civil crossover mediation training program may register as a civil mediator.

(5) As part of a judge's judicial service, a judicial officer may serve as a mediator in a case pending before another judicial officer.

(B) Domestic Relations Cases: Educational Qualifications.

(1) Subject to approval of the court, in which the case is pending, the parties may agree upon any person to serve as a mediator.

(2) In domestic relations cases, a registered mediator must be either: (a) an attorney, in good standing with the Supreme Court of Indiana; (b) a person who has a bachelor's degree or advanced degree from an institution recognized by a U.S. Department of Education approved accreditation organization, e.g. The Higher Learning Commission of the North Central Association of Colleges and Schools. Notwithstanding the provisions of (2)(a) and (b) above, any licensed professional whose professional license is currently suspended or revoked by the respective licensing agency, or has been relinquished voluntarily while a disciplinary action is pending, shall not be a registered mediator.

(3) To register as a domestic relations mediator, a person must meet all the requirements of this rule and must have either: (1) taken at least forty (40) hours of Commission approved domestic relations mediation training in the three (3) years immediately prior to submission of the registration application, or (2) taken at least forty (40) hours of Commission approved domestic relations mediation training at any time, and taken at least six (6) hours of approved Continuing Mediation Education in the three (3) years immediately prior to submission of the registration application.

(4) However, if a person is registered as a civil mediator and by December 31 of the second full year after meeting those requirements completes a Commission approved domestic relations crossover mediation training program (s)he may register as a domestic relations mediator.

(5) As part of a judicial service, a judicial officer may serve as a mediator in a case pending before another judicial officer.

(C) Reasons to Delay or Deny Registration. The Commission may delay (pending investigation) or deny registration of any applicant seeking to register as a mediator pursuant to A.D.R. 2.5(A) or 2.5(B) based on any of the grounds listed in A.D.R. Rule 7.1.

(D) Continuing Mediation Education ("CME") Requirements for All Registered Mediators. A registered mediator must complete a minimum of six hours of Commission approved continuing mediation education anytime during a three-year educational period. A mediator's initial educational period commences January 1 of the first full year of registration and ends December 31 of the third full year. Educational periods shall be sequential, in that once a mediator's particular three-year period terminates, a new three-year period and six hour minimum shall commence. Mediators registered before the effective date of this rule shall begin their first three-year educational period January 1, 2004.

(E) Basic and Continuing Mediation Education Reporting Requirements. Subsequent to presenting a Commission approved basic or continuing mediation education training course, the sponsor of that course must forward a list of attendees to the Commission. An attendance report received more than thirty (30) days after a program is concluded must include a late processing fee as approved by the Indiana Supreme Court. Received, in the context of an application, document(s), and/or other item(s) which is or are requested by or submitted to the Commission, means delivery to the Commission; mailed to the Commission by registered, certified or express mail return receipt requested or deposited with any third-party commercial carrier for delivery to the Commission within three (3) calendar days, cost prepaid, properly addressed. Sending by registered or certified mail and by third-party commercial carrier shall be complete upon mailing or deposit. This list shall include for each attendee: full name; attorney number (if applicable); residence and business addresses and phone numbers; and the number of mediation hours attended. A course approved for CME may also qualify for CLE credit, so long as the course meets the requirements of Admission and Discipline Rule 29. For courses approved for both continuing legal education and continuing mediation education, the sponsor must additionally report continuing legal education, speaking and professional responsibility hours attended.

(F) Accreditation Policies and Procedures for CME.

(1) *Approval of courses*. Applications must be accompanied by an application fee as approved by the Indiana Supreme Court. An "application" means a completed application form, with all required attachments and fees, signed and dated by the Applicant. Applications received more than thirty (30) days after the conclusion of a course must include a late processing fee. The Commission shall approve the course, including law school classes, if it determines that the course will make a significant contribution to the professional competency of mediators who attend. In determining if a course, including law school classes, meets this standard the Commission shall consider whether:

(a) the course has substantial content dealing with alternative dispute resolution process;

(b) the course deals with matters related directly to the practice of alternative dispute resolution and the professional responsibilities of neutrals;

(c) the course deals with reinforcing and enhancing alternative dispute resolution and negotiation concepts and skills of neutrals;

(d) the course teaches ethical issues associated with the practice of alternative dispute resolution;

(e) the course deals with other professional matters related to alternative dispute resolution and the relationship and application of alternative dispute resolution principles;

(f) the course deals with the application of alternative dispute resolution skills to conflicts or issues that arise in settings other than litigation, such as workplace, business, commercial transactions, securities, intergovernmental, administrative, public policy, family, guardianship and environmental; and,

(g) in the case of law school classes, in addition to the standard set forth above the class must be a regularly conducted class at a law school accredited by the American Bar Association.

(2) Credit will be denied for the following activities:

(a) Legislative, lobbying or other law-making activities.

(b) In-house program. The Commission shall not approve programs which it determines are primarily designed for the exclusive benefit of mediators employed by a private organization or mediation firm. Mediators within related companies will be considered to be employed by the same organization or law firm for purposes of this rule. However, governmental entities may sponsor programs for the exclusive benefit of their mediator employees.

(c) [Reserved].

(d) Courses or activities completed by self-study.

(e) Programs directed to elementary, high school or college student level neutrals.

(3) *Procedures for Sponsors*. Any sponsor may apply to the Commission for approval of a course. The application must:

(a) be received by the Commission at least thirty (30) days before the first date on which the course is to be offered;

(b) Include the nonrefundable application fee in order for the application to be reviewed by the Commission. Courses presented by non-profit sponsors which do not require a registration fee are eligible for an application fee waiver.

Courses presented by bar associations, Indiana Continuing Legal Education Forum (ICLEF) and government or academic entities will not be assessed an application fee, but are subject to late processing fees.

Applications received less than thirty (30) days before a course is presented must also include a late processing fee in order to be processed by the Commission.

Either the provider or the attendee must pay all application and late fees before a mediator may receive credit.

Fees may be waived in the discretion of the Commission upon a showing of good cause.

(c) contain the information required by and be in the form set forth in the application approved by the Commission and available upon request;

(d) be accompanied by the written course outline and brochure used by the Sponsor to furnish information about the course to mediators; and

(e) be accompanied by an affidavit of the mediator attesting that the mediator attended the course together with a certification of the course Sponsor as to the mediator's attendance. If the application for course approval is made before attendance, this affidavit and certification requirement shall be fulfilled within 5 thirty (30) days after course

attendance. Attendance reports received more than thirty (30) days after the conclusion of a course must include a late processing fee.

Course applications received more than (1) one year after a course is presented may be denied as untimely.

(4) *Procedure for Mediators*. A mediator may apply for credit of a live course either before or after the date on which it is offered. The application must:

(a) be received by the Commission at least thirty (30) days before the date on which the course is to be offered if they are seeking approval before the course is to be presented. If the applicant is seeking accreditation, the Sponsor must apply within thirty (30) days of the conclusion of the course.

(b) include the nonrefundable application fee in order for the application to be reviewed by the Commission. Courses presented by non-profit sponsors which do not require a registration fee are eligible for an application fee waiver.

Either the provider or the attendee must pay all application and late fees before a mediator may receive credit.

Fees may be waived in the discretion of the Commission upon a showing of good cause.

(c) contain the information required by and be in the form set forth in the application approved by the Commission and available upon request;

(d) be accompanied by the written course outline and brochure used by the Sponsor to furnish information about the course to mediators; and

(e) be accompanied by an affidavit of mediator attesting that the mediator attended the course together with a certification of the course Sponsor as to the mediator's attendance. If the application for course approval is made before attendance, this affidavit and certification must be received by the Commission within thirty (30) days after course attendance. An attendance report received more than thirty (30) days after the conclusion of a course must include a late processing fee.

Course applications received more than one (1) year after a course is presented may be denied as untimely.

(G) Procedure for Resolving Disputes. Any person who disagrees with a decision of the Commission and is unable to resolve the disagreement informally, may petition the Commission for a resolution of the dispute. Petitions must be received by the Commission within thirty (30) days of notification by the Commission of the Commission's decision and shall be considered by the Commission at its next regular meeting, provided that the petition is received by the Commission at least ten (10) business days before such meeting. The person filing the petition shall have the right to attend the Commission meeting at which the petition is considered and to present relevant evidence and arguments to the Commission. The rules of pleading and practice in civil cases shall not apply, and the proceedings shall be informal as directed by the Chair. The determination of the Commission shall be final subject to appeal directly to the Supreme Court.

(H) Confidentiality. Filings with the Commission shall be confidential. These filings shall not be disclosed except in furtherance of the duties of the Commission or upon the request, by the mediator involved, or as directed by the Supreme Court.

(I) Rules for Determining Education Completed.

(1) *Formula*. The number of hours of continuing mediation education completed in any course by a mediator shall be computed by:

(a) Determining the total instruction time expressed in minutes;

(b) Dividing the total instruction time by sixty (60); and

(c) Rounding the quotient up to the nearest one-tenth (1/10).

Stated in an equation the formula is:

$$\frac{\text{Total Instruction time (in minutes)}}{\text{Sixty (60)}} = \text{Hours completed (rounded up the nearest 1/10)}$$

(2) *Instruction Time Defined*. Instruction time is the amount of time when a course is in session and presentations or other educational activities are in progress. Instruction time does not include time spent on:

(a) Introductory remarks;

(b) Breaks; or

(c) Business meetings

(3) A registered mediator who participates as a teacher, lecturer, panelist or author in an approved continuing mediation education course will receive credit for:

(a) Four (4) hours of approved continuing mediation education for every hour spent in presentation.

(b) One (1) hour of approved continuing mediation education for every four (4) hours of preparation time for a contributing author who does not make a presentation relating to the materials prepared.

(c) One (1) hour of approved continuing mediation education for every hour the mediator spends in attendance at sessions of a course other than those in which the mediator participates as a teacher, lecturer or panel member.

(d) Mediators will not receive credit for acting as a speaker, lecturer or panelist on a program directed to elementary, high school or college student level neutrals, or for a program that is not approved under Alternative Dispute Resolution Rule 2.5(E).

Rule 2.6. Mediation Costs

Absent an agreement by the parties, including any guardian ad litem, court appointed special advocate, or other person properly appointed by the court to represent the interests of any child involved in a domestic relations case, the court may set an hourly rate for mediation and determine the division of such costs by the parties. The costs should be predicated on the complexity of the litigation, the skill levels needed to mediate the litigation, and the litigants' ability to pay. Unless otherwise agreed, the parties shall pay their mediation costs within thirty (30) days after the close of each mediation session.

Rule 2.7. Mediation Procedure

(A) Advisement of Participants. The mediator shall:

(1) advise the parties of all persons whose presence at mediation might facilitate settlement; and

(2) in child related matters, ensure that the parties consider fully the best interests of the children and that the parties understand the consequences of any decision they reach concerning the children; and

(3) inform all parties that the mediator (a) is not providing legal advice, (b) does not represent either party, (c) cannot determine how the court would apply the law or rule in the parties' case,

or what the outcome of the case would be if the dispute were to go before the court, and (d) recommends that the parties seek or consult with their own legal counsel if they desire, or believe they need legal advice; and

(4) explain the difference between a mediator's role and a lawyer's role when a mediator knows or reasonably should know that a party does not understand the mediator's role in the matter; and

(5) not advise any party (i) what that party should do in the specific case, or (ii) whether a party should accept an offer; and

(6) advise a party who self-identifies or who the mediator identifies as a victim after screening for domestic or family violence, also known as intimate partner violence or abuse, or coercive control (hereinafter, "domestic violence") that the party will only be required to be present at mediation sessions in accordance with Rule 2.7(B)(1) below.

(B) Mediation Conferences.

(1) The parties and their attorneys shall be present at all mediation sessions involving domestic relations proceedings unless otherwise agreed. At the discretion of the mediator, non-parties to the dispute may also be present. A party who self-identifies or who the mediator identifies as a victim after screening for domestic violence shall be permitted to have a support person present at all mediation sessions. The mediator may terminate the mediation at any time when a participant becomes disruptive to the mediation process.

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

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

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

(5) The mediator may meet jointly or separately with the parties and may express an evaluation of the case to one or more of the parties or their representatives. The mediator shall advise the parties that the mediator's evaluation is not legal advice.

(C) Confidential Statement of Case. Each side may submit to the mediator a confidential statement of the case, not to exceed ten (10) pages, prior to a mediation conference, which shall include:

(1) the legal and factual contentions of the respective parties as to both liability and damages;

(2) the factors considered in arriving at the current settlement posture; and

(3) the status of the settlement negotiations to date.

A confidential statement of the case may be supplemented by damage brochures, videos, and other exhibits or evidence. The confidential statement of the case shall at all times be held privileged and confidential from other parties unless agreement to the contrary is provided to the mediator.

(D) Termination of Mediation.

(1) The mediator shall terminate or decline mediation whenever the mediator believes:

(a) that of the meditation process would harm or prejudice one or more of the parties or the children;

(b) the ability or willingness of any party to participate meaningfully in mediation is so lacking that a reasonable agreement is unlikely;

(c) due to conflict of interest or bias on the part of the mediator;

(d) or mediation is inappropriate for other reasons

(2) At any time after two (2) sessions have been completed, any party may terminate mediation.

(3) The mediator shall not state the reason for terminating or declining mediation except to report to the court, without further comment, that the mediator is terminating or declining mediation.

(E) Report of Mediation: Status.

(1) Within ten (10) days after the mediation, the mediator shall submit to the court, without comment or recommendation, a report of mediation status. The report shall indicate that an agreement was or was not reached in whole or in part or that the mediation was extended by the parties. If the parties do not reach any agreement as to any matter as a result of the mediation, the mediator shall report the lack of any agreement to the court without comment or recommendation. With the consent of the parties, the mediator's report may also identify any pending motions or outstanding legal issues, discovery process, or other action by any party which, if resolved or completed, would facilitate the possibility of a settlement.

(2) If an agreement is reached, in whole or in part, it shall be reduced to writing and signed by the parties and their counsel. In domestic relations matters, the agreement shall then be filed with the court. If the agreement is complete on all issues, a joint stipulation of disposition shall be filed with the court. In all other matters, the agreement shall be filed with the court only by agreement of the parties.

(3) In the event of any breach or failure to perform under the agreement, upon motion, and after hearing, the court may impose sanctions, including entry of judgment on the agreement.

(F) Mediator's Preparation and Filing of Documents in Domestic Relations Cases.

At the request and with the permission of all parties in a domestic relations case, a Mediator may prepare or assist in the preparation of documents as set forth in this paragraph (F).

The Mediator shall inform an unrepresented party that he or she may have an attorney of his or her choosing (1) be present at the mediation and/or (2) review any documents prepared during the mediation. The Mediator shall also review each document drafted during mediation with any unrepresented parties. During the review the Mediator shall explain to unrepresented parties that they should not view or rely on language in documents prepared by the Mediator as legal advice. When the document(s) are finalized to the parties' and any counsel's satisfaction, and at the request and with the permission of all parties and any counsel, the Mediator may also tender to the court the documents listed below when the mediator's report is filed.

The Mediator may prepare or assist in the preparation of only the following documents:

(1) A written mediated agreement reflecting the parties' actual agreement, with or without the caption in the case and "so ordered" language for the judge presiding over the parties' case;

(2) An order approving a mediated agreement, with the caption in the case, so long as the order is in the form of a document that has been adopted or accepted by the court in which the document is to be filed;

(3) A summary decree of dissolution, with the caption in the case, so long as the decree is in the form of a document that has been adopted or accepted by the court in which the document is to be filed and the summary decree reflects the terms of the mediated agreement;

(4) A verified waiver of final hearing, with the caption in the case, so long as the waiver is in the form of a document that has been adopted or accepted by the court in which the document is to be filed;

(5) A child support calculation, including a child support worksheet and any other required worksheets pursuant to the Indiana Child Support Guidelines or Parenting Time Guidelines, so long as the parties are in agreement on all the entries included in the calculations;

(6) An income withholding order, with the caption in the case, so long as the order is in the form of a document that has been adopted or accepted by the court in which the document is to be filed and the order reflects the terms of the mediated agreement.

Rule 2.8. Rules of Evidence

With the exception of privileged communications, the rules of evidence do not apply in mediation, but factual information having a bearing on the question of damages should be supported by documentary evidence whenever possible.

Rule 2.9. Discovery
Whenever possible, parties are encouraged to limit discovery to the development of information necessary to facilitate the mediation process. Upon stipulation by the parties or as ordered by the court, discovery may be deferred during mediation pursuant to Indiana Rules of Procedure, Trial Rule 26(C).

Rule 2.10. Sanctions
Upon motion by either party and hearing, the court may impose sanctions against any attorney, or party representative who fails to comply with these mediation rules, limited to assessment of mediation costs and/or attorney fees relevant to the process.

Rule 2.11. Confidentiality and Admissibility
(A) Confidentiality.

(1) Mediation sessions shall be confidential and closed to all persons other than the parties of record, their legal representatives, and persons invited or permitted by the mediator.

(2) The confidentiality of mediation may not be waived.

(3) A mediator shall not be subject to process requiring the disclosure of any matter occurring during the mediation except in a separate matter as required by law.

(4) This Rule shall not prohibit the disclosure of information authorized or required by law.

(B) Admissibility.

(1) Mediation shall be regarded as settlement negotiations governed by Indiana Evidence Rule 408.

(2) Evidence discoverable outside of mediation shall not be excluded merely because it was discussed or presented in the course of mediation.

RULE 3. ARBITRATION

Rule 3.1. Agreement to Arbitrate
At any time fifteen (15) days or more after the period allowed for a peremptory change of venue under Trial Rule 76(B) has expired, the parties may file with the court an agreement to arbitrate wherein they stipulate whether arbitration is to be binding or nonbinding, whether the agreement extends to all of the case or is limited as to the issues subject to arbitration, and the procedural rules to be followed during the arbitration process. Upon approval, the agreement to arbitrate shall be noted on the Chronological Case Summary of the Case and placed in the Record of Judgments and Orders for the court.

Rule 3.2. Case Status During Arbitration
During arbitration, the case shall remain on the regular docket and trial calendar of the court. In the event the parties agree to be bound by the arbitration decision on all issues, the case shall be removed from the trial calendar. During arbitration the court shall remain available to rule and assist in any discovery or pre-arbitration matters or motions.

Rule 3.3. Assignment of Arbitrators
Each court shall maintain a listing of lawyers engaged in the practice of law in the State of Indiana who are willing to serve as arbitrators. Upon assignment of a case to arbitration, the plaintiff and the defendant shall, pursuant to their stipulation, select one or more arbitrators from the court listing or the listing of another court in the state. If the parties agree that the case should be presented to one arbitrator and the parties do not agree on the arbitrator, then the court shall designate three (3) arbitrators for alternate striking by each side. The party initiating the lawsuit shall strike first. If the parties agree to an arbitration panel, it shall be limited to three (3) persons.

If the parties fail to agree on who should serve as members of the panel, then each side shall select one arbitrator and the court shall select a third. When there is more than one arbitrator, the arbitrators shall select among themselves a Chair of the arbitration panel. Unless otherwise agreed between the parties, and the arbitrators selected under this provision, the Court shall set the rate of compensation for the

arbitrator. Costs of arbitration are to be divided equally between the parties and paid within thirty (30) days after the arbitration evaluation, regardless of the outcome. Any arbitrator selected may refuse to serve without showing cause for such refusal.

Rule 3.4. Arbitration Procedure

(A) Notice of Hearing. Upon accepting the appointment to serve, the arbitrator or the Chair of an arbitration panel shall meet with all attorneys of record to set a time and place for an arbitration hearing. (Courts are encouraged to provide the use of facilities on a regular basis during times when use is not anticipated, i.e. jury deliberation room every Friday morning.)

(B) Submission of Materials. Unless otherwise agreed, all documents the parties desire to be considered in the arbitration process shall be filed with the arbitrator or Chair and exchanged among all attorneys of record no later than fifteen (15) days prior to any hearing relating to the matters set forth in the submission. Documents may include medical records, bills, records, photographs, and other material supporting the claim of a party. In the event of binding arbitration, any party may object to the admissibility of these documentary matters under traditional rules of evidence; however, the parties are encouraged to waive such objections and, unless objection is filed at least five (5) days prior to hearing, objections shall be deemed waived. In addition, no later than five (5) days prior to hearing, each party may file with the arbitrator or Chair a pre-arbitration brief setting forth factual and legal positions as to the issues being arbitrated; if filed, pre-arbitration briefs shall be served upon the opposing party or parties. The parties may in their Arbitration Agreement alter the filing deadlines. They are encouraged to use the provisions of Indiana's Arbitration Act (IC 34-57-1-1 et seq.) and the Uniform Arbitration Act (IC 34-57-2-1 et seq.) to the extent possible and appropriate under the circumstances.

(C) Discovery. Rules of discovery shall apply. Thirty (30) days before an arbitration hearing, each party shall file a listing of witnesses and documentary evidence to be considered. The listing of witnesses and documentary evidence shall be binding upon the parties for purposes of the arbitration hearing only. The listing of witnesses shall designate those to be called in person, by deposition and/or by written report.

(D) Hearing. Traditional rules of evidence need not apply with regard to the presentation of testimony. As permitted by the arbitrator or arbitrators, witnesses may be called. Attorneys may make oral presentation of the facts supporting a party's position and arbitrators are permitted to engage in critical questioning or dialogue with representatives of the parties. In this presentation, the representatives of the respective parties must be able to substantiate their statements or representations to the arbitrator or arbitrators as required by the Rules of Professional Conduct. The parties may be permitted to demonstrate scars, disfigurement, or other evidence of physical disability. Arbitration proceedings shall not be open to the public.

(E) Confidentiality. Arbitration proceedings shall be considered as settlement negotiations as governed by Ind. Evidence Rule 408. For purposes of reference, Evid.R. 408 provides as follows:

Rule 408. Compromise and Offers to Compromise

Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept a valuable consideration in compromising or attempting to compromise a claim, which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule 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. Compromise negotiations encompass alternative dispute resolution.

(F) Arbitration Determination. Within twenty (20) days after the hearing, the arbitrator or Chair shall file a written determination of the arbitration proceeding in the pending litigation and serve a copy of this determination on all parties participating in the arbitration. If the parties had submitted this

matter to binding arbitration on all issues, the court shall enter judgment on the determination. If the parties had submitted this matter to binding arbitration on fewer than all issues, the court shall accept the determination as a joint stipulation by the parties and proceed with the litigation. If the parties had submitted the matter to nonbinding arbitration on any or all issues, they shall have twenty (20) days from the filing of the written determination to affirmatively reject in writing the arbitration determination. If a nonbinding arbitration determination is not rejected, the determination shall be entered as the judgment or accepted as a joint stipulation as appropriate. In the event a nonbinding arbitration determination is rejected, all documentary evidence will be returned to the parties and the determination and all acceptances and rejections shall be sealed and placed in the case file.

Rule 3.5. Sanctions

Upon motion by either party and hearing, the court may impose sanctions against any party or attorney who fails to comply with the arbitration rules, limited to the assessment of arbitration costs and/or attorney fees relevant to the arbitration process.

RULE 4. MINI-TRIALS

Rule 4.1. Purpose

A mini-trial is a case resolution technique applicable in litigation where extensive court time could reasonably be anticipated. This process should be employed only when there is reason to believe that it will enhance the expeditious resolution of disputes and preserve judicial resources.

Rule 4.2. Case Selection/Objection

At any time fifteen (15) days or more after the period allowed for peremptory change of venue under Trial Rule 76(B) has expired, a court may, on its own motion or upon motion of any party, select a civil case for a mini-trial. Within fifteen (15) days after notice of selection for a mini-trial, a party may object by filing a written objection specifying the grounds. The court shall promptly hear the objection and determine whether a mini-trial is possible or appropriate in view of the objection.

Rule 4.3. Case Status Pending Mini-Trial

When a case has been assigned for a mini-trial, it shall remain on the regular docket and trial calendar of the court. The court shall remain available to rule and assist in any discovery or pre-mini-trial matter or motion.

Rule 4.4. Mini-Trial Procedure

(A) Mini-Trial. The court will set a time and place for hearing and direct representatives with settlement authority to meet and allow attorneys for the parties to present their respective positions with regard to the litigation in an effort to settle the litigation. The parties may fashion the procedure by agreement prior to the mini-trial as they deem appropriate.

(B) Report of Mini-Trial. At a time set by the court, the parties, or their attorneys of record, shall report to the court. Unless otherwise agreed by the parties, the results of the hearing shall not be binding.

(1) The report shall indicate that a settlement was or was not reached in whole or in part as a result of the mini-trial. If the parties did not reach any settlement as to any matter as a result of the mini-trial, the parties shall report the lack of any agreement to the court without comment or recommendation. By mutual agreement of the parties the report may also identify any pending motions or outstanding legal issues, discovery process, or other action by any party which, if resolve or completed, would facilitate the possibility of a settlement.

(2) If a settlement is reached, in whole or in part, it shall be reduced to writing and signed by the parties and their counsel. If the agreement is complete on all issues, a joint stipulation of disposition shall be filed with the court. In all other matters, the settlement shall be filed with the court only by agreement of the parties.

(C) Confidentiality. Mini-trials shall be regarded as settlement negotiations as governed by Ind.Evidence Rule 408. Mini-trials shall be closed to all persons other than the parties of record, their legal representatives, and other invited persons. The participants in a mini-trial shall not be subject to

process requiring the disclosure of any matter discussed during the mini-trial, but rather, such matter shall be considered confidential and privileged in nature. The confidentiality requirement may not be waived by or on behalf of the parties.

(D) Employment of Neutral Advisor. The parties may agree to employ a neutral acting as an advisor. The advisor shall preside over the proceeding and, upon request, give advisory opinions and rulings. Selection of the advisor shall be based upon the education, training and experience necessary to assist the parties in resolving their dispute. If the parties cannot by agreement select an advisor, each party shall submit to the court the names of two individuals qualified to serve in the particular dispute. Each side shall strike one name from the other party's list. The court shall then select an advisor from the remaining names. Unless otherwise agreed between the parties and the advisor, the court shall set the rate of compensation for the advisor. Costs of the mini-trial are to be divided equally between the parties and paid within thirty (30) days after conclusion of the mini-trial.

Rule 4.5. Sanctions

Upon motion by either party and hearing, the court may impose sanctions against a party or attorney who intentionally fails to comply with these mini-trial rules, limited to the assessment of costs and/or attorney fees relevant to the process.

RULE 5. SUMMARY JURY TRIALS

Rule 5.1. Purpose

The summary jury trial is a method for resolving cases in litigation when extensive court and trial time may be anticipated. This is a settlement process, and it should be employed only when there is reason to believe that a limited jury presentation may create an opportunity to quickly resolve the dispute and conserve judicial resources.

Rule 5.2. Case Selection

After completion of discovery, the resolution of dispositive motions, and the clarification of issues for determination at trial, upon written stipulation of the parties, the court may select any civil case for summary jury trial consideration.

Rule 5.3. Agreement of Parties

A summary jury trial proceeding will be conducted in accordance with the agreement of the parties or their attorneys of record as approved by the court. At a minimum, this agreement will include the elements set forth in this rule.

(A) Completion Dates. The agreement shall specify the completion dates for:

(1) providing notice to opposing party of witnesses whose testimony will be summarized and/or introduced at the summary jury trial, proposed issues for consideration at summary jury trial, proposed jury instructions, and verdict forms;

(2) hearing pre-trial motions; and

(3) conducting a final pre-summary jury trial conference.

(B) Procedures for Pre-summary Jury Trial Conference. The agreement will specify the matters to be resolved at pre-summary jury trial conference, including:

(1) matters not resolved by stipulation of parties or their attorneys of record necessary to conduct a summary jury trial without numerous objections or delays for rulings on law;

(2) a final pre-summary jury trial order establishing procedures for summary jury trial, issues to be considered, jury instructions to be given, form of jury verdict to be rendered, and guidelines for presentation of evidence; and

(3) the firmly fixed time for the summary jury trial.

(C) Procedure/Presentation of Case. The agreement shall specify the procedure to be followed in the presentation of a case in the summary jury trial, including:

(1) abbreviated opening statements;

(2) summarization of anticipated testimony by counsel;

(3) the presentation of documents and demonstrative evidence;

(4) the requisite base upon which the parties can assert evidence; and

(5) abbreviated closing statements.

(D) Verdict and Records. All verdicts in a summary jury trial shall be advisory in nature. However, the parties may stipulate, prior to the commencement of the summary jury trial that a unanimous verdict or a consensus verdict shall be deemed a final determination on the merits. In the event of such a stipulation, the verdict and the record of the trial shall be filed with the court and the court shall enter judgment accordingly.

Rule 5.4. Jury

Jurors for a summary jury trial will be summoned and compensated in normal fashion. Six (6) jurors will be selected in an expedited fashion. The jurors will be advised on the importance of their decision and their participation in an expedited proceeding. Following instruction, the jurors will retire and may be requested to return either a unanimous verdict, a consensus verdict, or separate and individual verdicts which list each juror's opinion about liability and damages. If a unanimous verdict or a consensus verdict is not reached in a period of time not to exceed two (2) hours, then the jurors shall be instructed to return separate and individual verdicts in a period of time not to exceed one (1) hour.

Rule 5.5. Post Determination Questioning

After the verdict has been rendered, the jury will be advised of the advisory nature of the decision and counsel for each side will be permitted to ask general questions to the jury regarding the decisions reached which would aid in the settlement of the controversy. Counsel shall not be permitted to ask specific questions of the jury relative to the persuasiveness of the form of evidence which would be offered by particular witnesses at trial, the effectiveness of particular exhibits, or other inquiries as could convert summary jury trials from a settlement procedure to a trial rehearsal.

Rule 5.6. Confidentiality

Summary jury trials which are advisory shall be regarded as settlement negotiations as governed by Ind.Evidence Rule 408.

Summary jury trials shall be closed to all persons other than the parties of record, their legal representatives, the jurors, and other invited persons. The participants in a summary jury trial shall not be subject to process requiring the disclosure of any matter discussed during the summary jury trial, but rather, such matter shall be considered confidential and privileged in nature. The confidentiality requirement may not be waived by or on behalf of the parties.

Rule 5.7. Employment Of Presiding Official

A neutral acting as a presiding official shall be an attorney in good standing licensed to practice in the state of Indiana. The parties by agreement may select a presiding official. However, unless otherwise agreed, the court shall provide to the parties a panel of three (3) individuals. Each party shall strike the name of one (1) individual from the panel list. The party initiating the lawsuit shall strike first. The remaining individual shall be named by the court as the presiding official. Unless otherwise agreed between the parties and the presiding official, the court shall set the rate of compensation for the presiding official. Costs of the summary jury trial are to be divided equally between the parties and are to be paid within thirty (30) days after the conclusion of the summary jury trial.

RULE 6. PRIVATE JUDGES

Rule 6.1. Case Selection

Pursuant to IC 33-38-10-3(c), upon the filing of a written joint petition and the written consent of a registered private judge, a civil case founded on contract, tort, or a combination of contract and tort, or involving a domestic relations matter shall be assigned to a private judge for disposition.

Rule 6.2. Compensation of Private Judge and County
As required by IC 33-38-10-8, the parties shall be responsible for the compensation of the private judge, court personnel involved in the resolution of the dispute, and the costs of facilities and materials. At the time the petition for appointment of a private judge is filed, the parties shall file their written agreement as required by this provision.

Rule 6.3. Trial By Private Judge/Authority
(A) All trials conducted by a private judge shall be conducted without a jury. The trial shall be open to the public, unless otherwise provided by Supreme Court rule or statute.

(B) A person who serves as a private judge has, for each case heard, the same powers as the judge of a circuit court in relation to court procedures, in deciding the outcome of the case, in mandating the attendance of witnesses, in the punishment of contempt, in the enforcement of orders, in administering oaths, and in giving of all necessary certificates for the authentication of the record and proceedings.

Rule 6.4. Place Of Trial Or Hearing
As provided by IC 33-38-10-7, a trial or hearing in a case referred to a private judge may be conducted in any location agreeable to the parties, provided the location is posted in the Clerk's office at least three (3) days in advance of the hearing date.

Rule 6.5. Recordkeeping
All records in cases assigned to a private judge shall be maintained as any other public record in the court where the case was filed, including the Chronological Case Summary under the case number initially assigned to this case. Any judgment or designated order under Trial Rule 77 shall be entered in the Record of Judgments and Orders for the court where the case was filed and recorded in the Judgment Record for the Court as required by law.

RULE 7. CONDUCT AND DISCIPLINE FOR PERSONS CONDUCTING ADR

Rule 7.0. Purpose
This rule establishes standards of conduct for persons conducting an alternative dispute resolution ("ADR") process governed pursuant to ADR Rule 1.2, hereinafter referred to as "neutrals."

Rule 7.1. Accountability And Discipline
A person who serves with leave of court or registers with the Commission pursuant to ADR Rule 2.3 consents to the jurisdiction of the Indiana Supreme Court Disciplinary Commission in the enforcement of these standards. The Disciplinary Commission, any court or the Continuing Legal Education Commission may recommend to the Indiana Supreme Court that a registered mediator be removed from its registry as a sanction for violation of these rules, or for other good cause shown, including but not limited to any current or past suspension or revocation of a professional license by the respective licensing agency; any relinquishment of a professional license while a disciplinary action is pending; any current or past disbarment; any conviction of, plea of nolo contendere to, or any diversion or deferred prosecution to any state or federal criminal charges (felonies, misdemeanors, and/or infractions), juvenile charges, or violation of military law (unless the conviction, nolo plea, diversion, or deferred prosecution has been expunged pursuant to law).

Rule 7.2. Competence
A neutral shall decline appointment, request technical assistance, or withdraw from a dispute beyond the neutral's competence.

Rule 7.3. Disclosure and Other Communications
(A) A neutral has a continuing duty to communicate with the parties and their attorneys as follows:

(1) notify participants of the date, time, and location for the process, at least ten (10) days in advance, unless a shorter time period is agreed by the parties;

(2) describe the applicable ADR process or, when multiple processes are contemplated, each of the processes, including the possibility in nonbinding processes that the neutral may conduct private sessions;

(3) in domestic relations matters, distinguish the ADR process from therapy or marriage counseling;

(4) disclose the anticipated cost of the process;

(5) advise that the neutral does not represent any of the parties;

(6) disclose any past, present or known future

(a) professional, business, or personal relationship with any party, insurer, or attorney involved in the process, and

(b) other circumstances bearing on the perception of the neutral's impartiality;

(7) advise parties of their right to obtain independent legal counsel;

(8) advise that any agreement signed by the parties constitutes evidence that may be introduced in litigation; and

(9) disclose the extent and limitations of the confidentiality of the process consistent with the other provisions of these rules.

(B) A neutral may not misrepresent any material fact or circumstance nor promise a specific result or imply partiality.

(C) A neutral shall preserve the confidentiality of all proceedings, except where otherwise provided.

Rule 7.4. Duties

(A) A neutral shall observe all applicable statutes, administrative policies, and rules of court.

(B) A neutral shall perform in a timely and expeditious fashion.

(C) A neutral shall be impartial and shall utilize an effective system to identify potential conflicts of interest at the time of appointment. After disclosure pursuant to ADR Rule 7.3(A)(6), a neutral may serve with the consent of the parties, unless there is a conflict of interest or the neutral believes the neutral can no longer be impartial, in which case a neutral shall withdraw.

(D) A neutral shall avoid the appearance of impropriety.

(E) A neutral may not have an interest in the outcome of the dispute, may not be an employee of any of the parties or attorneys involved in the dispute, and may not be related to any of the parties or attorneys in the dispute.

(F) A neutral shall promote mutual respect among the participants throughout the process.

Rule 7.5. Fair, Reasonable and Voluntary Agreements

(A) A neutral shall not coerce any party.

(B) A neutral shall withdraw whenever a proposed resolution is unconscionable.

(C) A neutral shall not make any substantive decision for any party except as otherwise provided for by these rules.

Rule 7.6. Subsequent Proceedings

(A) An individual may not serve as a neutral in any dispute on which another neutral has already been serving without first ascertaining that the current neutral has been notified of the desired change.

(B) A person who has served as a mediator in a proceeding may act as a neutral in subsequent disputes between the parties, and the parties may provide for a review of the agreement with the neutral on a periodic basis. However, the neutral shall decline to act in any capacity except as a neutral unless the subsequent association is clearly distinct from the issues involved in the alternative dispute resolution

process. The neutral is required to utilize an effective system to identify potential conflict of interest at the time of appointment. The neutral may not subsequently act as an investigator for any court-ordered report or make any recommendations to the Court regarding the mediated litigation.

(C) When multiple ADR processes are contemplated, a neutral must afford the parties an opportunity to select another neutral for the subsequent procedures.

Rule 7.7 Remuneration

(A) A neutral may not charge a contingency fee or base the fee in any manner on the outcome of the ADR process.

(B) A neutral may not give or receive any commission, rebate, or similar remuneration for referring any person for ADR services.

RULE 8. OPTIONAL EARLY MEDIATION

Preamble.

The voluntary resolution of disputes in advance of litigation is a laudatory goal. Persons desiring the orderly mediation of disputes not in litigation may elect to proceed under this Rule.

Rule 8.1. Who May Use Optional Early Mediation.

By mutual agreement, persons may use the provisions of this Rule to mediate a dispute not in litigation. Persons may participate in dispute resolution under this Rule with or without counsel.

Rule 8.2. Choice of Mediator.

Persons participating in mediation under this Rule shall choose their own mediator and agree on the method of compensating the mediator. Mediation fees will be shared equally unless otherwise agreed. The mediator is governed by the standards of conduct provided in Alternative Dispute Resolution Rule 7.

Rule 8.3. Agreement to Mediate.

Before beginning a mediation under this Rule, participants must sign a written Agreement To Mediate substantially similar to the one shown as Form A to these rules. This agreement must provide for confidentiality in accordance with Alternative Dispute Resolution Rule 2.11; it must acknowledge judicial immunity of the mediator equivalent to that provided in Alternative Dispute Resolution Rule 1.5; and it must require that all provisions of any resulting mediation settlement agreement must be written and signed by each person and any attorneys participating in the mediation.

Rule 8.4. Preliminary Considerations.

The mediator and participating persons should schedule the mediation promptly. Before beginning the mediation session, each participating person is encouraged to provide the mediator with a written confidential summary of the nature of the dispute, as outlined in Alternative Dispute Resolution Rule 2.7(c).

Rule 8.5. Good Faith.

In mediating their dispute, persons should participate in good faith. Information sharing is encouraged. However, the participants are not required to reach agreement.

Rule 8.6. Settlement Agreement.

(A) In all matters not involving the care and/or support of children, if an agreement is reached, to be enforceable, all agreed provisions must be put in writing and signed by each participant. This should be done promptly as the mediation concludes. A copy of the written agreement shall be provided to each participant.

(B) Notwithstanding the other provisions of this Rule 8, in matters involving the care and/or support of children, mediated agreements put in writing and signed by all participants may be binding on the participants, but are only enforceable after review and approval by the appropriate court that would have jurisdiction over the care and/or support of the children.

Rule 8.7. Subsequent ADR and Litigation.
If no settlement agreement is reached, put in writing, and signed by the participants, the participants may thereafter engage in litigation and/or further alternative dispute resolution.

Rule 8.8. Deadlines Not Changed.
WARNING: Participation in optional early mediation under this Rule does not change the deadlines for beginning a legal action as provided in any applicable statute of limitations or in any requirement for advance notice of intent to make a claim (for example, for claims against government units under the Indiana Tort Claims Act).

Form A: Agreement for Optional Early Mediation	WordPerfect	MS Word	Adobe PDF

Section Two

Financial Considerations in Moderate to High Asset Divorce

Mark R. Hildebrand
Holistic Financial Partners LLC
Indianapolis, Indiana

Jason C. Llewellyn
Holistic Financial Partners LLC
Indianapolis, Indiana

Mark E. Idzik
Holistic Financial Partners LLC
Indianapolis, Indiana

Section Two

Financial Considerations in Moderate to High Asset Divorce…… Mark R. Hildebrand
Jason C. Llewellyn
Mark E. Idzik

PowerPoint Presentation

FINANCIAL CONSIDERATIONS IN MODERATE TO HIGH ASSET DIVORCE

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OUTLINE

#1 Defining Moderate to High Asset Divorce

#2 Including the Financial Professional in Mediation

#3 Children & Taxes

#4 Recent Legislation (SECURE Act, SS Tax Deferral, CARES Act)

#5 Early Access to Retirement Accounts

#6 Impact of Income on Health Insurance to Premiums

CHILD RELATED TAX BENEFITS

Child Related Tax Benefits	Eligibility	Qualifier	Credit Subject to Phase Out	Phase Out for Single (HOH)	Refundable or Non-Refundable	Other Important Points
Dependency Exemption	▫ The Tax Cuts and Jobs Act of 2017 suspended the $4,050 deduction per dependent claimed on tax returns. ▫Form 8332 can still be signed by the custodial parent to give the non-custodial parent the ability to claim a child on their tax return and benefit from any tax credits that may follow.					
Child Tax Credit	▫ Need to claim as dependent to be eligible	▫ Only children under age 17	▫ Max Credit: ▫ $2,000 per qualifying child ▫ $500 per non-qualifying child	▫ Begins at AGI > $200,001 ▫ Complete at AGI = $240,001	▫ Refundable up to $1,400 per qualifying child ▫ Non-Refundable for non-qualifying child	▫In order to waive it, the non-custodial parent needs to attach Form 8332
Child & Dependent Care Credit	▫ Only Custodial parent is eligible ▫ Do not need to claim as a dependent	▫ Only children under age 13 ▫ Must report earned income	▫ Max Credit is 35% of: ▫ $6,000 for 2+ children ▫ $3,000 for 1 child	▫ Begins at AGI > $15,001 ▫ Falls by 1% for every $2,000 of additional income ▫ Only 20% of expenses if AGI > $43,000	▫ Non-Refundable	▫ Non custodial parents can not take any expenses they pay for daycare even if they take the dependency exemption ▫ Need to determine if Section 129 DCB Plan is being funded

▫ A refundable tax credit is available to the taxpayer above and beyond the taxpayer's federal tax liability. A non-refundable credit is only availably to the extent of the taxpayer's federal tax liability.
▫ Under the Affordable Care Act, the parent claiming the dependent exemption is required to maintain health insurance coverage for dependent children or be penalized.

CHILD RELATED TAX BENEFITS

Child Related Tax Benefits	Eligibility	Qualifier	Credit Subject to Phase Out	Phase Out for Single (HOH)	Refundable or Non-Refundable	Other Important Points
Earned Income Credit	▫ Only Custodial parent is eligible ▫ Do not need to claim as a dependent	▫ Must report earned income	▫ Max Credit: ▫ $6,660 for 3+ children ▫ $5,920 for 2 children ▫ $3,584 for 1 child ▫ $538 for no children	▫ Complete when AGI > than: ▫ $50,954 for 3+ children ▫ $47,440 for 2 children ▫ $41,756 for 1 child	▫ Refundable	▫ Investment Income not > $3,650 ▫ Spousal maintenance and child support are not considered earned
American Opportunity Education Credit	▫ Need to claim as dependent to be eligible	▫ Available 1st 4 years of college	▫ Max Credit: ▫ $2,500 per student	▫ AGI > $90,000	▫ Refundable up to 40%; $1,000 max	▫ Credit follows dependency exemption regardless of who pays ▫ Reverts back to Hope Credit in 2018
Lifetime Learning Credit	▫ Need to claim as dependent to be eligible	▫ Available for unlimited number of years	▫ Max Credit: ▫ $2,000 per tax return	▫ AGI > $68,000	▫ Non-Refundable	▫ Credit follows dependency exemption regardless of who pays expense

▫ A refundable tax credit is available to the taxpayer above and beyond the taxpayer's federal tax liability. A non-refundable credit is only availably to the extent of the taxpayer's federal tax liability.
▫ Under the Affordable Care Act, the parent claiming the dependent exemption is required to maintain health insurance coverage for dependent children or be penalized.

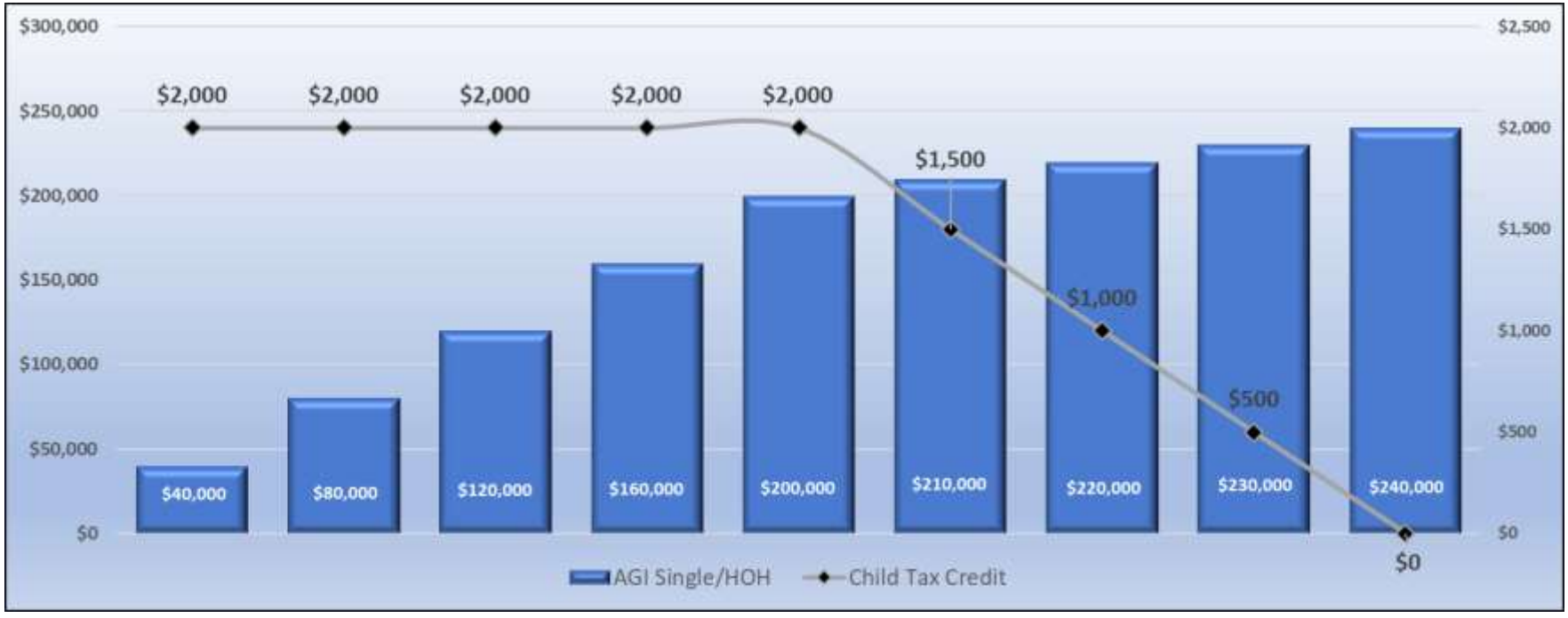
DEPENDENCY EXEMPTION RULES

Tie-Breaker on Claiming Child Exemption/Dependent

When two or more taxpayers can claim a child as a qualifying child under the general rules, special tie-breaker rules apply.

- If a parent and a non-parent both claim a child, the parent “wins” [IRC Sec. 152(c)(4)(A)(i)]
- If two parents claim a child on separate returns, the parent with whom the child lives for the longer period during the tax year “wins.” [IRC Sec. 152(c)(4)(B)(i)]
- If the child lives with each parent for the same amount of time during the tax year, the parent with the higher adjusted gross income “wins” [IRC Sec. 152(c)(4)(b)(ii)].
- If two non-parents claim a child, the one with the higher adjusted gross income for the tax year “wins” [IRC Sec. 152(c)(4)(A)(ii)]

CHILD TAX CREDIT PHASE OUT



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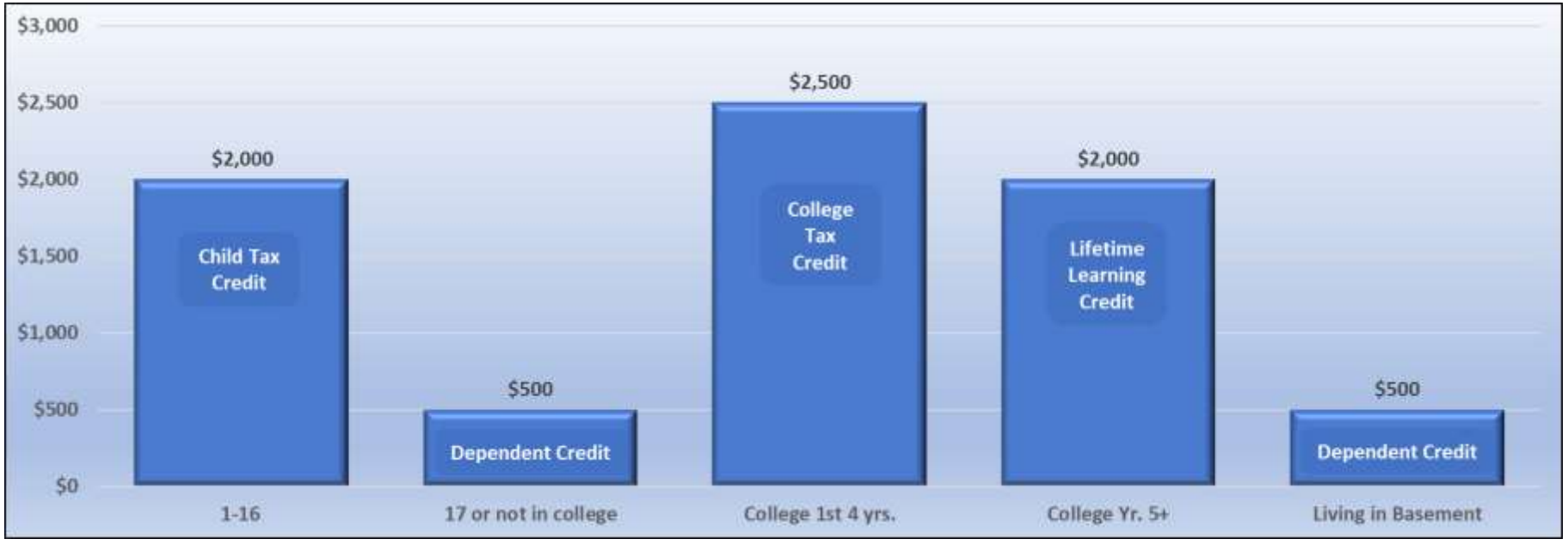
EARNED INCOME TAX CREDIT ANALYSIS

- Since spousal maintenance isn't a tax consideration anymore it won't phase someone out of the Earned Income Tax Credit
- In other words someone with high income could qualify for this credit now if their earned income is low enough to qualify
- Needs to be considered when discussing overnights

DEPENDENT TAX CREDITS



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SUGGESTED LANGUAGE

- Claiming dependents every other year, use Form 8332 …
    - Child Tax Benefit. Father may designate the child as a dependent for purposes of federal and state taxes and shall be entitled to claim all child tax credits in all even numbered years. Mother shall take all necessary actions to release her claim to the child in all even numbered years by executing IRS Form 8332, and/or any other forms necessary to allow Father to receive the tax benefit set forth herein.

SUGGESTED LANGUAGE

- Claiming dependents annually, benefit applied to college costs …

    - Mother shall be entitled to claim the Parties' children as dependents for state and federal income tax reporting purposes. Any funds received by Mother as a college tax credit or deduction shall be applied to the child's college tuition as the parent's share of college. If the tax benefit from claiming the college expenses is not apparent from the return, Mother shall run another tax return without claiming the college expenses to determine the amount of the tax benefit to be applied to the parent's share of college.

529 PLAN

- Qualified expenses under 529 plans will now also include elementary and high school education of up to $10k per year.

- Prior divorce agreements most likely failed to include provisions requiring that 529 funds be reserved for payment of college expenses so the use of 529 funds now for elementary or high school could undermine original divorce agreements and dissipate college funds.

- Non-title owner should exercise any rights he or she may have to review the account statements to track how the funds are being spent and to consult with his or her lawyer about taking action to address the issue before it may be too late to prevent dissipation of the funds

529 PLAN

- Questions to consider:
  - What happens if the divorce agreement is silent or ambiguous as to the application of the 529 funds?
  - What if one ex-spouse was obligated to pay for private pre-college education and the agreement is not clear on limiting 529 plan to pay his or her obligations for elementary school?
  - Can that spouse distribute funds from a 529 plan to pay his or her obligations for elementary school?
  - What if that dissipates the funds intended for college?

DEFERRAL OF SOCIAL SECURITY TAX WITHHOLDING

- Highlights:
  - Applies to wages paid starting September 1, 2020 through December 31, 2020
  - Social Security tax (6.2%) deferral may apply to payments of taxable wages that are less than $4,000 during a biweekly pay period.
  - Needs to be repaid ratably between January 1, 2021 and April 30, 2021
    - Interest & penalties begin to accrue May 1st.

SECURE ACT

- Highlights:
  - Long-term, part-time workers will be able to join their company's 401(k) plan
  - You can make IRA contributions beyond age 70.5
  - Required minimum distributions (RMD's) now begin at age 72
  - Inherited IRA distributions generally must now be taken within 10 years
  - You can withdrawal up to $5,000 per parent, penalty free from your retirement plan upon the birth or adoption of a child
  - 529 funds can now be used to pay down student loan debt, up to $10,000

CARES ACT

- What it does:
  - Provides expanded distribution options, favorable tax treatment, and special rollover rules for retirement plans and IRAs
  - Permits an additional year for repayment of loans from eligible retirement plans (not IRAs) and relaxes limits on loans

- Who qualifies:
  - those diagnosed with SARS-CoV2 or COVID-19
  - spouse or dependent diagnosed w/ either
  - those experiencing adverse financial consequences as a result of :
    - being quarantined, furloughed or laid off
    - being unable to work due to lack of childcare
    - closing or reducing hours of a business you own or operate

    …. due to SARS-CoV2 or COVID-19

CARES ACT – IRA/401(K) DISTRIBUTIONS

- Favorable tax treatment for up to $100k of coronavirus-related distributions
  - No 10% penalty
  - Included in income ratably over a three-year period
  - Can be repaid over three years and treated as a direct trustee-to-trustee transfer – no federal income tax on the distribution.
    - Will need to amend prior year tax returns if distribution paid back after year 1.
- Example:
  - distribution of $30k received in 2020,
  - elect to pay taxes over 3 years, $10k each year ’20, ‘21 & ’22
  - repay full $30k in 2022 …
    - no distribution income reported ‘22,
      ‘20 & ‘21 tax returns amended to reverse out tax impact on $10k distribution.

CARES ACT – 401(K) LOANS

- Certain loan repayments from eligible plans may be delayed for 1 year
  - Applies to loans outstanding on or after 3/27/20 with payments due between then and YE 2020.
  - Payments after suspension period will be adjusted to reflect delay and interest accruing during the period.
- Loan limit may be increased from eligible retirement plans (not IRAs)
  - Applies to plan loans made between 3/27/20 – 9/30/20
  - May be increased up to lesser of:
    - $100,000 or vested balance
- It is optional for employers to adopt these rules

EARLY ACCESS TO RETIREMENT ACCOUNTS

- Qualified Domestic Relations Order (QDRO)
- IRC Section 72(t)(2)
- ROTH IRA’s

EARLY ACCESS - QDRO

- Withdrawals from ERISA Qualified plans pursuant to a QDRO are exempt from 10% early withdrawal penalty
  - QDRO does not have to specify the amount to be withdrawn or even that a withdrawal will be made in order to avoid the 10% penalty
  - Does this apply to an IRA?
    - No. Only applies to 401(k)'s, 403(b)'s…

EARLY ACCESS - 72 (T) ELECTION

- Substantially equal period payments avoid the 10% early withdrawal penalty
- Amount determined by IRS calculator using age, defined interest rate, and balance of IRA
- Must commit to a minimum of 5 years or age 59.5 which ever comes later
- If amount is deviated from in either direction, then penalty is recaptured on all previous income.

Age on 12/31	**40**	**50**	**58**
Length of Withdrawals (yrs.)	**19.5**	**9.5**	**5**
Value of IRA ($250k)			
Penalty Free Income	**$ 7,808**	**$ 9,355**	**$ 11,252**
Value of IRA ($1M)			
Penalty Free Income	**$ 31,232**	**$ 37,420**	**$ 45,009**

EARLY ACCESS - ROTH IRA

ROTH IRA DISTRIBUTIONS

Order of Distributions	Age of Account Holder	Age of Account	Taxes	Penalties
1st Regular Contributions	*n/a*	*n/a*	None	None
2nd Conversion/Rollover Contributions (FIFO)	*n/a*	Over 5 yrs.	None	None
		Under 5 yrs.	None	10%
3rd Earnings on Contributions	Under 59.5	*n/a*	Regular Income Taxes	10%
	Over 59.5	Over 5 yrs.	None	None
		Under 5 yrs.	None	10%

EARLY ACCESS - CASE STUDY

Marital Balance Sheet

DOF xx/xx/xx DOM xx/xx/xx	Title	Account	Date	Basis	Value	Wife	Husband	Notes/Comments
ASSETS								
Real Estate								
Primary Residence	J				$ 400,000	$ 400,000	$ -	
Checking & Savings Accounts								
Marital Bank Accounts	J		9/12/14		$ 74,385	$ 533	$ 73,852	
Investment Accounts								
Marital Investments	J		9/30/14	$ 58,201	$ 95,033	$ 43,501	$ 51,532	
Retirement Accounts								
ROTH IRA	H	9027	9/30/14		$ 326,681	$ 204,681	$ 122,000	
401k	H		9/30/14		$ 370,624	$ 120,624	$ 250,000	
IRA	W		12/31/14		$ 115,700	$ 115,700	$ -	
Pension	H		4/11/15		$ 115,262	$ 57,631	$ 57,631	
Eli Lilly Compensation								
Annual Bonus					$ 16,279	$ 8,140	$ 8,140	
Performance Awards								
Payable in 2015; earned over 2013 & 2014					$ -	$ -	$ -	
Payable in 2016; earned over 2014 & 2015			4/15/15		$ 16,585	$ 8,293	$ 8,293	
Shareholder Value Awards								
Payable in 2015; earned over 2012, 2013, & 2014			4/15/15		$ 26,993	$ 13,497	$ 13,497	
Payable in 2016; earned over 2013, 2014 & 2015			4/15/15		$ 16,364	$ 8,182	$ 8,182	
Payable in 2017; earned over 2014, 2015 & 2016			4/15/15		$ 12,826	$ 6,413	$ 6,413	
LIABILITIES								
Mortgage	J	9657	4/11/14		$ (209,549)	$ (209,549)	$ -	
TOTAL NET WORTH					**$ 1,377,183**	**$ 777,645**	**$ 599,539**	
Percentages					**100%**	**56%**	**44%**	

HOLISTIC FINANCIAL PARTNERS

EARLY ACCESS – CASE STUDY

Facts:

- Wife stays at home with children and earns no income
- Monthly budget and cash flow projection suggest she needs around $80,000 to bridge the gap from now until she can begin earning an income in 2 years

Assets available:

- $40,000 in taxable brokerage account with unrealized gains of $10,000
- $120,000 via QDRO from Husband's 401(k)
- $200,000 in ROTH IRA's established more than 5 years ago with conversion
- Spousal Maintenance

EARLY ACCESS – CASE STUDY

Taxable Brokerage Account:

- Sell investments and realize $10,000 of capital gains
- $0 Federal income taxes because she in or under the 15% tax bracket, but would be subject to state income taxes
- Cost = $200 (state)

QDRO Distribution:

- 10% penalty avoided, but $40,000 captured as ordinary income
- Cost = $1,700 income taxes (state)

ROTH IRA:

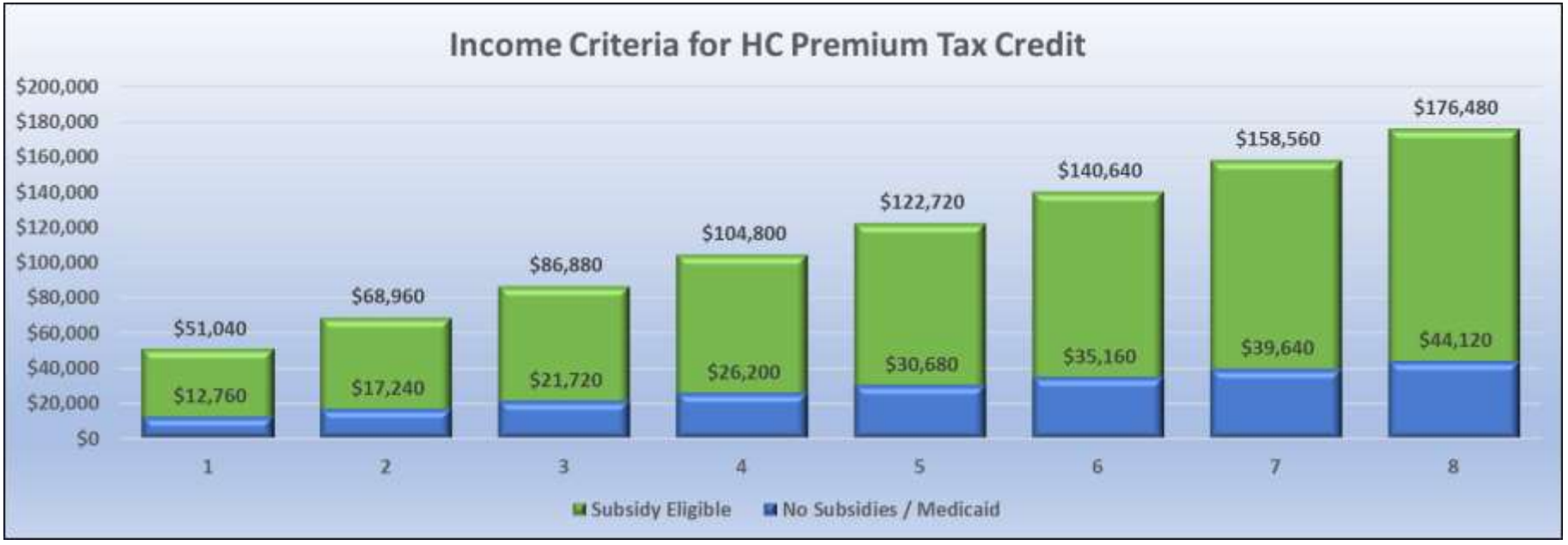
- $100,000 converted in 2009
- Since she is under 59.5, but has held for more than 5 years the $40,000 distribution would be tax-free and penalty-free
- Cost = $0

HEALTH INSURANCE PREMIUM TAX CREDITS

Income that impacts amount of subsidies

- Earned Income
- Interest, Dividends, **CAPITAL GAINS**
- **QDRO DISTRIBUTIONS**
- **IRA DISTRIBUTIONS**
- Loss carryforwards

HEALTH INSURANCE PREMIUM TAX CREDITS



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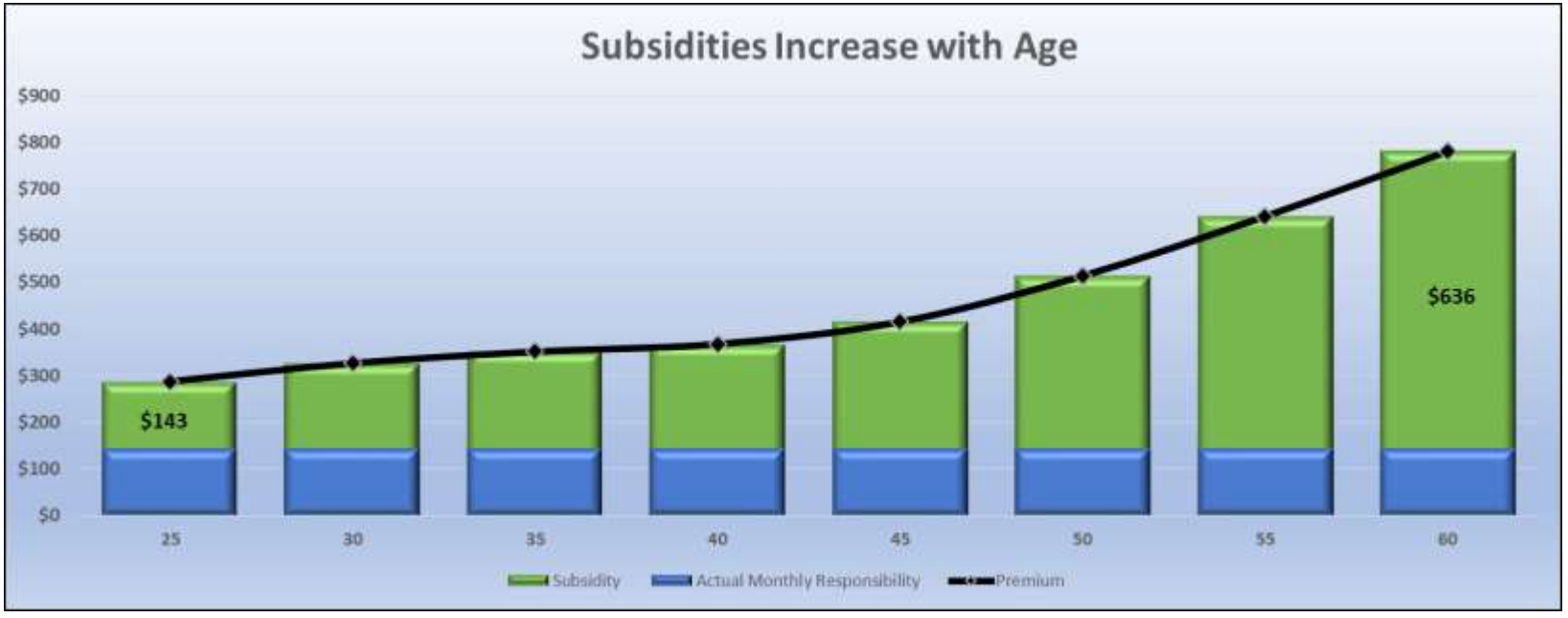
HEALTH INSURANCE PREMIUM TAX CREDITS

The cost of not managing income well is much higher those who are older



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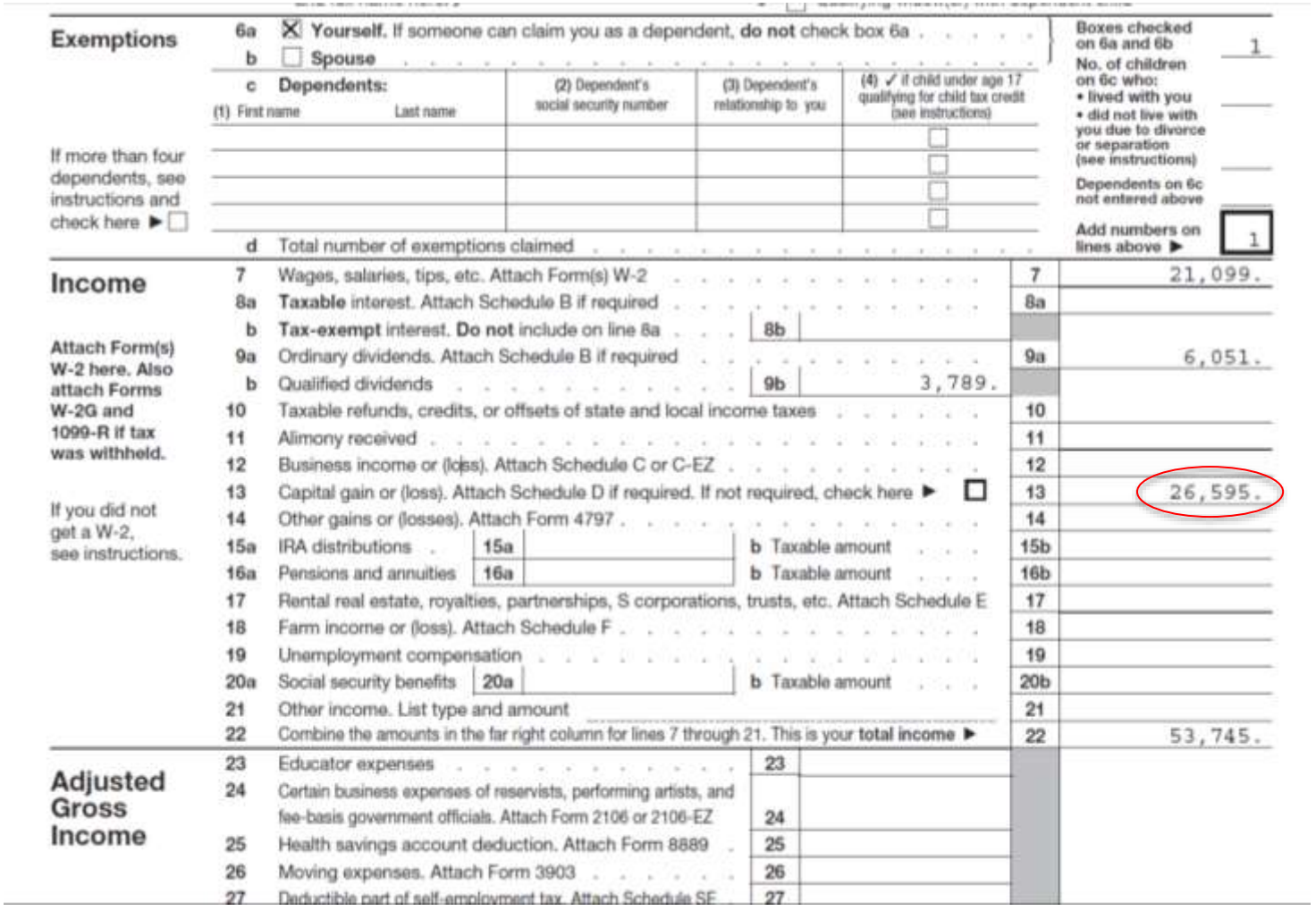
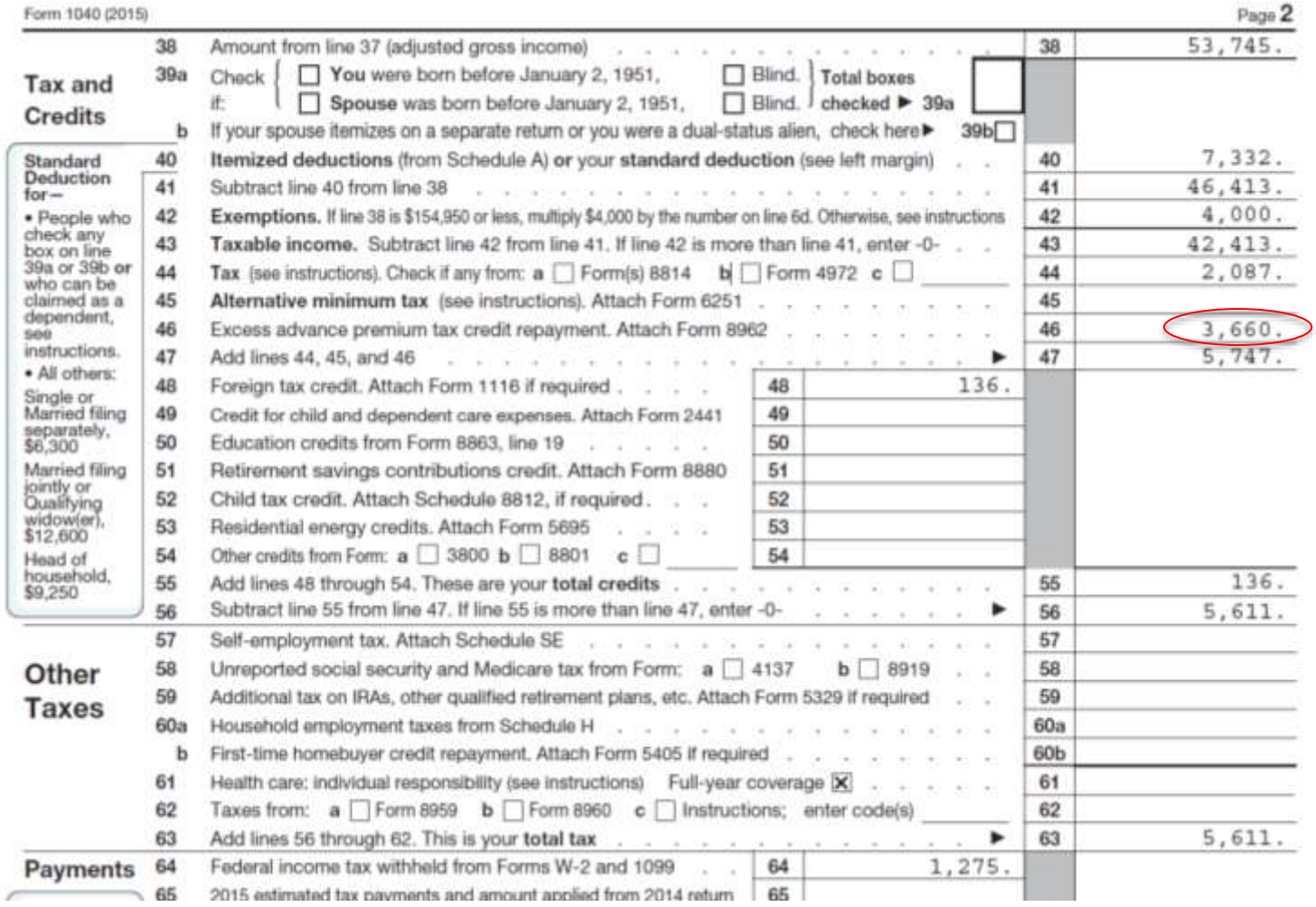
HEALTH INSURANCE PREMIUM TAX CREDITS – EXAMPLE



Exemptions	6a	☒ **Yourself.** If someone can claim you as a dependent, **do not** check box 6a		Boxes checked on 6a and 6b: 1
	b	☐ **Spouse**		No. of children on 6c who: • lived with you: • did not live with you due to divorce or separation (see instructions):
	c	**Dependents:** (1) First name / Last name; (2) Dependent's social security number; (3) Dependent's relationship to you; (4) ✓ if child under age 17 qualifying for child tax credit (see instructions)		Dependents on 6c not entered above:
If more than four dependents, see instructions and check here ▶ ☐				Add numbers on lines above ▶: 1
	d	Total number of exemptions claimed		
Income	7	Wages, salaries, tips, etc. Attach Form(s) W-2	7	21,099.
	8a	**Taxable** interest. Attach Schedule B if required	8a	
	b	**Tax-exempt** interest. **Do not** include on line 8a — 8b		
Attach Form(s) W-2 here. Also attach Forms W-2G and 1099-R if tax was withheld.	9a	Ordinary dividends. Attach Schedule B if required	9a	6,051.
	b	Qualified dividends — 9b: 3,789.		
	10	Taxable refunds, credits, or offsets of state and local income taxes	10	
	11	Alimony received	11	
	12	Business income or (loss). Attach Schedule C or C-EZ	12	
	13	Capital gain or (loss). Attach Schedule D if required. If not required, check here ▶ ☐	13	26,595.
If you did not get a W-2, see instructions.	14	Other gains or (losses). Attach Form 4797	14	
	15a	IRA distributions — 15a — b Taxable amount	15b	
	16a	Pensions and annuities — 16a — b Taxable amount	16b	
	17	Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E	17	
	18	Farm income or (loss). Attach Schedule F	18	
	19	Unemployment compensation	19	
	20a	Social security benefits — 20a — b Taxable amount	20b	
	21	Other income. List type and amount	21	
	22	Combine the amounts in the far right column for lines 7 through 21. This is your **total income** ▶	22	53,745.
Adjusted Gross Income	23	Educator expenses — 23		
	24	Certain business expenses of reservists, performing artists, and fee-basis government officials. Attach Form 2106 or 2106-EZ — 24		
	25	Health savings account deduction. Attach Form 8889 — 25		
	26	Moving expenses. Attach Form 3903 — 26		
	27	Deductible part of self-employment tax. Attach Schedule SE — 27		

HOLISTIC FINANCIAL PARTNERS

HEALTH INSURANCE PREMIUM TAX CREDITS – EXAMPLE



Form 1040 (2015) Page 2

Tax and Credits	38	Amount from line 37 (adjusted gross income)		38	53,745.
	39a	Check if: ☐ You were born before January 2, 1951, ☐ Blind. ☐ Spouse was born before January 2, 1951, ☐ Blind. Total boxes checked ▶ 39a			
	b	If your spouse itemizes on a separate return or you were a dual-status alien, check here ▶ 39b ☐			
Standard Deduction for— • People who check any box on line 39a or 39b or who can be claimed as a dependent, see instructions. • All others: Single or Married filing separately, $6,300 Married filing jointly or Qualifying widow(er), $12,600 Head of household, $9,250	40	**Itemized deductions** (from Schedule A) **or** your **standard deduction** (see left margin)		40	7,332.
	41	Subtract line 40 from line 38		41	46,413.
	42	**Exemptions.** If line 38 is $154,950 or less, multiply $4,000 by the number on line 6d. Otherwise, see instructions		42	4,000.
	43	**Taxable income.** Subtract line 42 from line 41. If line 42 is more than line 41, enter -0-		43	42,413.
	44	**Tax** (see instructions). Check if any from: a ☐ Form(s) 8814 b ☐ Form 4972 c ☐		44	2,087.
	45	**Alternative minimum tax** (see instructions). Attach Form 6251		45	
	46	Excess advance premium tax credit repayment. Attach Form 8962		46	3,660.
	47	Add lines 44, 45, and 46 ▶		47	5,747.
	48	Foreign tax credit. Attach Form 1116 if required	48 136.		
	49	Credit for child and dependent care expenses. Attach Form 2441	49		
	50	Education credits from Form 8863, line 19	50		
	51	Retirement savings contributions credit. Attach Form 8880	51		
	52	Child tax credit. Attach Schedule 8812, if required	52		
	53	Residential energy credits. Attach Form 5695	53		
	54	Other credits from Form: a ☐ 3800 b ☐ 8801 c ☐	54		
	55	Add lines 48 through 54. These are your **total credits**		55	136.
	56	Subtract line 55 from line 47. If line 55 is more than line 47, enter -0- ▶		56	5,611.
Other Taxes	57	Self-employment tax. Attach Schedule SE		57	
	58	Unreported social security and Medicare tax from Form: a ☐ 4137 b ☐ 8919		58	
	59	Additional tax on IRAs, other qualified retirement plans, etc. Attach Form 5329 if required		59	
	60a	Household employment taxes from Schedule H		60a	
	b	First-time homebuyer credit repayment. Attach Form 5405 if required		60b	
	61	Health care: individual responsibility (see instructions) Full-year coverage ☒		61	
	62	Taxes from: a ☐ Form 8959 b ☐ Form 8960 c ☐ Instructions; enter code(s)		62	
	63	Add lines 56 through 62. This is your **total tax** ▶		63	5,611.
Payments	64	Federal income tax withheld from Forms W-2 and 1099	64 1,275.		
	65	2015 estimated tax payments and amount applied from 2014 return	65		

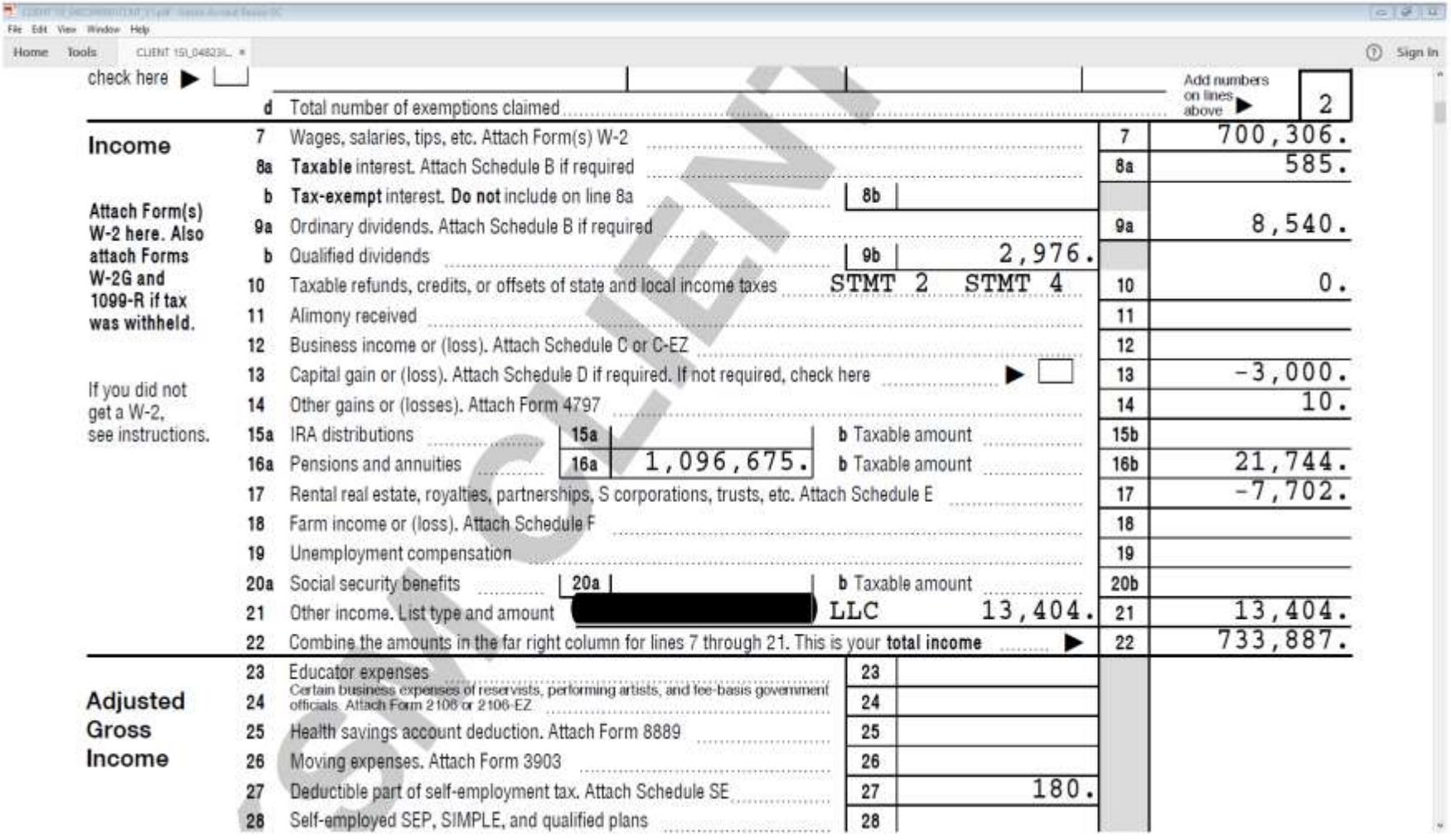
HOLISTIC FINANCIAL PARTNERS

Capital Loss Carryovers

Who is entitled to the capital loss carryover?

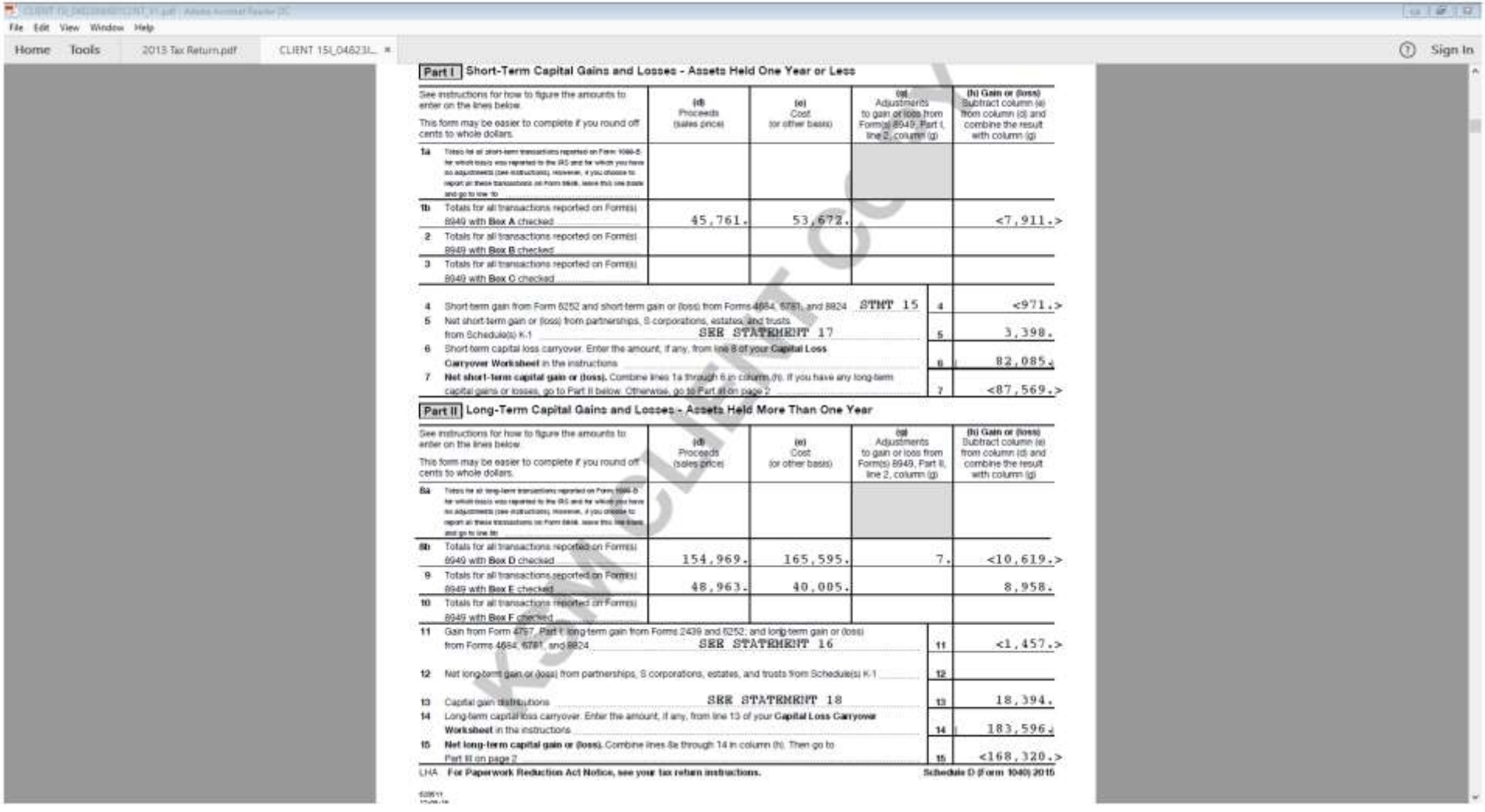
- It depends on who owned the assets
  - If joint ownership, then the losses are split
  - If individual ownership, then the loss belongs to the individual. An analysis of past tax returns in necessary to appropriately divide the carryover

Capital Loss Carryovers



check here ▶ ☐	d	Total number of exemptions claimed		Add numbers on lines above ▶	2
Income	7	Wages, salaries, tips, etc. Attach Form(s) W-2		7	700,306.
	8a	**Taxable** interest. Attach Schedule B if required		8a	585.
	b	**Tax-exempt** interest. **Do not** include on line 8a	8b		
Attach Form(s) W-2 here. Also attach Forms W-2G and 1099-R if tax was withheld.	9a	Ordinary dividends. Attach Schedule B if required		9a	8,540.
	b	Qualified dividends	9b 2,976.		
	10	Taxable refunds, credits, or offsets of state and local income taxes	STMT 2 STMT 4	10	0.
	11	Alimony received		11	
	12	Business income or (loss). Attach Schedule C or C-EZ		12	
	13	Capital gain or (loss). Attach Schedule D if required. If not required, check here ▶ ☐		13	-3,000.
If you did not get a W-2, see instructions.	14	Other gains or (losses). Attach Form 4797		14	10.
	15a	IRA distributions	15a	b Taxable amount	15b
	16a	Pensions and annuities	16a 1,096,675.	b Taxable amount	16b 21,744.
	17	Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E		17	-7,702.
	18	Farm income or (loss). Attach Schedule F		18	
	19	Unemployment compensation		19	
	20a	Social security benefits	20a [redacted]	b Taxable amount	20b
	21	Other income. List type and amount	LLC 13,404.	21	13,404.
	22	Combine the amounts in the far right column for lines 7 through 21. This is your **total income** ▶		22	733,887.
Adjusted Gross Income	23	Educator expenses	23		
	24	Certain business expenses of reservists, performing artists, and fee-basis government officials. Attach Form 2106 or 2106-EZ	24		
	25	Health savings account deduction. Attach Form 8889	25		
	26	Moving expenses. Attach Form 3903	26		
	27	Deductible part of self-employment tax. Attach Schedule SE	27 180.		
	28	Self-employed SEP, SIMPLE, and qualified plans	28		

Capital Loss Carryovers



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Part I Short-Term Capital Gains and Losses - Assets Held One Year or Less

See instructions for how to figure the amounts to enter on the lines below. This form may be easier to complete if you round off cents to whole dollars.	(d) Proceeds (sales price)	(e) Cost (or other basis)	(g) Adjustments to gain or loss from Form(s) 8949, Part I, line 2, column (g)	(h) Gain or (loss) Subtract column (e) from column (d) and combine the result with column (g)
1a Totals for all short-term transactions reported on Form 1099-B for which basis was reported to the IRS and for which you have no adjustments (see instructions). However, if you choose to report all these transactions on Form 8949, leave this line blank and go to line 1b				
1b Totals for all transactions reported on Form(s) 8949 with Box A checked	45,761.	53,672.		<7,911.>
2 Totals for all transactions reported on Form(s) 8949 with Box B checked				
3 Totals for all transactions reported on Form(s) 8949 with Box C checked				

4	Short-term gain from Form 6252 and short-term gain or (loss) from Forms 4684, 6781, and 8824 STMT 15	4	<971.>
5	Net short-term gain or (loss) from partnerships, S corporations, estates, and trusts from Schedule(s) K-1 SEE STATEMENT 17	5	3,398.
6	Short-term capital loss carryover. Enter the amount, if any, from line 8 of your **Capital Loss Carryover Worksheet** in the instructions	6	82,085.
7	**Net short-term capital gain or (loss).** Combine lines 1a through 6 in column (h). If you have any long-term capital gains or losses, go to Part II below. Otherwise, go to Part III on page 2	7	<87,569.>

Part II Long-Term Capital Gains and Losses - Assets Held More Than One Year

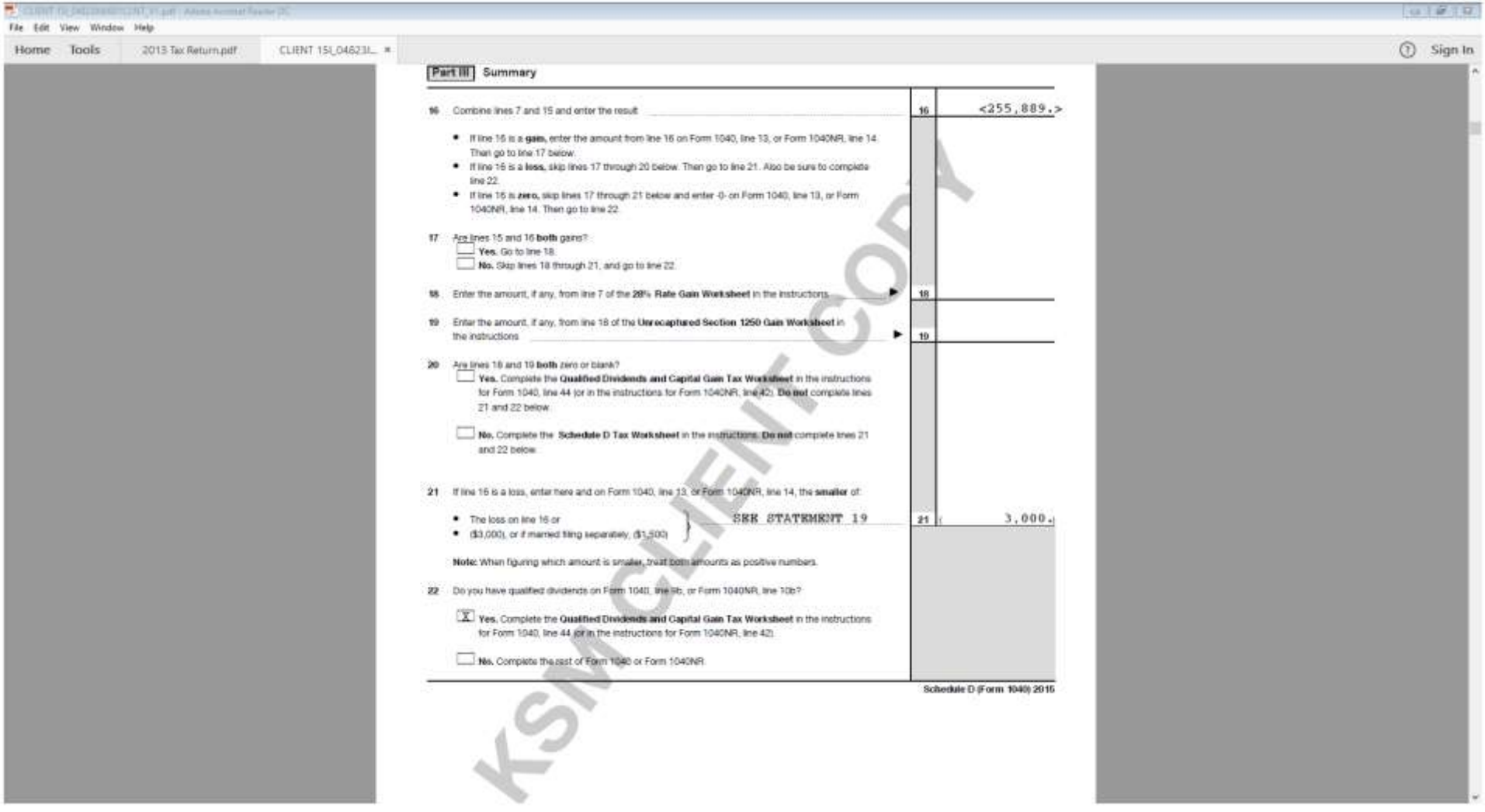
See instructions for how to figure the amounts to enter on the lines below. This form may be easier to complete if you round off cents to whole dollars.	(d) Proceeds (sales price)	(e) Cost (or other basis)	(g) Adjustments to gain or loss from Form(s) 8949, Part II, line 2, column (g)	(h) Gain or (loss) Subtract column (e) from column (d) and combine the result with column (g)
8a Totals for all long-term transactions reported on Form 1099-B for which basis was reported to the IRS and for which you have no adjustments (see instructions). However, if you choose to report all these transactions on Form 8949, leave this line blank and go to line 8b				
8b Totals for all transactions reported on Form(s) 8949 with Box D checked	154,969.	165,595.	7.	<10,619.>
9 Totals for all transactions reported on Form(s) 8949 with Box E checked	48,963.	40,005.		8,958.
10 Totals for all transactions reported on Form(s) 8949 with Box F checked				

11	Gain from Form 4797, Part I; long-term gain from Forms 2439 and 6252; and long-term gain or (loss) from Forms 4684, 6781, and 8824 SEE STATEMENT 16	11	<1,457.>
12	Net long-term gain or (loss) from partnerships, S corporations, estates, and trusts from Schedule(s) K-1	12	
13	Capital gain distributions SEE STATEMENT 18	13	18,394.
14	Long-term capital loss carryover. Enter the amount, if any, from line 13 of your **Capital Loss Carryover Worksheet** in the instructions	14	183,596.
15	**Net long-term capital gain or (loss).** Combine lines 8a through 14 in column (h). Then go to Part III on page 2	15	<168,320.>

LHA **For Paperwork Reduction Act Notice, see your tax return instructions.** Schedule D (Form 1040) 2015

HOLISTIC FINANCIAL PARTNERS

Capital Loss Carryovers



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Part III Summary

16	Combine lines 7 and 15 and enter the result	16	<255,889.>
	• If line 16 is a **gain,** enter the amount from line 16 on Form 1040, line 13, or Form 1040NR, line 14. Then go to line 17 below. • If line 16 is a **loss,** skip lines 17 through 20 below. Then go to line 21. Also be sure to complete line 22. • If line 16 is **zero,** skip lines 17 through 21 below and enter -0- on Form 1040, line 13, or Form 1040NR, line 14. Then go to line 22.		
17	Are lines 15 and 16 **both** gains? ☐ **Yes.** Go to line 18. ☐ **No.** Skip lines 18 through 21, and go to line 22.		
18	Enter the amount, if any, from line 7 of the **28% Rate Gain Worksheet** in the instructions ▶	18	
19	Enter the amount, if any, from line 18 of the **Unrecaptured Section 1250 Gain Worksheet** in the instructions ▶	19	
20	Are lines 18 and 19 **both** zero or blank? ☐ **Yes.** Complete the **Qualified Dividends and Capital Gain Tax Worksheet** in the instructions for Form 1040, line 44 (or in the instructions for Form 1040NR, line 42). **Do not** complete lines 21 and 22 below. ☐ **No.** Complete the **Schedule D Tax Worksheet** in the instructions. **Do not** complete lines 21 and 22 below.		
21	If line 16 is a loss, enter here and on Form 1040, line 13, or Form 1040NR, line 14, the **smaller** of: • The loss on line 16 or • ($3,000), or if married filing separately, ($1,500) SEE STATEMENT 19 **Note:** When figuring which amount is smaller, treat both amounts as positive numbers.	21	(3,000.)
22	Do you have qualified dividends on Form 1040, line 9b, or Form 1040NR, line 10b? ☒ **Yes.** Complete the **Qualified Dividends and Capital Gain Tax Worksheet** in the instructions for Form 1040, line 44 (or in the instructions for Form 1040NR, line 42). ☐ **No.** Complete the rest of Form 1040 or Form 1040NR.		

Schedule D (Form 1040) 2015

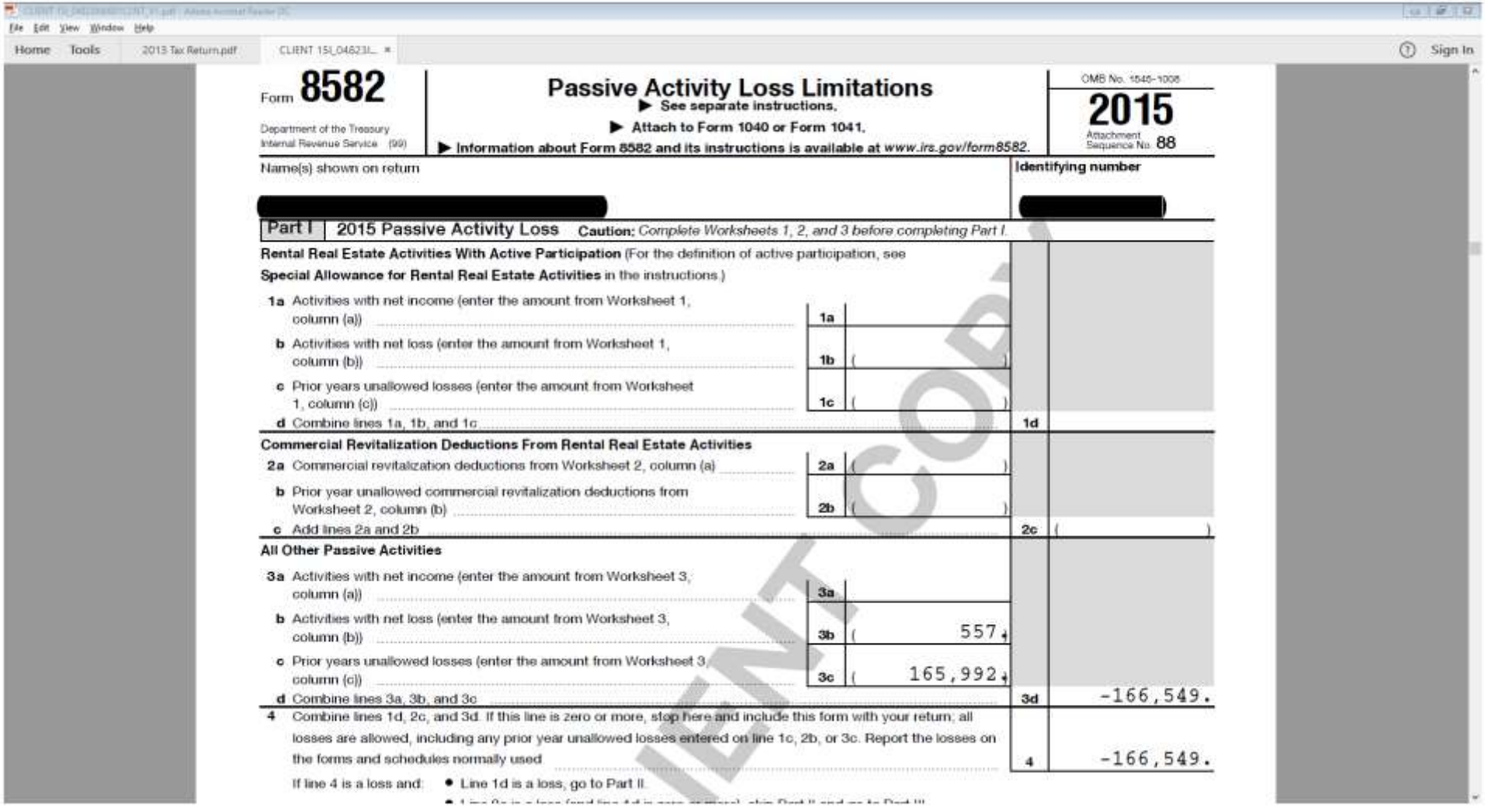
HOLISTIC FINANCIAL PARTNERS

Passive Loss Carryforwards

Who is entitled to the passive activity loss carryover?

- They follow the owner of the business/investment.
  - If the non-owner spouse gets some ownership in the business/investment their portion of the suspended loss cannot be used in future years against passive income. Instead it is added to the basis. This only provides a monetary benefit to the non-owner spouse when the passive business is disposed of

Passive Loss Carryforwards



Form **8582**

Department of the Treasury
Internal Revenue Service (99)

Passive Activity Loss Limitations

▶ See separate instructions.
▶ Attach to Form 1040 or Form 1041.
▶ Information about Form 8582 and its instructions is available at www.irs.gov/form8582.

OMB No. 1545-1008

2015

Attachment Sequence No. 88

Name(s) shown on return | Identifying number

[redacted] | [redacted]

Part I 2015 Passive Activity Loss **Caution:** *Complete Worksheets 1, 2, and 3 before completing Part I.*

Rental Real Estate Activities With Active Participation (For the definition of active participation, see **Special Allowance for Rental Real Estate Activities** in the instructions.)

1a	Activities with net income (enter the amount from Worksheet 1, column (a))	1a		
b	Activities with net loss (enter the amount from Worksheet 1, column (b))	1b	( )	
c	Prior years unallowed losses (enter the amount from Worksheet 1, column (c))	1c	( )	
d	Combine lines 1a, 1b, and 1c			1d

Commercial Revitalization Deductions From Rental Real Estate Activities

2a	Commercial revitalization deductions from Worksheet 2, column (a)	2a	( )	
b	Prior year unallowed commercial revitalization deductions from Worksheet 2, column (b)	2b	( )	
c	Add lines 2a and 2b			2c ( )

All Other Passive Activities

3a	Activities with net income (enter the amount from Worksheet 3, column (a))	3a		
b	Activities with net loss (enter the amount from Worksheet 3, column (b))	3b	(557.	
c	Prior years unallowed losses (enter the amount from Worksheet 3, column (c))	3c	(165,992.	
d	Combine lines 3a, 3b, and 3c			3d -166,549.

4	Combine lines 1d, 2c, and 3d. If this line is zero or more, stop here and include this form with your return; all losses are allowed, including any prior year unallowed losses entered on line 1c, 2b, or 3c. Report the losses on the forms and schedules normally used	4	-166,549.

If line 4 is a loss and: • Line 1d is a loss, go to Part II.

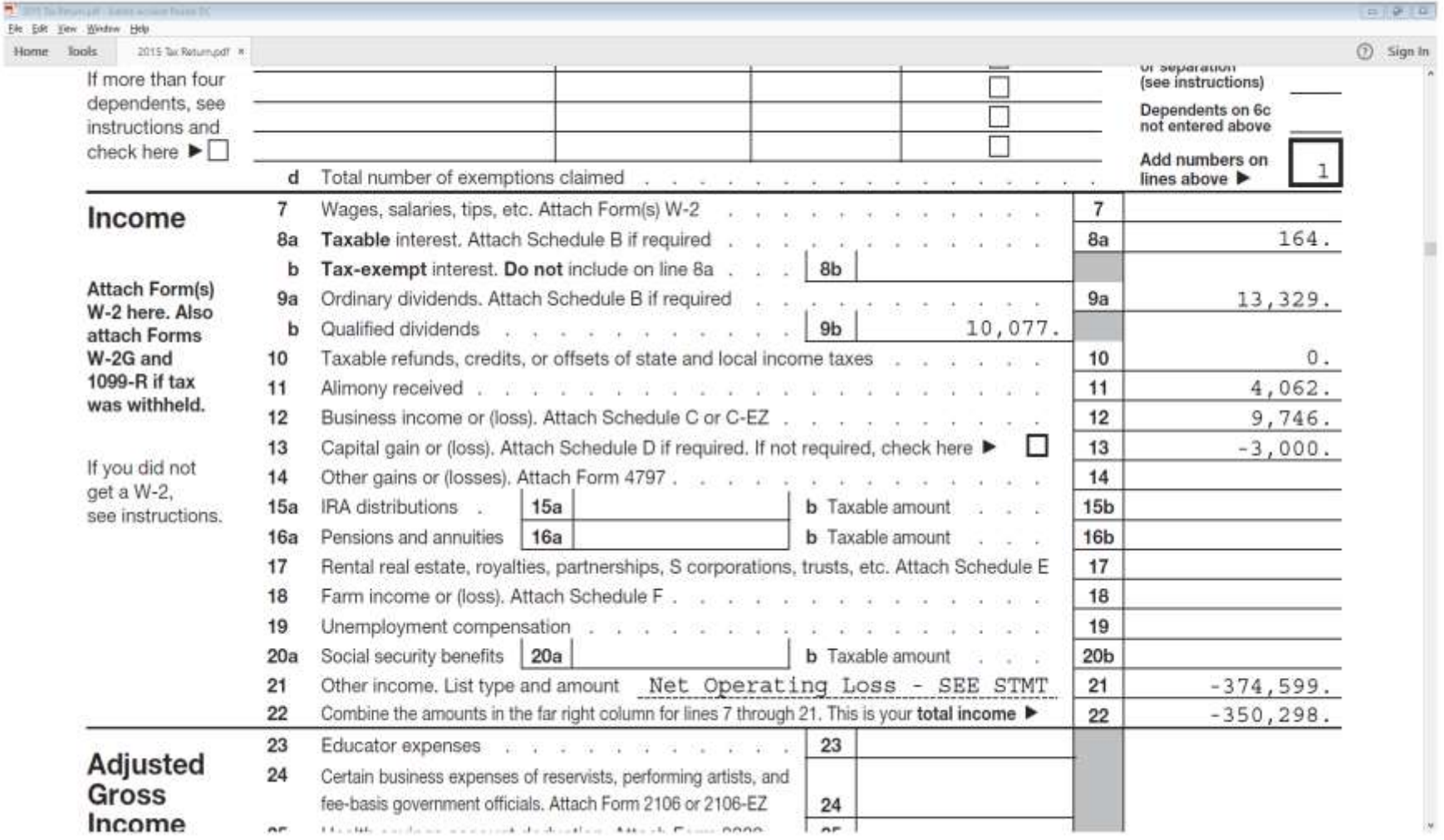
HOLISTIC FINANCIAL PARTNERS

Net Operating Loss Carryforwards

Who is entitled to the net operating loss carryforward?

- Because they originate from either a single member LLC or a sole proprietorship they are allocated 50/50 between spouses

Net Operating Loss Carryforwards



If more than four dependents, see instructions and check here ▶ ☐					
	d	Total number of exemptions claimed			
Income	7	Wages, salaries, tips, etc. Attach Form(s) W-2		7	
	8a	**Taxable** interest. Attach Schedule B if required		8a	164.
	b	**Tax-exempt** interest. **Do not** include on line 8a	8b		
Attach Form(s) W-2 here. Also attach Forms W-2G and 1099-R if tax was withheld.	9a	Ordinary dividends. Attach Schedule B if required		9a	13,329.
	b	Qualified dividends	9b 10,077.		
	10	Taxable refunds, credits, or offsets of state and local income taxes		10	0.
	11	Alimony received		11	4,062.
	12	Business income or (loss). Attach Schedule C or C-EZ		12	9,746.
	13	Capital gain or (loss). Attach Schedule D if required. If not required, check here ▶ ☐		13	-3,000.
If you did not get a W-2, see instructions.	14	Other gains or (losses). Attach Form 4797		14	
	15a	IRA distributions 15a	b Taxable amount	15b	
	16a	Pensions and annuities 16a	b Taxable amount	16b	
	17	Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E		17	
	18	Farm income or (loss). Attach Schedule F		18	
	19	Unemployment compensation		19	
	20a	Social security benefits 20a	b Taxable amount	20b	
	21	Other income. List type and amount Net Operating Loss - SEE STMT		21	-374,599.
	22	Combine the amounts in the far right column for lines 7 through 21. This is your **total income** ▶		22	-350,298.
Adjusted Gross Income	23	Educator expenses	23		
	24	Certain business expenses of reservists, performing artists, and fee-basis government officials. Attach Form 2106 or 2106-EZ	24		

HOLISTIC FINANCIAL PARTNERS

WHY USE US DURING THE DIVORCE

- Can objectively “set the financial stage” for the client
- Review decrees to help determine if there are hidden tax traps or perhaps a more creative structure
- As CDFA and with 100% of our focus on divorce clients, this is what we do all day, every day.
- We understand the issues, but know to “stay away from legal advice”
- We don’t charge during the divorce as our goal is to work with clients long-term where we provide most value

QUESTIONS?

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HOLISTIC
FINANCIAL PARTNERS

Section Three

Not Every Child Support Calculation is Straightforward: Child Support Calculation Nuances

By:
James A. Reed,
Dentons Bingham Greenebaum, LLP

and

Mark A. Glazier,
Cross, Glazier, Burroughs, P.C.

With Written Materials By:
Michael R. Kohlhaas
Dentons Bingham Greenebaum, LLP

and

David L. Morris (Unequal Parenting Time Materials)

September 24, 2020 at 1:15pm

Section Three

Not Every Child Support Calculation is Straightforward: Child Support Calculation Nuances……...James A. Reed
Mark A. Glazier
Michael R. Kohlhaas

Assumptions: All of the following calculations begin with the following "base assumptions," and then makes deviations in each scenario:

Base Calculation Assumptions:

- Father has a gross weekly income of $1,000.
- Mother has a gross weekly income of $500.
- There are two (2) children who are subjects of the order.
- Mother has primary physical custody of the children, subject to Father having 98 overnights (IPTG) per year.
- This calculation uses the state calculator at: https://public.courts.in.gov/csc#/practitioner-financials
- This produces a base child support obligation of Father paying Mother **$164/wk**. See attachment "Base"

Nuanced Scenario #1: Father Has a Support Order for a Prior Born Child

Same assumptions as the Base Calculation, except:

- Father has an existing Court order to pay child support in the amount of $60/wk for a previous child.

This adjustment is added to Line 1(C) of the worksheet. The adjustment reduces Father's child support from $164/wk in the Base Calculation to **$154/wk**. (See Attachment #1.)

The reduction is a result of lowering Father's weekly gross income in the instant calculation by the amount of his support obligation to the prior born. In other words, instead of using $1,000/wk for Father's gross income as in the Base Calculation, this calculation assumes that Father's gross weekly income is $940/wk. (See Line 1(E) of attachment #1.)

Note: this deduction to Father's gross weekly income can be based upon not only an obligation to pay weekly child support, but also an ordered obligation to pay college expenses for a prior born child.

See Ind. Child Supp. Guideline 3(C)(2) for additional discussion.

Nuanced Scenario #2: Mother Has a Subsequent Child

Same assumptions as the Base Calculation, except:

- Since her relationship with Father ended, Mother remarried and has a new child

This adjustment is added to Line 1(A) of the worksheet. Ironically, perhaps, Mother having additional subsequent children serves to increase Father's child support from $164/wk in the Base Calculation to **$167/wk**. See Attachment #2.

The small increase in Father's child support is a result of lowering Mother's weekly gross income in the instant calculation by the "Subsequent Child Multiplier Credit." The Subsequent Child Multiplier Credit is .065 for one subsequent child, .097 for two subsequent children, .122 for three subsequent children, and so on. The applicable fractional credit amount is multiplied by Mother's gross weekly income ($500 x .065 = $32.50). See Line 1(A) of Attachment #2. The resulting credit is then deducted from Mother's $500/wk gross weekly income.

In other words, instead of using $500/wk for Mother's gross income as in the Base Calculation, this calculation assumes that Mother's gross weekly income is $467.50/wk. (See Line 1(E) of Attachment #2.)

Note: In order to qualify for this adjustment, Mother must have either a legal obligation or a formal court order to support the subsequent child *and* must be meeting that obligation.

See Ind. Child Supp. Guideline 3(C)(1) for additional discussion.

Nuanced Scenario #3: Mother Receives $50/wk Social Security Benefits for Children as a Result of Father's Disability

In this example, Mother, as the custodial parent, receives Social Security Disability benefits, as the representative payee of the children, of $50/wk arising from Father's disability.

In this scenario, the $50/wk in benefits is both (a) added to Father's income; and (b) credited to Father against his child support obligation. The credit is automatic.

Same assumptions as the Base Calculation, except:

- Father's income is increased by $50/wk; and
- The resulting child support obligation is reduced by $50/wk as a credit to Father.

See Attachment #3. Father's income is increased from $1,000/wk to $1,050/wk at Line 1.

Once the provisional new child support amount of $173/wk is calculated, Father then receives his automatic credit in the amount of $50/wk. This results in a child support order of **$123/wk** ($173 - $50 = $123.)

See Ind. Child Supp. Guideline 3(G)(5)(a)(2)(ii) for additional discussion.

Nuanced Scenario #4: Split Custody

Here, all of the base calculation assumptions hold, except that rather than Mother having primary physical custody of *both* children, subject to Father's IPTG parenting time, each of the parents has primary physical custody of *one child* subject to the IPTG parenting time schedule of the other.

This scenario requires generating *two* child support worksheets. The first is the same as the base assumed calculation, above, except that the number of children is reduced from two children to one child. This first worksheet results in a child support obligation from Father to Mother in the amount of **$109/wk**. (See attachment #4A.)

The second worksheet is identical to the first worksheet (for one child), but the parenting time schedule is reversed so that Father is at "184+" overnights and Mother is at "96-100" overnights. This worksheet results in a child support obligation from Mother to Father in the amount of **$28/wk**. (See attachment #4B.)

Then, these corresponding child support obligations are netted out against each other ($109 – $28 = $81), for a final child support obligation from Father to Mother in the amount of **$81/wk**.

See Ind. Child Supp. Guideline 6 at Commentary for additional discussion.

Covid-19 Era Considerations:

a. PPP loan forgiveness
b. Business is bad-this year only?
c. Business is good—this year only?
d. Retained earnings—"writing on the wall"—business is going to go down..

guidelines; and (B) the order requested to be modified or revoked was issued at least twelve (12) months before the petition requesting modification was filed. (Emphasis added.)

3. The Commentary to Guideline 4 reflects the correct state of the law; the Guideline itself does not. Confusion over the governing standards for modifying support continues. *See, e.g, Patton v. Patton*, — N.E.3d — (Ind.Ct.App., No. 17A04-1503-DR-137, 12/11/15) (trial court erred when, in adjudicating a noncustodial father's request to modify his child support obligation, it failed to consider that one child's emancipation constitutes a substantial and continuing change of circumstances that may warrant a modification, even if the amount of the change from the previous order is not more than 20%).

4. Furthermore, as a matter of elementary logic, a difference of more than 20% between an existing and newly computed child support order does not necessarily constitute a "substantial and continuing change of circumstances." To hold otherwise would render IC § 31-16-8-1(b)(2) superfluous. Conversely, however, it is unlikely that a change in the order of less than 20% would constitute changed circumstances absent the presence of other factors. *See MacLafferty v. MacLafferty*, 829 N.E.2d 938 (Ind. 2005) ("Indeed, it is hard to see the reason the Legislature would have enacted subsection (2) at all if a parent could receive a modification under Subsection (1) where the only changed circumstance alleged would change one parent's payment by less than 20%.") *Id.* at 943.

5. Finally, the Commentary to Guideline 4 misstates the applicable statutory provision governing modifications of child support orders in paternity cases by citing to IC § 31-14-11-8. That section was repealed in 2013 by P.L.207-2013, § 26. Effective May 9, 2013, IC § 31-16-8-1 has governed modifications in both dissolution and paternity cases.[19]

M. Unequal Parenting Time with Multiple Children - The Guidelines do not address how to compute a parenting time credit where the parties have more than one child between them and parenting time occurs in different amounts. There are two methods used in practice. Method 1, below, is recommended.

1. Method 1 enters on Line 1PT the average number of overnights exercised by all of the children. To calculate, add up the total number of overnights exercised by each child, and then divide the total by the number of children. This method is mathematically simple, but will deprive a noncustodial parent of *any* parenting time credit if the average number of overnights falls below 52.[20] Whether this is equitable depends upon one's point of

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[19]IC § 31-14-11-2.3, which governs paternity actions, provides: "A child support order issued under this chapter is subject to the provisions in IC 31-16-6 through IC 31-16-13." Added by P.L.207-2013, SEC.20, effective May 9, 2013.

[20]*See, e.g., Hartley v. Hartley*, 862 N.E.2d 274, 286, n. 9 (Ind.Ct.App.2007) (overnight credit for three children requires exercising at least 156 total number of overnights).

view. Arguably, such a result is consistent with the Guidelines' policy that a noncustodial parent should not receive a credit for overnight visitation occurring below a minimum threshold. Moreover, a court is free to alter the parenting time credit provided it explains its methodology in doing so.

2. Method 2 determines the credit as if all of the children exercise overnights equal to the child that spends the highest number of overnights, and then pro rates the credit based on the total number of overnights actually exercised. This method will provide at least some credit in a larger number of cases than Method 1, because Method 1 requires the average number of overnights to equal or exceed 52 overnights while Method 2 does not.

3. Both approaches have advantages and disadvantages; both have been upheld on appeal.[21] In either case, complete only one parenting time credit worksheet and explain the calculation on the worksheet or in the order. Do not complete separate parenting time credit worksheets for children residing with the same parent. Doing so improperly amplifies the credit by replicating the Guideline support amount from Line 4 CSOW multiple times.[22]

4. Example — The parties have three children between them. Father exercises 68 overnights with Child A, 70 overnights with Child B, and 0 overnights with Child C.

   a. Method 1 — Add the total number of overnights exercised by all three children (68 + 70 + 0 = 138). Next, divide this number (138) by the number of children (3), which equals 46. Complete the PT Credit Worksheet using 46 as the annual number of overnights on Line 1PT. Since this number is less than 52, no overnight credit is awarded.

   b. Method 2 — Calculate parenting time as if Father exercised 70 overnights with all three children. Use 70 overnights on Line 1PT. Determine Father's parenting time credit by completing the PT Credit Worksheet. Then, pro-rate the credit obtained as follows:

      (1) Calculate the total number of overnights Father *actually exercises* (68 +70 + 0 = 138);

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[21] *Compare Hartley v. Hartley*, 862 N.E.2d 274, 286 (Ind.Ct.App.2007) (trial court did not abuse its discretion in averaging the total number of overnights in deriving the parenting time credit, nor would it have been error if the court had instead pro-rated the credit), with *In re Marriage of Blanford*, 937 N.E.2d 356, 361-62 (Ind.Ct.App.2010) (averaging the total number of overnights might award too much or too little parenting time credit. Given the lack of direction from the Guidelines, the trial court "may adjust the number of days of overnight credit to reach what appears to be an appropriate result for setting [a] weekly support obligation" and "must explain the reasons for its use of the specific number of days of overnight credit in its order.")

[22] Split custody arrangements still require separate child support and parenting time credit worksheets.

(2) Calculate the total number overnights Father would have exercised if all three children had spent overnight as much as the child who spent the most, in this case Child B, who spent 70 overnights. This is the total *potential* number of overnights (70 x 3 = 210);

(3) Divide the number of overnights actually exercised by the total potential number of overnights. The resulting quotient is the pro rata percentage. (138 ÷ 210 = .657 (rounded to .66, or 66%)).

(4) Multiply the pro rata percentage by the credit obtained for all three children to derive the pro rated credit. If Father's PT credit for all three children would be $100, his apportioned credit is $65.70, rounded to $66.00 ($100 x .657 = 65.70).[23]

N. Voluntary Unemployment / Underemployment -

1. Query: Does voluntary unemployment without just cause under Guideline 3(A) require a parent's subjective motivation to gain advantage in a child support order? What exactly does "without just cause" mean? The clause was added to Guideline 3(A) in 2010; did the drafters intend by adding it to change the Guideline's meaning?

2. Compare, for example, *Kondamuri v. Kondamuri*, 852 N.E.2d 939, 950 (Ind.Ct.App.2006) ("The trial court has discretion to impute potential income to a parent if it is convinced the parent's underemployment 'has been contrived for the sole purpose of evading support obligations.' ") (quoting *In re Marriage of Turner v. Turner*, 785 N.E.2d 259, 265 (Ind.Ct.App.2003)), with *In re Paternity of Pickett*, 44 N.E.3d 756 (Ind.Ct.App. 9/23/15) ("We caution that this rephrasing should not be interpreted to mean that potential income may not be imputed unless the court finds that the parent is avoiding the payment of significant child support. While the Guidelines clearly indicate that a parent's avoidance of child support is grounds for imputing potential income, it is not a necessary prerequisite.")

O. Work-Related Child Care Expenses - Should "work-related" child care include expenses while the parent is in school?

1. One Indiana reported decision, *Thomas v. Orlando*, 834 N.E.2d 1055, 1059 (Ind.Ct.App. 2005), opined that "[i]t is apparent to us that becoming a full-time student is an inherently work-related activity in that it is designed to improve employment prospects and increase income potential. Education is designed to benefit the parent and the child,

[23]The Method 2 computation is considerably simpler where there are only two children or where parenting time occurs with only one child. For example, if Father has three children but exercises overnights with only one, divide the credit obtained on Line 9PT by three.

Section Four

Incorporating Custody Evaluation Recommendations in Divorce Mediation

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Section Four

ICLEF CME for Family Mediators 2020

Incorporating Custody Evaluation Recommendations in Divorce Mediation

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Clinical Psychologist
Custody Evaluator

preliminary considerations

* Obtain the custody/parenting time evaluation report with parents' or court's permission.
* Read the report carefully, attending to the rationale for each recommendation and note any recommendations that do not have adequate rationale.
* Bear in mind that recommendations are often offered as an integrated plan. One recommendation (e.g., reunification therapy) may not be indicated unless another recommendation (e.g., the child's individual therapy) is implemented.

preliminary considerations

* At the outset, secure permission to contact the evaluator for clarification of ambiguities. Do not wait until an issue arises.
* Remind the parents that it is hard to objective about your children – that is why mental health professionals cannot treat family members.
* Be clear that the goals are to
  * develop a sustainable parenting plan that promotes healthy child development and
  * prevent coparent conflict, emotions, and reactions that impede progress toward the goal.

setting ground rules

* Shifting away from “custody battle” mentality and litigation toward shared concerns for child welfare and developing a sustainable parenting plan.
* No dwelling in the past.
* No derogation.
* No mind reading.
* No crystal ball gazing.
* Specify ground rules in a written agreement.

additional preparation

* Assign relevant readings:
  * Overcoming the Co-parent Trap. Moran, Sullivan, and Sullivan.
  * Co-parenting 101. Philyaw and Thomas.
  * So, What's Your Proposal? Bill Eddy.
* Impress upon the parents that coparent conflict is the best predictor of poor mental health outcome for the child.

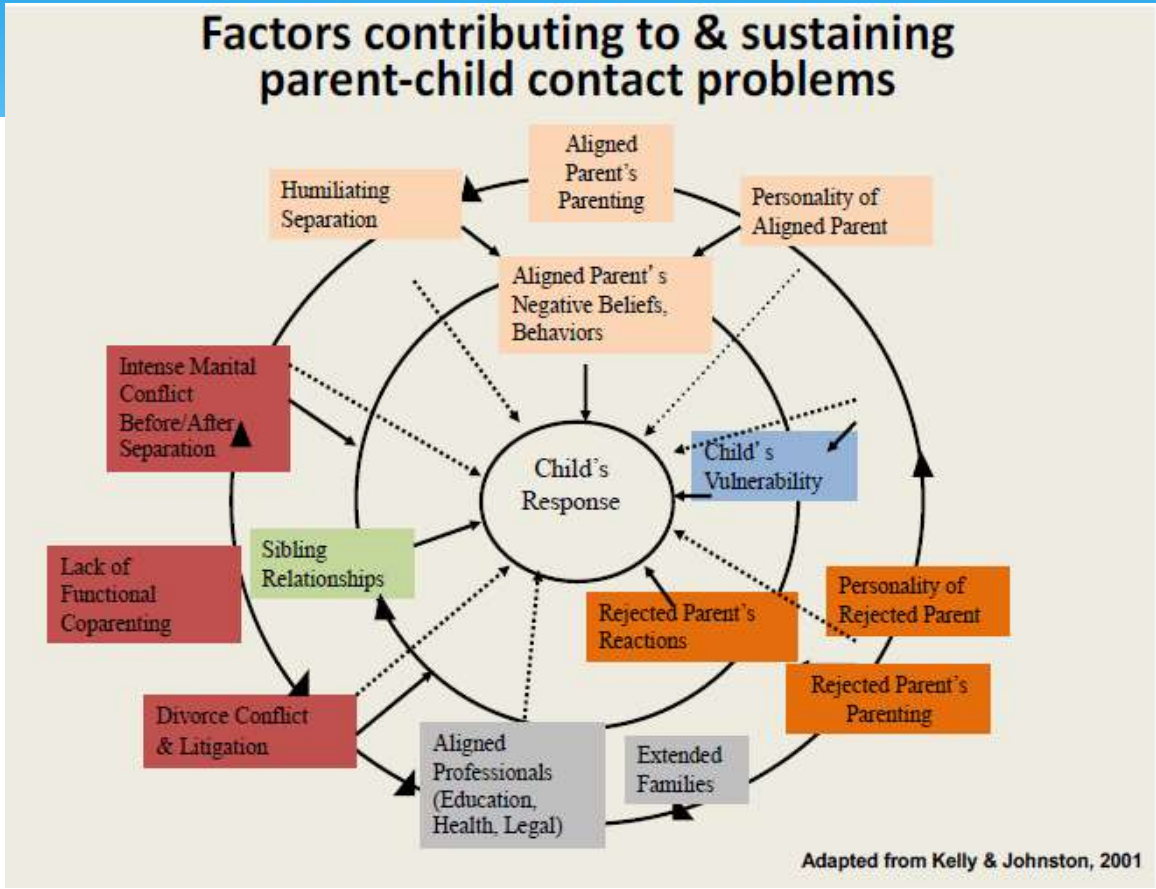
additional preparation

* Focus on negotiation skills (see So What's Your Proposal?).
  * problem identification and staying focused on the problem (e.g., turning ultimatums into specific concerns)
  * listening without judgment
  * validation
  * emotional regulation (breathe, take a break, focus on facts)
  * making proposals
  * responding to proposals

reunification

When resist and refuse dynamics are present, they are almost always addressed by the evaluator.

reunification



Resist and Refuse cases are complicated and almost always have multiple causes.

reunification

* Resist and Refuse behavior will almost always require clinical intervention with a specialist.
* Most of the time, R&R cases will require coparent counseling. Parents will need help in understanding this. Your patience and gentle persistence will be required.

finding the right therapist

* Standard individual and family therapy approaches can actually do more harm than good.
* use AFCC database
* Contact me or someone familiar with the therapists in the area who have experience with post-divorce family problems.

gatekeeping

Three types of gatekeeping: restrictive, protective, facilitative.

gatekeeping and accusations

* Sometimes, restrictive gatekeepers persist even when the evaluator finds no risk to the children with the other parent.
* These parents usually justify their persistence with accusations. (10% – 25% of accusations during custody battles are false; Saini et al., 2020).
* Sometimes, restrictive gatekeepers will relent if their concerns are taken seriously and addressed.

coparent communication

Even the most carefully wrought custody and parenting time recommendations will fail if the coparent communication is poor.

coparent communication

* Coparent counseling is often recommended to build communication skills.
* In severely recalcitrant parents (i.e., compulsively defensive, accusatory, past-dwelling), it may be necessary to implement coparent counseling before mediation.
* If online coparenting courses were recommended, offer to share the experience – ask about it and discuss it. Sometimes it helps to prioritize this intervention.

common objections to recommendations by parents

* “I cannot afford the recommended services.”
  * Help the parents re-sequence or pace the services so they are not all happening at once.
  * Help them wean off litigation so resources can be reallocated.

common objections to recommendations by parents

* "We/I do not need _____ (coparent coaching, individual counseling, online parenting courses, et cetera)."
  * Carefully review the custody evaluation for the rationale for the recommendation.
  * Discuss the consequences of not implementing the recommendation.
  * Point out how previous problems could have been solved more easily if the recommendation had been implemented earlier.

common objections to recommendations by parents

* “We tried that and it didn’t work.”
  * Inform the parent that not all therapy is the same and not all therapists are the same. Clinicians vary in terms of experience, approach, style, and personality. Perhaps they tried family therapy but need a particular type of family therapy.
  * Let the parents know that the context of the recommendation is important. The set of recommendations are meant to work as an integrated plan so the recommended activity may not have “worked” in isolation of other recommendations.

common objections to recommendations by parents

* "The recommendation is impractical (too far to drive, does not fit with work schedule, et cetera)"
  * Help the parents understand the problem the recommendation was meant to solve and seek another approach – probably with the assistance of the evaluator.

common objections to recommendations by parents

* “I can’t get my child to cooperate.” Often seen when reunification therapy is recommended.
  * Ask parent(s) to consider how they would handle school refusal, poor hygiene, refusal to follow basic household rules.
  * Work with parents on presenting a believable, unified front.

if resistance persists

* Identify the problem the recommendation was supposed to address and ask for alternative solutions (So, What's Your Proposal?).
* Have the parents go over the recommendations with a clinician experienced in custody disputes. The clinician should have a copy of the report.
* Perhaps schedule a conference with the attorneys and evaluator to review the problem the recommendation was supposed to address and review the options.

Section Five

Mental Health and Addiction Issues in Divorce Cases

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Section Five

Mental Health and Addiction Issues in Divorce Cases…… Dr. Michael J. Jenuwine J.D., Ph.D.

OVERVIEW OF PERSONALITY DISORDERS
2020 CME for Family Mediators

Michael Jenuwine, PhD, JD

A personality disorder is a way of thinking, feeling and behaving that deviates from the expectations of society, causes distress or problems functioning, and lasts long term. The pattern of experience and behavior begins by late adolescence or early adulthood and causes distress or problems in functioning. Personality disorders can involve (1) extreme and distorted thought patterns, (2) problematic emotional response patterns, (3) a pattern of impulse control problems, and (4) a pattern of significant interpersonal problems. These long-term patterns of dysfunction must not be better explained by an individual's culture, another mental health disorder, substance use, physical illness, or an organic impairment.

Individuals with personality disorders typically do not seek treatment voluntarily. When they do pursue mental health services, it is typically motivated by:

- Another (co-morbid) disorder, such as depression, anxiety, or substance use disorder;
- Legal or employment issues mandating mental health intervention;
- Behavioral issues causing collateral problems, such as frequent fighting, gambling, substance abuse, and sexual acting out;

Personality disorders are diagnosed based on psychological evaluation and testing, personal history, and severity of symptoms. Without treatment, personality disorders can be long-lasting. Personality disorders affect at least two of the following areas:

- Way of thinking about oneself and others
- Way of responding emotionally
- Way of relating to other people
- Way of controlling one's behavior

There are ten different personality disorders under the DSM-V. They can be categorized into the following three clusters or categories:

CLUSTER A ODD OR ECCENTRIC	**CLUSTER B** DRAMATIC, EMOTIONAL, ERRATIC	**CLUSTER C** ANXIOUS OR FEARFUL
• Paranoid • Schizoid • Schizotypal	• Antisocial • Narcissistic • Histrionic • Borderline	• Avoidant • Dependent • Obsessive-Compulsive

ANTISOCIAL PERSONALITY DISORDER –

A pattern of disregarding or violating the rights of others. A person with antisocial personality disorder may not conform to social norms, may repeatedly lie or deceive others, or may act impulsively.

AVOIDANT PERSONALITY DISORDER –

A pattern of extreme shyness, feelings of inadequacy and extreme sensitivity to criticism. People with avoidant personality disorder may be unwilling to get involved with people unless they are certain of being liked, be preoccupied with being criticized or rejected, or may view themselves as not being good enough or socially inept.

BORDERLINE PERSONALITY DISORDER –

A pattern of instability in personal relationships, intense emotions, poor self-image and impulsivity. A person with borderline personality disorder may go to great lengths to avoid being abandoned, have repeated suicide attempts, display inappropriate intense anger or have ongoing feelings of emptiness.

DEPENDENT PERSONALITY DISORDER –

A pattern of needing to be taken care of and submissive and clingy behavior. People with dependent personality disorder may have difficulty making daily decisions without reassurance from others or may feel uncomfortable or helpless when alone because of fear of inability to take care of themselves.

HISTRIONIC PERSONALITY DISORDER –

A pattern of excessive emotion and attention seeking. People with histrionic personality disorder may be uncomfortable when they are not the center of attention, may use physical appearance to draw attention to themselves or have rapidly shifting or exaggerated emotions.

NARCISSISTIC PERSONALITY DISORDER –

A pattern of need for admiration and lack of empathy for others. A person with narcissistic personality disorder may have a grandiose sense of self-importance, a sense of entitlement, take advantage of others or lack empathy.

OBSESSIVE-COMPULSIVE PERSONALITY DISORDER –

A pattern of preoccupation with orderliness, perfection and control. A person with obsessive-compulsive personality disorder may be overly focused on details or schedules, may work excessively not allowing time for leisure or friends, or may be inflexible in their morality and values. (*This is NOT the same as a diagnosis of obsessive-compulsive disorder).*

PARANOID PERSONALITY DISORDER –

A pattern of being suspicious of others and seeing them as mean or spiteful. People with paranoid personality disorder often assume people will harm or deceive them and don't confide in others or become close to them.

SCHIZOID PERSONALITY DISORDER –

Being detached from social relationships and expressing little emotion. A person with schizoid personality disorder typically does not seek close relationships, chooses to be alone and seems to not care about praise or criticism from others.

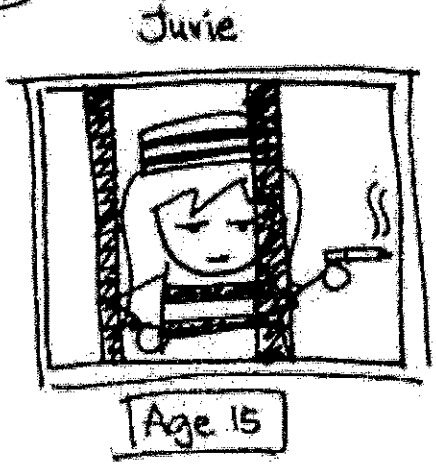
SCHIZOTYPAL PERSONALITY DISORDER –

A pattern of being very uncomfortable in close relationships, having distorted thinking and eccentric behavior. A person with schizotypal personality disorder may have odd beliefs or odd or peculiar behavior or speech or may have excessive social anxiety.

ANTISOCIAL PERSONALITY DISORDER

1. Disregard for + violation of rights of others, since age 15

2.

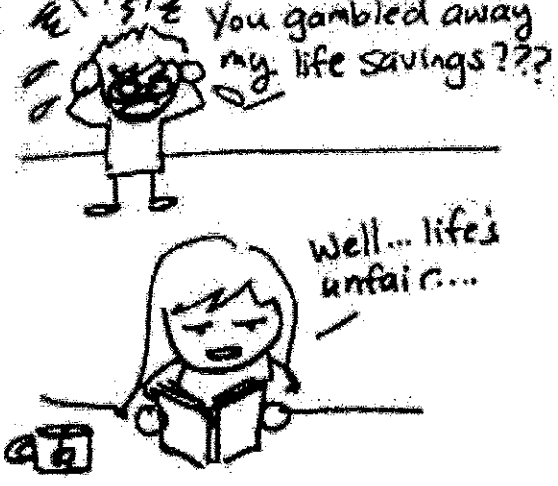


3. Deceitfulness / conning for profit / pleasure

4. Reckless disregard for safety

5. Consistent Irresponsibility

6. Lack of Remorse

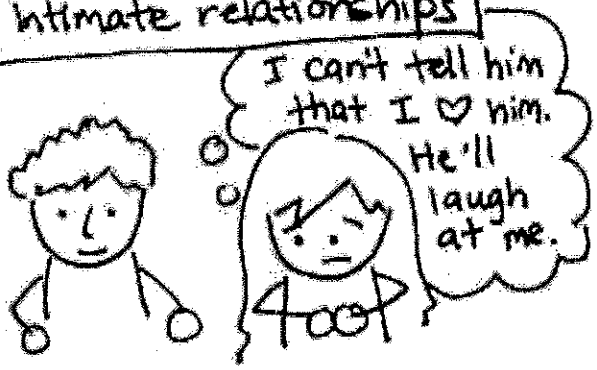


AVOIDANT PERSONALITY DISORDER

1. Avoids activities due to fears of criticism

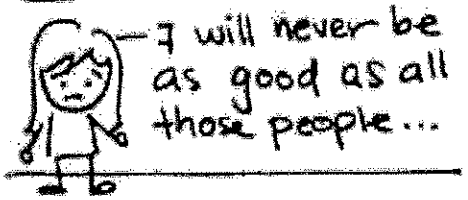
2. My outfit is no good. I'll just cancel this job interview today...

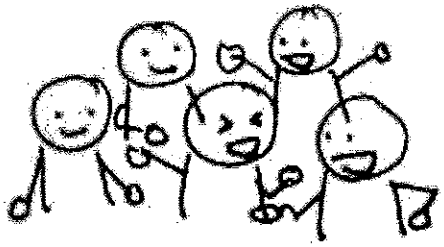
3. Restraint in intimate relationships



4. Preoccupied with being rejected

5. Views self as inferior to others





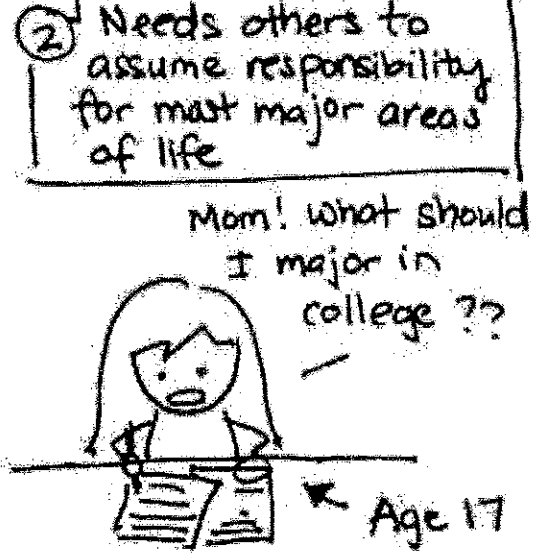
6. Reluctant to take risks

BORDERLINE PERSONALITY DISORDER

DEPENDENT PERSONALITY DISORDER

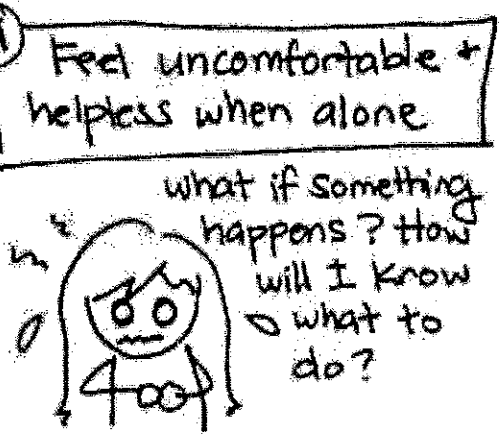
1. Difficulty making everyday decisions w/o excessive reassurance

2. Needs others to assume responsibility for most major areas of life

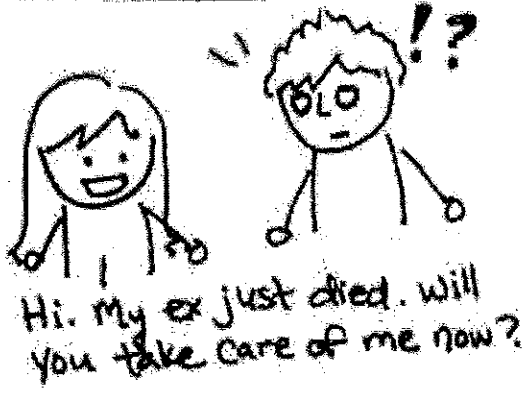


3. Difficulty expressing disagreement due to fear of loss of support

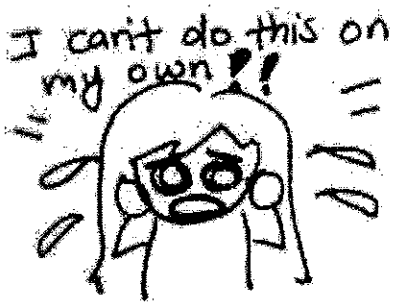
4. Feel uncomfortable + helpless when alone



5. Urgently seeks another relationship as source of support when a close relationship ends.

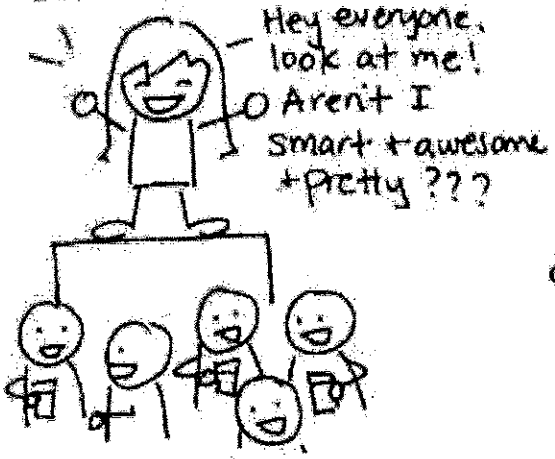


6. Unrealistically preoccupied w/fears of having to take care of self

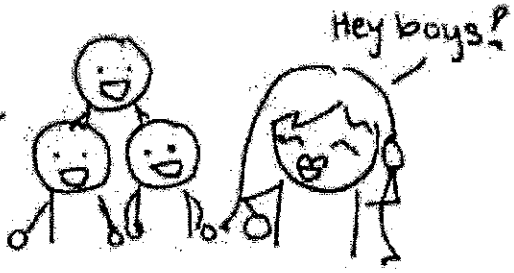


HISTRIONIC PERSONALITY DISORDER

1. Wants constant attention and praise

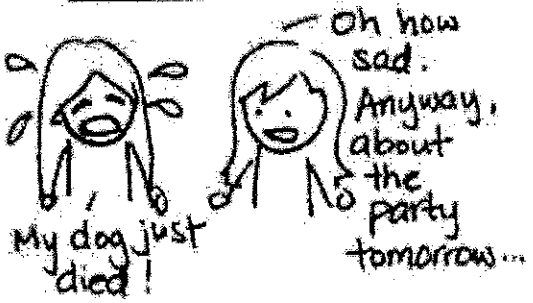


2. Inappropriately seductive

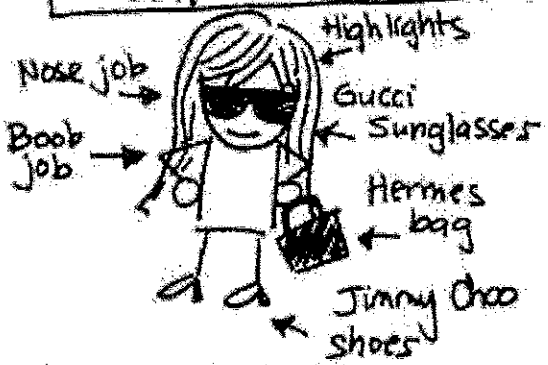


(At the staff meeting at work.)

3. Display of shallow emotions



4. Use physical appearance to draw attention to self



5. Exaggerate expression of emotion

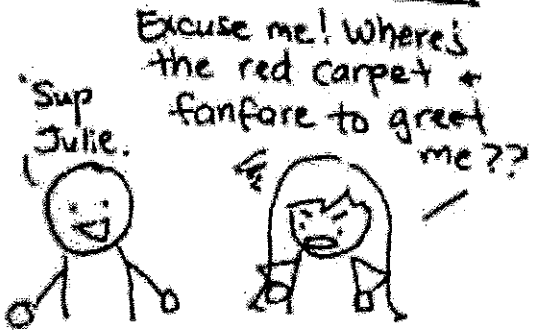
6. Easily influenced by others

NARCISSISTIC PERSONALITY DISORDER

1. Grandiose sense of self-importance

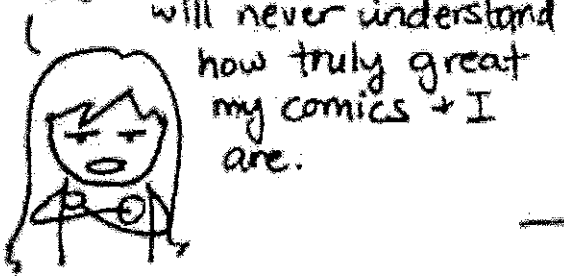
I AM ridiculously good looking + my famous comics are a form of art!

2. Requires excessive admiration



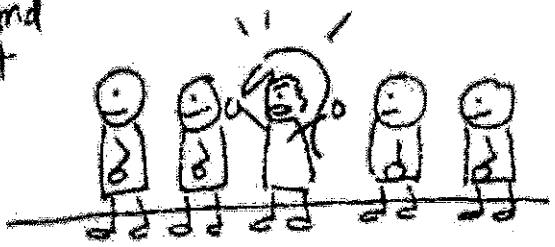
3. Believes she is "special" + unique with high status

whatever. These stupid ugly non-artistic people will never understand how truly great my comics + I are.



4. Sense of entitlement

I have to wait in line?? This is bullshit!!



5. Lacks empathy

I lost my job....

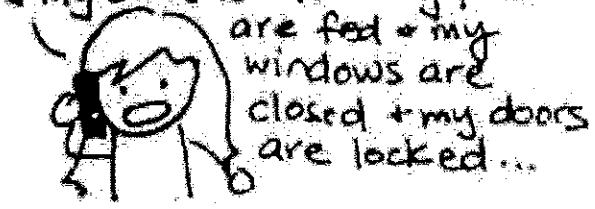
Speaking of jobs, I got a raise the other day!

6. Envious of others

Gasp! Her cat is cuter than mine! Well, I hope it dies soon!

OBSESSIVE-COMPULSIVE PERSONALITY DISORDER

1. Preoccupied with details, rules, order, organization



2. Excessively devoted to work

3. Unable to discard worn-out or worthless objects

4. Reluctant to delegate tasks

5. Adopts a miserly spending style

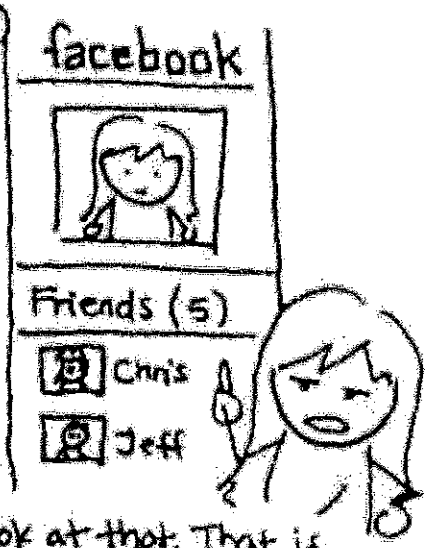
6. Shows rigidity and stubbornness

PARANOID PERSONALITY DISORDER

SCHIZOID PERSONALITY DISORDER

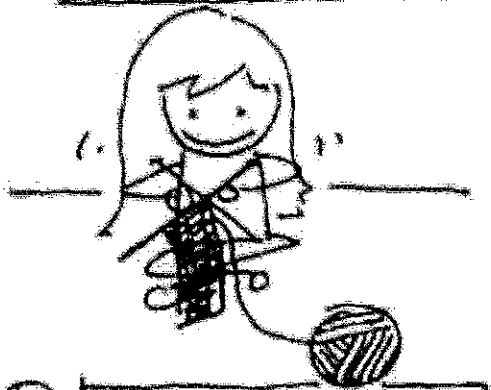
1. Does not desire close relationships

2. facebook

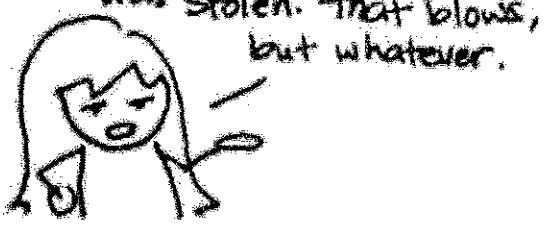


3. Little interest in sex or romantic relationships

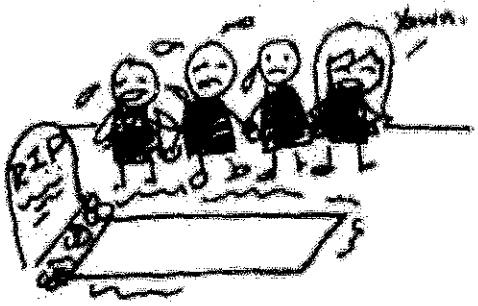
4. Chooses solitary activities



5. Lack of strong emotions



6. Emotional coldness



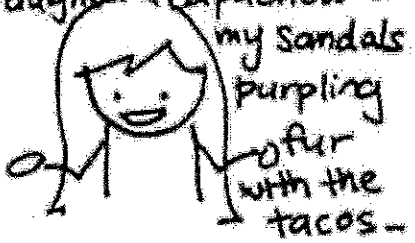
SCHIZOTYPAL PERSONALITY DISORDER

① Ideas of Reference

② Mom left food on her plate. She's trying to tell me something! This is a message!

③ Odd beliefs/Magical Thinking

④ Odd Thinking/Speech



⑤ Odd/eccentric Appearance

⑥ Social Anxieties Associated w/Paranoid Fears

YES, NO, or I'LL THINK ABOUT IT

(Two Tips for Resolving Any Conflict)

By: Bill Eddy, LCSW, ESQ.

Whether in a divorce, a workplace dispute, or a conflict with a neighbor, it's easy to get caught up in defending our own behavior and point of view. In a conflict, people can "push our buttons," and it's easy to react before we know it. The focus can quickly become personal and about the past.

To avoid this problem, there's a simple, two-step method that seems to help, no matter what type of conflict you are in. If you think you are going to be in a difficult situation, remind yourself of these two steps before you start talking. And if you are in the middle of an argument, you can always shift to this approach.

1) First Person: MAKE A PROPOSAL

Whatever has happened before is less important than what to do now. Avoid trying to emphasize how bad the problem is or criticizing the other person's past actions. There's nothing he or she can do about the past now. This just triggers defensiveness. Plus, people never agree on what happened in the past anyway. Instead, picture a solution and propose it.

For example, in a divorce dispute: "If you're going to be late to pick up the kids on Fridays, then I propose we just change the pickup time to a more realistic time. Instead of 5pm, let's make it 6:30pm."

Or in a workplace dispute: "I propose that we talk to our manager about finding a better cubicle for you, since you have so many phone calls that need to be made and I often hear them."

2) Second Person: YES, NO, or I'LL THINK ABOUT IT

All you have to do to respond to such a proposal is say: "Yes." "No." or "I'll think about it." You always have the right to say: "Yes." "No." or "I'll think about it." Of course, there are consequences to each choice, but you always have these three choices at least. Here's some examples of each:

YES: "Yes, I agree. Let's do that." And then stop! No need to save face, evaluate the other person's proposal, or give the other person some negative feedback. Just let it go. After all, if you have been personally criticized or attacked, it's not about you. Personal attacks are not problem-solving. They are about the person making the hostile attack. You are better off to ignore everything else.

NO: "No, I don't want to change the pickup time. I'll try to make other arrangements to get there on time. Let's keep it as is." Just keep it simple. Avoid the urge to defend your decision or criticize the other person's idea. You said no. You're done. Let it drop.

I'LL THINK ABOUT IT: "I don't know about your proposal, but I'll think about it. I'll get back to you tomorrow about your idea. Right now I have to get back to work. Thanks for making a proposal." Once again, just stop the discussion there. Avoid the temptation to discuss it at length, or question the validity of the other person's point of view. It is what it is.

When you say "I'll think about it," you are respecting the other person. It calms people down to know you are taking them seriously enough to think about what they said. This doesn't mean you will agree. It just means you'll think about it.

MAKE A NEW PROPOSAL: After you think about it, you can always make a new proposal. Perhaps you'll think of a new approach that neither of you thought of before. Try it out. You can always propose anything. (But remember there are consequences to each proposal.) And you can always respond: "Yes." "No." or "I'll think about it." (And there are consequences to each of those choices, too.)

AVOID MAKING IT PERSONAL

In the heat of the conflict, it's easy to react and criticize the other person's proposals—or even to criticize the other person personally, such as saying that he or she is arrogant, ignorant, stupid, crazy or evil. It's easy and natural to want to say: "You're so stupid it makes me sick." Or: "What are you, crazy?" "Your proposal is the worst idea I have ever heard." But if you want to end the dispute and move on, just ask for a proposal and respond "Yes" "No" or "I'll think about it."

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MEETING THE INCREASING DEMANDS ON FAMILY ATTORNEYS REPRESENTING CLIENTS WITH MENTAL HEALTH CHALLENGES

Lynda E. Frost and Connie J. A. Beck

The changing nature of family court and increasing awareness of mental health challenges force family lawyers to navigate tricky legal, ethical, and practical issues. This article reviews increased complexity for litigants as a result of procedural changes in the current family court, the rise of pro se representation, and statutory changes encouraging shared parental care of children. It analyzes common legal and ethical challenges for attorneys representing potentially impaired clients. It details practical means of supporting clients and increasing their capacity to engage meaningfully in family court matters. This roadmap can guide lawyers in improving their knowledge and skills in order to meet legal and ethical standards for representing family law clients with mental health challenges.

Key Points for the Family Court Community:

- Trends such as procedural changes in the current family court, the rise of pro se representation, and statutory changes encouraging shared parental care of children require significant engagement and competence on the part of litigants.
- Family attorneys have a complex task in representing a possibly impaired client, as they must gauge the client's level of functioning throughout the legal process to ensure the client has sufficient capacity to participate meaningfully.
- Legal requirements and ethical guidelines address and shape many aspects of an attorney's interactions with a client living with mental illness.
- Experienced attorneys can support clients in maximizing their capacity to engage in family court proceedings.

Keywords: *Capacity; Dementia; Divorce; Ethics; Family Law; Legal Competence; and Mental Illness.*

INTRODUCTION

Most people are not at their best when they are going through a divorce. The stress, disappointment, and powerful emotions can negatively impact a person's level of functioning. These strong negative emotions can also exacerbate symptoms of mental illness. A percentage of individuals in divorce proceedings will have significant mental health challenges that affect their capacity to participate in the proceedings. And, changes in modern divorce procedures make representing a client with impaired mental functioning or a serious mental illness an increasingly complex endeavor.

This article details how the changing nature of family court and increasing awareness of mental health challenges force family lawyers to navigate tricky legal, ethical, and practical issues. It explicates how challenges arise, in part, because of procedural changes in the current family court, the rise of pro se representation, statutory changes encouraging shared parental care of children, and increased understanding of and sensitivity to mental illness. In response to an identified need for clearly articulated standards and guidelines in order to protect litigants' rights and address issues that occur when one or more litigants in a family law case appear to be significantly affected by an untreated mental illness (Kourlis, Taylor, Schepard, & Pruett, 2013), this article analyzes legal and ethical issues for attorneys representing potentially impaired clients. Finally, it details practical means of supporting clients in hopes of increasing their capacity to engage meaningfully in family court matters. Lawyers must improve their knowledge and skills in order to meet the legal and ethical standards for representing family law clients with mental health challenges.

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THE CHANGING NATURE OF FAMILY COURT PROCEEDINGS

One of the major changes in family courts in the last 50 years is the rise of alternative dispute resolution as a means to resolve cases. Much of the negotiating surrounding divorce occurs in private meetings, settlement conferences, and mediation. Trials are much less common as more disputes are resolved through alternate mechanisms (Hensler, 2003). The vast majority of divorce-related issues are resolved in out-of-court negotiations.

As divorce laws changed in the 1970s and 1980s, the conciliation courts originally created to provide marriage counseling to help keep parents together shifted to providing family mediation to assist families in resolving disputes as they proceeded through a divorce (Brown, 1982). In most jurisdictions, if a litigant contests custody (legal decision making) or visitation (parenting time) of the children, the family is mandated to attempt to resolve the disputes through mediation before a trial will be scheduled and some jurisdictions require litigants with any disputed issues to attempt mediation (Beck & Sales, 2001). During the mediation, some jurisdictions allow attorneys in mediation sessions while others allow the mediators to decide if attorneys may be present (Beck & Sales, 2001). If the attorney is excluded from the mediation session, it presents significant challenges to an attorney representing a client with impaired mental functioning.

Paralleling the rise of mediation is the increase in pro se parties in family law cases (Applegate & Beck, 2013). The majority of divorce cases include at least one litigant who is representing him/herself; depending on the jurisdiction, estimates range from 55 to 90% (Kourlis et al., 2013). Pro se litigants seldom are trained in legal procedures and typically lack knowledge of how to present their issues to the court or respond to challenges from their spouse's attorney. If the opposing party also has a mental illness that is interfering with his or her functioning, the attorney may find challenges in figuring out how to present the best case possible for his or her client yet not be seen as taking advantage of the pro se party.

Additional challenges arise from changes in procedure after the divorce is finalized. A relatively new procedural mechanism in family court is the use of a parenting coordinator. To deal with the postdivorce litigation in high-conflict cases, courts have established parenting coordinator programs to assist families in resolving day-to-day conflicts out of court. These programs provide quasi-judicial authority to a third party who at times can be appointed over the objections of the parties. Although parenting coordinator guidelines were established by two major professional associations (Association of Family and Conciliation Courts, 2006; American Psychological Association [APA], 2012), confusion remains concerning the specific issues under the purview of the parent coordinator and the processes to be used to execute the role. These programs remain controversial and several states have either banned courts from using them (Menzano, 2013) or are considering limiting the use of them unless both parties agree (Arizona Parenting Coordinator Rule Petition Review Committee, 2015). There is limited judicial oversight of parenting coordinators. If they are not well trained in understanding the dynamics of mental illness and how it might impact family functioning, the parenting coordinator could use a process to resolve conflicts that may not support the client with limited capacity in the decision-making process and thus lead to flawed decisions. For example, relying solely on e-mail communications may not provide enough information to a parenting coordinator to assess clients' current capacity or give clients the support they need to understand and communicate their needs and wishes. The resulting decisions made may not be in the best interests of the child. A lawyer representing the client with diminished capacity would then need to petition the court for changes in the parenting coordinator decisions.

In recent years, many custody statutes have been revised to reflect a cultural preference for the continued involvement of both parents in a child's life postdivorce. This shift presents challenges, as shared care often requires more frequent exchanges of the children and increased consultation or negotiation concerning decisions about the child's education, health care, religion, and activities. This increased complexity and contact with the other parent can be challenging for individuals with impaired capacity. Families unable to negotiate amicably are frequently using the court system to litigate issues that in earlier years would not have come before the courts, as one parent would be

making the decisions and informing the other parent. Attorneys representing clients with impairments are challenged to fashion parenting plans with which their clients can comply.

In summary, procedural and policy changes have increased the complexity of legal representation of clients involved in family courts. Attorneys are now required to represent clients who may also be ordered to participate in programs that at times do not allow attorney presence (mediation or parent coordination), bypass traditional judicial decision making (parenting coordinator), and require increased ongoing contact with the other parent (shared care). While all of these can be beneficial to clients, the involvement of a parent with compromised mental functioning increases the complexity of an already complicated situation.

REDUCED MENTAL CAPACITY AND DIVORCE

Marital separation and the divorce process result in a number of possible changes in a person's life including changes in living arrangements, loss of social networks (friends and family), feelings of loneliness, financial and legal problems, co-parenting conflict, and loss of time with children (Halford & Sweeper, 2013). Adjusting to these changes can stress a person's coping skills and lead to psychological distress.

The presence of high levels of psychological distress in a divorcing population should not be confused with the presence of mental illness. But stress can precipitate or exacerbate mental disorders (Metsa-Simola & Martikainen, 2013). Further, there is a strong association between a person having a psychiatric disorder such as major depression, bipolar disorder, and some anxiety and substance use disorders, and subsequently becoming separated or divorced (Kessler, Walters, & Forthofer, 1998). Research indicates a bidirectional relationship between major depression and divorce (Sbarra, Emery, Beam, & Ocker, 2013). It is important for an attorney to understand the prevalence of depression and other mental health challenges among divorce clients.

Neurocognitive disorders (commonly known as dementia; American Psychiatric Association, 2013) are another consideration, as the United States experiences a "greying of divorce" (Brown & Lin, 2012). While the overall divorce rate for first marriages has stabilized at between 40 and 50%, there is a massive increase in the rate of divorce for people over 50 years old. This divorce rate has doubled in the two decades between 1990 and 2010 and the trend is projected to continue (Brown & Lin, 2012). Given the skyrocketing divorce rate for adults over age 50, attorneys increasingly see divorce clients experiencing neurocognitive disorders. A nationwide study estimated that in 2010, 5.2 million Americans had Alzheimer's disease; this figure is projected to triple by 2050 (Hebert, Weuve, Scherr, & Evans, 2013). Alzheimer's disease has key symptoms of agitation, apathy, depression, and delusions (Rosenberg, Nowrangi, & Lyketsos, 2015), all of which can impact an individual's ability to participate effectively in a divorce proceeding.

Taken together, the high incidence of psychological distress and mental illness or dementia intersect with the increasingly decentralized and complex evolving mechanisms in family court to heighten the need for family attorneys to improve their toolkit. Book learning is insufficient to address their contemporary challenges and relevant skill building is too often omitted from the law school curriculum (Hedeen & Salem, 2006). Bloom's three domains of learning (Bloom, 1956) are the inspiration for a more comprehensive focus on improving knowledge (cognitive domain), skills (psychomotor), and attitudes (affective). To meet the demands placed on them by the growing number of clients with mental health challenges, attorneys must enhance their capabilities in all three domains.

IMPROVING KNOWLEDGE: LEGAL ISSUES AND CLIENTS WITH IMPAIRED CAPACITY

A diagnosis of a mental illness does not automatically deem a person incompetent to participate in family law proceedings. Mental illnesses and distress fall along a continuum from acute symptoms

which can be significantly debilitating to symptoms that are well managed with appropriate treatment. A client could have limited capacity (Coy & Hedeen, 1998) to participate in negotiations, decision making, or parenting or could be completely competent in these arenas. From a legal perspective, functioning, not diagnosis, is the relevant factor, and the precise standard varies by context. The complex task of the attorney representing a possibly impaired client is to gauge the client's level of functioning throughout the legal process to ensure the client meets the legal standard of capacity that applies to a specific task or process and to support the client in maintaining that level of capacity.

CAPACITY TO CONTRACT

When a client hires an attorney, the two sign a legal agreement in order for the attorney to represent the client. Consequently, unless the court has appointed the attorney to represent the client (e.g., attorney ad litem), the client must have sufficient capacity to sign a contract. State law, which governs capacity to contract, historically focused on a cognitive standard of whether the individual understood the nature and consequences of the contract. Cases challenging a contract for legal services are rare and difficult to win, as even impaired individuals generally understand they are paying a lawyer a specified fee in order for that lawyer to represent them in a legal proceeding (Perlin, Champine, Dlugacz, & Connell, 2008).

CAPACITY TO MAINTAIN A DIVORCE ACTION

With or without the representation of an attorney, a client who is delusional or psychotic may prompt questions about whether that client has legal capacity to maintain a divorce action. Generally, state mental health codes permit individuals who meet the criteria for civil commitment to a psychiatric hospital to make their own personal decisions, including decisions regarding marriage (Mossman & Shoemaker, 2010). But for individuals under a legal guardianship, in most jurisdictions the guardian or intermediary is not allowed to file for divorce on behalf of the person under guardianship (Mossman & Shoemaker, 2010). Perlin and colleagues (2008) identify a trend in many jurisdictions of permitting a guardian to sue for divorce under specific circumstances (that vary by jurisdiction). But for the vast majority of cases in which the impaired individual is not under a civil commitment or guardianship order, there is little legal guidance and the guidance that exists varies on the criteria and procedures used to gauge capacity. Mossman and Shoemaker (2010) proposed a detailed model statute on competence to maintain a divorce action that draws heavily on existing legal standards for competence to stand trial in a criminal case and competence to make medical decisions. It is a functional standard detailing the abilities a party must have relating to expressing preferences, understanding relevant facts and their implications, thinking rationally, and articulating reality-based reasoning (Mossman & Shoemaker, 2010). The authors propose detailed procedures designed to assess and ensure these abilities, but they fail to identify a funding source for the court-ordered evaluations and treatment detailed in the model statute.

When the person with questionable capacity is the respondent of the divorce action, a different set of legal issues arise. Incapacity was often an independent ground for divorce in fault-based systems, although in some jurisdictions the same impairment barred a divorce action (Mossman & Shuemaker, 2010). The mental disability could also be used as a defense to a fault-based divorce action (Perlin et al., 2008). With the dramatic increase in unilateral and no-fault divorces, this cause-based analysis is less significant. No-fault divorce may not be an option, though, in jurisdictions with special requirements, for example, that both parties agree to a no-fault divorce (Perlin et al., 2008).

CAPACITY TO PARTICIPATE IN MEDIATION

Beck and Frost (2006, 2007) have identified separate legal concerns that arise in the context of divorce mediation. Mediation is designed to lead to a legally binding mediation agreement. Yet

parties to a divorce action have fewer protections and controls than in a formal judicial process and existing standards give mediators and attorneys little guidance on how to gauge an individual's capacity to participate in mediation. They propose a model statute that clarifies:

> A person is incompetent to participate in mediation if he or she cannot meet the demands of a specific mediation situation because of functional impairments that severely limit 1. A rational and factual understanding of the situation; 2. An ability to consider options, appreciate the impact of decisions, and make decisions consistent with his or her own priorities; or 3. An ability to conform his or her behavior to the ground rules of mediation (Beck & Frost, 2006, p. 25).

If an individual fails to meet this low minimum standard for participating in mediation, then educational or therapeutic interventions or including a support person in the mediation process might increase the person's level of functioning. If not, alternative legal processes with more judicial oversight and involvement are better options.

OTHER LEGAL ISSUES

The Americans with Disabilities Act (ADA, 1990) requires reasonable accommodations for individuals with "mental impairments" who seek to access public services such as judicial proceedings. To fall under the ADA, an individual must have an impairment that limits a major life activity, have a record of such an impairment, or be regarded as having such an impairment. Some individuals with serious mental illness would reach this level of limitation.

There are important legal issues around disclosing mental health treatment in a divorce proceeding. Because mental health conditions and treatment still carry a great deal of stigma, they can be used during a contentious proceeding, for example, to challenge a person's credibility or parenting skills. Under most circumstances, treatment records are protected by the Health Insurance Portability and Accountability Act (1996) and state laws on evidence, privilege, and duties. But savvy lawyers may attempt to access records through subpoenas and court orders. Seighman, Sussman, and Trujillo (2011) provide a detailed analysis of the protection and disclosure of mental health records in the context of domestic violence survivors.

Clearly a client with impaired functioning can present an attorney with complex legal issues. The attorney must also be attuned to ethical dilemmas that can arise.

IMPROVING KNOWLEDGE: ETHICAL ISSUES AND CLIENTS WITH IMPAIRED CAPACITY

Legal ethics can vary by jurisdiction, but almost all states have adopted a version of the American Bar Association's (ABA, 2013) Model Rules of Professional Conduct (MRPC). The vast majority have also adopted the comments to the MRPC (ABA, 2011). The following analysis, therefore, relies on the most recent version of the MRPC and comments, although attorneys should always check the relevant state law for guidance.

Ethical questions can arise from the first time a potential client contacts an attorney. Confidentiality adheres to the conversation, even if the individual seeking consultation does not become a client (MRPC 1.18(b)) and the lawyer is prohibited from representing the opposing party unless both parties give informed consent in writing (MRPC 1.18(d)). The individual seeking representation must have the legal capacity to contract for services (see above) or to provide informed consent to permit the attorney to represent the other party. In some cases a third party may seek legal representation for an impaired party. For example, an adult child or a sibling might seek to hire a lawyer to represent a severely depressed mother who is being sued for divorce. The existence of a third party who pays for the legal services does not change the attorney–client relationship; the depressed mother is still

considered the client, the information obtained is confidential, and the client must provide informed consent to the payment arrangement (MRPC 1.8(f)).

To gauge a client's ability to provide informed consent, the attorney is not expected to conduct a clinical assessment, but lay people often can determine whether an individual's functioning is impaired. In another context, the American College of Trust and Estate Counsel Commentaries on MRPC 1.14 suggest assessing capacity by reviewing "the client's ability to express the reasons leading to a decision, the ability to understand the consequences of a decision, the substantive appropriateness of a decision, and the extent to which a decision is consistent with the client's values, long-term goals, and commitments." (American College of Trust and Estate Counsel, 2006; Bennett, 2005). The Commentaries also suggest consulting with a mental health professional as needed.

Assuming an individual has sufficient capacity to form the initial attorney–client relationship, the MRPC delineate who decides what during the course of representation. The client determines the ends of the representation, although the attorney is prohibited from asserting frivolous claims (MRPC 1.2(a), 3.1). The client provides input on the means to reach those ends (MRPC 1.4(a)(2)). Typically clients will defer to the attorney's specialized knowledge regarding technical, legal, and tactical issues (MRPC 1.2 comment 2). It is the attorney's duty to zealously represent the client's position (MRPC preamble, para.2). The attorney also fills a role of an advisor or counselor (MRPC 2.1). But the attorney should stay within his/her professional competence and should also recognize that in family law cases, some challenges might fall within the expertise of mental health professionals (MRPC 1.1, 2.1 comment 4).

If the client becomes increasingly impaired over the course of representation, the attorney must maintain as normal a lawyer–client relationship as possible (MRPC 1.14). Standard duties such as maintaining confidentiality and responding promptly to reasonable requests for information still apply (MRPC 1.6, 1.4). And always the lawyer must treat the client with attention and respect (MRPC 1.14 comment 2). The attorney, however, may not be able to fully inform a client with diminished capacity because of that client's jeopardized comprehension or impulsive responses (MRPC 1.4 comments 6, 7).

If the lawyer comes to believe the client is at substantial risk of physical, financial, or other harm from which the client cannot protect him or herself, the lawyer may consult with others who can protect the client (MRPC 1.14(b)). It is important to recognize the parameters of confidentiality protections in these circumstances. Protections under the MRPC are more expansive than attorney-client privilege under evidentiary rules, and they cover both privileged and unprivileged information learned during the course of representation (MRPC 1.6 comment 3). While confidentiality protections apply, they are not absolute and the lawyer may reveal information as necessary to protect the client (MRPC 1.14(c)). The attorney may disclose information in order to prevent death or serious injury, either to the individual or to another person (MRPC 1.6(b)(1), comment 6). People with mental health challenges are more often victimized than the general population (Teplin, McClelland, Abram, & Weiner, 2005) and there may be a duty to report abuse under state law, particularly with older clients. Rule 1.14 (Client with Diminished Capacity) raises particularly complex challenges (Gallagher & Kearney, 2003). In difficult situations, a lawyer should seek legal advice on his/her obligations under the ethical rules and whether this type of consultation is allowed (MRPC 1.6 comment 9).

Even if a client becomes increasingly irrational and demanding, the attorney can withdraw only if there is no material adverse effect on the client unless there is another good cause for withdrawal (MRPC 1.16(b)(1)). In contrast, the client can discharge the attorney at any time, with or without good cause (MRPC 1.16 comment 4). But if the client lacks the legal capacity to discharge the attorney, the attorney should take protective action under Model Rule 1.14 (MRPC 1.16 comment 6). Regardless of who terminated the professional relationship, the attorney has a continuing ethical duty to mitigate the consequences of the termination to the client (MRPC 1.16(d)) and must fulfill the duties lawyers have to all former clients under Model Rule 1.9.

In some cases it might be the pro se opposing party who is impaired. The MRPC delineate the role of an attorney under those circumstances. The attorney is required to make reasonable efforts to effectively explain to the opposing party the role of the opposing counsel and clear up any

misunderstandings (MRPC 4.3). The attorney should be careful not to give the opposing party any legal advice, except for a recommendation to hire an attorney (MRPC 4.3). The attorney may feel his or her client's best interests are served by asking the court to appoint a guardian ad litem for the pro se opposing party, thus reducing the risk of an appeal of the final decree.

Mediators in family disputes can find ethical guidance through the Model Standards of Practice for Family and Divorce Mediation (MSPFDM; adopted in 2001 by the ABA House of Delegates) (ABA, 2001) and the Model Standards of Conduct for Mediators (MSCM; adopted in 2005 by the ABA House of Delegates, the American Arbitration Association, and the Association for Conflict Resolution). According to the MSPFDM, before and during the mediation process, a mediator must be attuned to the capacity of the participants (MSPFDM standard III(9)). While the mediator is required to maintain confidentiality, if a participant threatens suicide or violence and appears likely to act upon the threat, the mediator must report the threat to the intended victim and the authorities if such reporting is permitted under applicable law (MSPFDM standard VII(22)).

If the mediator believes a participant is unable to participate effectively because of a mental condition, she or he must stop the process (MSPFDM standard XI(3)). In contrast, the broader MSCM simply suggest that a mediator who thinks a party lacks capacity should simply "explore the circumstances and potential accommodations, modifications or adjustments that would make possible the party's capacity to comprehend, participate and exercise self-determination" (MSCM standard VI(A)(10)). But the MSCM allows for ending the mediation if participant conduct does not permit conducting a mediation in a manner consistent with the standards (MSCM standard VI(C)).

Clearly family attorneys and mediators must build their knowledge of legal and ethical issues involved in representing clients with mental impairments. Knowledge alone, however, is insufficient in the current environment. Attorneys must develop new skills to work effectively with these clients.

IMPROVING SKILLS: IDENTIFYING A CLIENT'S IMPAIRED MENTAL FUNCTIONING

Most attorneys are not trained as mental health professionals and diagnosis is beyond their expertise. To further complicate the process, attorneys typically interact with individuals from a broad range of cultures and will not always be familiar with normative notions of appropriate behavior and expression of emotions (Paniagua, 2014). Diagnosis is not the point; in this context, mental illness could be a proxy for impaired capacity. Lawyers constantly make informal assessments of their clients' capacity (Sabatino, 2000). The key issue is whether the client's level of functioning is adequate to meet the demands of the context in which negotiations are conducted or decisions made (Beck & Frost, 2006).

An attorney who suspects a client might have compromised functioning can do several things to address that concern. Asking directly about a mental health diagnosis during the first interview can be off-putting. People can feel stigmatized by a diagnosis and research shows that over a third of people will fail to report a diagnosis of depression (Bharadwaj, Pai, & Suziedelyte, 2015). Instead, the attorney should interact with the client and observe details of that interaction.

The attorney should be cautious about talking too much. Open-ended questions avoid hinting at a particular response and give a better indication of a client's processing of information (Frost & Volenik, 2004). Inquiring about a client's beliefs about the process and analyzing the reasoning behind the response can provide helpful insight into the rationality of the client's thought process. Toward the end of the interview, it can be useful for the attorney to ask the client to repeat something mentioned earlier in the interview and to explain something previously discussed. This gives the attorney an opportunity to gauge the client's memory, recall, and comprehension of information (Frost & Volenik, 2004). Follow-up at a future meeting can be important, as a client's capacity often fluctuates and can grow along with trust in the attorney.

From the responses of the client in these interviews, an attorney can observe if the client has any oddities in use of language or speech patterns or unusual or bizarre thoughts. While a range of emotions is expected, attorneys need to be cautious in making attributions of normality to emotional responses of

their clients, particularly if these responses remain strong and do not recede over time. Clients may also provide information that leads the attorney to believe that they lack insight into their current situation. Depending on myriad factors associated with the family (length of separation, who decided to leave or file for divorce, emotional state of any children; Emery, 2011), clients may be experiencing high levels of stress that interferes with cognitive functioning. An attorney may observe that a client has difficulty making or sticking with decisions or struggles to change plans when the situation warrants.

A vulnerable group is clients with intellectual disabilities (formerly called mental retardation; Federal Register, 2013), with or without a diagnosis of co-occurring mental illness. One factor that impedes detection of the disability and increases vulnerability is that not all people with intellectual disabilities exhibit physical characteristics commonly associated with Down syndrome (Devoy, 2014). Thus, attorneys cannot assume that they will easily be able to recognize a client with an intellectual disability, especially people with a mild disability who can successfully work and engage socially. A second factor that makes this group vulnerable is that people with intellectual disabilities often have a predisposition to please authority figures, which includes nodding and agreeing to closed-ended questions without comprehending their meaning (Devoy, 2014). Unbeknownst to the attorneys, clients may actually be confused and unable to appreciate the long-term effects of particular decisions but will not stop the attorney to ask for clarification, sometimes actively trying to prevent any discovery of the disability. Consequently these clients would not receive potential accommodations that would assist them in understanding the legal process (Bonnie, 1990).

If any client responses raise red flags, an attorney may want to consider consulting with a mental health professional. In addition, Logan (1992) and the ABA/APA (2005) have developed detailed descriptions of possible mental health–related issues (Logan) and worksheets (ABA/APA) to assist lawyers in understanding the range of potential mental health issues clients may present and to decide if additional investigation or actions are needed to ensure client capacity.

IMPROVING SKILLS: SUPPORTING CLIENTS WITH MARGINAL CAPACITY

There are a number of things an attorney can do to support and improve the capacity of a client to engage in a divorce proceeding. First, it is essential to build a trusting relationship with the client from the start. Individuals with mental disabilities may be more likely to have their first impressions of the attorney colored by paranoia, naiveté, or errors in thinking and judgment (Louisiana Appleseed, 2011). A careful explanation of the confidential nature of the relationship is important (ABA/APA, 2005). The relationship with opposing counsel could be confusing to a client. Explaining the nature of collegiality and any preexisting friendship can diminish the risk of a courteous relationship with the opposing attorney being misinterpreted as a lack of zeal in representing the client (Louisiana Appleseed, 2011). Multiple meetings and one-on-one time spent building the attorney-client relationship can lay the foundation for difficult questions and result in more fruitful responses (ABA/APA, 2005; Sabatino, 2000).

Next, if the client's cognitive functioning is marginal, the attorney should take extra measures to provide support. The ABA/APA (2005) guidelines for attorneys working with older clients with cognitive decline are helpful in the context of family law. A fast-paced conversation full of legal jargon can be challenging and unproductive. For clients with low cognitive skills, the attorney should break information into manageable pieces. Questions should be short and allow plenty of time for response. Repeating and summarizing information and providing a written version can boost comprehension. So can asking a client to explain information in his/her own words and correcting any misunderstandings. Meetings should be modest in length and allow for breaks. The modality of communication (e.g., telephone, in-person, e-mail, letters) should be one the client is most likely to understand and retain, with multiple modalities used as needed to keep good records. These many measures can serve to boost the client's cognitive functioning (ABA/APA, 2005; Sabatino, 2000).

The attorney can also strive to maximize the client's engagement in the decision-making process. The ABA/APA handbook recommends an older technique of gradual counseling that deconstructs the decision-making process by identifying goals, stating the problem, ascertaining values, comparing options

to goals, and giving feedback (ABA/APA, 2005; Smith, 1988). The rapidly developing field of supported decision making may soon provide additional guidance in this regard (Kohn & Blumenthal, 2014).

The stress of divorce can diminish a person's level of functioning (Halford & Sweeper, 2013), so it is likely that effective self care could promote improved cognition and engagement. A supportive person can play a role in various portions of the legal process (California Family Code Section 6303(a) – (e) (2015); Folberg, Milne, & Salem, 2004). Depending on the client's concerns about confidentiality, the support person may attend meetings with the attorney and be present during legal proceedings. Local resources and peer groups can provide important support (Margulies, 1994). Evidence-based recovery-oriented programs such as Wellness Recovery Action Planning can guide individuals in developing plans to maintain and support wellness and to take action if their mental health is deteriorating (Fukui et al., 2011).

In addition, there are specific accommodations attorneys can make depending on whether the client is participating in a mediation session, a settlement conference, or a trial proceeding. Screening clients prior to mediation can identify potential problems, but mediation researchers analyzing recent neuroscience research note that the capacity of an individual to engage productively in a process will vary over time and with different mediation processes (Hedeen, 2012). Mediators can adapt the process by limiting overly stimulating components, inviting the presence of a support person, or utilizing techniques like shuttle mediation. Long mediations that become endurance events place particular stress on individuals with mental disabilities (Hedeen, 2009). Training mediators to better understand emotions is critical to successful conflict resolution (Lund, 2000).

Settlement conferences can be a key component of the legal process. Thorough briefing of the client prior to attempting to reach a settlement is increasingly valued by the professionals seeking to resolve the dispute (Hedeen, 2012). Research has shown family lawyers to be particularly adversarial in their approach to negotiations (Schneider & Mills, 2006). Yet the increase in collaborative divorce proceedings allows for and encourages the inclusion of mental health professionals and others who can facilitate reaching a settlement (Mosten, 2009). Helping professionals can be included in negotiations or mediations even if they do not follow a collaborative divorce model. The development of planned early negotiation with its emphasis on relationship building is another example of more supportive practice that can better engage clients in the divorce process (Lande, 2011).

For the small proportion of cases that make it to an adversarial trial, it is essential to adequately prepare a client with impaired capacity. The National Center on Domestic Violence, Trauma & Mental Health suggests a number of strategies to support the client (Seighman et al., 2011). The attorney and client can practice direct and cross examination so that the client is familiar with the process. A support person can attend the proceedings. The attorney can request a recess if the client is overwhelmed. The attorney can also consider requesting accommodations under the ADA (1990), but should weigh the potentially prejudicial effect of highlighting the client's mental health challenges (Seighman et al., 2011).

IMPROVING ATTITUDES: CULTIVATING RESPECT AND HOPE

For family attorneys working with clients with impaired capacity, improving their own knowledge and skills is important, but not sufficient. People with mental health challenges are the focus of significant stigma. Many attorneys, like people in general, have negative images and concerns about people with mental illness. The impact of stigma can be as harmful as the psychiatric disorder itself (Hinshaw, 2007). Increased knowledge about mental illness can reduce stigma, as can more contact with individuals with mental illness (Corrigan, Morris, Michaels, Rafacz, & Rusch, 2012).

The use of language can have an important impact in promoting or reducing stigma. For many years, individuals have promoted "person first" language in order to prioritize the person over the disorder (e.g., "a person with schizophrenia" instead of "a schizophrenic"; Barnish, 2014; Brown & Bradley, 2002). A basic ethical principle requires attorneys to treat a client with a disability with respect (MRPC 1.14) and choice of language can be an important component of respect.

Recently, the "medical model" of psychiatric care has been widely criticized as focusing on symptoms and labelling (Frost, Heinz, & Bach, 2011; Leamy, Bird, Boutillier, Williams, & Slade, 2011). A "recovery model" places the individual at the center of the treatment process and emphasizes hope and goals for the future rather than symptom abatement. In 2006, the Substance Abuse and Mental Health Services Administration (SAMHSA) issued a consensus statement developed by over 110 expert participants identifying ten fundamental components of recovery: self-direction, individualized and person-centered, empowerment, holistic, nonlinear, strengths-based, peer support, respect, responsibility, and hope (SAMHSA, 2006). In the decade since these components were identified, many states have overhauled their mental health service systems to ground those services in these recovery components. Popular culture and the legal system lag behind, but this evolution in attitudes is essential for attorneys to provide quality representation for clients with impaired capacity.

CONCLUSION

The changing nature of family court and the increasing number of litigants with mental health challenges compel family lawyers to improve their knowledge, skills, and attitudes to best represent their clients. Attorneys should consider complex legal, ethical, and practical issues in doing their work so as to protect their clients' interests and fulfill their own obligations. They need to gauge their clients' capacity to participate in the legal proceedings and adapt their services to optimize their clients' abilities. Sensitivity to the client's level of functioning requires lawyers to slow down, listen carefully, and weigh options to boost capacity and address legal and ethical challenges related to impaired capacity.

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