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August 19, 2022
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CME FOR FAMILY MEDIATORS

August 19, 2022

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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, Greg Noland, Robert N. Reimondo, Robert E. Shive, Jill E. Goldenberg Schuman*

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

11:15 A.M. Drafting Issues: Division of Retirement Accounts
- *Brandon Elkins- Barkley, Brooke Jones Lindsey*

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

1:15 P.M. A crash course on what you don't know about financial and tax issues in divorce
- *Greeg Keele, CFP, CRPC, CDFA*

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

2:30 P.M. Psychological Testing and the Court
- *Dr. Robin Kohli*

3:30 P.M. Resolving Custody and Coparenting Issues with Personality Disordered Parents
- *Dr. Kevin Byrd*

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

August 19, 2022

CME FOR FAMILY MEDIATORS

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Lana Pendoski, Cross Glazier Reed Burroughs, PC, Indianapolis

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 Reed Burroughs, PC, Indianapolis

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.

Brandon C. Elkins-Barkley, Cross Glazier Reed Burroughs, Carmel

Brandon C. Elkins-Barkley's practice is focused on complex family law litigation, tax, and the division of various types of retirement and employment benefits. Brandon provides comprehensive family legal services involving custody disputes and parenting issues, while also representing high net-worth clients with complex benefits packages and financial issues. Brandon practices in state and federal courts. In addition to his law degree, Brandon achieved a Masters of Law in Taxation from the University of Denver. While Brandon is a family law attorney with over a decade of experience, his practice has allowed him to represent clients in the Indiana Supreme Court, Indiana Court of Appeals, state trial courts, and in federal administrative appeals. Also, Brandon brings his unique experience of having worked in an international family law firm to his client matters involving disputes and issues reaching far beyond Indiana. Brandon regularly teaches other attorneys about retirement and employee benefits and how those assets are handled in divorce cases.

A graduate of the Indiana University Maurer School of Law in Bloomington, Brandon is originally from Phoenix, Arizona. Brandon grew up in Colorado and attended high school in Nashville, Tennessee. As the child of parents who divorced in his infancy, Brandon has a personal perspective on how the divorce process effects children. He clerked for the Honorable Richard Caschette in Colorado's 18th Judicial District before entering private practice. Brandon returned to Indiana in 2018, where he has been ever since.

Brandon believes keeping a focus on litigation preparation and creative strategy is essential in representing clients, he also is always looking for opportunities to resolve and minimize intrafamily conflict. He emphasizes the importance of a positive and constructive attorney-client relationship and believes the best result for his clients will only come from an open and trusting line of communication. Brandon listens, cares, and always gives thoughtful, honest, and practical legal advice.
Areas of Practice:

- Family Law
- Appeals
- Complex Asset and Retirement Division

Bar Admissions:
- Indiana, 2018
- Colorado, 2010 (Inactive)

Education:
- University of Denver College of Law, Denver, Colorado, M.L.
- Indiana University Maurer School of Law, Bloomington, Indiana
- Indiana University, B.A.

Professional Associations and Memberships:
- Indianapolis Bar Association

Gregg Keele, Smarter Divorce Solutions, Indianapolis

Gregg is divorced and has a passion for helping others dealing with divorce to find stability and happiness again. Gregg resides in Indianapolis with his two children. Though he is often quite busy, in his free time he enjoys spending time with his two children, family, and friends, fishing, boating, traveling, and reading. Additionally, he is involved with organizations in his community such as Damar Autism Services.

Gregg has been a financial advisor since 1996 and a trained Financial Professional in Collaborative Law, a member of the Central Indiana Association of Collaborative Professionals, a member of the Institute of Divorce Financial Analysts, the Association of Divorce Collaborative Professionals, and the Financial Planning Association. Gregg recently has been a guest speaker on Bloomberg Live and local, Indianapolis area radio shows.

Gregg graduated from Indiana State University in 1996 and 1997 with bachelor's degrees in Economics and Political Science respectively. From 1992-2006 Gregg served as Captain in the U.S. Army, serving in Operation Iraqi Freedom. He has earned his Certified Divorce Financial Analyst®, Certified Financial Planner®, Chartered Retirement Planning Counselor®, and Certified Long-Term Care® licenses.

Dr. Robin Kohli, Psychologist, Muncie

Dr. Robin Kohli is a licensed psychologist who has worked with children, adolescents and families in Indiana since 1998. She graduated from Ohio State University in 1992 and received her Master's and Doctoral degrees from Pepperdine University, and she is a full member of the American Psychological Association.

Dr. Kohli specializes in psychological assessment of youth and families for court-ordered forensic evaluations, psychoeducational assessments, autism assessments, sex offender risk assessments, and child hearsay evaluations. In her years of experience in working with challenging youth and family systems, she has developed a wide range of solution-focused and creative interventions to help kids and families get back on track. She has worked with the Indiana Department of Child Services, Probation, the Dawn Project, school districts, and the court system to assist families who have struggled to manage emotionally disturbed and conduct-disordered youth.

Dr. Kohli also has a long history of teaching pre-doctoral interns and practicum students in how to conduct individual, family and group therapy, as well as learning how to administer and interpret a wide range of psychological and forensic assessment measures. She has served as an adjunct faculty supervising practicum students for the University of Indianapolis since 2001 and supervised students from Ball State University since 2005. From 2005-2013, she served as the Director of Psychological Services at the Youth Opportunity Center. She often speaks at conferences and workshops for attorneys, clinicians, and mental health professionals.

Brooke Jones Lindsey, Partner, Cohen Garelick & Glazier, Indianapolis

Brooke Jones Lindsey is a partner at the law firm of Cohen Garelick & Glazier in Indianapolis, Indiana. Admitted to practice in Indiana since 2011, she is also qualified to appear before the U.S. District Court for the Northern District of Indiana, the U.S. District Court for the Southern District of Indiana and the Supreme Court of Indiana.

Over the course of her legal career, Ms. Lindsey has helped families navigate complex legal issues, enabling them to move forward with their lives and make a new start. The cases she has handled include legal separation and divorce, spousal support, property division, child custody and support, visitation, parental relocation, protective orders, post-divorce modifications and guardianships.

Ms. Lindsey obtained her legal education from the *Indiana University Robert H. McKinney School of Law* in 2011 after receiving her Bachelor of Arts in political science and criminal justice from the *Indiana University Bloomington*, in the year 2008. She functioned as an associate attorney for four-plus years at other renowned Indiana law firms before partnering with her current firm.

Outside of work, Ms. Lindsey enjoys spending time with her family and vacationing.

Ms. Lindsey retains memberships in several legal organizations such as the Boone County Bar Association, the Indiana State Bar Association and the Indianapolis Bar Association.

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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

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.

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

Jill E. Goldenberg Schuman, Cohen Garelick & Glazier, P.C., 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.

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Section One

Sticking Points: Problems and How to Handle Them

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Section One

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

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, 2021
Find alternative dispute resolution forms at courts.in.gov

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 7.0. 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.

Persons participating in mediation under this Rule shall have the same ability afforded litigants under Trial Rule 26(B)(2) of the Rules of Trial Procedure to obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a settlement under this Rule or to indemnify or reimburse for payments made to satisfy a settlement under this Rule.

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.

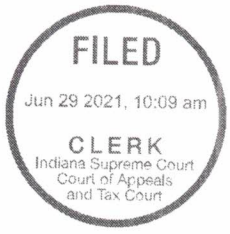
Rule 8.6. Settlement Agreement.

(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).



IN THE

Indiana Supreme Court

Supreme Court Case No. 21S-DC-320

Russell G. Berg
Appellant (Respondent below)

–v–

Stacey L. Berg
Appellee (Petitioner below)

Argued: April 29, 2021 | Decided: June 29, 2021

Appeal from the Allen Circuit Court,
No. 02C01-1709-DC-1268
The Honorable John D. Kitch, III, Magistrate

On Petition to Transfer from the Indiana Court of Appeals,
No. 19A-DC-3038

Opinion by Justice Goff

Chief Justice Rush and Justices David, Massa, and Slaughter concur.

Goff, Justice.

Alternative Dispute Resolution (A.D.R.) plays an important role in our justice system. Because our public policy strongly favors the amicable resolution of disputes, we encourage parties to communicate openly and honestly during A.D.R. proceedings such as mediation. For this reason, communications during settlement negotiations are deemed confidential.

The question here is whether documents produced in anticipation of mediation fall under this confidentiality requirement. We conclude that they do and hold that the trial court erroneously admitted a marital balance sheet prepared for mediation to allow Wife to avoid the parties' settlement agreement. But, because the trial court also found that Husband had breached the settlement agreement, we affirm the trial court.

Facts and Procedural History

In 2017, Stacey Berg (Wife) sued Russell Berg (Husband) for dissolution of marriage. After limited discovery, Wife and Husband participated in mediation and signed a settlement agreement (the Agreement) under which each party retained all stock accounts in their respective names and Husband received all jointly held stock accounts. The Agreement contains a warranty stating, "[e]ach of the parties further represent and warrant one to the other that all assets and debts owned or owed by the parties, either individually or jointly, have been correctly and truly revealed to the other and reflected within this [A]greement." Appellant's App. Vol. 2, pp. 21–22. The trial court approved the Agreement and incorporated it into the dissolution decree.

One year later, Wife filed a Trial Rule 60(B) motion for relief from judgment, alleging that the Agreement shouldn't be enforced because it was procured through fraud, constructive fraud, misrepresentation, mutual mistake, or other misconduct. Wife's motion rested on the omission of a stock account from the balance sheet that the parties had used in determining the division of assets. Husband had identified that account to

Wife's lawyer during their exchange of information. The lawyers discussed getting together to reconcile the parties' balance sheets. When Wife's attorney gave Husband's attorney her version of the balance sheet, Husband's attorney pointed out one of Wife's accounts that was missing but said nothing about Husband's missing account. After Wife added her missing account to the balance sheet, Husband's attorney said they would use her balance sheet at mediation. Wife maintains that the parties used her sheet, which omitted Husband's account, when determining the division of assets at mediation.

Husband moved to strike the evidence submitted by Wife as inadmissible mediation evidence. The trial court overruled Husband's objection and initially denied relief to Wife. Wife then filed a motion to correct errors, which the trial court granted. Because the trial court found that fraud, constructive fraud, mutual mistake, or misrepresentation had occurred and that Husband had breached the Agreement's warranty provision, it awarded Wife half of the value of the account.

In a 2-1 published opinion, the Court of Appeals reversed. *Berg v. Berg*, 151 N.E.3d 321 (Ind. Ct. App. 2020). In the majority's view, the evidence that Wife proffered, and which the trial court relied on in granting relief, was inadmissible because it was evidence of what transpired at mediation. *Id.* at 329. The trial court erroneously granted Wife's motion to correct errors, the majority reasoned, because the inadmissible evidence was required to avoid the Agreement and because Wife was estopped from claiming that Husband had breached the warranty. *Id.* at 331.

In dissent, Judge Crone would have affirmed the trial court on grounds that Husband cited no authority for the proposition that evidence prepared in anticipation of (rather than during) mediation is inadmissible under Evidence Rule 408. *Id.* at 331–32 (Crone, J., dissenting). *See* Ind. Appellate Rule 46(A)(8)(a) (requiring a party to support his or her arguments with "cogent reasoning" and "citations to the authorities").

Wife petitioned this Court for transfer, which we now grant, thus vacating the Court of Appeals opinion. *See* App. R. 58(A).

Standards of Review

Because we generally review a ruling on a motion to correct error for an abuse of discretion, we will only reverse "where the trial court's judgment is clearly against the logic and effect of the facts and circumstances before it or where the trial court errs on a matter of law." *Perkinson v. Perkinson*, 989 N.E.2d 758, 761 (Ind. 2013). But, where a ruling turns on a question of law, our review is de novo. *Id.*

An abuse-of-discretion standard likewise applies to a ruling on a Trial Rule 60(B) motion. *Citimortgage, Inc. v. Barabas*, 975 N.E.2d 805, 812 (Ind. 2012). "[A] court's exercise of power under Trial Rule 60(B) is subject to the limitations of the substantive law itself." *Ryan v. Ryan*, 972 N.E.2d 359, 370 (Ind. 2012). So, when a 60(B) motion involves a marital settlement agreement, the Court treats the matter "as a contract dispute, subject to the rules of contract law." *Id.* at 370–71.

Discussion and Decision

Wife argues that the trial court properly admitted her evidence to allow her to avoid the contract because the information was exchanged **before** mediation (thus falling beyond the reach of Rule 408) and because the evidence was discoverable outside of mediation under A.D.R. Rule 2.11(B)(2). She also argues that, even if the evidence isn't admissible for that purpose, it is admissible to prove that Husband breached the warranty. Husband, on the other hand, argues Wife's evidence should be excluded under Indiana A.D.R. Rule 2.11 and Indiana Rule of Evidence 408. He also characterizes the warranty as a mutual warranty and argues that Wife cannot now argue that the assets and debts weren't correctly revealed or reflected.

I. Wife's evidence was inadmissible to avoid the Agreement under Indiana Evidence Rule 408.

Because "Indiana judicial policy strongly urges the amicable resolution of disputes," we embrace "a robust policy of confidentiality of conduct

and statements made during negotiation and mediation." *Horner v. Carter*, 981 N.E.2d 1210, 1212 (Ind. 2013). This robust policy takes root in both our A.D.R. Rules and Evidence Rule 408, which govern the mediation process. As relevant here, A.D.R. Rule 2.1 provides that mediation is "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." While "[e]vidence discoverable outside of mediation shall not be excluded merely because it was discussed or presented in the course of mediation," A.D.R. 2.11(B)(2), the mediation itself "shall be regarded as settlement negotiations governed by Indiana Evidence Rule 408," A.D.R. 2.11(B)(1).

Evidence Rule 408, in turn, operates to foster an open exchange between the parties during settlement negotiations by excluding from evidence statements made or documents prepared for mediation. *Worman Enter. v. Boone Co. Solid Waste Mgmt. Dist.*, 805 N.E.2d 369, 376 (Ind. 2004). Specifically, when a party attempts to "prove or disprove the validity or amount of a disputed claim or to impeach by a prior inconsistent statement or a contradiction," Rule 408 renders inadmissible evidence of "furnishing, promising, or offering, or accepting, promising to accept, or offering to accept a valuable consideration in order to compromise the claim" and "conduct or a statement made during compromise negotiations about the claim." Ind. Evidence Rule 408.

A. Information exchanged specifically to assist in mediation, but disclosed prior to mediation, falls under Rule 408.

Wife acknowledges "that evidence of what transpired at mediation is deemed confidential and presumably not admissible." Pet. to Trans. at 6. She contends, however, that the evidence she submitted "did not transpire at mediation." *Id.* Rather, she insists, the evidence can't be excluded under Rule 408(a)(2) because the "exchange of information" about "marital assets and debts, the valuation of marital assets and debts," and the use of the balance sheet "all took place weeks before the mediation session." *Id.*

We disagree with Wife's reading of the rules. While the A.D.R. rules and Rule 408 don't apply when a mediation is "not instituted pursuant to judicial action in a pending case," *Vernon v. Acton*, 732 N.E.2d 805, 808 n.5 (Ind. 2000), nothing in Rule 408 limits the application of 408(a)(2) to the mediation session itself. In *Kerhof v. Kerhof*, the Court of Appeals held that an alleged statement made by the husband outside of any formal settlement negotiation fell under Rule 408. 703 N.E.2d 1108, 1112 (Ind. Ct. App. 1998). The wife in that case sought to admit evidence that, after the filing of the dissolution petition but before the final dissolution hearing, the husband told her that he would have to pay her $150,000 in the settlement. *Id.* The Court of Appeals affirmed the trial court's exclusion of that evidence, noting that there was sufficient evidence that the statement by the husband was part of settlement negotiations. *Id.*

Because Rule 408 is intended "to promote candor by excluding admissions of fact," communications to facilitate settlement "are not admissible into evidence." *Worman*, 805 N.E.2d at 376–77. And here, the contents of the balance sheet are "admissions of fact" that certain assets and debts exist and about the value of the assets and quantity of the debt. These "facts" established the point from which the parties would negotiate at the mediation itself. That the admission of fact occurred prior to the formal mediation proceeding doesn't remove it from the ambit of the mediation process if it was made for the purpose of reaching a settlement agreement.

B. The balance sheet isn't admissible as evidence discoverable outside of settlement negotiations.

While A.D.R. Rules 2.11(A) and (B)(1) make mediation confidential, A.D.R. Rule 2.11(B)(2) provides that "[e]vidence discoverable outside of mediation shall not be excluded merely because it was discussed or presented in the course of mediation." Contrary to Wife's argument, the evidence in the balance sheet wasn't discoverable outside of settlement negotiations. Rather, the figures on the balance sheet reflected the positions that the parties took on the value of certain property for the purpose of negotiation.

This observation is consistent with prior caselaw. In *R. R. Donnelley & Sons Co. v. North Texas Steel Co.*, our Court of Appeals applied the Fifth Circuit's interpretation of Federal Rule of Evidence 408, which is similar to our Rule 408,[1] to determine that a video produced specifically for settlement negotiations should not have been admitted at trial. 752 N.E.2d 112, 128–29, 130 (Ind. Ct. App. 2001). When the racks which R. R. Donnelley & Sons Company (RRD) had recently purchased collapsed and caused extensive damage, RRD sued North Texas Steel Company (NTS). *Id.* at 120. RRD contended that NTS defectively welded the racks. *Id.* As the parties prepared for mediation, an expert conducted and filmed a weld test to present at the mediation. *Id.* at 127. The parties didn't reach a settlement, and NTS sought admission of the video at trial. *Id.*

The trial court admitted the video over RRD's objection. *Id.* The Court of Appeals reversed the trial court. *Id.* at 140. The panel accepted the Fifth Circuit's reasoning that a document falls within the "protected area of compromise" where "the statements or conduct were intended to be part of the negotiations toward compromise." *Id.* at 129 (quoting *Ramada Development Co. v. Rauch*, 644 F.2d 1097, 1106–07 (5th Cir. 1981)). And the video in *R. R. Donnelley* was intended to be part of negotiations toward compromise, the court found, because the "expert ideas and research were being exchanged in the spirit of attempting to resolve the case through mediation." *Id.* at 130 (quotation marks omitted).[2]

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[1] Federal Rule of Evidence Rule 408 allows the introduction in a criminal case of statements or conduct during compromise negotiations regarding a civil dispute by a government regulatory, investigative, or enforcement agency. Fed. R. Evid. 408(a)(2).

[2] Other courts have also found that material prepared for compromise negotiations are protected by Rule 408. *See, e.g., EEOC v. UMB Bank Fin. Corp.*, 558 F.3d 784, 791 (8th Cir. 2009); *Affiliated Mfrs. v. Aluminum Co. of Am.*, 56 F.3d 521, 530 (3d Cir. 1995); *Blu-J, Inc. v. Kemper C.P.A. Grp.*, 916 F.2d 637, 642 (11th Cir. 1990); *Kritikos v. Palmer Johnson, Inc.*, 821 F.2d 418, 423 (7th Cir. 1987); *Ramada Dev. Co. v. Rauch*, 644 F.2d 1097, 1107 (5th Cir. 1981); *Axenics, Inc. v. Turner Constr. Co.*, 62 A.3d 754, 768 (N.H. 2013); *State ex rel. Miller v. Superior Court*, 941 P.2d 240, 244 (Ariz. Ct. App. 1997).

C. Challenging the validity of the Agreement is not a collateral matter for the purposes of 408(b)'s exception.

Evidence Rule 408 contains an exception that allows the admission of evidence "for another purpose, such as proving a witness's bias or prejudice, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution." Evid. R. 408(b). The exception for evidence used "for another purpose" extends to evidence used "in collateral matters unrelated to the dispute that is the subject of the mediation." *Horner*, 981 N.E.2d at 1212.

In *Horner*, the husband sought to modify the maintenance provision of the settlement agreement in the dissolution of his marriage. *Id.* at 1211. During the evidentiary hearing, the husband attempted to testify about statements he made to the mediator. *Id.* The trial court excluded the testimony and ultimately denied his request for modification. *Id.* This Court affirmed the trial court. *Id.* at 1213. Because the husband sought to "avoid liability under the agreed settlement on grounds that it reflected neither his intent, nor his oral agreement during mediation," this Court found that the evidence wasn't used in a collateral matter and was inadmissible. *Id.* at 1212, 1213.

Like in *Horner*, Wife seeks to make a change to the Agreement itself. This is clearly distinguishable from the only post-*Horner* Indiana case that found that Rule 408's exception applies. *See Gast v. Hall*, 858 N.E.2d 154, 161 (Ind. Ct. App. 2006) (evidence of the mental condition of the testator at a mediation on a different matter was admissible to prove testamentary capacity).

Rule 408 applies, and Wife's evidence is inadmissible to avoid the Agreement. Because the trial court relied on this inadmissible evidence to

find that fraud, constructive fraud, mutual mistake, or misrepresentation had occurred, this finding cannot be the basis for Wife's relief.[3]

II. A warranty clause in which "each of the parties" warrants "one to the other" doesn't preclude a party from demonstrating breach of warranty.

Wife argues that Husband breached the warranty language included in the Agreement. Under the Agreement's warranty, "[e]ach of the parties further represent one to the other that all assets and debts owned or owed by the parties, either individually or jointly, have been correctly and truly revealed to the other and reflected in this agreement." Appellant's App. Vol. 2, pp. 21–22. Husband argues that Wife is estopped from pursuing her breach-of-warranty claim because Husband and Wife **both** assumed responsibility for the factual assertions made under the "mutual warranty."[4]

"A warranty is a promise relating to past or existing fact that incorporates a 'commitment by the promisor that he will be responsible if the facts are not as manifested.'" *Johnson v. Scandia Assocs., Inc.*, 717 N.E.2d 24, 28 (Ind. 1999) (quoting 1 Samuel Williston, *A Treatise on the Law of Contracts* § 1:2, at 10 (Richard A. Lord, ed., 4th ed. 1990)). As Judge Learned Hand noted, a warranty is intended to "relieve the promisee of

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[3] Since we find that Wife's evidence isn't admissible to attack the settlement, we don't reach her claim that she can avoid the Agreement because Husband engaged in a "gaming view of the litigation process" that constitutes constructive fraud. *See* Appellee's Br. at 16 (internal quotations omitted).

[4] Husband also maintains that neither party argued that the Agreement was breached by either party. But Wife argued before the trial court that the Agreement required each party to "correctly and truly reveal" to the other all assets and that Husband failed to meet that contractual obligation. Appellant's App. Vol. 2, p. 34. And a claim that a party failed to meet a contractual obligation is a claim that the contract was breached. *See Kaghann's Korner, Inc. v. Brown & Sons Fuel Co.*, 706 N.E.2d 556, 565 (Ind. Ct. App. 1999) ("The trial court did not err in finding that as a matter of law Brown failed to strictly perform its contractual obligations, thereby committing a breach of contract.").

any duty to ascertain the fact for himself." *Metro. Coal Co. v. Howard*, 155 F.2d 780, 784 (2d Cir. 1946).

The Court of Appeals held that, because Wife also warranted that all assets and debts had been "correctly and truly" revealed and reflected in the Agreement, she is "estopped from obtaining relief because Wife is disputing the truth of her own assertions." *Berg*, 151 N.E.3d at 330 & n.11. We disagree.

While the warranty does provide that the parties warrant "one to the other" that the assets and debts are reflected in the Agreement, the language doesn't preclude Wife from arguing that Husband breached the warranty. When the Court examines a contract, we look at the "contract as a whole" and "accept an interpretation of the contract that harmonizes all its provisions." *Ryan v. TCI Architects/Eng'rs/Contractors, Inc.*, 72 N.E.3d 908, 914 (Ind. 2017) (citing *Kelly v. Smith*, 611 N.E.2d 118, 121 (Ind. 1993)). "A contract should be construed so as to not render any words, phrases, or terms ineffective or meaningless." *Id.* "A contract is ambiguous if reasonable people would find it subject to more than one interpretation." *Willey v. State*, 712 N.E.2d 434, 440 (Ind. 1999) (quoting *Haxton v. McClure Oil Corp.*, 697 N.E.2d 1277, 1280 (Ind. Ct. App. 1998)).

If we were to interpret the warranty clause as the Court of Appeals did, that clause would be meaningless because neither party would be able to enforce it. A reasonable person wouldn't find that the parties added the warranty provision without intending it to have any effect, and our case law requires that we "make every effort to avoid a construction of contractual language that renders any words, phrases, or terms ineffective or meaningless." *Ind. Gaming Co., L.P. v. Blevins*, 724 N.E.2d 274, 278 (Ind. Ct. App. 2000). Furthermore, this isn't a case where the parties merely warranted as a singular unit that the assets and debts were reflected in an agreement. Instead, "[e]ach of the parties" warranted "one to the other" that the assets were accurate. The words "each" and "one" separate the parties out. Either Husband or Wife may enforce the Agreement and allege breach of the warranty provision. Since we find that Wife is not precluded from claiming that Husband breached the warranty, we must determine whether

the trial court abused its discretion in finding that Husband did breach the warranty.[5]

While Wife's evidence wasn't admissible to challenge the validity of the Agreement under Trial Rule 60(B), it is admissible in the collateral breach-of-contract claim. "The essential elements of a breach of contract action are the existence of a contract, the defendant's breach thereof, and damages." *Fowler v. Campbell*, 612 N.E.2d 596, 600 (Ind. Ct. App. 1993). The evidence here shows that (1) each party promised that the assets and debts were "correctly and truly" reflected in the Agreement—the contract; (2) Husband's assets were not "correctly and truly" reflected in the Agreement—the breach;[6] and (3) Wife's portion of the 50/50 division of assets would have been higher if the account were included—the damage. The trial court didn't abuse its discretion in determining that Husband breached the Agreement. And Indiana has a statutory presumption of a 50/50 division of marital assets. Ind. Code § 31-15-7-5 (2018). Thus, the trial court didn't err in awarding Wife 50% of the Edward Jones account because of Husband's breach of the Agreement.

Conclusion

The trial court incorrectly determined that fraud, constructive fraud, mutual mistake, or misrepresentation had occurred, but because the trial

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[5] The Court of Appeals' citations to 31 C.J.S. Estoppel and Waiver § 72 (2019) and *Stevens v. State Farm Fire & Casualty Co.*, 929 S.W.2d 665, 672 (Tex. Ct. App. 1996) to support its conclusion that Wife is estopped from claiming that Husband breached the warranty clause are inapposite. *See Berg*, 151 N.E.3d at 330–31. In her claim of breach of warranty, Wife isn't arguing that the Agreement "do[es] not express [her] intentions or understanding." *See* 31 C.J.S. Estoppel and Waiver § 72, at 414. Nor is she seeking to avoid being "bound by the terms of [the] contract." *See Stevens*, 929 S.W.2d at 672.

[6] This case is readily distinguishable from *Ehle v. Ehle*, 737 N.E.2d 429 (Ind. Ct. App. 2000). In that case, the wife relied on her husband's representation as to his assets, rather than conducting her own discovery. *Id.* at 434. While the Court of Appeals stated that the wife would have been unable to recover absent the husband's fraud, the parties in that case didn't have an agreement to disclose the information and ensure that it was accurately reflected in the agreement. *Id.*

court didn't abuse its discretion in finding that Husband had breached the warranty clause of the Agreement, we affirm the trial court.

Rush, C.J., and David, Massa, and Slaughter, JJ., concur.

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Berg v. Berg (June 29, 2021) (Mediation Evidence / Disclosure Warranty Case)

HELD: Documents produced not during mediation, but in anticipation of mediation, fall under the confidential settlement communication provisions that preclude them from later being admitted into evidence at a final hearing.

HELD: A disclosure warranty provision of a property settlement agreement can be used to pursue a breach of contract claim if one spouse later determines assets were not disclosed.

FACTS AND PROCEDURAL HISTORY:

In 2017, after limited discovery, Husband and Wife participated in a divorce mediation that resulted in a signed property settlement Agreement that provided, in relevant part, that each party would keep their respective stock accounts, and Husband would retain the jointly-titled stock accounts. The Agreement also included a provision by which each party warranted full asset disclosure.

The following year, Wife filed a Trial Rule 60(B) motion seeking to set aside the Agreement on the basis that Husband had failed to disclose a stock account. The 60(B) litigation that followed focused on what financial information had been exchanged between the parties leading up to mediation. Wife successfully introduced some of those materials into evidence, after which the trial court granted Wife's relief and awarded Wife one-half of the stock account in question.

On an appeal, the Court of Appeals had split 2-1, with the majority concluding that the documents exchanged in advance of mediation were inadmissible. Judge Crone dissented based upon Husband citing no authority that evidence prepared in anticipation of mediation—rather than during mediation—is inadmissible under Evid. R. 408. Importantly, the Court of Appeals, after making this evidentiary determination, concluded that Wife was estopped from relying upon the disclosure warranty provision of the Agreement because Wife had also warranted that the Agreement fairly reflected all assets of the marriage.

Wife sought transfer, which was granted.

Relying significantly on policy reasons, the Indiana Supreme Court concluded that marital balance sheets exchanged in advance of mediation are not later admissible evidence under Rule 408. And, while Rule 408 includes an exception for the admission of evidence for another purpose, Wife's effort to challenge the validity of the Agreement did not fall under the exception.

The Court of Appeals had further concluded that the warranty language of the Agreement estopped Wife from obtaining relief under it because Wife also warranted that all assets and debts had been correctly reflected in the Agreement. On this point, the Indiana Supreme Court disagreed. Such a construction would render a disclosure warranty clause meaningless.

Thus, the Supreme Court reasoned that Rule 408 prevented Wife from attacking the validity of the parties' Agreement. However, the evidence was admissible in a collateral breach of contract claim. The evidence established that: (1) each party warranted all assets and debts were reflected in the Agreement (the contract); (2) Husband's assets were not correctly reflected in the Agreement (the breach); and (3) Wife's portion of a 50/50 division of the marital estate would have been larger without the breach (the damage).

The trial court did not abuse its discretion in determining that Husband breached the Agreement, and awarding Wife half of the omitted account to rectify the breach.

The trial court's order was affirmed on the basis that Husband had breached the warranty clause of the Agreement, setting aside the trial court's finding of fraud that was based upon inadmissible evidence.

IC 31-15-2-16 Dissolution decree; scope; finality; remarriage pending appeal

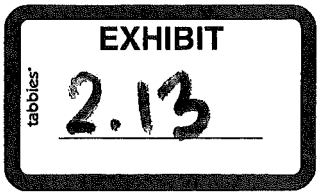
Sec. 16. (a) The court shall enter a dissolution decree:
(1) when the court has made the findings required by section 15 of this chapter; or
(2) upon the filing of pleadings under section 13 of this chapter.
(b) The decree may include orders as provided for in this article.
(c) If the decree provides for the division of property pursuant to IC 31-15-7-4, the decree shall:
(1) identify any real property by both its legal description and its parcel identification number;
(2) specify the type of ownership interest each party will have in the respective real property governed by the decree following the dissolution of the marriage.; and
(3) direct the auditor of the county to reflect in the records of that auditor the change in ownership, if any, the court decrees under this section.
(d) ~~(b)~~ A dissolution decree is final when entered, subject to the right of appeal.
(e) ~~(c)~~ An appeal from the provisions of a dissolution decree that does not challenge the findings as to the dissolution of the marriage does not delay the finality of the provision of the decree that dissolves the marriage, so that the parties may remarry pending appeal.

IC 31-15-2-17Agreements

Sec. 17. (a) To promote the amicable settlements of disputes that have arisen or may arise between the parties to a marriage attendant upon the dissolution of their marriage, the parties may agree in writing to provisions for:
(1) the maintenance of either of the parties;
(2) the disposition of any property owned by either or both of the parties; and
(3) the custody and support of the children of the parties.

(b) In an action for dissolution of marriage:
(1) the terms of the agreement, if approved by the court, shall be incorporated and merged into the decree and the parties shall be ordered to perform the terms; or
(2) the court may make provisions for:
(A) the disposition of property;
(B) child support;
(C) maintenance; and
(D) custody;
as provided in this title.

(c) The disposition of property settled by an agreement described in subsection (a) and incorporated and merged into the decree is not subject to subsequent modification by the court, except as the agreement prescribes or the parties subsequently consent.
(d) An agreement described in subsection (a) and incorporated and merged into the decree shall:
(1) identify any real property by both its legal description and its parcel identification number; and
(2) specify the type of ownership interest each party will have in the respective real property governed by the agreement following the dissolution of the marriage.



Section Two

Division of Retirement Plan Benefits and Tax Issues in Divorce

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Brandon C. Elkins-Barkley
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Section Two

Division of Retirement Plan Benefits and Tax Issues in Divorce……... Brooke Jones Lindsey
Brandon C. Elkins-Barkley

PowerPoint Presentation

Division of Retirement Plan Benefits and Tax Issues in Divorce

Brooke Lindsey and
Brandon C. Elkins-Barkley

Retirement Benefits

- May well be the largest asset(s) in the divorce
- c. 100 million Americans have retirement accounts
- Totaling over some $28 trillion in assets
- QDROs and Other Division Documents
  - Can be used for marital property division, alimony, and/or child support
- Malpractice Concerns

Absolute Basics

- Market Investments
- Favorable Tax Treatment
- Accessibility Limits
- Vesting
- Plan Sponsorship
- Sources of Law – ERISA, IRC
- Supremacy Clause vs. State Law

Why do Markets Matter?

- Dow Jones Industrial Average
  - January, 2020 - $28,766.75
  - March, 2020 - $22,004.83
  - August, 2020 - $27,692.88
- NASDAQ Composite
  - January, 2020 - $9,187.54
  - March, 2020 - $7,730.90
  - August, 2020 - $11,146.46

Identifying your plan – Broad Categories

- Defined Benefit v. Defined Contribution
- Employer v. Individual
- Private Employer v. Government Employer
- State Government v. Federal Government

ERISA Plans

- Employee Retirement Income Security Act
- Provides anti-alienation rules for retirement plans
- Allows exception in case of divorce or legal separation
  - Qualified Domestic Relations Orders

Non-ERISA Plans

- Private and Government Plans
- Private plans – IRA, Roth IRA, etc.
- Government plans – Federal or State?

Identifying Your Plan: DC v. DB

- **<u>Defined Contribution Plans</u>**
  - 401(k), TSP, Traditional IRA
- **<u>Defined Benefit Plans</u>**
  - Pensions, FERS, Military Retirement

Defined Contribution v. Defined Benefit Plans

Defined Contribution Plans

Type of savings plan – 401(k)
Easy to read balance
Employee contributions
Employer contributions
Allocation of Market Gains/Losses
Can be cashed out*
Loans
Marital Component
Ok to Off-set
Can only be divided by QDRO
Watch out for Admin. fees

Defined Benefit Plans

A pension – a lifetime annuity
Employee works for x number of years
When employee retires, employer pays a sum certain for the rest of the employee's life
Cannot be cashed out
Hard to value (need expert)
Beware off-setting
Separate vs. Shared Interest Approach
Can only be divided by QDRO

Employer v. Individual

- Application of ERISA
- Qualified Domestic Relations Order
- 401(k), Pension, 403(b), etc.
- IRAs

Private Employer v. Government Employer

- Private: 401(k), Pensions
- Government: State or Federal?

State Government v. Federal Government

- Teachers, Police, Firefighters, etc.

- Military, Civilian

  FERS, TSP, Military Retirement, CSRS

Drafting Considerations- Defined Contribution Plans

- Flat Dollar
- Percentage
- Contributions during case
- Market fluctuations during case
- Pre-marital balances
- Rollover of pre-marital accounts
- Withdrawals before and after filing

Drafting Considerations Defined Benefit

- Flat percentage of monthly
- Flat dollar amount of monthly
- Time Rule Formula
- Horse Trading
- Survivor Benefits
- COLAs
- Cash-Outs
- Failure of employer

Time Rule Formula
(Don't call it coverture!)

$$\frac{\text{Number of Months of Overlapping Employment and Marriage}}{\text{Total number of Months of Employment}}$$

x 50%

x the monthly benefit at retirement

Dividing PERF Pensions

- PERF pension plans may be effectively divided by the Court even though not actually.
- So, participant may need to make payments to former spouse on a monthly basis.
- The tax liability remains with the participant.

Drafting Consideration
Federal Government

- Military Retirement
- FERS
- TSP
- Railroad

Drafting Considerations Military Retired Pay

- Service Members
- 20 "good" years of service
- 10 years of marriage during service
- Defined Benefit Plan
- Hybrid Time Rule Formula

Military Retired Pay

- Survivor Benefit Plan (SBP)
  - Reduces monthly benefit
  - Ceases upon Former Spouse's death
  - Ceases if Former Spouse remarried before age 55
  - Must be elected at time of retirement (deemed election)
  - Once elected, irrevocable
  - Max. benefit is 55% of retired pay if Former Spouse is <62
- COLAs
- Special Separation Benefit (SSB)
- Voluntary Separation Initiative (VSI)
- State law factors – rank and years of service at time of divorce (Texas) vs. at time of retirement.
- Reserve jurisdiction, coverture formula, time-rule formula for post-marital increases

Military Retirement After 2017

- All new MRPDO must include:
- High 3 at time of divorce
- Years of creditable service at time of divorce
- Award must be a:
  - Fixed dollar amount
  - A percentage
  - A formula or
  - A hypothetical

Drafting Considerations FERS

- Civilian Federal Employee
- Defined Benefit Plan
- Default provisions
- Cash out option
- Military Rollover

Drafting Considerations
Thrift Savings Plan (TSP)

- Federal government equivalent to a 401(k)
- Military and/or Civilian Service
- Loan inclusion language
- One time only, no amendments
- Gains and Losses not automatic

Drafting Considerations
Railroad Retirement

- Two tiers
  - No Social Security withholding
  - Tier I as Social Security
  - Including divorce spouse share
- Private or government?
- Springing!

QDRO considerations for drafting

- Who is Drafting?
- Getting the information needed
- Processing fees

Are We Coming Back For Mediation Round 2?

- Do you need an expert valuation?
- Can you identify premarital values?
- Can you trace post-filing contributions?
- Can you identify vested balance?

Practical Concerns

- Preparing an unnecessary QDRO - IRA
- Agreement to Divide a plan that can't be divided
  - Non-Qualified Plans
- Agreement to Divide benefits that can't be divided
  - Survivor benefits to spouse of retired Participant
  - Survivor benefits for Alternate Payee's new spouse
- Failing to get a pension valuation
- Failing to properly advise the client / discover the available benefits and options
- Failing to follow through on the QDRO
  - With a single life annuity = no benefits upon death

Section Three

A Crash Course on What You Don't Know About Financial Assets and Tax Issues in Divorce

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Indianapolis, Indiana

Section Three

A Crash Course on What You Don't Know About Financial Assets and Tax Issues in Divorce…..

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PowerPoint Presentation

SMARTER DIVORCE SOLUTIONS

A Crash Course on what you don't know about financial assets and tax issues in divorce

Gregg Keele, CFP®, CDFA®, CRPC ®
Phil Christner, CFP®, CDFA®, CLTC®

Introductions

Gregg Keele
CFP®, CDFA®, CLTC®, CRPC®
Certified Divorce Financial Analyst

Phil Christner
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SMARTER DIVORCE SOLUTIONS

Agenda

- Tax Concepts Introduction
- The 50/50 Standard Solution
- Case Study – Does Knowledge Matter?
- Summary

Advanced Concepts Case Study

These illustrations are hypothetical and are not meant to represent any specific investment or imply any guaranteed rate of return.

Case Study Overview

Michael (62) & Donna (62) Smith (Hypothetical)

- Married for 29 years
- Reside in Indianapolis, IN
- Michael is a Star Wars Reenactor with W2 income of **$400,000 annually**
- Donna is a retired rocket scientist who has been a homemaker for the last 10 years- can no longer work
- 2 kids over 19 years old

Goals

- Michael wants to retire at 65 years old, with similar standard of living.
- Donna wants to keep the home and Michael has agreed.

Insurance

- 2 term life insurance policies (no cash value)
- All health insurance is through Michael's work

Net Cash Flow

Michael

- Income: $400,000
- Expenses: $223,143
- Net: $176,857

Donna

- Income: $25,000 (SSB)
- Expenses: $100,000
- Net: ($75,000)

Assets

- $450,000 value of home in Indianapolis
- Michael's 401k: $1,000,000
- NQ Brokerage: $300,000
- Checking/Savings: $100,000
- Donna's IRA: $100,000
- Michael's Roth IRA: $150,000

Liabilities

- Outstanding mortgage on current home: ($100,000)

Two Scenarios: 60/40 Split vs 50/50 Split Which is better for Donna?

60/40 Split

Asset	Michael	Donna
Marital Home	$ -	$ 450,000
Mortgage	$ -	$ (100,000)
Checking/Savings	$ 50,000	$ 50,000
401k - Michael	$ 300,000	$ 700,000
NQ Investment Brokerage	$ 300,000	$ -
IRA	$ -	$ 100,000
Roth IRA	$ 150,000	$ -
Total:	**$ 800,000**	**$ 1,200,000**
Division	**40%**	**60%**

50/50 Strategic Split

Asset	Michael	Donna
Marital Home	$ 450,000	$ -
Mortgage	$ (100,000)	$ -
Checking/Savings	$ 50,000	$ 50,000
401k - Michael	$ 600,000	$ 400,000
NQ Investment Brokerage	$ -	$ 300,000
IRA	$ -	$ 100,000
Roth IRA	$ -	$ 150,000
Total:	**$ 1,000,000**	**$ 1,000,000**
Division	**50%**	**50%**

Taxable Income Impact of each scenario:

Taxable Income Estimate for Donna for each scenario:

Income Type	Gross $	Taxable Amount $
Social Security	$ 25,000	$ 21,250
IRA Distributions	$ 75,000	$ 75,000
Roth IRA Distributions	$ -	$ -
Capital Gain	$ -	$ -
Dividends/Interest*	$ -	$ -
Distribution from NQ Basis	$ -	$ -
TOTAL:	**$ 100,000**	**$ 96,250**
Total Federal Taxes Owed	**$ 13,943**	**14.49%**

*Taxed at 12%

Income Type	Gross $	Taxable Amount $
Social Security	$ 25,000	$ 7,475
IRA Distributions	$ 15,000	$ 15,000
Roth IRA Distributions	$ 20,000	$ -
Capital Gain	$ 5,000	$ -
Dividends/Interest*	$ 5,000	$ 5,000
Distribution from NQ Basis	$ 30,000	$ -
TOTAL:	**$ 100,000**	**$ 32,475**
Total Federal Taxes Owed	**$ 953**	**2.93%**

*Taxed at 12%

Is your Social Security Benefit taxable?

To find out if their benefits are taxable, taxpayers should:

Take one half of the Social Security money they collected during the year and add it to their other income.

Other income includes pensions, wages, interest, dividends and capital gains.

If they are single and that total comes to more than $25,000, then part of their Social Security benefits may be taxable.

If they are married filing jointly, they should take half of their Social Security, plus half of their spouse's Social Security, and add that to all their combined income. If that total is more than $32,000, then part of their Social Security may be taxable.

Fifty percent of a taxpayer's benefits may be taxable if they are:

Filing single, single, head of household or qualifying widow or widower with $25,000 to $34,000 income.

Married filing separately and lived apart from their spouse for all of 2019 with $25,000 to $34,000 income.

Married filing jointly with $32,000 to $44,000 income.

Up to 85% of a taxpayer's benefits may be taxable if they are:

Filing single, head of household or qualifying widow or widower with more than $34,000 income.

Married filing jointly with more than $44,000 income.

Married filing separately and lived apart from their spouse for all of 2019 with more than $34,000 income.

Married filing separately and lived with their spouse at any time during 2019.

Don’t forget, Social Security benefits may be taxable | Internal Revenue Service (irs.gov)

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Taxable Income Estimate for Donna for each scenario:

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*Taxed at 12%

Income Tax Brackets for 2022

2022 Federal Income Tax Brackets and Rates for Single Filers, Married Couples Filing Jointly, and Heads of Households			
Tax Rate	**For Single Filers**	**For Married Individuals Filing Joint Returns**	**For Heads of Households**
10%	$0 to $10,275	$0 to $20,550	$0 to $14,650
12%	$10,275 to $41,775	$20,550 to $83,550	$14,650 to $55,900
22%	$41,775 to $89,075	$83,550 to $178,150	$55,900 to $89,050
24%	$89,075 to $170,050	$178,150 to $340,100	$89,050 to $170,050
32%	$170,050 to $215,950	$340,100 to $431,900	$170,050 to $215,950
35%	$215,950 to $539,900	$431,900 to $647,850	$215,950 to $539,900
37%	$539,900 or more	$647,850 or more	$539,900 or more
Source: Internal Revenue Service			

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TOTAL:	**$ 100,000**	**$ 32,475**
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*Taxed at 12%

Affordable Care Act Estimate for Donna: www.healthcare.gov

HealthCare.gov/see-plans/#/plan/results

Bronze Plan		
$7,700 Deductible $8,550 Out of Pocket Max	Unsubsidized Monthly Premium: $808/month	Subsidized Monthly Premium: $30/month
62 Year-old Woman (nonsmoker)	Indiana	

Affordable Care Act Health Insurance Subsidy Table:

Determining if You Qualify:
Eligibility for subsidies depends on where you live, your age, your income and whether or not you are a smoker. Generally speaking, the lower your income, the larger your credit.

If you live in one of the 48 continental states, you should be able to qualify for a subsidy on both your premium and your out-of-pocket medical expenses if your income falls into one of the below ranges:

# of People in Household	Household Income Range
1	$11,670 to $46,680
2	$15,730 to $62,920
3	$19,970 to $79,160
4	$23,850 to $95,400
5	$27,910 to $111,640
6	$31,970 to $$127,880
7	$36,040 to $144,120

Subsidy Eligibility | ObamacareUSA.org

Impact of each settlement and ACA Premium Cost

60/40 Split

50/50 Strategic Split

Potential Affordable Care Act Health Insurance Impact for each Scenario for Donna:

Gross Income:	$ 100,000	Gross Income:	$ 100,000.00
Less Federal Tax	$ (13,943)	Less Federal Tax	$ (953.00)
Less Indiana Tax	$ (4,813)	Less Indiana Tax	$ -
Less Estimated ACA Premium Cost	$ (9,698)	Less Estimated ACA Premium Cost	$ (357.36)
Net Income:	**$ 71,547**	**Net Income:**	**$ 98,689.64**

Difference in Net income	**$27,142.94**	**38%**

Other Possible Variables

- Manage your Tax Triangle!
- 457 Gov't Plans Vs Non-Gov Plans.
- Non-qualified brokerage accounts and 401k NUA
- Co-signed on student debt for kids' education
- RSU/PSU equity valuation
- NQDC plans
- Annuities and lifetime guaranteed income benefits and death benefits
- Donna is healthy and would qualify for temporary health insurance policy.
- Have a long-term care insurance policy insuring both of them, that cannot be separated
- Have a second to die life insurance policy in an irrevocable life insurance trust
- Pending estate settlement from Michael's parent's death

How We Help Your Clients

Avoid Common Divorce Settlement Mistakes

- Taxability of Assets Matters
- Not looking at the long-term impact of settlement
- Not understanding the tax implications of settlement
- Not understanding how to divide debt
- Thinking fair and equal are the same

Higher Level Issues

- Executive compensation
- Stock options

$$C(S_t, t) = N(d_1)S_t - N(d_2)Ke^{-r(T-t)}$$

$$d_1 = \frac{1}{\sigma\sqrt{T-t}}\left[\ln\left(\frac{S_t}{K}\right) + \left(r + \frac{\sigma^2}{2}\right)(T-t)\right]$$

$$d_2 = d_1 - \sigma\sqrt{T-t}$$

- Non-qualified deferred compensation
- Family businesses

How We Help Your Clients

Pension Valuations

Information needed for each pension plan:

- Name of Participant and pension plan
- Birth Date for the participant
- Retirement Date (estimated retirement date) or Benefit Start Date
- Benefit amount ($) per month
- Cost of living adjustment (COLA) percent, if any
- Date participant started in the plan
- Date Married
- Date of filing or cut-off-date (date where the plan is no longer marital)

What is the CDFA® Designation?

Per the IDFA™ website:

"A CDFA® professional is a financial professional skilled at analyzing data and providing expertise on the financial issues of divorce. The role of the CDFA® professional is to assist the client and his or her attorney to understand how the decisions he or she makes today will impact the client's financial future. A CDFA ® can take on many roles in the divorce process:

1. Financial Expertise and Strategy
2. Data Collection and Analysis
3. Expert Presenter and Litigation Support

Always use a Certified Divorce Financial Analyst®!

How We Help Your Clients

Financial Neutral

Financial Advocate

In either method, we help set realistic expectations. We do this by integrating the financial planning process into divorce.

Final Thoughts

Consumer net worth in the US has never been higher*

Cash on hand has never been higher

Changes in the tax law are causing more confusion

Building teams with expertise is logical
and is what the clients expect

*Survey of Consumer Finances, Federal Reserve 2017

Thank you.

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Section Four

Psychological Assessment with Court-Ordered Families

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Section Four

Psychological Assessment with Court-Ordered Families……..... Robin Kohli, Psy.D., HSPP

PowerPoint Presentation

Psychological Assessment with Court-Ordered Families

Robin Kohli Psy.D.,HSPP
Woodview Psychology Group

Goals of Training

- Types of Court Ordered Evaluations
- What are some signs that a diagnostic assessment may be needed or appropriate?
- What are the components of an assessment & report?
- How do psychologists select assessment batteries?
- What kind of information does the psychologist need?
- What kinds of assessment are available?
- What are the types of assessment instruments?
- How are testing instruments developed and normed?
- How do you know that testing is valid and reliable?
- What are Personality Disorders and how they are evaluated?
- How do the results produce a diagnosis?
- How do psychologists develop recommendations?

Common Court ordered Evaluations

- Competency/Insanity Evaluations
- Child Custody Evaluations- Typically both parents evaluated to determine best interest of child
- Trial Rule 35 Evaluations- medical or psychological evaluation of one or more parties in the case
- Other Specialized Court-Ordered Situations
  - Waiver to Adult Court
  - Civil Commitment
  - Guardianship Issues
  - Sex Offender Registry

Signs that an assessment may be needed or appropriate

- If client has significant emotional, behavioral, cognitive, or adaptive impairments that interfere with functioning, they may require special services or treatment. Services may only be offered if a psych assessment has been completed listing the diagnosis and recommendations.
- If the client is unreliable or dishonest in reporting symptoms- psychological assessment can be helpful in clarifying the validity of the symptoms.
- If the client presents with atypical symptoms that are not being treated by a provider, psychological assessment can clarify diagnosis.
- If there are legal or safety concerns about placement, competency, risk to self or the community, etc.
- If the case is not progressing due to the parent's failure to participate and mental health, substance abuse or cognitive concerns are suspected.

What are the components of a typical assessment and report?

- Psychological assessment integrates a client's current presentation (mental status) with the following information, gathered during the assessment process:
  - Developmental history
  - Family history
  - Medical history
  - Educational/Work History
  - Mental Health and family mental health history
  - IQ/Achievement , adaptive skills, or neuropsych results
  - Objective measures (self or by parents, teachers or others)
  - Optional: Projective Measures (by client)
  - Diagnosis
  - Recommendations

Test Selection

- Psychological assessment uses data gathered from the client, history, and other objective raters to answer a specific referral question. Sometimes this question is inferred given the circumstance (i.e. parenting evaluations)
- Assessment measures (tests) selected vary based on the type of question that is asked. These measures must be appropriate for use with clients of the age, ethnicity, and functioning level of the client being tested.
- Understanding the specifics of the referral question assists in selecting the most appropriate and useful tests.

What kind of information does a psychologist need for an assessment?

- Mental Health records (therapy and evaluations)!!!!!!
- Medical records (if applicable)
- School records (for children/adolescents)
- Legal and Court records
- Past psychological or psychoeducational reports
- Inpatient mental health records
- Youth: Current behavioral info (i.e. school, detention, home)
- Releases of Info (signed) so psychologist can access missing info. These are needed ASAP!
- For Youth: Access to caregiver, guardian, parent or someone who knows the child's history

What are the types of assessment instruments?

- Objective- rating scales that are scored by the client or an observer, usually 0, 1 or 2, with a scale scores and a total score that is compared against a normative group.
- Projective (Optional)- originally based on psychodynamic theory about unconscious material projected on innocuous stimuli. Some projectives have been standardized and normed on different age groups and others are interpreted more loosely.
- Performance tests- Measure actual performance. IQ, achievement, memory, CPT's, ADOS-2 (Autism) are based on how subject scores on certain tasks (accuracy of their performance, timed or untimed) as compared to a normative group.
- Observational assessments- based on observed behavior (i.e. ADOS-2, for autism)
- Actuarial scales- statistically-based objective rating scale , which uses historical and current risk factors to determine a category of risk (violence risk, sex offending risk, etc)

Cognitive/Intellectual Functioning

- Provides a profile of cognitive strengths and weaknesses compared to same-age peers
- Common Tests:
  - Wechsler Adult Intelligence Scales (WAIS-IV)
    - Ages 16-90
  - Wechsler Intelligence Scales for Children (WISC-V)
    - (Ages 6-16)
  - Wechsler Abbreviated Scales of Intelligence (WASI-II)
    - (Abbreviated Version)
  - Woodcock Johnson Tests of Cognitive Abilities (WJ-IV)

Academic Functioning

- Assesses academic performance and the presence of possible learning disabilities
- Common Tests (Comprehensive):
  - Woodcock Johnson -Tests of Achievement (WJ-IV)
  - Wechsler Individual Achievement Test (WIAT-4)
  - Wide Range Achievement Test (WRAT-5)
    - Abbreviated
- Specific Achievement Measures:
  - Nelson-Denny, GORT-5, CELF-5, OWLS-II, TOWL-IV

Adaptive Functioning & ASD

- Adaptive Functioning: Measures adaptive skills needed in everyday life (i.e., social skills, activities of daily living, communication, personal safety, etc.)
  - Typically used when assessing for Intellectual Disability, LD, Autism Spectrum Disorder
  - Tests: ABAS-3; Vineland
- Autism Spectrum Disorder (ASD): Assesses for history and present symptoms associated with ASD
  - Tests: ADOS-2; Self-Report Measures (SRS-2; GARS-3); ADI-R (Structured Interview with caregiver)

Emotional/Behavioral Functioning

- Objective self and parent ratings of a wide range of emotional, social, and behavioral problems (e.g., anxiety, depression, conduct problems, aggression, etc.)
  - Tests: Conners Behavior Rating Scales; Achenbach Scales (CBCL); BASC
- Objective Personality Measures: Self report measures of emotional functioning and personality patterns
  - Common Tests: MMPI-3; MMPI-A-RF; MCMI-IV, MACI-2, M-PACI; NEO-PI-3

Trauma & Substance Abuse

- Trauma: Assesses symptoms commonly associated with traumatic experiences and PTSD
  - Tests: TSI-2, TSCC; TSCYC; CSBI, UCLA PTSD Index
- Substance Abuse: Assesses current substance use and risk factors for substance abuse/dependence
  - Tests: SASSI-A2; MAPP; MAST; DAST

Projective Measures

- Measures responses to ambiguous stimuli (e.g., pictures, inkblots, drawing directives) that represent personality traits and emotional functioning
- More difficult to respond in a socially acceptable manner
- Helpful with clients who tend to underreport psychological symptoms/problems
- Not as reliable as objective and highly standardized IQ/personality tests
- Common Tests:
  - Rorschach
  - TAT; AAT; CAT
  - HTP; Kinetic Family Drawing

Neuropsychological Evaluation

- Main use is to assess for the presence of neuropsychological impairment due to brain damage. Tests may also be administered to assess for executive functioning deficits in individuals with ADHD
- Comprehensive
  - NEPSY-II, Halstead-Reitan
- Executive Functioning/Attention
  - D-KEFS; Conners Continuous Performance Test-II (CPT-II)
  - Self-report measures (BRIEF, Brown ADD Scales; CAARS)
- Memory
  - WRAML-3; CVLT-3; WMS-IV
- Visual-motor abilities
  - Bender visual motor gestalt test ; Beery VMI-6

Additional Assessments

- Forensic
  - TOMM, SIRS, PCL-R, PCL-YV, HCR-20, VRAG, STATIC-2, Gudjonsson, FAVT, SAVRY, Juvenile Adjudicative Competency Interview
- Sex Offender Risk Assessment
  - HCR-20-V3, SORAG-R, Profesor, JSOAP-II, JSORRAT-II, SVR-20
- Parenting Capacity
  - CAPI, AAPI-2, PSI-IV, SIPA

Determining Significant Scores

- Standardized tests usually have an average (mean) score of 100 or 50 with standard deviations of 10 or 15. Tests usually have predetermined cut-off scores (T-Score >65 or Standard Scores of 1-2 standard deviations from the mean).
- Standardized tests often come with built-in validity and reliability scales to help determine if client exaggerated, minimized, or answered inconsistently or randomly.
- Some tests only have comparison groups based on research to compare scores. When this happens, groups may overlap in their average scores and ranges, which does not always help when determining diagnosis.

How are testing instruments developed and normed?

- Tests are developed based on symptoms or concepts validated by certain groups or by large ranges of symptoms, which when given to larger groups of clients, split apart into certain symptom clusters. Symptoms which are not highly correlated with the diagnosis being assessed are taken out of the test.
- For actuarial risk assessments, those who reoffend are evaluated for demographics which are correlated with reoffense (versus those who do not offend). The variables most highly correlated with reoffense are put into the risk assessment to gauge risk.
- Different types of validity and reliability are evaluated during the test development process and the test is usually compared to a standard test already available that is considered the best available to the public.
- For objective measures, multiple raters should be able to score the same subject in a consistent manner with little training.

Pros & Cons of Different Tests

- Price to examiner and client
  - Costs range from **free** to >$2000 (plus training costs) to purchase test kits or packages. Forms and computer-scored reports are billed separately and add to the cost.
- Time to administer and interpret
  - Most testing can be completed in one day (8 hours or less)
- Clinical utility
  - Some tests are much stronger and more specific to the referral question (or specific legal concern)
- Strong research data to support findings is ideal
- Screener tests versus comprehensive assessments
  - Screener tests are only meant to identify a problem, not fully describe or rate the severity of the problem (but are quick and cheaper to administer)

How do you know if testing is valid and reliable?

- Psychologists should give their opinion about the validity/reliability of each test administered and the client's approach to testing in general. Invalid data should not be reported or interpreted.
- If the tests administered were not consistent with client's age, culture, or language, or if significant modifications were made (exceeding standardized protocols), this should be explained and warnings about the reliability of the report should be given in the interpretation.
- Clients referred for testing, particularly for legal issues, rarely respond with full honesty. Caution and skepticism should **always** be used but this isn't uncommon when stakes are high.
- Information gathered from assessment measures should be compared and contrasted with historical information and information from the client's current presentation. Greater weight should be given to information from stronger tests and more reliable and objective raters and sources.

What are Personality Disorders

- Personality Disorders are stable (i.e. non-acute diagnoses) where the individual has developed beliefs about the world and themselves which are maladaptive and interfere with social relationships.
- Personality Disorders develop through childhood and adolescence and aren't typically diagnosed until adulthood.
- Personality Disorders can be treated but are more difficult to treat than Acute Mental Health conditions, as they require the client's trust, commitment to change, and long-term skill-building

Types of Personality Disorders

- Paranoid Personality Disorder
- Schizoid Personality Disorder
- Schizotypal Personality Disoder
- Antisocial Personality Disorder
- Borderline Personality Disorder
- Histrionic Personality Disorder
- Narcissistic Personality Disorder
- Avoidant Personality Disorder
- Dependent Personality Disorder
- Obsessive-Compulsive Personality Disorder
- PD due to Medical Condition or other specified

Personality Disorder Assessment

- Personality assessment measures assist in clarifying personality disorders. Objective questions can help identify underlying symptoms of personality disorders
- Personality disorders typically involve irrational beliefs about others, problems regulating mood, anger problems, cognitive processing concerns (rumination or gets stuck in thinking), paranoia, fears of abandonment, rejection, isolation/withdrawal, and difficulty communicating with others in a healthy manner

Acute Symptoms versus Personality Disorders

- The onset of symptoms is most important to consider. Depression, anxiety, and psychosis can set in at a certain period of time and with medication and/or therapy, can resolve or lessen in severity.
- Personality Disorders tend to be more chronic and involve symptoms but also patterns of behavior, which reoccur with multiple individuals or across different situations.
- Some acute diagnoses can also be personality disorders, depending on how disabling the condition is or how pervasive the problem is (OCD, etc.)

How do the results of testing produce a diagnosis?

- There is a hierarchy of diagnoses in the DSM-V that one must use in determining diagnoses (e.g. PTSD can cover OCD, GAD, somatic disorders, etc.)
- The psychologist should have one or more hypotheses that he/she tests by selecting various tests, as appropriate to the client's demographics. Test results should help to tease apart different diagnoses, which may present similarly.
- The client may meet diagnostic criteria for more than one diagnosis, but the symptoms must be severe enough to warrant more than one diagnosis if the diagnoses tend to co-occur.
- The DSM-V-TR is used as the final decision on diagnoses. Psychologists should never rely solely upon the diagnostic considerations offered from computer-generated reports.

Developing Recommendations

- Consider the following factors:
  - Specifics of the problem (e.g., diagnosis, severity of problem)
  - Risk of diagnosis to children or others
  - Client/Family resources
  - Environmental circumstances (e.g., accessibility, availability of resources)
  - Client risk factors
- Integration of personal characteristics with evaluation results

Treatment Recommendations

- Develop treatment recommendations related to:
  - Treatment setting (inpatient, outpatient, home-based)
  - Intensity (frequency, duration)
  - Mode (individual, family, group)
  - Specific strategies and interventions based on diagnoses
- Additional Recommendations
  - Recommendations based on IQ/achievement testing and current school status
  - Recommendations to increase social support, community involvement, etc.
  - Recommendations for parents (e.g., parenting classes, skills training, etc.)

Questions & Answers

Section Five

Resolving Custody and Coparenting Issues with Personality Disordered Parents

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Section Five

RESOLVING CUSTODY AND COPARENTING ISSUES WITH PERSONALITY DISORDERED PARENTS

Kevin R. Byrd, Ph.D.

ICLEF August 19, 2022

- The essence of the problem:

  One or both parties have a narrative of the coparent relationship that is based upon **exaggeration, selective memory, attributional bias, and lies** that support the idea that grave injustices have been endured by an innocent victim at the hands of a sadistic coparent.

- The essence of the problem:

Aggressive or obstructionist behaviors (often construed as merely assertive) are thusly justified. “If I give an inch …”

- The essence of the problem:

These narratives are inflexible and defended virtually “to the death,” because changing them would entail the collapse of one’s identity and sense of reality.

- The essence of the problem:

The court, your office, the PC's office, the GAL's office, and the custody evaluator's office become battlefields where these two realities clash - and DCS, the attorneys, and the police are all weaponized. They are too focused on the conflict to focus on the child(ren).

PERSONALITY DISORDERS

PERSONALITY DISORDERS

- I will focus on the more **general features** of personality disorders, as they present themselves in custody/parenting time disputes, rather than go into detail on each of the standard ten types.
  - Would rather deal with character assassination and sense of being a victim rather than focus on actual problems involving the children.
  - Unilateral decision-making, especially regarding medical and mental health issues.
  - Read minds and predict the future.
  - Exaggerates and uses inflammatory language.

- Overuse or inappropriate use of terms such as victim, abuse, and trauma. The alarm is usually worse than the fire and the drama is usually worse than the trauma.
- Multiple petitions and motions.
- “The best defense is a good offense” mentality.
- Usually feels entirely justified in alienating kids, verbally abusing ex, lying, and weaponizing social media, DCS, the police, and the courts.
- Sticks to aggressive or underhanded strategies even though they make matters worse.

PERSONALITY DISORDERS

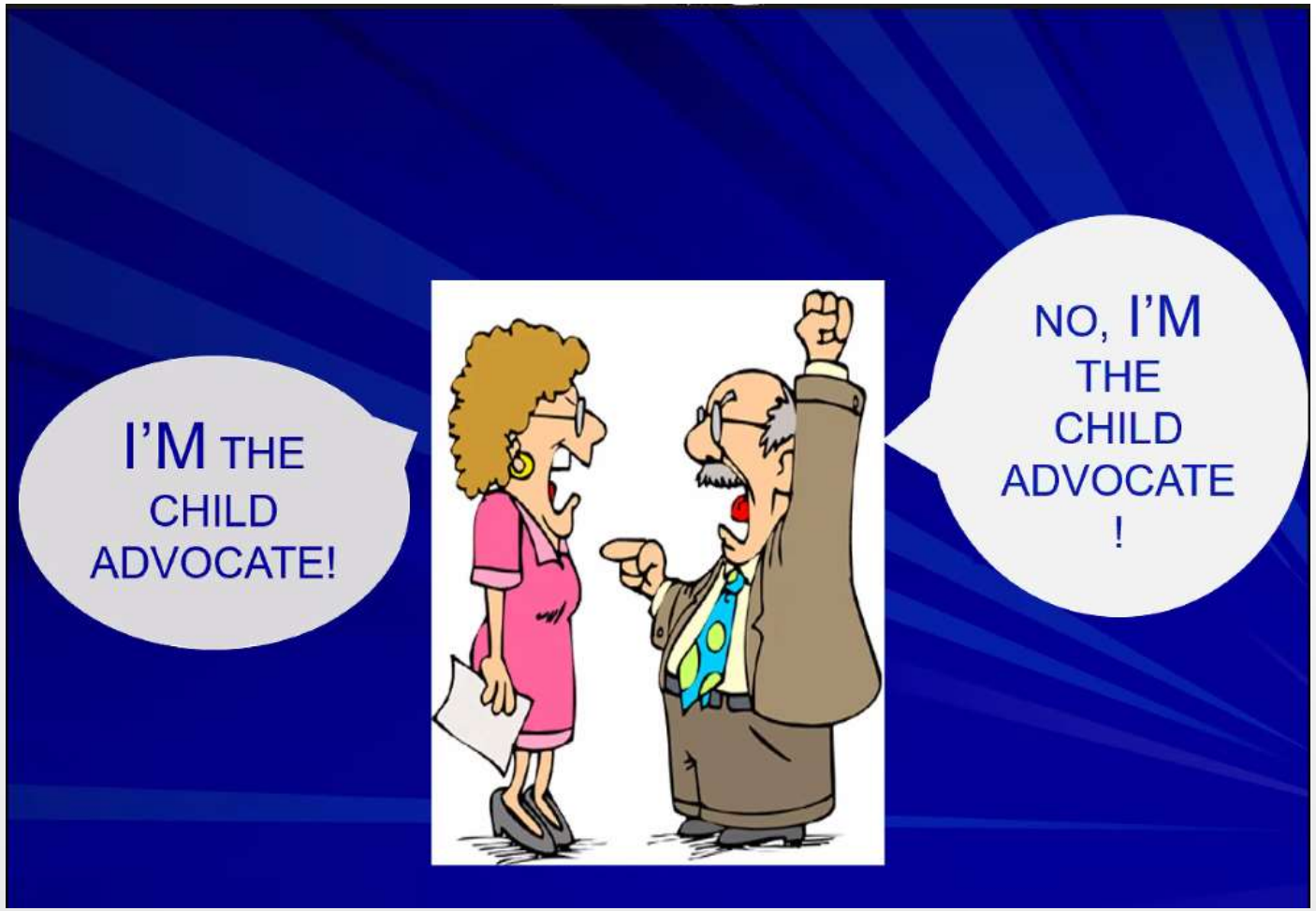
- Frequent litigation that keeps the pot stirred. (I recently evaluated a mother who filed a complaint that her ex called her an “idiot.”)
- Cannot focus on a child-related problem. Tends to focus on perceived injustices and character assassination.

FREQUENT PROBLEMS POSED BY PERSONALITY DISORDERED CLIENTS

Self-awarded degree in Clinical Psychology

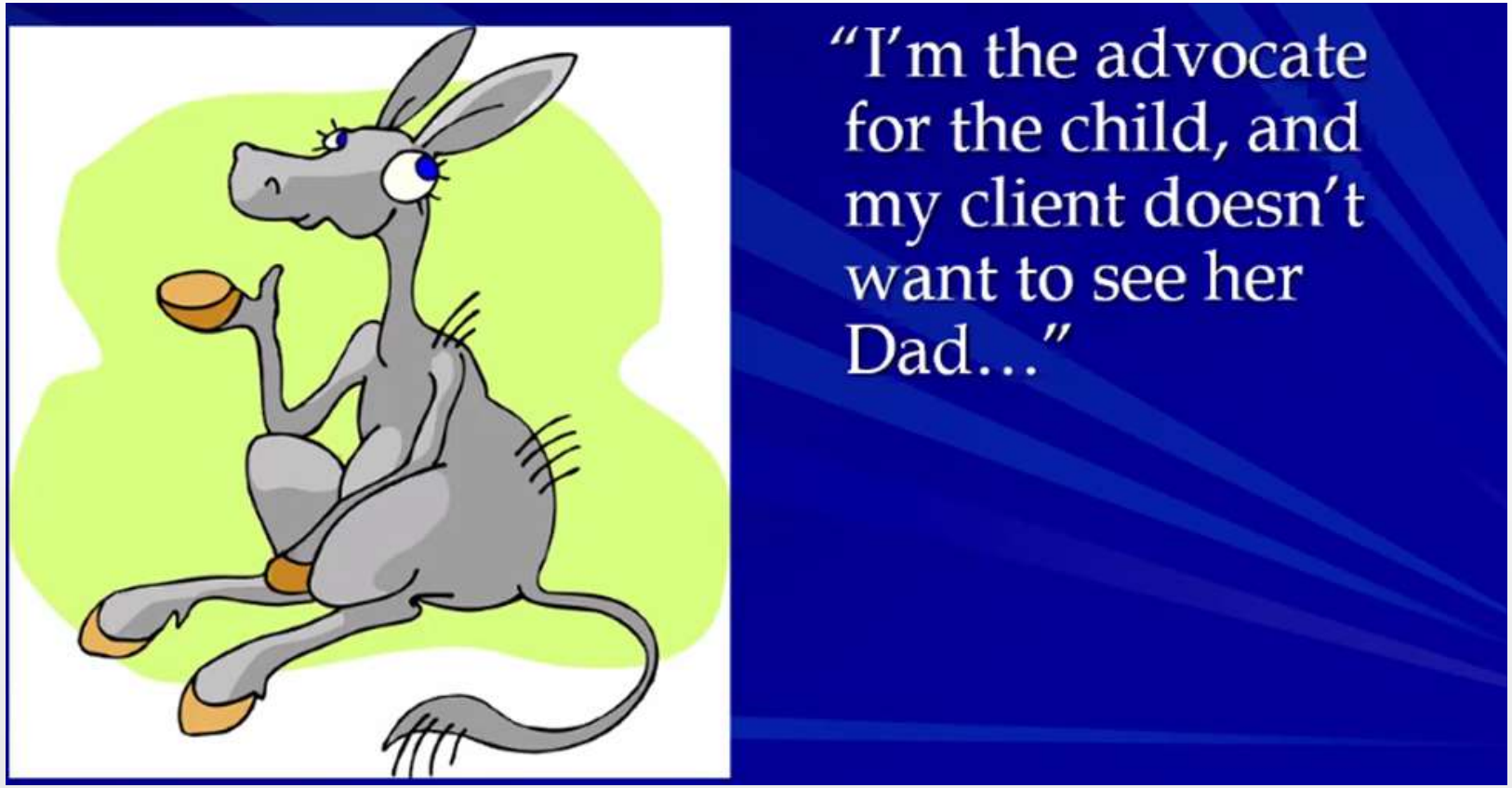
FREQUENT PROBLEMS POSED BY PERSONALITY DISORDERED CLIENTS

FREQUENT PROBLEMS POSED BY PERSONALITY DISORDERED CLIENTS



Self-assigned roles

FREQUENT PROBLEMS POSED BY PERSONALITY DISORDERED CLIENTS



Self-assigned roles

FREQUENT PROBLEMS POSED BY PERSONALITY DISORDERED CLIENTS

Attributional Bias

FREQUENT PROBLEMS POSED BY PERSONALITY DISORDERED CLIENTS

- Agreements up front
  - No mind reading “S/he’s only being nice in order to look good.” How would the behavior look different if it were sincere?
  - No crystal ball gazing: “S/he will only use the additional phone time to badmouth me to the kids.”
  - No back-channeled communication.

GENERAL INTERVENTIONS

- You have to be a “broken record,” repeatedly reminding the parents that their discord is not good for the children. The discord, not the other parent, is the threat to the children.

GENERAL INTERVENTIONS

- Steer away from characterological issues and the past, and **define the problem**.
- When intense anger or other disruptive emotions arise, do not try to change them. Stay empathic but not condescending. “I can see that what was just said really triggered intense feelings. When you are ready, let’s use those feelings to understand the problems we need to address.”

GENERAL INTERVENTIONS

GENERAL INTERVENTIONS

- Be a broken record. Example:
  - **Mediator**: Lets talk about the summer schedule.
  - **Parent 1**: Parent 2 is unreasonable and abusive.
  - **Mediator:** That is a different problem. Right now, we are dealing with the summer schedule. We can deal with other issues later. Do you have a proposal for the summer schedule?
  - **Parent 2**: You see what I am dealing with?
  - **Mediator**: Right now, we are dealing with obtaining a proposal from Parent 1 om the summer schedule.
  - **Parent 1:** Parent 2 won't agree to anything I propose.
  - **Mediator:** We do not have a crystal ball. Let's get a proposal on the table for the summer schedule and go from there.
  - Note how the mediator refers to the topic repeatedly.

General Interventions

- Never allow a proposal to be rejected without a counter proposal that addresses the problem at hand. Let's say the problem is that Johnny does not want to visit Parent 1.
  - **Parent 1**: I think I should just have primary custody.
  - **Parent 2**: That will never happen!
  - **Mediator**: How do you (Parent 2) propose that we deal with Johnny's reluctance to visit Parent 1?
  - **Parent 2**: I don't know.
  - **Mediator**: Parent 1 made a proposal that you immediately rejected without discussion. It is up to you to either discuss that proposal or make a counter-proposal.
  - **Parent 2:** Parent 1 would never stick to any agreement.
  - **Mediator**: We do not have a crystal ball and we can discuss the importance of keeping agreements later. There is a serious problem that involves your son, and we need a proposal from you (Parent 2) on how to

- Provide moderate amounts of empathy, but without getting into the weeds on the parent's personal reactions.
  - **Parent 1**: I am so stressed out by all this. I just can't take it anymore.
  - **Mediator**: I can see how the ongoing litigation and conflict would get you down, and I do take your feelings seriously. At the same time, I think if we can solve some of the problems at hand, you will feel stronger.
  - **Parent 1**: I've tried for years and have gotten nowhere. I just don't see how this is going to be any different.
  - **Mediator**: I get that. It's hard to keep trying when you don't feel much hope of success. But let's see if we can just get one or two minor problems resolved today, and that might boost your confidence, at least some. Let's start with a schedule for phone calls with the kids …

- Last resort: “If you cannot control impulses or regulate emotions, get help and come back when you can.”

GENERAL INTERVENTIONS

- The parents' argue over the child's health care.
  - Regardless of who has legal custody, it is usually in the child's best interest that each parent has equal access to health care providers and records (unless there is protective order or court order to the contrary; IC 16-39-1-7) and **equal input**. Providers often erroneously believe that the non-custodial parent is not allowed to access the child's records and this often needs to be corrected.
  - In joint legal custody systems, have the parents select a qualified professional to break "ties" if a compromise or agreement cannot be reached.

INTERVENTIONS FOR SPECIFIC PROBLEMS

- One parent accuses the other of fostering parental alienation.
  - Break this down into specific behaviors in the child that the rejected parent wants to see changed. Work within current parenting time arrangements. Solicit proposals on how to influence the child.
  - Each specific behavior may need a different intervention.
    - Johnny goes out with friends for most of the parenting time.
    - Johnny stays in room during most of parenting time.
  - Refer to reunification therapist if Johnny is intractable.

INTERVENTIONS FOR SPECIFIC PROBLEMS

- Use of audiovisual recordings during transitions.
  - Discuss the pros and cons of recording transfers, child's behavior.
    - Pros: Parents tend to stay on best behavior. Parents can review with a therapist to receive feedback.
    - Cons: Child may see this as an opportunity to create some drama. Promotes a focus on "evidence" for court as opposed to the child's needs.
  - Help each parent understand that there is no "right or wrong" answer to whether recording should take place. Discussion should take place over "how," "who," and "when."
  - Proposals and counterproposals.

INTERVENTIONS FOR SPECIFIC PROBLEMS

- Disagreements over extracurricular activities.
  - Lots of research indicates that extracurriculars promote maturity, confidence, well-being.
  - Provides an opportunity for the child to see the parents in “truce” mode. If you do not like the other parent, that is your problem – do not make it your child’s problem.
    - Can always take turns selecting activities from season to season. Each parent must agree to not “advocate” for the child when the decision belongs to the other parent.
    - However, there can be an agreement that the child participates (to an age-appropriate extent) in the decisions.

INTERVENTIONS FOR SPECIFIC PROBLEMS

- Unresponsiveness to attempts by a parent to solicit information from the other parent.
  - Encourage use of OFW for accountability.
  - Establish an agreement on acceptable waiting period (24 hours; 48 hours).
  - Navigate around obstacles. E.g., “I forget to check my email.” Set an alert on your cell phone.

INTERVENTIONS FOR SPECIFIC PROBLEMS

- Contact with the “away” parent. First establish amount of time deemed reasonable.
  - Parent 1 says the child does not want to come to the phone. “What would you do if the child refused to brush their teeth.”
  - Parent 2 says the other parent is listening in. What is the actual problem? Is the child being affected?

INTERVENTIONS FOR SPECIFIC PROBLEMS

- Stepparents and Romantic Partners
  - There is nothing *invasive* in wanting to know about a person who is spending significant time with one's child.
  - What is the role of the new partner in the child's life? How will it differ from the biological parent's role?
  - Janie said the new partner called Mommy a bad name. Can the Father tell Janie that no one should say anything bad about her Mother but that sometimes adults make mistakes. This does not implicate anyone – it just sets a rule and expectation. Take the blame away and the problem can be addressed.

INTERVENTIONS FOR SPECIFIC PROBLEMS

- Keep the fact that coparent conflict deteriorates the mental health of children at the forefront of discussions.
- Prevent the parents from weaponizing your services by introducing a written agreement at the outset that addresses untoward behavior (e.g., crystal ball gazing, mind reading).
- Be a broken record and keep returning to problem identification and negotiation over and over.
- Some clients are too emotionally dysregulated to participate in mediation. They may need a regime of psychotherapy first.

SUMMARY

Items included in a mediational contract

Resolving Custody and Coparenting Issues with Personality Disordered Parents
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When discussing current problems, co-parents often want to dwell in the past. They falsely believe that it is important for the therapist to know how treacherous, violent, deceitful, hostile, abusive, resistant to change, or harassing the other co-parent has been. However, Mediation requires almost exclusive focus on the present and future well-being of the child(ren).

There will be no “mind-reading,” once Mediation begins. Mind-reading is presuming to know the intentions, motivations, thoughts, or feelings of your coparent.

Likewise, there will be no “crystal ball reading,” that is predicting how your coparent will behave in the future if you change your behavior.

You will strive to be aware (mindful) of your intentions (i.e., what it is you want to accomplish) throughout the Mediational sessions and the impact your words and behavior in and out of the session are having on the other partner.

Neither coparent will diagnose the other through reading books, the internet, magazine articles, et cetera.

No defensiveness, disdain, self-centered diatribes, arguing, blame, accusations, or hostility will be tolerated. The Mediator will be respectful but direct in cutting off unhealthy verbal and non-verbal communication between co-parents. This includes behaviors such as rolling one’s eyes, interrupting, or any utterances and facial expressions that convey disdain or disengagement.