

FAMILY LAW FOCUS

Safeguarding Clients in Volatile Legal Situations



Take steps to protect client's assets in family law proceedings.

For any professional who is involved in a potentially volatile family situation, it is imperative to make efforts to safeguard the physical safety of your client and his or her children.

As one with demonstrated expertise in dealing with such emotional, high-stress issues, you may well be the person to whom your client looks for guidance.

Adequate Financial Resources

Be sure that he or she has put aside adequate financial resources, personal belongings and household items to set up independent living—before your client leaves the marital relationship.

Counsel him or her to insure that all legal rights and obligations have been considered—as well as protected—before they are possibly jeopardized by any actions either spouse

might take.

Explain Process to Client

Well in advance of starting any legal proceeding, be sure that your client (and his or her support system) is informed. Each will need to know what steps will be taken prior to and immediately after a petition is filed in court.

Because the safety of these people can be all too easily jeopardized in emotionally charged situations, the attorneys at **Newton Becker Reichert** urge that plans be in place to provide for their welfare.

Planning Prior to Move

Prior to his or her move, your client needs to consider:

- Making arrangements to live at a place with a secret location.
- Having a security system in place at the new residence.
- Obtaining an unlisted telephone number.
- Having someone within your client's support system with whom he or she will regularly maintain contact.
- Renting storage space or storing items at the residence of a family member or friend prior to moving from the marital residence.



Make plans to safeguard your client and his or her family.

- Making plans for the child or children to be removed from school on the day of the move.

- Giving copies of any pertinent court documents to the child's school.

- Planning to move when the offending spouse is away from the marital home. ♦

Spotlight On:

- Safeguarding Your Clients.....1
- Legal Help in Abuse Cases.....2
- Domestic Violence Hotlines.....2
- Custody Placement Analyzed..2
- Grandparents Raising Kids.....2
- Fraud in Custody Report?.....3
- A Client's "Bill of Rights".....3
- Same-Sex Couple Custody.....4
- PFLAG Support Group4

Legal Scrutiny Easier with Protective Order Law

THIRD IN A SERIES



New law makes getting legal relief easier.

One of the goals of Indiana's new protective order law is to make it easier for people to obtain judicial scrutiny and law enforcement protection.

As of July 1, 2002, when the law took effect, for example, filing fees for Protective Orders were no longer required. (A judge, however, may require the Respondent to pay fees.)

Emergency Relief in Court

Some emergency relief may be ordered without a hearing, but one will be required within 30 days. Such situations include: exclusive possession of the home, exclusive possession of a vehicle and getting

ISSUE WATCH:

Grandparents Raising Their Grandchildren

Greater numbers of children are being raised by their grandparents, but these caregivers often have difficulty in obtaining Medicaid benefits to meet the medical needs of their getting older.

Now on appeal in federal court is a Michigan case filed by grandparents who claim that they were denied Medicaid because the state failed to acknowledge the signifi-

personal items from the home.

Issues Requiring a Hearing

Judicial action on other issues may only be granted after a hearing has been held. Among those circumstances are: parenting time, paying rent or mortgage, paying child support or spousal maintenance, paying attorney's fees, reimbursement for expenses related to violence, paying other expenses such as counseling and prohibiting possession of firearms or ammunition.

Protect Against Abuse

Indiana's protective order law contains valuable tools to safeguard your client, but there is no substitute for self-help. While the order is an enforceable piece of paper, it will not prevent violence if someone is determined to be abusive.

Newton Becker Reichert has compiled a "Checklist" for clients when domestic violence is threatened, and we will send you a copy upon request. ♦

cant expenditures they made in raising their grandchildren.

The grandparents alleged that the state violated Medicaid law by treating them more harshly than it did parents in calculating financial eligibility for Medicaid.

They argued that by denying them the same eligibility criteria as caretaker parents, the state harmed them and the children entrusted to them. ♦

Helpful information for the victims of domestic violence cannot be repeated too many times. For aid and support, contact the Indiana Coalition Against Domestic Violence at 1-800-538-3393 or www.violenceresource.org/, the Protective Order Pro Bono Project of Greater Indianapolis at 1-317-638-POPB or www.popbp.org and the National Coalition Against Domestic Violence at 1-800-799-SAFE (7233) or www.ncadv.org. ♦

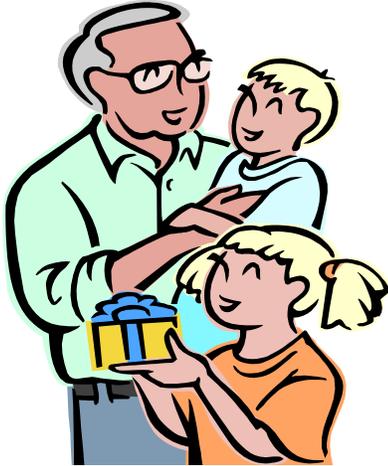
Study Looks at Joint Custody Placements

According to an abstract in *The Journal of Family Psychology*, children of divorce, when placed in joint physical or legal custody settings, adjusted better than did those in sole custody arrangements.

The recent study suggested that children placed in situations with shared parenting show higher levels of self-esteem and have higher levels of general adjustment.

This article buttresses the generally held view of many therapists and family law attorneys that a child is best served by the continued involvement of both parents in his or her life. (This abstract should provide additional weight to those proposals for shared parenting.) See the *Journal of Family Psychology*, Vol. 16, No. 1, September 2002. ♦

Indiana Supreme Court Held Custody Evaluation Not Fraudulent on Appeal



Supreme Court looks at alleged fraud in custody evaluations.

Even though there were inaccurate and, arguably, fraudulent materials presented during a custody hearing, the Supreme Court of Indiana concluded that such documentation was only “tangential to the true issues pertaining to custody.”

The case of *Stonger v. Sorrell*, 776 N.E.2d 353 (Ind. 2002), came before the Court on appeal when the Indiana Court of Appeals held that inaccurate material in a custody evaluation report was a fraud on the Court. The Supreme Court of Indiana, however, disagreed and reversed the decision.

Fraud Upon Court

The improprieties, deemed by the Court of Appeals to be a fraud upon the Court, were based upon an allegation that a psychologist involved in the custody hearing had incorporated inaccurate materials in his report—and that

those materials had influenced the trial court’s decision in a custody case.

The irregularities contained in this report had been based upon materials obtained from a counseling center consulted by one of the parties.

Inaccuracies in Curriculum Vita

According to the Court, there were inaccuracies in the curriculum vita of one of the psychologists at the counseling center. Also, the signature of a second staff psychologist who was involved in the matter had been signed by a secretary without his authorization. He did not recall preparing it as well.

The testifying psychologist, who incorporated this allegedly false data into his 19-page custody recommendation, gave evidence that the “materials were not significant to his decision and carried little weight.”

Need Actual Influence

The Court concluded it was not enough to show a possibility that the court may have been misled by such materials. Rather, it said, there needs to be shown that the court’s decision actually had been influenced by this documentation.

Because the parent attacking the trial court’s decision to change custody did not prove to the satisfaction of the Indiana Supreme Court that the false materials were a significant factor in the lower court’s decision, the challenging parent did not prevail. ♦

A CLIENT’S BILL OF RIGHTS

1. You are to be valued as a person and treated responsibly.
(And not treated like a business customer.)
2. You should be advised and counseled.
(Family, moral and emotional issues should be considered.)
3. Alternatives and probabilities should be discussed.
(You should not expect a guaranteed outcome.)
4. Your expectations should be addressed.
(And they need to be evaluated in the legal framework.)
5. You should expect a professional relationship.
(He or she is your attorney rather than your best friend.)
6. Your attorney must remain on your side of the table.
(He or she should be a deal-maker and not a deal-breaker.)
7. Remember, it’s your life.
(Your attorney is to advise you—rather than decide for you.)
8. You should exercise—and expect—discipline.
(In dealing with your legal matters and your finances.)
9. You should be listened to by your attorney.
(But he or she should warn you of costly repetition.)
10. You should be trusted, and you should trust your attorney.
(But both of you should keep communications and commitments in writing.) ♦

Case Raises Custody Issues in Same-Sex Relationships

Restrictions May Be Justified Only Upon Evidence of Harm to Child

“Best interests of child” is guideline for custody evaluation in same-sex relationships.



Can a trial court under Indiana law prohibit a custodial parent, who is engaged in a homosexual relationship, from living with a domestic partner as part of the court’s local Standard Parenting Guidelines—when there has been no finding of harm to a child or children?

Custody in Same-Sex Partner Situations

A recent case in Marshall County, Indiana, raised this issue when the trial court ordered the parents, who had been awarded joint legal and physical custody of their two children, to abide by the its version of the Indiana Parenting Time Guidelines.

The mother, a lesbian who had a same-sex domestic partner, appealed the restriction that included the following language:

2. Parental Living Arrangements. Neither parent shall allow an unrelated adult member of the opposite sex, or of the same sex if they are involved in a homosexual relationship

with that parent, to spend overnight with them while a child is in their care.

Best Interests of the Child

In its opinion, the Indiana Court of Appeals reviewed a line of cases in which restrictions had been placed upon visitation and custody. It stated that “the overriding proposition that the cases stood for was ‘the best interests of the child often demand the child be shielded from the visiting parents’ heterosexual practices’ as well as homosexual practices.”

In this case, however, there was no rational basis for the restriction. There was no evidence of any adverse effect upon the children based upon the mother’s sexual orientation and her relationship with a same-sex partner. “Imposition of such restriction can be justified only when it is based upon a finding of harm to the children on a case-by-case basis,” the Court stated. See *Downey v. Muffley*, 767 N.E.2d 1014 (Ind.App. 2002). ♦

PFLAG Provides Helpful Support

Helpful information for those concerned about—or involved with—same-sex relationships may be obtained by consulting PFLAG (Parents, Families and Friends of Lesbians and Gays). For a listing of local chapters throughout Indiana, contact this support group at <http://www.pflag.org/chapters/find.html>. In many communities, the group—which helps families have open relationships with gay children as well as works for their civil and human rights—meets on a monthly basis. ♦

NEWTON BECKER REICHERT
ATTORNEYS AT LAW
317 / 598-4529

M. Kent Newton
Carl Becker
Melanie Uptgraft Reichert
Judith Vale Newton
Leah Brownfield, paralegal
Courtney Haines, paralegal

knewton@NBRLaw.com
cbecker@NBRLaw.com
mreichert@NBRLaw.com
jnewton@NBRLaw.com
lbrownfield@NBRLaw.com
chaines@NBRLaw.com

FAMILY LAW FOCUS is intended to provide updates on matters of family law. Information contained herein does not constitute legal advice, nor is this publication intended to identify all developments in family law that may affect the reader’s case. Readers should not act or refrain from acting on the basis of this material without consulting an attorney. Transmission or receipt of this information does not create an attorney-client relationship. Copyright © 2003 Newton Becker Reichert. All rights reserved.