

Analysis of the 2013 Amendments to the Indiana Parenting Time Guidelines

by Stuart Showalter

The Amended Indiana Parenting Time Guidelines adopted by the Indiana Supreme Court on 04 January 2013 will become effective on 01 March 2013. To help you better understand the changes and where to find them I provide this analysis.

One of the changes made for ease of reference was continuity in format. The 2013 Guidelines may now be cited in a manner similar to statutory law. I provide my analysis in progressive fashion with citation provide for the relevant sections.

IPTG Sec. I(A)(5) Electronic communication

I lobbied intensely for inclusion of the concept known as Virtual Visitation. Virtual Visitation is generally defined as the use of electronic means of communication such as Skype to enhance the parent-child relationship during the interludes between parenting time. This new section of the Guidelines recognize all forms of electronic communication as being congruent with telephone contact.

IPTG Sec. I(A)(7) Communication between parent and child

This new section provides additional clarity as to the forms of electronic communication, the possible consequences of interference and an explanation of the importance of parent-child communication.

IPTG Sec. I(B)(2) Punctuality

I have often been asked what is the time limit that one must wait past the set time for a parenting time exchange before abandoning the effort. I have always stated that judges tend to follow an unwritten 15 minute rule but that each case is fact sensitive. When parents live within close proximity 15 minutes may be excessive while typical delays – although they should be foreseen – could easily blow through 15 minutes on a 10 hour journey. This section has been enhanced to include;

“Both parents have a duty to communicate any time the exchange is delayed. When no communication is initiated by the delaying parent, and pick up or return of a child does not occur within a reasonable time, the time and conditions of the exchange may be rescheduled at a time and place convenient to the parent not responsible for the delay.”

I was adamant that the burden be attributed to the delaying parent. I have been involved in numerous cases where a parent would delay exchanges as a means of harassment often times forcing the NCP to make a second trip to pick up the child. The 2013 Guidelines will allow the aggrieved parent to set the time and location of the exchange when the other parent unreasonably delayed the exchange. The important thing for parents to do is communicate. Failure to do that could result in something as onerous as then having to drive the full 50 miles with the child instead of meeting half way. On top of that is the always available finding of contempt by the court.

IPTG Sec. I(C)(3) Opportunity for Additional Parenting Time

In an area that has begged for clarity the 2013 Guidelines will provide it. Consistent with the overall goal of maximizing time for the child with each parent the language of this section has been tightened. The “family member” that may provide care instead of the other parent will be

restricted to a “responsible household family member” which will bar those incidences where a grandparent drove two hours to watch the children for an hour so the NCP who lives five minutes away couldn't have the additional time. “Household family member” is defined in the Commentary as *“an adult person residing in the household, who is related to the child by blood, marriage or adoption.”* The rule does not provide a clear demarcation of the time period for which the opportunity must be offered. Instead *“[t]he period of absence which triggers the exchange will vary depending upon the circumstances of the parties.”*

IPTG Sec. I(D)(1) School Records

What has long been a contentious area of co-parenting and one in which much needless litigation has occurred has been access to school records. Previously the custodial parent was responsible for obtaining, copying and passing along to the NCP any material received from the child's school. Some NCPs used this as a launch pad for attempting to use contempt sanctions against the offending parent although the information was otherwise readily available. That will all be put to rest now.

The Introduction states that *“[e]ach parent is responsible to establish a relationship with the child's school, health care provider and other service provider. A child may suffer inconvenience, embarrassment, and physical or emotional harm when parents fail to actively obtain and share information.”*

The School Records section begins by declaring that *“[u]nder Indiana law, both parents are entitled to direct access to their child's school records, Indiana Code § 20-33-7-2.”* The responsibility for obtaining school related information is placed upon each parent. This is based partly on the technological changes that have occurred in which most communication with schools is done electronically. Parents who supply an email address and phone number should be able to receive nearly all school communications. However, the law was clearly stated in the current Guidelines but that didn't stop schools from refusing access to NCPs. I am still called upon regularly to compel schools to comply with the law. I have written a guide to assist parents and school administrators with compliance. I have provided my access to school records guide to our new Superintendent of Public Instruction, Glenda Ritz, and offered to assist in developing a policy or guideline to ensure that school administrators comply with the law.

Finally, I raised the issue of emergency contact information to the Committee wherein I had a case once where the school contacted an out-of-county relative instead of the father who was available and lived closer to the school than the mother. The closing portion of this section also serves the purpose of attempting to further engage the NCP with the child and peripheral parties. *“The noncustodial parent shall be listed as an emergency contact unless there are special circumstances concerning child endangerment.”*

My guide for access to school records may be found here - www.stuartshowalter.com/3.html

IPTG Sec. I(D)(4) Health Information

Access to health information regarding the child has suffered from the same problems as school information. Also for the same reasons this section has been modified. The law related to health records has been moved to the beginning of this rule from the Commentary section just as was done for school records. *“Under Indiana law, both parents are entitled to direct access to their child's medical records, Indiana Code § 6-39-1-7.”*

The rule was also amended to instruct parents to adhere to the instructions for care provided by a health care provider. Disagreements should be resolved through the court rather than parents who share legal custody providing inconsistent or conflicting care. Doing so can endanger the child's well-being.

IPTG Sec. II(A) Introduction

The introduction to the Specific parenting Time Provisions clearly articulates the onus that the Committee has sought to place upon the parents. This is the same message that has been conveyed to me by every judge with whom I have discussed this issue. *“Parents should attempt to create their own parenting plan which is in the best interest of the child. If an agreement is reached, the parenting plan shall be reduced to writing, signed by both parties, and filed for approval by the court in order to be enforceable.”* Notice that the rule specifically directs that the parenting plan should be developed in the best interest of the child, not for the convenience of the parents or to affect the rate of child support payments. Just as happens with married parents what is best for the child may not always be the most convenient or cost effective method. Separated parents should be mindful of that.

IPTG Sec. II(C)(3)(C) Parenting Time in Later Infancy Age 19 Months through 36 Months

The Commentary to this section provides guidance for the advancement of implementing overnight parenting time with the NCP consistent with the goal of the Committee of moving toward a more equal distribution of parenting responsibilities and time. In February 2013 I was in a preliminary hearing for a divorcing couple with an infant of only two months. The judge in that case ordered that father shall have overnights beginning in March and that the parents would follow the revised IPTG.

IPTG Sec. II(D)(3) Extended Parenting Time

There are numerous changes to the specific parenting time provisions that I am not going to explain in detail. I encourage you to read the section applicable to your child's age.

IPTG Sec. II(F)(1) Conflicts Between Regular and Holiday Weekends

Well here is the section that has provided the greatest number of inquiries to me from litigants, attorneys and legislators. The Commentary section explains the often confusing language of resumption of the regular weekend parenting time schedule following a holiday. For years I have seen litigants, practitioners and judges apply the guidelines differently to consecutive weekends created by the holiday schedule as it trumps the regular weekend schedule. The rule states it clearly and the Commentary now details that there may be situations where a parent will receive three consecutive weekends.

IPTG Sec. II(F)(2)(B) Christmas Vacation

Here is the instance where the cart is leading the horse. More cooperative parents have long abandoned the additional burden of the New Year's Day schedule and trying to figure out in which year to apply it. These parents would split the child's Christmas break in a form that was substantially close to half with exchange occurring at a reasonable time. The high conflict parents however would choose instead to engage in absurdities such as exchanging the child during the first few hours of a calendar day. No judge I know of has ever looked favourably towards a parent who insisted on a 2:00 a.m. exchange because that is what the “guidelines” required. Oblivious to the implication of the term 'guideline' no doubt.

Just as these cooperative parents have done for years the Guidelines have now removed New Year's Day as a holiday. Instead Christmas Break is split in half. The rule provides specific guidance as to exchange times and the definition of the break period.

IPTG Sec. III(2) Commentary (C)

This section provides guidance for situations in which the child attends a school with a non-traditional calendar.

IPTG Sec. IV. Parallel Parenting

This is an entirely new section created specifically for most of my clients when they arrived to me. Parallel Parenting is the term applied to parenting plans which provide parenting time in a manner in which the parents have little or no contact with each other. This is for those situations where at least one of the parents managed to engage in the physical act of producing a child but is too immature or selfish to see past their own parenting short-comings and to cooperate in advancing the welfare of the child.

I suspect that my feelings about these parents may be showing but it is not without justification based upon years of experience and exposure to the most absurd acts in which parents can engage. I intentionally avoid using the term 'childish' to describe these 'parents' as children don't naturally behave in ways that are so manipulative, vindictive and vile as to necessitate a Parallel Parenting order.

I offer assistance to parents who would like to have the 2013 Guidelines applied to their current custody order whether by agreement or contested and also whether either parent is represented by an attorney. If you would like to change your custody order to adopt the 2013 guidelines then please visit my website<www.stuartshowalter.com> and contact my scheduler<scheduler@stuartshowalter.com> to make an appointment to meet with me.

Please keep in mind that the IPTG are guidelines and as the DRC has emphasized throughout the 2013 amended version it is the responsibility of the parents to craft a parenting plan that is in the best interest of their children. Parents should cooperate to ensure that the children are afforded an opportunity and to be able to exercise their right of having greatest possible access to both parents. This is no limited to specific parenting time only but also includes contact through mail, telephone and other mediums such as Skype or online chat.

Parents who are unable to cooperate and maintain civility in their parenting are going to find themselves more often at the mercy of an unsympathetic court. Judges and policy makers in the past few years have made significant changes in attitude about the gender roles of parenting and the psychological impact of child custody litigation. Trying to manipulate the system or failing to behave in a manner consistent with the best interest of the children is receiving strong rebuke from numerous judges. I am seeing contempt citations issued much more frequently.

You can be a spouse for a moment or a lifetime but once you become a parent at the moment of conception you will always have been a parent. Your actions from that day forward should reflect the attitude of a caring, nurturing and supporting parent regardless of your feelings towards your partner in creating that child.