
CHAMBERS GLOBAL PRACTICE GUIDES

Family Law 2023

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**Indiana: Law & Practice
and
Indiana: Trends & Developments**

Drew Soshnick
Faegre Drinker Biddle & Reath LLP

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Law and Practice

Contributed by:

Drew Soshnick

Faegre Drinker Biddle & Reath LLP see p.12



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1. Divorce

1.1 Jurisdiction

One party must be a resident of a county (or stationed at a US military installation within the county) in the state of Indiana for three consecutive months and the state of Indiana for six consecutive months for subject matter jurisdiction over a divorce. Ind. Code § 31-15-2-6. There also must be personal jurisdiction over the responding party. See Ind. Trial Rule 4.4(A).

Domicile is the place where a party resides or intends to return from a temporary absence to reside. Residence is where a party physically lives. Nationality, the place of origin of a person, generally is addressed by residency and domicile and does not often become relevant.

Contesting Jurisdiction and Staying Proceedings

A party to divorce proceedings may contest jurisdiction for lack of subject matter jurisdiction or personal jurisdiction, but not simply to stop a divorce from occurring. A party may obtain a divorce without stating a fault ground.

A party may request a stay of proceedings to pursue divorce proceedings in a foreign jurisdiction if there is a lack of subject matter or personal jurisdiction or a lack of jurisdiction over property or children's issues. Also, a divorce proceeding may be stayed under certain circumstances if there is a bankruptcy proceeding pending. Statutory and common law precedent are a guide in each of these instances.

1.2 Divorce Process Grounds

The grounds for divorce in Indiana for both opposite and same-sex marriages are: irretrievable breakdown of the marriage, conviction of a

felony after marriage, impotence if it existed at the time of the marriage, and incurable insanity of a party for at least two years. Ind. Code § 31-15-2-3. Indiana does not recognize common law marriages entered into after 1 January 1958. See Ind. Code § 31-11-8-5.

Process and Service

The divorce process begins with the filing of a petition for dissolution of marriage (see Ind. Code § 31-15-2-5) and, by statute, cannot end a marriage by approving a settlement agreement or conducting a final hearing less than 60 days after the filing of that petition or a petition for legal separation that was converted to a divorce petition (see Ind. Code § 31-15-2-10). There is no pre-filing or other period of required separation. A party may, but is not required to, respond to a petition for dissolution of marriage or for legal separation. Ind. Code § 31-15-2-8. Courts can enter provisional orders governing matters during the pendency of a divorce case. Ind. Code § 31-15-4-1 et seq. If parties reach an agreement, courts may dissolve a marriage without conducting a final hearing. Ind. Code § 31-15-2-13. Additionally, if parties resolve some, but not all, issues, they may submit the resolved issues for approval by summary disposition order. Ind. Code § 31-15-2-14.

Ind. Code § 31-15-2-8 and the Indiana Rules of Trial Procedure govern service and provide for certified mail, personal, process server, or waiver of formal service of process. See Ind. Trial Rules 4 (and subparts) and 5.

Religious Marriages

Religious marriages and divorces, if viewed as legitimate under Indiana law, are generally given full faith and credit.

Void and Voidable Marriages

Indiana has statutory provisions for void marriages – ie, marriages that were never valid because, for example, one of the spouses was married at the date of the new marriage, the marriage was to a close relative, or one of the spouses was incompetent. See Ind. Code § 31-11-8-0.3 et seq. Indiana also has statutory provisions for voidable marriages – ie, a valid marriage that has grounds to be voided, such as incapacity to marry because of age or mental incompetence or fraud. See Ind. Code § 31-11-9-1 et. seq. A void marriage can be declared as having never occurred upon a proper showing. For a court to order a void marriage, a petition for voidable marriage must be filed and requisite statutory proof provided.

2. Finances

2.1 Jurisdiction

One party must be a resident of a county (or stationed at a US military installation within the county) in the state of Indiana for three consecutive months and the state of Indiana for six consecutive months for subject matter jurisdiction over a divorce. Ind. Code § 31-15-2-6. There also must be personal jurisdiction over the responding party. See Ind. Trial Rule 4.4(A).

A party to divorce proceedings involving property division may contest jurisdiction for lack of subject matter or personal jurisdiction or to allege that a court does not have jurisdiction over property.

A party may request a stay of proceedings to pursue divorce property division proceedings in a foreign jurisdiction if there is a lack of subject matter or personal jurisdiction or if there is a lack

of jurisdiction over property. Statutory and common law precedent are a guide.

Courts hear financial claims after a foreign divorce court enters property orders, generally, to enforce foreign orders. Courts do not typically revisit the foreign orders, but there can be more scrutiny given to orders from non-Hague Convention countries.

2.2 Court Process

Ind. Code § 31-15-2-8 and the Indiana Rules of Trial Procedure govern service and provide for certified mail, personal, process server, or waiver of formal service of process. See Ind. Trial Rules 4 (and subparts) and 5.

The divorce process begins with the filing of a petition for dissolution of marriage (see Ind. Code § 31-15-2-5) and, by statute, cannot end a marriage by approving a settlement agreement or conducting a final hearing less than 60 days after the filing of that petition or a petition for legal separation that was converted to a divorce petition (see Ind. Code § 31-15-2-10). There is no pre-filing or other period of required separation. A party may, but is not required to, respond to a petition for dissolution of marriage or for legal separation. Ind. Code § 31-15-2-8. Courts can enter provisional orders governing matters, including allocation of financial responsibilities, during the pendency of a divorce case. Ind. Code § 31-15-4-1 et seq. If parties reach an agreement, courts may dissolve a marriage without conducting a final hearing. Ind. Code § 31-15-2-13. Additionally, if parties resolve some, but not all, they may submit the resolved issues for approval by summary disposition order. Ind. Code § 31-15-2-14.

2.3 Division of Assets

Marital Property

By statute, marital “property” is defined as all assets (and liabilities, per case law interpreting the definition of marital property) of either party or both parties, including:

- a present right to withdraw pension or retirement benefits;
- the right to receive pension or retirement benefits that are not forfeited upon termination of employment or are vested (as defined by I.R.C. § 411), but that are payable after divorce; and
- the right to receive disposable retired or retainer pay (as defined by 10 U.S.C. 1408(a)) acquired during the marriage that is or may be payable after divorce. Ind. Code § 31-9-2-98.

Just and Reasonable Division

Marital property is to be divided in a just and reasonable manner, and can be divided in kind, by setting aside the property of one party to the other party, ordering the sale of property, or ordering the distribution of pension or retirement benefits. See Ind. Code § 31-15-7-4. Courts presume that an equal division of all marital property is just and reasonable, but that presumption may be rebutted by consideration of relevant evidence, including consideration of five statutory factors:

- the contribution of each spouse to the acquisition of property, regardless of whether the contribution was income producing;
- premarital, gifted, or inherited property;
- the economic circumstances of each spouse;
- conduct leading to the disposition or dissipation of property; and
- the earnings or earning ability of the parties. Ind. Code § 31-15-7-5.

Courts look for meaningful reasons to deviate from the presumed equal equitable distribution.

Most courts require financial declarations stating under oath the identity and value of all marital assets and liabilities. Parties may also conduct discovery such as depositions, interrogatories, requests for production of documents, and requests for admissions. See Ind. Trial Rules 26, 30, 31, 33, 34, and 36. There also is the right to request documents from non-parties. See Ind. Trial Rule 34(C). Courts have the authority to enforce discovery compliance from parties and non-parties. See Ind. Trial Rule 37.

Trusts

If vested, trusts are considered marital property and part of a marital estate presumed to be equally divided. If trust documents do not allow the division of trust property, the trust beneficiary spouse may be ordered to offset other property or make property settlement payments to achieve the overall distribution of the parties’ marital estate. See, for example, *Loeb v Loeb*, 301 N.E.2d 349 (Ind. 1973).

2.4 Spousal Maintenance

Upon the filing of a petition for dissolution of marriage or legal separation, a party may seek and be awarded temporary spousal maintenance. See Ind. Code § 31-15-4-1 et seq.

Indiana does not have classic post-divorce alimony or spousal maintenance. There are three statutory grounds for spousal maintenance:

- physical or mental incapacity of a party to the extent it materially affects a party’s income-earning capacity;
- the need to forgo employment to care for a disabled child and lack of sufficient property to provide for needs; and

- rehabilitative maintenance, after considering education, interruption in education, and earning capacity, for a maximum of three years from the date of divorce. See Ind. Cod § 31-15-7-2.

Spousal maintenance is not often a factor in Indiana divorces.

For post-divorce spousal maintenance, incapacity and caregiver maintenance is based on the incomes and expenses of the parties for the duration of the incapacity or caregiver responsibilities. For rehabilitative maintenance, the amount is often based on costs for retraining, restoring a licence, or classwork related to returning to the work force. There are no formulae or calculations to guide the courts. It is wholly discretionary.

2.5 Prenuptial and Postnuptial Agreements

Indiana has adopted the Uniform Premarital Agreement Act (Ind. Code § 31-11-3-1 et seq) for premarital agreements executed after 1 July 1995, and has robust case law that promotes the validity and enforceability of premarital agreements so long as there is no fraud, duress, coercion, or unconscionability. Case law on post-marital agreements is less developed and the validity and enforceability of post-marital agreements is discretionary, and often determined based on whether the contract is necessary to extend a marriage that otherwise would be dissolved. The history of the case law for post-marital agreements has evolved from 1991 to the present date, balancing public policy considerations with freedom of contract principles. Please refer to the [Indiana Trends & Developments](#) chapter of this guide for further detail.

Courts presume the validity and enforceability of premarital agreements. It is a more fact-sensitive analysis with post-marital agreements. For premarital agreements, see *In re Marriage of Boren*, 475 N.E.2d 690 (Ind. 1985) and its progeny. For post-marital agreements, see *Hall v Hall*, 27 N.E.3d 281 (Ind. Ct. App. 2015).

2.6 Cohabitation

Indiana case law treats the separation of cohabiting couples far differently than divorce. Only the joint property of the cohabitants is divisible and there is no statutory presumption as to the division of that property. There are no statutory provisions and situations are assessed based on contract, quasi-contract, unjust enrichment, equity, and similar principles. For the history of the development of this common law, see *Glasgo v Glasgo*, 410 N.E.2d 1325 (Ind. Ct. App. 1980) and its progeny.

While there is no statutory provision and only selected case law guidance, the length of cohabitation, roles of each party, economic contribution of each party, non-economic contribution of each party, and other factors may affect how a court divides the property of the cohabitants that is subject to division.

2.7 Enforcement

If a party fails to comply with a financial order, the other party may file a motion to enforce the financial order. That motion may seek enforcement by contempt (not applicable to money judgments), compelling compliance with the terms of the divorce decree, an income withholding order, or any other remedies available for the enforcement of a court order. See Ind. Code § 31-15-7-10. In an effort to avoid enforcement issues, the receiving party may request security, such as pledge of assets, liens on stock or

membership units, direct payment provisions, life insurance, and other assurances.

International enforcement of financial orders is permitted in Indiana, again with more scrutiny given to orders from non-Hague Convention countries.

2.8 Media Access and Transparency

In Indiana, the media and press are able to report on financial cases. Courts are open to the public. However, if there are issues that would fall within the confidentiality of the Indiana Rules on Access to Public Records Act, courts may restrict access to proceedings and court documents. Non-disclosure of trade secrets, confidential and proprietary financial and other information, and other types of non-public information may be protected from disclosure.

There are two primary methods of seeking anonymity of proceedings. Parties may file a divorce case in any county in Indiana (subject to the other party requesting to move the case back to a county of residence) to try to limit likelihood of access. Some counties permit filings with initials as opposed to full names, but that is discretionary. Indiana allows for public access to the Chronological Case Summary of filings and proceedings (but not the actual filings for non-lawyers) at mycase.in.gov for most types of family law cases (but not orders of protection, adoptions, and other categories).

2.9 Alternative Dispute Resolution

Indiana has rules for alternative dispute resolution. Mediation, arbitration, and private judging is available to assist parties to resolve financial disputes.

Several Indiana counties, by local rule, require mediation before a final hearing. If a party is non-compliant, courts can impose sanctions.

Mediated agreements on financial issues are generally enforceable upon execution and are approved by courts as an order of the court. Agreements are favoured under Indiana law to promote amicable resolution of disputes. See Ind. Code § 31-15-2-17.

3. Children

3.1 Jurisdiction

Indiana does not separate financial issues from children's issues in divorce cases. However, there are separate statutes that address jurisdiction for child custody proceedings, if children's issues are not part of a divorce case, such as paternity, post-divorce children's issues, guardianships, and children's issues from other jurisdictions. Indiana has adopted a version of the Uniform Child Custody Jurisdiction Act (styled UCCJA rather than UCCJEA). See Ind. Code § 31-21-1-1 et seq. While not absolute, the six-month home state rule – the state where the child has lived with a parent or a person acting as a parent for at least the last six consecutive months is the child's "home-state" – applies in many situations. There are exceptions for emergency and other situations. In addition to home-state considerations, the best interests of children are considered when establishing jurisdiction.

Home state is most relevant for children in determining jurisdiction when children's issues are not part of a divorce case. In those instances, for the parents, having some nexus to Indiana is relevant, although the three-month county and

six-month state requirements are not technically applied as in divorce cases.

3.2 Court Process: Child Arrangements and Child Support

3.2.1 Child Arrangements

Custody Disputes

If there is a dispute over custody and parenting time, courts will address those issues upon application of a party. Indiana has statutes and case law that govern the determination of both legal custody (making major life decisions for children) and physical custody (deciding what parenting time each parent will have). “Children” are defined as under the age of 18, for purposes of custody and parenting time. See Ind. Code §31-9-2-13. Courts may make orders that are in children’s best interests as to custody and parenting time so long as they are constitutional and do not improperly infringe on a parent’s right to have access to and raise children.

A custodian may determine the children’s upbringing, including education, health care, and religious training, unless limited by court order due to the children’s physical health being endangered or emotional development significantly impaired. See Ind. Code 31-17-2-17. An award of joint legal custody does not require an equal division of physical custody of the children. See Ind. Code § 31-17-2-14.

As to physical custody and parenting time for children, courts look at the statutory factors (Ind. Code § 31-17-2-8 for initial custody determinations and Ind. Code § 31-17-2-21 for custody modifications).

Ind. Code § 31-17-2-8 provides for the determination of custody and entry of an initial custody order, in accordance with the best interests of the children. In determining the best interests of

the children, there is no presumption favouring either parent. Id. Courts shall consider all relevant factors, including:

- the age and sex of the children;
- the wishes of the parties;
- the wishes of children (with more consideration given to the wishes of children aged 14 or older);
- the interaction and interrelationship of the children with the parties, siblings and other persons who may significantly affect the children’s best interests;
- the children’s adjustment to homes, school and community;
- the mental and physical health of all individuals involved;
- evidence of a pattern of domestic or family violence of either party;
- evidence that children have been cared for by a de facto custodian (defined in Ind. Code § 31-9-2-35.5 and with additional factors for consideration set forth in Ind. Code § 31-17-2-8.5); and
- a designation in a power of attorney of a party or a de facto custodian. Id.

Joint Legal Custody

Ind. Code § 31-9-2-67 defines “joint legal custody” as parties sharing authority and responsibility for major decisions concerning the children’s upbringing, including the children’s education, health care, and religious training. Ind. Code § 31-17-2-13 indicates that courts can award joint legal custody if the court finds it is in the best interests of the children. In determining whether an award of joint legal custody is in the best interests of children, courts shall consider it a matter of primary, but not of determinative importance, that the parties have agreed to joint legal custody. Ind. Code § 31-17-2-15. Courts shall also consider:

- the fitness and suitability of each person;
- whether parties are able to communicate and co-operate in advancing the children's welfare;
- the wishes of children (with more consideration given to the wishes of children aged 14 or older);
- whether the children have established a close and beneficial relationship with both parties;
- whether the parties live close to each other and plan to continue to do so; and
- the nature of the physical and emotional environment in each party's home. Ind. Code § 31-17-2-15.

Modifying Child Custody Orders

Ind. Code § 31-17-2-21 provides that courts may not modify child custody orders unless the modification is in the best interests of the children and there is a substantial change in one or more of the factors set forth in Ind. Code §§ 31-17-2-8 or 8.5. Courts shall not hear evidence on a matter occurring before the last custody proceeding unless that matter relates to a change in the statutory factors relating to the best interests of the children. Id.

The Indiana Parenting Time Guidelines

The Indiana Supreme Court has established the Indiana Parenting Time Guidelines which, in the absence of extreme circumstances, serve as a guide for the minimum amount of time a non-custodial parent will have with children. There are age gradations suggesting different frequency and duration for a parent's contact with children depending on the children's age. There is also a detailed suggested schedule for holidays and extended parenting time, as well as consideration of distance between parents as a factor.

3.2.2 Child Support

The Indiana Supreme Court has adopted the Indiana Child Support Rules and Guidelines that presumptively govern child support. There is an underlying formula that adopts an income shares model, uses gross income, and applies a 21.88% tax factor. There are additional references as to how to address other expenses, such as health care, extracurricular activities, and educational expenses. If courts deviate from the presumptive child support amount, they must explain and offer reasons for the deviation. Ind. Code § 31-16-6-1 provides a non-exhaustive list of factors to be considered for child support payments, but the guidelines calculation usually controls the amount. The duty to support children ends at age 19 unless a child is earlier emancipated or is incapacitated. See Ind. Code § 31-16-6-6. College expense orders can continue past age 19 for the duration of an undergraduate degree. Child support orders are modifiable upon showing (i) changed circumstances so substantial and continuing as to make the terms of the existing child support order unreasonable or (ii) that a party has been ordered to pay an amount in child support that differs by more than 20% from the guidelines calculation.

Parties may make agreements outside of court for child support and to cover certain children's expenses, but they are informal arrangements and not enforceable, in the event of disputes. The most common approach is for courts to make formal child support orders.

Any person entitled to receive child support payments may commence a child support action. See Ind. Code § 31-16-2-1 et seq.

3.3 Other

Courts have the power to make an order that dictates the upbringing of children when parents

have opposing views on specific issues, such as schooling, medical treatment, religion, holidays, etc, by naming one parent the sole legal custodian or when there is a dispute between joint legal custodians. See Ind. Code § 31-17-2-17. However, that does not mean the other parent must, for example, take the children to the sole legal custodian's preferred house of worship on his or her parenting time. It means that the specification of how a child will be raised is in the sole province of the custodian. If joint legal custodians have a voluminous number of disputes, courts will eventually modify legal custody so one parent makes the decisions after consulting with the other parent.

Parental alienation is considered, not independently or as a syndrome, but rather, as part of the assessment of a parent when courts conduct the statutory analysis of a custody situation. See Ind. Code §§ 31-17-2-8 and 21 (enumerating a non-exhaustive list of factors for courts to consider).

Courts have the discretion to permit a child to speak to the judge in chambers (Ind. Code § 31-17-2-9) or, for older children, to testify on the witness stand. Those practices are largely discouraged. More often, a child's counsellor, custody evaluator, guardian ad litem, or court-appointed special advocate presents the views of children. See Ind. Code §§ 31-17-2-10, and 12 and Ind. Code § 31-17-6-1 et seq.

3.4 Alternative Dispute Resolution

The Indiana Rules for Alternative Dispute Resolution, adopted by the Indiana Supreme Court, govern alternative dispute resolution. These rules provide for mediation, arbitration, mini-trials, summary jury trials, and private judges to assist parties to resolve financial disputes.

While not mandated in all instances, several Indiana counties, by local rule, require mediation before a final hearing. Also, if a party requests mediation, it is likely to be granted. If a party is non-compliant in participating in the mediation process, courts can impose sanctions that include an award of attorneys' fees.

Mediated agreements on children's issues are generally enforceable, upon approval by courts, as an order of the court. Mediated agreements on financial issues are generally enforceable upon the parties signing the mediated agreement and are subsequently approved by courts.

There is no statutory requirement for a party to engage in alternative dispute resolution.

3.5 Media Access and Transparency

In Indiana, the media and press are generally permitted to report on financial cases. Courts are open to the public. See Indiana Rule on Access to Court Records ("Ind. R. Acce. Ct. Rec.") 4(A). However, if there are issues that would fall within the confidentiality of Ind. Code § 5-14-3-1 et seq and the Indiana Rules on Access to Court Records, adopted by the Indiana Supreme Court, courts may restrict access to proceedings and court documents. The statute addresses, among other things, trade secrets and confidential financial information (see Ind. Code § 5-14-3-4(a)(4) and (5)). The act details mandatory confidentiality, discretionary confidentiality, and the process of maintaining confidentiality. There is a process for filing mandatory confidential information. There is a process for discretionary confidentiality that requires filing a notice and setting a hearing. If information is not determined to be confidential, the media and the press are rarely limited on what they can and cannot report.

There are two primary methods of seeking anonymity of proceedings. Parties may file a proceeding in any county in Indiana (subject to the other party requesting to move the case back to a more appropriate county) to try to limit ease of access. The “preferred venue” is generally the county where the parties reside. If a party files a divorce case in a non-preferred venue, the other party has the right to request that the case be transferred back to a county of preferred venue. See Ind. Trial Rule 75. Additionally, some counties and courts permit filings with initials or partial initials as opposed to full names. That permission is within the discretion of the particular county and court and, with the advent of electronic filing, sometimes within the discretion of the electronic filing service. Certain types of children’s cases have limitations on access to preserve confidentiality (eg, paternity actions created after 1 July 1941, and before 1 July 2014, pursuant to Ind. R. Acce. Ct. Rec. 5(A)(6)), but generally not divorce cases involving children which are mostly open to the public. Personal identifiers such as Social Security Numbers also are excluded from public access.

4. Reform

4.1 Upcoming Reform and Areas of Debate

The issues of expanding spousal maintenance, presumptive joint legal and physical custody, and access to representation of children are current areas of interest in the Indiana General Assembly. Indiana spousal maintenance laws are some of the least generous in the United States. Efforts over the past 40 years to reform those laws have failed. While not likely to surface in the current legislative session, another attempt can be anticipated in the future. Post-marital agreements are poised to be a potential topic in future legislative sessions. Indiana has no statute and relatively little case law regarding the validity and enforceability of post-marital agreements. Child support related to childbirth is being proposed in the current legislative session. A controversial bill is being amended and likely to pass in some form. Refinements to adoption consent laws are being discussed. Finally, the Indiana Department of Child Services continues to be the subject of much scrutiny. These issues are covered in greater detail in the [Indiana Trends & Developments](#) chapter of this guide.

Contributed by: Drew Soshnick, Faegre Drinker Biddle & Reath LLP

Faegre Drinker Biddle & Reath LLP has a team of twelve attorneys – practising in Indiana, Colorado, Minnesota, and New York – who focus on counselling, mediating, and litigating high-net-worth complex divorce proceedings that involve business and professional practice valuations, private equity and venture capital, professional licences, patents and royalties, alimony and spousal maintenance, and all oth-

er financial considerations. The firm combines zealous advocacy with empathetic sensitivity to complicated issues to protect assets. Recent work includes successfully defending the valuations of manufacturing concerns, medical practices and ambulatory surgery centres; successfully defending tax elements of both businesses and non-business activities; and counselling on international divorce property division aspects.

Author



Drew Soshnick is a partner at Faegre Drinker Biddle & Reath LLP, concentrating his practice in complex divorce cases involving sophisticated financial issues such as business and professional practice valuations, private equity, venture capital, and stock and stock options. He is a graduate of Northwestern University Pritzker School of Law and a Fellow of the American Academy of Matrimonial Lawyers and, International Academy of Family Lawyers, and a faculty member of the National Family Law Trial Institute.

Faegre Drinker Biddle & Reath LLP

300 N. Meridian Street
Suite 2500
Indianapolis
IN 46062
USA

Tel: +1 317 237 1243
Fax: +1 317 237 1000
Email: drew.soshnick@faegredrinker.com
Web: www.faegredrinker.com



Trends and Developments

Contributed by:

Drew Soshnick

Faegre Drinker Biddle & Reath LLP see p.16

Family Law Issues Before the Indiana General Assembly

Spousal maintenance

The trend of revisiting Indiana spousal maintenance laws is due to reappear. Indiana family law has long favoured the spouse with the larger income. The state's spousal maintenance laws are among the least generous in the United States and sees parties attempt to obtain jurisdiction in Indiana to avoid onerous spousal maintenance issues. When the Indiana Dissolution of Marriage Act was enacted in 1973, the trade-off was to include all property as marital property, regardless of how titled or how or when acquired, and to statutorily presume an equal division of marital estates. That statutory regime remains largely unchanged fifty years later. Since the 1980s, several attempts have been made to expand Indiana's spousal maintenance laws, to no avail. The Indiana General Assembly meets in alternating years in short and long sessions, neither of which is considered long temporally. While rumblings are heard that the spousal maintenance issue will resurface, that is not anticipated for 2023. The expectation is that, with the changing demographics of the legislature, proposed bills to expand spousal maintenance rights may appear in the near future. If a bill of that nature does gain traction, it is anticipated that some will call for Indiana to re-evaluate its "one pot" definition of marital property that leaves the state as one of the few that does not have a separate property classification that removes certain property from division at divorce.

Given the half century history of Indiana's divorce laws, there is not a huge appetite to tackle changing the statutory regime of what is and what is not marital property. While courts, by statute and case law, can deviate from the presumptive equal division of marital estates on the basis of gifted, inherited, and premarital property, the proponent of the deviation bears the burden of proof. That has ruffled many who believe that Indiana should have a separate property classification that is non-marital in status. Independently, this issue is not likely in the offing. But if spousal maintenance reform advances, the entire equitable distribution scheme may be on the table for the legislature.

Post-marital agreements

Another area of potential development relates to post-marital agreements. Indiana has not adopted a version of the Uniform Marital Property Act that provides for post-marital agreements. As a result, case law from 1991–2017 has left some confusion as to the validity and enforceability of such agreements. Although the recent appellate decisions focus on whether this type of contract, if valid and enforceable, will preserve and extend a marriage that otherwise would be dissolved, the application of this standard has proved elusive and undefined. While only a handful of states have adopted statutes regarding post-marital agreements, conflicting case law in Indiana may suggest the appropriateness of the legislature to consider statutory guidance. That effort is unlikely to be made in 2023 but look for it to be raised at some point in the coming years.

Presumptive joint custody

What is likely to make it to at least committee reading are bills seeking presumptive joint legal custody and joint physical custody. Indiana defines legal custody as making major life decisions (eg, health, education, and religion). Physical custody involves the allocation of parenting time. Over the last two years, Indiana legislators have attempted to advance bills for both types of custody to be presumptively equal. Other states have adopted these rules without great success, and some states have rescinded these presumptions. Several legislators have taken on this cause and are persisting with various versions of these bills in an effort to garner majority support. So far, those efforts have yet to succeed. But they have attracted the attention and support of others. Given this momentum, expect legislative efforts to continue on this issue and be at the forefront of family law in the Indiana General Assembly.

Adoption laws

Also, adoption laws are under scrutiny in this session of the Indiana General Assembly. Bills to reduce the time for a party to withdraw consent to an adoption is almost certain to make it to committee and may advance further. Much litigation has arisen over the years in the context of adoption consents, with some difficult outcomes for children. Legislators appear to have taken note and made this topic one of priority in their agenda.

Indiana's Changing Economy and Demographics

From a socioeconomic and demographic perspective, Indiana is changing. What was once a largely agrarian and manufacturing economy is now rapidly converting to a service economy. Health care, life sciences, and information technology has emerged in the Bloomington to

West Lafayette corridor, including Indianapolis. Ft. Wayne and Evansville are diversifying their economies. Even northwest Indiana near Chicago, long a hub of industrial businesses, is adapting to more service offerings. The result of this conversion is the emergence of new businesses, venture capital, and private equity that drives sophisticated valuation issues in divorce cases. Gone are the days of only valuing a farm or tool company. Now, the most complex valuation issues arise with some frequency at divorce. Courts are grappling with new concepts, and experts are learning and developing skills that were once the province of valuation professionals on the US coasts or in more notable emerging markets. The Indiana government solicits these new ventures, and with a low tax rate and business incentives, is drawing new enterprises to the Midwest. This growing business sector means that complex valuation issues involving venture capital, private equity, an assessment of personal goodwill (not a marital asset under Indiana law) and enterprise goodwill (a marital asset under Indiana law), discounts for lack of marketability, discounts for lack of control, risk assessments, and capitalisation rates will take on new and greater importance. Accordingly, the opportunities for business litigation between people when relationships are ending has become much more frequent. The need for sophisticated divorce counsel is as never before and will continue to expand as Indiana's economy continues to embrace the digital age.

As with the changes in its economy, Indiana's population is evolving. In particular, more couples are eschewing marriage and cohabiting. Since the late 1970s, Indiana has addressed the property rights of cohabitants through case law. Only joint property is divided between cohabitants and the laws of divorce do not apply. That can lead to vigorous disputes over what to divide

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and what is the appropriate division of property. This topic has not been top of mind for legislators, but some wonder whether there should be more formal rules for property division when cohabitants end their relationship – particularly with the dearth and non-application of spousal maintenance laws. This issue is unlikely to arise to the forefront, but could become of interest on the basis of supply and demand.

Indiana also has enacted some of the strictest laws in the United States related to abortion. Those restrictions are being challenged and will likely continue to be challenged, and these laws may attract to or deter certain businesses from Indiana. At the present time, Indiana's economy is strong and diversified with low taxes. These competing considerations and the ultimate outcome may impact the quantity of high net worth matrimonial actions in Indiana.

Finally, while general statistics suggest that Indiana's population is at the lower end of states, in terms of education, those statistics are deceiving. There is a mountain of family wealth that passes from generation to generation through farms, businesses, and personal holdings. That wealth is augmented by the conversion of Indiana's economy and attraction of profitable investments. Indiana's high net worth base continues to expand exponentially and, in times of marital distress, provides the most complex and compelling issues for resolution in divorce cases. That trend is likely to continue long into the future.

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Faegre Drinker Biddle & Reath LLP has a team of twelve attorneys – practising in Indiana, Colorado, Minnesota, and New York – who focus on counselling, mediating, and litigating high-net-worth complex divorce proceedings that involve business and professional practice valuations, private equity and venture capital, professional licences, patents and royalties, alimony and spousal maintenance, and all oth-

er financial considerations. The firm combines zealous advocacy with empathetic sensitivity to complicated issues to protect assets. Recent work includes successfully defending the valuations of manufacturing concerns, medical practices and ambulatory surgery centres; successfully defending tax elements of both businesses and non-business activities; and counselling on international divorce property division aspects.

Author



Drew Soshnick is a partner at Faegre Drinker Biddle & Reath LLP, concentrating his practice in complex divorce cases involving sophisticated financial issues such as business and professional practice valuations, private equity, venture capital, and stock and stock options. He is a graduate of Northwestern University Pritzker School of Law and a Fellow of the American Academy of Matrimonial Lawyers and, International Academy of Family Lawyers, and a faculty member of the National Family Law Trial Institute.

Faegre Drinker Biddle & Reath LLP

300 N. Meridian Street
Suite 2500
Indianapolis
IN 46062
USA

Tel: +1 317 237 1243
Fax: +1 317 237 1000
Email: drew.soshnick@faegredrinker.com
Web: www.faegredrinker.com



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