

Spring 2010

**Editorial Staff:**  
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**Our Attorneys:**

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- Judith Koper Morris
- Katrina M. Luedtke
- George W. Swartz, II
- Amy E. W. Ehrhart
- Jason C. Imler
- Jeffrey R. Lawrence
- Tyann L. Miller,  
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# MOONEY LAW LETTERS

**What Family Lawyers Wish their Clients knew.**

The process of going through a divorce, custody and/or support case can be very difficult. When going through a divorce or custody, it is natural for people to talk to and share their concerns with their friends and co-workers about their legal situations, especially if their friends or co-workers may have had similar experiences or know someone who has been through the process. This can create confusion and can lead to the sharing of inaccurate information for that particular person's situation. As an attorney who practices in the area of divorce, custody and support law, it is not uncommon to hear a variety of untruths during initial consultations with clients. Those heard most frequently are included here. This article is meant to help separate some of the "fiction" from the "facts".

Custody

**Fiction:** If parents who are di-

vorced or separated each have fifty percent (50%) custody, then neither parent has to pay the other any child support.

**Fact:** The Pennsylvania support guidelines provide that the parent who earns less than the other parent may still be entitled to receive child support from the higher-earning parent.

**Fiction:** If two parents separate and one moves in with a new boyfriend or girlfriend, the other parent has the right to be granted a custody Order stating that the new boyfriend or girlfriend may not be present when the other parent has custody of the children.

**Fact:** Unless it can be proven that the new significant other of the other parent presents a danger to the children (such as having previous criminal convictions for abuse of children, assaults, or drug convictions, etc.),

or the significant other has physically harmed the children in any way, it is not likely a custody court would enter an Order preventing that parent from having their significant other present during their periods of custody.

Divorce

**Fiction:** If you can prove your spouse was unfaithful during the marriage, your spouse will get less money in the divorce litigation.

**Fact:** The Divorce Code provides that fault grounds (such as unfaithfulness) have no bearing or impact on the percentage of the division of the marital assets.

**Fiction:** A wife is entitled to alimony in every divorce action.

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## Family Lawyers (Continued from Cover)

**Fact:** The Divorce Code has fourteen different factors to consider in every divorce when determining if a spouse is entitled to alimony. Alimony is usually reserved for situations where there has been a marriage of long duration, one spouse earns significantly more than the other and there are not enough financial assets to adequately provide a fair economic division of the marital assets through any other method.

**Fiction:** If your spouse moves out of the marital residence you can sue them for abandonment.

**Fact:** Under Section 3301(a) (1) of the Divorce Code, there is a fault ground of divorce if it can be proven that a spouse "committed will-

ful and malicious desertion, and absence from the habitation of the injured and innocent spouse, without a reasonable cause, for the period of one or more years". However, in the vast majority of divorce cases, this section of the Divorce Code is never utilized and it has no bearing on the division of the marital property.

### Child Support

**Fiction:** If a parent falls behind in their child support obligation, they should not be entitled to any visitation rights with the child.

**Fact:** The child custody court and the Office of Domestic Relations (that handles child support) have no relation to the other. There-

fore, even if a parent falls behind on child support, they still have the right to see their children under the existing custody Order.

In conclusion, although the above examples apply to the typical divorce, custody and support cases, it is always the best practice to consult with a family law attorney concerning questions and issues in each case as there are exceptions to the general rules. At Mooney & Associates, we believe each case is unique and give each case individualized attention.

- Katrina Luedtke Esquire

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Angie Mohan, paralegal to Attorney John Mooney, Jeff Lawrence, & Judy Morris: Ext. 109 (Last names A-L)

Pam Rockwell, paralegal to Attorney John Mooney, Jeff Lawrence, & Judy Morris: Ext. 108 (Last names M-Z)

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Estate Administration and Probate, contact Janice Brady: Ext. 204

Karen Tregoning, Accounts Payable and Accounts Receivable: Ext. 107

Tyann Miller, Advertising and Land Development: Ext. 202

## Expungement of Summary Offenses.

Youthful indiscretions are commonplace. Many decisions made in the earlier stages of life are not always the wisest ones. However, time moves on, and we change as people. In other words, we get older, and we get smarter. Or at least, that is the theory.

Until recently, the laws of Pennsylvania had not included any way of compensating for that type of personal growth. If a youthful indiscretion involved a violation of the law, and that violation resulted in a conviction of a criminal offense, that conviction stayed on your record forever. There were no exceptions. It did not matter whether you had been convicted of a major felony like murder, kidnapping, or arson, a misdemeanor like assault or theft, or a relatively minor summary conviction like underage drinking or obstruction of a highway. For the purposes of record keeping, all convictions were treated in exactly the same manner. Expungement would only be available if two things were true - (1) the convicted person had no charges during the past ten years, and (2) the convicted person was over 70 years of age. Obviously, the number of people who fulfilled both requirements was extremely small; and that is exactly the way the

Pennsylvania legislature intended it to be.

However, in January of 2009 a modification was made to the statute regarding the expungement of criminal history record information. The added language now allows for the expungement of criminal records where (1) the person was convicted of a summary offense, and (2) that person has been free of arrest or prosecution for five years following the conviction. Additionally, a summary violation for the specific crime of underage drinking may be expunged even before the five year waiting period where the violator is now (1) over 21 years of age, and (2) has satisfied all of the terms and conditions of the sentence, including any suspension of operating privileges imposed pursuant to section 6310.4 (relating to restriction of operating privileges).

This can be a great benefit to people who have moved on from their youthful indiscretions. The presence of even a summary offense on a person's record can affect eligibility for things like student loans and housing assistance programs. It may also impede approval for licensing in professions like nursing, child

care, education, or police work. Further, Pennsylvania is especially strict in disqualifying people with any sort of criminal record from working with the elderly, mentally ill, or retarded, whether in nursing homes or personal care facilities. Not to mention the simple embarrassment that most people feel when they need to explain to any prospective employer all of the facts and circumstances surrounding their summary conviction. Now, thanks to Pennsylvania's recent changes regarding the possibilities of expungement of a criminal record, people who have not been charged with or convicted of a crime for the past five years may be able to reopen doors that had been closed to them as a result of their summary conviction.

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## Julie Swimley- Our Personal Injury Support

Julie Swimley started working at Mooney & Associates in January 2010. Julie is a legal assistant in our personal injury department. She is in contact with doctors, medical facilities and clients. Before joining Mooney & Associates she worked at a printing company for 26 years where their main focus was on medical journals. Julie has completed courses at Harrisburg Area Community College with a focus in the medical field. She is married and has a son. In her spare time she enjoys traveling, going on walks, and watching her son participate in different sporting events.

We are committed to alleviating the stress that often accompanies legal transactions. Our clients speak with the attorney handling their case and are always informed about progress and options. For client convenience, we maintain six office locations and extended hours. If our clients are unable to travel, our attorneys visit client homes, nursing homes, and hospitals.

## Our New Office in Carlisle

In April 2010, Mooney & Associates expanded its practice by opening an office in Carlisle, PA to better serve the needs of its clients in south central PA. The office is located at 2 South Hanover Street, across from the Cumberland County Courthouse. Our attorneys look forward to meeting our clients

there for appointments in of the week - Monday through Friday - without an appointment since emergencies happen and we want to be available for you. Once you are our clients we are always available Wednesdays from 5:00 PM to 7:00 PM - NO APPOINTMENT NEEDED. Of course we will continue to have evening hours at seven locations. Also, because of our locations near the Maryland line, we can also represent clients in MD courts.

## Changes to Calculation of Support

Effective Wednesday, May 12, 2010 - From Adams County's Family Law Committee and Domestic Relations Offices

The amendments to Pa.R.C.P. 1910.11, 1910.16-1 through 1910.67, 1910.17, 1910.27, and the adoption of Rule 1910.16-3.1 will take effect on May 12, 2010.

### Important Items to Remember

Any conference for either a new case or a petition to modify an existing order of support held on or after May 12, 2010 will be calculated under the new support guidelines. De novo hearings conducted on or after May 12, 2010 will include the new or old guideline calculations at the discretion of the judge.

The new guidelines may be considered a material and substantial change in circumstances for the purpose of petitioning for modification of the order of support. See Rule 1910.19(a) and its Explanatory Comment - 1993.

### Summary of the changes:

The Self Support Reserve (SSR), which ensures that noncustodial parents have sufficient income to meet their needs, increases to \$867.00. The SSR applies to child support, spousal support, and *alimony pendente lite*.

Earning Capacity assessment will

be refined; it will be limited to the earnings of one full-time job, and will require the trier-of-fact to set forth the reasons for the assessment.

The Basic Child Support Schedule (BCSS), in Rule 1910.16-3, starts with a \$0 - \$900 range and continues to the maximum net monthly income of \$30,000. This change assumes the child(ren) spends 30% of time with the obligor. The PACSES calculations will round down if the Combined Adjusted Net Income for a child(ren) is less than 50% of the incremental difference. The PACSES calculations will round up if the Combined Adjusted Net Income for a child (ren) is 50% or more of the incremental difference.

High Income Cases will no longer utilize the Melzer analysis, which took the actual needs of the parties into consideration. Now, if the combined net income exceeds \$30,000/month, Rule 1910.16-3.1 provides a formula to calculate child support, spousal support, and *alimony pendente lite*. The old Melzer Expense Statement form has been revised and is now the Expense Statement for Cases Pursuant to Rule 1910.16-

3.1 ad Rule 1920.31. The new process includes three steps: (1) base support amount depending on the number of children plus a set percentage (based on the number of children) of combined net income over \$30,000.00 per month, (2) possible allocation of additional expenses pursuant to 1910.16-6, (3) consideration of 1910.16-5 factors for whether to deviate from the calculated support obligation, with findings of fact either on the record or in writing. Any final adjustment of (1) and (2) is subject to the presumptive minimum.

When calculating Child Support, Spousal Support and APL will not be awarded, and calculations will not be allowed where the parties share 50/50 custody and the incomes of the parties are equalized.

Rule 1910.16-7(d) is now in 1910.17(d), and it removes the court's authority to choose how to distribute support payments. Priority of Payment Distribution and/or Collections now applies to all support cases, not just those instances where the obligor has multiple orders for multiple families.



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### **Legal Questions?**

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Attorney Katrina M. Luedtke has been a part of the Mooney and Associates since November 24, 1997. She primarily practices family law including divorce, custody and support cases and criminal defense cases. Attorney Luedtke is fluent in Spanish which enables her to assist our Spanish speaking clients.

In 1987 Attorney Luedtke received her B.S. at Brigham Young University in Provo, Utah and her J.D. at Widener University School of Law in Wilmington, Delaware in 1990.

Her first job after law school, Attorney Luedtke was a Prosecutor in the United States Army Judge Advocate General's Corps (JAGC). She was stationed in Germany for four years. She then became an Assistant District Attorney in West Chester, Pennsylvania. Both of these previous positions allowed her to gain knowledge and trial experience which now aid her in representation of her clients.

During her leisure time Attorney Luedtke enjoys spending time with her family. She also enjoys visiting the beach in the summer time and going skiing in the winter. She also likes to take her dog for long walks in the Gettysburg battlefield.

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