

THE ADVOCATE

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- Personal injury
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INTRODUCING... MUNDY, ROGERS & ASSOCIATES

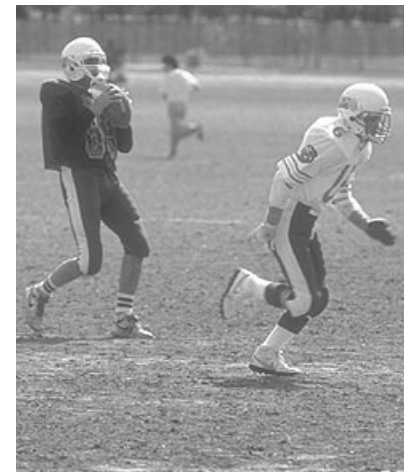
We are pleased to announce the establishment of **Mundy, Rogers & Associates, LLP**. The firm has a new name and a newly designed Web site: www.mundyrogers.com. However, Marshall, Frank, and their dedicated staff are still offering clients their extensive training and experience, impeccable reputation, excellent service, and the winning results you've come to expect. Mundy, Rogers & Associates will continue to focus on medical malpractice, family law, personal injury, wrongful death, and nursing home litigation. If you have any questions about the change, please contact the firm at (540) 982-2900 or info@mundyrogers.com.

SEPARATION, DIVORCE, AND COPARENTING

Fall means the start-up of football, soccer, and other sports for children. When households are split, both parents' attendance at sports and other events can present challenges to adults and children alike.

In the best of all possible worlds, a separated or divorced husband and wife should agree in advance on who attends which practices or games, who can drive or pick up children, and other related decisions.

If the spouses cannot decide coparenting issues themselves, which is really the best alternative, a lawyer can help by



petitioning family court to decide custody.

The process may involve mediation by a trained professional whose job it is to find a solution to custody issues that both parents can live with. A family court judge can review the mediator's findings and determine a course of custody and visitation—always with the best interests of the children in mind, who deserve the affection and attention of both parents.

The best legal thinking gets the best results

ELDERCARE. Assisted-living residences

One of the privileges of family life is helping a beloved elder family member find an assisted-living residence to meet their daily living, health-care, nutritional, social, and spiritual needs. Seniors' residences vary in both offerings and qualifications, so it's important for a family to review several residences before making a selection.

Here are some screening guides.

- Ask for records of licensure, quality assurance planning, association membership, inspection certificates, and continuing education for staff.
- Investigate resident needs assessments and a progress plan.
- Identify facility assistance available to

memory-impaired or disabled residents.

- Inquire about physician and hospital availability.
- Obtain a listing of all services and activities, from medication assistance and laundry to social activities and group outings.
- Be sure to understand all costs and fees.

If care fails

Assisted-living centers that conduct health-care testing have a particularly important responsibility to residents. After an 84-year-old was placed on a cardiac medication, he underwent testing to evaluate the results. Although the test lab faxed notice of abnormal value



Please contact an attorney for assistance with eldercare issues.

readings to residence medical staff, they took three days to notify the resident's physician. When the resident became ill and died, his family brought a medical negligence suit against the testing lab and the assisted-living facility. A jury awarded significant damages as a "clear statement" that the resident's life had value despite his advanced age.



Travelers' Advisory

Baby cribs and children's play areas

Trend watchers report that Americans have reacted to the 9/11 tragedy and Wall Street's roller coaster ride by making their homes more comfortable and taking more driving vacations. Families who travel need to be particularly attentive to children's needs.

Last year, the U.S. Consumer Product Safety Commission and National SAFE KIDS Campaign conducted a survey of 90 hotels and motels in 27 states and the District of Columbia. Researchers found that 80 percent of the facilities that were spot-checked offered child cribs and play areas that were unsafe for children.

Inspections uncovered entrapment hazards from loose hardware or mattress supports, soft bedding that could lead to breathing problems or suffocation, and holes in crib meshing that could lead to strangulation. Half of the play yards reviewed had at least one feature that endangered children.

Vacationing parents should inspect cribs carefully for loose or unsafe conditions, and monitor their children's activities in play areas very carefully.

Second medical opinions

No one should ever feel uncomfortable or awkward about obtaining a second opinion for diagnosis or treatment of a medical problem. As consumers, we usually pride ourselves on comparison-shopping for the best deal on a home appliance or office photocopier. Those purchases pale in comparison with our own or our family's health-care decisions, so obtaining the highest-quality medical health care should go without saying.

Patients should always know their options. For instance, some studies show that many suggested surgeries may be unnecessary. Insurance carriers encourage patients to obtain second opinions in many situations. Physicians often welcome second opinions on their assessments from medical colleagues.

To obtain a second medical opinion on a diagnosis, treatment, prescription, biopsy, x-ray, medical test or chart, diagnostic assessment, and other medical counsel, start with a personal physician. Patients can also seek out other doctors, medical societies, relatives, friends, and neighbors. No matter what the approach, feeling comfortable and confident about resolving health issues is key.

Failure to diagnose

Following several years of varying treatments for her serious hip and back pain, a patient was rendered unable to walk. Her doctor's practice settled out of court when her lawyer demonstrated that the disability resulted from her primary care physician's failure to diagnose a spinal cord tumor in a timely manner.

What is marital property?

When a marriage ends, a marital estate may consist of all of the assets and liabilities acquired during the marriage. These may include real estate, automobiles, credit-card and other debt, frequent flyer miles, furniture, pensions, pets, and stock and other investments. However, case law may determine marital property in many states. Here are some examples.

Kentucky

An appeals court held that a spouse's vacation and sick leave are not marital property subject to division upon divorce. Although pension or retirement benefits are a form of deferred compensation, the court ruled that accrued leave is an alternative form of wages since it replaces wages on days when a worker does not work. That makes accrued leave difficult to value and more personal than a pension or retirement benefits.

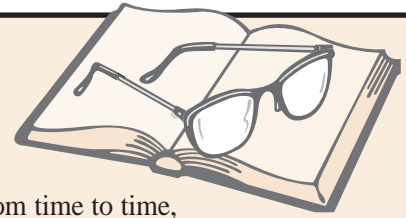
Kansas

An appellate court held that a trial court may consider a party's receipt of military disability benefits in awarding maintenance. When a couple divorced, a trial court considered, but wouldn't divide, the man's military disability benefits in awarding maintenance to the woman. An appellate court reversed and remanded, and the trial court reimposed its initial maintenance award, holding that federal law does not bar a state court from considering the receipt of military disability benefits when equitably dividing marital property.

Arkansas

While a couple was separated, the husband was injured at work and filed a Federal Employers' Liability Act (FELA) claim. The couple later divorced and entered a property settlement that granted the woman a 50-percent interest in any proceeds awarded to the man as a result of his FELA claim. Several years later, the man received a lump-sum payment FELA claim settlement. A trial court held that the man suffered permanent disability caused by his work-related injury and the settlement proceeds were not marital property.

LEGAL DICTIONARY



Many find legal terms puzzling. From time to time, we'll offer some easy-to-understand definitions. This time, we'll help with terms related to child custody.

Custody

The obligation and responsibility to care for and protect a child's rights.

Guardian *ad litem*

An individual or individuals the court appoints to act in a child's best interests during legal proceedings.

Legal custody

Following divorce, the right and responsibility of one or both

parents to make medical, educational, social, spiritual, and other decisions on behalf of a child.

Physical custody

Following divorce, the parent with whom a child will live all of or most of the time.

Joint custody

When both parents share either legal or physical custody.

Divorce and "forensic accounting"

When couples are divorcing, determining the value of assets available in the marriage may be complicated by one or more spouses misrepresenting their personal or business property and fiscal resources. While some individuals may act out of greed, others can be motivated by anger or spite.

Whatever the cause, an attorney may retain a forensic accountant to scrutinize a wide variety of financial and other documents to expose undisclosed assets and other nonmarital expenses that should be included in marital assets.

The most common incidents of underreporting income and assets come about when one or both spouses control closely held businesses. Accountants can usually identify a number of dubious transactions, such as

- highly inflated salaries
- unreported cash or sales transactions
- multiple or hidden checking, banking, or investment accounts
- large one-time business write-offs
- personal expenditures masquerading as business expenses
- sudden decreases in income.

Forensic accountancy can often play an important role in litigation and obtaining fairer settlements in what may be, at the outset, unclear or confusing divorce proceedings.

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Credit-card smarts



During separation or divorce, individuals need to maintain a good credit history by using credit cards responsibly. Avoid high-cost impulse purchases, control others' use of the cards, and make payments on time, complying with lender's terms and conditions.

Maintaining a good credit history also means monitoring a credit-card account carefully.

• Read the contract to understand all financial responsibilities and privacy rights. Don't fall prey to unsolicited direct marketing letters and telemarketing phone calls.

• Sign and register new cards upon receipt.

• Guard against credit-card fraud by treating all credit-card, Social Security, and personal identification numbers (PINs) like cash. Never disclose information to anyone who should not have it. Dispose of receipts carefully.

• Scrutinize monthly invoices and periodic reports and letters. Look for mistakes, special offers, changes in policy, and other information.

• Contest improper billing items immediately and in writing.

FMLA for depressed elderly parents

Many adults are in the "sandwich generation," assuming the responsibilities of caring for both their young children and elderly parents.

Under the Family and Medical Leave Act (FMLA), covered employers must grant eligible employees up to 12 weeks of unpaid family or medical leave during any 12-month period. Workers are entitled to leave for the birth and care of a baby, for receiving a child for adoption or foster care, to care for a sick immediate-family member, or if unable to work because of illness.

Employee eligibility requires working

- for a covered employer for 12 months.
- a minimum of 1,250 hours in the previous 12 months.
- at a U.S. location or territory where at least 50 employees are employed by the employer within a certain radius.

A recent Ninth Circuit Court case found that FMLA covered physical and psychological care for depressed elderly parents as well.

For information on FMLA, contact the Department of Labor. Consult an attorney with specific questions.

Fertility programs

Nearly five million American couples face infertility problems. Many seek conception assistance from reproductive medicine centers, which evaluate their reproductive status, conduct reproductive testing, diagnose conceptive challenges, and recommend individualized treatments.

However, assisted-fertility programs also require careful legal shepherding to protect and balance the respective health, legal, and privacy rights of parents, surrogates, children, and egg and sperm donors.

Couples and individuals contemplating entry into reproductive health programs should consult their attorneys for counsel, guidance, and support for issues related to

- drafting legal letters and contracts
- understanding compensation and payment schedules
- releasing funds
- preparing release and consent forms
- reviewing birth certificate, registry, and passport documentation
- managing privacy issues
- representing couples in court, if necessary.