

## CUSTODY, SUPPORT AND PARENTING OF A SPECIAL NEEDS CHILD

Dear Client:

You've come to us with a custody, support or parenting issue involving a **special needs child**.

As you are fully aware, raising children such as yours requires a great deal of attention, equipment, dedication, time, effort and expense. All of these factors affect a parent's options and choices with regard to divorce, custody, parenting, estate planning and Family Law in general.

Some children have special needs which will obviously impact their entire lifespan and may require a non-traditional parenting schedule, special estate planning, a long-term guardianship, establishment of a trust fund, etc.

Margaret S. Price, in her 2015 article entitled *Best Practices in Handling Family Law Cases Involving Children with Special Needs*, defines those needs as encompassing "a wide range of conditions and diagnoses. Sometimes the label gets used where it might not be appropriate. Routine aspects of childhood are not special needs. The 'terrible twos' and puberty are not special needs. Typical short-term childhood illnesses or injuries are not necessarily special needs. When a child has the flu or breaks an arm, this does not confer the status of 'special needs' upon that child."

Children with special needs can include those who have or are at increased risk for chronic physical, developmental, behavioral, or emotional condition and who also require health and related services of a type or amount beyond that required by children generally. Very often, those needs continue far beyond the typical emancipation that other children achieve at age 18. The statutes of Kentucky provide for the continuation of parents' support obligations to these children even after they have reached a chronological age of majority.

It's impossible to create an all-inclusive list of conditions that constitute "special needs" but a partial one would include congenital birth defects that impact the child's ability to move or provide self-care, autism, Down syndrome, deafness, blindness, cystic fibrosis, paralysis, missing limbs, post-traumatic stress disorder (PTSD), major organ failure, extreme psychiatric disorders, muscular dystrophy, mental retardation, fetal alcohol spectrum disorder, Tourette's syndrome, severe ADHD

or learning disabilities, epilepsy, bipolar or oppositional defiance disorder, processing disorders, leukemia and other cancers. Unfortunately, the list is literally endless.

Because we believe that your child's special needs are going to be an important factor in litigating your Family Court issue, we need a great deal of additional and rather specific information from you. Please complete the attached Datapack to the best of your ability before your next appointment.

Very truly yours,

JAMES K. MURPHY  
RUTH J. WILKERSON  
WILLIAM L. HOGE, III  
*Attorneys at Law*



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## Attorneys at Law

Concentrating in Family Law Representation  
throughout Greater Metropolitan Louisville

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*Hoge Partners, PLLC is the successor to Hoge & Associates, a law practice with a four-decade history of providing legal services throughout Metropolitan Louisville, including Jefferson, Oldham, Hardin and Bullitt Counties.*

### **JAMES K. MURPHY**

Jim Murphy is the Managing Partner of **Hoge Partners, PLLC**. He began practicing law in Kentucky in 1993. He graduated *magna cum laude* from Washington & Lee University and *cum laude* from the Lewis School of Law at Washington & Lee University.

Prior to joining Hoge & Associates in 2014, Jim's practice with another Louisville firm focused in commercial transactions, real estate and business. Since then, he has refocused his practice on Family Law matters with a special emphasis on associated business and real estate factors. Jim's caseload includes a variety of Family Law matters including domestic violence actions and criminal defense in child support matters as well as processing divorces, child support, child custody and post-divorce litigation. He also has significant appellate experience.

### **RUTH J. WILKERSON**

Ruth Wilkerson is a Partner of **Hoge Partners, PLLC**. She has been practicing law in Kentucky since 2010. A graduate of Transylvania University in Lexington, Kentucky and the Appalachian School of Law in Grundy, Virginia, Ruth has a varied legal background which included estate planning, workers compensation, personal injury litigation, employment law, civil rights discrimination and sexual harassment.

Ruth has focused on Family Law matters since joining the firm in 2014. She handles both contested and uncontested divorce actions, post-divorce litigation, modifications of child support and maintenance/alimony, disputed parenting matters such as visitation schedules and primary residence, adoption proceedings, child custody and domestic violence proceedings.

### **WILLIAM L. HOGE, III**

Bill Hoge has been practicing law in Louisville since 1972 and focused on Family Law for better than half of that period. He retired from active practice in 2017. Bill remains of counsel to the firm of **Hoge Partners, PLLC**, providing advice and guidance to attorneys Jim Murphy and Ruth Wilkerson and handling a limited number of cases. He is still a Fellow of the American Academy of Matrimonial Lawyers and formerly served as the Chair of the Family Law Sections for both the Kentucky Bar Association and the Louisville Bar Association. The majority of Mr. Hoge's legal career has been dedicated to Family Law and being of service to people going through the divorce process in Kentucky, individuals needing assistance with post-divorce matters (child support, custody, visitation, etc.), victims of domestic violence, international parental abductions and others situations relating to Domestic Relations law.

## CUSTODY, SUPPORT AND PARENTING OF A SPECIAL NEEDS CHILD

Please Print

Today's Date: \_\_\_\_\_

YOUR FULL NAME: \_\_\_\_\_

PRESENT ADDRESS: \_\_\_\_\_  
{Street Address or P. O. Box}

\_\_\_\_\_  
{City} {County} {State} {Zip}

YOUR TELEPHONE: Home -- \_\_\_\_\_ Work -- \_\_\_\_\_

Mobile Phone or other means of contact -- \_\_\_\_\_

YOUR E-MAIL ADDRESS: \_\_\_\_\_

### CHILD'S SPECIAL NEEDS

Child's Name: \_\_\_\_\_

Date of birth: \_\_\_\_\_ Present Chronological Age: \_\_\_\_\_

What is the child's current diagnosis?  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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THE SPACE BELOW IS FOR OFFICE USE ONLY  
*Please complete the remaining pages of this form*

Date of Initial Interview: \_\_\_\_\_ Responsible Attorney: \_\_\_\_\_

CASE TYPE:  Divorce  Legal Separation  Post-Divorce (including Custody/Visitation)  Custody/Visitation (unmarried parents)  
 Annulment  Pre-Nuptial Agmt.  Paternity  Adoption  Child Support  Hague action  Relocation Dispute  
 EPO/DVO  Estate Planning  Other: \_\_\_\_\_

What other diagnoses has the child been given in the past?

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What are the child's greatest challenges at the present time?

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Please identify the child's current healthcare providers:

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Please identify the child's other providers of services, including therapists, counselors, consulting professionals, etc.

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Please list your child's current prescription and non-prescribed medications, nutritional supplements, etc.

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Describe the public assistance or charitable assistance that your family receives to help provide for your special needs child (Medicaid, SSI, SSDI, etc.).

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What are your greatest concerns about the child's future?

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What are your greatest fears about the impact of the current legal process on the child?

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Has this child expressed his/her concerns about the current legal process? What knowledge or understanding does the child have about these proceedings?

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Describe the special educational or occupational services your child receives. Please include details about his/her Individualized Education Plan (IEP) or 504 Plan.

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Describe your expectations for your special needs child's requirements with respect to health, education and welfare in the future, including after he/she turns 18. Do you expect the child to obtain a high school diploma, get a college degree, live independently, be gainfully employed, marry, have and raise children?

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What arrangements have you and the other parent previously made to care for the child in the future such as life insurance policies, estate planning, asking someone to be a guardian, establishing a trust, etc.?

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Who is the primary caregiver for the child at the present time? Has this arrangement changed? Who takes the child to healthcare appointments? Who interacts the most with the child's caregivers, educators, therapists, etc.? Explain the level of assistance that the child requires for his/her daily needs (clothing, bathing, hygiene, transportation, etc.).

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How have this child's special needs impacted your and the other parents' career advancement, employment opportunities, contributions to retirement plans, ability to save for the future, etc.?

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Does anyone besides yourself and the other parent have any custody claim on this child? If so, please identify.

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Please state **who** (IN YOUR OPINION) is best suited to have custody of the children and briefly explain your position.

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What are your present visitation arrangements or parenting schedule with the other parent?

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What do you wish to change about your present parenting arrangements?

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Why do you wish to change this parenting arrangement?

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Why does the other parent object to this change in your parenting arrangement?

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# CHILD SUPPORT

Do you wish to seek child support from the other parent? \_\_\_\_\_

Does the other parent wish to obtain child support from you? \_\_\_\_\_

Why do you wish to change the current child support arrangement?  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*Child support in Kentucky is a mathematical formula set out by the General Assembly in Kentucky Revised Statute 403.212. However, a related statute (KRS 403.211) states that those Guidelines are to be adhered to in calculating the amount and duration of child support unless the child has **extraordinary medical, dental, educational, job training, or special needs**. In that event, the court can determine that those special needs are so severe and impact the child's life to such an extent that he or she can never be self-sufficient and the parents be required to contribute in the form of child support for the duration of the child's lifetime.*

Please fill in the following blanks to permit us to do a gross calculation of the estimated amount of child support we anticipate the Court to grant to the custodial parent under the current Kentucky Child Support Guidelines.

Do you pay child support for other children born before the oldest child of this relationship?       Yes     No

If yes, how much?      \$ \_\_\_\_\_ per \_\_\_\_\_

To whom?      \_\_\_\_\_

Number of children:      \_\_\_\_\_

Ages of children:      \_\_\_\_\_

Number of minor children of this relationship:      \_\_\_\_\_

Who is custodial parent?       Mother     Father

Mother's GROSS monthly income (before taxes):      \_\_\_\_\_

Father's GROSS monthly income (before taxes):      \_\_\_\_\_

Children's health insurance cost:      \$ \_\_\_\_\_ per month

Children's health insurance paid by: \_\_\_\_\_

Daycare expense for children of this relationship:      \$ \_\_\_\_\_ per month

Daycare expenses paid by: \_\_\_\_\_

Now, let's begin accumulating information on the **out-of-pocket cost** of your special needs child's unique requirements which will help convince the court to deviate from the established Child Support Guidelines.

Please list **ONLY** the expenses associated with raising and caring for your **SPECIAL NEEDS CHILD**:

	<i>Per Month</i>
<b>EXTRAORDINARY HOUSING EXPENSES:</b>	
Nursing home or residential treatment facility	
<b>EXTRAORDINARY FOOD COSTS:</b>	
Nutritional supplements	
Specialized nutrition products	
<b>EXTRAORDINARY CLOTHING COSTS:</b>	
Incontinence products	
Special clothing	
Personal care items	
<b>EXTRAORDINARY MOBILITY COSTS:</b>	
Wheelchairs and other assistive devices	
Vehicle modifications	
Lifting equipment	
Home modifications	

Other transportation costs (ambulances, etc.)	
<b>EXTRAORDINARY MEDICAL AND HEALTHCARE EXPENSES:</b>	
Medical doctors and providers	
Therapy providers	
Behavioral therapy providers	
Occupational therapy providers	
Speech therapy	
Non-parental caregivers	
Respite care	
Medical equipment (breathing devices, medication delivery products, monitoring equipment, etc.)	

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	<i>Per Month</i>
Prescription medications	
Non-prescribed medications (supplements, etc.)	
<b>EXTRAORDINARY EDUCATIONAL COSTS:</b>	
Special equipment for school	
School aide or assistants	
Educational or special needs advocate	
<b>OTHER EXTRAORDINARY COSTS:</b>	
Service animal (include food, vet care, grooming, etc.)	

Supplemental health insurance	
Out-of-pocket deductibles and co-pays	
Summer camp for special needs child	
<b>OTHER RECURRING COSTS:</b>	
<b>TOTAL ESTIMATED MONTHLY OUT-OF-POCKET COSTS ASSOCIATED WITH SPECIAL NEEDS CHILD:</b>	

## TALKING POINTS

- Highlighting the child's special needs in the initial filing
- Appointment of a *guardian ad litem* to represent only the child's interests in these proceedings
- Expert evaluation of the child's history, condition, symptoms, course of treatment and prognosis
- Expert evaluation of the child's unique educational history and future needs
- Counseling for the child to minimize the disruption to his or her life patterns during the litigation
- Inclusion of the costs for extraordinary medical care, physical therapy, occupational therapy, speech therapy, prescription and non-prescribed medications, special mobility and caregiving equipment, transportation needs, caregiver assistance, special nutritional requirements, special clothing and personal care items, respite care, etc. in determining special requirements with respect to temporary or permanent child support
- Establishing a non-traditional parenting plan which incorporates the child's unique needs and care requirements
- Incorporation of the child's special needs and requirements into the discovery process (interrogatories, requests for production, requests for admission, depositions, etc.)
- Accumulation of critical records documenting the child's special medical, psychiatric or educational needs
- Consideration of whether the requirement for a custodial parent to provide around-the-clock care to a grievously disabled dependent child should be factored into a long-term maintenance claim against the non-custodial parent
- Estate planning to create and fund a trust for the care of the child after parent's death
- Appointment of a guardian to provide care for the child if both parents are deceased

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Please return completed Datapack to:

### Hoge Partners, PLLC

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If you have questions, please call us at (502) 583-2005.

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