CLE by the SEA 2024

Family Law Track

All In The Family: Case Law Updates, Ethics and Advanced Practice Pointers for the Family Law Practitioner

Monday, July 8, 2024 - Wednesday, July 10, 2024
8:15 AM - 12:30 PM (each day)

Coronado Island Marriott Resort & Spa | Coronado, CA

Thank you to our Top-Tier Sponsors:

MISSION MANAGEMENT & TRUST CO.
PART OF THE NOTRE DAME FCU FAMILY
Happy Hour Sponsor

SOBERLINK
Improving Lives
Lanyard Sponsor

Klinedinst ATTORNEYS
Ethics Break Sponsor

Family Law Track Law Firm Sponsor

RILEY LAW FIRM
QDRO • Appeals • Family Law

Opinions expressed in this seminar or the written materials do not constitute an endorsement by the State Bar of Arizona, unless specifically identified as a policy of the State Bar. The views expressed are those of the speakers and authors only. Authors are responsible for the accuracy of all citations and quotations. No guarantees, representations or warranties are made by the State Bar of Arizona as to the accuracy or adequacy of the information provided by seminar faculty or authors.

Jennifer Sonier, *Professional Development Director*
Continuing Legal Education
(602) 340-7346

MISSION
MANAGEMENT & TRUST CO.
*PART OF THE **NOTRE DAME FCU** FAMILY*

Your Partner for a Lifetime.

Mission Management & Trust Co. offers high-level professionalism and exceptional service. Our dedicated team strives to provide each client with the utmost care and attention. Our mission is to give clients peace of mind and create **Trust For A Lifetime.**

Trustee Services & Wealth Management

Specialty Services Include:

- Delegated & Directed Trusts
- Estate Settlement
- Special Needs Trusts
- Settlement Preservation Trusts
- Conservatorships
- Enhanced Cash Management

OR SCAN BELOW FOR PEACE OF MIND

Learn More & Meet the Team:

Visit MissionTrust.com

Susan L. Ernsky
President
520-577-5559

Bridget O'Brien Swartz
Vice President & Fiduciary Council
602-735-0891

You can also contact us at:
Info@MissionTrust.com

SOBERLINK
Proving Sobriety, Improving Lives

The #1 Alcohol Monitoring Solution for Family Law

- Facial Recognition
- Compliance Department
- Real-Time Results
- Certified Records
- Advanced Reporting
- Testimony

"I use Soberlink as a way to minimize conflict, protect children, and get to the root of the problem, and potentially show there isn't a problem."

– FAMILY LAW ATTORNEY

Schedule a Lunch and Learn. Join the thousands of Family Law Professionals who trust our expertise in remote alcohol monitoring.

714.975.7200 | familylaw@soberlink.com

Klinedinst
ATTORNEYS

Proud to Welcome Legal Ethicist Lynda C. Shely as Shareholder

Welcome to Coronado! At this year's CLE by the Sea, we are very excited to announce the addition of Lynda C. Shely to our growing Phoenix office.

Ms. Shely has built a solid reputation focusing almost exclusively on legal ethics. In her practice, Ms. Shely advises law firms, law firm investors, and lawyers alike in all aspects of legal ethics law, Arizona ABS regulations, and risk management.

Enjoy your time at CLE by the Sea, and learn more about Lynda and our Phoenix law office at:

KlinedinstLaw.com/Phoenix

Lynda C. Shely
Shareholder

Board Certified Psychologist

Consultation and Forensic Psychological Services

Dr. David J. McIntyre, Ph.D., ABPP
(Diplomate in Psychology)

Forensic Evaluation and Expert Witness Testimony

AREAS OF EXPERTISE

- Brain Injury/Cognitive Impairment
- Incapacitation/Guardianship
- Dementia/Alzheimer's
- Competence to Stand Trial
- Geriatrics/Elder Abuse
- Family Law - Parental Fitness
- Military/Veteran Psychological Health
- Disability Evaluations
- Native American Behavioral Health
- Impaired Provider Evaluations
- Fitness for Duty Evaluations
- Suicidology
- Violence Risk Assessment
- Testamentary Capacity

Dr. McIntyre has performed over 800 forensic evaluations (civil and criminal).
Licensed in Arizona & Nevada

Behavioral Science CONSULTING LLC

4500 S. Lakeshore Drive, Suite 300 • Tempe, Arizona 85282
DrMc@behavioralscienceconsulting.org
(480) 495-5685 • www.behavioralscienceconsulting.org

Run your best firm

with Smokeball's cloud practice management software.
State Bar of Arizona members get 10% off Smokeball subscriptions.

Scan below to redeem your 10% discount.*

**Or, visit: www.smokeball.com/bar-associations/state-bar-of-arizona*

SMOKEBALL
www.smokeball.com

- Manage billing & trust accounting compliantly.
- Automate legal documents and court forms.
- Automatically capture your time and activity.
- Get clients and engage them faster.
- Workflows & matter types built for your practice area.
- Improved communications and email management.
- Run a thriving firm from anywhere on any device.
- Unlock revenue and grow your firm.

STATE BAR OF ARIZONA
Member Benefits

Smokeball is an Approved Member Benefit Provider of the State Bar of Arizona

The Right Care Plan Starts

With Having The Right People At The Table.

A sustainable quality of life should be attainable for anyone who seeks it, no matter their abilities or special needs. National Care Advisors works as a liaison for our clients in the complex legal and financial climate surrounding insurance, government benefits, and future care and quality of life cost projections.

NATIONAL CARE ADVISORS

Planning for care. For life.

800.652.7404

www.nationalcareadvisors.com

We Serve

- Trustees & Fiduciaries
- Financial Wealth Advisors
- Attorney's

Our Services

- Special Needs Analysis and Planning
- Trust Advisor Services
- Litigation Consulting
- Registered Nurse Case Management
- Education Advocacy
- Benefits analysis and planning —
- Annual Visits Program
- Concierge Care

OurFamilyWizard®

Now Available: Calls

A simple and secure way to track virtual parenting time

Scan the QR code to learn more or to connect with our team. we'd be happy to answer any questions about Calls or set up a training.

https://landing.ourfamilywizard.com/calls

WHERE EXPERIENCE MATTERS

EXPERIENCE. INTEGRITY. SERVICE.


DAVID ITZKOWITZ


VICKI ETHERTON


RANDALL PARMELE


NEIL MOFFETT


MARIE VOLM


CHRIS MADDOX


KARRISSA JONES


SHAUN TESSENSOHN


FRIEDA JIMENEZ

Work with a seasoned professional that knows how to navigate a commercial real estate transaction. No matter how complex or multifaceted, we've got you covered.

When you need the best, at Landmark Title we set the standard for personal attention, security and service, because what's important to you is important to us.

LANDMARK
TITLE ASSURANCE AGENCY
A SHADDOCK COMPANY

Phone: 602.748.2800

LTAAG.COM

UNBIASED
PROPERTY SERVICES

FREE 1 HOUR CLIENT CONSULTATION INCLUDES:

- Evaluation of real property value
- Walkthrough of the property
- Local neighborhood comparative market analysis
- Multiple options for selling the real estate
- Net sheet breaking down net proceeds after sale
- Blueprint for additional property services needed
- Locating & establishing contact with beneficiaries
- Free in person relocation consultation with unwanted tenants/occupants at the property

WHAT ARE MY OPTIONS?

480-283-5631

Together, we can end cancer as we know it, for everyone.

Cancer has touched so many of us. Your clients can help people impacted by cancer by making legacy gifts to the American Cancer Society through their wills, trusts, retirement plans, or charitable gift annuities.

Legacy gifts help fuel breakthrough research across all cancer types and fund essential services for people facing cancer, including 24/7 information and resources and improved access to care.

Join our National Professional Advisor Network (NPAN) to help your clients make lifesaving gifts through their estate plans. **Visit cancer.org/npan to join today.**

American Cancer Society®

To learn more contact Nicole Hill, Senior Director, Wealth Consultant at 520-481-6454 or nicole.hill@cancer.org.

Dynamic Solutions for drafting Professional Trusts and Wills

adapt

adaptdocs.com

(800) 212-2642

support@adaptdocs.com

Create Thorough and Accurate Wills, Trusts and Powers

Draw up simple or complex estate plans using the most up to date legal templates for Arizona or others states that your practice may take you.

Funding trusts is a breeze using our state specific deeds and transfer document templates.

EP Professional offers an expansive range of Irrevocable Trusts (e.g. ILITs, Medicaid Trusts, Gift Trusts, etc.) and related documents to suit your clients' needs.

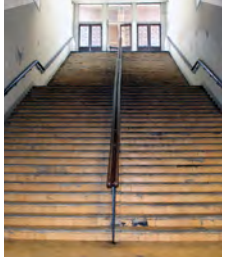
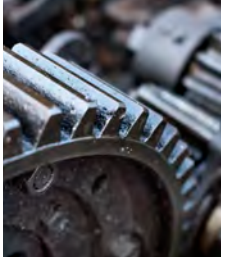
Effectively Gather Client Input

Review your client's input information at your convenience 24/7.

ADAPT has fully customizable online questionnaires to meet your firm needs as well as a wide array of client situations.

Integration with CLIO is now available to allow ease in transferring data between systems.

Additional integrations to be available later this year.


THE EXPERTS
Robson Forensic

WE ARE THE EXPERTS

Robson Forensic is a multidisciplinary Forensic Firm offering a broad range of specialty experts. The majority of our technical experts are full-time employees; this is an important distinction for both our experts and our clients.

www.robsonforensic.com | 206.641.4952

We are proudly not a referral service.

- Fully Vetted Experts
- Quality Assurance & Accountability
- Deposition Prep Processes
- Real Forensic Experience
- 120+ Exclusive Experts

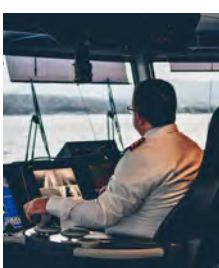
Anthony DiLiberto
Business Development
adiliberto@robsonforensic.com
206.641.4952

AREAS OF EXPERTISE

Admiralty / Maritime
Architecture
Aviation
Biomechanics
Civil Engineering
Crash Reconstruction
Dram Shop
Electrical Engineering
Elevator & Escalator
Environmental
Equine Science
Facilities Engineering
Fire & Explosion
Health Care
Highway Engineering
Human Factors
Machine Guarding
Mechanical Engineering
Medical Device & Pharma
Metallurgical Science
Meteorology
Police Practices
Premises Safety
Product Liability
Questioned Documents
Railroad & Trains
Social Services
Sports & Recreation
Structural Engineering
Supervision & Education
Toxicology
Trucking & Warehousing
Vehicle Engineering
Workplace Safety





DISCOVER REAL ESTATE TREASURE!

- COMMERCIAL, RESIDENTIAL AND LAND BROKERAGE
- FIDUCIARY REAL ESTATE SPECIALISTS
- SPECIAL COMMISSIONER APPOINTMENTS

LET R.O.I. HELP YOU MAXIMIZE THE VALUE OF REAL ESTATE ASSETS

AZ Business Magazine
10 MOST INFLUENTIAL WOMEN

Phoenix Business Journal
TOP 10 IN COMMERCIAL SERVICES

The Arizona Republic
TOP 10 RESIDENTIAL BROKER

Republic Media
WHO'S WHO IN BUSINESS

Beth Jo Zeitzer, Esq.
CEO | Designated Broker

R·O·I PROPERTIES®

602.319.1326 | WWW.ROIPROPERTIES.COM

FindLaw

YOUR PARTNER IN A SHIFTING LEGAL LANDSCAPE

KNOWING HOW AND WHERE TO SPEND YOUR LAW FIRM'S MARKETING DOLLARS CAN BE A COMPLICATED DECISION

Just when you think you've got things figured out, a new social network emerges. Search engines adjust their algorithms. And once-reliable marketing platforms such as the Yellow Pages come into question. On top of that, prospective clients are savvier, more digitally connected and more demanding than ever before.

To navigate this landscape, you need to **attract** potential clients to your firm. You need to **engage** prospects. You need to **connect** with those prospects and turn them into paying clients. You need a plan for how to put it all together in one integrated plan. In short, you need a partner like FindLaw.

ATTRACT

Building awareness starts well before a consumer encounters a problem. When individuals realize they need legal help, a well-crafted awareness strategy will place your firm front and center, keep it top of mind — and boost the odds that they'll turn to you.

How FindLaw helps you **attract:**

- MOBILE-FRIENDLY WEBSITES
- LEGAL DIRECTORIES
- PAY-PER-CLICK
- INTEGRATED MARKETING SOLUTIONS
- BLOGS

ENGAGE

Attract is only the first step. Consumers looking for legal help have a wealth of options to choose from. When the time comes to make a decision, you want to stand out as a reliable resource. Engaging consumers with unique information and advice showcases your expertise and positions your firm as one they can trust.

How FindLaw helps you **increase engagement:**

- SOCIAL MEDIA
- ANIMATED VIDEOS
- CONTENT MARKETING
- REPUTATION MANAGEMENT
- INTEGRATED MARKETING SOLUTIONS

CONNECT

Engagement cultivates a relationship and fosters consumer trust. Connect closes the loop by transforming engaged prospects into paying clients. FindLaw provides your firm with the insights, tools and practices to make that happen.

How FindLaw helps you **connect with prospects**:

- CALL ANSWERING / WEB CHAT SERVICES
- SOCIAL MEDIA
- REPUTATION MANAGEMENT
- INTEGRATED MARKETING SOLUTIONS

YOUR PARTNER FROM DAY ONE

FindLaw has focused on a single mission for more than 20 years: connecting law firms with consumers. We've developed the legal industry's most comprehensive portfolio of business development solutions.

But there's more to it. We understand your day-to-day challenges — competing with larger firms, managing your reputation, building referrals and more. We don't rely on assumptions or one-size-fits-all solutions.

Our team will get to know you, analyze your needs and customize integrated marketing solutions to meet them. And we'll stand by you every step of the way.

That's the type of rock-solid partner you need in today's marketing world.

Visit LawyerMarketing.com

THOMSON REUTERS®

TrustBank™

Building Prosperity

FOCUS INTEGRITY RESILIENCE

- Trust & Wealth Management
- Total Life Planning
- Investment Management
- Legacy Planning

(602) 957-2006 Phoenix Scottsdale Ocotillo www.tbaz.com

Sandra Hudson
President/CEO

Greg Furseth
Chief Fiduciary Officer

Philip Hotchkiss
Chief Wealth Strategist

Lisa Sullivan
Chief Trust Officer

FIRSTLEGAL

PERSONALIZED SOLUTIONS. EFFORTLESS EXPERIENCE. FILE THRU TRIAL™.

ABOUT US

First Legal is the first comprehensive File Thru Trial™ solutions firm. For over 30 years, we have offered a streamlined experience with fast turnaround.

Our six divisions work together to tackle every assignment with precision and excellence.

FILE THRU TRIAL™

First Legal simplifies the litigation process from File Thru Trial™.

From the beginning to end of the litigation process, or at any point in between, we are here for you.

Our broad range of services help simplify your workload.

The First Legal You Know And Love

"First Legal has been a valuable, strategic partner for over 20 years. The First Legal team has provided unparalleled customer service, going above and beyond our expectations."

- Valued First Legal Client

COURT & PROCESS
Court Filings
eFiling
eRecording

DEPOSITIONS
Court Reporting
Deposition & Case Management
Videographers

EDISCOVERY
Early Case Assessment & Consultation
Preservation & Litigation Holds
Data Collection

RECORDS
Subpoena and Authorization Services
Subpoena Preparation
Deposition Officer Designation

DIGITAL
Litigation Copying & Scanning
Exhibit Boards & Binders
Mail-Outs

INVESTIGATIONS
Surveillance & Sub Rosa
Background Searches
Skip Tracing

Karla Ciccanti | Account Executive
kciccanti@firstlegal.com
480.239.1180

Justin Corso | Account Executive | eDiscovery
jcorso@firstlegal.com
623.692.3915

Now Growing in Arizona!

JUSTICE HQ

COLLABORATE. CULTIVATE. THRIVE.

JOIN THE NATIONWIDE MEMBERSHIP FOR PLAINTIFF ATTORNEYS

Live-time collaboration	Curated events + programming	Brand enhancement	Mentorship opportunities

justicehq.com | info@justicehq.com | @justice.hq

CLE by the Sea

Family Law Track

July 8-10, 2024

Table of Contents

State Bar of Arizona

2024 CLE BY THE SEA- Family Track

Agenda

Day One- Monday, July 8, 2024

8:15 a.m. – 10:00 a.m.	**Case Law and Legislative Updates** Hon. Ronda R. Fisk, *Maricopa County Superior Court* Hon. Andrew J. Russell, *Maricopa County Superior Court* Sally M. Colton, *Reardon House Colton PLC* Kristi A. Reardon, *Reardon House Colton PLC*
10:00 a.m. – 10:15 a.m.	**Break**
10:15 a.m. – 12:30 p.m.	**Case Law and Legislative Updates** Hon. Ronda R. Fisk, *Maricopa County Superior Court* Hon. Andrew J. Russell, *Maricopa County Superior Court* Sally M. Colton, *Reardon House Colton PLC* Kristi A. Reardon, *Reardon House Colton PLC*

Day Two- Tuesday, July 9, 2024

8:15 a.m. – 10:15 a.m.	**Reading Business Valuations and Tax Returns** Hon. Andrew J. Russell, *Maricopa County Superior Court* Gloria L. Cales, *Gloria L Cales PC* Mark Hughes, *Gorman Consulting Group* Giancarlo A. Sapelli, *Warner Angle Hallam Jackson & Formanek*
10:15 a.m. – 10:30 a.m.	**Break**
10:30 a.m. – 12:30 p.m.	**Spousal Maintenance Updates** Hon. Ronda R. Fisk, *Maricopa County Superior Court* David N. Horowitz, *Warner Angle Hallam Jackson & Formanek* Mark Hughes, *Gorman Consulting Group* Giancarlo A. Sapelli, *Warner Angle Hallam Jackson & Formanek*

Day Three- Wednesday, July 10, 2024

8:15 a.m. – 9:15 a.m.	**Building a Better China Doll Affidavit** Hon. Ronda R. Fisk, *Maricopa County Superior Court* Hon. Andrew J. Russell, *Maricopa County Superior Court* Giancarlo A. Sapelli, *Warner Angle Hallam Jackson & Formanek*
9:15 a.m. – 10:15 a.m.	**Stop Sleeping with Your Clients (and other Ethical Recommendations and Updates)** Lynda C. Shely, *Klinedinst PC*
10:15 a.m. – 10:30 a.m.	**Break**
10:30 a.m. – 11:30 a.m.	**Crash Course on Estate Planning for Divorce Attorneys** Phillip W. Hilliard, *Warner Angle Hallam Jackson & Formanek*
11:30 a.m. – 12:30 p.m.	**Direct and Cross Examination of Pension Valuation Experts: Advanced Techniques and Updates** Hon. Amy M. Kalman, *Maricopa County Superior Court* Daniel S. Riley, *Riley Law Firm* Taylor S. House, *Reardon House Colton PLC* Nicole Siqueiros-Stoutner, *Sheldon-Siqueiros-Stoutner*

2024 CLE by the Sea: Family Track
July 8-10, 2024

Faculty Biographies

GLORIA L. CALES received her Bachelor's Degree in 1981, Masters of Science in 1983, and her Juris Doctorate in 1986, from Arizona State University. Since being admitted to the Arizona Bar in 1986, Ms. Cales primary focus has been in the area of Family Law. In 1999, Ms. Cales left the firm in which she was a partner and opened her own practice, the focus of which remains exclusively Family Law. For more than 17 years, Ms. Cales was active on the Executive Counsel of the Family Law Section of the State Bar, serving as Chair of that organization as well as numerous other offices. Ms. Cales often co-chairs and teaches seminars for the State Bar of Arizona, including the coveted "CLE by the Sea" in Coronado, California and the "Practicing with Porcupines" seminar. Ms. Cales is AV Rated by Martindale Hubbell, has been included in the Bar register of Preeminent Women Lawyers, has been recognized on multiple occasions as a Super Lawyer of the Southwest and is also currently a Judge Pro Tempore with the Maricopa County Superior Court.

SALLY M. COLTON is a Certified Family Law Specialist by the State Bar of Arizona. She has been recognized Ms. Colton's practice includes all areas of family law. Ms. Colton earned her Bachelor of Arts Degree from Brigham Young University, and her Juris Doctor from the Sandra Day O'Connor College of Law at Arizona State University. Ms. Colton was selected as a Rising Star by Super Lawyers in 2023 and as a Super Lawyer in 2024. Ms. Colton currently serves as a Judge Pro Tempore for the Maricopa County Superior Court. Ms. Colton also volunteers for various organizations, including the Family Lawyers Assistance Project and Fresh Start Women's Foundation.

HON RONDA R. FISK- Since July 2023, Judge Ronda Fisk has served as the Maricopa County Family Department's Presiding Judge. Along with the Department Administrator, she manages the Department's day-to-day operations and provides administrative oversight over 40 judicial officers and all Family Court cases. Judge Fisk's major initiatives have focused on implementing significant family law rule changes, including the spousal maintenance guidelines and calculator, informal family law trials, education orders, and department-wide use of the Case Center digital evidence portal. She serves on the Maricopa County Judicial Advisory Committee and the Strategic Planning Committee. In addition, Judge Fisk also serves on the Arizona Supreme Court's Committee on Family Courts (COFC), Committee on the Impact of Domestic Violence and the Courts (CIDVC), Advisory Committee on Evidence Retention (ACER), and Arizona Steering Committee on Artificial Intelligence and the Courts. Judge Ronda Fisk was appointed to the Superior Court of Arizona in Maricopa County in February 2017. She began her judicial career in the Criminal Department, where she managed a regular trial calendar and the Sex Offender Probation calendar. In March 2019, she served as the Criminal Department Associate Presiding Judge and managed the Trial Assignment Calendar for two years. In June 2021, Judge Fisk rotated the Family Department and served as the Department's Associate Presiding Judge. Prior to Judge Fisk's appointment to the bench, she

was a partner at Osborn Maledon, PA, where she focused on employment counseling, administrative law, and general commercial litigation. Prior to that, she worked as a sixth-grade teacher in a dual-language program in South Phoenix, teaching half of the day in English and half in Spanish. Judge Fisk graduated from the James E. Rogers College of Law at the University of Arizona in 2002. She has served on the boards of Circle the City, Childsplay, and Unity of Phoenix; has participated numerous times on the Report Committee for the Arizona Town Hall; and is an alumna of Teach For America's Phoenix (1996 Corps).

PHILLIP W. HILLIARD was born and raised in Phoenix, even attending Arizona State University. After college, Phil moved to Boston where he attended Boston College Law School and experienced completely different weather and a depressing lack of good Mexican food. After law school, Phil began working for US Trust, first in the trust termination group in Providence, Rhode Island, and eventually the trust administration group on San Diego, California (where he was reunited with good Mexican food and discovered California burritos). In 2015, Phil joined the San Diego office of the law firm Hahn Loeser & Parks, where his practice focused on estate planning; trust and estate administration; and tax law. In his free time, Phil pursued an L.L.M. in Taxation at the University of San Diego School of Law. Phil and his family moved back to Phoenix in 2021, when he joined the law firm Warner Angle Hallam Jackson & Formanek, later becoming a Partner in 2023. Phil's practice at Warner Angle focuses on estate planning; tax law; trust and estate administration; and business law. In his free time, Phil enjoys making pizza with his wife, Jenn, reading books and playing Legos with his 5-year-old son, Parker, and chasing after his 1-year-old daughter, Lainey.

DAVID N. HOROWITZ has significant experience in all child-related issues, including step-parent adoption, grandparents' rights, parenting coordination, same-sex parenting, and guardianship/conservatorship. His practice also offers guidance with prenuptial and post-nuptial agreements, complex divorce (including business valuation and complex custody and child support issues), collaborative divorce, mediation, arbitration, and court-appointed special master services. He is also a respected mediator in family law disputes and serves as a judge pro tem for the Maricopa County Superior Court. David is a Certified Family Law Specialist (Arizona Board of Legal Specialization) and a Super Lawyers honoree. He is a Fellow of the American Academy of Matrimonial Lawyers, serves on the Academy's board of governors, and chairs its Mediation Committee. He is the current chair of the State Bar of Arizona's Board of Legal Specialization Family Law Advisory Commission and an officer of the State Bar's Family Law Executive Council. David teaches Family Law and Legal Studies at Phoenix College and has been an adjunct faculty member at the Phoenix School of Law and Arizona Summit Law School. He has been practicing in Arizona for over 30 years. He received his B.S.B.A. in Business Economics (1987) from the University of Arizona Eller College of Management and his J.D. (1990) from the University of Arizona College of Law.

TAYLOR HOUSE is a Certified Family Law Specialist with Reardon House Colton PLC. He practices exclusively in the areas of family law and family law appeals. Taylor currently serves on the board of directors for the Family Law Section of the Maricopa County Bar Association. He previously served as the Chair of the Sole Practitioner and Small Firm Section of the State Bar of Arizona from 2016–2019. Taylor has been recognized as a Rising Star by

Super Lawyers. Taylor is also a Founding Member of the American Academy for Certified Financial Litigators.

MARK HUGHES is an Arizona Certified Public Accountant with a practice focusing on valuation and forensic accounting issues. He is a partner at Gorman Consulting Group, LLC where he leads the business valuation practice. He assists legal counsel in areas of financial dispute in areas ranging from marital dissolution to commercial litigation. His expertise includes performing valuations of privately held businesses for a variety of purposes including marital dissolutions, business acquisition or sales and dispute resolution. He frequently performs forensic accounting, asset tracing and community lien analyses in a family law context. He is Accredited in Business Valuation (ABV) and Certified in Financial Forensics (CFF) by the American Institute of Certified Public Accountants. He has written and spoke on the topics of personal goodwill, community lien analysis and post-service distribution analysis. He assists attorneys in understanding the intersection of case law and financial analysis related thereto.

HON AMY M. KALMAN graduated from Western Washington University and Duke University Law School. After graduating, she relocated to Phoenix and worked for the Maricopa County Public Defender's Office for eleven years in felony trials and for the last five years, in capital defense. She was a member of the Arizona Supreme Court's Criminal Rules Task Force and Fair Justice Task Force Subcommittee on Restoration of Rights and Set-Asides, and the State Bar's Criminal Practices and Procedures Committee. In June 2018, Amy was appointed a Commissioner of the Maricopa County Superior Court in the Probate/Mental Health division. She handled Title 36 matters at the Desert Vista Behavioral Hospital, as well as a Probate calendar involving a combination of wills, trusts and estates, as well as protective procedures for minors and incapacitated adults. Then she rotated to a specialty criminal calendar for nine months, handling competency proceedings and drug, DUI, and mental health probation calendars. In March 2023 she was appointed as Judge and moved to the family department. In her free time, she nerds out on science fiction, cooking shows, and obstacle races.

KRISTI A. REARDON is a Certified Family Law Specialist with Reardon House Colton PLC. She is one of approximately 80 Certified Specialists in Family Law by the State Bar of Arizona and is an accomplished litigator with over a decade of experience in all areas of family law, including complex financial matters, paternity matters, and custody matters. In addition to her family law practice, Kristi also practices in the areas of juvenile law and appellate law. Kristi is the author of the Arizona Legal Forms book published by Thomson Reuters which provides family law forms to practitioners and litigants. Ms. Reardon is AV rated by Martindale Hubbell and has been recognized as a Rising Star in the Super Lawyers Listing. Kristi's extensive experience and dedication to her clients have established her as a respected authority in family law. She frequently presents at legal conferences and seminars, sharing her insights on case law updates, trial litigation strategies, and appellate procedures. Her published appellate matters include notable cases before the Supreme Court of Arizona and the Arizona Court of Appeals, demonstrating her expertise in navigating complex legal issues. Beyond her professional accomplishments, Kristi is committed to mentoring young attorneys and contributing to the legal community. Her work on the Thomson Reuters Arizona Legal Forms

book has provided valuable resources to legal practitioners across the state, further solidifying her impact on the field of family law.

DANIEL S. RILEY earned a B.A. in English (Education) from the University of Washington in 2003 and worked as a preschool teacher and museum administrator before returning to college to earn his law degree. He has practiced family law exclusively since 2011, when he began managing a family law clinic partnered with Arizona State University. Dan is a Family Law Specialist (Arizona State Bar) and Certified QDRO Professional (American Association of Certified QDRO Professionals). He opened Riley Law Firm PLC in 2023, and his practice focuses on the preparation of QDROs, expert services related to the valuation of retirement assets, and family law appeals.

HON ANDREW J. RUSSELL was first appointed to the Superior Court as a Commissioner in 2014. In that role, he covered probate cases for four years, and then served as a Special Assignment Commissioner for three years. Judge Russell is one of the only Maricopa County judicial officers to serve in each department (criminal, civil, family, juvenile, and probate) and at every court facility. He currently presides over Family Court cases at the Northeast Court Facility following his appointment as a Judge in July 2021. Prior to his judicial appointment, Judge Russell worked as a commercial and appellate litigator at Kutak Rock LLP, led the Thurgood Marshall American Inn of Court for one year as its President, and served as a Judge *pro tempore* for the Superior Court. He began his legal career as a law clerk for the Honorable Noel Fidel at the Arizona Court of Appeals. Judge Russell earned his juris doctorate from Washington & Lee University in Lexington, Virginia, graduating *magna cum debitum*. While in law school, he served an externship with the United States Attorney's Office for the Western District of Virginia which included representing the United States is *United States v. Hopkins*, but the law was Judge Russell's second career. He began his professional life as a middle school music teacher – first in Pasadena, CA, and then in Big Bear Lake, CA. Teaching middle school students was very rewarding, and never boring. While in Big Bear, Judge Russell served as music director for many local productions, including *Amahl and the Night Visitors*, *The Music Man*, *Godspell*, and *Joseph and the Amazing Technicolor Dreamcoat*. He also performed in *Brigadoon* (Tommy), and in Gilbert and Sullivan's *Trial by Jury* (Plaintiff's Counsel). Judge Russell earned a Bachelor of Arts Degree in Music from UCLA. While at UCLA, Judge Russell drove for ABC during the 1984 Summer Olympics, performed with the UCLA Marching Band at the 1985 Fiesta Bowl, worked as an usher at the Hollywood Bowl, and spent his junior year "studying" in Bordeaux, France. Judge Russell enjoys college basketball, quality beverages, gardening, traveling with his family, and Sondheim musicals.

GIANCARLO A. SAPELLI focuses his practice primarily on domestic relations. He offers experience representing clients in all family law related matters. These include divorce, with or without children, and all issues that may arise in both types of cases. Giancarlo effectively and compassionately advances his clients' interests in matters involving legal decision-making, parenting time, child support, division of property and debts, spousal maintenance, and other issues. He also has experience in complex divorce matters including complex custody and property issues. Aside from divorce matters, Giancarlo's practice also focuses on paternity issues and third-party rights issues, such as grandparents' rights, step-parents' rights, and other

non-parental rights for children. Giancarlo attended The S.J. Quinney College of Law at the University of Utah. In law school, Giancarlo was the assistant to the editor of the Utah Journal of Family Law. Giancarlo earned a Bachelor's in Political Science, with a History minor from the University of Arizona. He also has a Master's in Educational Leadership from Northern Arizona University, where he graduated with distinction. After an eight-year term of teaching junior high school, Giancarlo's love for family and children inspired him to work in family law. That same passion continues to inspire him today. Away from the office, Giancarlo enjoys spending time with his family, traveling, running, and making memories.

LYNDA C. SHELY is a Shareholder in the Phoenix office of Klinedinst. With nearly four decades of experience, Ms. Shely advises law firms, law firm investors, and lawyers alike in all aspects of legal ethics law, Arizona ABS regulations, and risk management. She also assists clients with responding to initial Bar charges and serves as an expert witness in legal malpractice, motions to disqualify counsel, fee disputes, and lawyer discipline cases. Ms. Shely advises clients on regulatory topics involving compliance with the Rules of Professional Conduct, alternative business structure law firms, lawyer discipline matters, and law office risk management. Prior to joining Klinedinst, Ms. Shely worked at her own law firm, where she built a reputation serving law firm clients in matters such as ethical advertising, Arizona's alternative business structure program, fee agreements and billing requirements, training and supervision of law firm personnel, and conflict waivers. Prior to private practice in Arizona she was the Director of Lawyer Ethics at the State Bar of Arizona, where she supervised multiple departments and provided tens of thousands of telephonic advisory opinions to members of the State Bar on legal ethics issues. She served as Staff Counsel to the Ethics, Fee Arbitration, and Peer Review Committees, as well as the Client Protection Fund Board of Trustees and the Unauthorized Practice of Law Committee. Before moving to Arizona Ms. Shely was an associate at an Am Law 50 firm handling intellectual property and antitrust matters. Ms. Shely is an active leader in the legal community, serving on multiple committees of both the American Bar Association and the **State Bar of Arizona**. She served as the 2020–2023 Chair of the ABA Standing Committee on Ethics and Professional Responsibility, was an Arizona delegate in the ABA House of Delegates from 2016–2023, a prior Chair of the ABA Standing Committee on Client Protection, and a longtime member of the ABA's Center for Professional Responsibility. She also served on the Center's Conference Planning Committee and the Standing Committee on Professionalism. Additionally, she is a member of the State Bar of Arizona Ethics Advisory Group, acted as Co-Chair of one of the subcommittees of the APRL Futures Committee, and serves on several other non-billable groups involved with legal ethics. Ms. Shely has led the efforts of several organizations as President, including the National ABS Law Firm Association (2022–2023), the Association of Professional Responsibility Lawyers (2014–2016), and the Scottsdale Bar Association (2008–2009). She continues her involvement in the community today through various national and regional organizations. Not only that, Ms. Shely has taught as an Adjunct Professor at all of the law schools in Arizona, on professional responsibility and law firm management. As a tribute to her impact on the Arizona legal community, Ms. Shely has received multiple recognitions from both the State Bar of Arizona, being named "Member of the Year" in 2007, and the Maricopa County Bar Association, being honored in the Hall of Fame in 2023 and Member of the Year in 2022. Since 2013, she has continuously been featured every year in

Best Lawyers In America for her work in Ethics and Professional Responsibility. Notably, she has received the Arizona Women Lawyers' Association, Maricopa Chapter, Ruth V. McGregor Award in 2015, the Scottsdale Bar Association Award of Excellence in 2010, and the Attorney Law-Related Education Award, Arizona Foundation for Legal Services and Education in 2002. Ms. Shely earned her Juris Doctor from the Columbus School of Law at Catholic University in Washington, DC.

NICOLE D. SIQUEIROS-STOUTNER- Since graduating from ASU law school, Ms. Siqueiros-Stoutner focused solely on family law including litigation, mediation, and parenting coordination work. She began her career as a legal advocate for domestic violence victims and a case specialist for CPS (now DCS) assisting children and families in need. She later worked at the Maricopa County Superior Court: first as a law clerk for a former family court presiding judge, and then performing mediations in divorce and paternity cases. Ms. Siqueiros-Stoutner went on to manage the legal department of a local non-profit organization, and practice at three boutique Phoenix family law firms as an associate and later a partner. After working with Launi Sheldon for year, Ms. Siqueiros-Stoutner and Ms. Sheldon continued their partnership and opened the law firm of Sheldon & Stoutner in 2019. Ms. Siqueiros-Stoutner was honored to be appointed as a judicial officer (Commissioner) in Maricopa County Court Superior Court. She served for one year and then resumed her law practice with Ms. Sheldon in 2021. Over the years, Ms. Siqueiros-Stoutner received numerous awards and recognitions related to her work as a family law attorney. Ms. Siqueiros-Stoutner was selected to participate in the 2009 – 2010 State Bar of Arizona's Leadership Institute and was appointed to serve on the State Bar of Arizona's Committee on Minorities and Women in the Law. In April 2011, she was honored as one of Arizona's "Forty under 40" community leaders by the Phoenix Business Journal. She was also voted a "Top Attorney" by North Valley Magazine from 2012 to 2020. In 2019 and 2020 she was named a Family Law "Rising Star" and was named a "Super Lawyer" in 2024 by Thomson Reuters. On a regular basis Ms. Siqueiros-Stoutner authors articles and presents Continuing Legal Education seminars through and for the Arizona State Bar, the Maricopa County Bar, the Arizona Chapter of the Association of Family and Conciliation Courts. AAML, and the Arizona Supreme Court Committee on the Impact of Domestic Violence. CLE topics include family law trial techniques and advocacy, current case law, legal decision-making, mental health issues in the family court, serving minority clients, orders of protection, multi-jurisdictional custody and support issues, and cultural competency. Ms. Siqueiros-Stoutner serves as judge pro tem for the Maricopa County Superior Court and conducts Alternative Dispute Resolution Conferences, as well as private mediations. She is also a trained Parenting Coordinator and appeared on the Maricopa County Superior Court Mental Health Roster. In 2016, Ms. Siqueiros-Stoutner was chosen to serve on the Arizona State Bar Family Law Executive Council and was elected as Chair in 2023. She has also chaired the Board of Directors of the Maricopa County Bar Association's Family Law Section and served as Ex-Officio Board Member in 2018 and 2019. Ms. Siqueiros-Stoutner is a former director on the Board of Directors of the Los Abogados Hispanic Bar Association. She is a member of the Los Abogados Hispanic Bar Association and the Arizona Women Lawyer's Association. In her spare time, Ms. Siqueiros-Stoutner enjoys spending time with her husband and daughter, reading, skiing, crafting, and traveling.

2024 CLE by the Sea: Family Track - Monday

July 8, 2024

8:15 AM - 12:30 PM

Coronado Island Marriott Resort & Spa
Coronado, CA

FAMILY LAW RULES & LEGISLATION UPDATE
2024 CLE by the Sea
Judges Ronda Fisk and Andrew Russell

A. AUGUST 2023 & DECEMBER 2023 SUPREME COURT RULES AGENDAS

Rules > Rule Amendments from Recent Rules Agenda(s) (azcourts.gov)

Petition: **R-23-0021 (filed by State Bar of Arizona)**
Action: Adopted at August 2023 Rules Agenda (eff. 01/01/2024)
Rule(s): Rule 34, ARFLP

Amended Rule 34 includes a new subsection (c) which requires a party filing a motion to continue a trial, hearing, or conference to show the following:

(1) the basis for the good cause for a continuance;
(2) when the party learned of the circumstances which form the basis for the good cause and why the motion was not or could not have been brought at an earlier date;
(3) the party's diligence and efforts in attempting to avoid the circumstances;
(4) the prejudice which may be caused to the other party or any children at issue in the action by granting and/or denying the continuance; and
(5) the continuance is sought in good faith and not for delay or another improper purpose.

Petition: **R-22-0044 (filed by the Committee on Family Courts[1])**
Action: Adopted on Emergency Basis at August 2023 Rules Agenda (eff. 01/01/24)
Adopted on Permanent Basis December 2023 Rules Agenda (eff. 01/01/24)
Rule(s): Rules 30, 43.1, 44.1, 45, 45.1, 47, 47.1, 47.2, 48, and 91.5

Newly adopted Rule 30 requires trial courts to abide by the following new time limits "to help ensure that parties to domestic relations actions have their disputes timely resolved":

- The trial court must rule within 21 days of the date of lodging of any written stipulation (Rule 43.1); default decree or judgment by motion (Rule 44.1); consent decree, judgment, or order (Rule 45); or summary consent decree (Rule 45.1). Applies to cases in which the motion, stipulation, decree, judgment, or order is filed or lodged on or after 01/01/2024.
- When a proposed decree of dissolution or legal separation is lodged less than 60 days after the effective date of service, the 21-day time limit expands to 81 days after the effective date of service of the petition (Rules 45 & 45.1).
- The trial court must rule within 21 days of concluding a hearing on a motion for temporary orders (Rule 47), motion for temporary simplified child support order (Rule 47.1), and motion for emergency temporary orders (Rule 48). Applies to cases in which the hearing is concluded on or after 01/01/2024.
- The trial court must rule within 21 days of concluding a hearing or conference on a petition to enforce a visitation or parenting time order. Applies to cases in which the conference or hearing is concluded on or after 01/01/2024.

[1] The Family Court Improvement Committee (FCIC) was renamed the Committee on Family Courts (COFC). For consistency, the committee will be referred to throughout this memorandum as the Committee on Family Courts.

Petition: **R-23-0001 (filed by Judge Bruce Cohen)**
Action: Adopted at August 2023 Rules Agenda (eff. 01/01/2024)
Rule(s): Rule 48, ARFLP

Amended Rule 48 addresses all "Emergency Temporary Orders." The amended rule has been restructured to include a new subsection (a), creating a new category of "Emergency Temporary Orders With Notice." The trial court may set one of these motions for an accelerated hearing with notice if the verified motions "provides specific facts that establish why an emergency or accelerated hearing is required." Subsection (b) addresses Emergency Temporary Orders Without Notice and is largely unchanged.

Petition: **R-22-0043 (filed by the Committee on Family Courts)**
Action: Adopted August 2023 Rules Agenda (eff. 01/01/2024)
Rule(s): Rule 81, ARFLP

Newly adopted Rule 81 is a vehicle to comply with A.R.S. § 25-410(B), which provides as follows:

> If either parent requests the order, or if all contestants agree to the order, or if the court finds that in the absence of the order the child's physical health would be endangered or the child's emotional development would be significantly impaired, and if the court finds that the best interests of the child would be served, the court shall order a local social service agency to exercise continuing supervision over the case to assure that the custodial or parenting time terms of the decree are carried out. At the discretion of the court, reasonable fees for the supervision may be charged to one or both parents, provided that the fees have been approved by the supreme court.

Specifically, Rule 81 provides for post-judgment "parenting time supervision" or "case implementation supervision" (both defined terms) to be provided by "any person or local social service agency stipulated to by the parties and approved by the court, or any person or local social service agency appointed by the court." For supervisor selection, Rule 81 provides that "the court *may* provide parties with a list of supervisors" and "the court must designate a supervisor based on the parties' stipulation or under a procedure adopted by the court."

Rule 81 further identifies what must be included in the appointment order, including allocating the fee payment; responsibility for scheduling appointments; providing record availability to the supervisor; establishing frequency of reports from the supervisor; identifying the type of parenting time supervision; establishing the supervisor's authority to carry out the judgment; setting a procedure for review hearings; establishing the duration of the supervision; and stating the purpose of the supervision.

Rule 81 authorizes "the imposition of reasonable fees" to be charged to one or both parties, which are defined as "the usual and customary fees charged in the county, considering the availability of services, the nature of the issues presented, and the level of experience and training required of the supervisor."

Petition: **R-22-0040 (filed by Judges Bruce Cohen, Ronda Fisk, and Chris Coury)**
Action: Adopted at August Rules Agenda (eff. 01/01/2024)
Rule(s): Rule 84(b), ARFLP

Amended Rule 84(b) provides that a motion for clarification must be filed within six months after entry of the ruling, unless good cause is demonstrated as to why the motion was not filed within that time. A motion to clarify support obligations or distribution of retirement benefits "may be filed at any time."

Petition: **R-23-0007 (filed by Judge Bruce Cohen)**
Action: Adopted on Emergency Basis at August 2023 Rules Agenda (eff. 01/01/2024)
Agenda item on August 2024 Rules Agenda
Rule(s): Rules 44.1(e), 45(c), 78(g), and 91.3(c), ARFLP

Amended Rule 97 adds new "Education Order" forms, including ***Form 19 (Joint Legal Decision-Making Education Order)*** and ***Form 20 (Sole Legal Decision-Making Education Order)***. Rule amendments require that the trial court to issue an "Education Order" substantially in conformity with these form orders when entering any judgment when the parties have children in common (Rule 78(g)(1), including a default decree or judgment by motion (Rule 44.1(e)); a consent decree, judgment, or order (Rule 45); and "any order granting modification" of legal decision-making or parenting time pursuant to Rule 91.3.

Pending comments for consideration at the Supreme Court's August 2024 Rules Agenda:

- Judges Burnett & Fisk: Proposes adoption of revised Forms 19 and 20; the Committee on Family Courts filed a separate comment in support of this comment.
- Judges Sakall & Burnett and Joi Hollis: Propose amending Rules 44.1(e), 45(c), 78(g), and 91.3 to provide the trial court must include an "Education Order" "if the judicial officer finds it is in the children's best interests for the Education Order to be issued." Effect is that the Education Order would not be required in every case in which parties have children in common.
- Judge Robert Brooks (+18 Maricopa County Judges): Opposes the Education Order for various enumerated reasons. Recommends vacating the emergency order; appointing a task force through the Committee on Family Courts; incorporating education order within the parenting plan; and rejecting the proposal that Education Orders (in their current form) be issued in the trial court's discretion.
- Citizen Ashley West (+136 "co-sponsors"): Opposes the Education Order as an improper expansion of the Supreme Court's authority in Family Court matters.

Petition: **R-23-0041 (filed by the Committee on Family Courts)**
Action: Adopted on Emergency Basis at August 2023 Rules Agenda (eff. 08/24/23)
Adopted on Permanent Basis December 2023 Rules Agenda (eff. 01/01/24)
Rule(s): Rules 44.1, 45, ARFLP

Amended Rule 44.1(f) requires that a party requesting spousal maintenance separately file a Spousal Maintenance Calculator Worksheet that specifies the requested amount and duration.

Amended Rule 45(b)(1) requires as follows: "For dissolution or legal separation decrees that include an award of spousal maintenance, the parties must separately file a Spousal Maintenance Calculator Worksheet. If the stipulated amount or duration of spousal maintenance is outside the applicable

guideline ranges, the decree must include the required findings from the guidelines, and state that the stipulated amount and duration will allow the receiving party to become self-sufficient."

Petition: **R-22-0007 (filed by Judges Bruce Cohen, Greg Sakall, and Mike Peterson)**
Action: Discussed at the August 2022 Rules Agenda
AO2022-159 (dated 11/16/2022) authorizes the establishment of an Informal Family Law Trial (IFLT) Pilot Program in Graham, Maricopa, and Pima Counties
Continued to the August 2024 Rules Agenda.
Rule(s): Rules 77, 77.1, ARFLP

AO2022-159 creates an IFLT pilot program, piloting the use of the procedures set forth in proposed Rule 77.1. In June 2024, the Committee on Family Courts (COFC) submitted a Final Report to the Arizona Judicial Counsel, with the following description of an Informal Family Law Trial:

> What is an Informal Family Law Trial (IFLT)? As its name conveys, an IFLT is a trial that lacks the formality of a traditional trial. The parties—by agreement with each other and the court—can have any Title 25 action (except IV-D child support) conducted in this less contentious trial process. The door to a traditional trial is not closed, though, and a party that has opted into the IFLT process can decide to opt out in favor of a traditional trial up to 21 days before the IFLT. In an IFLT, the judge conducts the examination of the parties and any witnesses called by either party. The judge also determines whether evidence offered is relevant and material. Parties cannot cross examine each other. If a party has an attorney, the attorney may offer opening and closing statements. The moving party testifies under oath about the disputes in the case; the nonmoving party is then permitted to introduce any additional issues. An expert witness can be called only if the expert is named on the pretrial statement. At the conclusion of the IFLT, the court will render judgment (same day in most cases). The final judgment has the same force and effect as if entered after a traditional trial. The final judgment can be appealed or objected to on any grounds that do not rely on the Rules of Evidence.

The Final Report contains the following recommendation:

> [It is recommended that] the IFLT procedures be adopted statewide as the default procedure in all family law cases except IV-D child support matters. The recommendation extends to cases where one or both parties are represented by counsel. The courts and COFC further recommend that either party be permitted to opt out of the IFLT procedures by a deadline to be specified in the rules. A timely opt out by either party would require courts to apply the procedures applicable to a traditional trial.
>
> Because the pilot program required an opt-in, proposed Rule 77.1 would need to be revised to accommodate the IFLT procedure becoming the default with an opt-out. The proposed rule's drafters have suggested that they make proposed revisions and present them to the COFC at its September meeting. This would require continuing the petition from the Arizona Supreme Court's August 2024 rules agenda. Once completed, the proposed revisions could be filed as an amendment to the pending rule-change petition. The public would then have the opportunity to file responses in advance of the December 2024 rules agenda, should the court wish to continue the petition to that time. The participating courts do not believe any further value would be realized from extending the pilot program beyond December 2024.

B. FAMILY LAW LEGISLATION

Bill: **SB1372 – Family Reunification treatment; prohibitions (sponsored by Shawna Bolick)**
Action: Signed by Governor Hobbes 04/16/2024
Statute: ARS § 25-418 Family reunification treatment; prohibited conditions; definition

SB1372 "proscribes a court from ordering family reunification treatment that requires certain conditions for participation unless both parents consent."

The impetus for SB1372 was Kayden's Law (34 U.S.C.A. § 10446), which was part of the Violence Against Women Reauthorization Act of 2022, bipartisan legislation passed by Congress. Kayden's Law provides for grants for eligible states that adopt certain laws, including *inter alia*, the following:

> [A] law that ensures that, during a child custody proceeding… (iii) a court may not order a reunification treatment, unless there is generally accepted and scientifically valid proof of the safety, effectiveness, and therapeutic value of the reunification treatment; [and] (iv) a court may not order a reunification treatment that is predicated on cutting off a child from a parent with whom the child is bonded or to whom the child is attached." 34 U.S.C.A. § 10446(k)(3)(B)(iii & iv).

SB1372 is modeled after California's "Piqui's Law," Cal. Fam. Code § 3193, named after a 5-year-old boy who was murdered by his abusive father in 2017 during a bitter custody battle.

25-418. Family reunification treatment; prohibited conditions; definition

A. Notwithstanding any other law, a court may not order family reunification treatment that, as a condition of enrollment or participation, requires or results in any of the following:

1. A no-contact order with a parent.
2. An overnight, out-of-state or multiday stay.
3. A transfer of physical or legal custody of the child.
4. The use of private youth transporters or private transportation agents engaged in the use of force, threat or force, physical obstruction or circumstances that place the safety of the child at risk.
5. The use of threats of physical force, undue coercion, verbal abuse or isolation from the child's family, community or other sources of support.

B. For the purposes of this section, "family reunification treatment" means a treatment, therapy, program, service or camp that is aimed at reuniting or reestablishing a relationship between a child and an estranged or rejected parent.

ATTACHMENT[1]

RULES OF FAMILY LAW PROCEDURE

Rule 34. Continuances and Scheduling Conflicts

(a)-(b)[No change]

(c) Motion to Continue; Other Good Cause. On a motion to continue a trial, hearing, or conference based on other good cause, the party requesting the continuance must show:

(1) the basis for the good cause for a continuance;

(2) when the party learned of the circumstance(s) which form(s) the basis for the good cause and why the motion was not or could not have been brought at an earlier date;

(3) the party's diligence and efforts in attempting to avoid the circumstance(s) which form(s) the good cause for the continuance;

(4) the prejudice which may be caused to either party or any children at issue in the action by granting the continuance and by denying the continuance; and

(5) the continuance is sought in good faith and not for delay or another improper purpose.

(d)~~(c)~~[No change in text]

[1] Additions to the text of the rule are shown by underscoring and deletions are shown by ~~strike-through~~.

ATTACHMENT A[1]

RULES OF FAMILY LAW PROCEDURE

Rule 30. Right to Timely Review

To help ensure that the parties in a domestic relations action have their disputes timely resolved, courts must abide by the time limits imposed by Rules 43.1, 44.1, 45, 45.1, 47, 47.1, 47.2, 48, and 91.5.

* * *

Rule 43.1. Filings, Pleadings, and Other Documents

(a)-(d) [No change]

(e) Proposed Orders; Proposed Judgments.

(1)-(4) **[No change]**

(5) *Stipulations and Motions; Proposed Forms of Order*.

(A) All written stipulations must be accompanied by a proposed order. Except as otherwise provided in these rules, the court must rule on any written stipulation no later than 21 days after the date the stipulation is filed with a notice of lodging and the proposed order included as an attachment. If the proposed order is signed and entered, no minute entry need issue.

(B) **[No change]**

(f)-(h) [No change]

* * *

Rule 44.1. Default Decree or Judgment by Motion and Without a Hearing

(a) Generally. The court may enter a default judgment based on documents in the court's file, on motion and without the parties appearing at a hearing, in the circumstances described in this rule. However,

(1)-(3) **[No change]**

(b) Decree of Dissolution, Annulment, or Separation

(1)-(3) **[No change]**

[1] Additions to the text of a rule are shown by underscoring and deletions of text are shown by ~~strikethrough~~.

(4) *Acting on the Motion.* The Court must act on the motion in a timely manner as provided by this subpart.

(A) For petitions for dissolution or legal separation, the court must notify the appearing parties that the motion has been set for hearing or rule on the motion no later than:

(i) 21 days after the filing date of the motion if the motion was filed 60 days or more after the effective date of service of the petition; or

(ii) 81 days after the effective date of service of the petition if the motion was filed less than 60 days after the effective date of service.

(B) For petitions for annulment, the court must notify the appearing parties that the motion has been set for hearing or rule on the motion no later than 21 days after the filing date of the motion.

(c) Judgment of Maternity or Paternity.

(1)-(2) **[No change**]

(3) *Acting on the Motion.* The court must notify the appearing parties that the motion has been set for hearing or rule on the motion no later than 21 days after the filing date of the motion.

(d) Money Judgments and Attorney Fees.

(1)-(2) **[No change]**

(3) *Acting on the Motion.* Unless Rule 44.1(b)(4)(A) applies, the court must notify the appearing parties that the motion has been set for hearing or rule on the motion no later than 21 days after the filing date of the motion.

(e)-(g) [No change]

* * *

Rule 45. Consent Decree, Judgment, or Order

(a) Generally. If the petitioner and the respondent agree to the terms of a dissolution, annulment, or legal separation, or to the terms of a paternity or maternity action, they may obtain a consent decree, judgment, or order without a court hearing.

(1) To obtain a consent decree for a dissolution or legal separation, ~~the summons and petition must have been served on the respondent, or the respondent must have accepted service, at least 60 days before the parties lodge the consent decree.~~ A.R.S. § 25-329 provides for a 60-day waiting period which begins on the date the respondent was served with the summons and complaint, or the date on which an acceptance of service is filed with the clerk, whichever is earlier.

(2) To proceed with a consent decree for a dissolution of marriage, the parties must jointly file a notice of lodging and lodge a consent decree that is substantially similar to Form 8, Rule 97.

(3) The assigned judge or commissioner must determine whether the parties have met the requirements for a consent decree, judgment, or order and set the matter for hearing or rule on the lodged consent decree, judgment or order no later than:

(A) for petitions for dissolution or legal separation,

(i) 21 days after the lodging date if the decree, judgment, or order was lodged 60 days or more after the effective date of service of the petition; or

(ii) 81 days after the effective date of service of the petition if the decree, judgment, or order was lodged less than 60 days after the effective date of service.

(B) for all other matters, no later than 21 days after the lodging of the decree, judgment, or order.

(b)-(c) [No change]

Rule 45.1. Summary Consent Decree

(a)-(c) [No change]

(d) Entry of a Summary Consent Decree.

(1)-(2) **[No change]**

(3) *Waiting Period; Hearing.* The court may not enter a final summary consent decree earlier than 60 days after the filing date of the summary consent petition and response. After 60 days, the court may enter a summary consent decree without a hearing if it has determined that the parties have met the requirements for a summary consent decree. Alternatively, the court may set a hearing on specified issues or enter other appropriate orders. The court must set the matter for hearing or rule on the lodged summary consent decree no later than 81 days after the filing date.

(4) **[No change]**

* * *

Rule 47. Motions for Temporary Orders

(a)-(i) [No change]

(j) Acting on the Motion. The court must rule on the motion no later than 21 days after the date the hearing is concluded.

~~(j)~~ (k) [No change in text]

* * *

Rule 47.1. Simplified Child Support Orders

(a)-(b) [No change]

(c) Acting on the Motion. The court must rule on the motion no later than 21 days after the date the hearing is concluded.

Rule 47.2. Motions for Post-Decree Temporary Legal Decision-Making, Parenting Time or Child Support Orders

(a)-(d) [No change]

(e) Acting on the Motion. The court must rule on the motion no later than 21 days after the date the hearing is concluded.

Rule 48. Temporary Orders Without Notice

(a)-(f) [No change]

(g) Acting on the Motion. The court must rule on the motion no later than 21 days after the date the hearing is concluded.

* * *

Rule 91.5. Post-Judgment Petition for Enforcement of Legal Decision-Making or Parenting Time; Warrant to Take Physical Custody

(a)-(b) [No change]

(c) Hearing. Under A.R.S. § 25-414, within 25 days of service of the petition, the court must hold a hearing or conference before a judge, commissioner, or person appointed by the court to review noncompliance with a visitation or parenting time order. The court must rule on the petition no later than 21 days after the hearing or conference is concluded.

ATTACHMENT B[2]
(Showing Changes from the Rule Amendments Adopted on an Emergency Basis)

RULES OF FAMILY LAW PROCEDURE

Rule 30. Right to Timely Review

~~In every domestic relations action, the parties are entitled to the timely resolution of their disputes. To ensure the matters do not linger unnecessarily, the courts of this state must abide by time requirements imposed by an applicable statute or these rules.~~ To help ensure that the parties in a domestic relations action have their disputes timely resolved, courts must abide by the time limits imposed by Rules 43.1, 44.1, 45, 45.1, 47, 47.1, 47.2, 48, and 91.5.

* * *

Rule 43.1. Filings, Pleadings, and Other Documents

(a)–(d) [No change]

(e) Proposed Orders; Proposed Judgments.

(1)-(4) **[No change]**

(5) *Stipulations and Motions; Proposed Forms of Order.*

(A) All written stipulations must be accompanied by a proposed order. Except as otherwise provided in these rules, the court must rule on any written stipulation ~~within twenty-one~~ no later than 21 days after ~~of~~ the stipulation is ~~being~~ filed with a notice of lodging and the proposed order included as an attachment. If the proposed order is signed and entered, no minute entry need issue.

(B) **[No change]**

(f)-(h) [No change]

* * *

Rule 44.1. Default Decree or Judgment by Motion and Without a Hearing

(a) Generally. The court may enter a default judgment based on documents in the court's file, on motion and without the parties appearing at a hearing, in the circumstances described in this rule. ~~The party seeking default judgment by motion must file a notice of lodging and attach the proposed default decree and any other documentation required by~~

[2] Additions to the text of a rule as amended on an emergency basis are shown by underscoring and deletions are shown by ~~strikethrough~~.

~~this rule. The court must rule on the motion within twenty-one days of the lodging date.~~ However,

(1)-(3) **[No change]**

(b) Decree of Dissolution, Annulment, or Separation

(1)-(3) **[No change]**

(4) *Acting on the Motion.* The Court must act on the motion in a timely manner as provided by this subpart.

(A) For petitions for dissolution or legal separation, the court must notify the appearing parties that the motion has been set for hearing or rule on the motion no later than:

(i) 21 days after the filing date of the motion if the motion was filed 60 days or more after the effective date of service of the petition; or

(ii) 81 days after the effective date of service of the petition if the motion was filed less than 60 days after the effective date of service.

(B) For petitions for annulment, the court must notify the appearing parties that the motion has been set for hearing or rule on the motion no later than 21 days after the filing date of the motion.

(c) Judgment of Maternity or Paternity.

(1)-(2) **[No change]**

(3) *Acting on the Motion.* The court must notify the appearing parties that the motion has been set for hearing or rule on the motion no later than 21 days after the filing date of the motion.

(d) Money Judgments and Attorney Fees.

(1)-(2) **[No change**]

(3) *Acting on the Motion.* Unless Rule 44.1(b)(4)(A) applies, the court must notify the appearing parties that the motion has been set for hearing or rule on the motion no later than 21 days after the filing date of the motion.

(e)-(g) [No change]

* * *

Rule 45. Consent Decree, Judgment, or Order

(a) Generally. If the petitioner and the respondent agree to the terms of a dissolution, annulment, or legal separation, or to the terms of a paternity or maternity action, they may obtain a consent decree, judgment, or order without a court hearing.

(1) To obtain a consent decree for a dissolution or legal separation, ~~the summons and petition must have been served on the respondent, or the respondent must have accepted service, at least 60 days before the parties lodge the consent decree~~ A.R.S. § 25-329 provides for a 60-day waiting period which begins on the date the respondent was served with the summons and complaint, or the date on which an acceptance of service is filed with the clerk, whichever is earlier.

(2) To proceed with a consent decree for a dissolution of marriage, the parties must jointly file a notice of lodging and lodge ~~include as an attachment~~ a consent decree that is substantially similar to Form 8, Rule 97.

(3) The assigned judge or commissioner must determine whether the parties have met the requirements for a consent decree ~~and rule on the lodged consent decree within 21 days of the lodging date~~, judgment, or order and set the matter for hearing or rule on the lodged consent decree, judgment or order no later than:

(A) for petitions for dissolution or legal separation,

(i) 21 days after the lodging date if the decree, judgment, or order was lodged 60 days or more after the effective date of service of the petition; or

(ii) 81 days after the effective date of service of the petition if the decree, judgment, or order was lodged less than 60 days after the effective date of service.

(B) for all other matters, no later than 21 days after the lodging of the decree, judgment, or order.

(b)-(c) [No change]

* * *

Rule 47. Motions for Temporary Orders

(a) Motions for Pre-Decree Temporary Orders. A party seeking temporary orders for legal decision-making, parenting time, child support, or spousal maintenance, or concerning property, debt, or attorney fees, must file a separate verified motion that states the motion's legal and jurisdictional basis and the specific relief requested. The motion must be filed either after or concurrently with the initial petition. The motion must include the following information and documentation, if relevant:

(1)-(4) **[No change]**

(b)-(i) [No change]

(j) ~~Time to Review~~ Acting on the Motion. ~~At the conclusion of a hearing, the~~ The court must rule on the motion within 21 days after the date the hearing is concluded..

(k) [No change in text]

* * *

Rule 47.1. Simplified Child Support Orders

(a)-(b) [No change]

(c) ~~Time to Review~~ Acting on the Motion. ~~At the conclusion of a hearing, the~~ The court must rule on the motion no later than 21 ~~within twenty-one~~ days after the conclusion of the hearing.

* * *

Rule 47.2. Motions for Post-Decree Temporary Legal Decision-Making, Parenting Time or Child Support Orders

(a) Generally. A party requesting temporary legal decision-making, parenting time or child support after entry of a decree must file a verified motion stating the legal and jurisdictional bases for the motion, and the specific relief requested. The motion must include a proposed parenting plan containing the legal decision-making and parenting time requested for both parties. If the motion requests child support, the party requesting child support must comply with Rule 91.1. The motion must incorporate by reference the relevant allegations of the pending post-decree petition and not separately repeat them.

(b)-(d) [No change]

(e) ~~Time to Review~~ Acting on the Motion. ~~At the conclusion of a hearing, the~~ The court must rule on the motion no later than 21~~within twenty-one~~ days after the conclusion of the hearing.

Rule 48. Temporary Orders Without Notice

(a) Filing and Timing. A party may request temporary orders without notice by filing a verified motion, along with a proposed form of orders and a notice of hearing on the motion. A motion may be filed at the same time or after filing an initial pre-decree or post-decree petition.

(b)-(f) [No change]

(g) ~~Time to Review~~ Acting on the Motion. ~~At the conclusion of a hearing, the~~ The court must rule on the motion no later than 21 ~~within twenty-one~~ days after the conclusion of the hearing.

*** * ***

Rule 91.5. Post-Judgment Petition for Enforcement of Legal Decision-Making or Parenting Time; Warrant to Take Physical Custody

(a) Enforcement. A petition for enforcement of legal decision-making, parenting time, or visitation order must comply with Rule 91, and

(1)-(2) **[No change]**

(b) [No change]

(c) Hearing. Under A.R.S. § 25-414, within twenty-five days of service of the petition, the court must hold a hearing or conference before a judge, commissioner, or person appointed by the court to review noncompliance with a visitation or parenting time order. The court must rule on the petition no later than twenty-one days after the hearing or conference is concluded.

ATTACHMENT[1]

RULES OF FAMILY LAW PROCEDURE

Rule 48. Emergency Temporary Orders ~~Without Notice~~

(a) With Notice; Filing and Timing. A party may request emergency temporary orders at the same time or after filing an initial pre-decree or post-decree petition. A court may set the matter for an accelerated hearing only if the verified motion:

(1) sets forth the specific relief requested and the specific facts that support that relief; and

(2) provides specific facts that establish why an emergency or accelerated hearing is required.

(b) ~~Grounds.~~**Without Notice; Filing and Timing**. A party may request temporary orders without notice by filing a verified motion, along with a proposed form of orders and a notice of hearing on the motion. A motion may be filed at the same time or after filing an initial pre-decree or post-decree petition.

(1)~~**(b)**~~ *Grounds*. A court may grant temporary orders without written or oral notice to an adverse party or that party's attorney only if the verified motion:

(A)~~(1)~~ clearly shows by specific facts that if an order is not issued before the adverse party can be heard, the moving party or a minor child of the party will be irreparably injured, or irreparable injury, loss, or damage will result to the separate or community property of the moving party; and

(B)~~(2)~~ the moving party or attorney provides written certification of the efforts to give notice to the other party, or why giving notice should not be required.

(2)~~**(c) Orders.**~~ *Orders Without Notice.* Temporary orders without notice must specify the injury, loss, or damage and why it is irreparable, and state why the court granted the orders without notice. Temporary orders expire at the date and time set for hearing on the motion unless the court extends the time for good cause.

(3)~~**(d) Hearing**~~. *Hearing.* Upon entry of a temporary order without notice, ~~A~~ an evidentiary hearing must be set on the motion not later than 10 days after the order's entry, unless the court extends the time for good cause. The nonmoving party may request an earlier evidentiary hearing with reasonable notice as the court directs.

(c) ~~**(e)**~~ **Service.** ~~The~~ Any order and notice of the evidentiary hearing must be served as soon as possible after the order's entry or as the court directs.

---

[1] Additions to the text are shown by underscoring and deletions of text are shown by ~~strike-through~~.

ATTACHMENT

NEW RULE 81

RULES OF FAMILY LAW PROCEDURE

Rule 81, **Post-Judgment Parenting Time Supervision and Case Implementation Supervision**

(a) Application. This rule applies after a judgment has been entered under Rule 78.

(b) Definitions. These definitions apply:

(1) *Parenting Time Supervisor or Case Implementation Supervisor*. A "parenting time supervisor" or a "case implementation supervisor" is any person or local social service agency stipulated to by the parties and approved by the court, or any person or local social service agency appointed by the court to carry out the terms of A.R.S. § 25-410(B).

(2) *Local Social Service Agency*. A "local social service agency" is any group or individual recognized by the community as a provider of social services to members of the community, including conciliation courts, when ordered by the presiding judge of the county or presiding domestic relations judge.

(3) *Parenting Time Supervision*. Parenting time supervision encourages parenting time between the child and parents. The supervisor facilitates contact per court orders in a manner that may include but is not limited to physical supervision. Communication with and services provided by the parenting time supervisor are not confidential. Supervisors must observe and report their observations. The supervisor may terminate a court-ordered parenting time session should there be a concern arising from a participant's behavior or safety issues for a participant, including the parenting time supervisor.

(4) *Case Implementation Supervision*. After a judgment is entered, implementation issues may remain other than the fitness of each parent to carry out the plan that the court ordered. Case implementation supervision assists the parties and court in implementing the judgment's terms. Communication with and services provided by the supervisor is not confidential. Supervisors must observe and report their observations. Supervision may include a therapeutic component for all participants to address behaviors inconsistent with the parenting plan's implementation.

(c) The Parenting Time or Case Implementation Supervision Order.

(1) The court must order parenting time consistent with the child's best interests. If the parties agree, or the court finds that without a continuation order the child's physical health would be endangered or the child's emotional development would be significantly impaired, the court may order parenting time or case implementation supervision consistent with the child's best interests.

(2) For the supervisor selection, the court may provide parties with a list of supervisors. The parties may stipulate to a supervisor from the list or any other person that the parties agree is appropriate to serve. The court must designate a supervisor based on the parties' stipulation or under a procedure adopted by the court.

(3) The appointment order must provide the following:

(A) The allocation of fee payment between the parties. After determining that the parties can afford to pay the fees, the order will state who will be responsible for paying the fees and how and when payments will be paid. If the parties cannot afford the fees and other funding is available, the order will provide how the costs will be covered.

(B) Scheduling appointment responsibility. The order must state the party or parties responsible for contacting the supervisor to arrange parenting time supervision or case implementation.

(C) Providing record availability to the supervisor. The order must specify what information is to be provided to the supervisor. The order must determine how, when, and by whom the information will be provided. If there are any special concerns or needs of the child, the supervisor should be informed.

(D) Establishing the frequency of reports from the supervisor. The order must specify the required reports, the report's content, and frequency. The order must require that the supervisor keep notes of each visit.

(E) For parenting time supervision, the order must specify the type required by the court. Such supervision may include but is not limited to, parenting time exchange supervision, parenting time supervision, and therapeutic parenting time supervision.

(F) Establishing the supervisor's authority to carry out the judgment.

(G) Setting out any procedure necessary for review hearings.

(H) Establishing the duration of parenting time or case implementation supervision. The supervision order expires at the court's discretion but must be stated in the order. If a party seeks to modify, extend, or vacate the parenting time or case implementation supervision, the requesting party must file the appropriate petition under Rule 91. A supervisor may submit a written request for an extension or modification. The court must allow the parties to be heard if a supervisor requests an extension or modification.

(I) Stating the purpose of parenting time or case implementation supervision, including the identification of and protection from the potential risks to the child's physical or emotional health arising from parenting time.

(d) Fees. The imposition of reasonable fees is authorized for parenting time and case implementation supervision and may be charged to one or both parties under Rule 95(a).

Reasonable fees are the usual and customary fees charged in the county, considering the availability of services, the nature of the issues presented, and the level of experience and training required of the supervisor.

ATTACHMENT[1]

RULES OF FAMILY LAW PROCEDURE

Rule 84. Motion for Clarification

(a) [No change]

(b) Timing. A party may file a motion for clarification ~~at any time, but the motion does not extend the time for filing a notice of appeal.~~ within 6 months after the entry of the ruling, unless good cause is demonstrated as to why the motion was not filed within that time. If the motion is filed to clarify support obligations or distribution of retirement benefits under the order, the motion may be filed at any time. The filing of a motion for clarification does not extend the time for filing a notice of appeal.

(c)-(d) [No change]

[1] Additions to the text of a rule are shown by underscoring and deletions are shown by ~~strike through~~.

ATTACHMENT A[1]

RULES OF FAMILY LAW PROCEDURE

Rule 44.1. Default Decree or Judgment by Motion and Without a Hearing

(a)-(d) [No change]

(e) When Children Are Involved or a Party is Pregnant. When the parties have children in common or a party is pregnant, the default decree must include the following:

(1) whether either party is pregnant with a child common to the parties;

(2) provisions for legal decision-making and parenting time, either within the default decree or by a separate parenting plan;

(3) an "Education Order" substantially in conformity with Rule 97, Form 19 or Form 20, as appropriate;

~~(3)~~(4) a child support order supported by a child support worksheet, but if a party requests any deviation in the child support amount, the default decree or child support order must state the basis for deviation under the child support guidelines;

~~(4)~~(5) if either party is receiving benefits under Temporary Assistance for Needy Families (TANF) or the Title IV-D program, the parties must attach to the default decree the Attorney General's written approval of any specified child support amount;

~~(5)~~(6) a copy of the filing parent's certificate of completion of the parent information program, if it has not already been filed with the court;

~~(6)~~(7) a completed income withholding order, including the current employer information sheet;

~~(7)~~(8) if the parties are requesting joint legal decision-making, a statement as to whether domestic violence has occurred, and the extent of any such violence; and

~~(8)~~(9) for a paternity or maternity action, the identities of the natural mother and father and anyone who has lawful status as a parent or custodian of a child, including the court case conferring that status if it is not the current case.

(f) –(g) [No change]

[1] Additions to the text of a rule are shown by underscoring and deletions of text are shown by ~~strike-through~~.

Rule 45. Consent Decree, Judgment, or Order

(a)-(b) [No change]

(c) When Children Are Involved. When the parties have children in common or a party is pregnant with a child common to the parties, the consent decree, judgment, or order must include the following:

(1) provisions for legal decision-making and parenting time, either within the consent decree or by a separate parenting plan;

(2) an "Education Order" substantially in conformity with Rule 97, Form 19 or Form 20, as appropriate;

~~(2)~~(3) a child support order supported by a child support worksheet, but if a party requests any deviation in the child support amount, the consent decree or child support order must state the basis for deviation under the child support guidelines;

~~(3)~~(4) if either party is receiving Temporary Assistance for Needy Families (TANF) or services from the Title IV-D program, the parties must attach to the consent decree the written approval of the Attorney General or county attorney;

~~(4)~~(5) copies of each parent's Certificate of Completion of the Parent Information Program, if not previously filed with the court;

(~~5~~)(6) a completed income withholding order, including the current employer information sheet;

~~(6)~~(7) if the parties are requesting joint legal decision-making, a statement as to whether domestic violence has occurred, and the extent of any such violence; and

~~(7)~~(8) for a paternity or maternity action, the identities of the natural mother and father and anyone who has lawful status as a parent or custodian of a child, including the court case conferring that status if it is not the current case.

* * *

Rule 78(g). Judgment, Attorney Fees, Costs, and Expenses.

(a)-(f) [No change]

(g) Entering Judgment.

(1) *Written Document*. All judgments must be in writing and signed by a judge or a court commissioner duly authorized to do so. When the parties have children in common, the judgment must include an "Education Order" substantially in conformity with Rule 97, Form 19 or Form 20, as appropriate;

(2) **[No change]**

(h)-(i) [No change]

* * *

Rule 91.3. Post-Judgment Petition to Modify Legal Decision Making or Parenting Time; Education Order

(a) Generally. A petition for modification of legal decision-making or parenting time:

(1) must comply with Rule 91;

(2) must contain detailed facts supporting the modification;

(3) must be verified by the applicant or supported by affidavit(s) as required by A.R.S. § 25-411; and

(4) in actions in which the legal decision-making order or decree was not entered by an Arizona court, must include an affidavit required under A.R.S. § 25-1039.

(b) Service. In addition to complying with Rule 91(j), the applicant must comply with A.R.S. § 25-1035

(c) Education Order. Any order granting modification issued under this rule must include an "Education Order" substantially in conformity with Rule 97, Form 19 or Form 20, as appropriate.

ATTACHMENT B

Rule 97, Rules of Family Law Procedure

Form 19. Joint Legal Decision-Making Education Order

In re the Matter of: _____ Petitioner/Parent A v. _____ Respondent/Parent B	**CASE NO. _____** **JOINT LEGAL DECISION-MAKING EDUCATION ORDER**

THE COURT FINDS AS FOLLOWS:

1. The parties have the following minor child(ren) (hereinafter "minor child(ren)"):

   Name: _____ Born: _____

   Name: _____ Born: _____

   Name: _____ Born: _____

   Name: _____ Born: _____

   Name: _____ Born: _____

   Name: _____ Born: _____

2. An Order regarding legal decision-making and/or parenting time was entered by this Court on _____ in the best interests of the minor child(ren).

3. It furthers the best interests of the minor child(ren) for this Court to enter the following school-specific order that reflects relevant provisions under the court-ordered parenting plan. This order serves to supplement, but not modify or replace, the provisions set forth in the court-ordered parenting plan. For the purpose of this order, the terms shall apply equally to schools, pre-schools, and institutional childcare providers.

4. It is a stated goal of the Court to eliminate or at least reduce the involvement of school officials and teachers in disputes between the parents, and the terms herein are designed to meet that objective.

Based thereon,

IT IS HEREBY ORDERED AS FOLLOWS:

1. Binding Upon Parties:

This order is binding upon the parents, who are responsible for complying with its terms and the terms in the parenting plan. It is not binding on a school but is provided as guidance for a school.

2. Delivery to School:

The parents are required to provide a copy of this order to the child(ren)'s school(s).

3. Legal Decision-Making:

As it relates to education and/or school issues for the minor child(ren), legal decision-making in the best interests of the minor child(ren) is as follows:

Joint legal decision-making authority with neither parent entitled to any greater decision-making authority.

Joint legal decision-making authority with _____ entitled to presumptive decision-making authority in the event of a disagreement between the parties after a good faith effect to resolve the issue.

Joint legal decision-making with _____ entitled to final decision-making authority in the event of a disagreement between the parties after a good faith effect to resolve the issue.

4. Parenting Time and Child Pick-Up:

The Parenting Plan ordered by the court designates each parent's time with the child(ren). The parents are expected to abide by that schedule, unless otherwise agreed. That schedule is not binding on the school. Therefore, the school should not use the parenting schedule as a basis to deny either parent access to their child(ren) nor shall either parent instruct the school to limit contact, unless otherwise ordered.

Each parent may designate other individuals who are authorized to pick up the child(ren). In the event of a dispute between the parties as to any such individuals, the persons designated by either parent shall remain authorized to pick up the child(ren) until the parties reach an agreement or secure a court order to the contrary.

-or-

The following listed individuals are not permitted to pick-up the minor child(ren) from school without written consent of

Other:

5. Contact Information and Emergencies:

Each parent's home address, e-mail, cell phone and any other contact information shall be provided to the school and listed by the school as the contact information for the child(ren). Both

parents shall be listed as the first two emergency contacts. Additional contacts may be listed but in the event of a dispute between the parties, the school shall list any person requested by either party until the parties reach an agreement or secure a court order to the contrary.

The school may contact either parent about the child(ren), and it may contact any of the listed individuals in an emergency if neither parent can be reached. In the event of an emergency, either parent may make decisions for a child(ren)'s immediate care.

-or-

Other:

6. Access to School Grounds:

Subject to the policies of the school, there are no restrictions on either parent's right to participate in any school activities or events at which parents are generally permitted to attend.

Both parents are entitled to equal access to school grounds, including, without limitation, attending a child(ren)'s events or activities, volunteering in the classroom and/or school events, attending lunch, or volunteering in the classroom or for field trips in the same fashion as all other parents who have children enrolled at the school. Neither parent may limit the other parent's ability to enter school grounds or participate in school activities without a court order to the contrary.

Each parent may authorize others to attend school-related events or activities unless restricted by order of the court.

-or-

The following listed individuals are not permitted on school grounds, to attend field trips, or to otherwise participate in in-person school activities to pick-up the minor children from school without written consent of

Other:

7. Extra-Curricular Activities

Each parent is authorized to sign consent forms for the child(ren) to participate in extra-curricular activities. In the event the parents disagree about the child(ren)'s involvement in such activities, the issue shall be addressed in accordance with the legal decision-making authority determined by the court. If neither parent has superior decision-making authority, the burden shall be on the parents, and not the schools, to resolve the issue through agreement or order of the court consistent with the legal decision-making orders entered by the court.

-or-

It is anticipated that the child(ren) will participate in extra-curricular activities. If there is a disagreement between the parties, only _____ has the authority to sign any permission slip or authorization.

8. Access to School Records and Parent Portal:

Both parents are entitled to equal access to the child(ren)'s school records. Neither parent may restrict the other parent's access to information. Further, each parent shall be individually responsible for contacting the school and requesting to be included on any mailing or distribution list.

-or-

The following persons are not permitted access to the child(ren)'s school records and are NOT entitled to receive information from the school or be made part of any mailing or distribution list

Other:

Both parents are entitled to access the school's student information system or online parent portal(s) (e.g. ParentVUE, Google Classroom, Infinite Campus etc.). Unless the school allows each parent to have an individual login account, the parents shall create a joint login ID and password, which shall not be changed or modified without the consent of the other parent.

-Or-

The following persons are not permitted access to the school's online parent portal(s)

Other:

9. Parent-Teacher Conferences:

Each of the parents shall have the equal right to confer with teachers and counselors concerning a child's education and other activities. For regularly-scheduled parent-teacher conferences (e.g. the conference days established on the school calendar), the parents may attend jointly. Any request for separate conferences shall be addressed in the sole discretion of the school and may or may not be accommodated. The school may, in its discretion, require the parents to attend separate conferences or require one or both of the parents to participate through a virtual platform if joint attendance is disruptive or not productive.

-Or-

The following persons shall not confer with the teacher or school official and is not authorized to attend any parent-teacher conferences, whether individually or jointly with the other group: _____

10. Curriculum and Instruction Disputes:

In the event there is a disagreement between the parties as to the child(ren)'s involvement in any specific curricular activities, the subject matter being taught by the school (including books associated with the school curriculum), or the method of instruction, the issue shall be decided consistent with the legal decision-making authority assigned by court order. If neither parent has superior decision-making authority, the school shall implement its standard curriculum and method of instruction until such time that the parties reach an agreement or secure a court order.

11. Special Services:

If the child(ren) is eligible for or being considered for a 504 Plan, an Individualized Education Program (IEP), an Individualized Service Plan (ISP), or other special services, both parents are entitled to attend all meeting with school officials in which parents are permitted to attend and are authorized to have access to all records and testing results. If one parent receives notice of a meeting, that parent shall provide that same notice via e-mail or text to the other parent within 24 hours of receipt of the meeting notice.

Whether initiated by the school or either parent, absent any decision-making authority assigned to one parent, an evaluation as to the child(ren)'s eligibility for special services shall proceed so long as at least one parent consents. Upon completion of any evaluations or assessments and a Multi-Disciplinary Evaluation Team (MET) determination of eligibility, the parents, along with the school officials, shall confer regarding consent for the initial provision of special education and related special services. If there is no agreement between the parties, and absent any decision-making authority assigned to one parent, the issue shall be decided in accordance with the legal decision-making orders of the court.

If there is an Individualized Health Plan (IHP) for the child(ren), both parents shall cooperate with the implementation of the plan. In the event of a disagreement between the parents and absent any decision-making authority assigned to one parent, the IHP shall be implemented until the contesting parent secures a court order to the contrary.

12. School Selection:

Agreements between the parties as to school selection are not binding on the school or school district. Enrollment of a child in a particular school is subject to the school's policies or rules, space availability, enrollment restrictions set by the school or school district or its authorizer (if a charter school), and state law. If the parties anticipate a dispute as to school selection, each party may submit enrollment documentation to the school of choice solely for the purpose of reserving the child(ren)'s place at the school in the event that parent's choice becomes the selected school. Parents shall not enroll their child(ren) in two different schools as presumptive full-time students, with each parent taking the children) to a different school during that parent's parenting time.

In the event an issue arises regarding a change in schools for the child(ren),

(a) absent an agreement between the parties, the determination shall be decided as directed by the court. Until there is an agreement, no change shall be made to the child(ren)'s current school attendance.

(b) _____ shall have authority to decide the school choice, subject to the other parent securing a court order to the contrary.

13. Future Litigation:

In the event of any future modification or enforcement proceeding regarding parenting-related issues, involvement of the child(ren)'s school and its officials should be kept to a minimum. The parties shall put forth best efforts to agree upon the admission of school records or communications without

the need for foundational testimony or shall agree upon the submission of an affidavit from the custodian of records to authenticate the records in lieu of testimony, whenever possible.

If a teacher or school official is required for substantive testimony, the scheduling of such testimony shall, when possible, be set at a time that is least disruptive to the school, its other students, and its operations. Such witnesses may be taken out of order to accommodate this goal. Further, assuming the court can accommodate virtual appearances by the teacher or school official, it shall be assumed that the witness shall be permitted to appear through a remote or virtual platform in lieu of a personal appearance. If either party believes that a personal appearance for testimony is required, that party shall seek leave of the court as much in advance of the scheduled proceeding as is possible for requiring a personal appearance.

14. Additional Orders:

Signed this _____ day of _____ 20____

By:_____
Judicial Officer
Superior Court of

ORIGINAL of the foregoing e-filed

this ___ day of ____, 20__ with:

Clerk of Court

COPY of the foregoing e-mailed/mailed

this ___ day of _____, 20___ to:

Form 20. Sole Legal Decision-Making Education Order

In re the Matter of: _____ Petitioner/Parent A v. _____ Respondent/Parent B	**CASE NO. _____** **SOLE LEGAL DECISION-MAKING EDUCATION ORDER**

THE COURT FINDS AS FOLLOWS:

1. The parties have the following minor child(ren) (hereinafter "minor child(ren)"):

   Name: _____ Born: _____

   Name: _____ Born: _____

   Name: _____ Born: _____

   Name: _____ Born: _____

   Name: _____ Born: _____

   Name: _____ Born: _____

2. An Order regarding legal decision-making and/or parenting time was entered by this Court on _____ in the best interests of the minor child(ren).

3. It furthers the best interests of the minor child(ren) for this Court to enter the following school-specific order that reflects relevant provisions under the court-ordered parenting plan. This order serves to supplement, but not modify or replace, the provisions set forth in the court-ordered parenting plan. For the purpose of this order, the terms shall apply equally to schools, pre-schools, and institutional childcare providers.

4. It is a stated goal of the Court to eliminate or at least reduce the involvement of school officials and teachers in disputes between the parents, and the terms herein are designed to meet that objective.

Based thereon,

IT IS HEREBY ORDERED AS FOLLOWS:

1. Binding Upon Parties:

This order is binding upon the parents, who are responsible for complying with its terms and the terms in the parenting plan. It is not binding on a school but is provided as guidance for a school.

2. Delivery to School:

The parents are required to provide a copy of this order to the child(ren)'s school(s).

3. Legal Decision-Making:

As it relates to education and/or school issues for the minor child(ren), legal decision-making in the best interests of the minor child(ren), _____ has sole legal decision-making authority in the event of a dispute between the parents. Such sole authority is subject to the terms set forth herein.

4. Parenting Time and Child Pick-Up:

The Parenting Plan ordered by the court designates each parent's time with the child(ren). The parents are expected to abide by that schedule, unless otherwise agreed. That schedule is not binding on the school. Therefore, the school should not use the parenting schedule as a basis to deny either parent access to their child(ren) nor shall either parent instruct the school to limit contact, unless otherwise ordered.

Each parent may designate other individuals who are authorized to pick up the child(ren). In the event of a dispute between the parties as to any such individuals, the persons designated by either parent shall remain authorized to pick up the child(ren) until the parties reach an agreement or secure a court order to the contrary.

-or-

The following listed individuals are not permitted to pick-up the minor child(ren) from school without written consent of

Other:

5. Contact Information and Emergencies:

Each parent's home address, e-mail, cell phone and any other contact information shall be provided to the school and listed by the school as the contact information for the child(ren). Both parents shall be listed as the first two emergency contacts. Additional contacts may be listed but in the event of a dispute between the parties, the school shall list any person requested by either party until the parties reach an agreement or secure a court order to the contrary.

The school may contact either parent about the child(ren), and it may contact any of the listed individuals in an emergency if neither parent can be reached. In the event of an emergency, either parent may make decisions for a child(ren)'s immediate care.

-or-

Other:

6. Access to School Grounds:

Subject to the policies of the school, there are no restrictions on either parent's right to participate in any school activities or events at which parents are generally permitted to attend.

Both parents are entitled to equal access to school grounds, including, without limitation, attending a child's events or activities, volunteering in the classroom and/or school events, attending lunch, or volunteering in the classroom or for field trips in the same fashion as all other parents who have children enrolled at the school. Neither parent may limit the other parent's ability to enter school grounds or participate in school activities without a court order to the contrary.

-or-

The following listed individuals are not permitted on school grounds, to attend field trips, or to otherwise participate in in-person school activities to pick-up the minor children from school without written consent of

Other:

7. Extra-Curricular Activities

It is anticipated that the child(ren) will participate in extra-curricular activities. If there is a disagreement between the parties, only _____ has the authority to sign any permission slip or authorization.

8. Access to School Records and Parent Portal:

Both parents are entitled to equal access to the child(ren)'s school records. Neither parent may restrict the other parent's access to information. Further, each parent shall be individually responsible for contacting the school and requesting to be included on any mailing or distribution list.

-or-

The following persons are not permitted access to the child(ren)'s school records and are NOT entitled to receive information from the school or be made part of any mailing or distribution list

Other:

Both parents are entitled to access the school's student information system or online parent portal(s) (e.g. ParentVUE, Google Classroom, Infinite Campus etc.). Unless the school allows each parent to have an individual login account, the parents shall create a joint login ID and password, which shall not be changed or modified without the consent of the other parent.

-or-

The following persons are not permitted access to the school's online parent portal(s)

Other:

9. Parent-Teacher Conferences:

Each parent has the right to confer with teachers and counselors concerning a child's education and other activities. For regularly-scheduled parent-teacher conferences (e.g. the conference days established on the school calendar), the parents may attend jointly. Any request for separate conferences shall be addressed in the sole discretion of the school and may or may not be accommodated. The school may, in its discretion, require the parents to attend separate conferences or require one or both of the parents to participate through a virtual platform if joint attendance is disruptive or not productive.

-or-

The following persons shall not confer with the teacher or school official and is not authorized to attend any parent-teacher conferences, whether individually or jointly with the other group: _____

10. Curriculum and Instruction Disputes:

In the event there is a disagreement between the parties as to the child(ren)'s involvement in any specific curricular activities, the subject matter being taught by the school (including books associated with the school curriculum), or the method of instruction, _____ shall have decision-making authority.

11. Special Services:

If the child(ren) is eligible for or being considered for a 504 Plan, an Individualized Education Program (IEP), an Individualized Service Plan (ISP), or other special services, both parents are entitled to attend all meeting with school officials in which parents are permitted to attend and are authorized to have access to all records and testing results. If one parent receives notice of a meeting, that parent shall provide that same notice via e-mail or text to the other parent within 24 hours of receipt of the meeting notice.

Whether initiated by the school or either parent, absent any decision-making authority assigned to one parent, an evaluation as to the child(ren)'s eligibility for special services shall proceed so long as at least one parent consents. Upon completion of any evaluations or assessments and a Multi-Disciplinary Evaluation Team (MET) determination of eligibility, the parents, along with the school officials, shall confer regarding consent for the initial provision of special education and related special services. If there is no agreement between the parties, and absent any decision-making authority assigned to one parent, the issue shall be decided in accordance with the legal decision-making orders of the court.

12. School Selection:

Agreements between the parties as to school selection are not binding on the school or school district. Enrollment of a child in a particular school is subject to the school's policies or rules, space availability, enrollment restrictions set by the school or school district or its authorizer (if a charter school), and state law. In the event an issue arises regarding a change in schools for the child(ren), _____ shall have authority to decide the school choice. Parents shall not enroll their child(ren) in

two different schools as presumptive full-time students, with each parent taking the children) to a different school during that parent's parenting time.

13. Future Litigation:

In the event of any future modification or enforcement proceeding regarding parenting-related issues, involvement of the child(ren)'s school and its officials should be kept to a minimum. The parties shall put forth best efforts to agree upon the admission of school records or communications without the need for foundational testimony or shall agree upon the submission of an affidavit from the custodian of records to authenticate the records in lieu of testimony, whenever possible.

If a teacher or school official is required for substantive testimony, the scheduling of such testimony shall, when possible, be set at a time that is least disruptive to the school, its other students, and its operations. Such witnesses may be taken out of order to accommodate this goal. Further, assuming the court can accommodate virtual appearances by the teacher or school official, it shall be assumed that the witness shall be permitted to appear through a remote or virtual platform in lieu of a personal appearance. If either party believes that a personal appearance for testimony is required, that party shall seek leave of the court as much in advance of the scheduled proceeding as is possible for requiring a personal appearance.

14. Additional Orders:

Signed this _____ day of _____ 20____

By:_____
Judicial Officer
Superior Court of

ORIGINAL of the foregoing e-filed

this ___ day of ____, 20__ with:

Clerk of Court

COPY of the foregoing e-mailed/mailed

this ___ day of _____, 20___ to:

ATTACHMENT A[1]

RULES OF FAMILY LAW PROCEDURE

Rule 44.1. Default Decree or Judgment by Motion and Without a Hearing

(a)-(e) [No change]

(f) Spousal Maintenance. If a party requests spousal maintenance and chooses to proceed by motion without a hearing, the party must file a form substantially similar to Form 6, Rule 97, Default Information for Spousal Maintenance, with the Rule 44 application for default. The party must file separately the Spousal Maintenance Calculator Worksheet that specifies the requested amount and duration.

(g) [No change]

Rule 45. Consent Decree, Judgment, or Order

(a) [No change]

(b) Content of Consent Decree, Judgment, or Order. The consent decree, order, or judgment must meet these requirements:

(1) It must state the terms of the parties' agreement. For dissolution or legal separation decrees that include an award of spousal maintenance, the parties must separately file a Spousal Maintenance Calculator Worksheet. If the stipulated amount or duration of spousal maintenance is outside the applicable guideline ranges, the decree must include the required findings from the guidelines, and state that the stipulated amount and duration will allow the receiving party to become self-sufficient.

(2)-(4) **[No change]**

(c) [No change]

[1] Additions to the text of the rules are shown by underscoring and deletions are shown by ~~strike-through~~.

ATTACHMENT B[2]
(Showing Changes from the Rule Amendments Adopted on an Emergency Basis)

RULES OF FAMILY LAW PROCEDURE

Rule 44.1. Default Decree or Judgment by Motion and Without a Hearing

(a)-(e) [No change]

(f) Spousal Maintenance. If a party requests spousal maintenance and chooses to proceed by motion without a hearing, the party must file a form substantially similar to Form 6, Rule 97, Default Information for Spousal Maintenance, with the Rule 44 application for default. ~~To establish the amount requested, the party must file separately the Spousal Maintenance Guidelines worksheet generated by filling in the requested information in the Spousal Maintenance Calculator.~~ The party must file separately the Spousal Maintenance Calculator Worksheet that specifies the requested amount and duration.

(g) [No change]

Rule 45. Consent Decree, Judgment, or Order

(a) [No change]

(b) Content of Consent Decree, Judgment, or Order. The consent decree, order, or judgment must meet these requirements:

(1) It must state the terms of the parties' agreement. For dissolution or legal separation decrees~~, if the parties agree to spousal maintenance, the consent decree, order, or judgment must include a proposed spousal maintenance order supported by a Spousal Maintenance Guidelines worksheet generated by filling in the requested information in the Spousal Maintenance Calculator. If the parties request a deviation in the spousal maintenance amount, the decree, order, or judgment must state the basis for deviation under the Spousal Maintenance Guidelines.~~ that include an award of spousal maintenance, the parties must separately file a Spousal Maintenance Calculator Worksheet. If the stipulated amount or duration of spousal maintenance is outside the applicable guideline ranges, the decree must include the required findings from the guidelines, and state that the stipulated amount and duration will allow the receiving party to become self-sufficient.

(2)-(4) **[No change]**

(c) [No change]

[2] Additions to the text of the rules as amended on an emergency basis are shown by underscoring and deletions are shown by ~~strike-through~~.

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:	)	
	)	
AUTHORIZING THE ESTABLISHMENT OF AN INFORMAL FAMILY LAW TRIAL PILOT PROGRAM IN THE SUPERIOR COURTS OF GRAHAM, MARICOPA, AND PIMA COUNTIES	)	Administrative Order No. 2022 - 159

Judges of the Superior Court with experience presiding over family law matters in Graham, Maricopa, and Pima counties seek adoption of an amendment to the Arizona Rules of Family Law Procedure to allow for Informal Family Law Trials (IFLT). (See R-22-0007.) The availability of IFLT would allow litigants to opt into an alternative trial process. The Family Court Improvement Committee (FCIC) voted unanimously in support of the proposal. The State Bar of Arizona's Family Law Practice and Procedure Committee opposed its adoption and raised several concerns. Other western states have similar programs in operation.

The Court would benefit from additional information gained through a pilot program before deciding whether to adopt an amendment to the rules on a statewide basis.

Therefore, pursuant to Article VI, section 3 of the Arizona Constitution,

IT IS ORDERED that a pilot program beginning no later than March 31, 2023 is approved for operation in Graham, Maricopa, and Pima counties, and that the rules allowing for Informal Family Law Trials in Attachment A are approved for the pilot program.

IT IS FURTHER ORDERED that the presiding judges in Graham, Maricopa, and Pima counties are authorized to enter orders as necessary to implement the pilot program and to make modifications to the rules in Attachment A as needed to facilitate its objectives.

IT IS FURTHER ORDERED that the pilot program will remain in effect until December 31, 2024, unless otherwise terminated by this Court.

IT IS FURTHER ORDERED that the FCIC will submit an interim report to the Arizona Judicial Council (AJC) on the effectiveness of the pilot program in October 2023 and submit a final report to the AJC in June 2024.

Dated this 16th day of November, 2022.

_____

ROBERT BRUTINEL
Chief Justice

Attachment A
Pilot Program Rules Allowing for Informal Family Law Trials

Rule 77 of the Arizona Rules of Family Law Procedure is amended and Rule 77.1 added as noted below (deletions indicated by strikethrough and additions by underscoring):

Rule 77. Trials

(a) Setting Cases for Trial. Unless the court has already set a trial on its own or at a resolution management conference or a scheduling conference, any party may file a motion to set a case for trial. The motion must state:

(1) the date by which the case will be ready for trial;

(2) the names, addresses, and telephone numbers of the parties or their attorneys who are responsible for the conduct of the litigation;

(3) whether the case is entitled to a preference for trial because legal decision-making or parenting time is at issue; ~~and~~

(4) the estimated time for trial~~.~~; and

(5) whether the party agrees to proceed with an informal family law trial under Rule 77.1.

(b) Continuances and Scheduling Conflicts. Rule 34 addresses trial continuances and scheduling conflicts.

Rule 77.1. Informal Family Law Trials

(a) Applicability. Upon consent of all parties and the court, an Informal Family Law Trial (IFLT) may be held to resolve all actions brought under Title 25 of the Arizona Revised Statutes, except IV-D child support hearings. This rule applies to both pre-decree and post-judgment actions.

(b) General. An IFLT is an alternative trial procedure to which the parties, their attorneys, and the court voluntarily agree. Under this model, the court may admit any relevant and material evidence, even though such evidence might be inadmissible under formal rules of evidence, and the traditional format used to question witnesses at trial does not apply. In most cases, the only witnesses will be the parties. At the discretion of the court, other relevant witnesses may be called.

(c) Election. All parties must elect an IFLT and waive a traditional trial.

(1) At any time, the court may offer the parties the option of electing an IFLT and must explain the process. If the parties make that election, the court must obtain the parties' consent on the record under oath or in writing on a form developed for the pilot program.

(2) At any time and by agreement, the parties may request to change from a traditional trial to an IFLT.

(3) The court may refuse to allow the parties to use the IFLT process at any time, and may direct that the case proceed traditionally, and may also direct that a case proceed in the traditional manner of trial even after an IFLT has been commenced but before judgment has been entered.

(4) A party who has agreed to proceed with an IFLT may move to opt out of the IFLT provided that the motion is filed at least 21 calendar days before trial. The court may allow a party to withdraw from an IFLT election as long as the withdrawal would not prejudice the other party. The court will not allow a withdrawal of an election that postpones the trial date absent a showing of cause.

(5) The election of a traditional trial or IFLT process does not diminish the court's authority to question witnesses or otherwise manage the proceedings in the interest of justice.

(d) Pretrial Procedures. A case proceeding as an IFLT will be subject to the same pretrial procedures and rules, including mandatory disclosure and court orders that apply to a traditional trial case.

(e) Trial Procedure. The IFLT will proceed as follows:

(1) At the beginning of the IFLT, the court will ask the parties to affirm that they understand the rules and procedures of the IFLT process, they are consenting to this process freely and voluntarily, and they have not been threatened or promised anything for agreeing to the IFLT.

(2) The court may ask each party or the party's attorney to summarize the issues to be presented.

(3) The moving party will be allowed to testify to the court under oath about all disputes. The party must not be questioned by another party or any lawyers but may be questioned by the court to develop evidence required by any statute or rule necessary to address the matters at issue.

(4) Parties and non-expert witnesses will not be subject to cross-examination; however, the court will ask the nonmoving party or their lawyer whether the party wishes the court to ask about any other areas. The court will inquire into these areas if requested and relevant to an issue that the court will decide.

(5) The process in (e)(3) and (e)(4) will then repeat for each other party.

(6) Lay witnesses (non-experts not named in the case caption) are not allowed to testify unless the court orders otherwise based on a showing of good cause. Any testimony from lay witnesses must be submitted in the form of an affidavit or unsworn declaration under the penalty of perjury as provided by Rule 14.

(7) Reports from experts and court-appointed advisors will be admitted as exhibits. Legal decision-making and parenting time evaluation reports will be admitted. An expert or court-appointed advisor may not be called as a witness unless a party has specified the intention to call that witness on that party's Pretrial Statement. Upon the court's request or that of any party, the witness will be sworn and subjected to questioning by a party or the party's lawyer and the court.

(8) Declarations, letters, or other submissions by the parties' minor children will not be considered, but summaries or transcripts of Rule 12 child interviews will be admitted.

(9) The court may admit any other exhibit offered by the parties that can be made a part of the record in the case. The court will then determine the materiality, relevance, and what weight, if any, to give each exhibit. The court may order the record to be supplemented by additional documents or testimony from other witnesses.

(10) A party may not offer an exhibit, affidavit or unsworn declaration under penalty of perjury during an IFLT other than those that have been timely disclosed and specified on a party's Pretrial Statement, unless the court orders otherwise for good cause.

(11) The parties or their lawyers will then be offered the opportunity to respond briefly to the other party's testimony.

(12) The court will offer each party or the party's lawyer the opportunity to make a closing statement.

(13) After the IFLT, the court must render judgment. The court may take the matter under advisement, but best efforts will be made to issue prompt judgments.

(14) The court may put reasonable time limits on any person's testimony or argument.

(15) If an IFLT converts to a traditional trial, the court will allow each party an opportunity to object to any evidence that was offered in the IFLT, and evidence will be admitted consistent with Rule 2.

(16) The court may modify these procedures as justice and fundamental fairness requires.

(f) **Judgment and Appeals.** The court's final judgment will have the same force and effect as if entered after a traditional trial and may be appealed or objected to on any grounds that do not rely on the rules of evidence.

azcentral.

INVESTIGATIONS

Arizona bans controversial therapy that blocks kids from seeing favored parents in custody battles

Hannah Dreyfus and Alexis Waiss Arizona Republic

Published 6:00 a.m. MT April 17, 2024 | **Updated 6:00 a.m. MT April 17, 2024**

Arizona family court officials will no longer have the power to order controversial reunification "treatments" that force minors back into contact with a parent they are rejecting after Gov. Katie Hobbs signed a bill banning the practice Tuesday.

"I was glad to sign this bill to codify current best practices of the courts and prevent vulnerable children from being in potentially unwelcome and unhelpful situations," Hobbs said in a statement to The Arizona Republic.

The legislation, Senate Bill 1372 sponsored by Sen. Shawnna Bolick, R-Phoenix, passed the Legislature earlier this month. However, it met resistance from some Democratic lawmakers who expressed concerns that the bill could interfere with judicial discretion.

With the bill's signing, Arizona becomes one of several states, including Colorado, Utah, California and Tennessee, to reform family court practices per the 2022 Keeping Children Safe from Family Violence Act, a federal law that promises to underwrite states that pass laws that better protect children.

Adam Venetis, a Phoenix father whose children were ordered to a reunification treatment program by a Maricopa County judge last year, said the moment felt "surreal."

"This bill is for all the kids that are fighting right now and don't have a voice — this is for them," Venetis said. As part of the reunification program's court-enforced "treatment," he has not seen or heard from his children in more than a year, even as they continue to express the desire to live with him.

Venetis and multiple other Arizona families worked with Bolick on the bill.

"He took the opportunity to educate me about reunification camps," Bolick told The Republic earlier this year. At the time, she had "never heard of them," but decided to "sponsor legislation this year to protect children from these unregulated and highly suspicious operations. ... I figured if a state like California banned them, then, maybe Arizona should look to do the same."

"These camps manipulate children and pass on exorbitant fees to families," Bolick said. "Sadly, our judicial system doesn't always get it right."

Venetis' children resisted a court order sending them to Turning Points for Families-Texas, an intensive reunification treatment that charges $15,000 for a four-day intervention and advertises its services as a "therapeutic vacation." In response, law enforcement interceded to help enforce the court order and Venetis was jailed for eight days. His teenage daughter ran away to avoid the court's order and is still a missing person.

"They've been so strong throughout this whole ordeal," said Venetis of his children. "I could not have faced what they have at their age."

Tori Neilson, an 18-year-old who was ordered by a Maricopa County judge in 2021 to attend Building Family Bridges, a reunification program in California said she is "just so relieved" that "there is finally recognition for what's going on and what my brother and I went through." After attending the program, she was forced to remain in her father's custody and was restricted from having any contact with her mother for two years. On her 18th birthday, she returned to her mother.

"I'm grateful that other kids in Arizona are now going to be protected from the trauma and brainwashing I went through. These camps destroy families; they don't reunify them," she said. Her brother, who is still a minor, remains in his father's custody.

Controversial theory fuels reunification camps

The new Arizona law takes effect 90 days after the end of the current legislative session. The programs it will ban have enforced, with court backing, "no-contact" periods that can last indefinitely and effectively overrule existing custody orders.

The popularity of the programs has grown over the past decade, usually embraced by overburdened courtroom officials when children resist the custody of one parent. Many of

these programs rely on the controversial theory of "parental alienation," a psychological theory in which one parent is accused of brainwashing a child against the other parent.

The controversial theory isn't accepted by psychiatry's leading diagnostic bodies. But in family courts across the U.S., including in Arizona, the theory was cited as justification for these intensive treatment programs.

Parents and minors affected by the intervention have led the nationwide push to ban them.

"The hearings happening around the country on these bills are creating a profoundly important opportunity for youth and adult survivors alike to finally testify about what is really happening inside family courts in the U.S.," said Danielle Pollack, policy manager at the National Family Violence Law Center at George Washington University's law school who assisted state stakeholders with the legislation.

"I applaud Arizona. ... Arizona children will be safer."

Lawmakers explain opposition, support

The bill went to Hobbs with the backing of only four Democrats, a lack of support that can signal a measure will meet the governor's veto stamp. Some Democrats said the measure takes away "judicial discretion."

Rep. Analise Ortiz, D-Phoenix, said individual situations needed investigations, "as opposed to passing a blanket piece of legislation that takes away this option from judges entirely." She also had questions about how frequently Arizona judges actually order children to go to these camps.

But Rep. Quang Nguyen, R-Prescott Valley, said he and some of his Republican colleagues talked to more than a dozen parents directly affected by reunification treatment. Almost 50 people requested to speak in support of the bill to the Legislature.

"I think it's more of a re-education camp than a reunification camp, so I fully support this bill," Nguyen said at a meeting at the Capitol in March.

Liana Garcia, director of government affairs for the Arizona Supreme Court, said the judicial branch did not take an official stance on the bill.

"After reviewing the bill's text, we didn't find anything in the bill that conflicted with current court rules or practices, so we left it to the Legislature to make a policy determination on this

issue," Garcia said.

Venetis, ordered by Maricopa family court Judge Lauren R. Guyton two weeks ago to stop speaking about his case in any public forum, said he doesn't know if this legislation he fought for will help his case.

"But I do know it will help future families," he said. "And I'm so thankful for that."

Hannah Dreyfus is an investigative reporter for The Arizona Republic. Reach her at hannah.dreyfus@arizonarepublic.com. Follow her on X @Hannah_Dreyfus or Threads @hannahdreyfus.

Reach reporter Alexis Waiss at alexis.waiss@gannett.com.

CASELAW UPDATES

Kristi Reardon & Sally Colton
Reardon House Colton PLC

Wallace v. Smith
255 Ariz. 377 (2023)
Supreme Court of Arizona

Topic:

Supersedeas Bonds

Issue:

This case requires us to resolve a conflict between a court rule and a statute. Arizona Rule of Civil Appellate Procedure ("ARCAP") 7(a)(4)(A) instructs courts to include "damages, costs, attorney's fees, and prejudgment interest" when setting the amount of a supersedeas bond. Conversely, A.R.S. § 12-2108(A)(1) instructs courts to only include damages. In short, ARCAP 7(a)(4)(A) and § 12-2108(A)(1) are in direct conflict. We resolve this conflict in favor of the rule, because the process for determining the amount of a supersedeas bond is a procedural matter within the purview of the judicial branch. Ariz. Const. art. 6, § 5(5).

Facts:

In this case, the superior court entered judgment against Robert Wallace for wrongfully filing a UCC-1 lien. The court awarded $500.00 in statutory damages, $38,322.04 in attorney fees, and $338.51 in taxable costs to Real Parties in Interest, Christian Cruz et al. Wallace filed a notice of appeal and asked the court to set a supersedeas bond at $0, contending that there were no damages and thus $0 was the proper bond amount under § 12-2108(A)(1). But the court calculated the bond as directed by ARCAP 7(a)(4)(A), including the statutory damages, attorney fees, and costs. In so doing, the court acknowledged the "tension" between § 12-2108(A)(1) and ARCAP 7(a)(4)(A) but refused to find that ARCAP 7(a)(4)(A) is an "impermissible rule of appellate procedure." Wallace subsequently posted the bond and then filed a petition for special action in this Court challenging the validity of the rule.

Condensed Analysis:

Here, the plain text of § 12-2108(A)(1) and ARCAP 7(a)(4)(A) directly conflict and cannot be harmonized. The statute instructs courts to include the "total amount of damages awarded" to determine the amount of a supersedeas bond, § 12-2108(A)(1),

whereas the rule instructs courts to include "the total amount of damages, costs, attorney's fees, and prejudgment interest included in the judgment when entered," ARCAP 7(a)(4)(A). If a court calculates a supersedeas bond in accordance with the court rule, the bond amount will necessarily be heftier than one calculated pursuant to the statute, assuming the judgment includes attorney fees. By instructing courts to factor in more than damages, ARCAP 7(a)(4)(A) is at odds with § 12-2108(A)(1).

…

§ 12-2108(A)(1) does not create, define, or regulate the substantive right to appeal by setting the procedure for determining the amount of a supersedeas bond.

…

This Court has never held that defendants have a separate substantive right to stay a judgment by posting a supersedeas bond; instead, we have treated the amount of supersedeas bonds as a procedural matter.

…

By empowering the trial court, in an appropriate case,1 to reduce the amount of a supersedeas bond when a defendant is financially unable to post the full amount, the legislature ensured that overly large bond amounts will not preclude access to appellate review. Conversely, § 12-2108(B) does not further this purpose: it prevents trial judges from incorporating certain items into the bond amount, regardless of whether the ultimate amount of the supersedeas bond will financially obstruct a defendant's ability to seek appellate review. It also does not consider whether continued delay in executing on the judgment would result in harm to the appellee.

Ultimate Holding:

While we ordinarily give effect to a legislature's statement of purpose, when deciding a question of law the Court's analysis is not governed by the legislature's characterization of a statute. Seisinger, 220 Ariz. at 92 ¶ 25, 203 P.3d 483 ("[T]he issue of whether an enactment is procedural or substantive cannot turn on the record made in legislative hearings. The question is instead one of law."). This Court's duty to safeguard our government's system of separation of powers requires us to consider de novo the legal question of whether a legislative enactment comports with the legislature's constitutional authority. Here, we conclude that § 12-2108(A)(1) regulates a procedural area of law and therefore it must yield where it conflicts with ARCAP 7(a)(4)(A).

Meek v. Meek
539 P.3d 920 (App. 2023)
Division One

Topic:

Separation Agreements

Issue:

Whether a court has to divide the community assets equitably when the parties reach their own agreement. See A.R.S. § 25-317(A).

Whether the time to review for unfairness under § 25-317(B) is at the time of the agreement's formation or the dissolution date.

Facts:

Husband works in the mortgage industry, and in 2017, he became a member of a mortgage company, JFQ Lending, Inc. ("Company").

…

Husband and Wife attended a private mediation to discuss the division of the community assets. In September 2021, they signed a separation agreement under Arizona Rule of Family Law Procedure ("Rule") 69.

…

The relevant part of the Rule 69 agreement awarded Husband the community interest in the Company and Wife an equalization payment of $5 million, secured by a promissory note. The promissory note dictated the terms of the equalization payment and required Husband to pledge 7,500 shares of the Company as collateral to secure the note.

…

In May 2022, Husband requested an evidentiary hearing in a "Motion to Determine Fairness of Rule 69 Agreement Pursuant to A.R.S. § 25-317(B)." He claimed that "in the eight (8) months since the parties' entered the Agreement (and one (1) year since the last valuation report for [the Company] was prepared) material subsequent events have occurred that have resulted in a significant devaluation of the community's interest in [the Company]." Citing "rising interest rates and general economic changes," Husband alleged that the Company had lost substantial value, so the Rule 69 agreement was now "unfair and inequitable" and must "be deemed unenforceable." Husband also identified that the Rule 69 agreement "only contains specific values for four (4) assets" and

therefore the agreement does not "contain enough information to enable the Court to make [a] fairness determination."

Condensed Analysis:

Consistent with our holding in Buckholtz, we conclude that nothing in A.R.S. § 25-318(A) requires the court to review whether a Rule 69 agreement is equitable. See Buckholtz, 246 Ariz. at 131, ¶ 18, 435 P.3d at 1037. Instead, A.R.S. § 25-317(B) mandates that a court review a separation agreement and determine whether it is "unfair."

…

Under A.R.S. § 25-317(D), the superior court may adopt the agreement in one of two ways. The Rule 69 agreement may "merge" into the court's decree, superseding the agreement's terms. See In re Marriage of Rojas, 255 Ariz. 277, 282, ¶ 14, 530 P.3d 1167, 1172 (App. 2023). Or the decree may incorporate the agreement by reference, in which "the agreement retains its independent contractual status and is subject to the rights and limitations of contract law." Id. at ¶ 16 (quoting LaPrade v. LaPrade, 189 Ariz. 243, 247, 941 P.2d 1268, 1272 (1997)). Whether a separation agreement's terms merge into the decree "depends on the intent of the parties and the dissolution court." Id. at ¶ 19. Once the court enters a decree, its property terms are non-modifiable. See A.R.S. § 25-317(F).

…

Thus, here, A.R.S. § 25-318(A) cannot require the court to "divide the community ... equitably" because it is not the court that is dividing the assets in its order—it is the parties in their contract. We decline to expand the scope of the superior court's review such that it may override the terms of a valid and enforceable contract. See Ertl, 252 Ariz. at 312, ¶ 12, 502 P.3d at 470 ("Arizona has long recognized that parties can enter a separation agreement disposing of rights to property as they desire."); accord Unif. Marriage and Divorce Act § 306 cmt. (as amended 1973) ("Subsection (b) undergirds the freedom allowed the parties by making clear that the terms of the agreement respecting maintenance and property disposition are binding upon the court unless those terms are found to be unconscionable."); Wheeler, 999 S.W.2d at 287.

…

In Maxwell v. Fidelity Financial Services, Inc., our supreme court provided a framework for courts to use when analyzing the "amorphous equitable doctrine" of unconscionability. See 184 Ariz. at 88-90, 907 P.2d at 57–59. An agreement may be procedurally or substantively unconscionable. Id. at 90, 907 P.2d at 59 (The court rejected the requirement that both aspects be present for a court to find unconscionability.). Procedural unconscionability, the "common-law cousin[ ] of fraud and duress," may be found by considering "the real and voluntary meeting of the minds of the contracting

party: age, education, intelligence, business acumen and experience, relative bargaining power, who drafted the contract, whether the terms were explained to the weaker party, whether alterations in the printed terms were possible." Id. at 89, 907 P.2d at 58 (citation omitted). Some substantive unconscionability indicators are "contract terms so one-sided as to oppress or unfairly surprise an innocent party" or "an overall imbalance in the obligations and rights imposed by the bargain." Id. The listed factors are not exhaustive. Id.

…

Maxwell acknowledged that unconscionability arises based on "the circumstances existing at the time of the making of the contract." See 184 Ariz. at 88, 907 P.2d at 57 (quoting Seekings v. Jimmy GMC of Tucson, Inc., 130 Ariz. 596, 602, 638 P.2d 210, 216 (1981)); see also A.R.S. § 47-2302(A). The review's timing is because unconscionability concerns the bargaining process. See Maxwell, 184 Ariz. at 89, 907 P.2d at 58 (Procedural unconscionability "mean[s] bargaining did not proceed as it should."); id. at 90, 907 P.2d at 59 ("[S]ubstantive unconscionability really seems to be ... [evidence] ... confirming the conclusion that the process of bargaining was itself defective."). Moreover, this court has long reviewed premarital agreements for unconscionability when they are entered. See, e.g., In re Marriage of Pownall, 197 Ariz. 577, 581, ¶ 11, 5 P.3d 911, 915 (App. 2000) (A premarital agreement was not unconscionable partly because Wife received disclosure of property at issue.); see also A.R.S. § 25-202(C)(2).

Ultimate Holding:

We hold that a court need not divide the community assets equitably when the parties reach their own agreement.

…

Courts Must Evaluate a Rule 69 Agreement's Unfairness Based on Circumstances Existing at the Agreement's Formation.

…

We thus hold that, like a test for unconscionability, courts must review for unfairness under A.R.S. § 25-317(B), considering only the circumstances that existed around the time of the separation agreement's formation. As Husband only claims to have evidence of the Company's value change after the agreement's formation, the court did not err by refusing to consider his evidence at the evidentiary hearing.

Motley v. Simmons
256 Ariz. 286 (App. 2023)
Division One

Topic:

Procedural Rules

Issue:

Whether the superior court had the authority to vacate a non-appealable order that terminated a parent's child support obligation when that order did not account for accrued interest on an arrearage judgment.

Facts:

The 1993 divorce decree ordered Father to pay $296 a month in child support to Mother through May 2009. Over the ensuing years, Father paid varying amounts of child support.

In 2019, Father petitioned to stop the income withholding order, asserting in part that all past due child support, including interest, "has been paid." Mother did not respond, and the court issued a signed order declaring all child support orders "fully paid and satisfied, including all past due support, arrearage judgments and interest."

In July 2021, Father requested a judgment for reimbursement of $16,934 in child support overpayments. Mother objected, asserting that Father still owed arrears and interest. She petitioned for an $11,637 judgment against Father. Father moved to dismiss Mother's petition as untimely, arguing it fell outside the (1) six-month period for challenging the February 2020 Order under Rule 85(c), and (2) the 30-day period to appeal from the February 2020 Order under ARCAP 9(a).

Following an evidentiary hearing, the superior court ordered the Family Court Conference Center to provide an updated "arrears calculation/payment history" to the parties and the court. The updated report showed Father owed $6,639.87 for unpaid interest on child support arrears that accrued from May 1, 1998, through June 30, 2022. The court entered judgment against Father for $6,639.87 under Rule 78(c).

Condensed Analysis:

The February 2020 Order was issued in response to a single claim for relief. That means the superior court needed to include a Rule 78(c) recitation; otherwise, the order would not be appealable. But the superior court did not say that no further matters remained pending under Rule 78(c) and thus, contrary to Father's suggestion, Mother could not have appealed the order. If the court or either party wanted the order to be appealable, the

Rule 78(c) recitation had to be included. And without that language, the superior court had the authority to enter a new judgment that correctly reflected Father's remaining child support obligation.

Father has not identified, and our research has not revealed, any authority suggesting the superior court cannot modify a non-appealable order issued in the same case. Instead, relevant authority supports the opposite conclusion.

Specific to dissolution cases, our supreme court has authorized the family court to revisit its orders when appropriate. Rule 83(a) permits the court, "on its own[,] ... [to] amend all or some of its rulings" if it determines that grounds to alter the ruling exists, and that such grounds "materially affect a party's rights." ARFLP 83(a)(1). One of those grounds is that the judgment "is not supported by the evidence or is contrary to law." ARFLP 83(a)(1)(H). The rule plainly authorizes a court to act on its own accord and it may even go as far as to "vacate the judgment if one has been entered ... and direct the entry of a new judgment." ARFLP 83(b). Moreover, nothing in the rule places a time restriction on the superior court's ability to sua sponte amend its prior rulings so long as the reason for doing is supported by at least one of the Rule 83 grounds.

When the superior court issued the February 2020 Order, the only evidence supporting Father's claim that he had overpaid Mother was the letter from the clerk of the superior court, which omitted any reference to interest. After obtaining an arrears calculation report, the court confirmed that Father had outstanding child support interest owed to Mother. Finding the calculation report to be the most accurate record of his payments and obligations, the court granted Mother's petition for entry of judgment to the extent she sought the $6,639.87 owed to her. Although the court relied on Rule 85(d) as a basis to enter a new judgment, we need not decide whether this reasoning was proper because the court reached the correct outcome under its inherent authority as well as its authority under Rule 83 to correct an erroneous decision. The court's determination that the arrears calculation report was a more accurate record of Father's child support obligations provides ample justification for vacating the February 2020 Order because it was not supported by the available evidence. See ARFLP 83(a)(1)(H).

Ultimate Holding:

The trial court has the inherent authority as well as its authority under Rule 83 to correct an erroneous decision.

Hernandez v. Athey
256 Ariz. 476 (App. 2023)
Division One

Topic:

Attorney's Fees

Issue:

Whether pursuant to Ariz. R. Fam. Law P. 78(b) a superior court may certify for appeal its decision entitling a party to attorney fees without determining the amount.

Facts:

This appeal stems from a September 2022 order modifying parenting time and decision-making authority. In its order resolving those issues, the court also determined that Mother was entitled to attorney fees and ordered Mother to submit a fee application. Pursuant to Rule 78(b), the court certified the entire September 2022 order, including Mother's entitlement to attorney fees ("entitlement decision"), as a "final judgment" for which there was "no just reason for delay." See ARFLP 78(b). Father appealed from the September 2022 order and raises arguments about the entitlement decision. Because an award of attorney fees is a single claim, the superior court improperly certified the entitlement decision as a separate appealable order.

Condensed Analysis:

Rule 78(b) provides for an appealable judgment before "all of the claims pending before the court have been resolved," if "the court expressly determines there is no just reason for delay and recites that the judgment is entered under" ARFLP 78(b). But Rule 78(b) certification is improper for an unresolved or partially resolved claim. The inclusion of Rule 78 language alone does not make a judgment final and appealable; 'the certification also must be substantively warranted.

A claim is separable from others remaining to be adjudicated when the nature of the claim already determined is 'such that no appellate court would have to decide the same issues more than once even if there are subsequent appeals.'

Although Rule 78(b) allows the court to certify fully resolved claims for appeal when other claims remain unresolved, Rule 78(b) does not permit appeal of an unresolved claim. Pursuant to Rule 78(b), a claim for attorney fees is "considered a separate claim from the related judgment regarding the merits of the action." ARFLP 78(b). Finding a party is entitled to attorney fees, without awarding a specific amount, does not allow certification under Rule 78(b) because the claim is not fully resolved.

The entitlement decision can precede the fees award, but they remain two components of a single "claim" for attorney fees. See ARFLP 78(e)(2)–(3) (describing a "claim" for fees and requiring supporting fee affidavits and a judgment with a fee determination). Until the court makes the entitlement decision and awards an amount, the court cannot certify any portion of the attorney-fees claim under Rule 78(b). See Ghadimi, 230 Ariz. at 623–24, ¶ 13, 285 P.3d at 971-72 (determining the attorney-fees award is a discretionary decision and not a ministerial act that might excuse a premature notice of appeal).

Ultimate Holding:

By certifying the attorney-fees claim under Rule 78(b), the judgement here improperly bifurcated the entitlement decision from a later determination of the fees award. Parties may appeal an award of attorney fees only when the entire claim has been resolved. Thus, even though the court certified the entitlement decision under Rule 78(b), we lack jurisdiction to consider that issue.

Nickel v. Potter
256 Ariz. 292 (App. 2023)
Division One

Topic:

Child Support

Issue:

Whether the superior court erred in modifying a non-appealable child support order entered by a different judicial officer in the same case.

Whether a petition to modify child support must be directed at the most recent child support order entered in the case.

Facts:

After a default hearing, the court awarded Mother sole custody of the children and ordered Father to pay child support. In 2011, Father and Mother stipulated to joint custody, with neither party paying child support.

In 2020, Mother petitioned to modify legal decision-making, parenting time, and child support. After an evidentiary hearing, the court awarded Mother sole legal decision-making, with Father having supervised parenting time along with the obligation to pay Mother $998 per month in child support.

Mother petitioned to enforce child support. Father filed a petition to modify the prior support order through the "simplified process." He attached a child support worksheet

and a proposed order listing his child support obligation as $76 per month, effective January 1, 2021.

Judge Carson issued a minute entry acknowledging that the parties had "reached a full agreement" and then approved the parties' stipulated judgment and order which confirmed the child support arrears owed by Father, and stated that he "shall continue to pay $998.00 per month as and for current child support in accordance with [the October 2020 Order].".

Several weeks later, Albrecht issued an order stating that "Father is obligated to pay child support to Mother" in the amount of $76 per month. Neither the January 2021 Order nor the February 2021 Order included any reference to Arizona Rule of Family Law Procedure Rule 78(b) or (c). Mother then petitioned to modify, explaining that after Father filed his December petition, Father's obligation to pay $998 per month was confirmed by Judge Carson. Mother contended that although she was served with Father's petition in December 2020, she believed it would be addressed at the January 2021 hearing, which was within the 20-day response time.

The hearing on Mother's petition was not held until April 2022. Judge Russell heard from both parties on their competing positions about the enforceability of the January 2021 Order versus the February 2021 Order.

Judge Russell found that the parties resolved the issue of Father's child support obligation at the January 2021 hearing, when Father agreed to keep paying $998 per month. Judge Russell explained that "[n]othing in the [January 2021 Order] suggest[ed] that Father retained the right to contest the amount of child support" originally set forth in the October 2020 Order. Noting that Father's petition was "unfortunately routed" to Judge Albrecht in February 2021, Mother's failure to request a hearing under the Guidelines was "understandable given that the parties had already resolved the issue" at the January 2021 hearing. Judge Russell thus vacated the February 2021 Order but declined to make any changes to Father's child support obligation.

Condensed Analysis:

Whether a party seeks modification under the standard or the simplified procedure, we hold that a petition for modification must be directed to the most recent child support order. We reach this conclusion based on the language used in the Guidelines, which contemplates that the most recent child support order is the benchmark for a judicial officer to decide whether the existing child support obligation should be modified.

A proper analysis of Mother's petition to modify required Judge Russell to determine which order applied to the dispute before him, and he correctly exercised his authority to do so.

Irrespective of whether Father had specific notice of what the January 2021 hearing would encompass, or what was discussed at that hearing, as a matter of law his petition to modify was rendered moot when he entered into the stipulated judgment. He expressly agreed to pay $998 per month in child support. When the parties agreed to this stipulated judgment, it became the most recent order because it now contained the court's most "recent findings" under the Guidelines. The January 2021 Order thus re-established Father's child support obligation. If he wanted the court to change that order, he had to file a new petition. And without it, Judge Albrecht lacked the authority to enter the February 2021 Order.

Ultimate Holding:

A petition for modification must be directed to the most recent child support order.

Walker v. Walker
256 Ariz. 264 (App. 2023)
Division One

Topic:

Jurisdiction

Issue:

Whether it was error for the family court to issue a decree with Rule 78(c) language without determining if the QDRO needed to apportion survivor benefits, deferring instead to a special master.

Facts:

The parties asked for Wife's 401(k) to be divided equitably. In the decree, the court awarded each party 50% of the community portion, to be divided via a QDRO. The decree provided that "[t]o the extent there may be survivor benefits associated with any of the retirement accounts, the QDRO drafter shall be appointed as a Rule 72 Special Master to make recommendations to the [c]ourt as to whether the non-employee spouse should be awarded a survivor benefit." The decree included Rule 78(c) language stating that "[n]o further matters remain pending." Wife filed a notice of appeal from the decree.

Condensed Analysis:

The superior court must divide the community property, including retirement plans. The division of a retirement plan is generally accomplished by the court establishing the percentage of a retirement plan each spouse is to receive, with a domestic relations order3

to be entered later. The question is whether the direction for entry of a QDRO leaves a substantive issue pending, which would make the Rule 78(c) finding an error.

When a court specifies the division of a retirement plan between divorcing spouses and directs entry of a separate QDRO, the general rule in modern practice is that the second order, the QDRO, "is not a substantive order at all" but is instead a "procedural device[ ] for enforcing the terms of the underlying substantive order."

If a dissolution decree resolves the substantive division of a retirement account, a QDRO should be treated as a special order entered after the final judgment under A.R.S. § 12-2101(A)(2) for appeal purposes. Because a QDRO may be entered months or years after a decree, policy considerations preferring finality of the decree favor viewing a QDRO as a procedural mechanism to enforce a final decree rather than as a substantive order required to be prepared before an appeal can be taken. An appeal from a dissolution decree should not be delayed because a QDRO has not been prepared and filed.

Thus, we hold that when a dissolution decree resolves all issues and divides a retirement account by awarding a specific percentage to each party but orders a QDRO to be prepared consistent with its orders, the decree is appealable if it contains Rule 78(c) language indicating no other pending matters.

But here, the dissolution decree awarded 50% of the community portion of Wife's 401(k) to Husband and directed that a QDRO be prepared. But it also provided that "[t]o the extent there may be survivor benefits associated with any of the retirement accounts, the QDRO drafter shall be appointed as a Rule 72 Special Master to make recommendations to the [c]ourt as to whether the non-employee spouse should be awarded a survivor benefit." A court may appoint an attorney or other professional to recommend a division of retirement benefits or implement a division the court ordered. Ariz. R. Fam. Law P. 72.1(a). But if "the professional finds the division requires the use of discretion, the professional must submit its recommendation to the court for approval." Dividing property is a discretionary determination, not a ministerial matter.

Mentioning potential survivor benefits but failing to determine whether they exist and dividing any such benefits means the decree did not resolve all claims and issues, which precludes certification under Rule 78(c). The judgment is not appealable if it includes Rule 78(c) language when potential issues or claims remain pending

We, therefore, find that including Rule 78(c) language in the decree was inaccurate because a substantive issue about property division remained unresolved, meaning this court lacks appellate jurisdiction. Even so, we exercise our discretion to treat the appeal as a special action and resolve the claims raised.

Ultimate Holding:

Thus, we hold that when a dissolution decree resolves all issues and divides a retirement account by awarding a specific percentage to each party but orders a QDRO to be prepared consistent with its orders, the decree is appealable if it contains Rule 78(c) language indicating no other pending matters.

Sowards v. Sowards
255 Ariz. 527 (2023)
Arizona Supreme Court

Topic:

Settlement Agreements/Postnuptial Agreements

Issue:

Did the court of appeals err in interpreting the Agreement as a binding property settlement or postnuptial agreement?

Facts:

The parties sued the doctor, hospital, and the pacemaker manufacturer for medical malpractice, claiming personal injury to Husband and loss of consortium on Wife's behalf. The couple also alleged injury to the marital estate. They entered into a settlement with the doctor and hospital for compensatory damages and after a trial, they were awarded $2 million in compensatory damages and $5.4 million in punitive damages against the pacemaker manufacturer.

The parties then signed a written settlement agreement with the pacemaker manufacturer. The Agreement provided for a lump sum payment of $6.6 million that was made “to the MCML Trust Account” and specified that $2,383,673 was “attributable to personal injuries alleged by the Plaintiffs.” The Agreement also required Husband and Wife to use $5.4 million of the settlement to fund a series of “Non-Qualified Periodic Payments” (“annuity payments”) payable to “Settling Plaintiffs” per a detailed payment schedule.

With respect to the annuity payments, the Agreement provided that certain payments “will be paid to [Husband] for his lifetime.” In the event of his death, payments would then be made to Wife and, in the event of her death, to certain beneficiaries. Certain paragraphs provided that payments are made payable to “Settling Plaintiffs.” The payments were all deposited into a joint checking account.

Upon their divorce, the family court ruled that $2,383,673 of the settlement amount was Husband's sole and separate property and found that the remainder of the settlement was

for punitive damages. Given that the language in the Agreement directed payments “to [Husband] for his lifetime” and after his death “to [Wife] for her lifetime” and then to designated beneficiaries, the court further found that the parties had agreed to the allocation of the settlement funds. The court thus concluded that the settlement agreement took the payments “out of the community property realm.”

The court of appeals found that the Agreement was a valid postnuptial agreement and affirmed the trial court's interpretation.

Condensed Analysis:

To determine whether Husband and Wife intended the Agreement to function as a postnuptial agreement, we examine its language and consider its terms in the overall context of the Agreement. Furthermore, we give that language its “plain and ordinary meaning.”

Spouses may enter into a postnuptial agreement absent contemplation of separation or divorce. Any such agreement must have been entered into “with full knowledge of the property involved and [the] rights therein.”

No party argues that the Agreement is not a valid contract. But the contract is between Husband and Wife as a couple and the settling defendants in a personal injury lawsuit. Nowhere does the Agreement state that Husband and Wife have agreed to distribute their property between each other in a particular way.

The Agreement never delineates Husband and Wife as individuals for purposes of an express agreement between the two of them and nowhere provides that the payments are the sole and separate property of Husband or that Wife has no interest in any of the payments.

Although we have not required specific language to create a valid postnuptial agreement, the agreement must clearly express the spouses’ intent to divide and delineate their separate property interests.

The Agreement here contains no language setting forth any terms or conditions that reflect an intent to allocate the settlement monies as between Husband and Wife. Nor does any provision support the inference that Husband and Wife contemplated making any agreement between each other. Thus, we find that the Agreement is not a valid postnuptial agreement and the court of appeals erred in concluding otherwise.

Ultimate Holding:

Because the settlement agreement in this case only addresses the disposition of the funds in question as between the third party and the husband and wife and does not address any

division of the funds nor any respective rights as between the spouses, we hold that this settlement agreement is not a valid property settlement or postnuptial agreement.

Whitt v. Meza
2024 WL 807959
Division One

Topic:

Character of Property

Issue:

Whether the non-marital property of a third party can be transmuted into community property if the parties fail to prove the community amount.

Facts:

Husband opened a bank account with Grandmother before marriage and they deposited their earnings into it. After the marriage, they continued to deposit their earnings into the Chase account. The parties then used the account to pay for living expenses. The account had a balance of around $42,000 on the marriage date and grew to around $98,500 on the date of service. The day after service, Grandmother withdrew the entire balance.

Condensed Analysis:

Grandmother's funds in the account are not marital property and can never become such because she was never married to either party. The court lacks the authority to assign non-marital property. As a result, Grandmother's funds are not subject to transmutation simply because they were combined in an account containing the parties' community property. Because Grandmother was not a spouse in the dissolution, her property is neither "separate" nor "community." Grandmother's funds are non-marital property and not subject to transmutation.

The superior court must determine Grandmother's non-marital interest in the account before it can determine the community's interest. We vacate the allocation of "the community depository accounts" and remand for reconsideration consistent with this opinion.

Ultimate Holding:

Grandmother was not a spouse in the dissolution, her property is neither "separate" nor "community." Grandmother's funds are non-marital property and not subject to transmutation.

Nicaise v. Bernick
2024 WL 807959
Division One

Topic:

Jurisdiction

Issue:

Whether a superior court retains jurisdiction to rule on a petition to modify child support filed while an appeal from a judgment is pending.

Facts:

While a prior appeal was pending, Father filed a petition to modify child support in superior court in September 2022. In a January 2023 minute entry, the assigned commissioner questioned her jurisdiction because of "a stay imposed in the Court of Appeals matter" and she asked the parties to brief the jurisdiction issue. Mother argued that filing the Notice of Appeal from the 2021 Order ended the trial court's jurisdiction, preventing it from considering the 2022 Petition. The commissioner agreed with Mother and dismissed the petition without prejudice in January 2022.

Father moved for reconsideration of the dismissal and then, four days later, while that motion remained pending, he filed a Notice of Appeal of the dismissal. The Court of Appeals dismissed the appeal because the trial court's dismissal was without prejudice. After requesting additional briefing, the superior court denied the motion to reconsider, concluding that it lacked jurisdiction to address the reconsideration motion related to that order.

Condensed Analysis:

Our legislature explicitly authorizes petitions seeking modification of maintenance or support on a showing of "changed circumstances that are substantial and continuing." A.R.S. § 25-327(A). And the legislature authorizes motions to modify legal decision-making or parenting time "one year after the previous order or within a year if the child's life or health is at risk." A.R.S. § 25-411(A). Neither statute precludes modification requests during an appeal, nor divests the superior court of jurisdiction to consider such requests. Rather, the superior court must regularly consider modifications to parenting and support orders because of new circumstances and evidence.

The superior court's jurisdiction over modification requests is not contingent on whether a request strays into matters subject to an ongoing appeal. The superior court retains jurisdiction while an appeal is pending to consider requests to modify maintenance or

support under Section 25-327 and to consider requests to modify legal decision-making or parenting time under Section 25-411 as long as the requests to modify satisfy the statutory requirements to pursue a modification. The superior court may rule on these requests even when the subject of the request is the issue on appeal.

Ultimate Holding:

The trial court retains jurisdiction to consider requests seeking prospective child support, parenting time, or legal decision-making modifications filed while an appeal from a previously entered judgment is pending.

In Re the Marriage of McCulloch
546 P.3d 109 (App. 2024)
Division Two

Topic:

Reimbursements, characterization of property, gifts

Issue:

1. Did the trial court err in finding husband had gifted an SUV to wife before marriage and awarding it to her as her sole and separate property?

2. Did the trial court err in ordering wife to reimburse husband for her exclusive occupancy of his sole and separate property?

3. Did the trial court err in concluding husband had already reimbursed the community for expenditures on his sole and separate property?

Facts:

The parties signed a premarital agreement in which they agreed that their sole and separate property would remain as such. In August 2020, Wife filed for an order of protection and the court issued an ex parte order of protection granting her exclusive use and possession of Husband's sole and separate Sedona home for one year. Husband filed for divorce and sent Wife a letter demanding she vacate the Sedona home pursuant to the terms of their premarital agreement. He offered to accelerate spousal maintenance payments under the premarital agreement if she agreed to vacate the home. Wife remained in the home.

Wife sought temporary orders for spousal maintenance and "sole and exclusive use of either the Sedona or the Phoenix residence" pending the decree, and Husband responded that her exclusive use of either residence for more than three months "constitutes more than the permissible 'limited time' under" Rule 23(h)(2), Ariz. R. Protective Order P.

Additionally, Husband moved for a temporary order "directing that Wife immediately vacate his sole and separate Sedona residence."

In October, the trial court adopted a "Stay Away Order" negotiated by the parties, which provided that Wife would "continue to have exclusive use" of the Sedona home "pursuant to the Court's Temporary Orders." The order also provided Husband would "be entitled to visit the [home] from time to time ... to inspect the progress of the construction work" so long as he had no contact with Wife during those visits. The order stated it would expire after one year or upon entry of a divorce decree. Wife agreed to dismiss the second order of protection upon entry of the Stay Away Order.

Both parties claimed ownership of a 2017 Mercedes SUV. Husband sought reimbursement for Wife's exclusive use of his Sedona home, and Wife sought community reimbursement for spending by Husband on improvements to the Sedona home. In the dissolution decree, the trial court awarded ownership of the SUV to Wife as her sole and separate property, finding Husband had gifted it to her before the marriage. Further, as the premarital agreement allowed Wife, upon divorce, to select between having "the remaining balance owed on automobile awarded to [her] in an amount up to $50,000" or the purchase of a new car of equal value, she opted to receive $50,000 from Husband after being awarded the SUV. The court also ordered Wife to pay Husband $200,000 for her exclusive use of his separately owned Sedona home from August 2020 to September 2022 and denied her claim for community reimbursement.

Condensed Analysis:

Both parties' briefs lack citation to authority, and we are not aware of any, establishing whether a trial court, in a dissolution proceeding, may order a non-owner spouse to reimburse the other spouse for exclusive occupancy of the other's sole and separate property under the specific circumstances present in this case, including Wife's orders of protection.

The parties contest whether the negotiated Stay Away Order granted Camerone permission to stay in the Sedona home for free. When determining the meaning of a written agreement, we look to the language used by the parties, and if it is clear and unambiguous, we go no further.

The text is unambiguous: the continued occupancy was done in accordance with court orders. Husband's actions showed that he had no desire for Wife to remain in the home and her continued occupancy was based solely on the court's orders.

Nothing in § 13-3602 suggests that an order for exclusive possession alters the separate or community character of a residence or any contractual relationship between the parties. Nor does such an order imply a right to possess property in which the other party also has

a right to possession without reimbursement. An order for exclusive use of a residence does not preclude a family court from ordering reimbursement for a party's exclusion from a marital or separate home. We find no abuse of discretion and affirm the award of reimbursement.

On the record before us, we cannot conclude the trial court erred in finding Husband had gifted the SUV to Wife prior to marriage and awarding it to her as her sole and separate property. Wife testified the vehicle was "a Christmas present," pointing to a December 2016 email sent to her by Husband titled "early present," which stated, "[L]ove my girl[,] here's your present," and included a photo of the SUV with a large bow on its hood. Husband stated in the email that the vehicle would be "deliver[ed] to [Camerone] at condo." Husband also registered the vehicle's "Mercedes me" online account in Wife's name. Thus, the evidence is sufficient to show Husband intended to gift the SUV to her Although "[a] prima facie presumption of ownership arises from a certificate of title," this presumption may be rebutted. We have previously reasoned that "'ownership' exists independent of a certificate of title," and the lack of an official registration in the donee's name does not invalidate a gift if actual possession has passed to the donee and the gift remains in their possession, Husband does not dispute that the vehicle itself was delivered to Wife and that it remained in her possession. Therefore, the lack of official title in Wife's name is not alone sufficient to conclusively establish Husband intended to retain legal ownership of the vehicle rather than gift it to her.

Ultimate Holding:

Nothing in § 13-3602 suggests that an order for exclusive possession alters the separate or community character of a residence or any contractual relationship between the parties. Nor does such an order imply a right to possess property in which the other party also has a right to possession without reimbursement. An order for exclusive use of a residence does not preclude a family court from ordering reimbursement for a party's exclusion from a marital or separate home.

The lack of official title in Wife's name is not alone sufficient to conclusively establish Husband intended to retain legal ownership of the vehicle rather than gift it to her.

Goodell v. Goodell
___ Ariz. ___ (App. 2024)
Division One

Topic:

Equitable Division, Character of Property, Waste, Reimbursements, and Attorney's Fees.

Issue:

Did the superior court abuse its discretion when it equally divided community property despite finding that extrinsic evidence to an unambiguous contract indicated this was an inequitable result.

Did the court err when it denied Husband's reimbursement claim for payments he made to Wife under a Rule 69 agreement.

Did the court err when it awarded Wife her waste claim for a portion of the unvested Restricted Stock Units Husband forfeited when he started a new, higher paying job.

Did the court err when it failed to credit the parties' stipulation to an award.

Did the court abuse its discretion when it awarded Wife her attorney fees without finding Husband acted unreasonably.

Facts:

San Carlos Way Home: In 2018, Husband's father needed care in an assisted living facility but could not afford one. To help secure assisted living expenses, Husband and his father agreed to transfer title to the San Carlos Way Home. Husband wrote and executed a deed transferring ownership to Husband and Wife. Husband and Wife never resided in this home, did not contribute community funds to the purchase or maintenance of the home, and referred to the home as Husband's "dad's house" throughout litigation. Wife asserted that the San Carlos Way Home is community property. Husband testified that his father intended to gift the San Carlos Way Home to him and his two brothers when his father died, but Husband mistakenly deeded the home to himself and Wife. Wife acknowledged that the purpose of the transfer was to help pay for Husband's father's assisted living expenses, and that Husband did not intend to transfer ownership solely to Husband and Wife. Wife did not object to testimony regarding the parties' intentions and understanding related to the deed. But during closing arguments, Wife argued the court should disregard evidence of the father's intent underlying the deed. The superior court concluded the San Carlos Way Home was community property and awarded Wife half the value of the home.

Reimbursement: Husband asserted a reimbursement claim for $106,563 to cover his payments toward Wife's living expenses. Wife argued Husband's claim was untimely. She also testified to her "impression that [Husband] was going to be paying all of [their] expenses through [their] joint account until [they] were finished with [the] divorce," and this was the reason she did not request temporary spousal maintenance. The superior court denied Husband's reimbursement claim.

Restricted Stock Units. Husband acquired RSUs that vest over a period of time. He kept the RSUs that vested before service of the dissolution petition in a separate account. Of the

remaining RSUs, 454 vested after service of the petition but during the divorce proceedings, and he forfeited the remaining 750 unvested RSUs when he began working for another employer in March 2022. Wife argued Husband committed marital waste when he switched jobs after service of the dissolution petition and forfeited the 750 unvested RSUs. She asserted the marital community lost the value of the unvested RSUs and Husband received personal financial gain that Wife was unable to realize. Husband testified he did not leave his job to deprive Wife of the unvested RSUs. Rather, he was worried about his job security due to recent layoffs reducing his department from 80 to 1.5 employees. Husband testified he would have lost the unvested RSUs had he been laid off. When he accepted the offer from another company, he asked for a later start date to receive the last vesting of RSUs. The superior court found the community value of all the vested RSUs was $139,938.56, and wife was entitled to one-half that amount, $69,969.28. The court agreed with Wife that the forfeited, unvested RSUs were community property. The court applied a combination of two formulas and took the average to estimate a total community value of $296,138 for the unvested RSUs. It awarded Wife a net value of $96,245.

Waste: Wife asserted a waste claim for expenditures Husband made toward an extramarital affair. Wife originally claimed Husband spent more than $70,000 and requested an equalization of $35,106. During a trial recess, Husband's counsel showed Wife's counsel a document accounting for $20,000 not spent on the affair. Based on her agreement that this reduced the total asserted waste to about $50,000, Wife requested an equalization of $25,106. The court acknowledged Wife's reduced claim, but the document accounting for the $20,000 was not offered or admitted into evidence. The court awarded Wife $35,106.50 for her waste claim.

Attorney Fees: Both parties sought attorney fees, and both argued the other acted unreasonably throughout litigation. There is no dispute that Husband has superior financial resources. The superior court granted Wife attorney fees and spousal maintenance. After the decree, Wife's counsel contacted Husband's counsel to discuss equalization and attorney fees. Husband's counsel replied that she did not have an answer for the equalization issue but that Husband would pay $50,000 for Wife's attorney fees. Husband later disputed agreeing to pay the $50,000 in fees. The court found that the email exchange between counsel created a binding Rule 69 agreement and ordered Husband to pay Wife $50,000 in attorney fees.

Condensed Analysis:

San Carlos Way Home: The superior court concluded that the San Carlos Way Home was community property, subject to equitable division. In doing so, the court noted that "[t]he evidence could not have been plainer that the house was not community property, and that Wife was seizing on a legal technicality to assert leverage over Husband in the divorce."

Wife's legal technicality is the court's application of the unambiguous text of the deed transferring the property to both Husband and Wife. But the evidence included uncontroverted evidence—extrinsic evidence—about what the parties intended to accomplish with the deed.

Wife did not challenge the admissibility of the extrinsic evidence. Rather, in her closing argument she asserted that the evidence was legally irrelevant given the unambiguous text of the deed and this court's holding in Valento. When the language of the deed is unambiguous, "parol evidence concerning the grantors' intent has no place in the determination of the property's character." The language of the deed unambiguously conveyed the property to Husband and Wife. Thus, the court did not err in concluding that the San Carlos Way Home was community property. After entry of the decree, Husband asked the court to either reconsider its community property characterization or alter its award to an unequal distribution. The court summarily rejected Husband's post-decree request. Our legislature directs that community property be divided equitably rather than equally. A.R.S. § 25-318(A). That distinction means community property should be divided based on "a concept of fairness dependent upon the facts of particular cases." The superior court's equal division of the San Carlos Way Home is not congruent with its statement in the decree that "[t]he evidence could not have been plainer that the house was not community property." Taken together, the court appears to have believed it lacked the ability to resolve the inequitable result of the community property characterization. To the extent the court's allocation rested on its perceived lack of discretion to resolve this inequity, that was error. Nothing prevents the court from considering parol evidence when dividing the property because the parol evidence rule only applies to contract interpretation. The court expressed its belief that it lacked discretion and thus divided the San Carlos Way Home equally. The court's reasoning indicates the court wanted to award Husband a larger portion of the San Carlos Way Home to account for the stated inequity. We reverse the denial of the motion to alter or amend the division of the San Carlos Way Home, and remand for the court to divide the property equitably, considering all relevant evidence.

Husband's Reimbursement Claim: In a Rule 69 agreement the parties agreed that Husband would continue to pay for all of Wife's living expenses from the joint checking account. Husband has not shown that he made any of these payments outside the Rule 69 agreement or that he expected reimbursement. The agreement does not provide for a reimbursement to Husband and he has not contested its validity. The parties' Rule 69 agreement for Husband to cover Wife's post-petition expenses eliminated the need for Wife to seek temporary orders. And Husband had discretion for how to fund those payments; he chose to do so by moving money from the Fidelity account into the parties' joint account. But the Fidelity account remained an asset subject to later equitable distribution. The court did not abuse its discretion when dividing the value of that account.

Unvested Restricted Stock Units: The superior court focused primarily on whether the unvested RSUs were community property. The superior court concluded that the unvested RSUs were community property and then divided them. The court did not rule explicitly on Wife's waste claim but in dividing the unvested RSUs gave wife property that was no longer accessible to the community. Although the superior court concluded that the unvested RSUs were community property, it never reached the critical issue— whether the RSUs were intended for past performance or as a future incentive. And the court's subsequent decision to apply a combination of the Hug and Nelson formulas does not clarify the court's thinking. Husband's earnings statements establish that, in addition to the RSUs and salary, he received annual cash performance bonuses. Both serve as evidence that the RSUs are not community property. Wife offered no evidence or argument that the RSUs related to past performance. The court's conclusion that the RSUs are community property is, thus, arguably inconsistent with the evidence presented. Even if we assume the RSUs are community property, Wife failed to meet her burden of establishing waste. Wife must establish that Husband acted unreasonably in forfeiting the RSUs to prove waste. In evaluating reasonableness, the court must consider the timing of the alleged waste. A spouse's pre-petition conduct must be for the affirmative benefit of the community. But post-petition conduct need only be reasonable under the circumstances; we do not require post-petition spouses to make unreasonable financial decisions in service of a community that no longer exists. Because the unvested RSUs are forfeited and no longer available to Husband or the community, the court should only award Wife a portion of those RSUs if Husband committed waste. We vacate the portion of the decree related to the unvested RSUs and remand for reconsideration.

Wife's Waste Claim Regarding Husband's Extramarital Affair: Husband argues the superior court erred when it ordered him to pay $35,106.50 instead of the adjusted $25,106.50 Wife requested during trial. Wife stipulated during trial to reduce her initial request because Husband established to her satisfaction that the request was based on error. The superior court erred when it failed to credit the stipulation.

Wife's Attorney Fees: Unless requested by the parties, Section 25-324 does not require written fact-finding, and it does not require an affirmative determination of unreasonableness to support a fee award. While the court must consider both factors, either is sufficient to support a fee award. Husband also argues that the court should not have enforced the parties' agreement that Husband would pay $50,000 of Wife's attorney fees. After trial, Wife's counsel contacted Husband's counsel seeking an agreement regarding equalization and attorney fees. Counsel then discussed both issues during a phone call. After Wife's counsel followed up on the call, Husband's counsel replied via email: "I don't yet have an answer for you on the equalization. However, [Husband] agrees to pay $50,000 towards [Wife's] attorney fees to avoid you having to file an application for attorney fees." Wife's counsel responded: "I will prepare the Stipulated Order, to reflect the parties'

agreement that [Husband] will pay an additional $50,000 towards [Wife's] attorney fees, and [Wife] will not file her fee application." Husband's counsel did not respond. Husband argues this is not a valid agreement because he only intended to reach agreement if all issues raised in the email would be resolved together. But neither counsel gave any indication that the fee agreement was offered contingent to the equalization issue. The superior court did not err when it enforced the agreement memorialized in the email for Husband to pay $50,000 in Wife's attorney fees.

Ultimate Holding:

The court does not lack the ability to resolve the inequitable result of the community property characterization and may equitable divide the property.

Although the superior court concluded that the unvested RSUs were community property, it never reached the critical issue— whether the RSUs were intended for past performance or as a future incentive. And the court's subsequent decision to apply a combination of the Hug and Nelson formulas does not clarify the court's thinking.

Tiger v. Pennel
__ Ariz. __ (App. 2024)
Division One

Topic:

Service

Issue:

Whether petitioner met her burden of showing that service of her petition to establish paternity and child support, under Arizona Rule of Family Law Procedure 41, was impracticable and therefore justified service by alternative means.

Whether the superior court erred in allowing alternative service through Instagram/Facebook without requiring specific details showing how such service methods would be reasonably calculated to alert the respondent of the petition to establish paternity and child support.

Facts:

Mother petitioned to establish paternity and child support. ADES filed a notice of appearance only to address "support/reimbursement issues," and stated that a copy of the notice had been mailed to Mother's counsel and to Father at his home in Missouri. The court later issued a notice of intent to dismiss the case for lack of service. A few weeks later, Mother moved for alternative service, asserting she had conducted a skip trace and

had tried to serve Father at his Colorado and Missouri addresses. The efforts relating to the Colorado address included four separate attempts to serve Father personally. But the extent of Mother's efforts to serve Father at the Missouri address was a single letter, sent on January 20, 2022, with a return receipt requested.

The court granted the motion for alternative service, directing Mother to "send a copy of all documents to Respondent's [F]acebook/[I]nstagram account messaging service and shall leave a copy of all documents at Respondent's last known address." Mother then applied for entry of default judgment, supporting her alternative service on Father with a copy of an Instagram message containing a Dropbox link sent to him together with an affidavit of service indicating the petition and summons were posted at Father's Missouri address.

The court held a default hearing in August 2022. On the issue of service, Mother's counsel avowed "that all steps that were ordered to be taken to provide alternative service . . . were taken."

Condensed Analysis:

Mother failed to provide evidence that service at Father's Missouri home was impracticable. asserted that both the Colorado and Missouri addresses are Father's "last known current address[es]." The likelihood of Father's current address being in Missouri was bolstered by ADES listing it as his address in their notice of appearance filed well before Mother's motion for alternative service. Even so, Mother only attempted to personally serve Father at the Colorado address. Mother offered no evidence showing that personal service in Missouri would have been any more difficult or inconvenient than her attempts to serve Father at the Colorado address. And the one letter sent to Father's Missouri address was insufficient to show impracticability.

Mother never attempted to serve Father at his place of work. It does not help Mother's position that personal service was impracticable when she had not produced evidence of any effort to contact Father's employer, agent, or other employment-related contacts. And to the extent Mother asserts that Father was evading service of process by failing to monitor his mail during the football season, she needed to attempt to serve him personally at his Missouri address to support that assertion and include such information in the motion for alternative service. On this record, the superior court erred in implicitly concluding that serving Father through his social media accounts was reasonably calculated to alert Father about the pending child support proceeding.

Even assuming alternative service was justified, Mother has not shown she complied with the order for alternative service. The trial court allowed Mother to send the documents to Father's Facebook/Instagram "account messaging service" and directed her to "leave a copy of all documents at [his] last known address." Mother then sent the message via a

Dropbox link to Father's Instagram account. Mother does not dispute that the Dropbox link in the Instagram message she sent to Father did not include a copy of the summons and thus failed to comply with ARFLP 41.2 The order granting alternative service specifically required that "all documents" be sent through Father's Facebook/Instagram messaging service. And when a court orders service by alternative means, the serving party "must also mail. . . any court order authorizing an alternative means of service to the last known business or residential address of the person being served." Mother has not shown that she mailed a copy of the order granting alternative service to Father's Missouri address or his place of employment. Because alternative service was insufficient, the court erred in denying Father's motion to set aside.

Ultimate Holding:

Because Mother failed to show that service through alternative means was justified, or that service through such means was reasonably calculated to give him notice of the proceeding, we reverse the court's order denying Father's motion to set aside, vacate the default judgment, and remand for further proceedings.

Caselaw Updates

Kristi Reardon
Sally Colton

AZCLE® from the State Bar of Arizona

CLE by the SEA 2024

Wallace v. Smith

Issue Presented:

Does the Rule of Civil Appellate Procedure apply when in conflict with the bond statute A.R.S. 12-2108?

"[T]he plain text of § 12-2108(A)(1) and ARCAP 7(a)(4)(A) directly conflict and cannot be harmonized. The statute instructs courts to include the "total amount of damages awarded" to determine the amount of a supersedeas bond, § 12-2108(A)(1), whereas the rule instructs courts to include "the total amount of damages, costs, attorney's fees, and prejudgment interest included in the judgment when entered," ARCAP 7(a)(4)(A).

“We resolve this conflict in favor of the rule, because the process for determining the amount of a supersedeas bond is a procedural matter within the purview of the judicial branch. Ariz.Const. art. 6, § 5(5).”

ARCAP 7(a)(7)

(7) Amount of the Bond--Family Court Judgments. For that portion of any family court judgment that divides assets or orders the transfer of property or money under A.R.S. § 25-318, or that awards costs or expenses under A.R.S. § 25-324, the superior court must determine the amount of the bond, if any, that the requesting party must post, taking into account the judgment as a whole and whether requiring a bond would impose an undue hardship.

Meek v. Meek

Issues Presented:

1. Does the equitable finding under A.R.S. § 25-318(A) apply to settlement agreements?

2. What is the timeframe for analysis under A.R.S. § 25-317 “fairness”?

Issue 1

Does the equitable finding under A.R.S. § 25-318(A) apply to settlement agreements?

- A.R.S. § 25-318(A)'s equitable division requirement applies only when the judicial officer determines the division of assets.
- It does not apply when the parties' own Agreement divides the assets.

"Two spouses enter a contract when they execute a Rule 69 separation agreement. Of course, the contract 'is not binding on the court until it is submitted to and approved by the court,' see Ariz. R. Fam. Law P. 69(b), but the agreement may still be 'valid and binding on the parties" even before court approval'" (internal citations omitted)

"We decline to expand the scope of the superior court's review such that it may override the terms of a valid and enforceable contract."

Issue 2

What is the timeframe for a fairness analysis under A.R.S. § 25-317 fairness?

- When determining whether an agreement is unfair, the superior court must look at the fairness at the time the agreement was entered.
- Unfair does not equal unconscionable.

Motley v. Simmons

Issue Presented:

Whether the superior court had the authority to vacate a non-appealable order that terminated a parent's child support obligation when that order did not account for accrued interest on an arrearage judgment.

- When an order arises from a single claim for relief, a reference to Rule 78(c) is required for the order to be appealable.
- The order must also say that no further matters remain pending. If the court or either party wanted the order to be appealable, the Rule 78(c) recitation had to be included. And without that language, the superior court had the authority to enter a new judgment that correctly reflected Father's remaining child support obligation.
- There is no time restriction on court's ability to amend its prior ruling- as long as the reason for the amendment is supported by at least one of the grounds set forth in Rule 83.

Hernandez v. Athey

Issue Presented:

Is the “entitlement to fees” in a minute entry separately appealable under ARFLP 78(B)?

- Rule 78(b) certification is improper for unresolved or partially resolved claims.

- A claim is separable when the nature of the claim is such that no appellate court would have to decide the same issues more than once even if there are subsequent appeals.

- A judicial finding that a party is entitled to attorney fees, without inclusion of a specific amount of the award, does not fully resolve the claim.

Additional Issue

- During legal decision-making and parenting time modification proceedings Mother was arrested and later pleaded guilty to extreme DUI. After participating in court-ordered mental health treatment, the trial court reinstated joint legal decision-making without final say and equal parenting time. Father challenged the sufficiency of the findings.
- The court was not requires to address every condition mentioned in its modification order as the record supported thre

Nickel v. Potter

Issues Presented:

1. Whether the superior court erred in modifying a non-appealable child support order entered by a different judicial officer in the same case.

2. Whether a petition to modify child support must be directed at the most recent child support order entered in the case.

A petition to modify child support must seek to modify the most recent child support order issued in the divorce proceeding.

A child support award may be modified only under certain circumstances. Including

(1) a petition filed under Rule 91.1
(2) a motion under Rule 83
(3) a motion under Rule 85
(4) an appellate directive
(5) when legally justified under the trial court's inherent authority.

Walker v. Walker

Issue Presented:

Whether it was error for the family court to issue a decree with Rule 78(c) language without determining if the QDRO needed to apportion survivor benefits, deferring instead to a special master.

The decree directed the QDRO drafter be appointed as a Rule 72 Special Master.

The Decree mentioned potential survival benefits, but failed to determine whether they exist or to divide them.

Result: The decree did NOT resolve all claims and issues, precluding certification under Rule 78(c). Thus, it was not an appealable judgment.

When a decree divides a retirement account by awarding a specific % of the account to each party and also orders a QDRO to be prepared consistent with the decree, the decree is appealable if it contains Rule 78(c) language indicating no other matters remain pending.

Sowards v. Sowards

Issue Presented:

Did the court of appeals err in interpreting the Agreement as a binding property settlement or postnuptial agreement?

- Postnuptial agreements are a product of the right to contract.
- To determine whether the parties intended the Agreement to function as a postnuptial agreement, look to its language and consider its terms in the overall context of the Agreement.
- The agreement must clearly express the spouses' intent to divide and delineate their separate property interests.

Whitt v. Meza

Whether the non-marital property of a third party can be transmuted into community property if the parties fail to prove the community amount.

- Husband and Grandmother pooled their funds in an account before and during marriage.
- Grandmother's funds in the account are not marital property and can never become such because she was never married to either party.
- The court lacks the authority to assign non-marital property. As a result, Grandmother's funds are not subject to transmutation simply because they were combined in an account containing the parties' community property.

Nicaise v. Bernick

Issue Presented:

Can a party file to modify support, parenting time or decision-making while an appeal is pending?

- An appeal generally divests the trial court of jurisdiction to proceed except in furtherance of the appeal.

- HOWEVER, there is a unique, ongoing nature of family court proceedings.

- The legislature explicitly authorized petitions seeking modification of maintenance or support on a showing of "changed circumstances that are substantial and continuing." A.R.S. § 25-327(A).

- ¶14 Our supreme court spoke to this issue in part and concluded that the superior court
- retains jurisdiction over requests to modify even when the case is pending appeal, at least
- when the subject matter of the request is not an issue on appeal. O'Hair v. O'Hair, 109 Ariz.
- 236, 241–42, 508 P.2d 66, 71-72 (1973).
- • ¶16 In summary, a superior court retains jurisdiction while an appeal is pending to
- consider requests to modify maintenance or support under Section 25-327 and to
- consider requests to modify legal decision-making or parenting time under Section 25-
- 411 as long as the requests to modify satisfy the statutory requirements to pursue a
- modification. The superior court may rule on these requests even when the subject of the
- request is the issue on appeal. Our holding does not suggest any opinion on the merits of
- the requests, which the superior court must consider on remand.

In Re the Marriage of McCulloch

- Did the trial court err in finding husband had gifted an SUV to wife before marriage and awarding it to her as her sole and separate property?

- Did the trial court err in ordering wife to reimburse husband for her exclusive occupancy of his sole and separate property?

- Did the trial court err in concluding husband had already reimbursed the community for expenditures on his sole and separate property?

- The parties signed a premarital agreement in which they agreed that their sole and separate property would remain as such.

- Wife filed for an order of protection and the court issued an ex parte order of protection granting her exclusive use and possession of Husband's sole and separate Sedona home for one year.

- The trial court adopted a "Stay Away Order" negotiated by the parties, which provided that Wife would "continue to have exclusive use" of the Sedona home "pursuant to the Court's Temporary Orders."

- The court also ordered Wife to pay Husband $200,000 for her exclusive use of his separately owned Sedona home.

Nothing in § 13-3602 suggests that an order for exclusive possession alters the separate or community character of a residence or any contractual relationship between the parties. Nor does such an order imply a right to possess property in which the other party also has a right to possession without reimbursement. An order for exclusive use of a residence does not preclude a family court from ordering reimbursement for a party's exclusion from a marital or separate home. We find no abuse of discretion and affirm the award of reimbursement.

The SUV

- The trial court awarded ownership of the SUV to Wife as her sole and separate property, finding Husband had gifted it to her before the marriage.
- We have previously reasoned that "'ownership' exists independent of a certificate of title," and the lack of an official registration in the donee's name does not invalidate a gift if actual possession has passed to the donee and the gift remains in their possession, Husband does not dispute that the vehicle itself was delivered to Wife and that it remained in her possession. Therefore, the lack of official title in Wife's name is not alone sufficient to conclusively establish Husband intended to retain legal ownership of the vehicle rather than gift it to her.

Goodell v. Goodell

Issues Presented:

1. Did the superior court abuse its discretion when it equally divided community property despite finding that extrinsic evidence to an unambiguous contract indicated this was an inequitable result.

2. Did the court err when it denied Husband's reimbursement claim for payments he made to Wife under a Rule 69 agreement.

3. Did the court err when it awarded Wife her waste claim for a portion of the unvested Restricted Stock Units Husband forfeited when he started a new, higher paying job.

4. Did the court err when it failed to credit the parties' stipulation to an award.

5. Did the court abuse its discretion when it awarded Wife her attorney fees without finding Husband acted unreasonably.

San Carlos Way Home

- Husband's father needed care in an assisted living facility but could not afford one. To help secure assisted living expenses, Husband and his father agreed to transfer title to the San Carlos Way Home.
- Husband wrote and executed a deed transferring ownership to Husband and Wife. Husband and Wife never resided in this home, did not contribute community funds to the purchase or maintenance of the home, and referred to the home as Husband's "dad's house" throughout litigation.
- Wife asserted that the San Carlos Way Home is community property
- Husband testified that his father intended to gift the San Carlos Way Home to him and his two brothers when his father died, but Husband mistakenly deeded the home to himself and Wife. Wife acknowledged that the purpose of the transfer was to help pay for Husband's father's assisted living expenses, and that Husband did not intend to transfer ownership solely to Husband and Wife.
- The superior court concluded that the San Carlos Way Home was community property, subject to equitable division. In doing so, the court noted that "[t]he evidence could not have been plainer that the house was not community property, and that Wife was seizing on a legal technicality to assert leverage over Husband in the divorce."

- When the language of the deed is unambiguous, “parol evidence concerning the grantors’ intent has no place in the determination of the property’s character.” The language of the deed unambiguously conveyed the property to Husband and Wife. Thus, the court did not err in concluding that the San Carlos Way Home was community property.
- Community property should be divided based on “a concept of fairness dependent upon the facts of particular cases.” The superior court’s equal division of the San Carlos Way Home is not congruent with its statement in the decree that “[t]he evidence could not have been plainer that the house was not community property.”
- Taken together, the court appears to have believed it lacked the ability to resolve the inequitable result of the community property characterization. To the extent the court’s allocation rested on its perceived lack of discretion to resolve this inequity, that was error.

Nothing prevents the court from considering parol evidence when dividing the property because the parol evidence rule only applies to contract interpretation. The court expressed its belief that it lacked discretion and thus divided the San Carlos Way Home equally. The court's reasoning indicates the court wanted to award Husband a larger portion of the San Carlos Way Home to account for the stated inequity. We reverse the denial of the motion to alter or amend the division of the San Carlos Way Home, and remand for the court to divide the property equitably, considering all relevant evidence.

RSU's

- Husband acquired RSUs that vest over a period of time.
- He kept the RSUs that vested before service of the dissolution petition in a separate account.
- Of the remaining RSUs, 454 vested after service of the petition but during the divorce proceedings, and he forfeited the remaining 750 unvested RSUs when he began working for another employer in March 2022.
- Wife argued Husband committed marital waste when he switched jobs after service of the dissolution petition and forfeited the 750 unvested RSUs. She asserted the marital community lost the value of the unvested RSUs and Husband received personal financial gain that Wife was unable to realize.
- Husband testified he did not leave his job to deprive Wife of the unvested RSUs. Rather, he was worried about his job security due to recent layoffs reducing his department from 80 to 1.5 employees.

- The superior court focused primarily on whether the unvested RSUs were community property. The superior court concluded that the unvested RSUs were community property and then divided them. The court did not rule explicitly on Wife's waste claim but in dividing the unvested RSUs gave wife property that was no longer accessible to the community.
- Although the superior court concluded that the unvested RSUs were community property, it never reached the critical issue– whether the RSUs were intended for past performance or as a future incentive. And the court's subsequent decision to apply a combination of the Hug and Nelson formulas does not clarify the court's thinking.

Tiger v. Pennel

Issues Presented:

1. Whether petitioner met her burden of showing that service of her petition to establish paternity and child support, under Arizona Rule of Family Law Procedure 41, was impracticable and therefore justified service by alternative means.

2. Whether the superior court erred in allowing alternative service through Instagram/Facebook without requiring specific details showing how such service methods would be reasonably calculated to alert the respondent of the petition to establish paternity and child support.

- Mother petitioned to establish paternity and child support.
- Mother moved for alternative service, asserting she had conducted a skip trace and had tried to serve Father at his Colorado and Missouri addresses. The efforts relating to the Colorado address included four separate attempts to serve Father personally. But the extent of Mother's efforts to serve Father at the Missouri address was a single letter, sent on January 20, 2022, with a return receipt requested.
- The court granted the motion for alternative service, directing Mother to "send a copy of all documents to Respondent's Facebook/Instagram account messaging service and shall leave a copy of all documents at Respondent's last known address." Mother then applied for entry of default judgment, supporting her alternative service on Father with a copy of an Instagram message containing a Dropbox link sent to him together with an affidavit of service indicating the petition and summons were posted at Father's Missouri address.
- Mother's counsel avowed "that all steps that were ordered to be taken to provide alternative service . . . were taken."

- Mother failed to provide evidence that service at Father's Missouri home was impracticable.
- Mother only attempted to personally serve Father at the Colorado address. Mother offered no evidence showing that personal service in Missouri would have been any more difficult or inconvenient than her attempts to serve Father at the Colorado address. And the one letter sent to Father's Missouri address was insufficient to show impracticability.
- Mother never attempted to serve Father at his place of work. It does not help Mother's position that personal service was impracticable when she had not produced evidence of any effort to contact Father's employer, agent, or other employment-related contacts.
- To the extent Mother asserts that Father was evading service of process by failing to monitor his mail during the football season, she needed to attempt to serve him personally at his Missouri address.
- The superior court erred in implicitly concluding that serving Father through his social media accounts was reasonably calculated to alert Father about the pending child support proceeding.
- Because Mother failed to show that service through alternative means was justified, or that service through such means was reasonably calculated to give him notice of the proceeding, we reverse the court's order denying Father's motion to set aside, vacate the default judgment, and remand for further proceedings.

2024 CLE by the Sea: Family Track - Tuesday

July 9, 2024

8:15 AM - 12:30 PM

Coronado Island Marriott Resort & Spa
Coronado, CA

Reading Business Valuations and Tax Returns

A Matter of Perspective

Hon. Andrew J. Russell, *Maricopa County Superior Court*

Gloria L. Cales, *Gloria L Cales PC*

Mark Hughes, *Gorman Consulting Group*

Giancarlo A. Sapelli, *Warner Angle Hallam Jackson & Formanek*

AZCLE® from the State Bar of Arizona

CLE by the SEA 2024

Disclaimer

- The opinions set forth in this presentation and discussion are for educational and discussion purposes.
- Matters vary based on underlying facts and circumstances and are evaluated as such. Comments and content presented herein are not absolute.

How to Analyze if you Need A Valuation

- Attorneys' Perspective
- Judicial Perspective
- Accountant's Perspective
- Audience Perspective

How to Analyze if you Need A Valuation – Accountant's Perspective

- Documents to Review
  - Individual Tax Returns
    - Business Income comes through on Schedule C or Schedule E
    - Pass Through Income is Different than Distributions
    - Owner Compensation Comes through on Page 1

Schedule C of 1040

SCHEDULE C (Form 1040)
Department of the Treasury
Internal Revenue Service

Profit or Loss From Business
(Sole Proprietorship)
Attach to Form 1040, 1040-SR, 1040-SS, 1040-NR, or 1041; partnerships must generally file Form 1065.
Go to www.irs.gov/ScheduleC for instructions and the latest information.

OMB No. 1545-0074
2023
Attachment Sequence No. 09

Name of proprietor	Social security number (SSN)
JOHN R. DOE	123-45-6789

A Principal business or profession, including product or service (see instructions): CONSULTING

B Enter code from instructions:

C Business name. If no separate business name, leave blank.

D Employer ID number (EIN) (see instr.)

E Business address (including suite or room no.)
City, town or post office, state, and ZIP code

F Accounting method: (1) [X] Cash (2) Accrual (3) Other (specify)

G Did you "materially participate" in the operation of this business during 2023? If "No," see instructions for limit on losses — [X] Yes No

H If you started or acquired this business during 2023, check here

I Did you make any payments in 2023 that would require you to file Form(s) 1099? See instructions — Yes [X] No

J If "Yes," did you or will you file required Form(s) 1099? — Yes No

Part I Income

1	Gross receipts or sales. See instructions for line 1 and check the box if this income was reported to you on Form W-2 and the "Statutory employee" box on that form was checked	1	200,000.
2	Returns and allowances	2	
3	Subtract line 2 from line 1	3	200,000.
4	Cost of goods sold (from line 42)	4	
5	**Gross profit.** Subtract line 4 from line 3	5	200,000.
6	Other income, including federal and state gasoline or fuel tax credit or refund (see instructions)	6	
7	**Gross income.** Add lines 5 and 6	7	200,000.

Part II Expenses. Enter expenses for business use of your home **only** on line 30.

8	Advertising	8	15,000.	18	Office expense	18	9,000.
9	Car and truck expenses (see instructions)	9		19	Pension and profit-sharing plans	19	
10	Commissions and fees	10		20	Rent or lease (see instructions):		
11	Contract labor (see instructions)	11	25,000.	a	Vehicles, machinery, and equipment	20a	
12	Depletion	12		b	Other business property	20b	
13	Depreciation and section 179 expense deduction (not included in Part III) (see instructions)	13		21	Repairs and maintenance	21	3,000.
14	Employee benefit programs (other than on line 19)	14		22	Supplies (not included in Part III)	22	
15	Insurance (other than health)	15	7,000.	23	Taxes and licenses	23	4,000.
16	Interest (see instructions):			24	Travel and meals:		
a	Mortgage (paid to banks, etc.)	16a		a	Travel	24a	30,000.
b	Other	16b		b	Deductible meals (see instructions)	24b	8,000.
17	Legal and professional services	17	6,000.	25	Utilities	25	6,000.
				26	Wages (less employment credits)	26	
				27a	Other expenses (from line 48)	27a	17,000.
				b	Energy efficient commercial bldgs deduction (attach Form 7205)	27b	
28	**Total expenses** before expenses for business use of home. Add lines 8 through 27b					28	130,000.
29	Tentative profit or (loss). Subtract line 28 from line 7					29	70,000.

Part V Other Expenses. List below business expenses not included on lines 8-26, line 27b, or line 30.

PERSONAL CARE	10,000.
DAYCARE	5,000.
BANK CHARGES	2,000.

Schedule E Income From Rental Real Estate

SCHEDULE E (Form 1040)

Department of the Treasury
Internal Revenue Service

Supplemental Income and Loss

(From rental real estate, royalties, partnerships, S corporations, estates, trusts, REMICs, etc.)

Attach to Form 1040, 1040-SR, 1040-NR, or 1041.

Go to www.irs.gov/ScheduleE for instructions and the latest information.

OMB No. 1545-0074

2023

Attachment Sequence No. 13

Name(s) shown on return: JOHN R. & JANE T. DOE

Your social security number: 123-45-6789

Part I Income or Loss From Rental Real Estate and Royalties **Note:** If you are in the business of renting personal property, use Schedule C. See instructions. If you are an individual, report farm rental income or loss from Form 4835 on page 2, line 40.

A Did you make any payments in 2023 that would require you to file Form(s) 1099? See instructions — Yes [X] No

B If "Yes," did you or will you file required Form(s) 1099? — Yes No

1a Physical address of each property (street, city, state, ZIP code)

A 123 OFFICE BUILDING, SAMPLE CITY, AZ

B

C

1b	Type of Property (from list below)	2 For each rental real estate property listed above, report the number of fair rental and personal use days. Check the QJV box only if you meet the requirements to file as a qualified joint venture. See instructions.		Fair Rental Days	Personal Use Days	QJV
A	7		A	365		
B			B			
C			C			

Type of Property:

1 Single Family Residence 3 Vacation/Short-Term Rental 5 Land 7 Self-Rental
2 Multi-Family Residence 4 Commercial 6 Royalties 8 Other (describe)

			Properties A	Properties B	Properties C
Income:					
3	Rents received	3	120,000.		
4	Royalties received	4			
Expenses:					
5	Advertising	5			
6	Auto and travel (see instructions)	6			
7	Cleaning and maintenance	7			
8	Commissions	8			
9	Insurance	9			
10	Legal and other professional fees	10			
11	Management fees	11			
12	Mortgage interest paid to banks, etc. (see instructions)	12			
13	Other interest	13			
14	Repairs	14			
15	Supplies	15			
16	Taxes	16			
17	Utilities	17			
18	Depreciation expense or depletion	18	10,000.		
19	Other (list)	19			
20	Total expenses. Add lines 5 through 19	20	10,000.		
21	Subtract line 20 from line 3 (rents) and/or 4 (royalties). If result is a (loss), see instructions to find out if you must file Form 6198	21	110,000.		
22	Deductible rental real estate loss after limitation, if any, on Form 8582 (see instructions)	22	( )	( )	( )
23a	Total of all amounts reported on line 3 for all rental properties	23a	120,000.		
b	Total of all amounts reported on line 4 for all royalty properties	23b			
c	Total of all amounts reported on line 12 for all properties	23c			
d	Total of all amounts reported on line 18 for all properties	23d	10,000.		
e	Total of all amounts reported on line 20 for all properties	23e	10,000.		
24	**Income.** Add positive amounts shown on line 21. Do not include any losses	24	110,000.		

Schedule E Income or Loss From Partnerships and S Corps

Schedule E (Form 1040) 2023 Attachment Sequence No. 13 Page 2

Name(s) shown on return. Do not enter name and social security number if shown on page 1.

JOHN R. & JANE T. DOE

Your social security number: 123-45-6789

Caution: The IRS compares amounts reported on your tax return with amounts shown on Schedule(s) K-1.

Part II **Income or Loss From Partnerships and S Corporations**

Note: If you report a loss, receive a distribution, dispose of stock, or receive a loan repayment from an S corporation, you **must** check the box in column **(e)** on line 28 and attach the required basis computation. If you report a loss from an at-risk activity for which **any** amount is **not** at risk, you **must** check the box in column **(f)** on line 28 and attach **Form 6198.** See instructions.

27 Are you reporting any loss not allowed in a prior year due to the at-risk or basis limitations, a prior year unallowed loss from a passive activity (if that loss was not reported on Form 8582), or unreimbursed partnership expenses? If you answered "Yes," see instructions before completing this section ..... ☐ Yes ☒ No

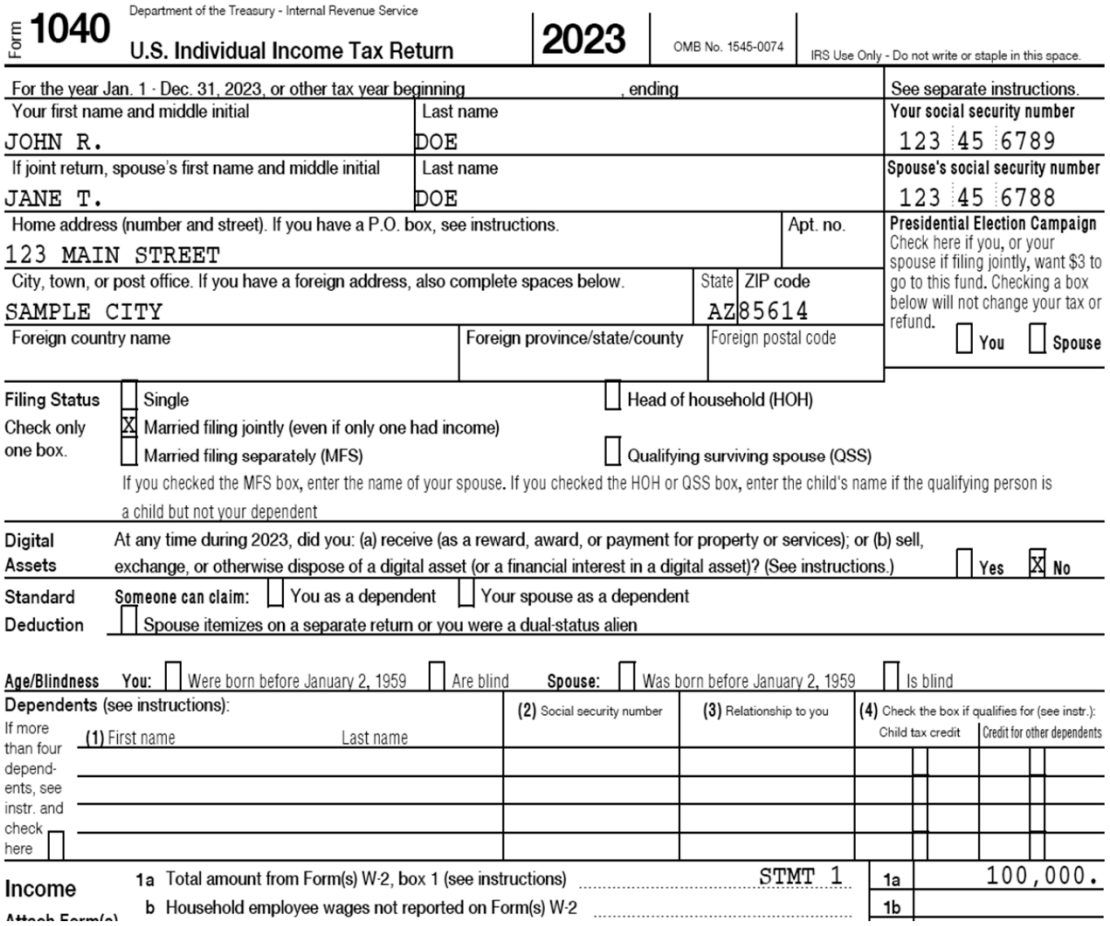
28	(a) Name	(b) Enter P for partnership; S for S corporation	(c) Check if foreign partnership	(d) Employer identification number	(e) Check if basis computation is required	(f) Check if any amount is not at risk
A	JANE'S COFFEE & CONFECTIONS	S				
B						
C						
D						

	Passive Income and Loss		Nonpassive Income and Loss		
	(g) Passive loss allowed (attach **Form 8582** if required)	(h) Passive income from **Schedule K-1**	(i) Nonpassive loss allowed (see **Schedule K-1**)	(j) Section 179 expense deduction from **Form 4562**	(k) Nonpassive income from **Schedule K-1**
A					250,000.
B					
C					
D					
29a Totals					250,000.

AZCLE® from the State Bar of Arizona

CLE by the SEA 2024

Page 1 of 1040 Compensation



Form **1040** Department of the Treasury - Internal Revenue Service

U.S. Individual Income Tax Return **2023** OMB No. 1545-0074 IRS Use Only - Do not write or staple in this space.

For the year Jan. 1 - Dec. 31, 2023, or other tax year beginning , ending See separate instructions.

Your first name and middle initial	Last name	Your social security number
JOHN R.	DOE	123 45 6789
If joint return, spouse's first name and middle initial	Last name	Spouse's social security number
JANE T.	DOE	123 45 6788

Home address (number and street). If you have a P.O. box, see instructions. Apt. no.: 123 MAIN STREET

City, town, or post office. If you have a foreign address, also complete spaces below. State: AZ ZIP code: 85614

SAMPLE CITY

Foreign country name | Foreign province/state/county | Foreign postal code

Presidential Election Campaign Check here if you, or your spouse if filing jointly, want $3 to go to this fund. Checking a box below will not change your tax or refund. ☐ You ☐ Spouse

Filing Status Check only one box.
- ☐ Single
- ☒ Married filing jointly (even if only one had income)
- ☐ Married filing separately (MFS)
- ☐ Head of household (HOH)
- ☐ Qualifying surviving spouse (QSS)

If you checked the MFS box, enter the name of your spouse. If you checked the HOH or QSS box, enter the child's name if the qualifying person is a child but not your dependent

Digital Assets At any time during 2023, did you: (a) receive (as a reward, award, or payment for property or services); or (b) sell, exchange, or otherwise dispose of a digital asset (or a financial interest in a digital asset)? (See instructions.) ☐ Yes ☒ No

Standard Deduction Someone can claim: ☐ You as a dependent ☐ Your spouse as a dependent
☐ Spouse itemizes on a separate return or you were a dual-status alien

Age/Blindness You: ☐ Were born before January 2, 1959 ☐ Are blind Spouse: ☐ Was born before January 2, 1959 ☐ Is blind

Dependents (see instructions): If more than four dependents, see instr. and check here ☐

(1) First name Last name	(2) Social security number	(3) Relationship to you	(4) Check the box if qualifies for (see instr.): Child tax credit	Credit for other dependents

Income Attach Form(s)

1a	Total amount from Form(s) W-2, box 1 (see instructions) STMT 1	1a	100,000.
b	Household employee wages not reported on Form(s) W-2	1b	

How to Analyze if you Need A Valuation – Accountant's Perspective

- Business Tax Returns
  - Revenue
  - Gross Profit
  - Net Income per Books
  - Taxable Income
  - Distributions
  - Book Value of Equity

Business Income Tax Return 1120S Page 1

Form **1120-S** — **U.S. Income Tax Return for an S Corporation** — OMB No. 1545-0123

Department of the Treasury
Internal Revenue Service

Do not file this form unless the corporation has filed or is attaching Form 2553 to elect to be an S corporation.
Go to *www.irs.gov/Form1120S* for instructions and the latest information.

2023

For calendar year 2023 or tax year beginning , 2023, ending , 20

A S election effective date: 1/1/2000	TYPE OR PRINT — Name: JANE'S COFFEE & CONFECTIONS	**D** Employer identification number: 99-9999999
B Business activity code number (see instructions): 99999	Number, street, and room or suite no. If a P.O. box, see instructions.: 456 MAIN ST.	**E** Date incorporated:
C Check if Sch. M-3 attached ☐	City or town, state or province, country, and ZIP or foreign postal code: SAMPLE CITY, AZ 85629	**F** Total assets (see instructions): $

G Is the corporation electing to be an S corporation beginning with this tax year? See instructions. ☐ Yes ☒ No

H Check if: **(1)** ☐ Final return **(2)** ☐ Name change **(3)** ☐ Address change **(4)** ☐ Amended return **(5)** ☐ S election termination

I Enter the number of shareholders who were shareholders during any part of the tax year 1

J Check if corporation: **(1)** ☐ Aggregated activities for section 465 at-risk purposes **(2)** ☐ Grouped activities for section 469 passive activity purposes

Caution: Include **only** trade or business income and expenses on lines 1a through 22. See the instructions for more information.

Income	1a	Gross receipts or sales 2,000,000 **b** Less returns and allowances **c** Balance	1c	2,000,000.00
	2	Cost of goods sold (attach Form 1125-A)	2	1,000,000
	3	Gross profit. Subtract line 2 from line 1c	3	1,000,000.00
	4	Net gain (loss) from Form 4797, line 17 (attach Form 4797)	4	
	5	Other income (loss) (see instructions—attach statement)	5	
	6	**Total income (loss).** Add lines 3 through 5	6	1,000,000.00
Deductions (see instructions for limitations)	7	Compensation of officers (see instructions—attach Form 1125-E)	7	100,000
	8	Salaries and wages (less employment credits)	8	250,000
	9	Repairs and maintenance	9	
	10	Bad debts	10	
	11	Rents	11	120,000
	12	Taxes and licenses	12	
	13	Interest (see instructions)	13	20,000
	14	Depreciation from Form 4562 not claimed on Form 1125-A or elsewhere on return (attach Form 4562)	14	20,000
	15	Depletion **(Do not deduct oil and gas depletion.)**	15	
	16	Advertising	16	
	17	Pension, profit-sharing, etc., plans	17	
	18	Employee benefit programs	18	
	19	Energy efficient commercial buildings deduction (attach Form 7205)	19	
	20	Other deductions (attach statement)	20	240,000
	21	**Total deductions.** Add lines 7 through 20	21	750,000.00
	22	**Ordinary business income (loss).** Subtract line 21 from line 6	22	250,000.00

Schedule K		Shareholders' Pro Rata Share Items		Total amount
Income (Loss)	1	Ordinary business income (loss) (page 1, line 22)	1	250,000.00
	2	Net rental real estate income (loss) (attach Form 8825)	2	
	3a	Other gross rental income (loss) 3a		
	b	Expenses from other rental activities (attach statement) 3b		
	c	Other net rental income (loss). Subtract line 3b from line 3a	3c	0.00
	4	Interest income	4	
	5	Dividends: a Ordinary dividends	5a	
		b Qualified dividends 5b		
	6	Royalties	6	
	7	Net short-term capital gain (loss) (attach Schedule D (Form 1120-S))	7	
	8a	Net long-term capital gain (loss) (attach Schedule D (Form 1120-S))	8a	
	b	Collectibles (28%) gain (loss) 8b		
	c	Unrecaptured section 1250 gain (attach statement) 8c		
	9	Net section 1231 gain (loss) (attach Form 4797)	9	
	10	Other income (loss) (see instructions) Type:	10	
Deductions	11	Section 179 deduction (attach Form 4562)	11	
	12a	Charitable contributions	12a	
	b	Investment interest expense	12b	
	c	Section 59(e)(2) expenditures Type:	12c	
	d	Other deductions (see instructions) Type:	12d	
Credits	13a	Low-income housing credit (section 42(j)(5))	13a	
	b	Low-income housing credit (other)	13b	
	c	Qualified rehabilitation expenditures (rental real estate) (attach Form 3468, if applicable)	13c	
	d	Other rental real estate credits (see instructions) Type:	13d	
	e	Other rental credits (see instructions) Type:	13e	
	f	Biofuel producer credit (attach Form 6478)	13f	
	g	Other credits (see instructions) Type:	13g	
International	14	Attach Schedule K-2 (Form 1120-S), Shareholders' Pro Rata Share Items—International, and check this box to indicate you are reporting items of international tax relevance ☐		
Alternative Minimum Tax (AMT) Items	15a	Post-1986 depreciation adjustment	15a	
	b	Adjusted gain or loss	15b	
	c	Depletion (other than oil and gas)	15c	
	d	Oil, gas, and geothermal properties—gross income	15d	
	e	Oil, gas, and geothermal properties—deductions	15e	
	f	Other AMT items (attach statement)	15f	
Items Affecting Shareholder Basis	16a	Tax-exempt interest income	16a	
	b	Other tax-exempt income	16b	
	c	Nondeductible expenses	16c	
	d	Distributions (attach statement if required) (see instructions)	16d	200,000
	e	Repayment of loans from shareholders	16e	
	f	Foreign taxes paid or accrued	16f	

Business Income Tax Return 1120S Page 2

Also See Schedules K-1 attached to Return

R ed	subtract the sum of the amounts on lines 11 through 12d and 16f	18			
Schedule L	**Balance Sheets per Books**	Beginning of tax year		End of tax year	
	Assets	(a)	(b)	(c)	(d)
1	Cash				70,000
2a	Trade notes and accounts receivable . . .				
b	Less allowance for bad debts	( )	0.00	( )	0.00
3	Inventories				
4	U.S. government obligations				
5	Tax-exempt securities (see instructions) . .				
6	Other current assets (attach statement) . . .				
7	Loans to shareholders				
8	Mortgage and real estate loans				
9	Other investments (attach statement) . . .				
10a	Buildings and other depreciable assets . . .			220,000	
b	Less accumulated depreciation	( )	0.00	(80,000)	140,000.00
11a	Depletable assets				
b	Less accumulated depletion	( )	0.00	( )	0.00
12	Land (net of any amortization)				
13a	Intangible assets (amortizable only)				
b	Less accumulated amortization	( )	0.00	( )	0.00
14	Other assets (attach statement)				
15	Total assets		0.00		210,000.00
	Liabilities and Shareholders' Equity				
16	Accounts payable				15,000
17	Mortgages, notes, bonds payable in less than 1 year				
18	Other current liabilities (attach statement) . .				
19	Loans from shareholders				
20	Mortgages, notes, bonds payable in 1 year or more				110,000
21	Other liabilities (attach statement)				
22	Capital stock				
23	Additional paid-in capital				
24	Retained earnings				85,000
25	Adjustments to shareholders' equity (attach statement)				
26	Less cost of treasury stock		( )		( )
27	Total liabilities and shareholders' equity . .		0.00		210,000.00

Business Income Tax Return Balance Sheet

How to Analyze if you Need A Valuation - Panel Perspective

- Does the reported income match up with marital lifestyle?
- Unreported Cash Income
- Personal Expenses
- Is it enough to make a difference?
- Panel Examples

How to Analyze if you Need A Valuation

- Personal Goodwill
  - The business can't be sold/ is worth nothing without me
  - Walsh v. Walsh
    - Walsh Quote
  - Attorney Perspective
  - Judicial Perspective
  - Accountant Perspective
  - Audience Perspective

Types of Valuations you Can Procure – Accountant's Perspective

- Opinion of Value
  - Summary Report
  - Detailed Report
  - Reporting Exemption

Types of Valuations you Can Procure – Attorney and Judicial Perspective

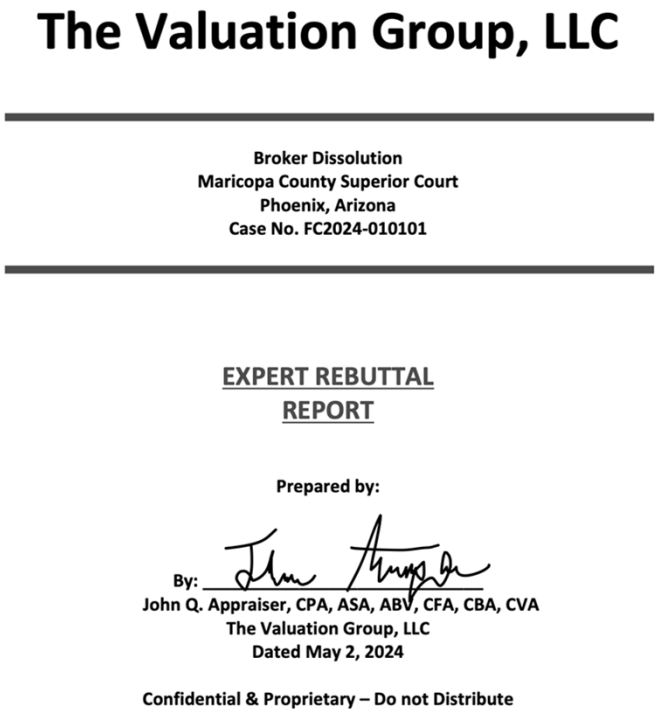
- Calculation of Value
- Larchick v. Pollock
- Down and Dirty / Look See / Thumbnail / Back of the Envelope / Quick Guess etc.
- Business Broker Opinion?
- List the Business for Sale

Analyzing the Valuation

Judicial Perspective
Testimony v. Written Report

Analyzing the Valuation

- Is the Valuation by a Credentialed Appraiser?
  - ABV
  - ASA
  - CVA
  - CBA
  - CFA



The Valuation Group, LLC

Broker Dissolution
Maricopa County Superior Court
Phoenix, Arizona
Case No. FC2024-010101

EXPERT REBUTTAL REPORT

Prepared by:

By:
John Q. Appraiser, CPA, ASA, ABV, CFA, CBA, CVA
The Valuation Group, LLC
Dated May 2, 2024

Confidential & Proprietary – Do not Distribute

Analyzing the Valuation

- What is the standard of value
  - Fair Value
  - Fair Market Value
  - Investment Value
- Implications of the Walsh rejection of the net realizable benefit

Assignment 1: Perform a Valuation of Parking Company, LLC as of December 31, 2021

We have performed a valuation of Parking Company, LLC ("Parking Company") as of December 31, 2021. Based on our valuation, as presented in **Appendix A**, the Fair Value and Fair Market Value of a 100 percent interest in Parking Company as of December 31, 2021 on a Controlling, Non-Marketable basis is reasonably concluded to be:

Fair Market Value of a 100 Percent Equity Ownership Interest	Fair Value of a 100 Percent Equity Ownership Interest
$1,425,000	$1,750,000

Analyzing the Valuation

- Fair Market Value

The SSVS defines "Fair Market Value" as:

The price, expressed in terms of cash equivalents, at which the property would change hands between a hypothetical willing and able buyer and a hypothetical willing and able seller, acting at arm's length in an open and unrestricted market, when neither is under a compulsion to buy or sell and when both have reasonable knowledge of the relevant facts.

- Fair Value/Investment Value

The term "Fair Value" is not defined in Statement on Standards for Valuation Services No. 1. Instead, it was assumed, for purposes of this engagement, that "Fair Value" is analogous to "Investment Value" which is defined in the SSVS as the value to a particular investor based upon the individual investment requirements and expectations.

Analyzing the Valuation – Accountant's Perspective

- Does the valuation utilize the three approaches to value
  - Asset
  - Income
  - Market

Analyzing the Valuation – Accountant's Perspective

- Asset Approach

Asset Approach

The asset approach establishes value based on the cost of reproducing or replacing the property, less depreciation from physical deterioration and functional and economic obsolescence, if present and measurable. Generally, the asset approach is based on the company's balance sheet, which provides details of the relevant assets and liabilities and the corresponding net asset value.

Analyzing the Valuation – Accountant's Perspective

- Income Approach

Income Approach

In the income approach, the projected cash flow associated with an asset or business is determined. The cash flows are then discounted to present value with an appropriate discount rate. Discount rate factors include general market rates of return at the valuation date, business risks associated with the industry in which the Company operates, and other risks specific to the asset being valued. Popular forms of the income approach include the multi-period discounted cash flow method and the single-period capitalization method.

Analyzing the Valuation – Accountant's Perspective

- Market Approach

Market Approach

In the market approach, the value of a business or asset is determined based on the sales prices of other similar assets or businesses. Generally, a financial or operational metric is selected and compared to the sales price for the business or asset. The resulting multiple is then utilized to determine a value for the subject business or asset by applying it to the same financial or operational metric for the subject business. Popular forms of the market approach include the guideline transaction method, which considers historical sales of private and public businesses, and the guideline public company method, which considers the current trading prices of public companies.

Analyzing the Valuation – Panel Perspective

- What is the market salary utilized
- What is the earnings multiplier utilized
- Does the valuation add back any personal expenses
- Does the valuation consider any unreported revenues

Analyzing the Valuation

- What is the market salary utilized

Schedule 10
Valuation of University Parking, LLC
Valuation Date: March 31, 2023
Normalized Compensation Adjustments

		FYE 12/31/18	FYE 12/31/19	FYE 12/31/20	FYE 12/31/21	FYE 12/31/22	LTM 3/31/23
[1]	Compensation - James Broker	$ 85,000	$ 85,000	$ 85,000	$ 94,231	$ 95,000	$ 96,827
	Normalized Compensation						
[2]	ERI - President	212,508	268,676	266,086	316,700	345,779	351,758
[3]	Compensation Conclusion	$ 212,508	$ 134,338	$ 133,043	$ 158,350	$ 172,890	$ 175,879
[4]	Compensation Adjustment	$ 127,508	$ 49,338	$ 48,043	$ 64,119	$ 77,890	$ 79,052
[5]	Social Security Adjustment	$ 2,709	$ 2,970	$ 2,979	$ 3,011	$ 3,224	$ -
[6]	Medicare Adjustment	$ 1,849	$ 715	$ 697	$ 930	$ 1,129	$ 1,146
[7]	Adjustment - James Broker	$ 132,066	$ 53,023	$ 51,718	$ 68,060	$ 82,243	$ 80,198
[8]	Compensation - Phil Adams	$ 6,211	$ 17,000	$ 654	$ -	$ -	$ -
	Normalized Compensation						
[9]	ERI - Operations Director	$ 82,709	$ 87,736	$ 85,714	$ 96,368	$ 102,010	$ 103,711
[10]	Compensation Conclusion	$ 82,709	$ 87,736	$ -	$ -	$ -	$ -
[11]	Compensation Adjustment	$ 76,498	$ 70,736	$ (654)	$ -	$ -	$ -
[12]	Social Security Adjustment	$ 4,743	$ 4,386	$ (41)	$ -	$ -	$ -
[13]	Medicare Adjustment	$ 1,109	$ 1,026	$ (9)	$ -	$ -	$ -
[14]	Adjustment - Phil Adams	$ 82,350	$ 76,147	$ (704)	$ -	$ -	$ -
[15]	**Overall Adjustment**	**$ 214,416**	**$ 129,171**	**$ 51,014**	**$ 68,060**	**$ 82,243**	**$ 80,198**

Notes:

[1]	Equals the actual compensation paid in each year to James Broker.
[2]	Equals the median total compensation for a President per the Economic Research Institute database.
[3]	Our compensation conclusion is based on information provided by the ERI for a President. We understand that Mr. Broker began dividing his time among the parking structures starting in 2019. Therefore, we have apportioned his compensation at 50% from 2019 through the Last Twelve Months (LTM) period.
[4]	Equals [3] - [1].
[5]	Equals the Social Security tax implication of the compensation adjustment based on the tax rate and income limit for the year.
[6]	Equals the Medicare tax implication of the compensation adjustment based on a 1.45% tax rate.
[7]	Equals the sum of [4] through [6].
[8]	Equals the actual compensation paid in each year to Phil Adams.
[9]	Equals the median total compensation for a Operations Director per the Economic Research Institute database.
[10]	We have relied on the Operations Director indication for our compensation conclusion in 2018 and 2019 as it is our understanding that Mr. Adams started working full-time in 2020.
[11]	Equals [10] - [8].
[12]	Equals the Social Security tax implication of the compensation adjustment based on the tax rate and income limit for the year.
[13]	Equals the Medicare tax implication of the compensation adjustment based on a 1.45% tax rate.
[14]	Equals the sum of [11] through [13].
[15]	Equals the sum of adjustment amount for each individual.

Analyzing the Valuation

- What is the earnings multiplier utilized

Schedule 13
Valuation of University Parking, LLC
Valuation Date: March 31, 2023
Weighted Average Cost of Capital (WACC)

	Cost of Equity - Capital Asset Pricing Model (CAPM)	
[1]	Risk-free Rate (20 Year U.S. Treasury)	3.81%
[2]	Equity Risk Premium	6.35%
[3]	Relevered Beta	1.2
[4]	Size Premium	4.83%
[5]	Specific Company Risk Premium	12.00%
[6]	Indicated Cost of Equity - CAPM	28.04%
[9]	**Selected Cost of Equity**	**27.17%**

	Cost of Debt	
[10]	Pre-Tax Cost of Debt Capital	9.00%
[11]	Effective Blended Tax Rate	24.87%
[12]	**Selected After-Tax Cost of Debt Capital**	**6.76%**

	Cost of Equity - Build-Up Method	
[1]	Risk-free Rate (20 Year U.S. Treasury)	3.81%
[2]	Equity Risk Premium	6.35%
[7]	Industry Risk Premium	-0.70%
[4]	Size Premium	4.83%
[5]	Specific Company Risk Premium	12.00%
[8]	Indicated Cost of Equity - Build-Up Method	26.29%

	Capital Structure	
[13]	Equity Weighting of Capital Structure	100.00%
[14]	Debt Weighting of Capital Structure	0.00%
[15]	**Selected Weighted Average Cost of Capital**	**27.00%**

[16]	Weighted Average Cost of Capital	27.00%
[17]	Less Long-Term Growth Rate	3.00%
[18]	Capitalization Rate	24.00%
[19]	Midpoint Adjustment	1.13
[20]	**Capitalization Factor**	**4.70**

Notes:

[1]	Risk-free rate based on Federal Reserve Statistical Release H.15.
[2]	Equity risk premium equals the supply-side equity risk premium from the Kroll 2023 Cost of Capital Navigator.
[3]	Unlevered beta based on Restaurant/Dining industry sector from Damodaran Online.
[4]	Size premium equals the 10th decile size premium from the Kroll 2023 Cost of Capital Navigator.
[5]	Specific company risk premium based on GCG's analysis of the Company.
[6]	Equals [1] + ([2] x [3]) + [4] + [5].
[7]	Industry risk premium based on GICS 25301040 - Restaurants from the Kroll 2023 Cost of Capital Navigator
[8]	Equals [1] + [2] + [7] + [4] + [5].
[9]	Equals the average of [6] & [8].
[10]	Pre-tax cost of debt capital based on the prime rate plus 100 basis points.
[11]	Equals the Company's blended state and federal tax rate.
[12]	Equals [10] x (1 - [11]).
[13]	Equity weighting of capital structure equals 100% - [14].
[14]	Debt weighting of capital structure based on consideration of the Company's actual capital structure.
[15]	Equals [9] x [13] + [12] x [14].
[16]	Equals [15].
[17]	Equals the long-term growth rate from Schedule 12.
[18]	Equals [16] - [17].
[19]	Equals the mid-point adjustment from Schedule 12.
[20]	Equals (1/[18])*[19].

Analyzing the Valuation

- Does the valuation add back any personal expenses
- Does the valuation consider any unreported revenues

	FYE 12/31/18	FYE 12/31/19	FYE 12/31/20	FYE 12/31/21	FYE 12/31/22	LTM 3/31/23	
Total Revenues	$ -	$ -	$ -	$ -	$ -	$ -	
Total Cost of Revenues	-	-	-	-	-	-	
Gross Profit	-	-	-	-	-	-	
Operating Expenses							
Owner Compensation	$ 214,416	$ 129,171	$ 51,014	$ 68,060	$ 82,243	$ 80,198	[1]
Salaries and Wages	-	-	-	-	-	-	
Guaranteed Payments to Partners	(19,990)	-	(25,187)	(23,652)	(23,301)	(23,301)	[2]
Repairs and Maintenance	-	-	-	-	-	-	
Rent	-	-	-	-	-	-	
Taxes and Licenses	-	-	-	-	-	-	
Employee Benefit Program	-	-	-	-	-	-	
Credit Card Fees	-	-	-	-	-	-	
Advertising and Promotion	-	-	-	-	-	-	
Bank Service Charges	-	-	-	-	-	-	
Computer and Internet Expense	-	-	-	-	-	-	
Insurance Expense	-	-	-	-	-	-	
Office Supplies and Expense	-	-	-	-	-	-	
Legal and Professional	-	-	-	-	(1,750)	-	[3]
Janitorial Expense	-	-	-	-	-	-	
Telephone Expense	-	-	-	-	-	-	
Payroll Processing	-	-	-	-	-	-	
Storage	-	-	-	-	-	-	
Medical Expense	(361)	(273)	(263)	(436)	(437)	(458)	[4]
Security	-	-	-	-	-	-	
Utilities	-	-	-	-	-	-	
Cash Contributions	(544)	(306)	-	-	(750)	(750)	[5]
Operating Expenses	-	-	-	-	-	-	
Total Operating Expenses	193,521	128,592	25,564	43,972	56,005	55,689	
Depreciation and Amort.	(42,922)	(18,308)	(88,887)	(46,070)	(2,734)	(2,734)	[6]
Income from Operations	(150,598)	(110,284)	63,323	2,098	(53,271)	(52,955)	
Other (Income)/Exp.							
Interest Expense	-	-	-	-	-	-	
Interest Income	-	-	-	-	-	-	
Cash Over and Short	416	2,515	7,068	-	-	-	[7]
Miscellaneous Income	-	-	2,279	-	-	-	[8]
PPP Loan	-	-	308,800	432,322	-	-	[9]
Total Other (Income)/Exp.	416	2,515	318,147	432,322	-	-	
Pre-Tax Income	(151,014)	(112,799)	(254,824)	(430,224)	(53,271)	(52,955)	
Income Tax Expense	133,983	174,220	82,257	200,830	208,293	259,854	[10]
Net Income	$ (284,998)	$ (287,019)	$ (337,081)	$ (631,054)	$ (261,564)	$ (312,810)	

Notes:

[1]	Owner compensation has been adjusted based on the analysis presented in Schedule 10.
[2]	We have removed Guaranteed Payments to Partners as it has been considered in Owners Compensation.
[3]	We have removed non-recurring transaction in the amount of $1,750.
[4]	Eliminated as discretionary.
[5]	Eliminated as discretionary.
[6]	We have removed Amortization and Recast Special Deprecation Methods based upon a 7 year
[7]	Eliminated as nonrecurring.
[8]	Eliminated as nonrecurring.
[9]	Eliminated as nonrecurring.
[10]	Taxes have been recalculated based on the Company's blended income tax rate. See Schedule 9.

Analyzing the Valuation

- Does the valuation align with prior transactions or offers for the business
- Does the valuation align with industry rules of thumb
- Contact a qualified business valuation professional for a review

Date of Valuation – Panel Perspective

Gross v. Gross
Meister v. Meister
Passive vs. Active Changes
COVID

Audience Questions & Comments

The Dilemma of Double Dipping in Divorce

Mark Hughes, CPA, ABV, CFF

The concept of double dip in marital dissolution proceedings has been a topic of discussion in the valuation and legal communities for many years. A double dip occurs when an income-producing asset is awarded to a spouse (the "in-spouse") via property settlement and the income produced by that asset is included in determining the in-spouse's income for spousal maintenance purposes while assets awarded to the other spouse (the "out-spouse") are not attributed any level of income.

In an unpublished 2006 memorandum decision, Stathakis v. Stathakis 1 CA-CV 05-0094, the Arizona Court of Appeals addressed the issue of the double dip as it relates to goodwill in professional practices. The court stated that, "any value that attaches to this type of goodwill may be realized only through utilization of a spouse's earning capacity which is already charged through an award of maintenance and/or through the division of the parties' property, which is the fruit of that earning capacity. Thus, valuing it as divisible property would result in a double charge."

As with many other highly theoretical financial issues presented in family law cases, there is a lack of consistency among the various states with respect to double dipping, which suggests a fundamental lack of understanding of the true nature of the issue. This article seeks to clearly explain the concept of double dipping. Once the double dip is understood, hypothetical examples will be used to illustrate various nuances of the issue. Understanding the issues presented in this article will enable family law judges, attorneys and financial experts to help ensure equitable outcomes in marital dissolution proceedings

The Double Dip Illustrated

For purposes of illustration, consider a marital community with total assets of $200,000 and no outstanding debt. Assume the marital community owns a municipal bond with a market value of $100,000 that pays $5,000 of interest per year. The remaining assets consist of $100,000 in cash. In a marital dissolution, the in-spouse retains the bond and the out-spouse receives $100,000 in cash. If the $5,000 of annual interest payments are included in determining the in-spouse's income for spousal maintenance purposes, and no level of income is attributed to the out-spouse's cash, a double dip has been created.

The foundation of the double dip lies in the fact that all income-producing assets are priced by the market based upon the amount of their future cash flows and the risk and timing of these cash flows. Therefore, the $100,000 market value of the municipal bond in the example above is based upon the timing and risk of the annual $5,000 payment plus the $100,000 coupon payment at the end of a 10-year term.

To illustrate this point, consider the value of two hypothetical bonds.

	Bond A	Bond B
Interest Payment	$5,000	$2,500
Term	10 Years	10 Years
Coupon Payment	$100,000	$100,000
Market Value	$100,000	$75,000

Bond A, the bond in the example above, pays $5,000 per year for 10 years and then $100,000 at the end of the tenth year. The market values Bond A at $100,000 based on these attributes. Bond B pays $2,500 per year for 10 years and then $100,000 at the end of the tenth year. The market values Bond B at $75,000. All else being equal, the market price of Bond A will always be higher than Bond B because of the higher annual interest payment.

In the double dip situation above, the in-spouse pays the out-spouse for half of Bond A and then (after paying spousal maintenance) may receive annual cash flow similar to the $2,500 paid by Bond B. The out-spouse's cash, which generates no income, is priced by the market with no interest expectation. If no level of income is attributed to the out-spouse's $100,000 of cash, and the out-spouse receives some of the interest income of the in-spouse's bond as spousal maintenance, a double dip has occurred as is illustrated below.

Out-Spouse				In-Spouse			
Asset	Value	Yield	Income	Asset	Value	Yield	Income
Cash	$ 100,000	0%	$ -	Bond	$ 100,000	5%	$ 5,000

One potential solution for this issue is to exclude the $5,000 annual interest payment from the determination of the in-spouse's income for spousal maintenance purposes. To maintain consistency in avoiding the double dip, the $100,000 cash received by the out-spouse must also be attributed no income in determining the out-spouse's earnings for spousal maintenance. The results of this treatment are illustrated as follows.

Out-Spouse				In-Spouse			
Asset	Value	Yield	Income	Asset	Value	Yield	Income
Cash	$ 100,000	0%	$ -	Bond	$ 100,000	0%	$ -

Private Company Example

Now that the double dip has been explained through the example of a municipal bond, consider the implications of a double dip with respect to another income producing asset, a closely held business. Similar to the bond, a fictitious company

XYZ, Inc. has a market value of $250,000 and produces $200,000 of dividends to the marital community per year.

The in-spouse is the CEO of the Company but takes no annual salary, as the business is 100 percent owned by the community. The business appraiser determines that a reasonable market-based salary for the in-spouse is $150,000 per year. Market salary is utilized by business valuation analysts to segregate wage income from business income and reflects the cost of replacing a business owner with a non-owner who would perform similar tasks and work similar hours.

The $250,000 value of the business is based upon $50,000 per year of business income ($200,000 of dividends less market salary of $150,000) at a multiple of 5 times earnings. The out-spouse receives $250,000 of cash in the settlement of the community. The out-spouse's annual salary is $40,000. The following table illustrates the proper determination of income for spousal maintenance purposes in this example.

Out-Spouse				In-Spouse			
Asset	**Value**	**Yield**	**Income**	**Asset**	**Value**	**Yield**	**Income**
Cash	$ 250,000	0%	$ -	Company	$ 250,000	0%	$ -
Salary			$ 40,000	Salary			$ 150,000
			$ 40,000				$ 150,000

In determining the in-spouse's income for spousal maintenance purposes, to include the entire $200,000 of cash dividends produced by the business would create a double dip identical to the bond example if no income is attributed to the out-spouse's cash. To properly calculate the in-spouse's income for spousal maintenance, only the $150,000 of market-based salary should be utilized. The $50,000 of business income should be excluded (like the $5,000 of interest above) as it has already been captured in the $250,000 business value. As stated in the previous example, the $250,000 of cash received by the out-spouse should not be attributed any level of income in order to maintain consistency in avoiding the double dip.

Implied Growth of Market Salary

With some exceptions, the income approach that is utilized by business valuation analysts to project the future business income (after a market salary has been deducted) of a company utilizes a perpetual growth rate. This rate is the valuation analyst's estimate of the annual growth rate of the company into forever. For practical purposes, one can think of this rate as the anticipated average annual growth rate of a company for the next twenty years. These rates can range from three to four percent inflationary growth for mature businesses to upwards of ten percent for high-growth companies.

Assuming a constant profit margin over a company's next ten years implies that the in-spouse's market compensation will rise each year by the growth rate utilized by the valuation analyst in valuing the company. Thus, the $150,000 of market compensation in the example above would be projected by the valuation analyst to be approximately $233,000 in ten years assuming a 5 percent annual growth rate. The following table illustrates this growth over a ten-year period.

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Salary	$150,000	$157,500	$165,375	$173,644	$182,326	$191,442	$201,014	$211,065	$221,618	$232,699
Growth Rate		5%	5%	5%	5%	5%	5%	5%	5%	5%

If the out-spouse were given a ten-year spousal maintenance award based upon $150,000 per year, there would be an obvious disconnect between the market salary utilized to value the company and the salary utilized for spousal maintenance purposes.

There are two possible solutions to this dilemma. The first would be to select an average salary such as the implied midpoint of approximately $190,000 and utilize that figure for spousal maintenance over the ten-year period. The second solution would be to utilize the year 1 salary of $150,000 and the 5 percent annual growth rate from the business valuation to grow income for spousal maintenance each year. This would allow the out-spouse to receive additional spousal maintenance as the implied market salary rises.

High Net Worth Marital Estate

Throughout this article, it has been stressed that, in order to avoid the double dip, no income should be attributed to an income producing asset retained by the in-spouse or the corresponding non-income producing asset utilized to compensate the out-spouse. This simplistic approach makes practical sense for marital estates in which the level of community assets is relatively low. For high net worth marital estates, the property settlement awarded to an out-spouse can be sufficient to support them if the funds are invested in risk-free or low-risk investments.

ARS 25-319(B)(9) states that the Court must consider, "The financial resources of the party seeking maintenance, including marital property apportioned to that spouse, and that spouse's ability to meet that spouse's own needs independently." Therefore, if a spouse is awarded sufficient property to support himself or herself while investing in risk-free or low-risk investments, Arizona law mandates that the Court consider the awarded property in the determination of spousal maintenance. In cases in which an out-spouse receives a property settlement that, when low-risk rates are applied, can produce a material amount of income, the double dip issue becomes even more complex.

For example, consider a marital estate with $2 million in assets, which consists of $1 million in cash and a private company worth $1 million. The in-spouse, who runs

the business, has a market salary of $100,000 and retains the private company. The out-spouse, who cannot work due to injury, has a market salary of zero and retains the cash. In determining the out-spouse's need for spousal maintenance, the Court considers the $1 million in property received in the dissolution and applies a low-risk rate of 4 percent or a yield of $40,000 per year.

In determining the in-spouse's income for spousal maintenance, several factors come into play. As in the example above, the market-based salary from the business valuation should be utilized to determine the in-spouse's wages of $100,000. The implied growth rate of the in-spouse's salary may also be considered by increasing the spousal maintenance award each year by the growth rate from the business valuation. However, in this scenario, simply excluding the income produced by the business may not solve the double dip dilemma. Since the out-spouse is being attributed a return on the $1 million cash property settlement per Arizona statute, it may also be appropriate to attribute a return on the in-spouse's settlement of the $1 million private company.

In cases such as these, the question for judges, attorneys and financial experts is what annual rate of return, if any, should be applied to a closely held business in determining spousal maintenance in a high net-worth dissolution. The three available options are as follows:

The first option is to utilize the actual annual yield rate (the capitalization rate) from the business valuation. This treatment would produce the following income profiles for the in-spouse and the out-spouse:

Out-Spouse				In-Spouse			
Asset	**Value**	**Yield**	**Income**	**Asset**	**Value**	**Yield**	**Income**
Cash	$1,000,000	4%	$ 40,000	Company	$ 1,000,000	30%	$ 300,000
Salary			$ -	Salary			$ 100,000
			$ 40,000				$ 400,000

The second option is to utilize the same 4 percent low-risk rate for the business that was applied to the cash settlement. This treatment produces the following income profiles:

Out-Spouse				In-Spouse			
Asset	**Value**	**Yield**	**Income**	**Asset**	**Value**	**Yield**	**Income**
Cash	$1,000,000	4%	$ 40,000	Company	$ 1,000,000	4%	$ 40,000
Salary			$ -	Salary			$ 100,000
			$ 40,000				$ 140,000

The third option is to utilize zero return for the private company. This treatment produces the following:

Out-Spouse				In-Spouse			
Asset	**Value**	**Yield**	**Income**	**Asset**	**Value**	**Yield**	**Income**
Cash	$1,000,000	4%	$ 40,000	Company	$ 1,000,000	0%	$ -
Salary			$ -	Salary			$ 100,000
			$ 40,000				$ 100,000

Obviously, the yield rate attributed to the private company can have a significant impact on the in-spouse's income for spousal maintenance purposes. It may be appropriate to utilize the 30 percent rate as that is the rate that was utilized to value the company and the in-spouse will continue to earn high returns in the future along with bearing the high risks of owning a private company. The 4 percent rate may be appropriate, as the company was stated at cash equivalent value and this treatment does not penalize the in-spouse for the post-divorce decision to retain the business as opposed to sell it for cash. Finally, zero return can be attributed to the business, but to do so while attributing a low-risk rate to the out-spouse's assets may create an inequitable imbalance double dipping into the out-spouse's property settlement. Family law judges, attorneys and financial experts must understand the implications associated with each yield rate and address what is fair and equitable in each particular circumstance.

Summary and Conclusion

In summary, a double dip in divorce occurs whenever the income of an asset that was subject to division is included in the determination of income for spousal maintenance purposes while no income associated with an offsetting asset is included. For lower net-worth divorces, the most efficient way to avoid this pitfall is to exclude income from divided assets in determining income for spousal maintenance. For higher net-worth dissolutions, advisors must consider the appropriate rates to apply to income producing assets when assessing the income of each spouse for maintenance purposes.

Understanding the issue of the double dip and its impact on business valuations, the marital balance sheet and income determination for spousal maintenance purposes will enable family law judges, attorneys and financial experts ensure that parties to a divorce will be treated equitably and fairly. As the facts and circumstances of each case will be unique, I highly recommend that you contact a credentialed financial expert for assistance when dealing with the double dip dilemma in divorce.

2024 CLE by the Sea: Family Track - Wednesday

July 10, 2024

8:15 AM - 12:30 PM

Coronado Island Marriott Resort & Spa
Coronado, CA

Building a Better China Doll

Honorable Ronda Fisk

Honorable Andrew Russell

Giancarlo A. Sapelli, Esq.

Why China Doll?

China Doll was a restaurant in Arizona at 7th Avenue and Osborn.

The case involved a dispute between owners of the restaurant and the landlord over termination of the restaurant's lease.

The landlords were awarded fees and costs. The restaurant owners argued the request for $10,331.00 in fees was unreasonable.

The Court of Appeals gave the Courts factors to consider and a blueprint for attorneys on how to request fees.

"China Doll Restaurant, Inc." *Schweiger v. China Doll Restaurant, Inc.*, 138 Ariz. 183, 673 P.2d 927 (Ariz. App. 1969)

What did *China Doll Do?*

Gave guidance on how the factors created by *Schwartz v. Schwerin*, 85Ariz. 242, 336 P.2d 144 (1959) are to be used in determining and calculating a reasonable fee. The factors to be considered are:

- The qualities of the attorney.
- The character of the work being done.
- The work actually performed by the lawyer.
- The result of the work performed by the lawyer.

What did *China Doll* Do?

Factors for the Court to Consider

- Reasonableness of Rates Billed;
- Reasonableness of Hours Expended;
- Detail of the Records Kept; and
- Claims of the Other Party.

Reasonableness of Rates Billed

- You must disclose the hourly rate(s) of all parties who worked on the case.
- The Court is not bound by the agreement between the attorney and client.
- Based upon the experience and the skill of the lawyer.
- *China Doll* did note that while it is unlikely that the court will adjust fees upwards for the lawyer, the court may utilize a lesser rate.

Reasonableness of Hours Expended

- The type of legal service performed, the date it was provided, the attorney providing the service and the time spent.
- Be specific when appropriate, however, keep in mind and be aware of privileged information being placed inside of your time entry.
- Do not be too broad.

What's in a *China Doll?*

- Application for Attorney's Fees
- Affidavit for Attorney's Fees

Affidavit

What's in the Affidavit?

- Sworn Affidavit
- Type of legal services provided;
- The date the service was provided;
- The attorney or attorney's providing the service;
- The time spent in providing the service.

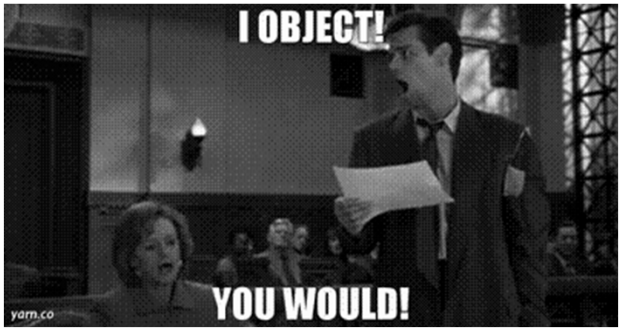
Affidavit

- Things to remember:
  - Multiple Attorney Firm
  - Changed Firms
  - Paralegal Time

Application

- The application is the document in which when requesting fees the attorney does three things:
    1. List your qualifications.
    2. Justify your billing rate.
    3. List the total amount of fees being sought.

Objections



- Block Billing: The practice of grouping tasks together in a block and not individually breaking down the amount of time spent in each task.
- No Arizona case specifically deals with the issue of block billing; however, federal courts have dealt with this issue several times and it is disapproved.
  - *Lahiri v. Universal Music Video Distrib. Corp.*, 606 F.3d 1216, 1223 (9th Cir. 2010)
  - *Welch v. Met. Life Ins. Co.,* 480 F.3d 942, 948 (9th Cir. 2007)
  - *Sunstone Behavioral Health, Inc. v. Alameda County Med. Ctr.,* 646 F.Supp.2d 1206, 1214 (E.D.Cal. 2009)

Objections

Examples of Block Billing

- Trial Preparation: Prepare for trial. Review file, ECR and Exhibits (1.85)
- Trial: Travel to/from and attend trial. (4)
- Hearing; travel; met client prior. (4.2)
- Revise: Joint Pretrial Statement and discuss with OPC about issues remaining for trial and any objections for trial. (1.9)

Each individual task needs to be able to be broken down to determine the reasonable time spent on each task.

Objections

Examples of Block Billing

- Trial Preparation: Prepare for trial: Review file (.5) ECR (.3) and Exhibits (1)
- Trial: Travel to/from (.5 to and .5 from) and attend trial. (3)
- Hearing (2.7); travel (.5 to and .5 from); met client prior (.5) (4.2)
- Revise: Joint Pretrial Statement (1.4) and discuss with OPC about issues remaining for trial and any objections for trial. (5)

Objections

Hours Spent on a Particular Task

- Make sure that the hours spent on a task or tasks is within a reasonable time frame for the task undertaken.

- Familiarity with tasks in family law:
  - 3 hours to review an email with a settlement offer in it
  - 11 hours to draft positions for a joint pretrial statement
  - .5 for a Notice of Appearance.
  - 2 hours for an RMC Statement

Objections

Failing to Properly Identify Who Performed the Task

- Make sure that in your *China Doll* you identify everyone who worked on the task both in your affidavit's and billing records.
  - Case to cite: *Roberts v. City of Phoenix*, 225 Ariz. 112, 235 P.3d 265 (Ariz. Ct. App. 2010)

How to Help Your Judge

- Do the Math for your Judge.
- State your objection in easy to understand language.
- Research the time entry for accuracy.
- Organize your objections to entries.
- Make sure your time entries are for the correct case.

Questions for the Panel

If the Court has already found one party to be unreasonable; how much argument for unreasonableness do you wish to see in the *China Doll?*

Questions for the Panel

How often are you asked to submit a *China Doll* other than A.R.S. 25-324(A)

B. If the court determines that a party filed a petition under one of the following circumstances, the court shall award reasonable costs and attorney fees to the other party:

1. The petition was not filed in good faith.

2. The petition was not grounded in fact or based on law.

3. The petition was filed for an improper purpose, such as to harass the other party, to cause an unnecessary delay or to increase the cost of litigation to the other party.

C. For the purpose of this section, costs and expenses may include attorney fees, deposition costs and other reasonable expenses as the court finds necessary to the full and proper presentation of the action, including any appeal.

D. The court may order all amounts paid directly to the attorney, who may enforce the order in the attorney's name with the same force and effect, and in the same manner, as if the order had been made on behalf of any party to the action.

Questions for the Panel

Do you know why some judges are asking for attorneys to submit *China Dolls* with Pretrial Statements?

Questions for the Panel

Does a *China Doll* have to be notarized or can it be verified under Rule 14(c)?

Questions for the Panel

When looking at a *China Doll* affidavit, do Judges prefer/want a separate application explaining the amount of fees argument in the affidavit?

Questions for the Panel

- Do judges actually look at the work billed or just the amount requested?
- Do judges go in with an amount in mind looking to award and then cut to help “satisfy the objection” and make the order?

Questions for the Panel

- Thoughts on replies in support of fees?

Questions for the Panel

- Can you start awarding more fees?

Questions for the Panel

- Qualified Attorney's Fees: What are you looking for in a request and how do you want us to distinguish combined tasks?

Questions for the Panel

- What, if any, pet peeves do you have about *China Dolls* that are filed in your division?

Questions for the Panel

- What is your position on only bringing the issue of fees to trial?

Arizona Attorneys Fees Desk Reference

Second Edition

Compendium of Selected Statutes Rules of Court Cases Ethics Opinions

Author: Hon. Toby Maureen Gerst

Commissioner Superior Court of Arizona
Maricopa County, Ret.

Editor: Herbert Patrick Harwood

Commissioner Toby Maureen Gerst, Ret.

ISBN 0-88726-060-8
ISBN 978-0-887-26060-5

Printed in the United States of Arizona

This desk reference is designed to enable judges and attorneys to have immediate topical access to attorneys' fee awards information. The author has made clear whether attorney fees are mandatory or discretionary where appropriate. This compendium is intended to provide accurate and current information about the subject matter covered. The author intends to assist with, and not to take the place of, prudent professional legal research to ensure that the sources relied upon are current.

DOMESTIC RELATIONS/FAMILY LAW

Author's Comment re: Domestic Relations / Family Law section. The Constitution of Arizona uses the term "divorce." The Arizona Revised Statutes use the term "divorce." The Rules of Court use the term "Arizona Rules of Family Law Procedure." Case law may refer to "domestic relations." The desk reference incorporates all of the foregoing under the heading

Also see selected Rules *infra*

Other Resources:

- ARIZONA ATTORNEY'S FEES MANUAL, Chapter 8, Bruce E. Meyerson & Patricia K. Norris, eds. (5th ed. 2009, State Bar of Arizona
- Arizona Practice Series™ Marriage Dissolution Practice
- *Excessiveness or Adequacy of Attorney's Dees in Domestic Relations Cases,* Jane Massey Draper, B.C.L. 17 ALR 5th 366
- ARIZONA MARRIAGE DISSOLUTION PRACTICE, Charles M. Smith and Irwin Cantor
- ARIZONA COMMUNITY PROPERTY LAW 3RD, Thomas A. Jacobs
- ARIZ. CONST., art. VI, § 14(9). The superior court shall have original jurisdiction of divorce and for annulment of marriage. ARIZ. CONST., art. VI, § 14(9).

  Author's Comment: A court may enforce an order for the payment of attorney's fees through contempt proceedings.

  Author's Comment: Korman v. Strick, 133 Ariz. 471, 652 P.2d 544 (1982). This case has a superior discussion regarding the nature and types of contempt proceedings.

A.R.S. § 25-315. Temporary Order or Preliminary Injunction; Effect; Definition

A. In all actions for dissolution of marriage, for legal separation or for annulment, the clerk of the court shall pursuant to order of the superior court issue a preliminary injunction in the following manner:

1. The preliminary injunction shall be directed to each party to the action and contain the following orders:

   (a) That both parties are enjoined from transferring, encumbering, concealing, selling or otherwise disposing of any of the joint, common or community property of the parties except if related

to the usual course of business, the necessities of life or court fees and reasonable attorney fees associated with an action filed under this article, without the written consent of the parties or the permission of the court.

Preliminary Injunction

A.R.S. § 25-321. Representation of child by counsel; fees

The court may appoint an attorney to represent the interests of a minor or dependent child with respect to the child's support, custody and parenting time. The court may enter an order for costs, fees and disbursements in favor of the child's attorney. The order may be made against either or both parents.

Discretionary

A.R.S. § 25-324. Attorneys' Fees

A. The court from time to time, after considering the financial resources of both parties and the reasonableness of the positions each party has taken throughout the proceedings, may order a party to pay a reasonable amount to the other party for the costs and expenses of maintaining or defending any proceeding under this chapter or chapter 4, article 1 of this title. On request of a party or another court of competent jurisdiction, the court shall make specific findings concerning the portions of any award of fees and expenses that are based on consideration of financial resources and that are based on consideration of reasonableness of positions. The court may make these findings before, during or after the issuance of a fee award.

Discretionary

B. If the court determines that a party filed a petition under one of the following circumstances, the court shall award reasonable costs and attorney fees to the other party:

1. The petition was not filed in good faith.
2. The petition was not grounded in fact or based on law.
3. The petition was filed for an improper purpose, such as to harass the other party, to cause an unnecessary delay or to increase the cost of litigation to the other party.

Circumstances for Mandatory Findings on Request

C. For the purpose of this section, costs and expenses may include attorney fees, deposition costs and other reasonable expenses as the court finds necessary to the full and proper presentation of the action, including any appeal.

D. The court may order all amounts paid directly to the attorney, who may enforce the order in the attorney's name with the same force and

effect, and in the same manner, as if the order had been made on behalf of any party to the action. **Discretionary**

Author's comment: *See Cardinal & Stachel P.C. v. Curtiss,* 2 CA-CV 2009-0163 (9/3/10) analyzes community debts. The facts involved a case in which a spouse who incurred attorneys' fees in a dissolution action died prior to the dissolution becoming final. The wife's law firm brought an action against the widower husband for the fees incurred by the wife in the marriage dissolution. Attorney's fees incurred by a spouse in an action for marriage dissolution proceedings may be a community property debt if where the dissolution does not become final due to death of that spouse. Attorney's fees incurred during dissolution proceedings may be a community debt if the spouse who incurred the debt evinced intent to benefit the community. There is an analysis, in this decision, of civil and domestic relations statutes and cases.

A.R.S. 12-349 (A) (B) (C) (E). Sanctions Unjustified Actions

A. Except as otherwise provided by and not inconsistent with another statute, in any civil action commenced or appealed in a court of record in this state, the court **shall** assess reasonable attorney fees, expenses and, at the court's discretion, double damages of not to exceed five thousand dollars against an attorney or party, including this state and political subdivisions of this state, if the attorney or party does any of the following:

1. Brings or defends a claim without substantial justification.

2. Brings or defends a claim solely or primarily for delay or harassment.

3. Unreasonably expands or delays the proceeding.

4. Engages in abuse of discovery.

B. The court may allocate the payment of attorney fees among the offending attorneys and parties, jointly or severally, and may assess separate amounts against an offending attorney or party.

C. Attorney fees **shall not** be assessed if after filing an action a voluntary dismissal is filed for any claim or defense within a reasonable time after the attorney or party filing the dismissal knew or reasonably should have known that the claim or defense was without substantial justification.

D. This section does not apply to the adjudication of civil traffic violations or to any proceedings brought by this state pursuant to title 13.

E. Notwithstanding any other law, this state and political subdivisions of this state **may** be awarded attorney fees pursuant to this section.

F. For the purposes of this section, "without substantial justification" means that the claim or defense is groundless and is not made in good faith.

Mandatory/ Discretionary Allocation Findings Required

A.R.S. § 25-353. Court Ordered Educational Program, Failure to comply

Unless the court excuses a party's participation, if a party fails to complete the educational program as ordered pursuant to section 25-352 the court may deny relief in favor of that party, hold that party in contempt of court or impose any other sanction reasonable in the circumstances. **Discretionary**

A.R.S. § 25-403.06 (A), (B). Access to Health and Education Documents

A person who does not comply with a reasonable request for equal access to documents and information concerning a child's education and physical, mental, emotional and moral health **shall** reimburse the requesting parent for court costs and attorney fees incurred by that parent to force compliance with this subsection. **Mandatory**

Custody/Parenting Time Disputes

A.R.S. § 25-403.08. Resources

In a proceeding regarding sole custody or joint custody, either party **may** request attorney fees, costs and expert witness fees to enable the party with insufficient resources to obtain adequate legal representation and to prepare evidence for the hearing. If the court finds there is a financial disparity between the parties, the court **may** order payment of reasonable fees, expenses and costs to allow adequate preparation. **Discretionary**

A.R.S. § 25-408 (C). Rights of Noncustodial Parent; Parenting Time; Relocation of Child; Exception; Enforcement; Access to Records

A. The notice required by this section shall be made by certified mail, return receipt requested, or pursuant to the Arizona rules of family law procedure. The court shall sanction a parent who, without good cause, does not comply with the notification requirements of this subsection. The court may impose a sanction that will affect custody or parenting time only in accordance with the child's best interests. **Unspecified Mandatory Sanctions**

A.R.S. § 25-408(I). 25-408. Rights of each parent; parenting time; relocation of child; exception; enforcement; access to prescription medication and records

The court shall assess attorney fees and court costs against either parent if the court finds that the parent has unreasonably denied, restricted or interfered with court-ordered parenting time. **Mandatory**

A.R.S. § 25-408(J). Visitation Disputes

The court shall assess attorney fees and court costs against either parent if the court finds that the parent has unreasonably denied, restricted or interfered with court-ordered parenting time. **Mandatory**

> ***Author's Comment:*** The court may impose a sanction that will affect custody or parenting time only in accordance with the child's best interests.

A.R.S. § 25-411(A). Modification of Custody Decree; Affidavit; Contents

See § 25-411(G).

A person shall not make a motion to modify a custody decree earlier than one year after its date, unless the court permits it to be made on the basis of affidavits that there is reason to believe the child's present environment may seriously endanger the child's physical, mental, moral or emotional health. At any time after a joint custody order is entered, a parent may petition the court for modification of the order on the basis of evidence that domestic violence pursuant to § 13-1201 or 13-1204, spousal abuse or child abuse occurred since the entry of the joint custody order. Six months after a joint custody order is entered, a parent may petition the court for modification of the order based on the failure of the other parent to comply with the provisions of the order. A motion or petition to modify a custody order shall meet the requirements of this section. Except as otherwise provided in subsection B of this section, if a custodial parent is a member of the United States armed forces, the court shall consider the terms of that parent's military family care plan to determine what is in the child's best interest during the custodial parent's military deployment. **Contents**

A.R.S. § 25-411(G). Vexatious Modification of Decree

See also **§ 25-411(A)**

The court **shall** assess attorney fees and costs against a party seeking modification if the court finds that the modification action is vexatious and constitutes harassment.

> ***Author's Comment:*** The court must make findings in the conjunctive, to wit: that the modification is *both* vexatious and constitutes harassment. **Mandatory**

A.R.S. § 25-414(C). Access/Visitation Denial

Court costs and attorney fees incurred by the non-violating parent associated with the review of noncompliance with a visitation or parenting time order **shall** be paid by the violating parent. In the event the custodial parent prevails, the court in its discretion **may** award court costs and attorney fees to the custodial parent. **Mandatory/ Discretionary**

Author's Note: A verified petition is required, together with reasonable notice to the alleged violating parent and an opportunity to be heard.

A.R.S. § 25-415(A, D). Sanctions for Litigation Misconduct

A. The court shall sanction a litigant for costs and reasonable attorney fees incurred by an adverse party if the court finds that the litigant has done any one or more of the following:

1. Knowingly presented a false claim under section 25-403, 25-403.03 or 25-403.04 with knowledge that the claim was false.

2. Knowingly accused an adverse party of making a false claim under section 25-403, 25-403.03 or 25-403.04 with knowledge that the claim was actually true.

3. Violated a court order compelling disclosure or discovery under rule 65 of the Arizona rules of family law procedure, unless the court finds that the failure to obey the order was substantially justified or that other circumstances make an award of expenses unjust. **Mandatory**

D. This section does not prevent the court from awarding costs and attorney fees or imposing other sanctions if authorized elsewhere by state or federal law. **Discretionary**

A.R.S. § 25-503(E). Modification of Child Support – Child Support Modification Change of Circumstances

Any order for child support **may** be modified or terminated upon a showing of substantial and continuing changed circumstances. The order of modification or termination **may** include an award of attorneys' fees and court costs to the prevailing party. **Discretionary**

A.R.S. § 25-503(K). Renewal of Judgments

A judgment for child support and attorney fees is exempt from renewal and is enforceable until paid in full. **Exempt From Renewal**

A.R.S. § 25-504(C). Home and Employment Addresses

Unless a court has expressly ordered otherwise, you must notify the clerk of the court or the support payment clearinghouse in writing of the address of

your residence and of your employment and, within ten days, of a change in either one. Your failure to do so may subject you to sanctions for contempt of court, including reasonable attorney fees and costs pursuant to state law. **Discretionary**

A.R.S. § 25-504(H) Duty of Employer to Comply with Wage Assignment Order – Order of Assignment; Ex Parte Order of Assignment; Responsibilities; Violation; Termination

An employer or payor who fails without good cause to comply with the terms of an order of assignment is liable for amounts not paid to the clerk or support payment clearinghouse pursuant to the order of assignment and reasonable attorney fees, costs and other expenses incurred in procuring compliance and **may** be subject to contempt. **Mandatory**

Author's Comment: See A.R.S. § 25-513 relating to employee cooperation.

A.R.S. § 25-504 (K) Duty of Employer to Comply With Wage Assignment Order – Order of Assignment; Ex Parte Order of Assignment; Responsibilities; Violation; Termination

(K) Unless a court has ordered otherwise, the person ordered to pay support or spousal maintenance shall notify the clerk of the superior court or the support payment clearinghouse in writing of the obligor's residential address and the name and address of any employer, and within ten days of any change. Failure to do so may subject the person to sanctions for contempt of court, including reasonable attorney fees and costs. **Discretionary Sanctions**

A.R.S. § 25-504(Q) Fees and Wage Assignment Orders

(Q) Any employer or other payor shall not refuse to hire a person and shall not discharge or otherwise discipline an obligor because of service of an order of assignment authorized by this section. An employer or payor who refuses to hire a person or who discharges or otherwise disciplines an employee or obligor because of service of an order of assignment is subject to contempt and sanctions as may be ordered by the court. A person who is wrongfully refused employment, wrongfully discharged or otherwise disciplined is entitled to recover damages sustained by the prohibited conduct, reinstatement, if appropriate, and attorney fees and costs incurred. **Mandatory**

A.R.S. § 25-504(R) Fees and Wage Assignment Orders

In any proceeding under this section the court, after considering the financial resources of the parties and the reasonableness of the positions each party has taken, **may** order a party to pay a reasonable amount to another party for the costs and expenses, including attorney fees, of maintaining or defending the proceeding. **Discretionary**

Title IV-D

A.R.S. § 25-505.01(M). Administrative Income Withholding Order; Notice; Definition

An income withholding order shall include a statement that an employer shall not refuse to hire a person or shall not discharge or otherwise discipline an employee as a result of an income withholding order authorized by this section, and an employer who refuses to hire a person or who discharges or otherwise disciplines an employee as a result of the income withholding order is subject to contempt and fines as established by the court. Any person wrongfully refused employment or an employee wrongfully discharged or otherwise disciplined is entitled to recovery of damages suffered, reinstatement if appropriate, plus attorney fees and costs incurred. Any employer or other payor who fails without good cause to comply with the terms of the income withholding order may be liable for amounts not paid to the support payment clearinghouse pursuant to the income withholding order, reasonable attorney fees and costs incurred and may be subject to contempt. The department may initiate an action in superior court to enforce this subsection.

Author's Comment: Title IV-D cases are filed by the Office of the Attorney General of the State of Arizona pursuant to the federal law. Nothing in this law precludes either the petitioner or the respondent from retaining private counsel. **Discretionary**

A.R.S. § 25-523(E) Financial Institutions Data Match; Nonliability; Prohibited Disclosure; Liability; Civil Liability; Definition

An employee of the department, its agent or any state or political subdivision that administers a child support enforcement program pursuant to title IV-D of the social security act, who knowingly or negligently discloses a person's financial records in violation of subsection D is subject to civil liability in an amount equal to the greater of either:

1. One thousand dollars for each act of unauthorized disclosure of a financial record with respect to which the defendant is found liable.
2. The sum of the actual damages sustained by the plaintiff as a result of the unauthorized disclosure and, in the case of a willful disclosure or a disclosure that is the result of gross negligence, punitive damages, including costs and attorney fees. **Discretionary/ Findings Required**

A.R.S. § 25-553(A), (B). Request for Arrearages; Deadline [Spousal Maintenance]

A. The person to whom the spousal maintenance obligation is owed may file a request for judgment for spousal maintenance arrearages not later than

three years after the date the spousal maintenance order terminates. In that proceeding there is no bar to establishing a money judgment for all of the unpaid spousal maintenance arrearages.

B. Notwithstanding any other law, formal written judgments for spousal maintenance and for associated costs and attorney fees are exempt from renewal and are enforceable until paid in full.

Exempt from Renewal of Judgment

A.R.S. § 25-809(G). Child Born Out of Wedlock – Maternity/Paternity

After considering the financial resources of both parties and the reasonableness of the positions each party has taken throughout the proceedings, the court **may** order a party to pay a reasonable amount to the other party for the costs and expenses of maintaining or defending any proceeding under this article. The court **may** order the party to pay these amounts directly to the attorney. The attorney **may** enforce the order in the attorney's name with the same force and effect and in the same manner as if the order had been made on behalf of any party to the action. For the purposes of this subsection, "costs and expenses" includes attorney fees, deposition costs, appellate costs and other reasonable expenses the court determines were necessary.

Author's Comment: A.R.S. § 25-324 is the corollary statute in cases other than paternity and maternity.

Discretionary

UCCJEA

Author's Comment: Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), falls within the purview of A.R.S. § 25-1001 though § 25-1067. UCCJEA replaced the former UCCJA, Uniform Child Custody Jurisdiction Act.

A.R.S. § 25-1038(C). Jurisdiction Declined by Reason of Conduct

If a court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction pursuant to subsection A of this section, it **shall** assess against the party seeking to invoke its jurisdiction necessary and reasonable expenses including costs, communication expenses, attorney fees, investigative fees, expenses for witnesses, travel expenses and child care during the course of the proceedings, unless the party from whom fees are sought establishes that the assessment would be clearly inappropriate. The

court shall not assess fees, costs or expenses against this state unless authorized by law other than this chapter. **Mandatory**

A.R.S. § 25-1058(D). Expedited Enforcement of Child Custody Determination

An order issued under subsection C of this section must state the time and place of the hearing and advise the respondent that at the hearing the court will order that the petitioner may take immediate physical custody of the child and the payment of fees, costs and expenses under § 25-1062 and may schedule a hearing to determine whether further relief is appropriate, unless the respondent appears and establishes that either of the following is true:

1. The child custody determination has not been registered and confirmed under § 25-1055 and that any of the following is true:
   (a) The issuing court did not have jurisdiction under article 2 of this chapter.
   (b) The child custody determination for which enforcement is sought has been vacated, stayed or modified by a court having jurisdiction to do so under article 2 of this chapter.
   (c) The respondent was entitled to notice, but notice was not given in accordance with § 25-1008, in the proceedings before the court that issued the order for which enforcement is sought.
2. The child custody determination for which enforcement is sought was registered and confirmed under § 25-1054, but has been vacated, stayed or modified by a court of a state having jurisdiction to do so under article 2 of this chapter. **Notice Required**

A.R.S. § 25-1062 Costs, Fees and Expenses

A. The court **shall** award the prevailing party, including a state, necessary and reasonable expenses incurred by or on behalf of the party, including costs, communication expenses, attorney fees, investigative fees, expenses for witnesses, travel expenses and child care during the course of the proceedings, unless the party from whom fees or expenses are sought establishes that the award is clearly inappropriate. **Mandatory**

B. The court shall not assess fees, costs or expenses against a State unless authorized by law other than this chapter.

Author's Comment: The principal attorneys' fees statute under the UCCJEA

A.R.S. § 25-1067 Costs and Expenses

If the respondent is not the prevailing party, the court may assess against the respondent all direct expenses and costs incurred by the attorney general and law enforcement officers who act pursuant to section 25-1065 and 25-1066. **Discretionary**

UIFSA

Author's Comment: The Uniform Interstate Family Support Act (UIFSA) falls within the purview of A.R.S. §§ 25-1201–1242.

A.R.S. § 25-1202(24). Definitions

"Support order" means a judgment, decree, order or directive, whether temporary, final or subject to modification, for the benefit of a child, a spouse or a former spouse, that provides for monetary support, health care, arrearages or reimbursement and that may include related costs and fees, interest, income withholding, attorney fees and other relief. **Definitions**

Support Order

***Author's Comment*:** Paragraph 24 defines a support order to include attorneys' fees.

A.R.S. § 25-1245(B)(11). Duties and Powers of Responding Tribunal

A responding tribunal of this state, to the extent not prohibited by other law, may do one or more of the following: Award reasonable attorney fees and other fees and costs. **Discretionary**

A.R.S. § 25-1253(B), (C) Duties and Powers of Responding Tribunal

If an obligee prevails, a responding tribunal **may** assess against an obligor filing fees, reasonable attorney fees, other costs and necessary travel and other reasonable expenses incurred by the obligee and the obligee's witnesses. The tribunal shall not assess fees, costs or expenses against the obligee or the support enforcement agency of either the initiating or the responding state, except as provided by other law. Attorney fees may be taxed as costs and may be ordered paid directly to the attorney, who may enforce the order in the attorney's own name. Payment of support owed to the obligee has priority over fees, costs and expenses.

The tribunal shall order the payment of costs and reasonable attorney fees if it determines that a hearing was requested primarily for delay. In a proceeding under article 6 of this chapter for the enforcement and modification of a support order after registration, a hearing is presumed to have been requested primarily for delay if a registered support order is confirmed or enforced without change. **Discretionary**

A.R.S. § 13-3602 (P). Order of Protection

After a hearing on an order of protection, with notice to the affected party, the court **may** enter an order requiring any party to pay the costs of the action, including reasonable attorney fees, if any. **Discretionary**

See Also **Rules of Court**

Family Law Case Notes

Author's comment: The superior court shall have original jurisdiction of Divorce and for annulment of marriage. Arizona Constitution Article VI, § 14(9).

Author's comment: A court may enforce an order for the payment of attorneys fees through contempt proceedings. *Korman v. Strick* 133 Ariz. 471, 652 P.2d 544 (1982). This case has a fine discussion regarding the nature and types of contempt proceedings.

Purpose of Allowance of Attorneys' Fees in Dissolution Actions.

Edsall v. Superior Court In and For Pima County, 143 Ariz. 240, 249, 693 P.2d 895 (1984). The purpose of allowance of attorney's fees in divorce actions is to insure that the party with the least may have proper means to litigate the action. **Purpose**

Considerations in Determination of Reasonable Fee.

Baum v. Baum, 120 Ariz. 140, 584 P.2d 604 (Ct. App. 1978). In determining what is a reasonable fee, the trial judge can draw upon her/his knowledge of case and upon her/his own experience. **Reasonableness**

Judicial Discretion in Attorneys' Fees Awards.

The decision whether to award attorneys' fees lies within the sound discretion of the trial court, *Mori v. Mori,* 124 Ariz. 193, 199, 603 P.2d 85, 91 (1975); *Spector v. Spector*, 23 Ariz. App. 131, 531 P.2d 176 (1975).

In determining what is a reasonable fee, the trial judge can draw upon his or her knowledge of the case and experience. *Baum v. Baum*, 120 Ariz. 140, 581 P.2d 604 (Ct. App. 1978).

A.R.S. § 12-341.01(A) Not Applicable in Domestic Relations Matters.

In *Rowe v. Rowe,* 154 Ariz. 611, 623, 744 P.2d 717 (1987), the court held that A.R.S. § 12-341.01(A) did not apply in domestic relations matters.

The Arizona Supreme Court has also held that even if the parties adopt a provision in a settlement agreement entitling the prevailing party to

reasonable attorney's fees, A.R.S. § 25-324 governs, not the parties' agreement. *Smith v. Saxon,* 186 Ariz.70. 918 P.2d 1088 (Ct. App. 1996) (Paternity); *Edsall v. Superior Court*, 143 Ariz. 240, 693 P.2d 895 (1984) (Dissolution).

Inapplicable

Concealed Assets. In *Kosidlo v. Kosidlo,* 125 Ariz. 32, 607 P.2d 15 (Ct. App. 1979), *modified,* 125 Ariz. 18, 607 P.2d 1 (1979). An award of attorney's fees **may** be granted to compensate a spouse for the costs necessitated by a search for concealed assets. In *Mori v. Mori,* 124 Ariz. 193, 603 P.2d 85 (1979). In *Mori,* the court upheld the trial court's award of attorney's fees where the record indicated the incursion of substantial costs due to the need to locate concealed assets. In each of these cases there was no mention of a finding by the trial court that the recipient of the award was financially capable of paying the fees under the former A.R.S. § 25-324, nor was any mention made of A.R.S. §25-349, A.R.S. §12-341.01(C) or any Rules of Court.

SANCTIONS – ATTORNEYS' FEES AS SANCTIONS

A.R.S. § 12-341.01(C), A.R.S. § 12-349

Domestic relations proceedings are not exempt from the statutes and rules permitting courts to award fees as a sanction for attorney or party misconduct: A.R.S. § 12-341.01(C), *In re Marriage of Benge*, 151 Ariz. 219, 726 P.2d 1088 (Ct. App. 1986); A.R.S. § 12-349, *see: Lynch v. Lynch*, 164 Ariz. 127, 791 P.2d 653 (Ct. App. 1990).

Sanctions

A.R.S. § 25-403(V). Abusive Conduct

Specific domestic relations statutes have been enacted to deter abusive conduct. Attorneys' fees and costs must be assessed against a party seeking modification of a custody decree if the court finds the modification action is "vexatious and constitutes harassment." *See also* A.R.S. § 25-332(C), which protects the party with custody from harassing and vexatious attempts to modify the decree. *See Gubser v. Gubser*, 126 Ariz. 303, 614 P.2d 845 (1980).

Discretionary

Enforcement of an Attorneys' Fees Award.

If a divorce action is voluntarily dismissed by party, the court loses jurisdiction over the matter lacks jurisdiction to enter a judgment awarding attorneys' fees to either party. *Spring v. Spring*, 3 Ariz. App. 381, 414 P.2d 769 (1966).

Jurisdiction

The homestead exemption will not protect real property from a judgment for attorneys' fees awarded as part of the same decree awarding support for a spouse and children. *Bickel v. Bickel,* 17 Ariz. App. 29, 495 P.2d 154 (1972).

Objection to Fees/Due Process.
Due process principles apply in determining reasonableness of fees. In considering a request for fees pursuant to A.R.S. § 25-324, a party objecting to the reasonableness and appropriateness of fees and expenses is entitled to be heard on those subjects under elementary due process principles. *Reed v. Reed,* 154 Ariz. 101, 740 P2d 963 (Ct. App. 1987).

Hearing and Findings on Fee Request.
A request for attorneys' fees pursuant to A.R.S. § 25-324, is made regardless of the outcome of the action, and the award of attorneys' fees in this type of action is not dependent upon prevailing. *Edsall v. Superior Court in and for Pima County*, 143 Ariz. 240, 247-49, 693 P.2d 895, 902-04 (1984). The trial court should receive evidence and make findings regarding the financial condition of the respective parties before fees and costs can be awarded. *Appels-Meehan v. Appels*, 167 Ariz. 182, 805 P.2d 415 (Ariz. App. 1991). A.R.S. § 25-324; *Reed v. Reed*, 154 Ariz. 101, 107-08, 740 P.2d 963, 969-70 (Ct. App.1987). In the absence of a request, there is no obligation for the trial court to make findings of fact under § 25–324. MacMillan v. Schwartz, 226 Ariz. 584, ¶ 39, 250 P.3d 1213, 1221 (App.2011). Furthermore, a party cannot challenge the lack of findings when none have been requested Myrick v. Maloney, No. 2 CA–CV 2014–0019 (Ariz. Ct. App. 2014)

ETHICAL COMPONENTS
See **Ethics**, *infra*

(1) Ethical Considerations in Fee Awards. Ethical considerations and constraints are a fundamental component in the determination of fees in domestic relations litigation.

(2) Ethics Rules, Rules of Court, Statutes and Cases to be read in *pari materia.* It is imperative that any fee award in Domestic Relations be read in conjunction with Ethics Rules, such as E.R. 1.5; Rules of Court, such as Rule 11, Ariz. R. Civ. P.; relevant statutes and cases such as *Schweiger v. China Doll Restaurant, Inc.,* 138 Ariz. 183, 187-188, 673 P.2d at 931-932. *See ABC Supply, Inc. v. Edwards,* 191 Ariz. 48, 952 P.2d 286 (1996) *amended in part* (1997), reviewed in 1998; *In the Matter of Swartz, supra.*

The opinions of the Ethics Advisory Committee of the State Bar of Arizona cited herein are advisory in nature. The opinions are not binding upon the courts, the State Bar, its Board of Governors, any person or any tribunals charged with regulatory responsibilities or any State Bar member. The opinions are persuasive and should be regarded as meaningful in making decisions regarding contingency fees in domestic relations matters.

(3) Contingency Fee Prohibition. Ethical rules prohibit a contingency fee in domestic relations actions.

A lawyer **shall** not enter into an arrangement for, charge, or collect any fee in a domestic relations matter, the payment or amount of which is contingent upon the *securing of a divorce* or upon the amount of alimony or support or property settlement in lieu thereof; * * * * * (Emphasis added.)

The prohibition regarding contingency fees in domestic relations cases in ER 1.5(d) applies to no-fault dissolutions. In 1977, the Committee reaffirmed the prohibition under the former Code of Professional Responsibility against charging a contingent fee with regard to either property disposition or spousal maintenance in an Arizona dissolution proceeding which had changed from a "fault" to a "no-fault" divorce concept. Ariz. Ethics Op. 77-18. (August 17, 1977).

(4) Post Decree Enforcement of Child Support and Spousal Maintenance. Contingency fees, however, are permitted for post decree child support and spousal maintenance. An attorney **may**, ethically, charge a client a contingent fee to collect or enforce arrearages in child support and spousal maintenance after the entry of a Decree of Dissolution. The policy concerns prohibiting the charging of contingent fees in certain Domestic Relations matters are not present in post decree cases. Committee on Rules of Professional Conduct, Opinion No. 93-04 (March 17, 1993). Opinion No. 93-04 supplanted former Opinion No. 91-20, which was withdrawn by the Committee on Rules of Professional Conduct. The committee had previously determined that, if the amounts are fixed, the attorney would have no incentive to encourage divorce and the attorney would have no personal interest in disrupting the court's fact-sensitive determination of child support or spousal maintenance. In 93-04, the Committee noted that ER 1.5(d) was inapplicable to post-decree collections or enforcements of child support or spousal maintenance. *See also* Inquiry No. 1344 (March 1993) in which it was determined that an agreement to attempt to recover past due spousal or child support payments on a contingency basis is not ethically improper.

(5) Enforcement of Current Child Support and Spousal Maintenance. Enforcement of current child support or spousal maintenance stands on a different footing. Each unpaid child support order which is due and unpaid becomes a judgment by operation of law. When a contingent fee arrangement is entered into for the enforcement of a current child support or spousal maintenance order as each becomes due and is unpaid, it is essential that the length of time the contingency fee will apply to future payments be spelled out and that the agreement be, in all respects, fair and reasonable to satisfy ethical constraints.

(6) Reasonableness of Contingent Fees. The reasonableness of a contingent fee is subject to analysis and judicial scrutiny. ER 1.5 provides that a lawyer's fee **shall** be reasonable. ER 1.5 further delineates with particularity the *considerations* to be used to determine *the reasonableness* of a contingent fee award as follows:

(1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation and ability of the lawyer or lawyers performing the services; and

(8) whether the fee is fixed or contingent.

The State Bar Ethics Committee concluded that it would be impossible to predetermine the reasonableness of an attorney's fees contract. However, the committee enunciated useful considerations for assistance to the parties and the courts as follows:

(1) the prospects of collection,

(2) the amount of money involved,

(3) the length of time the parties believe the services would be needed, and

(4) a determination of whether the collection would involve interstate proceedings which might require the assistance of other professionals.

It would be the superior practice to set forth with particularity, in the contingent fee application, the facts germane to the foregoing considerations. This practice would enable the court to arrive at a fair evaluation of the time expended, the nature and need for the service, the result obtained and the propriety of the contingency fee award in an expeditious manner. The State Bar Committee on Professional Responsibility and Conduct (COPRAC) has determined that contingent fee agreements based upon the value of community property assets recovered in a dissolution proceeding are not per se improper under Rule 2-107 of the Rules of Professional Conduct so long

as the agreement does not discourage or provide an impediment to the potential reconciliation of the spouses while the action is pending.

(7) Disciplinary Action for Excessive Contingent Fees. *Excessive contingent fees are subject to disciplinary action*. Excessive fees should not be charged (ABA Canons of Professional Ethics, Canon 12) and "clearly excessive fees" will constitute grounds for disciplinary action regardless of whether the fee is fixed or contingent. Rule 11 and ER 1.5 apply in all cases. The *contingent fee must be reasonable and is subject to regulation by the court. In Matter of Swartz,* 141 Ariz. 266, 686 P.2d 1236 (1984), the court imposed disciplinary sanctions on an attorney for charging an *excessive contingent fee.* In *Schwartz,* the court stated as follows:

> DR 2-1-6 [E.R. 1.5] **may** be violated even though no court in this state has set any particular percentage as appropriate for content fees. It is no more possible to set such percentages in advance than it would be to set a single fixed fee for all divorce cases or all real estate litigation. We hold therefore, that contingent fees are subject to regulation by this court. Excessive fees should not be charged (ABA Canons of Professional Ethics, Canon 12) and 'clearly excessive fees' will constitute grounds for disciplinary action regardless of whether the fee is fixed or contingent.

141 Ariz. 266 at 272, 273.

(8) Reduction of Excessive Contingent Fees. Excessive contingent fees must be reduced. If, at the conclusion of a lawyer's services, it seems that a fee, which appeared reasonable when agreed upon, has become excessive, the attorney **may** not stand upon the contract. The attorney, under these circumstances, must reduce the fee. *Swartz,* 141 Ariz. at 273, 686 P.2d at 1243.

The court in *Swartz* explained the factors to be considered in contingent fee awards were the product of a number of factors including the following:

1. the degree of uncertainty or contingency with respect to liability, amount of damages which **may** be recovered, or the funds available from which to collect any judgment;
2. the difficulty of the case and the skill required to handle it;
3. the time expended in pursuing it; and,
4. the results obtained.

Swartz, 141 Ariz. at 273, 686 P.2d at 1243.

(9) Contingent Fee for Setting Aside Decree and Property Settlement Agreement. Contingency fee awards **may** be permitted for legal services rendered in setting aside a divorce decree and property settlement agreement. Ariz. Ethics Op. 82-9, (May 28, 1982). A contingency fee based on property value is not permissible. Ariz. Ethics Op. 87-6.

With regard to property claims, an attorney **may** ethically handle a property claim on a contingency fee basis in a post-decree action Ariz. Ethics Op. 89-02 (1989).

In Ariz. Ethics Op. 87-6, the committee explained that property claim must be separate from alimony and child support issues. Contingency fees **may** be permissible in matters involving post-decree property settlement agreements.

An attorney **may** represent the client on a contingency fee basis in an action either to set aside the original property settlement agreement and negotiate a new property settlement agreement several months after the divorce became final, or to hold the ex-husband liable in damages for fraud, duress and bad faith in persuading the client to sign the agreement. Ariz. Ethics Op. 82-9 (May 28, 1982). *See* Ariz. Ethics Op. 89-02, *supra.*

(10) Concealed Assets. Contingency fees **may** be permissible in hidden asset cases where such assets were not considered by the court at the time of the dissolution action. Ariz. Ethics Op.. 89-02.

(11) Referring Business. Ethical considerations regarding payment of legal fees through a referring business. A lawyer is not permitted to have legal fees through a referring business. A lawyer **may** not be employed part-time by the non-lawyer referring business to provide legal services to clients of the business. Ariz. Ethics Op. 96-11 (December 30, 1996). [ER 1.8, 5.4, 7.1(r)(4)].

(12) Paralegal, Law Clerk and Legal Assistant Billing. Law clerk, paralegal or legal assistant billing rates services are not considered part of taxable court "costs." They are a component of attorneys' fees. *Continental Townhouses East v. Brockbank,* 152 Ariz. 537, 733 P.2d 1120 (App. 1986).

(13) Supervision of Non-Lawyer Assistants. The lawyer's professional responsibilities regarding supervision of non-lawyer assistants are set forth in Rule 5.3 of the Rules of Professional conduct.

(14) Redundant Non-Contingent Fees. An attorney is ethically obligated to make a good faith effort to exclude from any fee request billing hours that are redundant, excessive or otherwise unnecessary. *Hensley v. Eckherhart,* 461 U.S. 424, 76 L.Ed. 2D 40, 51, 103 S.Ct. 1983. In addition, in this setting, it

may be maintained that hours that should not be billed to one's client are also not properly billed to one's adversary. It is imperative that, in seeking awards of attorneys' fees, counsel not exacerbate the costs to the parties who are vindicating their rights to the detriment of the marital community itself. A reading of A.R.S. § 25-324 together with E.R. 1.5 should give strong incentives to counsel against litigating frivolous claims.

(15) Relationship Between Results and Hourly Rate. In *ABC Supply, Inc. v. Edwards,* 191 Ariz. 48, 953 P.2d 286 (App. 1996, amended on other grounds, Supplemental Opinion October 30, 1997, the court determined that counsel was engaged in single-minded pursuit of a higher fee and victory at any cost. The court determined that this expensive frivolity should be, and was, in fact, severely sanctioned. Fees were levied against the attorney personally. The court held that, in a fee request, there must be a proper relationship between the results obtained and the fee incurred.

In the supplemental opinion in *ABC Supply,* the court of appeals amended the original opinion when the court learned that the client, rather than the attorney, wished to proceed with the matter. Fees thus incurred were levied against the attorney's client, rather than the attorney as had been the determination in the original opinion in the 1996 decision in *ABC Supply*. **Mandatory**

EMPLOYMENT

A.R.S. § 23-1069. Actions before the Industrial Commission

In proceedings before the commission in which an attorney employed by the claimant has rendered services reasonably necessary in processing the claim, the commission **shall**, set a reasonable attorney's fee and **shall** provide for the payment thereof from the award, in installments or otherwise, as the commission determines proper in view of the award made, and **shall** further provide for the payment of the attorney's fee direct to the attorney. The commission **shall** charge the amount of the payment against the award to the claimant.

The attorney's fee provided for **shall** be not more than twenty-five per cent up to ten years from the date of the award. In cases involving solely loss of earning capacity, the maximum **shall** be twenty-five per cent up to five years from the date of the final award. When the payment of the award to the claimant is made in installments, or in other than a lump sum manner, in no event may an amount in excess of twenty-five per cent of any one such installment payment be withheld for the attorney's fee.

DESK REFERENCE COMPANION

UPDATE OF FEES, STATUTES AND SELECTED RULES OF COURT IN ARIZONA

2022

Hon. Toby Maureen Gerst, Ret.

ISBN 978-0-887-26060-5

ABORTION

A.R.S. § 36-2156 (D) (3) Informed Consent; Ultrasound Required; Violation; civil relief; Statute of Limitations (D (3) **Mandatory**

ADMINISTRATIVE AGENCIES

A.R.S. § 41-1007. Award of Costs and Fees Against a Department in Administrative Hearings; Exceptions; Definitions

Prevailing Party Defined
Discretionary where party prevails on appeal subject to judicial review

A.R.S. § 42-2064 (I)(2) Reimbursement of Fees and Other Costs; Definitions Tax **Discretionary**
Prevailing party defined

ADMINISTRATIVE HEARINGS

A.R.S. § 12-348(D), (E). Award of Fees in an Action to Review an Agency Decision Permissible

DOMESTIC RELATIONS/FAMILY LAW

A.R.S. § 25-324. Attorneys' Fees Generally

A.R.S. § 25-324 Findings in Attorneys' Fee Awards

A.R.S. § 25-324(D). Circumstances for Mandatory Award and Findings and Enforcement of Attorneys' Fees

A.R.S. § 25-317(E) A.R.S. § 25-324(B).Separation Agreement Terms

A.R.S. § 25-317(E) Enforcement of Attorneys' Fees

A.R.S. § 25-317(E); A.R.S. § 25-324(D). Separation Agreements

A.R.S. § 25-324(A), (B), (C,) (D). Attorney Fees

A.R.S. § 25-408(J). Rights of Each Parent; Parenting Time; Relocation of Child; Exception; Enforcement; Access to Prescription Medication and Records

A.R.S. § 25-553(B) Spousal Maintenance Arrearages

A.R.S. § 25-315(A). Preliminary Injunction or Temporary Order

A.R.S. § 25-321. Representation of Child by Counsel

A.R.S. §§ 25-403.06(B); 25-403.06(D). Legal Decision Making and Parenting Time

A.R.S. §§ 25-403.08 (A), 25-403.08(B). Resources and Fees.

A.R.S. § 25-414(C). Parenting Time/Visitation Violations

A.R.S. §§ 25-1062(A), 25-1067. Uniform Child Custody Jurisdiction and Enforcement Act

A.R.S. § 25-1253 (B), (C). Uniform Interstate Family Support Act

A.R.S. § 25-1401. Presumption of Legitimacy Child Born out of Wedlock

Rule 10(F), Rules of Family Law Procedure. Court-Appointed Attorney for Children

A.R.S. §§ 25-403, 25-403.03, 25-403.04, 25-415(A), (D). Litigation Misconduct

A.R.S. §§ 25-352, 25-353. Court Ordered Educational Program

ARIZONA RULES OF FAMILY LAW PROCEDURE RELATING TO ATTORNEYS' FEES AWARDS

ABROGATED. Rule 31(A). Signing of Pleadings, Motions and Other Papers

Rule 44.1 Judgment by Default – *By Motion without Hearing*

REPEALED Rule 47(A)(4). Motions for Pre-Decree or Pre-Judgment Temporary Orders – *Property, Debt and Attorneys' Fees*

Rule 47(N). Sanctions.

Disclosure and Discovery

Rule 57(G)(1), (2). Failure to Attend or to Serve Subpoena on a party or non-party

Rule 57(G)(2). Failure to Attend or to Serve Subpoena on a Non-Party Witness (fee award discretionary)

Rule 65. Failure to Make Disclosure or Discovery; Sanctions, Depositions, Disclosure, Unfavorable information

Rule 67.2 Mediation, arbitration, settlement conferences, and other dispute resolution processes outside of conciliation court services. *See* A.R.S. §§ 25-31 and 25-324.

Rule 70(A). Notice of Settlement Unreasonable Delay Notice of Settlement.
Rule 71(A). Sanctions for Failure to Comply With Settlement and ADR Rules.

Rule 68 (F). Conciliation Court Services; Counseling, Mandatory Mediation, Assessment or Evaluation and other Services. An award of attorneys' fees is discretionary for failure to appear. Rule 67(A)(8), (9); *see also* Rule 71(A).

Rule 76(D) Pretrial Procedures Sanctions for failure to obey a scheduling or pretrial order.

Rule 78(B). Multiple Claims or Multiple Parties Judgments; Costs; Attorneys' Fees; Judgment Upon Multiple Claims or Involving Multiple Parties.

Rule 79(G). Affidavits Made In Bad Faith

Rule 91(B). Petitions for Modification. *See* Rule 76(D).

Rule 91(N). Sanctions. *See* Rule 76(D).

Rule 91(S). Affidavits of Financial Information. *See* Rule 76(D).

CUSTODY/PARENTING TIME DISPUTES

A.R.S. § 25-403.08. Resources

A.R.S. § 25-408(J). Court-Ordered Visitation. Post-Decree Custody Disputes Unreasonably Denied, Restricted, or Interfered

A.R.S. § 25-411(A). Modification of Custody Decree; Affidavit; Contents. *See* § 25-411(M).

A.R.S. § 25-411(M). Vexatious Modification of Decree. *See also* § 25-411(A).

A.R.S. § 25-403.06(A), (B). Equal Access to Documents and Information

A.R.S. § 25-503(E). Modification of Child Support – Child Support Modification Change of Circumstances

A.R.S. § 25-504(C), (K), (Q), (R). Duty of Employer to Comply with Wage Assignment Order – Order of Assignment; Ex Parte Order of Assignment; Responsibilities; Violation; Termination

A.R.S. § 25-504(H). Duty of Employer to Comply with Wage Assignment Order – Order of Assignment; Ex Parte Order of Assignment; Responsibilities; Violation; Termination

A.R.S. § 25-503(M) Renewal of Judgments

A.R.S. § 25-509 Party may be Rrepresented by the Attorney General

UIFSA

A.R.S. § 25-1245(B)(11). Duties and Powers of Responding Tribunal

A.R.S. § 25-1253(B), (C). Duties and Powers of Responding Tribunal

A.R.S. § 25-321. Child Representation in Dissolution Proceeding

TITLE IVD

A.R.S. § 25-505.01(M). Administrative Income Withholding Order; Notice; Definition

A.R.S. § 25-408(J). Visitation Disputes

A.R.S. § 25-504(C). Home and Employment Addresses

A.R.S. § 25-504(R). Fees and Wage Assignment Orders

A.R.S. § 25-523(E) Financial Institutions Data Match; Nonliability; Prohibited Disclosure; Liability; Civil Liability; Definition

A.R.S. § 25-321. Attorney for the Child/Representation of Child by Counsel [UIFSA]

A.R.S. § 25-809(G). Child Born Out of Wedlock – Maternity/Paternity

A.R.S. § 25-503 (M). Modification or Revocation [of Child Support]

A.R.S. § 25-414(B). Court Ordered Visitation

A.R.S. § 25-408(J). Custody Denied by Reason of Conduct

A.R.S. § 25-411(M). Decree Modification

A.R.S. § 13-3602(T). Domestic Violence – Order of Protection

Ariz. R. Protect. Ord. P. 2(C). Costs and Attorneys' Fees

A.R.S. § 25-324. Dissolution Proceedings

A.R.S. § 25-403.06. Education and Health. Parental Access to Prescription Medication

A.R.S. § 13-3602(t). Order of Protection

A.R.S. § 25-809 (G). Paternity and Maternity

A.R.S. § 12-349 (A) (B) (C) (E). Sanctions

A.R.S. § 25-504(K). Spousal Maintenance – Assignment of Earnings

A.R.S. § 25-553(A), (B). Request for Arrearages; Deadline [Spousal Maintenance]

A.R.S. § 25-809(G). Temporary Orders – Maternity and Paternity Proceedings

A.R.S. § 25-411(M). Vexatious Modification of Custody Decree

A.R.S. § 25-414(M). Visitation Compliance

A.R.S. § 25-408(J). Visitation – Post-Decree Visitation Interference

A.R.S. § 25-504(R). Wage Assignment Order

A.R.S. § 25-504(H). Wage Assignment Order Noncompliance

Ariz. R. Fam. L. P. 63(e). Judgments, Costs, and Attorneys' Fees in Family Court

A.R.S. § 12-341.01(C); A.R.S. § 12-349 if brought as a civil action, the court and not a jury determines attorney fees

EMPLOYMENT

A.R.S. § 23-1069 (A). Actions before the Industrial Commission

A.R.S. § 23-808(D). Employers' Liability Law Fee Limitation

A.R.S. § 25-509C)4(H). Duty of Employer to Comply with Wage Assignment Order – Order of Assignment; Ex Parte Order of Assignment; Responsibilities; Violation; Termination

A.R.S. § 23-327. Minimum Wage for Minors

A.R.S. § 23-201(B). Obtaining Labor by False Pretenses

A.R.S. § 41-1481(J). Unlawful Employment Practice

ESTATE LITIGATION

See also **PROBATE**

A.R.S. § 14-3720. Good Faith Estate Litigation by Personal Representative

EXECUTION

A.R.S. § 12-1624. Failure of Bidder at Sale under Execution to Pay

FAMILY LAW/DOMESTIC RELATIONS

A.R.S. § 25-321. Appointed Counsel for Juvenile in Dissolution of Marriage

FORECLOSURE

A.R.S. § 33-813(B)(5). Default on Deed of Trust

Page 927

673 P.2d 927
138 Ariz. 183
Seymour SCHWEIGER and Jimmie Komatsu, Co-Trustees of the Komatsu-Okamoto Trust, Dated February 12, 1969, Plaintiffs-Appellees and Cross-Appellants,
v.
CHINA DOLL RESTAURANT, INC., an Arizona corporation; and Roy Ong and May Ong, Defendants-Appellants and Cross-Appellees.
No. 1 CA-CIV 5318.
Court of Appeals of Arizona, Division 1, Department D.
July 28, 1983.
Rehearing Denied Sept. 1, 1983.
Review Denied Oct. 18, 1983.

[138 Ariz. 185]

Page 929

Sternberg, Sternberg & Rubin, Ltd. by Ronald I. Rubin, Phoenix, for plaintiffs-appellees and cross-appellants.

Biaett & Bahde by Kenneth Biaett, Glendale, for defendants-appellants and cross-appellees.

OPINION

MEYERSON, Judge.

In this appeal, we set forth guidelines for the filing of affidavits in support of requests for attorneys' fees where the parties have agreed by contract that the prevailing party shall be entitled to recover reasonable fees. Although the court normally disposes of such matters by unpublished orders, because of the growing number of fee applications, this opinion is necessary to give guidance to counsel in submitting fee requests. See Note, Statutory Attorney's Fees in Arizona: An Analysis of A.R.S. Section 12-341.01, 24 Ariz.L.Rev. 659, 680 (1982).

I. BACKGROUND OF THE LITIGATION

Appellees and cross-appellants Seymour Schweiger and Jimmie Komatsu (Schweiger) initiated this litigation in 1976 by filing an action against China Doll Restaurant, Inc. (China Doll) seeking to terminate a lease existing between the parties and damages for breach of an alleged oral agreement to mutually cancel the lease. Schweiger leased property located in Phoenix to China Doll for use as a restaurant.

In China Doll Restaurant, Inc. v. Schweiger, 119 Ariz. 315, 580 P.2d 776 (Ct.App.1978), we reversed a summary judgment which was entered in Schweiger's favor concerning the termination of the lease based upon China Doll's alleged breach. We upheld a summary judgment against China Doll on its counterclaim against Schweiger for lost profits for a Mexican restaurant which China Doll intended to operate on the premises. On remand, and following a trial, judgment was entered in favor of Schweiger finding that China Doll had breached an oral agreement to cancel the lease of the property. Schweiger recovered lost rents for the remaining period of the lease and was compensated for expenses needed to restore the premises. The trial court denied Schweiger's request for attorneys' fees, refused to amend the judgment to include an award for pre-judgment interest and refused to grant punitive damages. China Doll appealed from the judgment awarding Schweiger lost rents and damages and Schweiger filed a cross-appeal from the portion of the judgment denying attorneys' fees, pre-judgment interest, and punitive damages.

In a memorandum decision filed November 23, 1982, we upheld the judgment in Schweiger's favor with respect to lost rents and damages, and in Schweiger's cross-appeal, we reversed the trial judge's ruling denying attorneys' fees but affirmed the portions of the order denying pre-judgment interest and punitive damages. In our memorandum decision, we advised the parties that Schweiger could submit an application for attorneys' fees for legal services rendered on appeal.

II. THE FEE APPLICATION

In accordance with our memorandum decision, Schweiger filed a statement of costs and attorneys' fees requesting $235 [1] in costs and $10,331.75 in attorneys' fees. China Doll filed an objection asserting that the affidavit was insufficient because it failed to disclose work performed in the superior court proceedings, failed to itemize the services provided, particularly between those services performed in connection with the cross-appeal, and more generally that the amount of fees was unreasonable. Schweiger filed a supplemental statement in which he itemized the attorneys' fees and added fees incurred for the motion for rehearing:

[138 Ariz. 186]

Page 930

Schweiger avowed that no time was included for work performed in the superior court. China Doll opposed the supplemental statement of costs generally re-stating arguments raised in its original objections. [2]

III. DETERMINING A REASONABLE FEE

A. Introduction

Like most courts, this court is faced with an ever-burgeoning growth of fee applications in a myriad of cases. Increasingly, the court's time is taken up with determining reasonable fees in cases ranging from contract disputes to litigation which arises under numerous statutes [3] containing attorneys' fees provisions. The slow but steady shift from the historic American rule, which provides that in the ordinary case each party should bear its own fees, to the English rule, which provides that the prevailing party is ordinarily entitled to recover fees, is changing the nature of litigation and the judicial function in many instances.

We do not mean to suggest, however, that this evolution is necessarily bad. We recognize that in many instances important rights will be vindicated only because the prevailing party may recover fees. And this court has held that the award of fees is one way to discourage the filing of frivolous or meritless claims. Price v. Price, 134 Ariz. 112, 654 P.2d 46 (Ct.App.1982). Thus, more judicial time will necessarily be devoted to a consideration of requests for fees and, hopefully, through this opinion, we can establish guidelines for the filing of fee applications which will facilitate the work of counsel as well as the work of this court.

The basis for the fee request in this case is a contractual provision in the parties' lease which provides that the lessor (Schweiger) may recover from the lessee (China Doll) reasonable attorneys' fees in connection with any legal proceeding in which the lessor shall prevail. Thus, in this opinion, we do not attempt to address special concerns which may exist in fee applications based upon statutes limiting or restricting the amount of fees which may be awarded. [4] Nor do we address herein the special considerations which arise in cases where fees are charged to the client on other than an hourly basis for time expended. [5] We are concerned only with determining reasonable attorneys' fees in commercial[138 Ariz. 187]

Page 931

litigation. See generally 2 S. Speiser, Attorneys' Fees § 15:1-49 (1973).

B. Previous Arizona Decisions

In Leggett v. Wardenburg, 53 Ariz. 105, 85 P.2d 989 (1939), the court held that in connection with the predecessor statute to A.R.S. § 14-3720 (providing for reasonable attorneys' fees in certain probate proceedings) the "payment of an attorney's fee must be reasonable and bear a direct relation to the amount involved, and the quality, kind and extent of the service rendered." Id. at 107, 85 P.2d at 990. In a domestic relations matter, the supreme court stated that "[l]awyers are entitled to a fair and reasonable compensation for their services. Courts should not hesitate in fixing an amount for attorney's fees based upon the evidence, and which is in accordance with the

usual reasonable charges made by members of the profession." Blaine v. Blaine, 63 Ariz. 100, 108, 159 P.2d 786, 789 (1945). The court went on to set the fee giving consideration to the "efforts of counsel in this cause, the time involved, the evidence as to the value of the services, and the character of the case ...." Id. And, in an action arising under a contract which contained a provision for the payment of reasonable attorneys' fees, the supreme court, without setting forth the components of a reasonable fee, held that it is error to award fees absent any proof of what is "reasonable." Crouch v. Pixler, 83 Ariz. 310, 315, 320 P.2d 943, 946 (1958).

The elements to be considered in determining a reasonable attorneys' fee were enumerated by the supreme court in Schwartz v. Schwerin, 85 Ariz. 242, 336 P.2d 144 (1959). In Schwartz, the amount of compensation had not been agreed upon by the parties, and thus the court held that the attorney's claim must be based on quantum meruit to establish the "reasonable value of services rendered." Id. at 245, 336 P.2d at 146. The court identified the factors to be considered in determining a reasonable fee as follows:

(1) the qualities of the advocate: his ability, his training, education, experience, professional standing and skill;

(2) the character of the work to be done: its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of the litigation;

(3) the work actually performed by the lawyer: the skill, time and attention given to the work;

(4) the result: whether the attorney was successful and what benefits were derived.

Id. at 245-46, 336 P.2d at 146. See Rule 29(a), Rules of the Arizona Supreme Court DR 2-106. [6] The court noted that no one element should predominate or be given undue weight. Thus, although Schwartz v. Schwerin is a useful starting point, it fails to give specific guidance in how the enumerated factors are to be used in calculating a reasonable fee. See generally Goodman, Attorney's Fees in Arizona, Adopting a New Approach, 18 Ariz.B.J. 8 (April, 1983).

C. Reasonable Billing Rate

The beginning point in a development of a reasonable fee is the determination of the actual billing rate which the lawyer charged in the particular matter. This can be distinguished from the traditional measure used in public-rights litigation which is generally referred to as the reasonable hourly rate prevailing in the community for similar work. Copeland v. Marshall, 641 F.2d 880, 892 (D.C.Cir.1980). Unlike public-rights litigation, and contingent-fee litigation, for example, in corporate and commercial litigation between fee-paying clients, there is no need to determine the reasonable hourly rate prevailing in the community for similar work because the rate charged by the lawyer to the client [138 Ariz. 188]

Page 932

is the best indication of what is reasonable under the circumstances of the particular case. Thus, the affidavit submitted in connection with an application for fees must indicate the agreed upon hourly billing rate between the lawyer and the client for the services performed in connection with the appeal. The court, of course, is not bound by the agreement between the parties. While it is unlikely that the court will adjust the hourly rate upward, upon the presentation of an opposing affidavit setting forth reasons why the hourly billing rate is unreasonable, the court may utilize a lesser rate. See Elson Development Co. v. Arizona Savings & Loan Association, 99 Ariz. 217, 222-23, 407 P.2d 930, 934 (1965) (contract provision stipulating amount of fees to be paid is binding only to the extent that it is reasonable); Guidelines for Compensation of Attorneys Appointed to Represent Indigent Persons in Criminal Appeals in the Court of Appeals and Supreme Court p 3 (Ariz.Sup.Ct. September 1, 1982) (Guidelines).

D. Hours Reasonably Expended

The prevailing party on appeal is "entitled to recover a reasonable attorney's fee for every item of service which, at the time rendered, would have been undertaken by a reasonable and prudent lawyer to advance or protect his client's interest in the pursuit" of a successful appeal. Twin City Sportservice v. Charles O. Finley & Co., 676 F.2d 1291, 1313 (9th Cir.), cert. denied, 459 U.S. 1009, 103 S.Ct. 364, 74 L.Ed.2d 400 (1982). Examples of the type of services which may be included in a fee application are:

1. Preparing pleadings and documents necessary to initiate the appeal.

2. Reviewing the records on appeal in anticipation of drafting the briefs.

3. Researching needed for drafting the briefs.

4. Drafting the briefs.

5. Preparing for oral argument and time at the argument.

6. Telephone calls and correspondence with other counsel directly related to the appeal.

7. Communication and correspondence with the client only if directly necessary and in furtherance of the appeal.

8. Travel time where necessary.

9. Preparing post-decision motions.

See Guidelines p 5. The affidavit of counsel should indicate the type of legal services provided, the date the service was provided, the attorney providing the service (if more than one attorney was involved in the appeal), and the time spent in providing the service. Amendment to Rule 21, Arizona Rules of Civil Appellate Procedure (effective September 1, 1983). It is insufficient to provide the court with broad summaries of the work done and time incurred. "[A]ny attorney who hopes to obtain an allowance from the court should keep accurate and current records of work done and time spent." In re Hudson & Manhattan R.R. Co., 339 F.2d 114, 115 (2d Cir.1964).

In order for the court to make a determination that the hours claimed are justified, the fee application must be in sufficient detail to enable the court to assess the reasonableness of the time incurred. Practitioners are advised to prepare their summaries based upon contemporaneous time records which indicate the work performed by each attorney for whom fees are sought. If counsel expects that the fee application will be opposed on the grounds that the hours claimed are excessive, counsel may find that it is useful to submit actual time records to support the fee request. Laje v. R.E. Thomason General Hospital, 665 F.2d 724, 730 (5th Cir.1982).

Just as the agreed upon billing rate between the parties may be considered unreasonable, likewise, the amount of hours claimed may also be unreasonable. If a particular task takes an attorney an inordinate amount of time, the losing party ought not be required to pay for that time. See Guidelines p 4. Furthermore, time spent on unsuccessful issues or claims may not be compensable. See Apache East, Inc. v. Wiegand, 119 Ariz. 308, 313, 580 P.2d 769, [138 Ariz. 189]

Page 933

774 (Ct.App.1978); Circle K. Corp. v. Rosenthal, 118 Ariz. 63, 69, 574 P.2d 856, 862 (Ct.App.1977). We turn now to an examination of this troubling question.

Fortunately, an extended discussion of this subject is unnecessary because of the recent decision of the United States Supreme Court in Hensley v. Eckerhart, 461 U.S. 424, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983). Although the Court was concerned with the meaning of the term "prevailing party" under 42 U.S.C.A. § 1978, the Court's reasoning is helpful for other cases in which a party prevails on some but not all issues. The Court recognized that a plaintiff (or appellant) may present in one case distinctly different claims for relief that are based on

different facts and legal theories. Where claims could have been litigated separately, fees should not be awarded for those unsuccessful separate and distinct claims which are unrelated to the claim upon which the plaintiff prevailed. See Epstein v. Frank, 125 Cal.App.3d 111, 177 Cal.Rptr. 831 (1981).

On the other hand, one claim for relief may involve related legal theories. "Much of counsel's time will be devoted generally to the litigation as a whole, making it difficult to divide the hours expended on a claim-by-claim basis." Hensley v. Eckerhart, 461 U.S. at ----, 103 S.Ct. at 1940. Thus, where a party has accomplished the result sought in the litigation, fees should be awarded for time spent even on unsuccessful legal theories. Where a party has achieved only partial or limited success, however, it would be unreasonable to award compensation for all hours expended, including time spent on the unsuccessful issues or claims. For example, when the plaintiff sues on a note, and the defendant successfully counterclaims, fees awarded to the plaintiff may be reduced to reflect the defendant's success. Pioneer Constructors v. Symes, 77 Ariz. 107, 112, 267 P.2d 740, 774 (1954). We agree with the Court's statement in Eckerhart that there is "no precise rule or formula for making these determinations." 461 U.S. at ----, 103 S.Ct. at 1941.

It should be recognized that an appellate court is somewhat unsuited for the fact-finding inquiry which is frequently necessary to properly determine reasonable fees for legal services rendered. Thus, we urge counsel to follow the hope expressed in Eckerhart that "[i]deally, of course, litigants will settle the amount of a fee." 461 U.S. at ----, 103 S.Ct. at 1941. If the parties find the time constraints of Rule 21 to be too limited for this purpose, the court will look favorably upon reasonable requests to extend the time period if it appears that a settlement of the fee amount will be likely.

IV. CONCLUSION

Under the standards enunciated above, the fee application submitted by Schweiger is plainly insufficient. The fee request fails to specify the agreed upon hourly billing rate between Schweiger and his counsel. The application fails to identify the legal services performed, the attorney that performed the legal services and the date on which the services were provided. In addition, counsel's affidavit fails to allocate any time between work performed on China Doll's appeal and work performed on Schweiger's cross-appeal. Although Schweiger is entitled to fees for all time reasonably expended in connection with the appeal of China Doll, having prevailed entirely, because he achieved only limited success in his cross-appeal, he is not entitled to recover fees for time incurred on the unsuccessful issues of pre-judgment interest and punitive damages.

The request for attorneys' fees submitted by Schweiger is denied without prejudice. Upon the filing of the opinion in this matter, Schweiger shall have ten days in which to submit an amended statement of costs and China Doll shall have five days after service of such statement in which to file any further objections.

HAIRE, P.J., and EUBANK, J., concur.

---

1 Of the $235, $220 is claimed for charges for copying of briefs. China Doll argues that $220 is too high. Schweiger offers nothing to indicate that the amount was "actually and necessarily expended." Rule 21(b), Arizona Rules of Civil Appellate Procedure (Rule). Thus, he is entitled to the presumptive cost of $2 for each typed page or $144.

Through October 1981 - $ 9,572.25
*933_ September 1982 - 1,696.50
October 1982 - 769.50
December 1982 - 977.50

TOTAL $13,015.75

2 China Doll also objected to the statement of costs on the grounds that it was untimely filed.

Our memorandum decision was filed November 23, 1982, and received by Schweiger the following day. The statement of costs was filed on Monday, December 6, 1982. Rule 21(a) provides that the statement of costs must be filed "within 10 days after the clerk has given notice that a decision has been rendered." The last day for filing the statement of costs was Friday, December 3, 1982.

The time limitation in which to file the statement of costs is not jurisdictional. Tovrea v. Superior Court, 101 Ariz. 295, 419 P.2d 79 (1966). No prior decision has expressly held that "notice" within the meaning of Rule 21(a) means the filing of the decision. Because Schweiger's statement of costs was only one day late, in the exercise of our discretion, we will permit the untimely filing of the statement of costs in this case.

3 A listing of at least 70 such statutes is contained in R. Corcoran & J. Cates, The Award of Attorneys' Fees in Civil Cases (May 6, 1983) (available from the State Bar of Arizona).

4 For example, A.R.S. § 12-348.D.2. places a ceiling on the hourly rate which may be used for setting fees in litigation with the state. Similarly, A.R.S. § 12-341.01. provides that a fee award is to "mitigate" the expense of litigation.

5 In certain types of cases, fees are not paid on an hourly basis. Thus, it has become necessary for the courts to establish formulas to construct a reasonable fee under the circumstances. The method which is currently the most popular is to calculate the lodestar, or product of the hours expended by a reasonable hourly rate of compensation, and adjust that amount up or down depending upon certain factors. See generally 3 H. Newberg, Newberg on Class Actions §§ 6900-7040 (1977); E. Larson, Federal Court Awards of Attorney's Fees 115-153 (1981). This method is unnecessary where the parties have agreed that payment for legal services is to be made based upon the attorney's billing rate charged for time actually expended.

6 The factors listed in Schwartz v. Schwerin and DR 2-106 are similar to those described in Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir.1974), a leading case describing a method for setting fees somewhat different than the lodestar approach discussed previously. See supra note 5.

Klinedinst ATTORNEYS

Lynda C. Shely
LShely@Klinedinstlaw.com

Recent Ethics Developments: ABA, Arizona, and Elsewhere!

Summer, 2024

By Lynda C. Shely[1]

The following overview of recent ethics opinions from the American Bar Association ("ABA") and Arizona is merely a summary of some recent highlights, as well as some additional national ethics issues. Reminder: ABA Opinions and prior Opinions from the State Bar of Arizona Committee on the Rules of Professional Conduct are not binding precedent. However, ethics opinions issued by the Arizona Supreme Court's Ethics Advisory Committee, which begin with the letters "EO-"*are* binding. Arizona Supreme Court Rule 42.1(l) provides that "Reliance on a final Committee opinion may be raised as a defense in any discipline proceeding."

American Bar Association Ethics Opinions

- **ABA Op 501 "Solicitation" for Law Firms (2022)**

ABA Model Rule of Professional Conduct 7.3(a), amended in 2018, contains a narrowed definition of what constitutes a "solicitation." Rule 7.3(b) delineates the type of solicitation that is expressly prohibited. Rules 8.4(a) and 5.3 extend a lawyer's responsibility for solicitation prohibitions not only to actions carried out by the lawyer directly but also to the acts of persons employed by, retained by, or associated with the lawyer under certain circumstances.
Rule 5.3(b) requires lawyer supervisors to make reasonable efforts to ensure that all persons employed, retained, or associated with the lawyer are trained to comply with the Rules of Professional Conduct, including Rule 7.3(b)'s prohibition. Partners and lawyers possessing comparable managerial authority in a law firm must make reasonable efforts to ensure that the firm has training that reasonably assures that nonlawyer employees' conduct is compatible with the professional obligations of lawyers. Under Rule 5.3(c), a lawyer will be responsible for the conduct of another if the lawyer orders or with specific knowledge of the conduct ratifies it, or if the lawyer is a manager or supervisor and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Rule 8.4(a) makes it professional misconduct for a lawyer to "knowingly assist or induce another," to violate the Rules or knowingly do so through the acts of another. Failing to train a person employed, retained, or associated with the lawyer on Rule 7.3's restrictions may violate Rules 5.3(a), 5.3(b), and 8.4(a).

Many legal consumers obtain information about lawyers from acquaintances and other professionals. The Model Rules of Professional Conduct are rules of reason. Recommendations or referrals by third parties who are not

[1] *Lynda Shely is admitted to practice law in Arizona, the District of Columbia and Pennsylvania. Reading this article obviously does not create an attorney/client relationship with Lynda.*

employed, retained, or similarly associated with the lawyer and whose communications are not directed to make specific statements to particular potential clients on behalf of a lawyer do not generally constitute "solicitation" under Rule 7.3.

- **ABA Op. 502 Pro Se Lawyers (2022)**

*Under Model Rule 4.2,*1 *if a person is represented in a matter, lawyers for others in the matter may not communicate with that represented person about the subject of the representation but instead must communicate about the matter through the person's lawyer, unless the communication is authorized by law or court order or consented to by the person's lawyer.*
When a lawyer is self-representing, i.e., pro se, that lawyer may wish to communicate directly with another represented person about the subject of the representation and may believe that, because they are not representing another in the matter, the prohibition of Model Rule 4.2 does not apply. In fact, both the language of the Rule and its established purposes support the conclusion that the Rule applies to a pro se lawyer because pro se individuals represent themselves and lawyers are no exception to this principle.
Accordingly, unless the pro se lawyer has the consent of the represented person's lawyer or is authorized by law or court order to communicate directly with the other represented person about the subject of the representation, such communication is prohibited. In this context, if direct pro se lawyer-to-represented person communication about the subject of the representation is desired, the pro se lawyer and counsel for the represented person should reach advance agreement on the permissibility and scope of any direct communications.

- **ABA Op. 504 Choice of Law (2023)**

When a lawyer practices the law of more than one jurisdiction, choice-of-law questions arise concerning which jurisdiction's ethics rules the lawyer must follow. Model Rule 8.5 provides that when a lawyer's conduct is in connection with a matter pending before a tribunal, the lawyer must comply with the ethics rules of the jurisdiction in which the tribunal sits, unless otherwise provided. For all other conduct, including conduct in anticipation of litigation not yet filed, a lawyer must comply with the ethics rules of the jurisdiction in which the lawyer's conduct occurs. However, if the predominant effect of the lawyer's conduct is in a different jurisdiction, then the lawyer must comply with the ethics rules of that jurisdiction.

- **ABA Op. 506 Nonlawyer Supervision (2023)**

A lawyer may train and supervise a nonlawyer to assist with prospective client intake tasks including obtaining initial information about the matter, performing an initial conflict check, determining whether the assistance sought is in an area of law germane to the lawyer's practice, assisting with answering general questions about the fee agreement or process of representation, and obtaining the prospective client's signature on the fee agreement provided that the prospective client always is offered an opportunity to communicate with the lawyer including to discuss the fee agreement and scope of representation. Because Model Rule 5.5 prohibits lawyers from assisting in the unauthorized practice of law, whether a nonlawyer may answer a prospective client's specific question depends on the question presented. If the prospective client asks about what legal services the client should obtain from the lawyer, wants to negotiate the fees or expenses, or asks for interpretation of the engagement agreement, the lawyer is required to respond to ensure that the non-lawyer does not engage in the unauthorized practice of law and that accurate

information is provided to the prospective client so that the prospective client can make an informed decision about whether to enter into the representation.

Caution: There are no Arizona Opinions or cases endorsing or approving of this ABA Opinion. Arizona lawyers still should try to have each client speak with a lawyer about the scope of representation and engagement terms.

- **ABA Op. 507 Office Sharing (2023)**

It is generally permissible for lawyers to participate in office sharing arrangements with other lawyers under the ABA Model Rules of Professional Conduct. At the same time, office sharing lawyers should appreciate that such arrangements will require them to take appropriate measures to comply with their ethical duties concerning the confidentiality of information, conflicts of interest, supervision of non-lawyers, and communications about their services. The nature and extent of any additional safeguards will necessarily depend on the circumstances of each arrangement.

- **ABA Op. 508 Witness Preparation (2023)**

A lawyer's role in preparing a witness to testify and providing testimonial guidance is not only an accepted professional function; it is considered an essential tactical component of a lawyer's advocacy in a matter in which a client or witness will provide testimony. Under the Model Rules of Professional Conduct1 governing the client-lawyer relationship and a lawyer's duties as an advisor, the failure adequately to prepare a witness would in many situations be classified as an ethical violation. But, in some witness-preparation situations, a lawyer clearly steps over the line of what is ethically permissible. Counseling a witness to give false testimony or assisting a witness in offering false testimony, for example, is a violation of at least Model Rule 3.4(b). The task of delineating what is necessary and proper and what is ethically prohibited during witness preparation has become more urgent with the advent of commonly used remote technologies, some of which can be used to surreptitiously "coach" witnesses in new and ethically problematic ways.

- **ABA Op. 510 Prospective Client Conflicts (2024)**

Under Rule 1.18 of the Model Rules of Professional Conduct, a lawyer who was consulted about a matter by a prospective client, but not retained, is disqualified from representing another client who is adverse to the prospective client in the same or a substantially related matter if the lawyer received from the prospective client "disqualifying information"—i.e., information that could be significantly harmful to the prospective client in the matter. But, if the lawyer "took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client," and the firm takes specified procedural precautions, then the lawyer's conflict of interest is not imputed to others in the lawyer's firm.

This opinion addresses the "reasonable measures" necessary to avoid the imputation of conflicts of interest under Rule 1.18.1 First, information that relates to "whether to represent the prospective client" includes information relating to (1) whether the lawyer may undertake or conduct the representation (e.g., whether a conflict of interest exists, whether the lawyer can conduct the work competently, whether the prospective client seeks assistance in a crime or fraud, and whether the client seeks to pursue a nonfrivolous goal), and (2) whether the engagement is one the lawyer is willing to accept. Second, to avoid imputation, even if information relates to "whether to represent the prospective client," the information sought must be "reasonably necessary" to make this determination. Third, to avoid exposure to disqualifying information that is not reasonably necessary to determine whether to undertake the representation, the lawyer must limit the information requested from the prospective client and should caution the prospective client at the outset of the initial consultation not to volunteer information pertaining to the matter beyond what the lawyer specifically requests.

Arizona Ethics Opinions

Arizona binding ethics opinions may be found on both the State Bar of Arizona website and the Arizona Supreme Court's website under the "Certification and Licensing Division" tab. There were no formal Arizona ethics opinions issued in 2023.

- **EO-20-0008 (2022): Not Reviewing Metadata**

"A lawyer who authors and sends an electronic document to someone other than the client on whose behalf the document was drafted, or other privileged persons, is responsible, under ER 1.6, for first scrubbing the document of confidential metadata that may be contained within the electronic file using standard software applications for doing so. A lawyer who receives an electronic document or other type of electronic file from another lawyer may ethically use the software applications within which the file was created and saved to retrieve and review embedded metadata unless the lawyer knows or reasonably should know that the metadata was included inadvertently—in which case the receiving lawyer should follow the process in ER 4.4(b). Metadata that contains material information that the lawyer knows or reasonably should know is confidential or privileged should be assumed to be inadvertently disclosed. "Mining" for metadata, meaning searching for metadata using software applications that are designed to retrieve metadata despite a sending lawyer's reasonable efforts to scrub it, violates ER 4.4(a). This opinion approves in part and disapproves in part State Bar of Arizona Opinion 07-03. A lawyer may not, without the prior informed consent of the recipient, ethically embed in an email to potential, current, or future clients, or other lawyers, hidden email-tracking software, also known as a web beacon, pixel tag, clear GIF or invisible GIF. Use of such a device violates ER 4.4."

- **EO-19-0010: Responding to online former client criticism**

The revised Opinion conclusion notes that it is not expressing a bright-line standard but lawyers must have the ability to respond to false allegations about the lawyer's prior representation of a client. "For these

reasons, we conclude that a lawyer may reveal confidential client information to the extent reasonably necessary to respond to a former client's online remarks about the lawyer that constitute an accusation of serious misconduct or incompetency." The Opinion explains:

> Before disclosing confidential information, a lawyer must "reasonably believe that options short of use or disclosure have been exhausted or will be unavailing or that invoking them would substantially prejudice the lawyer's position in the controversy." RESTATEMENT (THIRD)OF THE LAW GOVERNING LAWYERS § 64, cmt. e (2000). The lawyer should, for example, consider first asking the curator of the website to remove the comments, or asking the client to retract or correct the comments.
>
> In addition, any confidential information that is disclosed must be carefully limited to what is truly necessary for a meaningful defense to the charges made, and of course the lawyer's assertions must be accurate. The lawyer must also scrupulously refrain from making comments or revealing extraneous information that, to a reasonable reader, would appear designed to intimidate or embarrass the client. And, if the matter being discussed is on-going, the lawyer must refrain from making any statements that have a reasonable likelihood of compromising the client's position in the matter.

2024 Arizona Rules of Professional Conduct Amendments: Malpractice Coverage and Trust Accounts

Effective in January, 2024 Arizona lawyers are required to notify clients, in writing, if they do *not* have malpractice insurance. This must be done before or promptly after entering into the attorney/client relationship. Lawyers also must notify clients within thirty days if they lose their malpractice coverage. Rule 1.4 was amended to include these requirements.

Also effective in January, 2024 is an amendment to Rules of Professional Conduct 1.15 and 2.4 that now permit (but it is not required) lawyers to deposit into their firm trust accounts advance fees paid for expert witness and alternative dispute resolution services (such as serving as a mediator or arbitrator). Previously Rule 1.15 only permitted depositing funds related to representation of a *client* into trust. Because expert witness work and serving as a third-party neutral do not involve representation of a client, the Rule was amended to nevertheless provide the option to deposit such advance fees into a lawyer's trust account.

2023 Arizona Rules of Professional Conduct Amendment: Referral Fees

January 1, 2023 Arizona Rule of Professional Conduct 1.5(e) added a new Comment to explain that this Rule does *not* apply when a lawyer is merely paying a referral fee to someone else and that person is not going to be "jointly responsible" for the representation. New Comment [9] provides:

> Fee Sharing versus Compensation for Referral
>
> [9] Paragraph (e) applies only to the sharing of a fee paid by a client for joint work. It does not apply to compensation paid or received solely for the referral of a client. Compensation for a referral and any associated impact on the representation of the client and/or the legal fee may be governed by ERs 1.5(a) and 1.7(a)(2).

Thus, a client fee agreement does not need to list the name of another lawyer (or anyone else) who is going to receive a portion of the fee just as payment for a referral. CAUTION: Even though clients do not need to be told who is receiving a referral fee, a lawyer still must obtain client consent to disclose the *fact* of representation to someone else. The fact that a lawyer represents a client actually is "confidential" information under ER 1.6 and a lawyer CANNOT thank someone for a referral without obtaining client consent. Really.

Federal Reporting Requirements Starting in 2024! – For Both Clients and SOME Law Firms!!

In order to combat money laundering and terrorism financing in 2020 Congress enacted the Corporate Transparency Act ("CTA"), which will require, starting January 1, 2024, filing with Financial Crimes Enforcement Network ("FinCEN"), a department of the United States Treasury, and verifying the "beneficial ownership" of certain small companies.

Spring 2024 Note: While there currently is a stay on implementation of the CTA, firms should continue to caution their clients about the likelihood that the clients will need to comply with the beneficial ownership reporting requirements – eventually.

- **Exempt entities that do not need to report**

The CTA reporting requirements will affect small businesses such as LLCs and PCs. Companies that are exempt from the reporting requirements include: public companies, government entities, financial institutions, public utilities, investment advisors/companies, certain accounting firms, insurance companies, and some 501(c) organizations, and possibly companies that employ more than 20 U.S. fulltime employees and have more than $5million in gross annual sales (and operate in the U.S.).

- **Reporting "Beneficial Owners" and Company Information**

The report to FinCEN must identify information about the reporting company, including all "beneficial owners" and the "applicant" who assisted in creating the reporting company (if the company is formed after January 1, 2024) – which could be the law firm or individual lawyers.

"Beneficial owners" of a company include anyone who either: a) exercises "substantial control" over the company (senior officers and decision-makers; or b) owns or controls 25% or more of an ownership interest in a company (but not minor children, nominees, inheritors or creditors).

"Applicant" reporting – only for companies formed after January 1, 2024 - means the individual who filed the company formation documents or registered the company with the state to do business. This will include lawyers and law firms who file corporate documents for clients!

Starting in January, 2024, each "reporting company" must report to FinCEN:

- The "reporting company's" name, address, jurisdiction where formed, and TIN or EIN
- The following information for *each* beneficial owner (and applicant for newly formed companies): full names, date of birth, current home address, and some government identification such as a driver's license or passport with photo.

Again, these reports are mandatory but the "applicant" information (i.e., person who actually files the formation documents or oversees the filing of the formation documents – such as a lawyer) is only required for companies formed after January 1, 2024.

WARNING: THESE REGULATIONS WILL REQUIRE SMALL LAW FIRMS TO FILE!

WARNING: If your firm assists in the formation of companies, you must be aware of this reporting requirement and clarify for existing clients (i.e., formed before January 1, 2024) if they are going to file the information with FinCEN or if you will be responsible. For companies you form after January 1, 2024, you may be required to be listed as an "applicant" for the reporting company – prepare your clients for these disclosures and verify their information (see below).

Recent Discipline Decisions – From Arizona and Elsewhere

The following are brief reminders of how lawyers may end up with discipline sanctions - mostly from 2023 Arizona discipline cases - but a few from other states as well. These are only *some* of the 2023 Arizona discipline cases. For a full list and the decisions, visit: https://www.azcourts.gov/pdj

- Do not use ChatGPT to write pleadings, then not confirm the citations are legitimate, and then not either withdraw the pleading (when you do find out the cites are fake) or at least notify the court of the errors. *People v. Zachariah C. Crabill,* 23PDJ067 (November 22, 2023)(Colorado lawyer suspended for one year and a day for violations of ERs 1.1, 1.3, 3.3 and 8.4(c)).
- Don't steal from the firm: *State of New York v. Cohen*, case number 71228/2022 (pled guilty to felonies involving misappropriating $1.2 million from his former firm where he was a partner, tax fraud, and perjury).
- Don't practice law if you know you are on retired status: *In re Robert Hungerford,* PDJ 2023-9019 (Sept. 2023)(reprimand for violating Nevada and Arizona rules for practicing law while retired).
- Do not try to represent both parties to a divorce when you don't practice in that area – even if they are your friends. *Matter of Charity Clark,* PDJ 2022-9071 (April, 2023)(admonition and probation to attend Ten Deadly Sins of Conflicts CLE)

- Don't engage in harassment of your ex-spouse including not creating fake dating profiles for her, resulting in two misdemeanor convictions. *In re Daniel Fredenberg,* PDJ 2023-9039 (October 2023)(suspended six months and one day).
- Don't get convicted of drug trafficking, SEC violations, misprison of felony (misrepresentations to fraudulently induce others to invest in scheme), or any other crimes. These may result in interim and/or long term suspensions.
- Don't loan money to clients and attempt to represent them in related litigation where you also are a named defendant and haven't obtained the appropriate conflict waivers. *In re Frederick Taylor,* PDJ2023-9071 (Sept. 2023)(60 day suspension for violations of ERs 1.5, 1.7, 1.8(a), and 8.4(b)).
- Don't hold yourself out as a law firm with someone else where you then have imputed conflicts when you really aren't one firm. *In re Noah J. Tyler,* PDJ2022- 9075 (Jan 2023)(admonition and probation for CLE for violations of ERs 1.8, 7.1, and 8.4(d)).
- Be careful with trust account money! Keep all of the necessary documentation and communicate with client lienholders in a prompt manner. *In re Marlon Branham* PDJ 2023-9090 (Feb 2024)(reprimand and 2 years probation for failure to maintain trust account records and promptly communicate with medical lien holder).
- Do not ask for sex or your clients' worn underwear in lieu of fees: *Pennsylvania v. Corey Kolcharno,* case number CP-35-CR-0001526-2022 (pled guilty to four felonies involving clients).

Generative Artificial Intelligence Ethics Cautions

In case the term "ChatGPT" is unfamiliar, Google it. This is merely one example of an online generative artificial intelligence ("AI") application that searches billions of bits of data on the internet in response to specific queries to answer such requests as "Draft a Motion for Summary Judgment applying Arizona law in a breach of contract case," or "Prepare an employment contract using Washington state law for an independent contractor." It will prepare the actual documents, not just give you a link to a website. Sounds like practicing law, right? Maybe. But it also can be a very useful starting point for lawyers….with several ethics reminders.

This article summarizes just a couple of key ethics cautions lawyers should consider when using any artificial intelligence to assist with drafting legal documents. As of March, 2024 there are no official Arizona ethics opinions on this topic but Florida Opinion 24-1 and recommendations from the California Bar Committee on Professional Responsibility and Conduct (COPRAC) set forth recommendations for lawyers when using generative AI.[2]

1. *AI Can Make Up Stuff*

[2] *See also*, NJ Supreme Ct Committee on AI and the Courts, 2024 "P*reliminary Guidelines on the Use of Artificial Intelligence by New Jersey Lawyers" (*Discusses duties of accuracy, candor, confidentiality, supervision, and avoiding conduct involving discrimination).

The media is replete with stories about how lawyers are getting sanctioned by judges for submitting pleadings created by generative AI that included "hallucination" (aka fictitious) case cites or statutes. Because of the concern about AI-generated pleadings that contain false references to cases, rules or statutes, some courts (in other states) have even issued orders either banning the use of AI or requiring lawyers to attest to having confirmed the accuracy of citations in their pleadings. Note: You should have been doing that already – it is required by at least Arizona Rules of Professional Conduct 1.1 (Competence), 3.1 (Meritorious Claims), 3.3 (Candor), and 8.4(Misconduct).

Court orders banning the use of AI may be problematic because spellcheck actually is a form of AI. So are programs that auto-populate email addresses or suggest the next word in a sentence. What is of concern is when a computer generates a legal document – completely – and a lawyer relies on the legal document without checking citations and alleged quotations from cases.

But this is just the latest *assistance* for lawyers. Think of this as the 2023 version of off-shore researchers/drafters in other countries – or drafting by a first-year summer associate who has no experience in law firms. Lawyers of course are responsible for confirming the accuracy of documents prepared by others – whether the "others" are humans or machines. AI – even legal industry-specific systems by legal vendors – might contain hallucinations or other errors. Just like a new lawyer or paralegal or remote research assistant might mistakenly cite to something that does not exist. Verify each citation, quote, page number and rule number. Legal industry AI products offered by Lexis/Nexis, Clio, Westlaw and others *might* be efficient tools for lawyers to get a first draft of a contract or pleading. However, lawyers *must supervise artificial intelligence* just as you supervise staff, pursuant to Rule 5.3. ChatGPT and other generative open artificial intelligence (AI) platforms are *not* Westlaw or Lexis equivalents – ChatGPT *will make up cases, citations, and law.* Even if using a more law-based AI platform, such as in Westlaw or Lexis, lawyers must review the citations to confirm accuracy…just as you would review a draft from a new associate or paralegal. Do not use generative AI to prepare legal documents in areas of law for which you are not familiar. Again, while it might generate a basic starting point for a document from which you can do further drafting, if you are not familiar with the practice area, there is a greater risk that you will not catch inaccuracies, in violation of Rule 1.1.

Lawyers have ethical obligations under Rules of Professional Conduct 1.1, 3.3, 5.3 and 8.4 to review and check the "work" completed by AI for accuracy. Yes, this has been said multiple times – intentionally.

Consider a firm policy that requires lawyers, legal paraprofessionals, summer associates, law clerks, contract lawyers, and others to confirm that they have checked all citations (cases, statutes and rules) through a valid source for accuracy – such as Westlaw, Lexis, or Fastcase. *Do not rely on ChatGPT to confirm citations!!*

2. *Do Not Enter Client Confidential Information Into Open AI Platforms*

Do NOT enter client identifying information (including client names and even opposing party names) into ChatGPT or any other open AI online source (Google's version is Bard) that then commingles that information in its vast database…which other people also can find. Model Rule 1.6, regarding protecting client confidential information, requires that lawyers use reasonable measures to safeguard client information and Rule 1.1 requires

that lawyers understand the "risks and benefits" of using technology – meaning lawyers must remember that they should *not use open AI* with client information.

So, for instance, if a lawyer asks ChatGPT to "write a motion for summary judgment in Bucks County, PA Court of Common Pleas for plaintiff Jane Jones v. defendant ACME", that information (and the resulting motion for summary judgment) could now be available *to your opposing counsel.* While it may be unlikely that ChatGPT would disclose that same motion to someone else putting in the same search query, it is a possibility. And it also does not keep that pleading confidential as to your firm – or even the search query as confidential. Lawyers have a duty to maintain confidential information under ER 1.6, which means reading the Terms of Use for websites/AI platforms that offer generative legal research/drafting assistance to determine who can see the search queries and results. Unless you are 1000% positive that the platform will not share your queries or results with anyone else, do not enter client information.

3. *Disclose the Use of AI?*

Does your firm website use a chatbot to interact with visitors? Does it disclose that it is a chatbot and not a human? Do not use a chatbot that simply says "hi, I'm [Brenda] a legal assistant here to help" when "Brenda" actually is not a real human.

While some ethicists suggest that lawyers must notify their clients whenever they are using *any* AI, that seems unnecessary. Do you currently get client consent to use spellcheck? Of course not. You *would,* however, need a client's "informed consent" if you were to disclose client confidential information in an open AI platform. And remember that *all information is confidential under Rule 1.6* – even public record information.

4. *Be Aware of Court Restrictions on the Use of AI*

As mentioned above, be aware of court-specific restrictions/requirements if using AI to prepare pleadings. Some courts in other states *prohibit* the use of generative AI, some require disclosure by counsel if it was used, and some simply require counsel attestation as to the accuracy of citations in a pleading. While there are no Arizona court administrative orders currently imposing such disclosures, continue to check for updates.

5. *How Are You Going to Bill Clients For AI-Generated Documents?*

How will you bill for AI-generated documents? Just like a firm cannot bill the second and third clients for all of the time it took to draft the initial template for a Motion for the first client, the firm cannot spend five minutes on ChatGPT to prepare that motion and then try to bill ten hours of drafting time just because it would have taken ten hours to draft without ChatGPT (or other AI services). Yes, the lawyer may charge for the time it takes to double-check the citations used in the draft motion but clients must receive the benefit of the efficiencies from using AI. *See ABA Op.* 93-379 (Re-use of work product does not mean the same amount of time may be billed for the reused product). Whether the lawyer may have a *flat fee* that charges for the value of the word product is

a possibility – as long as the flat fee is "reasonable" for the work performed under the factors set forth in Rule 1.5(a).

Lynda C. Shely, is a shareholder in Klinedinst PC in Phoenix, Arizona, where she provides legal ethics and Alternative Business Structure (ABS) law firm regulatory advice to lawyers and law firms. Lynda was the 2020 – 2023 chair of the ABA Standing Committee on Ethics and Professional Responsibility, an Arizona Delegate in the ABA House of Delegates, and currently volunteers with several other nonbillable groups involved in legal ethics matters, including as a member of the Arizona Supreme Court's Alternative Business Structures Committee, the Arizona Supreme Court's Steering Committee on AI and the Courts, the ABA Standing Committee on Professional Regulation, and the State Bar of Arizona Ethics Advisory Group. She is a past president of the Association of Professional Responsibility Lawyers, the National ABS Law Firm Association, and the Scottsdale Bar Association and has been an adjunct professor at all Arizona law schools, teaching professional responsibility. Prior to opening her own firm, she was the Director of Lawyer Ethics for the State Bar of Arizona. Prior to moving to Arizona, Lynda was an attorney with Morgan, Lewis & Bockius in Washington, DC. Lynda received her BA from Franklin & Marshall College in Lancaster, PA and her JD from Catholic University in Washington, DC. She has received several awards for her contributions to the legal profession including most recently the 2022 Maricopa County Bar Association Member of the Year Award and the 2023 Maricopa County Bar Hall of Fame.

CRASH COURSE ON ESTATE PLANNING FOR DIVORCE ATTORNEYS

Estate Planning Documents

- Revocable Living Trust
- Last Will and Testament
- Durable Power of Attorney
- Health Care Power of Attorney
- Living Will
- HIPAA Authorization

Estate Planning – Why Bother?

- Control over “who” and “how”
- Privacy
- Reduce the administration burden

Deeper Look - Revocable Living Trust

- The trust is the foundation of an estate plan
- Creating a trust
- Funding a trust (*and change in legal title*)
- Dead Hand Control
- Disinheriting
- Trustor's intent should control

Notable Trust Provision: Slayer Language

"If a beneficiary (including, but not limited to, a primary beneficiary, a current beneficiary, remote beneficiary, contingent beneficiary, or remainder beneficiary) under this instrument: (i) was a principal or an accomplice in willfully bringing about the death of a Settlor, a descendant of a Settlor, or another beneficiary of this instrument; and (ii) but for the application of this section, a result of that death would be for the beneficiary to acquire, enlarge, or accelerate a benefit for themselves under this instrument; then such beneficiary shall be deemed for all purposes under this instrument to have predeceased the Settlor.

This section does not apply to deaths resulting from the lawful exercise of a medical power of attorney, a lawful decision to withhold medical treatment, or the lawful exercise of the beneficiary's right of self-defense, defense of others, or any other legal justification.

In determining whether a beneficiary was a principal or an accomplice in willfully bringing about the death of a Settlor, a descendant of a Settlor, or another beneficiary of this instrument, the Trustee shall consider the facts and circumstances surrounding the death, including, but not limited to, recorded confessions, plea bargains, settlements, and criminal or civil trial verdicts.

If, and for so long as determined, the beneficiary is not competent to stand trial, the beneficiary shall be deemed incapacitated under this instrument.

If found not guilty by reason of insanity, the beneficiary shall be deemed a slayer and this section shall apply."

Notable Trust Provision: Pet Language

"As soon as practicable after my death, the Trustee shall distribute my dog, CHARLIE, a Boston Terrier male, and the amount of Twenty Thousand Dollars ($20,000), to FRIEND, with instruction that such amount shall be used for the care and comfort of CHARLIE until the end of his natural life. Any funds which may remain after CHARLIE's natural life may be kept by FRIEND for her personal use."

Alternative: Pet Trust

Community Property and Transmutation Language

- Sample Provision: “Any community property transferred to the trust, including the property’s income and the proceeds from the property’s sale or exchange, will retain its character as community property during our lives, to the same extent as if it had not been transferred to the trust.”
- Sample Provision: “Separate property transferred to the trust will retain its character as separate property. Our separate property may be identified as the separate property of either of us on the attached schedules. The separate property of either of us, including the property’s income and proceeds from the property’s sale or exchange, will remain separate property. Each of us has the unrestricted right to remove all or any part of our separate property at any time.”

Deeper Look – Last Will & Testament

- Goal is to execute but never need.
- Modern purpose and pour-over provisions.
- Guardianship provisions – or risk crazy mother-in-law.

Deeper Look – Health Care Power of Attorney

- Preferences on medical treatment and end-of-life decisions
- Burial or cremation
- Anatomical gifts
- Agent's authority to restrict visitation
- Living Will preferences

Health Care Power of Attorney - Cremation

- ARS § 32-1365.02, Subsection (D): In determining who the proper authorizing agent is, the order of preference is the same as provided in § 36-831
- 36-731(A): Generally, the duty of burying the body of or providing other funeral and disposition arrangements for a dead person devolves in the following order:
    1. If the dead person was married, on the surviving spouse unless either (a) the dead person was legally separated from the person's spouse; or (b) a petition for divorce or for legal separation from the dead person's spouse was filed before the person's death and remains pending at the time of death.

Divorce Client Initial Meeting
No Estate Plan

- Need Health Care Power of Attorney, Durable Power of Attorney, and HIPAA.
- Individual revocable trust.
- Last Will & Testament.

Divorce Client Initial Meeting
Yes Estate Plan

- Set out to destroy what client created
- New power of attorney documents
- New individual revocable trust
- New will

Revocation of Trust and Direction to Trustee

- Trust Provision: “Each Trustor individually retains the right to revoke any term or provision of this trust in whole or in part as to each Trustor’s separate property and share of any community property.”
- Sample Revocation and Direction to Trustee: “I hereby revoke and terminate the Joint Marital Trust as to all of my separate property and all of my interest in the community property, and direct the Trustee of the Joint Marital Trust to transfer and convey all of my separate property and all of my interest in the community property held in the Joint Trust to the Trustee of the Single Person Trust.”

Divorce Client Initial Meeting
Yes “Advanced” Estate Planning

- Generally involves irrevocable trust(s) done for estate tax planning purposes.
- Can have significant consequences upon divorce.
- Can be difficult to undo or fix.
- Case-by-case.

Federal Estate Tax: 2-Minute Summary

- Tax not on wealth, tax on transfer of wealth.
- Unified exemption amount: tax-free transfers of wealth.
- Current exemption: $10,000,000 ($13,610,000 adjusted for inflation).
- January 1, 2026 exemption amount reduction.
- Annual gift exclusion: $18,000 in 2024.
- Unlimited Marital Deduction and Portability.

“Advanced” Estate Planning Trusts Alphabet Soup

- ILITs
- CRTs
- CLTs
- GRTs
- QPRTs
- SLATs

ILITs: Irrevocable Life Insurance Trusts

- Trust primarily designed to hold life insurance on trustor's life.
- ILIT's trustee (not trustor) owns the policy.
- On trustor's death, policy proceeds paid to ILIT.
- Funded, sometimes on recurring annual basis, with annual gift exclusion gifts.

ILIT Issues in Divorce

- Single-life policy or second-to-die?
- If single-life, dealing with possibility that ex-spouse could either (a) be beneficiary of life insurance proceeds, or (b) be responsible for funding.
- If second-to-die, need to ensure that funding obligations will be satisfied.

CRTs: Charitable Remainder Trusts

- Two Types:
  - Charitable Remainder Annuity Trust (CRAT): Pays a specific dollar amount each year.
  - Charitable Remainder Unitrust (CRUT): Pays a percentage of the value each year.

CRTs and Divorce

- Likely not a significant problem but could impact support calculation.
- If the spouses are each entitled to a portion of income stream of a CRT, they can retain the status quo (although if one of the spouses is acting as trustee, they may prefer to appoint a neutral trustee).
- Spouses can split the trust into two separate charitable remainder trusts. The income recipients of the former trust would each be named as sole income recipient of one of the newly created trusts.
- The spouses can also terminate the trust early by distributing a pro-rata share of the present value of the income stream to the individuals and the remainder to the charitable remainder beneficiary.

CLTs: Charitable Lead Trusts

- Inverse of CRTs.
- The grantor contributes assets to fund the CLT, which is set up to operate for a fixed term such as a set number of years or the life of one or more people. Payments from the CLT are disbursed to the selected charity or charities as either a fixed annuity payment (a CLAT) or a percentage of the trust (CLUT), depending on how the trust has been structured. At the end of the term, the remaining assets are distributed to non-charitable beneficiaries, often family members of the grantor.

CLTs and Divorce

- Usually not an issue because charitable organization is current beneficiary and descendants are remainder beneficiaries.
- Could be an issue if the grantor (or spouse) is named as remainder beneficiary and trust was funded with community funds.
- Most likely issue: Both spouses were grantors and they retained the ability to change the charitable beneficiaries – and they want different charitable beneficiaries.

GRTs: Grantor Retained Trusts

- Two types: Grantor retained annuity trusts (GRATs) and grantor retained unitrusts (GRUTs).
- Irrevocable trust where grantor transfers assets to a trust. A pre-determined amount (either a set amount or a set percentage of assets) is returned to the grantor on an annual basis. At the conclusion of the GRAT term, all assets remaining in the trust pass to the remainder beneficiaries free of gift and estate taxes.

GRTs and Divorce

- Look at how the annuity payment is structured.
- Could result in one spouse receive none of the distributions during the GRAT term if not named as beneficiary.
- Look at who is the grantor for income tax purposes.

QPRTs: Qualified Personal Residence Trusts

- Grantor creates irrevocable trust and then transfers his/her residence to the trust.
- For a set amount of time, the grantor can live in the residence rent free.
- After the expiration of the set amount of time, the residence goes to the beneficiaries.
- Sometimes, for tax planning purposes, the residence is first transferred to the sole and separate property of one spouse prior to transferring the residence to the trust.

QPRTs and Divorce

- Potential disaster.
- Residence is not a marital asset subject to division upon divorce.
- One spouse may have no right to live in residence (and no right to force a sale and receive any of the proceeds).

SLATs: Spousal Lifetime Access Trusts

- Proceed with caution.
- Irrevocable trust where the initial beneficiary is the grantor's spouse (and potentially descendants).
- Upon spouse's death, remaining assets pass to grantor's descendants.
- Often drafted in a way so that the grantor remains responsible for SLAT for income tax purposes until grantor's death.
- Theory Behind SLATs: Spouse #1 transfers assets to SLAT for benefit of Spouse #2 (and Spouse #2 can do the same for Spouse #1) and, *as long as they remain married*, there is really no change in economic circumstances.

SLATs and Divorce

- Tax laws treat the grantor as owner of SLAT assets for income tax purposes, but the SLAT (and not the grantor) is treated as the owner of the assets for all other purposes, including the state property laws that apply upon divorce.
- Possible that the grantor-spouse is responsible for the income on the SLAT but is also in a reduced economic position compared to the beneficiary spouse.
- Disaster Scenario: Wife transfers income-generating and rapidly appreciating assets into a SLAT for the benefit of Husband during Husband's lifetime, and then their descendants upon Husband's death. Wife and Husband divorce. Now, Wife remains responsible for the income tax liability of the SLAT – but Husband is the one who enjoys the income and can receive principal distributions until death.

Advance Estate Planning
Ancillary Issues

- Retained powers of grantor and grantor trust issues.
- Trustee and Discretionary Distributions.
- Powers of a Trust Protector.
- Ongoing maintenance to preserve the benefits of advance estate planning.

Advanced Estate Planning
What Should Divorce Attorney Do?

- Case-by-case analysis – need to determine the rights and financial interests of your client under the terms of trusts and what they gave up.
- May need to request a complete copy of the trust document, gift tax return, income tax returns, and request trust financial records.
- Could be as simple as turning off the grantor trust provisions.

Interest in Closely Held Business

- Operating Agreements or Partnership Agreements often contain a clause providing that if a member/partner divorces, and that member/partner does not receive all of ownership interest in the divorce (i.e., the ex-spouse receives a portion of the ownership interest), then it triggers a purchase option.
- Purchase price can be based on agreement, appraisal, or some other valuation formula.
- Will want to review any operating agreement or partnership agreement before discussing property division because it may be more beneficial to relinquish interest in entity in exchange for other assets.

Phillip Hilliard

- Warner Angle Hallam Jackson & Formanek PLC
- philliard@warnerangle.com
- (602) 264-7101

Direct and Cross Examination of Pension Valuation Experts:
Advanced Techniques and Updates

Hon. Amy Kalman

Daniel S. Riley, Esq., CQP

Nicole Siqueiros-Stoutner, Esq.

Taylor S. House, Esq.

AZCLE® from the State Bar of Arizona

CLE by the SEA 2024

A Brief History of Pension Formulas

- 1981 - *Van Loan* Formula
- "The community share of the pension is determined by dividing the length of time worked during the marriage by the total length of time worked..." *Johnson v. Johnson*, 131 Ariz 38 (1981).

A Brief History of Pension Formulas

- 1986 – *Koelsch* Formula
- "[T]he non-employee spouse [is] paid a monthly amount equal to his or her share of the benefit which would be received if the employee were to retire" by applying a *Van Loan* formula to the benefit earned as of the date payments commence. *Koelsch v. Koelsch*, 148 Ariz. 176 (1986).

A Brief History of Pension Formulas

- 2017 – Frozen Benefit (Military Only)
- Divides a hypothetical benefit. The hypothetical benefit is the amount the servicemember would have received if he or she had retired on the date of divorce, ignoring normal vesting rules.

A Brief History of Pension Formulas

- 2023 – Session Law 34
- Amends Title 38 to require that Arizona State pensions be valued “on the earliest date of service of the petition…” in a dissolution, annulment, or legal separation.

Is Session Law 34 a Frozen Benefit Rule?
Arguments in Favor of Frozen Benefit

- During debate, some advocates of the Bill expressed a belief that it "mirrors" the military's frozen benefit formula.
- During debate, the bill's sponsor argued the bill was crafted to overturn *Hoobler v. Hoobler*, 254 Ariz. 130 (App. Div. 1 2023).

Is Session Law 34 a Frozen Benefit Rule?
Arguments Against a Frozen Benefit

- *Van Loan* and *Koelsch* already value pensions using date of service, so the change has no practical effect.
- The statute is poorly crafted and does not provide guidance for how to apply a frozen benefit rule if that was indeed the intent.
- The appellate courts have criticized the frozen benefit rule in dicta in three recent cases, including one that post-dates the amendment. *See Sease v. Sease*, 1 CA-CV 23-0515 FC (App. Div. 1 2024).

Nicole Siqueiros-Stoutner, Esq.
Sheldon & Stoutner
11111 N. Scottsdale Rd. Ste. 245
Scottsdale, AZ 85254
stoutner@sheldonstoutner.com
Counsel for Husband

Taylor S. House, Esq.
Reardon House Colton PLC
7501 E. McCormick Parkway Ste. 106N
Scottsdale, AZ 85258
taylor@rhcfamilylaw.com
Counsel for Wife

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

In The Matter of: **JOHN BLACKACRE**, Petitioner, and, **JANE BLACKACRE**, Respondent.	Case No: **FN2024-123456** **JOINT PRETRIAL STATEMENT** (Assigned to the Hon. Amy Kalman)

John Blackacre (hereinafter "Husband") and Jane Blackacre (hereinafter "Wife") hereby submit their Joint Pretrial Statement for the trial set for 11:30 a.m. on Wednesday, July 10, 2024, before the Honorable Amy Kalman, Maricopa County Superior Court.

I. THE NATURE OF THE ACTION

This matter is before the Court as a result of the Petition for Dissolution filed by Husband on January 10, 2024. Wife accepted service of the petition on January 20, 2024.

II. WITNESSES TO BE CALLED AT TRIAL

Daniel S. Riley, Esq., CQP
Riley Law Firm PLC
112 N. Central Ave. Ste. 300D
Phoenix, AZ 85004

III. EXHIBITS TO BE USED AT TRIAL

No.	Description	Objections
1.	Initial Report of Daniel S. Riley	*None*
2.	Supplemental Report of Daniel S. Riley	

IV. STIPULATIONS OR AGREEMENTS OF THE PARTIES

The parties have resolved issues pertaining to property, debt, and support, and those agreements are memorialized in the Property Settlement Agreement previously filed in this matter and adopted by the Court as an order of the court pursuant to Ariz. R. Fam. P. 69.

V. UNCONTESTED ISSUES OF FACT

a. Husband's date of birth is December 13, 1984.

b. Husband began accruing pension benefits in the Public Safety Personnel Retirement System ("PSPRS") on March 1, 2008. Husband is continuing to accrue benefits in PSPRS. Husband's pension will not mature until he accrues 20 years of service.

c. The parties were married on October 8, 2010.

d. The date of service of the petition is January 20, 2024.

VI. CONTESTED ISSUES OF FACT AND LAW

The parties have resolved all issues in this case other than the fair and equitable division of the PSPRS benefit. Husband requests that he receive the PSPRS benefit in exchange for a buyout of $44,897.44 (tax-deferred value). Husband requests that the Court order that he may pay the buyout with a rollover from a separate tax-deferred savings plan. His position statement is attached as Exhibit A.

Wife requests that the Court value Wife's share of the pension using a *Koelsch* formula, because Husband intends to continue working beyond his date of normal retirement eligibility. With a *Koelsch* formula, Wife would be entitled to direct payments from Husband in the amount of $1,078.19 commencing March 1, 2028. Upon Husband's retirement, these payments would cease, and Wife would begin receiving a gross amount of $1,585.57 from the retirement system. Wife's position statement is attached as Exhibit B.

VII. STATEMENT OF COUNSEL

The parties have exchanged disclosures and discovery. The parties have discussed settlement in good faith. The parties believe a stenographer is unnecessary and ask that a recording of the proceedings be made using the court's electronic recording system.

RESPECTFULLY SUBMITTED on June 26, 2024.

/s/ Nicole Siqueiros-Stoutner
Sheldon & Stoutner
11111 N. Scottsdale Rd. Ste. 245
Scottsdale, AZ 85254
Counsel for Husband

/s/ Taylor S. House
Reardon House Colton PLC
7501 E. McCormick Parkway Ste. 106N
Scottsdale, AZ 85258
Counsel for Wife

EXHIBIT A

Husband's Position Statement

I. SUMMARY

The parties have resolved all issues in this case other than the fair and equitable division of Husband's pension. Husband retained Daniel S. Riley, Esq., CQP to determine the present-day lump sum value of the benefit using a frozen benefit formula. Mr. Riley opines that Wife's share of the pension is valued at $44,897.44. This is a tax-deferred value, so Husband proposes a buyout in which he would retain his pension in exchange for rolling over $44,897.44 to Wife from his tax-deferred 401(a) Supplemental Savings Plan.

II. FACTS

Husband is an officer with the Phoenix Police Department. He began his career in law enforcement on March 1, 2008, and the parties married two-and-a-half years later, on October 8, 2010. At the time the petition for divorce was filed, Husband had accrued less than sixteen years in PSPRS. An employee with less than twenty years of service in PSPRS is eligible for only two forms of payment: (1) the employee can receive a lump sum refund of the employee's payroll contributions to the pension system, or (2) the employee can receive a deferred annuity payable at age 62. If Husband completes twenty years of employment, he becomes eligible for a third form of payment: An immediate annuity equal to fifty percent of his highest average salary. There is no guarantee that Husband will reach twenty years of employment, and if he does, it will be solely because of his post-marital labor.

Mr. Riley determined that if Husband had ceased employment on the date of service, he would have been eligible to receive a pension of $3,205.52, commencing January 1, 2047.

Mr. Riley determined that the present-day lump sum value of Wife's share of the benefit is $107,394.83 as reflected in the worksheet attached as Appendix A to Mr. Riley's initial report. Husband began employment with Phoenix Police Department prior to marriage, so a portion of that benefit is his premarital separate property. Mr. Riley calculates that Wife's proportionate interest in the benefit is valued at $44,897.44. That is a pretax value.

Husband proposes to pay the buyout with a rollover from his tax-deferred 401(a) Supplemental Savings Plan in the amount of $44,897.44.

III. LEGAL ARGUMENT

A. The Court Must Value Husband's Pension as of the Date of Service

During its 2023 session, Governor Hobbs signed Session Law 34. This law amended Title 38 effective October 31, 2023 to now require that state pensions be valued "on the earliest date of service of the petition…in a dissolution, annulment, or legal separation." A.R.S. § 38-860(A). The way this is done is by applying a frozen benefit formula.

Frozen benefit formulas are not new. Military retirement is divided using such a formula, and other jurisdiction have statutes or caselaw favoring the frozen benefit method over the reserved jurisdiction method. *E.g.* Code of Virginia § 20-107.3(G)(1). The frozen benefit formula works by first determining the amount of the benefit the employee would have received had the employee retired on the date of service. Mr. Riley determined the amount of the benefit earned by Husband as of the date of service and the lump sum value of that benefit. Mr. Riley determined that had Husband ceased working on the date of service, he would be entitled to receive a pension of $3,205.52 per month commencing at age 62. This

is the benefit subject to division by the Court, not the benefit Husband will accrue if he works another four years.

B. A *Koelsch* Formula is Not Fair or Equitable Under These Facts

Wife asserts that her share of the pension should be valued four years in the future, once Husband completes twenty years of employment. Allowing a former spouse to share in an employee's post-marital labor is not fair—a fact recognized by the legislature when it amended Title 38. Wife's request to apply a *Koelsch* formula is barred by A.R.S. § 38-860(A), which requires this Court to value the pension on the date of service.

In *Koelsch*, the Arizona Supreme Court held that it may be fair in some circumstances to order an employee-spouse to make direct payments to the former spouse when: (1) the former spouse is entitled to a portion of the employee's pension, (2) the pension is mature, (3) the employee has chosen to continue working beyond the age of retirement eligibility, and (4) the retirement system is unable to initiate payments to the former spouse until the employee retires. *Koelsch v. Koelsch*, 148 Ariz. 176 (19986). The amount of the payment is "equal to [the former spouse's] share of the benefit which would be received if the employee spouse were to retire … The monthly amount which would be available if the employee spouse were to retire is multiplied by a fraction in which the total months married while enrolled in the pension plan is the numerator and the total time in the pension plan up to the date of dissolution is the denominator." *Id.* at 184.

Throughout *Koelsch*, the Court explains that these payments are not mandatory and that the decision whether to award such payments is a matter of the trial court's discretion based on the specific facts and circumstances of each case. *Id.* at 185. Even if this court

determines it *can* award direct payments despite the recent amendment to Title 38, that does not mean it *should*. Mr. Riley's supplemental report explains that the amount of the direct payments would be $1,078.19 commencing March 1, 2028. As noted in Mr. Riley's report, Husband's income has decreased since January 1, 2024 due to changes in the Phoenix Police Department's overtime policy. Husband cannot afford to make payments in such an amount, so if the court was to order direct payments, this would effectively force Husband to retire at his earliest available retirement date. It is not fair or equitable to force Husband into an early retirement.

EXHIBIT B

Wife's Position Statement

I. SUMMARY

Wife requests that the Court order a QDRO to be submitted that awards Wife $1,585.57 per month from the PSPRS benefit at the time of Husband's retirement. Wife further requests that if Husband declines to retire when eligible, he should make direct payments to her in the amount of $1,078.19 per month commencing the month he becomes eligible to retire and ending the month he retires.

The amendment to Title 38 does not invalidate fifty years of precedent. A *Koelsch* formula comports with the statute, because it determines the former spouse's portion of the benefit using the date of service as the termination point. It is unfair and inequitable to freeze Wife's share of the benefit at the date of service. This would apportion a fictional benefit instead of the benefit that is actually before the Court.

II. FACTS

There is no serious dispute that Husband will become eligible to retire on March 1, 2028 with a monthly pension of $4,775.81. Husband is not asking this court to divide that benefit. Instead, he asks this court to divide a fictional benefit. He wants this court to calculate Wife's share of the pension as if Husband was to receive a smaller amount ($3,205.52) at a far distant date (January 1, 2047).

According to *Koelsch*, Wife's share of the benefit is $1,585.57 per month commencing March 1, 2028. This is calculated as follows:

$$\$4{,}775.81\ gross\ benefit\ x \frac{13.28\ years\ of\ marriage}{20\ years\ of\ employment} x\ 50\% = \$1{,}585.57$$

Husband is entitled to choose for himself when he wants to retire, but this does not entitle him to delay Wife's receipt of benefits. Wife prefers to receive her share of the benefit as soon as possible. If Husband continues to work beyond March 1, 2028, he should be ordered to make direct payments to Wife in the amount of $1,078.19 until such time as Wife begins receiving her share of the pension directly from the retirement system. The court should enter a domestic relations order compelling the retirement system to pay $1,585.57 to Wife from Husband's benefit once he retires and the direct payments cease.

III. LEGAL ARGUMENT

A. The Amendment to Title 38 Does not Invalidate *Koelsch*

In 2023, Arizona amended Title 38 to clarify that the court must use the date of service when determining the community interest in a state pension such as PSPRS. The amended language is shown in bold below.

> A.R.S. § 38-860(A)
>
> [I]n a judicial proceeding for annulment, dissolution of marriage or legal separation that provides for the distribution of community property, or in any judicial proceeding to amend or enforce such a property distribution, a court in this state may issue a domestic relations order that provides that all or any part of a participant's benefit or refund in the system that would otherwise be payable to that participant shall instead be paid by the system to an alternate payee. **The value of a participant's benefit shall be the value on the earliest date of service of the petition for annulment, dissolution of marriage or legal separation**.

The amendment started its life as House Bill 2433 during the 2023 legislative session. During the scant debate on the bill, its sponsor explained that the purpose of the bill was to overturn *Hoobler v. Hoobler*, 254 Ariz. 130 (App. Div. 1 2023).

In *Hoobler*, the Court of Appeals affirmed a case-specific hybrid approach to dividing a set of retirement assets. In that case, the parties disputed whether the former spouse's interest in a PSPRS pension should be allocated using a lump-sum method or a reserved jurisdiction method. The trial court adopted neither method and instead applied a hybrid formula that combined elements of a lump sum calculation with an adjustment to future payments, combined multiple different types of retirements assets together for purposes of equalization, and included an order requiring the employee-spouse to obtain a life insurance policy to secure the former spouse's interest in the future pension payments. *Id.* at 137. The Court of Appeals declined to reverse the order, noting that although it was certainly "creative," it did not violate the duty to fairly and equitable divide the parties' community property.

Neither party is asking this court to adopt a hybrid approach like the one utilized in *Hoobler*, so the purpose for which House Bill 2433 was designed is not implicated here. Wife is requesting that her share of the pension be allocated in accordance with *Koelsch*. This formula comports with the amendment, because it determines Wife's proportionate share of the benefit using the "earliest date of service."

B. Applying a Frozen Benefit Formula is Unfair and Inequitable

The courts of this state have never endorsed the use of a frozen benefit formula. Although the court of appeals has not directly addressed the issue, there are several recent

decisions criticizing the frozen benefit formula. *E.g. Sease v. Sease*, 1 CA-CV 23-0515 FC (Ariz. App. Div. 1 2024); *Carrion v. Carrion*, 1 CA-CV 22-0135 FC (Ariz. App. Div.1 2022); *In re Marriage of Carr*, 2 CA-CV 2020-0045 FC (Ariz. App. Div. 2 2021). Husband's own expert vigorously criticized the frozen benefit formula in an article published shortly after the legislature amended Title 38:

> The frozen benefit formula gets its name from the fact that it freezes the former spouse's interest in a pension on the date of service. In other words, the issue is framed like this: "What would a former spouse receive if the employee-spouse had stopped working on the date of service?" Under a frozen benefit formula, the former response receives no investment gains, cost-of-living adjustments, or other increases in value of the pension. Proponents of the frozen benefit method argue that unlike the passive investment gains on a brokerage account or real estate, future increases in the value of a pension are the result of the employee-spouse's post-marital labor. This theory has never achieved popular support in the nation's courts. Only five states—Florida, Minnesota, Nebraska, and Ohio—have case law favoring the frozen benefit method. A sixth state (Virginia) has a statute requiring it.

Riley, Daniel. *Changes to Title 38 May Affect the Valuation of State Pensions at Divorce*. Maricopa county Bar Association Family Section Newsletter. Jan. 2023.

As noted by Husband's expert, a frozen benefit formula deprives the former spouse of the investment gains, cost-of-living adjustments, and other inherent increases in the value of the former spouse's share of the pension. This is not fair. Wife's interest in the pension should be determined based on the pension that actually exists—not the fictional benefit advocated by Husband.

RILEY LAW FIRM
112 N. Central Ave. Ste. 300D
Phoenix, AZ 85004
(602) 640-0719
QDRO • Appeals • Family Law

Daniel S. Riley, Esq., CQP *
Dionne J. Howell, LP

* Certified Family Law Specialist
Certified QDRO Professional

April 21, 2024

Nicole Siqueiros-Stoutner, Esq.
Sheldon & Stoutner
11111 N. Scottsdale Rd. Suite 245
Scottsdale, AZ 85254

RE: Valuation Report for PSPRS – *Frozen Benefit Formula*

Ms. Siqueiros-Stoutner:

You requested that I determine the lump sum value of a retirement benefit using the frozen benefit method. This valuation is based on the following data:

Employee's Date of Birth:	12/13/1984
Date Employment Began:	03/01/2008
Date of Marriage:	10/08/2010
Date of Service:	01/20/2024

As of the date of service, the Member had accrued 15.89 years in the pension system. The length of marriage at the date of service was 13.28 years. The Member's highest average salary at the date of service was the salary he earned from January 1, 2021 to January 1, 2024. During that 36-month period, he earned total compensation of $343,857.85, which averages $9,551.61 per month.

Conclusion of Value

It is my opinion that the value of the former spouse's interest in PSPRS using a frozen benefit method is $44,897.44. The basis of my opinion is described below.

Description of the Subject Asset

The retirement benefit at issue in this report is the Public Safety Personnel Retirement System ("PSPRS"). This is a state pension system governed by Title 38 of the Arizona Revised Statutes. On October 31, 2023, Title 38 was amended to read as follows:

A.R.S. § 38-860(A)

[I]n a judicial proceeding for annulment, dissolution of marriage or legal separation that provides for the distribution of community property, or in any judicial proceeding to amend or enforce such a property distribution, a court in this state may issue a domestic relations order that provides that all or any part of a participant's benefit or refund in the system that would otherwise be payable to that participant shall instead be paid by the system to an alternate payee. **The value of a participant's benefit shall be the value on the earliest date of service of the petition for annulment, dissolution of marriage or legal separation**.

The retirement system does not allow a former spouse to be designate the beneficiary of a survivor annuity, so I did not include a calculation of the present value of survivor benefits. The retirement system includes cost of livings adjustments. Over the last ten years, these adjustments have averaged 1.67% per year. I used this rate to project the post-retirement cost of living adjustments.

Frozen Benefit Calculation

The first step in determining Former Spouse's interest in the pension is to calculate the pension benefit accrued by the Member as of the date of service. Had Member ceased employment on the date of service, he would have been eligible for a pension of $3,205.52 per month beginning at age 62 as explained below.

To determine the benefit accrued as of the date of service, we apply the formula utilized by the retirement system to calculate a member's pension. That formula is described in Title 38, and the relevant sections are reproduced below.

A.R.S. § 38-842

7. "Average monthly benefit compensation" means the result obtained by dividing the total compensation paid to an employee during a considered period by the number of months, including fractional months, in which such compensation was received. For an employee who becomes a member of the system: (a) Before January 1, 2012, the considered period shall be the three consecutive years within the last twenty completed years of credited service that yield the highest average.

32. "Normal retirement date" means: (a) For an employee who becomes a member of the system before January 1, 2012, the first day of the calendar month immediately following the employee's completion of twenty years of service or the employee's sixty-second birthday and the employee's completion of fifteen years of service.

A.R.S. § 38-845

A. A member who meets the requirements for a normal pension, who becomes a member of the system before January 1, 2012 and who has twenty years of credited service shall receive a monthly amount that equals fifty percent of the member's average monthly benefit compensation. If the member retires with other than twenty years of credited service, the foregoing amount shall be:

1. Reduced by four percent for each year of credited service under twenty years, with pro rata reduction for any fractional year.

Member accrued 15.89 years of employment and an average monthly salary of $9,551.61 as of the date of service. Because he had not yet reached the date of normal retirement eligibility as of the date of service, his multiplier is reduced by 4% for each year short of normal retirement eligibility. He was 4.11 years short of retirement eligibility, so that penalty reduces his multiplier from 50% to 33.56%. Had Member ceased employment on the date of service, he would not be eligible to begin receiving payments from the retirement system until age 62.

In other words, the benefit earned by the Member as of the date of service is a pension of $3,205.52 per month, payable beginning January 1, 2047, which is the month following his 62nd birthday.

Opinion of Lump Sum Value

Now that the projected future pension is known, we can determine the lump sum value of the benefit. I relied upon the Income-Based Valuation Model to determine the lump sum value to be $107,394.83. Worksheets are attached to this report as Appendix A showing the calculations performed using this Model. This Model utilizes life expectancy and a discount rate as part of the calculation.

It is a generally accepted practice to determine life expectancy using the United States Life Tables, which are published by the Centers for Disease Control on their website.

I considered three different generally accepted discount rates and applied a weighted average to arrive at a final determination of value. The three discount rates I considered are described below along with the basis of my opinion as to the weight to be given to each discount rate.

AACQP Discount Rate: The American Association of Certified QDRO Professionals was established to create uniform standards for the valuation and division of retirement benefits at divorce. The Association updates its recommended discount rate as necessary based upon prevailing economic indicators. As of the date of this report, the AACQP recommends a discount rate of 5.50%.

PBGC Discount Rate: The Pension Benefit Guaranty Corporation insures ERISA-qualified pension plans. It publishes a table of discount rates on its website. Which discount rate applies is based upon two criteria: (1) the date of commencement of benefits, and (2) the corporate bond yield curve as of the valuation date. The corporate bond yield curve is published on the website of the Department of the Treasury. As of the date of this report, the PBGC discount rate is 5.00%.

GATT Discount Rate: The General Treaty on Tariffs and Trade (GATT) sets minimum funding requirements for ERISA-qualified pension plans. The standards were amended by the Retirement Protection Act of 1994. GATT uses the 30-Year Treasury Bond Rate as its discount rate. The bond rate is published on the website of the Department of the Treasury. As of the Valuation Date, the 30-Year Treasury Bond Rate was 4.55%.

It is my opinion, based on my training and experience, that the AACQP data set is the one most relevant to this valuation. AACQP's data set is specifically designed for this type of valuation. Significantly less weight should be given to the PBGC and GATT data sets, because those data sets were designed for different purposes. Those data sets are used to determine funding requirements, insurance premiums, and the overall health of pension funds/trusts. Those data sets were not designed for use in valuing a single retirement benefit. Consequently, I gave the data sets the following weight:

Data Set	Rate	Weight
AACQP	5.50%	80%
PBGC	5.25%	15%
GATT	4.55%	5%

Weighted Average: 5.415%

Opinion of the Alternate Payee's Interest

I determine the alternate payee's proportionate interest in the retirement benefit to be 41.52%. Expressed as a dollar amount, the alternate payee's share of the pension has a present-day lump sum value of $44,897.44 The Arizona Supreme Court has given specific instructions as to how to calculate an alternate payee's proportionate interest in a pension:

> The community property portion of the retirement benefit would be calculated by multiplying the lump sum present value of the pension plan at the date of maturity by a fraction in which the total months married while enrolled in the pension plan is the numerator and the total time in the pension plan up to the date of dissolution is the denominator. The non-employee spouse would then be awarded one-half of that amount. This formula assures that only the amount attributable to community effort or to the intrinsic quality of the community asset is divided as community property.

Koelsch v. Koelsch, 148 Ariz. 176, 184, 713 P.2d 1234, 1242 (1986).

Here, dividing the length of marriage by the length of employment accrued as of the date of service yields a figure of 83.61%. That is the community portion as of the date of service.

Discounts

Depending upon the circumstances of an individual case, the concept of lump sum value may require "discounts for mortality, interest, probability of vesting, and probability of continued employment." *Johnson v. Johnson*, 131 Ariz. 38, 42, 638 P.2d 705, 709 (1981). I applied a 16.34% mortality discount. This rate reflects the statistical probability of Husband dying before reaching age 62.

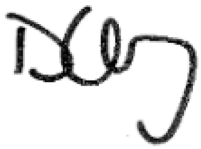
Tax Adjustments

This report reflects the gross (tax-deferred) value of the retirement benefit. If offsetting the alternate payee's interest in the pension using other tax-deferred assets, no downward adjustment is required. If offsetting the alternate payee's interest with non-tax-deferred assets, the value of the pension should be reduced to account for the fact that income taxes have not yet been applied to the retirement benefit.

Summary

It is my opinion that the value of the former spouse's interest in PSPRS using a frozen benefit method is $44,897.44. This is a tax-deferred value, meaning it could be satisfied with a rollover from another tax-deferred asset such as Husband's 401(a) Supplemental Savings Plan. It has been my pleasure to assist you with this matter, and if I can be of any further help, please let me know.

Sincerely,



Daniel S. Riley, Esq., CQS

Certification

I certify, to the best of my knowledge and belief:

1. The statements of fact contained in this report are true and correct.
2. The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions. They represent my personal, unbiased, professional analyses, opinions, and conclusions.
3. My compensation is not contingent on any final outcome or particular value estimate.
4. The analyses, opinions, and conclusions were developed in conformity with the standards of the American Association of Certified QDRO Professionals.
5. I am in compliance with all continuing professional education requirements of the State Bar of Arizona and the American Association of Certified QDRO Professionals.

Assumptions and Limiting Conditions

This report is subject to the following assumptions and limiting conditions:

1. Information, estimates, and opinions contained in this report are obtained from sources considered to be reliable; however, I have not performed an audit or review of such information and do not express an opinion or other form of assurance as to its accuracy or reliability.
2. This valuation provides the lump sum value of a specific valuation date based on the facts and circumstances known to me as of the date of the report. Subsequent conditions or events have not been considered, and I have no responsibility to amend or update this report for future conditions or events.
3. I have not considered the tax implications of allocating the retirement benefit at issue in this report, and this report should not be considered as tax advice.

APPENDIX A
Life Tables

Table 2. Life table for males: United States, 2021

Spreadsheet version available from: https://ftp.cdc.gov/pub/Health_Statistics/NCHS/Publications/NVSR/72-12/Table02.xlsx.

Age (years)	Probability of dying between ages x and $x+1$	Number surviving to age x	Number dying between ages x and $x+1$	Person-years lived between ages x and $x+1$	Total number of person-years lived above age x	Expectation of life at age x
	q_x	l_x	d_x	L_x	T_x	e_x
0–1	0.005833	100,000	583	99,489	7,354,986	73.5
1–2	0.000416	99,417	41	99,396	7,255,497	73.0
2–3	0.000274	99,375	27	99,362	7,156,101	72.0
3–4	0.000224	99,348	22	99,337	7,056,739	71.0
4–5	0.000175	99,326	17	99,317	6,957,402	70.0
5–6	0.000161	99,308	16	99,300	6,858,085	69.1
6–7	0.000149	99,292	15	99,285	6,758,785	68.1
7–8	0.000137	99,278	14	99,271	6,659,500	67.1
8–9	0.000119	99,264	12	99,258	6,560,229	66.1
9–10	0.000098	99,252	10	99,247	6,460,971	65.1
10–11	0.000084	99,242	8	99,238	6,361,724	64.1
11–12	0.000093	99,234	9	99,230	6,262,485	63.1
12–13	0.000144	99,225	14	99,218	6,163,256	62.1
13–14	0.000248	99,211	25	99,198	6,064,038	61.1
14–15	0.000392	99,186	39	99,167	5,964,840	60.1
15–16	0.000556	99,147	55	99,120	5,865,673	59.2
16–17	0.000719	99,092	71	99,056	5,766,553	58.2
17–18	0.000885	99,021	88	98,977	5,667,497	57.2
18–19	0.001044	98,933	103	98,882	5,568,520	56.3
19–20	0.001199	98,830	118	98,771	5,469,638	55.3
20–21	0.001361	98,711	134	98,644	5,370,868	54.4
21–22	0.001527	98,577	151	98,502	5,272,223	53.5
22–23	0.001678	98,427	165	98,344	5,173,722	52.6
23–24	0.001805	98,261	177	98,173	5,075,378	51.7
24–25	0.001915	98,084	188	97,990	4,977,205	50.7
25–26	0.002015	97,896	197	97,798	4,879,215	49.8
26–27	0.002116	97,699	207	97,596	4,781,417	48.9
27–28	0.002221	97,492	217	97,384	4,683,821	48.0
28–29	0.002334	97,276	227	97,162	4,586,438	47.1
29–30	0.002451	97,049	238	96,930	4,489,275	46.3
30–31	0.002569	96,811	249	96,686	4,392,346	45.4
31–32	0.002682	96,562	259	96,433	4,295,659	44.5
32–33	0.002789	96,303	269	96,169	4,199,227	43.6
33–34	0.002887	96,035	277	95,896	4,103,058	42.7
34–35	0.002982	95,757	286	95,615	4,007,162	41.8
35–36	0.003081	95,472	294	95,325	3,911,547	41.0
36–37	0.003190	95,178	304	95,026	3,816,222	40.1
37–38	0.003310	94,874	314	94,717	3,721,196	39.2
38–39	0.003446	94,560	326	94,397	3,626,479	38.4
39–40	0.003597	94,234	339	94,065	3,532,082	37.5
40–41	0.003772	93,895	354	93,718	3,438,018	36.6
41–42	0.003964	93,541	371	93,356	3,344,299	35.8
42–43	0.004158	93,170	387	92,977	3,250,944	34.9
43–44	0.004353	92,783	404	92,581	3,157,967	34.0
44–45	0.004560	92,379	421	92,168	3,065,386	33.2
45–46	0.004799	91,958	441	91,737	2,973,218	32.3
46–47	0.005090	91,516	466	91,283	2,881,481	31.5
47–48	0.005431	91,051	494	90,803	2,790,198	30.6
48–49	0.005818	90,556	527	90,293	2,699,394	29.8
49–50	0.006241	90,029	562	89,748	2,609,102	29.0
50–51	0.006679	89,467	598	89,169	2,519,353	28.2
51–52	0.007151	88,870	636	88,552	2,430,185	27.3
52–53	0.007690	88,234	678	87,895	2,341,633	26.5
53–54	0.008316	87,556	728	87,192	2,253,738	25.7
54–55	0.009023	86,828	783	86,436	2,166,546	25.0
55–56	0.009754	86,044	839	85,624	2,080,111	24.2
56–57	0.010510	85,205	895	84,757	1,994,486	23.4
57–58	0.011350	84,309	957	83,831	1,909,729	22.7
58–59	0.012285	83,352	1,024	82,840	1,825,898	21.9
59–60	0.013286	82,328	1,094	81,782	1,743,058	21.2

See footnote at end of table.

Table 2. Life table for males: United States, 2021—Con.

Spreadsheet version available from: https://ftp.cdc.gov/pub/Health_Statistics/NCHS/Publications/NVSR/72-12/Table02.xlsx.

Age (years)	Probability of dying between ages x and $x+1$	Number surviving to age x	Number dying between ages x and $x+1$	Person-years lived between ages x and $x+1$	Total number of person-years lived above age x	Expectation of life at age x
	q_x	l_x	d_x	L_x	T_x	e_x
60–61	0.014341	81,235	1,165	80,652	1,661,276	20.5
61–62	0.015402	80,070	1,233	79,453	1,580,624	19.7
62–63	0.016437	78,836	1,296	78,189	1,501,171	19.0
63–64	0.017445	77,541	1,353	76,864	1,422,982	18.4
64–65	0.018475	76,188	1,408	75,484	1,346,118	17.7
65–66	0.019576	74,780	1,464	74,048	1,270,634	17.0
66–67	0.020927	73,316	1,534	72,549	1,196,586	16.3
67–68	0.022303	71,782	1,601	70,982	1,124,036	15.7
68–69	0.023804	70,181	1,671	69,346	1,053,055	15.0
69–70	0.025383	68,511	1,739	67,641	983,709	14.4
70–71	0.026908	66,772	1,797	65,873	916,068	13.7
71–72	0.028704	64,975	1,865	64,042	850,195	13.1
72–73	0.030788	63,110	1,943	62,138	786,152	12.5
73–74	0.033361	61,167	2,041	60,147	724,014	11.8
74–75	0.035944	59,126	2,125	58,064	663,867	11.2
75–76	0.040497	57,001	2,308	55,847	605,804	10.6
76–77	0.044053	54,693	2,409	53,488	549,957	10.1
77–78	0.048810	52,283	2,552	51,007	496,469	9.5
78–79	0.053173	49,731	2,644	48,409	445,461	9.0
79–80	0.058908	47,087	2,774	45,700	397,052	8.4
80–81	0.063954	44,313	2,834	42,896	351,352	7.9
81–82	0.070311	41,479	2,916	40,021	308,456	7.4
82–83	0.076958	38,563	2,968	37,079	268,435	7.0
83–84	0.084813	35,595	3,019	34,086	231,356	6.5
84–85	0.094500	32,576	3,078	31,037	197,271	6.1
85–86	0.104319	29,498	3,077	27,959	166,234	5.6
86–87	0.116428	26,421	3,076	24,882	138,275	5.2
87–88	0.129619	23,344	3,026	21,831	113,392	4.9
88–89	0.143914	20,319	2,924	18,856	91,561	4.5
89–90	0.159317	17,394	2,771	16,009	72,704	4.2
90–91	0.175814	14,623	2,571	13,338	56,695	3.9
91–92	0.193369	12,052	2,331	10,887	43,358	3.6
92–93	0.211919	9,722	2,060	8,692	32,471	3.3
93–94	0.231379	7,661	1,773	6,775	23,779	3.1
94–95	0.251638	5,889	1,482	5,148	17,004	2.9
95–96	0.272559	4,407	1,201	3,806	11,856	2.7
96–97	0.293988	3,206	942	2,735	8,050	2.5
97–98	0.315751	2,263	715	1,906	5,315	2.3
98–99	0.337666	1,549	523	1,287	3,409	2.2
99–100	0.359544	1,026	369	841	2,122	2.1
100 and older	1.000000	657	657	1,281	1,281	1.9

SOURCE: National Center for Health Statistics, National Vital Statistics System, mortality data file.

HYPO 9

APPENDIX B
Worksheets for Unmatured Benefit with Cost-of-Living Adjustments

Attached below are the worksheets used to calculate the lump sum value in this report. The Income-Based Model uses the following formula to determine the initial lump sum value.

$$b\ x\ [\frac{1}{r-g} - \frac{1}{r-g}\ x\left(\frac{1+g}{1+r}\right)^{n}]$$

Where,
b = annual benefit
r = discount rate
g = cost-of-living adjustment
n = years of anticipated payments

If the pension benefit is not mature, the Income-Based Model requires that the initial lump sum value be discounted using a second formula:

$$\frac{l}{(1+r)^{y}}$$

Where,
l = is the initial lump sum value calculated above
r = is the discount rate
y = is the number of years until the pension matures

Frozen Benefit Formula	
Employee's Date of Birth:	12/13/84
Valuation Date:	1/20/24
Employee's Age at Valuation Date:	39.10
Date of Pension Maturity:	1/1/47
Employee's Age at Pension Maturity:	62.05
Employee's Life Expectency:	76.60
Monthly Pension Benefit:	$ 3,205.52
Years of Payments:	14.55
Discount Rate:	5.42%
Cost-of-Living Adjustments:	1.67%
Preretirement Mortality Discount:	16.34%
Lump Sum Value at Time of Maturity:	$ 360,216.20
Present-Day Lump Sum Value:	$ 107,394.84

Alternate Payee's Interest	
Employee's Hire Date	3/1/08
Employee's Separation Date	1/20/24
Date of Marriage	10/8/10
Date of Service	1/20/24
Community Interest in the Pension Benefit (%)	83.61%
Community Interest in the Pension Benefit ($)	$ 89,794.90
Alternate Payee's Interest in the Pension Benefit ($)	$ 44,897.45

RILEY LAW FIRM
112 N. Central Ave. Ste. 300D
Phoenix, AZ 85004
(602) 640-0719
QDRO • Appeals • Family Law

Daniel S. Riley, Esq., CQP *
Dionne J. Howell, LP

* Certified Family Law Specialist
Certified QDRO Professional

June 6, 2024

Nicole Siqueiros-Stoutner, Esq.
Sheldon & Stoutner
11111 N. Scottsdale Rd. Suite 245
Scottsdale, AZ 85254

RE: Valuation Report for PSPRS – *Koelsch* Formula

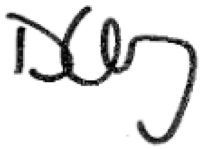
Ms. Siqueiros-Stoutner:

I previously provided a report in this case. You requested that I supplement my report with an opinion as to the Wife's share of the pension using a *Koelsch* formula. Husband is eligible to retire on March 1, 2028. Husband's highest average salary is $9,551.61 per month, which he earned during the period of January 1, 2021 through January 1, 2024. Husband informs me that he is unlikely to earn a higher average salary between now and March 1, 2028. He states that Phoenix Police Department offered unlimited overtime from 2021-2023 due to a combination of short-staffing and major public events requiring a large police presence such as the 2022 election-related protests, 2023 World Series, and 2023 Super Bowl. He states that rules regarding overtime have become stricter and his income has decreased.

If Husband continues employment, he will be entitled to 50% of his highest average salary commencing March 1, 2028. That amount is $4,775.81 per month. As of March 1, 2028, 66.40% of his employment would have occurred during marriage, meaning Wife would be entitled to 33.20% of the benefit. That amount is $1,585.57 commencing March 1, 2028.

If Husband elected to continue working beyond March 1, 2028, *Koelsch* requires that he make out-of-pocket payments to Wife in the amount of $1,585.57 minus a tax adjustment. Husband provided recent paystubs showing his year-to-date salary averages approximately $8,500 per month. His effective tax rate is approximately 32%. The out-of-pocket payments would be $1,078.19 after the tax adjustment.

Sincerely,



Daniel S. Riley, Esq., CQS